

# District of Columbia Code

1973 Edition



TITLE 18—WILLS AND PROBATE OF WILLS  
TO  
TITLE 40—MOTOR VEHICLES







BAARS







# DISTRICT OF COLUMBIA CODE

ANNOTATED

1973 EDITION

CONTAINING THE LAWS, GENERAL AND PERMANENT IN THEIR NATURE,  
RELATING TO OR IN FORCE IN THE DISTRICT OF COLUMBIA (EXCEPT  
SUCH LAWS AS ARE OF APPLICATION IN THE DISTRICT OF  
COLUMBIA BY REASON OF BEING GENERAL AND PER-  
MANENT LAWS OF THE UNITED STATES),  
IN FORCE ON JANUARY 2, 1973

NOTES TO DECISIONS THROUGH DECEMBER 1972



VOLUME TWO

TITLE 18—WILLS AND PROBATE OF WILLS  
TO  
TITLE 40—MOTOR VEHICLES



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# TITLES OF DISTRICT OF COLUMBIA CODE

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3. Board of Public Welfare.
4. Police and Fire Departments.
5. Building Restrictions and Regulations.
6. Health and Safety.
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- \*18. Wills and Probate of Wills.
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48. Trade-Marks and Trade Names.
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\* This title has been enacted as law.



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## PREFACE

This is the sixth edition of the Code of Laws of the District of Columbia prepared and published pursuant to Title 1 U.S. Code, section 202. This edition contains all the general and permanent laws relating to or in force in the District of Columbia, on January 2, 1973, except such laws as are of application in the District of Columbia by reason of being laws of the United States, general and permanent in their nature. The Code was originally adopted as prima facie evidence of existing law. However, Part II, Judiciary and Judicial Procedure, comprising Titles 11-17, Part III, Decedents' Estates and Fiduciary Relations, comprising Titles 18-21, Title 23, Criminal Procedure and Title 28, Commercial Instruments and Transactions (containing the Uniform Commercial Code), have since been enacted as law.

Many new features and improvements were incorporated in the 1940 edition, reflecting, as far as practicable, the preferences of the users of the Code who responded to a questionnaire sent out by the Committee on Revision of the Laws to several thousand attorneys and Government officers and employees within the District of Columbia. An entirely new arrangement of subject matter was adopted. Shortly before the 1973 edition was prepared a comparable survey was made by The Bar Association of the District of Columbia, and many of the suggestions resulting from the survey have been included in this edition.


The 1940 edition was the first official Code containing the annotations of the court decisions interpreting the respective sections of the Code. These annotations have been brought up to the indicated pages in the following reports:

93 S. Ct. 476, 468 F. 2d 632, 349 F. Supp. 1032, 296 A. 2d 896.

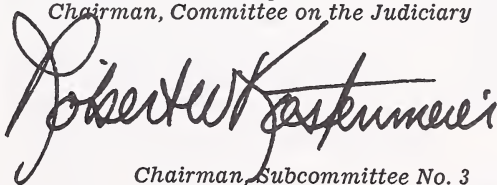
Numerous cross references and historical notes have been added to increase the usefulness of the Code. An important and extremely useful improvement in this edition is a cross-reference note following each section that is referred to in another section, indicating the section that refers to it. These cross references and historical notes are brought up to the end of 1972 in this edition and will be kept current in the future annual supplements. There is included in this edition, for the first time, an Index of Acts cited by Popular Names. It is hoped that it will prove to be an added useful tool for the users of the Code.

The work of preparing this edition was done by the Committee on the Judiciary of the House of Representatives with the assistance of the Equity Publishing Corporation under the supervision of Joseph Fischer, Esq., law revision counsel for the Committee. Acknowledgement is also made to the numerous officials of the District and Federal governments and the members of the bench and bar of the District whose suggestions have been most helpful.

The Committee invites suggestions and criticisms looking to the improvement of the Code.



*Chairman, Committee on the Judiciary*



*Chairman, Subcommittee No. 3  
Committee on the Judiciary*

WASHINGTON, D.C., January 2, 1973



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## PART III

# DECEDENTS' ESTATES AND FIDUCIARY RELATIONS

*Part III, consisting of Titles 18 to 21 and certain sections of Title 32, was enacted by Pub. L. 89-183, § 1, Sept. 14, 1965, 79 Stat. 685, effective Jan. 1, 1966*

TITLE 18. WILLS AND PROBATE OF WILLS.

TITLE 19. DESCENT AND DISTRIBUTION.

TITLE 20. ADMINISTRATION OF DECEDENTS' ESTATES.

TITLE 21. FIDUCIARY RELATIONS AND THE MENTALLY ILL.

## TITLE 18.—WILLS AND PROBATE OF WILLS

*Title 18 was enacted by Pub. L. 89-183*

For distribution of former sections of this title, see table following Title 49

Chap.	Sec.
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### ENACTING CLAUSE

Section 1 of act Sept. 14, 1965, provided in part: "That the general and permanent laws of the District of Columbia relating to wills and the probate of wills, descent and distribution, administration of decedents' estates, certain fiduciary relations, including provisions relating to guardians and wards, gifts to minors, and fiduciaries generally, and the mentally ill, are revised, codified, and enacted as Part III of the District of Columbia Code, 'Decedents' Estates and Fiduciary Relations', and may be cited 'D.C. Code §—', as follows:"

### EFFECTIVE DATE

Section 7 of act Sept. 14, 1965, provided: "This Act takes effect on January 1, 1966."

### APPROPRIATIONS

Section 5 of act Sept. 14, 1965, provided: "There are authorized to be appropriated such sums as may be necessary to carry out the provisions of Part III, District of Columbia Code, as set out in section 1 of this Act [Titles 18 to 21]."

### BRITISH STATUTES OMITTED

Section 6 of act Sept. 14, 1965, provided: "The following British statutes, heretofore classified to Part III of the District of Columbia Code, 1961 edition, [Titles 18 to 21] under the authority of section 1 of the Act approved March 3, 1901 (ch. 854, 31 Stat. 1189; D.C. Code, 1961 ed., sec. 49-301), have no further force, as such, in the District of Columbia:

(1) 9 Henry III (1225), chapter 7, section 1 (D.C. Code, 1961 ed., sec. 18-201).

(2) 13 Edward I (1285), chapter 4 (D.C. Code, 1961 ed., sec. 18-207).

(3) 13 Edward I (1285), chapter 7 (D.C. Code, 1961 ed., sec. 18-208).

(4) 13 Edward I (1285), chapter 15, section 1 (D.C. Code, 1961 ed., sec. 21-117).

(5) 13 Edward I (1285), chapter 34, section 4 (D.C. Code, 1961 ed., sec. 18-203).

(6) 21 Henry VIII (1529), chapter 4, section 1 (D.C. Code, 1961 ed., sec. 18-605).

(7) 27 Henry VIII (1535), chapter 10, sections 6, 7, 9 (D.C. Code, 1961 ed., secs. 18-206, 18-209, 18-205, respectively).

(8) 43 Elizabeth I (1601), chapter 8, section 2 (D.C. Code, 1961 ed., sec. 20-113).

(9) 30 Charles II (1677), chapter 7, section 2 (D.C. Code, 1961 ed., sec. 20-114).

(10) 4 and 5 William and Mary (1692), chapter 24, section 12 (D.C. Code, 1961 ed., sec. 20-112).

(11) 25 George II (1752), chapter 6, sections 1, 2, 7 (D.C. Code, 1961 ed., secs. 19-104, 19-106, 19-105, respectively)."

### REPEAL AND PRESERVATION OF RIGHTS AND LIABILITIES

Section 8 of act Sept. 14, 1965, provided: "The sections of the Acts or parts of Acts, enumerated in the schedule below, are repealed. Any rights or liabilities existing under the statutes or parts thereof so repealed, and any cases, actions, or proceedings instituted under, or growing out of, any of the statutes or parts thereof so repealed, are not affected by the repeal. However, laws becoming effective after February 3, 1965, and inconsistent with this Act supersede it to the extent of the inconsistency." [The "schedule below" referred to in text is set out as a part of Pub. L. 89-183.]

## Chapter 1.—GENERAL PROVISIONS

Sec.

18-101. Definitions.

18-102. Capacity to make a will.

18-103. Execution of written will; attestation.

18-104. Devises, legacies, etc., to attesting witnesses.

18-105. Retention or demand of void devise or legacy by attesting witness prohibited.

18-106. Creditors as competent witnesses.

18-107. Nuncupative wills.

18-108. Execution of power by will.

18-109. Revocation of wills; revival.

18-110. Opening will before delivery to Probate Court.

18-111. Withholding will.

18-112. Taking and carrying away, or destroying, mutilating, or secreting will.

### § 18-101. Definitions

As used in this title, unless the context requires a different meaning:

words importing the singular include the plural, and words importing the plural include the singular;

words importing the masculine gender include all genders;

the present tense includes the future as well as the present;



"District Court" means the United States District Court for the District of Columbia; and

"Probate Court" and "court", respectively, mean the Superior Court of the District of Columbia. (Sept. 14, 1965, 79 Stat. 685, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 147(1), 84 Stat. 566.)

#### AMENDMENT

1970—Section 147(1) of Act July 29, 1970, Public Law 91-358, amended the last paragraph of section by substituting "Superior Court of the District of Columbia" for "United States District Court for the District of Columbia in the exercise of its probate jurisdiction".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101 and note to 15-707.

#### REVISION NOTES

Section is new, and is inserted as a desirable statutory addition to this title of the District of Columbia Code. It permits the simplification of language in this title, as revised, including the deletion of surplusage, by the application of the definitions it contains.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20-101.

### § 18-102. Capacity to make a will

A will, testament, or codicil is not valid for any purpose unless the person making it is:

- (1) if a male, at least 21 years of age; or
- (2) if a female, at least 18 years of age—

and, at the time of executing or acknowledging it as provided by this chapter, of sound and disposing mind and capable of executing a valid deed or contract. (Sept. 14, 1965, 79 Stat. 686, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 19-101 (Mar. 3, 1901, ch. 854, § 1625, 31 Stat. 1433).

Changes are made in phraseology and arrangement.

#### CROSS REFERENCE

Stealing, destroying, or withholding will, penalty, see § 18-111, 18-112.

### NOTES TO DECISIONS UNDER PRESENT LAW

#### Capacity to make a will

Provision in section 21-1507 voiding transfer of real and personal property by person subject to conservatorship, does not render that person, per se, incapable of making valid will. *D. H. Rossi v. E. A. Fletcher* (1969, 418 F. 2d 1169, 135 U.S. App. D.C. 333, cert. denied 90 S. Ct. 568).

Congress in adopting provisions in section 18-102 that will was not valid unless person making it was of required age and at time of executing or acknowledging it was of sound and disposing mind and capable of executing valid deed or contract did not intend to deprive mentally competent person of testamentary capacity merely because he was subject to conservatorship. *Id.*

### NOTES TO DECISIONS UNDER PRIOR LAW

#### Evidence

Any degree of importunity or undue influence which deprives the testator of his free agency, and which is such as he is too weak to resist, and in effect renders the instrument not his free and unconstrained act, is sufficient to and will invalidate the will or testament of the party. *Barbour v. Moore* (1894, 4 App. D.C. 535).

Declarations of testator and his relations with the parties are competent circumstances tending to throw light upon his state of mind and disposition. The only limitation is that it shall not be received as proof of the independent fact or the truth of the things declared, but as supplementary only to direct proof of the alleged fraud and undue influence. *Manogue v. Herrell* (1898, 13 App. D.C. 455).

Testimony plainly of a hearsay character, including the certificates of the physicians for the commitment of testator to insane asylum is inadmissible, especially when testimony of physicians themselves was not taken. *Keely v. Moore* (1903, 22 App. D.C. 9, affirmed 25 S. Ct. 169, 196 U.S. 38, 49 L. Ed. 376.)

In Federal courts a will is not set aside on evidence showing only suspicion or possibility of undue influence. *Robinson v. Duvall* (1906, 27 App. D.C. 535, affirmed 28 S. Ct. 260, 207 U.S. 583, 52 L. Ed. 351).

It was proper to submit question to jury to determine testamentary capacity of testatrix, a woman of about eighty-two years, when she executed will during a decline of her physical and mental condition. *Morgan v. Adams* (1907, 29 App. D.C. 198, error dismissed 213 S. Ct. 213, 211 U.S. 627, 53 L. Ed. 362).

Trial court did not err when it excluded evidence which tended to show a delusion affecting person more than thirty years before the making of the will and codicils. *Turner v. American Security & Trust Co.* (1907, 29 App. D.C. 460, affirmed 29 S. Ct. 420, 213 U.S. 257, 53 L. Ed. 788).

Testimony of testatrix's brother, who had made his home with her for 36 years, that testatrix had repeatedly agreed or promised in presence of others to leave him her real estate if he remained single and continued to live with her was admissible on issues of undue influence and testamentary capacity in opposition to probate of will naming testatrix's sister sole beneficiary. *Duckett v. Duckett* (1943, 134 F. 2d 527, 77 U.S. App. D.C. 303).

#### Fraud and undue influence

If sole beneficiary of will, after taking sole charge of testatrix, first made false statements to other relatives with purpose of inducing them not to visit testatrix and then allowed her to suppose, contrary to fact, that the other relatives were making no effort to see testatrix, doing nothing for her and showing no interest in her welfare, such conduct would constitute both "fraud" and "undue influence" which would vitiate the will. *Duckett v. Duckett* (1943, 134 F. 2d 527, 77 U.S. App. D.C. 303).

#### Incorporation of document

Testator may so construct disposition of his property as to have recourse to some paper or document in order to explain his intention and to apply provisions of his will to the subject matter thereof. This doctrine of incorporation by reference must clearly identify the instrument to which will refers and must be in existence at the date of the will. *Vestry of St. John's Parish v. Bostwick* (1896, 8 App. D.C. 452).

#### Law governing

The law of wills and of probate as existing in Maryland on February 27, 1801, was and is the law of the District of Columbia, except as since altered by Congress. *Pascucci v. Alsop* (1945, 147 F. 2d 880, 79 U.S. App. D.C. 354, certiorari denied 65 S. Ct. 1406, 325 U.S. 868, 89 L. Ed. 1987). See, also, *In re Allen's Estate* (D.C.D.C. 1946, 64 F. Supp. 107).

#### Nature of proceedings

Proceedings for the probate of wills are statutory and are substantially in rem. The proceeding in upon the will itself and to determine its status. The judgment runs against no person, but is, simply, that the instrument before the court is, or is not, the will of the testator. *Cruit v. Owen* (1903, 21 App. D.C. 378).

#### Sound and disposing mind

Where trial judge thought testatrix was not in a condition to execute a serious document, such as a will or deed or contract, with judgment and understanding at time she signed will which had been written for her, direction of verdict upholding the will was error, and judgment would be reversed and cause remanded for new trial. *Collins v. Dobbins* (1952, 198 F. 2d 763, 70 U.S. App. D.C. 287).

Fact to be found by the jury is not that the testator was demented at the particular time or that he was victim of insane delusions, but whether from any one of these conditions that he was not of sound and disposing mind and of capacity to make a valid deed or contract. *National Safe Deposit, Sav. & Trust Co. v. Heiberger* (1902, 19 App. D.C. 506).

If person of sound mind executes a will, and the same is his voluntary act, the law presumes knowledge on his

part of its contents and such presumption also applies to illiterates. *Lipphard v. Humphrey* (1906, 28 App. D.C. 355, affirmed 28 S. Ct. 561, 209 U.S. 264, 52 L. Ed. 783, 14 Ann. Cas. 872).

An insane delusion exists when a person conceives the existence of something fanciful and extravagant, something having no foundation in reason or fact, and is dominated and controlled by such imagination, and therefore acts as he would not otherwise have acted. *Riddle v. Gibson* (1907, 29 App. D.C. 237).

If one acts under a delusion superinduced by false testimony, of the falsity of which he has no knowledge, it cannot be said that he is the victim of an insane delusion. *Morgan v. Morgan* (1908, 30 App. D.C. 436, 13 Ann. Cas. 1037).

The test is whether the testator, at the time of executing the paper purporting to be his will, was capable of making a valid deed or contract. *Lewis v. American Security & Trust Co.* (1923, 289 F. 916, 53 App. D.C. 258). See, also, *Thompson v. Smith* (1939, 103 F. 2d 936, 70 App. D.C. 65, 123 A.L.R. 76).

#### Status as married woman

Will made by married woman while separated from husband, from whom she is later divorced, was not revoked although she subsequently remarried. *Chapman v. Dismer* (1899, 14 App. D.C. 446).

### § 18-103. Execution of written will; attestation

A will or testament, other than a will executed in the manner provided by section 18-107, is void unless it is:

- (1) in writing and signed by the testator, or by another person in his presence and by his express direction; and
- (2) attested and subscribed in the presence of the testator, by at least two credible witnesses. (Sept. 14, 1965, 79 Stat. 686, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 19-103 (Mar. 3, 1901, ch. 854, § 1626, 31 Stat. 1433).

Section is taken from that part of section 19-103 of D.C. Code, 1961 ed., which preceded the first semi-colon therein. Remainder of section 19-103 is carried into section 18-109.

In the opening clause the phrase “, other than a will executed in the manner provided by section 18-107(b),” is inserted, because the section so cited permits the making and proof of nuncupative wills in certain cases.

The word “utterly”, which preceded “void”, and the words “and of no effect”, which followed “void”, are omitted as surplusage.

Changes are made in phraseology and arrangement.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 18-105, 18-109.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Ancient documents

Doctrine that an ancient document may be accepted as being genuinely executed for purposes of being submitted to jury is applicable to wills. *In re Estate of F. Hall* (1971, 328 F. Supp. 1305; aff'd 466 F. 2d 340, 151 U.S. App. D.C. 169).

##### Circumstantial evidence

Where writing has been found in an unsealed envelope, with portion missing, it would be inappropriate to use limited rule of circumstantial evidence to presume regularity in execution so as to permit admission of the document to probate for full testamentary purposes. *In re Estate of F. Hall* (1971, 328 F. Supp. 1305; aff'd 466 F. 2d 340, 151 U.S. App. D.C. 169).

##### Documents entitled to probate

Document consisting of one page of what evidence showed to be a three-page will and containing unfinished sentence at bottom of back page was incomplete and testatrix' signature on first page could not be viewed as carrying with it any testamentary intent entitling the

document to be admitted to probate. *In re Estate of F. Hall* (1971, 328 F. Supp. 1305; aff'd 466 F. 2d 340, 151 U.S. App. D.C. 169).

Document, which evidence showed was one page of a three-page will and which disposed of 70% of testatrix' estate but contained incomplete sentence at bottom of final page was not part of longer, complete document that was duly executed by decedent and properly attested by witnesses so as to permit admission to probate of single page. *Id.*

##### Holographic will

Holographic wills must be attested and subscribed in the presence of the testator by two witnesses, although they need not sign in each other's presence or physically observe other's signature. *In re Estate of F. Hall* (1971, 328 F. Supp. 1305; aff'd 466 F. 2d 340, 151 U.S. App. D.C. 169).

##### Interested witnesses

Testator's heirs at law or next of kin who are necessary witnesses to will can take legacies under will up to amount but not in excess of their intestate share if decedent had died intestate. *In re Estate of Pye* (1971, 325 F. Supp. 321).

Where codicil was subscribed and attested to by three witnesses and contained bequests to two of such witnesses, codicil is invalid with respect to such bequests. *Id.*

##### Parol evidence

A litigant may not furnish by parol those features of testament for which the wills statute demands peculiarly formalized writing. *In re Estate of Kerr* (1970, 433 F. 2d 479, 139 U.S. App. D.C. 321).

##### Proof

Burden of proving formal execution of will rests on the party wishing to have document admitted to probate. *In re Estate of F. Hall* (1971, 328 F. Supp. 1305; aff'd 466 F. 2d 340, 151 U.S. App. D.C. 169).

##### Signature

Purpose of signature to will is both to identify the testator and to authenticate document, and in order to be testamentary in character signature must indicate something more than the mere act of identifying maker of document in question. *In re Estate of F. Hall* (1971, 328 F. Supp. 1305; aff'd 466 F. 2d 340, 151 U.S. App. D.C. 169).

There is no requirement that signature be at any particular place on will to be effective, but there must be proof that the testator intended signature to bind his intention. *Id.*

##### Witnessing

Where evidence showed that the testatrix finished entire document in one sitting, signed it, had one witness sign it, and then went to bed, evidence that, at some unknown time, other witness signed first page which was presented for probate failed to establish that the will was validly attested by the second witness. *In re Estate of F. Hall* (1971, 328 F. Supp. 1305; aff'd 466 F. 2d 340, 151 U.S. App. D.C. 169).

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Alteration

Where a testator properly executed a will on two sheets of paper, and subsequently attempted to alter the will by substituting another sheet for the first, which was discarded, without notifying witnesses, or signing in the presence of witnesses, it is not entitled to probate. *Henry v. Fraser* (1929, 29 F. 2d 633, 58 App. D.C. 260, 62 A.L.R. 1364).

##### Birth of child

Where testator was unmarried and without children by a former marriage at time he executed will which contained no provision for any child of subsequent marriage, his subsequent marriage and the birth of a child amounted to an implied revocation of the previously executed will, notwithstanding this section specifying with particularity the manner in which will may be revoked. *Pascucci v. Alsop* (1945, 147 F. 2d 880, 79 U.S. App. D.C. 354, certiorari denied 65 S. Ct. 1406, 325 U.S. 868, 89 L. Ed. 1987).

A will in favor of wife executed by married man without children was not revoked by subsequent birth of a child. *Allen v. Heron* (1946, 157 F. 2d 707, 81 U.S. App. D.C. 298).

Where will was executed after testator's marriage, subsequent birth of a child to the marriage did not operate as



a revocation of will. *In re Allen's Estate* (D.C.D.C. 1946, 64 F. Supp. 107).

#### Formalities

The re-execution of a will requires the same formalities as required for its original execution. *Notes v. Doyle* (1909, 32 App. D.C. 413).

Unless the formalities prescribed are complied with the instrument is void. *Association Survivors of Seventh Georgia Regiment v. Lerner* (1925, 3 F. 2d 201, 55 App. D.C. 156).

Execution of will—qualification of witnesses—interest, see *Peters v. Peters* (1935, 78 F. 2d 215, 64 App. D.C. 331).

#### Law governing

All wills, in their very nature, are ambulatory and revocable during the life of the testator; and, in respect to personal estate, they speak only from and have effect upon the death of the testator; and to say that a will shall have effect and be declared valid in respect to a prior law, which has been repealed and given place to a different rule as a substitute, is to declare valid a testamentary paper without existing law to support it. *Colonna v. Alton* (1904, 23 App. D.C. 296).

#### Order of signatures

Will was valid even though attesting witnesses signed it before testatrix where all signed at substantially same time and in each other's presence. *Billings v. Woody* (1948, 167 F. 2d 756, 83 U.S. App. D.C. 219, certiorari denied 69 S. Ct. 46, 335 U.S. 822, 93 L. Ed. 377).

#### Promissory note

Condition in note that if payee predeceased maker, outstanding balance of note would be deemed to have been paid did not render note invalid on ground that condition was attempt to make testamentary disposition contrary to statute of wills. *M. Nunnally v. J. F. Wilder* (1964, 330 F. 2d 843, 117 U.S. App. D.C. 397).

#### Signature on envelope

Writing which purported to be the will of decedent, which was executed by decedent, folded and sealed in an envelope, the face of which envelope was inscribed "my last will and testament" followed by witnesses' signatures under such inscription, was not entitled to probate because paper upon which witnesses affixed their signatures was not physically attached to paper purporting to be the will and witnesses had not affixed their signatures to will itself. *In re Lee's Estate* (D.C.D.C. 1948, 80 F. Supp. 293).

#### Subscription

The evidence would allow an inference that the testator had signed in an adjoining room before he brought the will to the room in which the witnesses were present, and in the absence of clear and convincing testimony to the contrary, the presumption of regularity is not defeated. *Betts v. Lonas* (1949, 172 F. 2d 759, 84 U.S. App. D.C. 206).

#### Transfer effective at death

Generally, where design of owner of bank deposit is to retain sole control during his life and intended transfer or gift is not to take effect until death, arrangement is testamentary in character and void under statute of wills. *Gibson v. Industrial Bank of Washington* (D.C. Mun. App. 1944, 36 A. 2d 62).

#### Witnessing

Attesting witnesses need not know the contents of the document; "they may attest it without the presence of each other; they, or any of them, need not see the testator sign the will, provided he acknowledges the signature to each of the witnesses; and they need not even know that the document they have witnessed is a will." *Notes v. Doyle* (1909, 32 App. D.C. 413).

It is not necessary that testator should sign his will in the presence of witnesses, but that he shall, before witnesses sign, indicate that the document is his will and that he has signed it. *Bullock v. Morehouse* (1927, 19 F. 2d 705, 57 App. D.C. 231).

#### § 18-104. Devises, legacies, etc., to attesting witnesses

(a) A beneficial devise, legacy, estate, interest, gift, or power of appointment of or affecting real or personal estate, given or made to an attesting

witness to a will or codicil is void as to him and persons claiming under him, except as provided by subsections (b) and (c) of this section.

(b) Where an interested witness to a will or codicil, referred to in subsection (a) of this section, would be entitled to a share of the estate of the testator in case the will or codicil were not established, he or persons claiming under him shall take such portion of the devise or bequest made to him in the will or codicil as does not exceed the share of the estate which would be distributed to him or persons claiming under him in case of intestacy.

(c) The voidance provided for by subsection (a) of this section does not apply to charges on real estate for the payment of debts.

(d) Notwithstanding subsection (a) of this section, an interested witness referred to therein, whether an heir at law or not, is not disqualified as a competent witness to the execution of the will or codicil by reason of his interest. (Sept. 14, 1965, 79 Stat. 686, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 19-104 (25 Geo. II, ch. 6, § 1, 1752; Kilty's Rep., p. 253; Alex. Br. Stat., p. 781; Comp. Stat. D.C., p. 557, § 5).

Under a literal application of section 19-104 of D.C. Code, 1961 ed., a devise or legacy, etc., to an attesting witness to a will was "utterly null and void", even if the interested witness was an heir at law. The object of the British statute, from which that section was derived, was to prevent witness-devises or witness-legatees from benefiting by fraudulent attestation, but at the same time to uphold wills and permit probate where possible. Frequently, however, this worked injustice and hardship, where probably none was intended by the framers of the statute or certainly was not intended by the testator, and many American jurisdictions now permit a witness-devisee or witness-legatee who is an heir at law and would share in the estate were it to pass by intestacy to take the devise or bequest, etc., in an amount not to exceed his intestate share, provided, among other things in some cases, that there are other competent and disinterested witnesses constituting the required number. See, for example, West's Annotated California Prob. Code § 51; Canal Zone Code, Title 7, § 42; Florida Statutes Annotated § 731.07(5); Ill. Rev. Stat. 1955, ch. 3, § 195. In Vermont and New Hampshire, such a witness may take the devise or bequest without qualification, if there is the requisite number of other attesting witnesses (Vermont Statutes Annotated, Title 14, § 10; New Hampshire Rev. Stat. Annotated § 551:3). In New York and the Virgin Islands, the other conditions being met, the wording of what such a witness may take is reversed, that is, he may take so much of the share, as would have descended or been distributed to him in case of intestacy, as does not exceed the value of the devise or bequest (McKinney's N.Y. Decedent Estate Law § 27; Virgin Islands Code (1957), Title 15, § 19).

In fact, in the District of Columbia, section 19-104 of D.C. Code, 1961 ed., notwithstanding its language, was construed in 1956 by the United States Court of Appeals for the District of Columbia Circuit to permit a witness-legatee, who was also an heir at law, to take her bequest under the will, but in an amount no greater than her intestate share. See *Manoukian v. Tomasian*, 237 F. 2d 211, 99 U.S. App. D.C. 57, certiorari denied 77 S. Ct. 588, 352 U.S. 1026, 1 L. Ed. 2d 596.

In view of the foregoing, and to follow the principle laid down in the above-mentioned case, the provisions are rewritten in this section to provide in subsec. (b) that, if the interested witness is also an heir at law, he or persons claiming under him shall take such proportion of the devise or bequest as does not exceed the share of the estate which would be distributed to him or persons claiming under him if the will or codicil were not established. The purpose of the older statute to prevent



fraud is preserved by this change, particularly in view of the District of Columbia case mentioned above.

Whether the statute should be further revised to permit, as in a number of other jurisdictions, an attesting witness, who is not an heir at law, to take a devise or bequest made to him, if there is a sufficient number of other attesting witnesses who are competent, is a matter beyond the scope of this revision. It should be pointed out, however, that, in revising the section to conform the provisions with the case of *Manoukian v. Tomasian*, discussed above, it is not the intention to impede judicial construction or determination with respect to a devise, bequest, etc., in a will, or any judicial construction which might have been reached under the law as it now exists (that is, prior to this revision). In other words, there is no intention, in making the change, to limit or restrict the exceptions (to the general rule) to the exception spelled out in subsec. (b), or to prevent the judicial development of additional exceptions by the application of precedent or sound judicial construction.

In subsec. (c), the more modern term of "real estate" is substituted for "lands, tenements or hereditaments".

Subsec. (d) continues, with changes in phraseology, the provision of section 19-104 of D.C. Code, 1961 ed., which made an interested witness a competent witness to the execution of the will or codicil.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Beneficial interest

Where attorney who drew will which nominated him as executor and authorized ten percent fee for his services was attesting witness to will, court was required to determine whether or not ten percent commission was beneficial interest at time will was witnessed. *In re Estate of M. B. Small* (1972, 346 F. Supp. 600).

Where attorney who drew will which nominated attorney as executor and authorized payment of ten percent for his services was attesting witness to will, attorney had "financial interest" which constituted a "beneficial interest" and fixed commission was void but court would allow fee for work performed. *Id.*

##### Intestate share

Testator's heirs at law or next of kin who are necessary witnesses to will can take legacies under will up to amount but not in excess of their intestate share if decedent had died intestate. *In re Estate of Pye* (1971, 325 F. Supp. 321).

Where codicil was subscribed and attested to by three witnesses and contained bequests to two of such witnesses, codicil is invalid with respect to such bequests. *Id.*

##### Purpose

Purpose of statute rendering void any devise to attesting witness of will containing devise was to give maximum effect to wills and to eliminate any financial incentive which might taint necessary objectivity of attesting witnesses. *In re Estate of M. B. Small* (1972, 346 F. Supp. 600).

##### Supernumerary witness

Where a codicil was subscribed and attested to by three witnesses, two of whom were legally disinterested, bequest made in codicil to other witness is valid. *In re Estate of Pye* (1971, 325 F. Supp. 321).

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Intestate share

Although by statutes legacies to persons who are witnesses to will and testify to establish same, are void, a witness-legatee who was also an heir at law could testify as to the execution of the will and take his bequest thereunder, but in an amount no greater than his intestate share. *Manoukian v. Tomasian* (1956, 237 F. 2d 211, 99 U.S. App. D.C. 57, certiorari denied 77 S. Ct. 588, 352 U.S. 1026, 1 L. Ed. 2d 596).

#### § 18-105. Retention or demand of void devise or legacy by attesting witness prohibited

A person to whom a beneficial devise, legacy, estate, interest, gift, or power of appointment is given or made in a will or codicil, which is void under

section 18-103, may not, in any manner or under any color or pretense whatsoever:

(1) demand or take possession of or receive any profits or benefit of or from the devise, legacy estate, interest, gift, or power of appointment so given or made; or

(2) demand, receive, or accept from another person the beneficial devise, legacy estate, interest, gift, or power of appointment or any satisfaction or compensation therefor.

(Sept. 14, 1965, 79 Stat. 686, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 19-105 (25 Geo. II, ch. 6, § 7, 1752; Kilty's Rep., p. 253; Alex. Br. Stat., p. 783; Comp. Stat. D.C., p. 558, § 7).

In the opening paragraph, and par. (1), references to "devise" and "legacy" are inserted; and "power of appointment" is substituted for "appointment", for the purpose of clarification; and the provisions carried into par. (2) are changed to conform therewith. The provisions in section 19-105 of D.C. Code, 1961 ed., corresponding with par. (2) of this section, referred only to "legacy or bequest".

Changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Construction

Statutes providing that legacies to persons who are witnesses to a will and testify to establish same are void, are not, unlike most portions of District of Columbia Code, acts of Congress passed for the government of the District, but are part of the law of the District because they are British statutes which were recognized as being in force in Maryland prior to cession of the District in 1801 and maintained in effect by act of Congress retaining all common law in force in Maryland. *Manoukian v. Tomasian* (1956, 237 F. 2d 211, 99 U.S. App. D.C. 57, certiorari denied 77 S. Ct. 588, 352 U.S. 1026, 1 L. Ed. 2d 596).

#### § 18-106. Creditors as competent witnesses

A mere charge in a will or codicil on the estate of a testator for the payment of debts does not disqualify a creditor from being a competent witness to the will or codicil. (Sept. 14, 1965, 79 Stat. 686, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 19-106 (25 Geo. II, ch. 6, § 2, 1752; Kilty's Rep., p. 253; Alex. Br. Stat., p. 782; Comp. Stat. D.C., p. 558, § 6).

The language of the provisions is rewritten and simplified, but without change of substance or meaning. See West's Ann. Cal. Prob. Code § 52.

#### § 18-107. Nuncupative wills

A nuncupative will made after January 1, 1902, is not valid in the District of Columbia except that a person in actual military or naval service or a mariner at sea may dispose of his personal property by word of mouth, if:

(1) his oral disposition of the property is proved by at least two witnesses who were present at the making thereof and were requested by the testator to bear witness that the disposition was his last will; and

(2) The will is made during the time of the last illness of the deceased; and

(3) the substance of the will is reduced to writing within 10 days after it was made.

(Sept. 14, 1965, 79 Stat. 686, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)



## REVISION NOTES

Based on D.C. Code, 1961 ed., § 19-102 (Mar. 3, 1901, ch. 854, § 1634, 31 Stat. 1434).

Changes are made in phraseology and arrangement.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 18-103, 18-109.

## § 18-108. Execution of power by will

An appointment made by will in the exercise of a power is not valid unless it is so executed that it would be valid for the disposition of the property to which the power applies if it belonged to the testator. (Sept. 14, 1965, 79 Stat. 687, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 19-107 (Mar. 3, 1901, ch. 854, § 1629, 31 Stat. 1434).

Changes are made in phraseology.

## CROSS REFERENCES

General devise, see § 18-303.

Provisions concerning powers to create estates, see §§ 45-1001 to 45-1019.

## § 18-109. Revocation of wills; revival

(a) A will or codicil, or a part thereof, may not be revoked, except by implication of law, otherwise than by

(1) a later will, codicil, or other writing declaring the revocation, executed as provided by section 18-103 or 18-107; or

(2) burning, tearing, cancelling, or obliterating the will or codicil, or the part thereof, with the intention of revoking it, by the testator himself, or by a person in his presence and by his express direction and consent.

(b) A will or codicil, or a part thereof, after it is revoked, may not be revived otherwise than by its re-execution, or by a codicil executed as provided in the case of wills, and then only to the extent to which an intention to revive is shown. (Sept. 14, 1965, 79 Stat. 687, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 19-103, 19-108 (Mar. 3, 1901, ch. 854, §§ 1626, 1627, 31 Stat. 1433).

Section consolidates that part of section 19-103 of D.C. Code, 1961 ed., that was not carried into section 18-103 herein, with section 19-108 of the Code.

The provisions set out as subsec. (a), which are from section 19-103 of D.C. Code, 1961 ed., are rewritten to simplify the language and omit surplusage. To this end, the words "A will or codicil, or a part thereof" are substituted for "devise or bequest"; and the words "but all devises and bequests shall remain and continue in force until the same be burned, canceled, torn, or obliterated by the testator or by his direction in the manner aforesaid, or unless the same be altered or revoked by some other will, testament, or codicil in writing, or other writing of the testator signed in the presence of at least two witnesses attesting the same, any former law or usage to the contrary notwithstanding" are omitted, although the requirement for at least two witnesses is preserved by the insertion in the revised provisions of the words "executed as provided by section 18-103 or 18-107(b)".

Regarding the omission of the above-quoted words "any former law or usage to the contrary notwithstanding", attention is invited to the opinion in the case of *Pascucci v. Alsop* (1945), 147 F. 2d 880, 79 U.S. App. D.C. 354, certiorari denied 65 S. Ct. 1406, 325 U.S. 868, 89 L. Ed. 1987, in which it was held, as in English and Maryland cases, that these words, which, like the remainder of section 19-103 of D.C. Code, 1961 ed. (actually, section 1626 of the 1901 Act cited above), were derived from a corresponding Maryland statute, which, in turn, was

derived from the sixth section of the British Statute of Frauds enacted in 1676, affected only the "law or usage" prior to 1676, and did not affect the revocation of a will by operation of law. Those same words have since been omitted from the Maryland statute, presumably in recognition that they were without significance or effect.

To quote from the opinion in *Pascucci v. Alsop*, supra: "An examination of these [English cases collected and discussed by Chancellor Kent in the case of *Brush v. Wilkins*, N.Y. 1820, 4 Johns. Ch. 506] demonstrates quite clearly that the doctrine was definitely established in England before our Revolution that implied revocations of wills were not within the Statute of Frauds and that marriage and the subsequent birth of a child, following the execution of a will, operated as an implied revocation. In the United States, in the absence of a statute abolishing the common law rule and establishing a new rule in its place, the universal rule has been that the marriage of a man, and the birth of a child capable of inheriting, revoked a prior will, if both occurred after the execution thereof, and this rule is said to apply with even greater force where the child is born after the death of its father." The court held that this rule also applies in the District of Columbia, notwithstanding the District statute specifying with particularity how a will may be revoked (see, also, *In re Allen's Estate* (1946), 64 F. Supp. 107; *Allen v. Heron* (1946), 157 F. 2d 707, 81 U.S. App. D.C. 298). Therefore, in addition to the omission of the above-quoted words ("any former law or usage", etc.), the exception clause "except by implication of law" is inserted near the beginning of subsec. (a). The language of subsec. (a) is suggested by Vermont Statutes Annotated, Title 14, § 11. "There are now statutes in all the States and Territories which, in one form or another, provide for revocation by operation of law where the testator's domestic situation undergoes a change" (*Pascucci v. Alsop*, supra, p. 881, footnote 4, citing 5 Wis. L. Rev. 387).

Subsec. (b) is from section 19-108 of D.C. Code, 1961 ed., and in these provisions minor changes are made in phraseology.

## NOTES TO DECISIONS UNDER PRESENT LAW

## Copies of former wills

The court held that it is the clear import of existing statutes, that copies of former wills, whether executed or unexecuted, must be made available to the court under threat of criminal penalty. *C. H. Doherty, Sr., et al. v. V. Fairall et al.* (1969, 413 F. 2d 381, 134 U.S. App. D.C. 107).

## NOTES TO DECISIONS UNDER PRIOR LAW

## Application of statute

Section has no bearing when the doctrine of "dependent relative revocation" is invoked. *In re Nutting's Estate* (D.C.D.C. 1949, 82 Supp. 689, affirmed 187 F. 2d 357, 87 U.S. App. D.C. 351, 28 A.L.R. 2d 521).

## Cancellation

Pencil cross-marks across entire first page of will and large parts of second and third page, and across individual words and attestation clause, constituted "cancellation" of will. *In re Smith's Estate* (D.C.D.C. 1948, 77 F. Supp. 217).

## Construction

In ascertaining meaning of this section governing revocation of will, court was to be guided by the construction of like provision of statute of frauds by courts of England and like provisions by courts of Maryland, from which jurisdiction, this section had been adopted. *Pascucci v. Alsop* (1945, 147 F. 2d 880, 79 U.S. App. D.C. 354, certiorari denied 65 S. Ct. 1406, 325 U.S. 868, 89 L. Ed. 1987).

Where this section, specifying with particularity the manner in which a will may be revoked and concluding with words "any former law or usage to the contrary notwithstanding," had been adopted from Maryland which had adopted the English statute of frauds which had been enacted in 1676, it was the "law or usage" prior to 1676 that was affected by those words. *Id.*

Where English statute has been adopted, the known and settled construction of the statute by courts of law is considered as silently incorporated into the statute, or is received with all the weight of authority. *Id.*



In absence of District of Columbia decisions construing this section regarding cancellation of wills, cases from other jurisdictions having similar statutory provisions are persuasive. *In re Smith's Estate* (D.C.D.C. 1948, 77 F. Supp. 217).

#### Dependent relative revocation

Attempted revision of bequest of six thousand eight hundred dollars after execution and attestation of will by writing other numbers and numerals over the word "six" and corresponding but entirely obliterated numeral was ineffective to revoke or revise bequest and hence under doctrine of "dependent relative revocation," original bequest must prevail. *In re Chaconas' Estate* (D.C.D.C. 1948, 80 F. Supp. 549).

Where second will, revoking first will, was cancelled by pencil marks across portions of will and attestation clause, without substituted will being prepared and without clear and convincing showing that testator had determined what disposition to make of property upon revocation, the doctrine of "dependent relative revocation" was inapplicable and second will must be deemed to have been revoked, without reinstating first will. *In re Smith's Estate* (D.C.D.C. 1948, 77 F. Supp. 217).

#### Evidence

In probate proceeding, testimony that, some months after tearing of will, testator had told witness that he had left his wife all his property and wanted his brothers to have nothing was relevant to issue whether tearing of will by testator and his widow was animus revocandi and its exclusion was prejudicial error. *Savoy v. Savoy et ano.* (1955, 220 F. 2d 364, 94 U.S. App. D.C. 411).

In the absence of other evidence of intent of testatrix in making various cancellations in her own handwriting on the face of original will, unwitnessed holographic writing found after death in writing desk drawer with original will constituted persuasive "evidence" that cancellations on original will were conditional and were dependent upon the consummation of an effective revised testamentary disposition along the lines of uncompleted suggestions in holographic writing. *Wolfe v. Snyder* (D.C.D.C. 1943, 48 F. Supp. 227).

Evidence established that cancellations in testatrix's handwriting on the face of original will were "conditional revocations" dependent upon consummation of an effective revised testamentary disposition in accordance with suggestions in unwitnessed holographic writing found in writing desk drawer with original will, and no such revised disposition having been consummated, the cancellations were ineffective, leaving original will in force. *Id.*

#### Marriage

In the United States, in absence of a statute abolishing the common-law rule and establishing a new rule in its place, the marriage of a man and the birth of a child, capable of inheriting, revoke a prior will, if both occur after the execution thereof, especially where the child is born after the death of its father. *Pascucci v. Alsop* (1945, 147 F. 2d 880, 79 U.S. App. D.C. 354, certiorari denied 65 S. Ct. 1406, 325 U.S. 868, 89 L. Ed. 1987).

#### Partial cancellation

Partial cancellation of will should be regarded as a final act of "revocation" by the testator in the absence of evidence that the act of cancellation was merely a deliberative act performed with the intention of later executing a codicil or a new will. *Wolfe v. Snyder* (D.C.D.C. 1943, 48 F. Supp. 227).

#### Presumptions

Marks amounting to cancellation on face of will are presumed to have been placed on document with intent to revoke. *In re Smith's Estate* (D.C.D.C. 1948, 77 F. Supp. 217).

#### Republication

Republication merely ratifies will as modified by codicils, and instruments are read together as expressing single act. *M. H. Remon and R. R. Wenzel v. American Security & Trust Co., Executor et ano.* (1961, 288 F. 2d 849, 110 U.S. App. D.C. 37).

#### Revocation

Notwithstanding statutory provisions for express revocation of will, will may be revoked by implication of law,

and not merely under circumstances recognized at early common law but upon grounds bringing situation within rationale of common-law doctrine as result of historical changes. *Luff v. Luff* (1966, 359 F. 2d 235, 123 U.S. App. D.C. 251).

A divorce with property settlement revoked husband's will by implication of law. *Id.*

Imputed intention to revoke as result of change in circumstances is conclusive and may not be overcome by evidence adduced subsequent to testator's death and then relied upon as indicating intention that will should be effective. *Id.*

One codicil revokes another if such intent is unmistakably clear. *M. H. Remon and R. R. Wenzel v. American Security & Trust Co., Executor, et ano.* (1961, 288 F. 2d 849, 110 U.S. App. D.C. 37).

Instrument designated as "a" codicil, adding bequest and reaffirming will, which named bank as executor and trustee, did not revoke prior codicil naming testator's wife and daughter as coexecutrices. *Id.*

In probate proceeding in which widow offered torn will for probate where she testified that she and testator had torn will during argument, if jury found the tearing so occurred, they had to determine whether or not the tearing was animus revocandi, and if tearing of a will is accidental or unaccompanied by necessary intent, it does not constitute revocation. *Savoy v. Savoy et ano.* (1955, 220 F. 2d 364, 94 U.S. App. D.C. 411).

A conveyance of the title subsequently declared void does not operate as a revocation of a previous will. *McGowan v. Elroy* (1906, 28 App. D.C. 188).

Subsequent marriage of testatrix and birth of issue does not revoke will. *Morris v. Foster* (1922, 278 F. 321, 51 App. D.C. 238, certiorari denied 42 S. Ct. 586, 259 U.S. 582, 66 L. Ed. 1074).

Where cancellation or destruction of will is connected with the making of another will so as fairly to raise the inference that testator meant revocation of old will to depend upon the efficacy of the new disposition, if the will intended to be substituted is inoperative from defect of attestation or any other cause, the revocation fails and the original will remains in force. *Wolfe v. Snyder* (D.C.D.C. 1943, 48 F. Supp. 227).

### §18-110. Opening will before delivery to Probate Court

A person having possession or custody of a testamentary instrument may, after the death of the testator, open and read it in the presence of near relatives of the deceased, who may conveniently have notice thereof, and of other persons, and immediately thereafter may deliver the will or codicil to the Probate Court or the Register of Wills, until proceedings may be held for the purpose of proving it or other action is taken thereon. (Sept. 14, 1965, 79 Stat. 687, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 19-111 (Mar. 3, 1901, ch. 854, § 1635a, as added June 30, 1902, ch. 1329, 32 Stat. 545; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

"Probate Court" is substituted for "United States District Court for the District of Columbia, holding a special term as a probate court". The District of Columbia is now a judicial district, and, although the District Court therein is known as the Probate Court when exercising its probate jurisdiction, it no longer has "special terms" such as "circuit court", "equity court", "probate court", etc., for the purpose of hearing causes. Most of the provisions of Title 28, United States Code, relating to district courts, enacted into law in 1948, embrace the United States District Court for the District of Columbia. See 28 U.S.C. §§ 88, 132, 451. Sections 137-141 thereof, as amended by Act Oct. 16, 1963, Pub. L. 88-139, § 1, govern the division of business and "sessions" of district courts. Section 138 provides that district courts may not hold formal terms. Section 139 relates to times for holding regular sessions. Section 140 relates to adjournment,



and section 141 provides in part that special sessions may be held upon such notice as the court orders, and that any business may be transacted at a special session which might be transacted at a regular session.

Changes are made in phraseology.

#### CROSS REFERENCE

Stealing, destroying, secreting, or withholding will, see §§ 18-111, 18-112.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Time for probate

While the statutes regulating the probate of wills provides no time within which probate shall be applied for, yet they contemplate that this shall be speedily done. *McGowan v. Elroy* (1906, 28 App. D.C. 188).

#### § 18-111. Withholding will

Whoever, having possession of a testamentary instrument, willfully neglects, for the period of 90 days after the death of the testator becomes known to him, to deliver it to the Probate Court, or to the Register of Wills, or to an executor named in the instrument, shall be fined not more than \$500. (Sept. 14, 1965, 79 Stat. 687, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 22-1403 (Mar. 3, 1901, ch. 854, § 830, 31 Stat. 1324; June 30, 1902, ch. 1329, 32 Stat. 535; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Section is derived from the second paragraph of section 22-1403 of D.C. Code, 1961 ed. Remainder of section 22-1403 is carried into section 18-112 herein.

The reference to "other testamentary instrument" is inserted for the purpose of completeness and to conform the provisions with section 18-112 herein, which is based on other provisions of the same section of D.C. Code, 1961 ed. (22-1403), from which this section is derived.

"Probate Court" is substituted for "United States District Court for the District of Columbia, holding a special term as a probate court." See definition of "Probate Court" in section 18-101 herein, and see revision note under section 18-110 herein.

There references to "testatrix" are omitted as unnecessary, in view of the provision of section 18-101 that words in this title importing the masculine gender ("testator", for example, as used in this section) include all genders.

Further, "90 days" is substituted for "three calendar months" for the purpose of fixing this time-period more definitely.

Changes are made in phraseology.

The provisions carried into this section "relate to, and yet \* \* \* [differ from,] the matter of filing, or offering, or propounding a will for probate. That, too, must be speedily done, but for different reasons. The purpose then is to establish title." (Mersch, "Probate Court Practice in the District of Columbia", 2d Ed. (1952), § 781, p. 336, footnote 4, and cases therein cited. See, also, § 782 thereof and footnote 5, p. 337.)

#### CROSS REFERENCES

Allegation and proof of intent to defraud, see § 23-322.

Joinder of offenses, see § 23-311 et seq.

Opening before delivery to probate court, see § 18-110.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Copies of former wills

The court held that it is the clear import of existing statutes, that copies of former wills, whether executed unexecuted, must be made available to the court under threat of criminal penalty. *C. H. Doherty, Sr., et al. v. V. Fairall et al.* (1969, 413 F. 2d 381, 134 U.S. App. D.C. 107).

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Time in which to probate

"While the statutes regulating the probate of wills provides no time within which probate shall be applied for,

yet they contemplate that this shall be speedily done." *McGowan v. Elroy* (1906, 28 App. D.C. 188).

#### § 18-112. Taking and carrying away, or destroying, mutilating, or secreting will

Whoever, during the life or after the death of the testator, for a fraudulent purpose, takes and carries away, or destroys, mutilates, or secretes, a testamentary instrument, shall be imprisoned not more than five years. (Sept. 14, 1965, 79 Stat. 687, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 22-1403 (Mar. 3, 1901, ch. 854, § 830, 31 Stat. 1324; June 30, 1902, ch. 1329, 32 Stat. 535).

Section is derived from the first paragraph of section 22-1403 of D.C. Code, 1961 ed. Remainder of section 22-1403 is carried into section 18-111 herein.

The phrase "whether it relates to personal or real property," is omitted as surplusage.

Changes are made in phraseology.

#### NOTES TO DECISIONS

##### Copies of former wills

The court held that it is the clear import of existing statutes, that copies of former wills, whether executed or unexecuted, must be made available to the court under threat of criminal penalty. *C. H. Doherty, Sr., et al. v. V. Fairall et al.* (1969, 413 F. 2d 381, 134 U.S. App. D.C. 107).

#### Chapter 3.—DEVISES AND BEQUESTS

##### Sec.

- 18-301. Estates disposable by will.
- 18-302. Devise or bequests for religious purposes.
- 18-303. General devise and bequest of all property.
- 18-304. Devise of land to include leaseholds.
- 18-305. After-acquired real property.
- 18-306. "Pour-over" trusts.<sup>1</sup>
- 18-307. Advancement as satisfaction of devise or bequest.
- 18-308. Death of devisee or legatee; lapsed or void devises or bequests.

#### § 18-301. Estates disposable by will

The real and personal estate of a person, which may pass by deed or gift, or which would, in case of the owner's dying intestate, descend to or devolve upon his heirs or other legal representatives, may be disposed of, transferred, and passed by his last will, testament, or codicil in accordance with this Part. (Sept. 14, 1965, 79 Stat. 687, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 19-201 (Mar. 3, 1901, ch. 854, § 1623, 31 Stat. 1433).

Changes are made in phraseology.

#### CROSS REFERENCES

Bequests payable on majority of female, see § 20-1906.

Devise in lieu of dower, see § 19-112.

Devises in trust for use of another, see §§ 45-1201 to 45-1203.

Discharge of debt construed to be a specific bequest and invalid as to creditors, see § 20-902.

Estate which may be created in lands, see §§ 45-801 to 45-819.

Estates which may be created by will, method, requirements, adversely held property, see §§ 45-101 to 45-106.

Estates which may be created in personal property, see § 45-823.

Form and interpretation of devise; words of inheritance unnecessary; rule in Shelley's case abolished; posthumous children, see §§ 45-201 to 45-205.

Naming debtor executor does not discharge debt, see § 20-903.

<sup>1</sup> Analysis does not conform to section catchline.



Order for sale of property unnecessary where will directs such sale, see § 20-1102 et seq.

Provisions concerning powers to create estates, see §§ 45-1001 to 45-1019.

Rule against perpetuities, see §§ 45-102, 45-103.

Spouse's election in lieu of provisions of will, see §§ 19-113, 19-114.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Equitable estate

Devise of equitable estate remaining in grantor, after he has created a naked power in one to convey an estate to another upon the performance of a condition. *Mayer v. American Security & Trust Co.* (1909, 33 App. D.C. 391, affirmed 32 S. Ct. 95, 222 U.S. 295, 56 L. Ed. 206).

##### Presumption

In determining whether the property of a testator passes by his will, there is a presumption that he did not intend to die intestate, which presumption is greatly strengthened by words of general description in the residuary clause. *Fairclaw v. Forrest* (1942, 130 F. 2d 829, 76 U.S. App. D.C. 197, 143 A.L.R. 1154, certiorari denied 63 S. Ct. 531, 318 U.S. 756, 87 L. Ed. 1130).

##### Title, passage of

Where property or interest is devisable at the time of testator's death, and testator has sufficiently indicated his testamentary intention to dispose of it, the will is effective to pass the title to the devisee. *Fairclaw v. Forrest* (1942, 130 F. 2d 829, 76 U.S. App. D.C. 197, 143 A.L.R. 1154, certiorari denied 63 S. Ct. 531, 318 U.S. 756, 87 L. Ed. 1130).

#### § 18-302. Devises or bequests for religious purposes

A devise or bequest of real or personal property to a minister, priest, rabbi, public teacher, or preacher of the gospel, as such, or to a religious sect, order, or denomination, or to or for the support, use, or benefit thereof, or in trust therefor, is not valid unless it is made at least 30 days before the death of the testator. (Sept. 14, 1965, 79 Stat. 688, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 19-202 (Mar. 3, 1901, ch. 854, § 1635, 31 Stat. 1434).

The references to priest and rabbi are inserted for the purpose of clarification and completeness.

Further, with respect to the time period prior to which a devise or bequest for religious purposes must be made in order to be valid, "30 days" is substituted for "one calendar month", for the purpose of fixing the period more definitely, without, however, affecting the probable legislative intent when the provisions were first enacted. Calendar months vary in length from 28 to 31 days. The period of 30 days is suggested by West's Ann. California Probate Code, § 41, relating to charitable and benevolent devise or bequests.

Changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Generally

Under District of Columbia statute invalidating bequests to religious sects, orders, or denominations which are not made at least calendar month before death of testator, testatrix' bequest to religious order, in will executed four days before her death, was void. *McInerney v. District of Columbia* (1965, 355 F. 2d 838, 122 U.S. App. D.C. 413).

Finding that society which was a beneficiary of testatrix' will, and which it represented itself for tax purposes to be a semipublic religious institution and had been granted exemption from District of Columbia sales taxes and real property taxes in recognition of claim that property was used and occupied for religious study and training was a religious sect, order, or denomination within statute invalidating bequests to such organizations unless made more than one calendar month prior to death was not clearly erroneous. *Id.*

##### Construction

Statute is to be strictly construed, since its purpose is to prevent improvident testamentary gifts to the exclusion of lawful heirs. Such a construction should be adopted which will prevent intestacy and not one which will render the will invalid. The doctrine of "dependent relative revocation" is to be applied to facts presented. *In re Nutting's Estate* (D.C.D.C. 1949, 82 F. Supp. 689, affirmed 187 F. 2d 357, 87 U.S. App. D.C. 351, 28 A.L.R. 2d 521).

##### Dependent relative revocation

Where two prior wills contained residuary devises identical with that in latest will, which will was drawn for purpose of correcting formal defects within 30 days of testatrix' death, and provisions in latest will for benefit of two religious institutions were invalid under statute rendering invalid testamentary gifts for benefit of any religious sect made within one month of death, religious institutions would be held entitled to receive devises for them under earlier wills under doctrine of "dependent relative revocation," and notwithstanding revocatory clause in latest will, on ground that testatrix did not intend that revocatory clause should be effective until new devise became effective. *Linkins et al. v. Protestant Episcopal Cathedral Foundation of the District of Columbia et al.* (1951, 187 F. 2d 357, 87 U.S. App. D.C. 351, 28 A.L.R. 2d 521).

##### Sectarian institutions

Georgetown College was not a sectarian institution, so that bequest made to it less than one calendar month before testator's death was not void. *Speer v. Colbert* (1906, 26 S. Ct. 201, 200 U.S. 130, 50 L. Ed. 403).

#### § 18-303. General devise and bequest of all property

A devise and bequest purporting to be of all real or personal property, or both, belonging to the testator, includes also all property of either or both kinds, respectively, over which he has a general power of appointment, unless a contrary intention appears in the testamentary instrument containing the devise or bequest. (Sept. 14, 1965, 79 Stat. 688, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 19-203 (Mar. 3, 1901, ch. 854, § 1633, 31 Stat. 1434; June 30, 1902, ch. 1329, 32 Stat. 545).

Changes are made in phraseology.

#### § 18-304. Devise of land to include leaseholds

A devise of the land of a testator, or of his land in any place, or in the occupation of a person named or otherwise described in a general manner, includes his leasehold estates or those to which the descriptions extend, as well as freehold estates, unless a contrary intention appears in the testamentary instrument containing the devise. (Sept. 14, 1965, 79 Stat. 688, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 19-204 (Mar. 3, 1901, ch. 854, § 1632, 31 Stat. 1434).

Changes are made in phraseology.

#### § 18-305. After-acquired real property

(a) A will executed after January 17, 1887, and before January 1, 1902, devising real property, from which it appears that it was the intention of the testator to devise property acquired after the execution of the will, operates as a valid devise of all after-acquired real property.

(b) A will executed after January 1, 1902, which by words of general import devises all the estate or all the property of the testator, operates as a valid devise of real property acquired by the testator after



the execution of the will, unless it appears therefrom that it was not the intention of the testator to devise the after-acquired real property. (Sept. 14, 1965, 79 Stat. 688, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 19-205 (Mar. 3, 1901, ch. 854, § 1628, 31 Stat. 1433; June 30, 1902, ch. 1329, 32 Stat. 545).

Changes are made in phraseology and arrangement.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Intention

Although a testator may dispose by will of after-purchased lands, it is nevertheless necessary that his intention to make such disposition should clearly appear upon the face of the will. *Bradford v. Matthews* (1896, 9 App. D.C. 438).

Under act of June 30, 1902, a will is made to operate and take effect upon all real estate of the testator owned by him at the time of his death, unless it shall appear from the will that it was not the intention of the testator to devise such after-acquired property. *Crenshaw v. McCormick* (1902, 19 App. D.C. 494).

##### Passage by residuary clause

Any will containing a general residuary clause, or general devise of all of the testator's real property, sufficient under the old law to pass all real estate possessed at the time of its execution, would pass all after-acquired real estate as well. *Taylor v. Leesnitzer* (1911, 37 App. D.C. 356).

##### Property in entirety

A will by either spouse disposing of property held in entirety will be given effect when the other spouse dies first and the will remains unchanged and unpublished until the death of the survivor. *Fairclaw v. Forrest* (1942, 130 F. 2d 829, 76 U.S. App. D.C. 197, 143 A.L.R. 1154, certiorari denied 63 S. Ct. 531, 318 U.S. 756, 87 L. Ed. 1130).

##### Purpose

The purpose of this section making wills executed after January 1, 1902, effective as to after-acquired real estate in absence of intention to contrary, was to make general words of devise effective without reference to the time of acquisition of property and not to change the nature of estates from inalienable or nondevisable to devisable ones. *Fairclaw v. Forrest* (1942, 130 F. 2d 829, 76 U.S. App. D.C. 197, 143 A.L.R. 1154, certiorari denied 63 S. Ct. 531, 318 U.S. 756, 87 L. Ed. 1130).

##### Residuary clause

Where will executed in 1928 stated that testatrix's husband had been excluded from benefits thereunder because all the real estate in which testatrix was interested was held in joint tenancy with husband and all of testatrix's earnings for 25 years had gone into such real estate, and the residuary clause devised all the residue, real, personal, and mixed, to testatrix's brother, and testatrix's husband thereafter died before testatrix whose will was not thereafter republished, the residuary clause was valid as respects real estate theretofore owned by testatrix in joint tenancy with her husband who had predeceased testatrix. *Fairclaw v. Forrest* (1942, 130 F. 2d 829, 76 U.S. App. D.C. 197, 143 A.L.R. 1154, certiorari denied 63 S. Ct. 531, 318 U.S. 756, 87 L. Ed. 1130).

##### Will, effective date

Before the Wills Act of 1837 and the after-acquired property statutes, the testator could not devise realty which he did not own at the time he made his will because of the theory that a devise of realty took effect on the date of the execution of the will but so far as it formerly applied to exclude after-acquired property from the effects of the will, this section has overruled such theory and the will is effective as of the date of death. *Fairclaw v. Forrest* (1942, 130 F. 2d 829, 76 U.S. App. D.C. 197, 143 A.L.R. 1154, certiorari denied 63 S. Ct. 531, 318 U.S. 756, 87 L. Ed. 1130).

#### § 18-306. "Pour over" trusts

(a) *Bequests or Devises to Trustee Under, or in Accordance With Terms of, Existing Trusts.*—A devise or bequest may be made in a will or codicil, otherwise valid, in form or substance to the trustees under, or in accordance with the terms of, a written inter vivos trust, including an unfunded life insurance trust, although the settlor has reserved rights of ownership in the insurance contracts, which has been executed and is in existence prior to or contemporaneously with the execution of the will or codicil and is identified in the will or codicil, without regard to the size or character of the corpus of the trust, or whether the settlor is the testator or a third person.

The devise or bequest is not invalid because the trust is subject to amendment or modification or may be terminated or revoked after the will or codicil is executed, whether by the settlor or any other person or persons, nor because the trust instrument or an amendment thereto was not executed in the manner required by law for wills or codicils.

Unless the will or codicil otherwise provides:

(1) the devise or bequest is not invalid because the trust was amended or modified after the will or codicil was executed, and the devise or bequest shall be given effect in accordance with the terms of the trust as they appear in writing on the date of death of the testator, including any amendment or modification;

(2) property passing under the devise or bequest passes directly to the trustees of the inter vivos trust and becomes a part of the assets of the trust, and is not deemed to be held under a separate testamentary trust;

(3) an entire revocation of the trust prior to the death of the testator invalidates the devise or bequest even though the revocation was not effected in the manner provided by law for the revocation of wills and codicils;

(4) a termination of the trust, except by way of revocation, in accordance with the terms of the trust or by its exhaustion or by operation of law or otherwise does not invalidate the devise or bequest.

(b) *Bequests or Devises to Trustee Under, or in Accordance With Terms of, Testamentary Trusts.*—A devise or bequest may be made in a will or codicil, otherwise valid, in form or substance to the trustees under, or in accordance with the terms of, a testamentary trust established under another valid will or codicil. The devise or bequest is not invalid because the testamentary trust or the will or codicil establishing the testamentary trust was not in existence when the will or codicil containing the devise or bequest was executed, if the testator of the will or codicil establishing the testamentary trust predeceases the testator of the will or codicil containing the devise or bequest, and the will or codicil establishing the testamentary trust is admitted to probate.

Unless the will otherwise provides:

(1) property passing under the devise or bequest is deemed to pass directly to the trustees of the testamentary trust and becomes a part of the assets of the trust, and is not deemed to be held under a separate testamentary trust;



(2) a termination of the trust in accordance with the terms of the trust or by its exhaustion or by operation of law or otherwise does not invalidate the devise or bequest.

(c) This section applies to a devise or bequest made by a testator living on December 5, 1963, or born subsequent thereto, without regard to the date of execution of the will or codicil containing the devise or bequest or of the trust instrument, or an amendment thereto.

(d) This section does not affect the validity, as existing before December 5, 1963, of:

(1) a devise or bequest made by a testator who died prior to December 5, 1963; or

(2) a devise or bequest which does not come within this section.

(Sept. 14, 1965, 78 Stat. 688, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 19-206 (Mar. 3, 1901, ch. 854, § 1628a, as added Dec. 5, 1963, Pub. L. 88-192, § 1, 77 Stat. 345).

Changes are made in phraseology and arrangement.

#### § 18-307. Advancement as satisfaction of devise or bequest

An advancement or a provision for an advancement to a person is a satisfaction, in whole or in part, of a devise or bequest to that person contained in a previous will if it would be so deemed in case the devisee or legatee were the child of the testator; and, whether he is a child or not, it shall be so deemed where it appears from parol or other evidence to be so intended. (Sept. 14, 1965, 79 Stat. 689, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 19-109 (Mar. 3, 1901, ch. 854 § 1630, 31 Stat. 1434).

Changes are made in phraseology.

#### CROSS REFERENCE

Advancements, see, also, §§ 19-319, 19-307.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Evidence

Evidence established that payments made by testator during lifetime to brother were made in payment of trust obligation arising before execution of will and were not intended to be in partial satisfaction of bequest to brother. *In re Chaconas' Estate* (D.C.D.C. 1948, 80 F. Supp. 549).

##### Parent as debtor

Where parent, who is a debtor to his child, makes an advancement to such child, it is presumed to be a satisfaction pro tanto of the debt. *Glover v. Patten* (1897, 17 S. Ct. 411, 165 U.S. 394, 41 L. Ed. 760).

##### Presumptions

A legacy is never presumed to be in satisfaction of a trust obligation. *In re Chaconas' Estate* (D.C.D.C. 1948, 80 F. Supp. 549).

#### § 18-308. Death of devisee or legatee; lapsed or void devises or bequests

Unless a different disposition is made or required by the will, if a devisee or legatee dies before the testator, leaving issue who survive the testator, the issue shall take the estate devised or bequeathed as the devisee or legatee would have done if he had survived the testator. Unless a contrary intention appears by the will, the property comprised in a devise or bequest in a will that fails or is void or is

otherwise incapable of taking effect, shall be deemed included in the residuary devise or bequest, if any, contained in the will. (Sept. 14, 1965, 79 Stat. 689, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 19-110 (Mar. 3, 1901, ch. 854 § 1631, 31 Stat. 1434).

Changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Construction

This section is to be interpreted liberally with view to attainment of its beneficent objectives and, to render section inoperative, a purpose inconsistent with that objective must fairly appear and from terms of will itself but, where will reflects a countervailing intention with reasonable clarity, this section does not save gift from lapse. *In re Estate of Kerr* (1970, 433 F. 2d 479, 139 U.S. App. D.C. 321).

Countervailing intention that testamentary gift should lapse is manifested when the will articulates gift in words effectively conditioning its efficacy on beneficiary's survival of testator, and antilapse statute has no application to gifts limited to vest on beneficiary's survival of testator and not otherwise, whether gift is to single or to multiple beneficiaries and whether there is or is not a limitation over to another on death of primary beneficiary during lifetime of testator. *Id.*

Words referable to survivorship do not necessarily condition a testamentary gift and the construction properly to be placed on survivorship language is a product of testatorial intention. *Id.*

This section applies to gifts of residuum as well as to other devises and bequests contained in will. *Id.*

##### Intent

Testatorial intention is important under this section which may operate to avoid a lapse unless different disposition is made or required by the will. *In re Estate of Kerr* (1970, 433 F. 2d 479, 139 U.S. App. D.C. 321).

Provision of will specifying that residuum was to be divided equally between two named beneficiaries if they were both living at time of testatrix' demise and alternatively, if one predeceased testatrix, then all of estate was to go to one remaining expressed intent contrary to antilapse statute and the death of both beneficiaries during testatrix' lifetime caused the residuary clause to lapse. *Id.*

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Charitable bequests

Charitable bequest was not void for uncertainty. *Washington Loan & Trust Co. v. Hammond* (1922, 278 F. 569, 51 App. D.C. 260).

##### Common law

The common law still prevails in this District as to devises and bequests contained in the residuum. *George Washington University v. Riggs Nat. Bank of Washington, D.C.* (1937, 88 F. 2d 771, 66 App. D.C. 389).

At common law, a bequest of personalty which failed of distribution would go to the residuum or next of kin, but not so as to devises of realty. *Id.*

##### Construction

Where a bequest was made to a legatee and the legatee predeceased grantor and where the residuary clause distributed the residue including lapsed legacies to four institutions, the special bequest passes into the residuary estate and goes to the institution named. *Bunker v. Jones* (1950, 181 F. 2d 619, 86 U.S. App. D.C. 231).

##### Cy pres doctrine

The doctrine of "judicial cy pres" applies in the District of Columbia. *Noel v. Olds* (1944, 138 F. 2d 581, 78 U.S. App. D.C. 155, certiorari denied 64 S. Ct. 611, 321 U.S. 773, 88 L. Ed. 1067).

The doctrine of judicial cy pres is recognized in the District of Columbia but the facts of the case do not warrant the invocation of such doctrine. *Roberds v. Markham* (D.C.D.C. 1949, 81 F. Supp. 38).



**Death of legatee**

Under will devising half of residuary estate to testatrix' sister who predeceased testatrix, that portion of residue went to sister's children rather than to heirs of the testatrix. *Mitchell v. Merriam et al.* (1951, 188 F. 2d 42, 88 U.S. App. D.C. 213, certiorari denied 71 S. Ct. 855, 341 U.S. 935, 95 L. Ed. 1363).

A sum bequeathed by will to testator's deceased brother's widow, who predeceased testator, goes to her issue on his death. *Second National Bank of Washington v. Spinks* (D.C.D.C. 1954, 122 F. Supp. 153, affirmed 214 F. 2d 853, 94 U.S. App. D.C. 424).

Death of a specific legatee prior to death of the testator will "lapse" the legacy in the absence of a statute otherwise providing. *Wolfe v. Snyder* (D.C.D.C. 1943, 48 F. Supp. 227).

**Intent**

Words of a will cannot be ignored in searching its meaning as the court must look within the four corners of the will for the intention of the testatrix and the language must be given effect. If and when read with other parts of the will such intent can be ascertained, the statute does not apply in this case. *Pace v. Bradley* (1949, 171 F. 2d 350, 84 U.S. App. D.C. 212).

**Trust funds**

Testamentary provision for issue of beneficiary for life of testamentary trust to take the balance of trust fund was a "different disposition made or required by will" within meaning of this section, and hence where beneficiary for life predeceased testatrix his issue took the trust fund outright. *Wolfe v. Snyder* (D.C.D.C. 1943, 48 F. Supp. 227).

**Vested remainder**

Where will bequeathed to niece all household furniture, jewelry and other personal property, except cash, and bequeathed to brother all the rest, residue and remainder of estate except that if brother should predecease testatrix or for any other reason could not personally take residue, then it was to go to niece, testatrix's vested remainder in estate subject to life estate, passed to brother who survived testatrix but who along with niece, predeceased life tenant. *Bank of Galesburg, etc. v. Lawrenson, Jr., etc., and Waters, etc.* (1956, 240 F. 2d 31, 99 U.S. App. D.C. 345).

**Chapter 5.—PROBATE OF WILLS****Sec.**

- 18-501. Notice of petition for probate.
- 18-502. Notice to nonresidents and unfound residents.
- 18-503. Notice to unknown kin or heirs at law.
- 18-504. Probate; waiver of notice; proof of execution.
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- 18-508. Caveat; will not to be probated while issues pending.
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- 18-511. Guardian ad litem.
- 18-512. Plenary proceedings.
- 18-513. Rules of procedure.
- 18-514. Wills filed prior to June 8, 1898, may be probated as of real estate.

**AMENDMENT**

1970—Section 147(3)(B) of Act July 29, 1970, Public Law 91-358 amended chapter analysis relating to item 18-513 to read as above set out.

**EFFECTIVE DATE OF 1970 AMENDMENT**

See note preceding section 11-101.

**§ 18-501. Notice of petition for probate**

(a) Upon the filing of a petition for probate of a will, the notice provided by this section and sections 18-502 and 18-503, shall be issued to each person who would be entitled to or interested in the estate of the testator if the will had not been executed,

to appear in the Probate Court on a date named in the notice, if he has cause to show why the prayer of the petition should not be granted.

(b) The notice may be by a citation in which the return date named is not earlier than 10 days after the filing of the petition. The United States marshal or deputy marshal shall serve the citation in the District of Columbia not less than 5 days before the return day named in the citation. (Sept. 14, 1965, 79 Stat. 690, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 19-301 (Mar. 3, 1901, ch. 854, § 130, 31 Stat. 1211; June 30, 1902, ch. 1329, 32 Stat. 526; June 24, 1949, ch. 241, § 1, 63 Stat. 267).

Section is derived from the first paragraph and par. (a) of section 19-301 of D.C. Code, 1961 ed. Remainder of section 19-301 is carried into sections 18-502 and 18-503 herein.

Changes are made in phraseology and arrangement.

**CROSS REFERENCE**

Jurisdiction, pleading and practices of probate court, see §§ 11-921 and 16-3101 et seq.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 18-502, 18-504.

**NOTES TO DECISIONS UNDER PRIOR LAW****Jurisdiction of probate court**

Probate court has been clothed with full and complete jurisdiction to take proof of wills of either personal or real estate, and to admit the same to probate and record, and Congress, having established this special court for this special purpose, intended its jurisdiction to be exclusive. *Grace v. American Security & Trust Co.* (1922, 277 F. 543, 51 App. D.C. 141).

**Law governing**

The law of wills and of probate as existing in Maryland on February 27, 1801, was and is the law of the District of Columbia, except as since altered by Congress. *Pasucci v. Alsop* (1945, 147 F. 2d 880, 79 U.S. App. D.C. 354, certiorari denied 65 S. Ct. 1406, 325 U.S. 868, 89 L. Ed. 1987). See, also, *In re Allen's Estate* (D.C.D.C. 1946, 64 F. Supp. 107).

**Voluntary appearance**

Where a petition alleged widower as only next of kin, upon whom service was had, and he appeared, filed a caveat, and the will was sustained, and thereafter publication was had for unknown heirs, and the widower moved to vacate the verdict on the ground that court was without jurisdiction because of failure to publish before framing the issues, jurisdiction attached to any person who voluntarily appeared. *Lewis v. Luckett* (1908, 32 App. D.C. 188, affirmed 31 S. Ct. 682, 221 U.S. 554, 55 L. Ed. 851).

**Waiver of citation**

Citation may be waived (see § 19-304) and such waiver of citation does not estop the filing of a caveat. *Bowen v. Howenstein* (1913, 39 App. D.C. 585, Ann. Cas. 1913E, 1179).

**§ 18-502. Notice to nonresidents and unfound residents**

(a) Where a person entitled to notice under section 18-501(a) is a nonresident of the District of Columbia or is a resident of the District who has been returned "Not to be found" under subsection (b) of that section, the notice may be by a citation in which the return date named is not less than 20 days after the filing of the petition. The citation shall be served not less than 10 days before the return date named therein and only by a person not less than 18 years of age, who is not a party to or otherwise interested in the estate of the decedent. The return, showing the time and place of service,



shall be made under oath in the District of Columbia, unless the person making the service is a sheriff or deputy sheriff, or a marshal or deputy marshal, authorized to serve process where service is made.

(b) When there is proof by the petition for probate or by other affidavit that any or all of the persons, interested as described by section 18-501(a), are nonresidents of the District of Columbia, or when any of them has been returned "Not to be found" under subsection (b) of that section, the notice may be by a publication in which the return date named is not less than 30 days after the date of the first appearance of the publication. The notice shall be published once in each of three successive weeks in a newspaper of general circulation in the District of Columbia. A copy of the published notice shall be mailed to the last-known address of each person referred to in this subsection who is not shown to have been returned served personally under section 18-501(b) or subsection (a) of this section. The court may by general rule prescribe the form of the notice by publication, and may order such other publication as the case requires. (Sept. 14, 1965, 79 Stat. 690, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 19-301 (Mar. 3, 1901, ch. 854, § 130, 31 Stat. 1211; June 30, 1902, ch. 1329, 32 Stat. 526; June 24, 1949, ch. 241, § 1, 63 Stat. 267).

Section is derived from pars. (b) and (c) of section 19-301 of D.C. Code, 1961 ed. Remainder of section 19-301 is carried into sections 18-501 and 18-503 herein.

Changes are made in phraseology and arrangement.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 18-501, 18-503, 18-504.

### § 18-503. Notice to unknown kin or heirs at law

(a) When it appears to the satisfaction of the court that all or any of the next of kin or heirs at law of the deceased are unknown, they may be proceeded against and described in the publication of notice provided for by section 18-502(b) as "the unknown next of kin," or "the unknown heirs at law," as the case may be, of the deceased, and the publication of the notice under that designation is as effectual against them as if known and their names were specifically set forth in the order of publication.

(b) If a will was admitted to probate prior to June 30, 1902, upon publication against unknown next of kin or heirs, a person interested may file a petition for further probate of the will, alleging that the next of kin or heirs at law of the deceased, or some of them, as the case may be, are unknown, and upon satisfactory showing being made to the court publication of notice may be made against the unknown next of kin or heirs at law of the deceased. Upon the publication being made, as required by the court, a decree may be made confirming the previous probate. The decree is as effectual as if the unknown next of kin or heirs at law were named in the order of publication. (Sept. 14, 1965, 79 Stat. 690, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 19-301 (Mar. 3, 1901, ch. 854, § 130, 31 Stat. 1211; June 30, 1902, ch. 1329, 32 Stat. 526; June 24, 1949, ch. 341, § 1, 63 Stat. 267).

Section is derived from two unlettered paragraphs that followed par. (c) of section 19-301 of D.C. Code, 1961 ed. Remainder of section 19-301 is carried into sections 18-501 and 18-502 herein.

Changes are made in phraseology and arrangement.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 18-501, 18-504.

### § 18-504. Probate; waiver of notice; proof of execution

When the notice prescribed by sections 18-501 to 18-503 has been completed or if all parties interested adversely to the will have waived the notice and consent that the will be admitted to probate and record, the court shall proceed, if a caveat is not filed, to take the proofs, or to consider the proofs theretofore taken, of the execution of the will. All the witnesses to the will who are within the District of Columbia and competent to testify shall be produced and examined or the absence of any of them satisfactorily accounted for. A will may not be admitted to probate and record except upon formal proof of its proper execution. (Sept. 14, 1965, 79 Stat. 691, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 19-304, 19-305 (Mar. 3, 1901, ch. 854, §§ 131, 135, 31 Stat. 1211, 1212; June 24, 1949, ch. 241, § 2, 63 Stat. 267).

Section consolidates sections 19-304 and 19-305 of D.C. Code 1961 ed.

Changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Illiterate testators

The same rule applies in cases of illiterate testators. *Lippard v. Humphrey* (1906, 28 App. D.C. 355, affirmed 28 S. Ct. 561, 209 U.S. 264, 52 L. Ed. 783, 14 Ann. Cas. 872).

##### Jurisdiction of probate court

Probate court has exclusive jurisdiction to take proof of wills and to admit the same to probate and record. *Gracie v. American Security & Trust Co.* (1922, 277 F. 543, 51 App. D.C. 141).

##### Production of witnesses

"In all cases the subscribing witnesses, if living and within the jurisdiction, must be called to prove the fact of execution; and if it appears from their evidence that the will was formally executed and the testator competent, it must be admitted to probate." *Lippard v. Humphrey* (1906, 28 App. D.C. 355, affirmed 28 S. Ct. 561, 209 U.S. 264, 52 L. Ed. 783, 14 Ann. Cas. 872).

##### Proof

Admission by caveator of formal execution of will does not dispense with necessity for proof thereof. *National Safe Deposit, Sav. & Trust Co. v. Heiberger* (1902, 19 App. D.C. 506).

##### Proof of signature

"When any of the witnesses to a will has died, proof of his signature is sufficient prima facie proof of attestation of the will by him." *Kelly v. Moore* (1903, 22 App. D.C. 9, affirmed 25 S. Ct. 169, 196 U.S. 38, 49 L. Ed. 376).

##### Waiver of citation

Waiver of citation does not preclude subsequent filing of caveat. *Bowen v. Howenstein* (1913, 39 App. D.C. 585, Ann. Cas. 1913E, 1179).

Waiver of citation does bring party within jurisdiction of court. *Fardon v. Washington Loan & Trust Co.* (1915, 44 App. D.C. 69).

### § 18-505. Proof of wills; testimony; witnesses outside District

(a) When a will contains a devise of real estate, and an attesting witness thereto residing in the District of Columbia is unable to attend the court, the Register of Wills may, with the will, attend upon



the witness and take his testimony. When the testimony of resident attesting witnesses to the will has been taken, and other attesting witnesses reside out of the District or are temporarily absent from the District, but are within the United States, it is sufficient, for the purpose of proving the will, to prove the signatures of the nonresident and temporarily absent witnesses.

(b) When the attesting witnesses to a will mentioned in subsection (a) of this section are out of the District as specified in that subsection, or if one or more are within the United States and one or more are in a foreign country, it is sufficient, for the purpose of proving the will, to take the testimony of any one or all of them within the United States, as the Probate Court determines, and to prove the signatures of those whose testimony is not required to be taken.

(c) If all the attesting witnesses to a will mentioned in subsection (a) of this section are out of the United States, it is sufficient, for the purpose of proving the will, to take the testimony of such of them as the court requires, and to prove the signatures of the others.

(d) The rules of the court with respect to the taking and use of testimony of out-of-District witnesses apply to testimony taken pursuant to this section. The original will or codicil shall be sent with the notice or order of appointment or commission or letters rogatory, and exhibited to the witnesses.

(e) A notice of the time and place of taking testimony need not be given unless probate is opposed. (Sept. 14, 1965, 79 Stat. 691, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 147(2), 84 Stat. 566.)

#### AMENDMENT

1970—Section 147(2) of Act July 29, 1970, Public Law 91-358, amended subsection (d) generally. For provisions of this section prior to this amendment, see 1967 edition of the code.

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 19-306 (Mar. 3, 1901, ch. 854, § 132, 31 Stat. 1211).

The provisions of the fourth paragraph of section 19-306 of D.C. Code, 1961 ed., relating to the taking and use of testimony of out-of-District witnesses, are, in subsec. (d) of this section, revised to bring them into harmony with the Federal Rules of Civil Procedure. As revised, the provisions conform with section 16-3111 of the Code.

Changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Depositions

Deposition can be substituted for oral testimony only by statutory authority. *Hutchins v. Hutchins* (1914, 41 App. D.C. 367).

##### Evidence

Declarations of testatrix made after execution of her will showing that she made a different disposition of her property are inadmissible, especially when there is no tendency to show want of mental capacity. *Lipphard v. Humphrey* (1906, 28 App. D.C. 355, affirmed 28 S. Ct. 561, 209 U.S. 264, 52 L. Ed. 783, 14 Ann. Cas. 872).

##### Nonresident witness

"Section 132 of the Code (this section) specifically provides that, if the testimony of the resident witness is taken and any other witness resides out of the District,

it shall be sufficient to prove the signature of such nonresident witness, and that the will shall thereupon be admitted to probate." *Scott v. Herrell* (1908, 31 App. D.C. 45).

##### Testimony of witness in foreign country

D.C. Code 1901, § 1058 (§ 14-201) expressly provides that to take the testimony of a witness in a foreign country, letters rogatory shall issue, addressed to some court of record therein, accompanied by the interrogatories and cross-interrogatories propounded to the witness. *Hutchins v. Hutchins* (1914, 41 App. D.C. 367).

#### § 18-506. Appearance of persons not cited

A person, although not cited, who is interested in sustaining or defeating a will, may appear and support or oppose the application to admit it to probate. (Sept. 14, 1965, 79 Stat. 691, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 19-302 (Mar. 3, 1901, ch. 854, § 133, 31 Stat. 1212).

Minor changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Sufficiency of interest

"Any interest, however slight, is sufficient to entitle a party to oppose a testamentary paper, and for like reason, such interest entitles a party to insist upon probate." *Vestry of St. John's Parish v. Bostwick* (1896, 8 App. D.C. 452).

#### § 18-507. Admission to probate

When, upon hearing the proofs, the court is of the opinion that the will was duly executed and the testator was competent to execute it, and a caveat is not filed against the admission of the will to probate, the court shall decree that the will be admitted to probate and record. (Sept. 14, 1965, 79 Stat. 692, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 19-308 (Mar. 3, 1901, ch. 854, § 134, 31 Stat. 1212).

Changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Sufficiency of interest

Where caveat of alleged widower of deceased testatrix was not filed in District of Columbia within three months allowed by statute as to personality, and alleged widower had filed a renunciation of provision of will and election to take his legal share as of intestacy under statute, and there were no children born of alleged marriage, so that alleged widower had no interest by curtesy, motion to dismiss caveat would be granted because not timely filed and because alleged widower had no interest sufficient to entitle him to maintain caveat. *In re Phillips' Estate* (D.C.D.C. 1953, 111 F. Supp. 453).

##### Time for filing

Where caveat of alleged widower of deceased testatrix was not filed in District of Columbia within three months allowed by statute as to personality, and alleged widower had filed a renunciation of provisions of will and election to take his legal share as of intestacy under statute, and there were no children born of alleged marriage, so that alleged widower had no interest by curtesy, motion to dismiss caveat would be granted because not timely filed and because alleged widower had no interest sufficient to entitle him to maintain caveat. *In re Phillips' Estate* (D.C.D.C. 1953, 111 F. Supp. 453).

#### § 18-508. Caveat; will not to be probated while issues pending

If, prior to or upon the hearing of an application to admit a will to probate, a party in interest files a verified caveat in opposition, setting forth facts inconsistent with the validity of the will, the will may



not be admitted to probate until the issues raised by the caveat are determined, as directed by this chapter. (Sept. 14, 1965, 79 Stat. 692, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 19-307 (Mar. 3, 1901, ch. 854, § 136, 31 Stat. 1212).

Changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Caveat by executor

Executor appointed by will who had power of appointment regarding certain property had the requisite interest to caveat codicil reducing shares of residuary legatees. *E. McLain v. American Security and Trust Co.* (1968, 392 F. 2d 818, 129 U.S. App. D.C. 213).

##### Party in interest

The right conferred upon nephew by will and withdrawn from him by codicil to serve as executor and receive commissions therefor did not make him a "party in interest" within District of Columbia Code provision that if a party in interest files verified caveat setting forth facts inconsistent with validity of will, the will may not be admitted to probate until the issues are determined. *P. McLain and E. McLain v. American Security and Trust Co.* (1967, 265 F. Supp. 467; rev'd 392 F. 2d 818).

Testatrix' sister whose claim upon estate would be no different if codicil were set aside or sustained was not entitled to caveat the codicil under District of Columbia Code provision that if party in interest files verified caveat setting forth facts inconsistent with validity of will the will may not be admitted until the issues are determined. *Id.*

An estate of a decedent should not be subjected to the trouble and expense of an attack on a testamentary writing except by one who, if the attack prove successful, would have some claim upon the estate different from what he would have if the attack prove unsuccessful. *Id.*

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Burden of proof

Under a caveat to a will challenging the mental capacity of the testator, whether before or after the will has been admitted to probate, the burden of proof on the issue whether the testator was of sound and disposing mind and capable of executing a valid deed or contract, is upon the caveator. *Brosnan v. Brosnan* (1923, 44 S. Ct. 117, 263 U.S. 345, 68 L. Ed. 332).

##### Equitable remedies

"Equity furnishes the only complete remedy in the exceptional class of cases \* \* \* where the complex relief sought consists in setting aside a deed and will embracing the same property and the same parties, enjoining the beneficiaries \* \* \* and declaring them trustees \* \* \* with a general order for an accounting. This is true, even though there be \* \* \* an adequate statutory remedy (this section and § 19-309)." *Karrick v. Landon* (1914, 41 App. D.C. 416).

##### Party in interest

Even if decedent had been equitably adopted by petitioner's Maryland grandparents, before enactment of Maryland adoption laws, this did not give him status of one legally adopted, and did not confer on petitioner right to share in his estate or right, under District of Columbia law, to file caveat to will. *In re Estate of T. R. Jarboe, deceased* (D.C.D.C. 1964, 235 F. Supp. 505).

A widow was a "party in interest" within meaning of this section so as to be permitted to file caveat against will, under circumstances, where will listed debts which were assertedly due testator's children, which might be barred by limitation but which, if allowed as first charge as directed, might depreciate value of widow's share, where there was a substantial issue as to testamentary capacity and named executor whom widow asserted had joined in procuring execution of will so as to list such claims, would, in first instance, pass on debts. *Helen Rothenberg, Caveator, etc. v. A. Rothenberg* (1959, 273 F. 2d 825, 107 U.S. App. D.C. 11).

Interest which caveator must possess to enable him to assail validity of will in District of Columbia is such that, had testator died intestate, caveator would have been entitled to distributive share in estate, and such share would be different from that which caveator would be entitled to if will were held valid. *Kimberland v. Kimberland* (1953, 204 F. 2d 38, 92 U.S. App. D.C. 145).

##### Right to administer

Where testatrix by purported will left her entire estate to her son, and estate included no realty in District of Columbia, and son offered will for probate in District of Columbia, husband of testatrix lacked necessary interest in estate to file a caveat, even though husband might be appointed administrator if will should be set aside, since husband would take same share of estate whether will was or was not sustained. *Kimberland v. Kimberland* (1953, 204 F. 2d 38, 92 U.S. App. D.C. 145).

#### § 18-509. Caveat; time for filing

After a will has been admitted to probate, a person in interest may, within six months from the date of the order of probate, file a verified caveat to the will, praying that the probate thereof be revoked. (Sept. 14, 1965, 79 Stat. 692, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 19-309 (Mar. 3, 1901, ch. 854, § 137, 31 Stat. 1212; June 24, 1949, ch. 243, 63 Stat. 268; July 14, 1960, Pub. L. 86-674, § 1, 74 Stat. 553).

Minor changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Appeal

Appellate court will not reach the question of fraud upon the merits because a caveator cannot raise on appeal an issue which he failed to pose as an issue to be tried in a caveat proceeding. Probate procedure in this jurisdiction gives any person in interest ample opportunity to raise by caveat, prior to the decree of probate, any issue he may wish to raise in respect of the validity of a will. *Langston v. Schwartz* (1949, 174 F. 2d 31, 84 U.S. App. D.C. 329).

##### Appearance

Signing of waiver constitutes appearance, but, by leave of court, same may be withdrawn. *Fardon v. Washington Loan & Trust Co.* (1915, 44 App. D.C. 69).

Signing of waiver brings one within one-year limitation, notwithstanding fact that there was a subsequent order of publication. *Id.*

##### Defense to compulsory accounting

After probate of a will and until revocation, executor is required to act in accordance with terms of will, and, in absence of wrongdoing on his part, is fully protected in so doing. *Cashell v. Estlin* (D.C.D.C. 1944, 55 F. Supp. 747).

##### Estoppel to file

Whether receipt of legacy under will works an estoppel to file a caveat and effect of offer to return the same, see *Craighead v. Alexander* (1912, 38 App. D.C. 229).

##### Right to file

"The object of the section is to extend to the persons coming within its description a certain period within which to contest a will that has been regularly admitted to probate. As to them the probate is not a finality until the expiration of the prescribed periods. Until then the right to the caveat is absolute." *Craighead v. Alexander* (1912, 38 App. D.C. 229).

Waiver and consent does not deprive any person of right to file a caveat. *Fardon v. Washington Loan & Trust Co.* (1915, 44 App. D.C. 69).

##### Sufficiency of interest

The interest which a person must possess to enable him to assail the validity of a will is such that, had the testator died intestate, he would have been entitled to a distributive share in the estate. *Angell v. Groff* (1914, 42 App. D.C. 198).



Petition for caveat of will must show petitioner to be "next of kin," but also "person in interest." *Naylor v. Mealy* (1934, 67 F. 2d 693, 62 App. D.C. 321).

To be a person interested, a beneficiary under a prior will must show that, except for the effect of the later will, if valid, to revoke the earlier one, the latter remained the last will and testament of the testator until his death. *Werner v. Frederick* (1938, 94 F. 2d 627, 68 App. D.C. 158).

An heir, claiming by intestacy, may caveat a probated will regardless of possible effect of an earlier purported will which has not been proved or put in issue by any one claiming under it. *Lonas v. Betts* (1947, 160 F. 2d 281, 82 U.S. App. D.C. 55).

#### Time for filing

Where caveat to will probated in 1953 alleged that son of testatrix was incompetent when will was probated and proposed amendment alleged that incompetence was known or should have been known to the proponent and was not brought to the attention of the probate court, proposed amendment was properly rejected in view of the one-year statute of limitations on filing caveats, which contains no exceptions giving an incompetent or his committee a longer time than one year in which to file a caveat. *Merchant v. Davies* (1957, 244 F. 2d 347, 100 U.S. App. D.C. 258).

When the caveat was not filed until more than three months after the order of probate, the allegations of fraud, practiced in procuring the waiver of citation and service, were evidently made to excuse their failure to proceed within statutory period, and when further delayed for year and day, it was of no effect. *Craighead v. Alexander* (1912, 38 App. D.C. 229).

When person was legally alive for more than two years after the probate of his father's will, he was barred from caveating the will, and his heirs, having no rights which they could assert during his lifetime, are likewise barred. *Angell v. Groff* (1914, 42 App. D.C. 198).

The dismissal of a caveat to a will, which involved real and personal property, in so far as caveat was a caveat to a will of personal property, was proper where will was admitted to probate on July 5, 1938, and caveat was not filed until June 30, 1939. *Hengesbach v. Hengesbach* (1940, 114 F. 2d 845, 73 App. D.C. 1).

#### Waiver

Beneficiary of will of testator, by affixing her signature to document entitled "consent to probate and letters testamentary" did not unequivocally waive her statutory right to file a caveat on the ground that the waiver was founded upon consideration because of benefit conferred upon the beneficiary and by detriment incurred by the executors. *McNamara v. Miller, Sr. et al.* (1959, 269 F. 2d 511, 106 U.S. App. D.C. 64).

Beneficiary of will by affixing her signature to document entitled "consent to probate and letters testamentary" did not unequivocally waive her statutory right to file a caveat based on estoppel where the executors failed to demonstrate that damage would have resulted to them had the caveat been entertained. *Id.*

Beneficiary, by affixing her signature to document entitled "consent to probate and letters testamentary" did not unequivocally waive her statutory right to file a caveat on the ground that such waiver constituted a judicial admission, where the waiver was a statement of assertion or concession made for an independent purpose, thus not coming within the requirements of a judicial admission insofar as any issue pending before the court was concerned, and where there was no issue as to which the judicial admission could apply. *Id.*

#### § 18-510. Prior will not to be probated pending issues

While issues raised by a caveat are pending, either for trial or on appeal, a prior will may not be admitted to probate. (Sept. 14, 1965, 79 Stat. 692, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 19-310 (Mar. 3, 1901, ch. 854, § 137a, as added Apr. 19, 1920, ch. 153, 41 Stat. 557).

Minor changes are made in phraseology.

#### § 18-511. Guardian ad litem

When a party interested as specified by this chapter is an infant or of unsound mind, the court may appoint a guardian ad litem to represent him at the hearing of the application to admit the will to probate, with authority to file a caveat, as he may be advised, in behalf of the interested party. (Sept. 14, 1965, 79 Stat. 692, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Aug. 11, 1971, Pub. L. 92-88, § 10, 85 Stat. 314.)

#### AMENDMENT

1971—Section 10 of Act Aug. 11, 1971, Pub. L. 92-88, amended section by striking out "shall" and inserting "may" in lieu thereof.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 19-303 (Mar. 3, 1901, ch. 854, § 138, 31 Stat. 1212).

Changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Appearance of incompetency

This section providing that whenever, in a proceeding to probate a will, it shall "appear" that a party interested in non compos mentis, the court may appoint a guardian with authority to file a caveat, did not authorize the filing of an amendment to a caveat to a will probated in 1953 alleging the incompetency of the son of testatrix in 1955, since the incompetency did not "appear" when the will was probated. *Merchant v. Davies* (1957, 244 F. 2d 347, 100 U.S. App. D.C. 258).

##### Grandchildren

Guardian ad litem was not required to be appointed at time of probate of testator's will to represent testator's grandchildren, since grandchildren were not within class of testator's heirs at law and would not be entitled to or interested in testator's estate in case will had not been executed. *In re Estate of W. V. James, deceased* (D.C.D.C. 1963, 221 F. Supp. 456).

##### Person in interest

Where there had been no promise or contract to adopt caveator which would support her equitable adoption theory and admittedly there was no statutory adoption, caveator, being a stepdaughter only, was not a "person in interest" within statute authorizing a person in interest to file a caveat to probate of will. *E. Ekstein v. S. D. Meshner, Executrix etc.* (1964, 333 F. 2d 152, 118 U.S. App. D.C. 142).

#### § 18-512. Plenary proceedings

In all cases of controversy the court may direct a plenary proceeding to be had, by bill or petition, to which there shall be answer under oath, which may be compelled by the usual process, and all the depositions shall be taken down in writing and filed; or, if either party requires it, the court shall direct an issue to be framed for trial by a jury. (Sept. 14, 1965, 79 Stat. 692, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 19-311 (Mar. 3, 1901, ch. 854, § 139, 31 Stat. 1213).

A minor change is made in phraseology.

#### § 18-513. Rules of procedure

The court shall prescribe rules of procedure governing the trial of issues when a caveat is filed, including provisions for notice, appointment of guardians ad litem, trial by jury, and effect of judgments. (Sept. 14, 1965, 79 Stat. 692, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358 § 147(3) (A), title I, 84 Stat. 566.)



## AMENDMENTS

1970—Section 147(3) (A) of Act July 29, 1970, Public Law 91-358, amended section generally. For provisions of this section prior to this amendment, see 1967 edition of the code.

## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 19-312 (Mar. 3, 1901, ch. 854, § 140, 31 Stat. 1213; June 30, 1902, ch. 1329, 32 Stat. 526; Apr. 19, 1920, ch. 153, 41 Stat. 557; June 25, 1936, ch. 804, 49 Stat. 1921).

In those provisions of section 19-312 of D.C. Code, 1961 ed., carried into subsec. (c) of this section relating to the prescription of rules and regulations for service personally upon the party outside the District, "court" is substituted for "United States District Court for the District of Columbia". The Probate Court is the United States District Court for the District of Columbia in the exercise of its probate jurisdiction. See revision note under section 18-110 herein.

Section 19-312 of D.C. Code, 1961 ed., provided that the proceeding for impaneling a jury for the trial of issues as to a will should be the same as if they were being tried in the court of appeals. In the original, that is, in section 140 of the 1901 Act, the reference was to the "circuit court", a former special term of the Supreme Court of the District of Columbia (now, the District Court), at which "common-law" civil cases were heard. It is assumed, therefore, that the reference in section 19-312 of D.C. Code, 1961 ed., to the "court of appeals" was merely a typographical error. The District Court no longer has "special terms" known as the "circuit court", equity court", etc., for the hearing of causes. Accordingly, to bring the above-mentioned provision up to date, the first sentence of subsec. (d) of this section provides that the proceeding for the trial of issues as to a will is the same as in "civil actions". This preserves the apparent intent of the original provision.

In the second sentence of subsec. (d) of this section, "Subject to the right of appeal" is substituted for "subject to proceedings in error", to conform with current practice and terminology. Also in this sentence, the phrase "or the judgment of the court without a jury, as the case may be" is inserted to conform with another apparent legislative intent, inasmuch as section 19-312 of D.C. Code, 1961 ed., provided, and subsec. (a) of this section continues to provide, that, if all persons interested are sui juris and before the court, and give written consent to trial without a jury, the issues may be tried and determined by the court. It is not deemed to have been the legislative intent to provide that the judgment is res judicata only when rendered upon the verdict of a jury.

Changes are made in phraseology and arrangement.

## NOTES TO DECISIONS UNDER PRIOR LAW

## Burden of proof

"In the District of Columbia, under a caveat to a will challenging the mental capacity of the testator, whether before or after the will has been admitted to probate, the burden of proof on the issue whether the testator \* \* \* was of sound and disposing mind and capable of executing a valid deed or contract, is upon the caveator." *Brosnan v. Brosnan* (1923, 44 S. Ct. 117, 263 U.S. 345, 68 L. Ed. 332).

## Construction

Under § 6 of the act of Congress of June 8, 1898, the word "week" was not intended to mean the conventional week beginning with Sunday and ending with Saturday, but a period of seven consecutive days. *Leach v. Burr* (1900, 17 App. D.C. 128, affirmed 23 S. Ct. 393, 188 U.S. 510, 47 L. Ed. 567).

This section is still in force, notwithstanding Rule 38, 28 U.S.C. App., relating to jury trials, demand therefor, and waiver thereof, in view of rule 81 following said section providing that rules do not apply to probate proceedings in the District Court of the United States for the District of Columbia except to appeals therein, and hence the failure to demand jury trial in a will contest

was not a "waiver" of the right thereto. *In re Cottrill's Estate* (D.C.D.C. 1941, 39 F. Supp. 689).

Rule 1, § 2, of the District Court of the United States for the District of Columbia providing that in determining contested issues of law or fact or of law and fact in probate proceedings, District Court rules and federal procedural rules shall also govern procedure on motions, depositions, discovery and testimony and at hearing or trial of issues, does not purport to modify this section. *Id.*

Under 28 U.S.C. § 723b [now covered by 28 U.S.C. § 2072] providing that all laws in conflict with procedural rules shall be of no further force or effect, Rule 38, 28 U.S.C. App. relating to jury trials, demand therefor, and waiver thereof is not applicable as such to will contests in the District of Columbia, and does not in effect repeal this section in view of Rule 82 providing that rules do not apply to probate proceedings in the District Court of the United States for the District of Columbia except to appeals therein. *Id.*

## Directed verdict

In proceeding to probate will, where there was no evidence of fraud sufficient to justify submission of such issue to jury the trial judge properly directed a verdict against caveators on such issue. *Pollard v. Hawfield* (1948, 170 F. 2d 170, 83 U.S. App. D.C. 374, certiorari denied 69 S. Ct. 514, 336 U.S. 909, 93 L. Ed. 1073, rehearing denied 69 S. Ct. 654, 336 U.S. 929, 93 L. Ed. 1089).

## Discretion of court

In proceeding to probate will where it did not appear that physician had had any experience or training in mental illnesses or that he had never treated or observed any paralytic case which had resulted in impairment of the mind and there was but little if any evidence in the record to indicate that either partial paralysis of the testatrix with its resultant confinement or advanced age of testatrix caused any impairment of mind, limiting testimony of physician as to paralysis and refusing to permit him to testify to effect of paralysis on mental faculties was not an abuse of discretion. *Pollard v. Hawfield* (1948, 170 F. 2d 170, 83 U.S. App. D.C. 374, certiorari denied 69 S. Ct. 514, 336 U.S. 909, 93 L. Ed. 1073, rehearing denied 69 S. Ct. 654, 336 U.S. 929, 93 L. Ed. 1089).

## Evidence

Where probate of will naming testatrix's sister sole beneficiary was opposed on ground of undue influence and want of testamentary capacity, § 14-302 providing that if one of original parties to transaction or contract has died, the other party thereto shall not be allowed to testify to any declaration of the deceased in suit against personal representative of deceased did not require exclusion of testimony of testatrix's brother that testatrix had repeatedly agreed or promised in presence of others to leave him her real estate if he remained single and continued to live with her. *Duckett v. Duckett* (1943, 134 F. 2d 527, 77 U.S. App. D.C. 303).

The persons named as executors and legatees in an alleged will cannot, in order to probate the will, be permitted to utilize § 14-302 providing that if one of original parties to transaction or contract has died the other party thereto shall not be allowed to testify to any declaration of deceased in suit against personal representative of deceased. *Id.*

Testimony of testatrix's brother, who had made his home with her for 36 years, that testatrix had repeatedly agreed or promised in presence of others to leave him her real estate if he remained single and continued to live with her was admissible on issues of undue influence and testamentary capacity in opposition to probate of will naming testatrix's sister sole beneficiary. *Id.*

Where probate of will is opposed on ground of fraud and undue influence, it is not necessary that there be direct proof of undue influence. *Id.*

A finding that testator's subscription to purported will was procured by fraud, coercion, misrepresentation, undue influence, and pretension, executed by the sole beneficiary named in will, or some other person, was supported by sufficient evidence. *Duckett v. Duckett* (1945, 150 F. 2d 985, 80 U.S. App. D.C. 195).

Evidence supported finding that will had been procured by undue influence, duress or coercion by beneficiary, so



that it should be denied probate. *Martin v. Staples* (1947, 164 F. 2d 106, 82 U.S. App. D.C. 370).

#### Harmless or prejudicial error

In will contest, refusal to permit attorney for testatrix to testify concerning instruction given him by testatrix on ground that communication was privileged was error. *Sorrels v. Alexander* (1944, 142 F. 2d 769, 79 U.S. App. D.C. 112).

Where witness was permitted to use notes to refresh her memory, refusal to strike out testimony of witness when it developed on cross-examination that some of notes were not made until two years after event about which witness testified was not reversible error where counsel failed to object to use of notes when witness asked if she might use them, and later when it developed that they had not been made contemporaneously, counsel not only failed to move that her testimony be stricken from record, but used her notes in argument to jury. *Id.*

In will contest, erroneous refusal to permit attorney for testatrix to testify concerning instructions given him by testatrix did not authorize reversal, where record did not show what was intended to be elicited from witness or time when the instructions were received. *Id.*

In will contest, where it was developed when counsel for testatrix was on witness stand that he had held in his possession, and not offered for probate for a period of two weeks wills of testatrix's brother-in-law and sister, remark of court that when will is left with an attorney to be filed "it ought to be filed immediately" was not prejudicial where judge in subsequent charge left jury free to determine, without comment on his part, weight to be given to the evidence. *Id.*

#### Instructions

In proceeding to probate will, refusal of requested prayers on presumption of undue influence and on testamentary capacity was not error where the charge given properly informed the jury as to the law. *Pollard v. Hawfield* (1948, 170 F. 2d 170, 83 U.S. App. D.C. 374, certiorari denied 69 S. Ct. 514, 336 U.S. 909, 93 L. Ed. 1073, rehearing denied 69 S. Ct. 654, 336 U.S. 929, 93 L. Ed. 1039).

#### Questions for jury

In proceeding for probate of will, where there was evidence that testatrix' sister, who was named sole beneficiary, after taking sole charge of testatrix first made false statements to other relatives with purpose and effect of inducing them not to visit testatrix and then allowed her to suppose, contrary to fact, that the other relatives were making no effort to see testatrix, doing nothing for her and showing no interest in her welfare, issues of fraud and undue influence were for the jury. *Duckett v. Duckett* (1943, 134 F. 2d 527, 77 U.S. App. D.C. 303).

In will contest, evidence on question whether testatrix at time of making and signing the will was of sound and capable mind was sufficient for jury. *Sorrels v. Alexander* (1944, 142 F. 2d 769, 79 U.S. App. D.C. 112).

In will contest, evidence on question whether will was obtained or procured by undue influence, duress or coercion was sufficient for jury. *Id.*

In will contest, evidence of fraud in procurement of will was sufficient for jury. *Frene v. Muratori* (1944, 142 F. 2d 768, 79 U.S. App. D.C. 101).

#### Review

Order framing issues is interlocutory only, and reviewable only by special appeal. *Hutchins v. Hutchins* (1913, 40 App. D.C. 180).

In proceeding to probate will where no exceptions were taken to the charge on undue influence and testamentary capacity, charge on such matters could not be attacked on appeal. *Pollard v. Hawfield* (1948, 170 F. 2d 170, 83 U.S. App. D.C. 374, certiorari denied 69 S. Ct. 514, 336 U.S. 909, 93 L. Ed. 1073, rehearing denied 69 S. Ct. 654, 336 U.S. 929, 93 L. Ed. 1039).

#### Stay by prohibition

Prohibition will not lie to stay proceedings under an order framing issue for trial by jury. *In re Dahlgren* (1908, 30 App. D.C. 588).

#### Trial

The trial proceeded when it was shown by the record that at the time the issues were framed and the trial fixed, and at the trial the caveatees were present in person and by their attorneys. *Storey v. Storey* (1908, 30 App. D.C. 41).

### § 18-514. Wills filed prior to June 8, 1898, may be probated as of real estate

A person interested under a will filed in the office of the Register of Wills for the District of Columbia prior to June 8, 1898, may offer the will for probate as a will of real estate, whereupon such proceedings shall be had as this Code authorizes in regard to wills offered for probate after that date. (Sept. 14, 1965, 79 Stat. 693, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 19-313 (Mar. 3, 1901, ch. 854, § 141, 31 Stat. 1213).

Changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### In general

This section is permissive and not mandatory. *Young v. Norris Peters Co.* (1906, 27 App. D.C. 140).

##### Effect of probate of wills

Stepgrandchildren of a decedent lacked standing to maintain action to annul marriage of decedent and to set aside conveyance of interest in realty to decedent's wife after marriage, since stepgrandchildren as such could not contest marriage alone, and their claim to realty rested upon will of decedent which devised realty to decedent's stepgrandchildren, but will was not probated so that stepgrandchildren could not take realty even if conveyance and marriage were voided. *Norris v. Harrison* (1952, 198 F. 2d 953, 91 U.S. App. D.C. 103).

##### Equity jurisdiction

Determination of title to real estate devised by will is within the general jurisdiction of a court of equity. *Beyer v. Le Fevre* (1902, 22 S. Ct. 765, 186 U.S. 114, 46 L. Ed. 1080).

##### Jurisdiction

By act of June 8, 1898, 30 Stat. 434, ch. 394, plenary jurisdiction was given the District Supreme Court of all questions as to wills devising real estate in the District of Columbia. *Leach v. Burr* (1903, 23 S. Ct. 393, 188 U.S. 510, 47 L. Ed. 567).

## TITLE 19.—DESCENT AND DISTRIBUTION

*Title 19 was enacted by Pub. L. 89-183*

For distribution of former sections of this title, see table following Title 49

Chap.	Sec.
1. Rights of Surviving Spouse and Children...	19-101
3. Intestates' Estates.....	19-301
5. Simultaneous Deaths—Uniform Law.....	19-501
7. Escheat .....	19-701

### Chapter 1.—RIGHTS OF SURVIVING SPOUSE AND CHILDREN

Sec.
19-101. Family allowance; construction; penalties.
19-102. Dower; quarantine; curtesy abolished.
19-103. Forfeiture of dower by desertion and adultery.
19-104. Absent or incompetent spouse.
19-105. Jointure before marriage as bar to dower.
19-106. Jointure after marriage; election.
19-107. Effect of acts of one spouse.
19-108. Recovery of dower withheld; damages.
19-109. Recovery of dower obtained by default or collusion; damages.
19-110. Assignment by guardian; rights of heir.
19-111. Reendowment upon eviction from jointure.
19-112. Devise or bequest to spouse.
19-113. Renunciation of devises and bequests; election; time limitations; renunciation or election by guardian or fiduciary; maximum rights; effect of no devise or bequest or if nothing passes under either; antenuptial or postnuptial agreements.
19-114. Rights of surviving spouse if there is no renunciation.
19-115. Definition.

#### AMENDMENT

1970—Section 148(2)(B) of Act July 29, 1970, Public Law 91-358 amended chapter analysis by adding the item relating to 19-115.

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### § 19-101. Family allowance; construction; penalties

(a) Upon the death of a person leaving a surviving spouse, the spouse is entitled to an allowance out of the personal estate of the decedent of the sum of \$2,500 for the personal use of himself and of minor children. The allowance shall be paid in money, or in specific property at its fair value, as the surviving spouse may elect. It is exempt from all debts and obligations of the decedent, and is subject only to the payment of funeral expenses not exceeding \$600.

(b) When there is no surviving spouse, the surviving minor children, if any, are entitled to the allowance provided for by subsection (a) of this section. This allowance is payable, in the discretion of the Probate Court, to the person having custody of the children, or to such other person as the court designates. The person to whom the allowance is paid shall use it solely for the care and maintenance of the children.

(c) The allowance provided for by this section is in addition to the respective shares of the surviving spouse and children.

(d) This section applies to estates of all persons dying after June 24, 1949; and if there is any conflict or inconsistency between this section and other provisions of this Part or any other law, this section controls.

(e) Whoever, with respect to the family allowance authorized by this section:

- (1) makes a false affidavit; or
- (2) willfully violates an order of the Probate Court; or
- (3) willfully violates a provision of this section—

shall be fined not more than \$2,500 for each offense. (Sept. 14, 1965, 79 Stat. 693, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Aug. 11, 1971, Pub. L. 92-88, § 5, 85 Stat. 314.)

#### AMENDMENT

1971—Section 5 of Act Aug. 11, 1971, Pub. L. 92-88, amended section—

- (1) by striking out in subsec. (a) and (e) "\$500" and inserting "\$2,500" in lieu thereof; and
- (2) by striking out in the third sentence of subsec. (a) "\$200" and inserting "\$600" in lieu thereof.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 18-801, 18-808, 18-809, 18-810 (Mar. 3, 1901, ch. 854, § 394(a)(h)(i)(j), as added June 24, 1949, ch. 244, 63 Stat. 269).

Section consolidates sections 18-801, 18-808, 18-809 and 18-810 of D.C. Code, 1961 ed. Sections 18-808, 18-809 and 18-810 are also carried into chapter 21 of title 20 herein, to the provisions of which they also related.

Section 18-809 of D.C. Code, 1961 ed., in connection with the provisions carried into this section and chapter 21 of title 20 herein, repealed all laws inconsistent therewith to the extent of the inconsistency. This provision is omitted as executed, or obsolete in any event, as the bill to enact this revised Part repeals specifically all prior laws, as such, the provisions of which are carried into this revised Part. However, subsec. (d) of this section provides that this section controls, if there is any conflict or inconsistency with other laws.

Changes are made in phraseology and arrangement.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 20-1325, 20-1705, 20-2101.

#### NOTES TO DECISIONS

##### Family allowance

Provision in District of Columbia Code to effect that surviving spouse is entitled to \$500 allowance out of personal estate of decedent for personal use of himself and minor children was intended to supply surviving spouse with some necessary money before any distribution or payment out of estate. *In re Estate of I. N. Jones* (D.C.D.C. 1966, 259 F. Supp. 951).

Right of surviving spouse to \$500 allowance from personal estate of deceased spouse is not a vested right and if surviving spouse dies before receiving allowance, right to its payment is lost and money becomes part of estate of first deceased. *Id.*

Where husband died before he had received from deceased wife's estate the \$500 allowance provided by



District of Columbia Code for surviving spouse, allowance did not become part of his estate. *Id.*

#### § 19-102. Dower; quarantine; curtesy abolished.

(a) The widow of a deceased man, with respect to parties who inter-married prior to November 29, 1957, or the widow or widower of a deceased person dying after March 15, 1962, is entitled to dower and its incidents as the rights thereto were known at common law with respect to widows, including the use, during her or his natural life, of one-third part of all the land on which the deceased spouse was seized of an estate of inheritance at any time during the marriage. The surviving spouse entitled to dower under this section may remain in the chief dwelling house of the decedent 40 days after the death, without being liable for rent therefor, within which period the dower of the surviving spouse, if not previously assigned to her or him, shall be so assigned. In the meantime, the surviving spouse may have reasonable sustenance out of the estate of the decedent.

(b) The right of dower and its incidents provided for by subsection (a) of this section entitles the widow or widower to lands held by the deceased spouse at any time during the marriage, whether by legal or equitable title, and whether held by the decedent at the time of death, or not, but the right does not operate to the prejudice of a claim for the purchase money of the lands or other lien thereon.

(c) The right of dower provided for by this section does not attach to lands held by two or more persons as joint tenants while the joint tenancy exists. A husband may not claim a right of dower in land which his wife, during the coverture, conveyed or transferred to another person by her sole deed prior to November 29, 1957.

(d) With respect to the real estate of a wife dying after November 29, 1957, there is no estate by the curtesy. (Sept. 14, 1965, 79 Stat. 694, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 18-201, 18-201a, 18-202, 18-215a (9 Henry 3, ch. 7, § 1, 1225; Kilty's Rept., p. 205; Alex. Br. Stat., p. 1; Comp. Stat. D.C., p. 36, § 164; Mar. 3, 1901, ch. 854, § 1158, 31 Stat. 1375; Aug. 31, 1957, Pub. L. 85-244, §§ 2, 3, 71 Stat. 560; Sept. 14, 1961, Pub. L. 87-246, § 3, 75 Stat. 515).

Section consolidates, with changes in phraseology and arrangement, sections 18-201, 18-201a, 18-202 and 18-215a of D.C. Code, 1961 ed.

Section 18-201 of D.C. Code, 1961 ed., which gave the widow a right of common-law dower in the estate of her deceased husband, set forth an old British statute, 9 Henry 3, ch. 7, § 1, 1225, which was continued in force in the District by Act Mar. 3, 1901, ch. 854, § 1, 31 Stat. 1189 (D.C. Code, 1961 ed., § 49-301). It provided as follows:

"A widow, after the death of her husband, incontinent, and without any difficulty, shall have her marriage and her inheritance and shall give nothing for her dower, her marriage, or her inheritance, which her husband and she held the day of the death of her husband, and she shall tarry in the chief house of her husband by forty days after the death of her husband, within which days her dower shall be assigned her (if it were not assigned her before) or that the house be a castle; and if she depart from the castle, then a competent house shall be forthwith provided for her, in the which she may honestly dwell, until her dower be to her assigned, as it is aforesaid; and she shall have in the meantime her reasonable estovers of the common; and for her dower shall be as-

signed unto her the third part of all the lands of her husband, which were his during the coverture, except she was endowed of less of the church door."

The right of dower, and its incidents, were abolished by a former subsec. (a) of section 18-201a of D.C. Code, 1961 ed., which set forth subsec. (a) of section 3 of the Act of August 31, 1957, cited above. Prior to its general amendment by section 3 of the Act of September 14, 1961 (effective March 15, 1962), cited above, that subsection, in addition to abolishing dower and its incidents, provided: "except that with respect to parties who intermarried prior to the effective date of this Act [November 29, 1957], the wife shall retain her dower rights in all real estate whereof the husband, prior to the effective date of this Act, was seized of an estate of an inheritance at any time during the marriage. As to any such real estate of which the husband dies seized, the share of the wife therein, as provided in section 18-101, shall be, in lieu of her dower rights unless she elects to take the same in similar manner and within the period as authorized in section 18-211 [carried into section 19-113 herein], providing for renunciation of devises and bequests under wills." Section 2 of the 1957 Act (D.C. Code, 1961 ed., § 18-215a) abolished curtesy and its incidents, and section 1 thereof, in generally amending section 940 of the Act of Mar. 3, 1901, cited above, as amended (D.C. Code, 1961 ed., § 18-101, referred to in the above-quoted provisions, which is carried into section 19-301 herein), completely changed the course of descent of real property in the District of a person dying intestate, by providing that the same persons should succeed to intestate realty as were entitled to succeed to surplus intestate personalty, and that such kindred (including the surviving spouse as such) should share in the realty in the same proportions as they were entitled to share in the personalty. Previously, a surviving spouse could generally claim only dower or curtesy in the real property of her or his deceased mate.

A former subsec. (b) of section 18-201a of D.C. Code, 1961 ed., which set forth subsec. (b) of section 3 of the Act of August 31, 1957, provided, prior to the amendment of that section by section 3 of the Act of September 14, 1961 (effective March 15, 1962), referred to above:

"(b) the intestate share as provided by section 18-101 [see above], shall attach to all real property owned by husband or wife during coverture: Provided, That neither husband nor wife shall have the right to convey, transfer or encumber his or her real property free of the surviving spouse's interest in case of intestacy, as provided in sections 18-201 [see above], 18-201a 18-210 to 18-212, 18-215a, 18-714 to 18-717, and 30-201, without joinder of the other spouse." (In the original, the reference was to "this Act", meaning the 1957 Act. That Act amended or enacted the sections of D.C. Code, 1961 ed., cited in the quoted provisions. For distribution thereof in this revised Part, see tables.)

The Act of September 14, 1961, cited above, abolished this particular type of "intestate share" in real property in so far as spouses whose mates died or die on or after its effective date were concerned (March 15, 1962), and, while, in its general amendment of sections 18-101 and 18-201a and other sections of D.C. Code, 1961 ed., it continued to provide for the inheritance, by a surviving spouse, of a share of the intestate realty of the surviving spouse (see section 19-301 herein, and revision note thereunder), it created an alternate statutory right of dower in favor of both husbands and wives, "which shall have the same incidents as the common law estates of dower in force and effect immediately prior to November 29, 1957", and which "shall be in lieu of any inchoate rights acquired by or which may have attached to the real estate of any husband or wife by virtue of the provisions of" former subsec. (b) of section 18-201a of D.C. Code, 1961 ed., as it read prior to such 1961 amendment. While, therefore, former subsec. (b) of section 18-201a of D.C. Code, 1961 ed. (Act Aug. 31, 1957, § 3(b), as originally enacted, effective Nov. 29, 1957), relating to this "intestate share", has been superseded and is obsolete, and no reference to the "intestate share" is contained in this section, the provisions of such former subsection are still applicable in the settlement of the estates of married persons who might have died before March 15,



1962, the effective date of the 1961 Act referred to above. It is for this reason that subsec. (b) of section 18-201a of D.C. Code, 1961 ed., as it read prior to the amendment by the 1961 Act, is quoted in the preceding paragraph of this note.

The 1961 Act did not mention the inchoate common law dower rights which widows might have acquired under section 18-201 of D.C. Code, 1961 ed., and which, in so far as parties who intermarried prior to November 29, 1957, the effective date of the above-mentioned Act of August 31, 1957, are concerned, were preserved by the 1957 Act, but it would seem that these are rights which such wives still possess and may claim if they wish. "Since however, the statutory interest [under section 18-201a of D.C. Code, 1961 ed., as last amended by the 1961 Act] is the same size as the common law interest [under section 18-201 of D.C. Code, 1961 ed.], there is little reason for a widow to claim one rather than the other in any particular land except in so far as preserved dower [under section 18-201] has not attached—i.e., lands which were conveyed away by a husband without joinder before the effective date of the 1957 Act [November 29, 1957] (or, if that is not the material date, then before the effective date of the Amendments Act [1961 Act, effective March 15, 1962])." (Mersch, "Probate Court Practice in the District of Columbia", 1962 Pocket Supp. (Garvey), § 301, p. 42).

Since the surviving spouse's rights to dower and its incidents under section 18-201a of D.C. Code, 1961 ed., as amended by the 1961 Act mentioned above, were substantially the same as provided for widows by section 18-201 of the Code (the old British statute), and section 18-202 thereof, subsec. (a) of this section consolidates sections 18-201 and those provisions of section 18-201a setting up the general right to dower and its incidents, and subsec. (b) consolidates section 18-202, which related only to widows, with those provisions of section 18-201a which related to the same subject with respect to a surviving spouse. The general description of dower and its incidents was stated in section 18-201 of D.C. Code, 1961 ed., so the description thereof in subsec. (a) of this section follows that section, but rephrased in modern language, with surplusage omitted, and the cut-off marriage date of November 29, 1957 specified. The final phrase of section 18-201, "except she were endowed of less at the church door" is omitted as apparently superseded by section 18-211(f) of D.C. Code, 1961 ed., which is carried into section 19-113(f) herein.

The provision in subsec. (a) for non-liability for rent, during the period of the widow's (and now, also, the widower's) quarantine is new as text, but it appears to be necessarily implied in the provision of section 18-201 of D.C. Code, 1961 ed., for sustenance ("estovers", in the old British statute). See 4 Kent's Comm., 14 ed., p. 64; also, McKinney's N.Y. Real Property Law § 204.

As stated, subsec. (b) of this section consolidates part of section 18-201a of D.C. Code, 1961 ed., which established dower rights for both husbands and wives, and section 18-202 thereof, which related to widows only. The provisions consolidated in subsec. (b) were substantially the same, except that the provision protecting other liens from the operation of the widow's dower rights was contained in section 18-202 only. As set out in subsec. (b) herein, the provision affords a protection of such liens from the operation of both the widow's and the widower's dower rights, in view of the amendatory provision in section 18-201a of the Code, referred to above.

The provision in subsec. (c) of this section relating to joint tenancy interests is also derived from section 18-201a of D.C. Code, 1961 ed., the section which created dower rights for both husbands and wives. The second sentence of subsec. (c) is new as statutory text, but it is not deemed to create any new law. It seems clear, considering existing rights and the present state of the law, that a husband may not, under subssecs. (a) and (b) of this section, or might not, under section 18-201a of D.C. Code, 1961 ed., from which those subsections were partly derived, claim a right of dower in land conveyed by his wife, during the coverture, to another person by her sole deed executed prior to November 29, 1957, the effective date of the Act of August 31, 1957. Prior to that

date, the husband had only a restricted right of curtesy in his wife's real property, and the law did not prevent the wife from defeating this right by her sole deed. Therefore, the second sentence of subsec. (c) of this section is added for the purpose of clarification.

Subsec. (d) of this section is based on section 18-215a of D.C. Code, 1961 ed., which abolished estates by the curtesy, with respect to wives dying after the effective date thereof (November 29, 1957).

Section 18-201a of D.C. Code, 1961 ed., which, as stated, created dower rights for both husbands and wives, contained another provision, which read as follows: "and all provisions of the Act entitled 'An Act to establish a code of law for the District of Columbia', approved March 3, 1901, as amended, and all other laws in force in the District of Columbia relating to the right of dower and its incidents shall, on and after the effective date of this amendment [by the 1961 Act, effective March 15, 1962], be construed to be applicable to both husband and wife." This provision is omitted here. Insofar as it affected sections of D.C. Code, 1961 ed., carried into this revised Part, it is executed in the text of the sections. Insofar as it affects sections in other Parts of the Code, it is preserved by an amendment in a separate section of the bill to enact this revised Part. The amendment strikes out all matter in section 3 of the 1957 Act, as amended by section 3 of the 1961 Act (section 18-201a of D.C. Code, 1961 ed.), except such provision.

#### CROSS REFERENCES

Assignment of dower in partition proceedings, see § 16-2901 et seq.

Release of dower, see §§ 19-113, 30-216.

Renunciations, see § 19-113.

Sale of real estate to pay debts or legacies, assignment of dower, sale subject to dower, see § 20-1108.

#### DOWER RIGHTS APPLY TO HUSBAND AND WIFE UNDER OTHER LAWS

Section 3 of act Sept. 14, 1965, provided: "Effective March 15, 1962, all provisions of the Act entitled 'An Act to establish a code of law for the District of Columbia', approved March 3, 1901, as amended, and all other laws in force in the District of Columbia, relating to the right of dower and its incidents, apply to both husband and wife."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section (formerly 18-201a) is referred to in sections 19-106, 30-201.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Common law rule

At common law the wife had no dower in an equity of redemption. *Follansbee v. Follansbee* (1893, 1 App. D.C. 326).

The common law rule that a widow is not entitled to dower in lands to which the husband has a remainder in fee if the remainderman predecease the life tenant is not modified by 1901 Code, § 1158 (this section). *Talty v. Talty* (1913, 40 App. D.C. 587).

"Prior to 1896, there was no statute giving a wife dower in the equitable estate of her husband, and she was not entitled to any under the common law." *Waggaman v. Dulany* (1918, 48 App. D.C. 14).

##### Construction with other laws

Former § 18-204 depriving wife who has been adjudged incompetent of her rights of dower in any real property acquired by husband subsequent to adjudication of incompetency and while adjudication is in force, and this section providing that husband or wife does not have right to convey his or her property free of surviving spouse's interest in case of intestacy without joinder of other spouse, are not repugnant or inconsistent, and former § 18-201a did not repeal section 18-204. *Vito v. Bonart and Vito* (D.C.D.C. 1958, 163 F. Supp. 747).

##### Decisions under prior law

Appellant was entitled to a decree declaring a deed of trust to be without legal effect or operation to bar her of her right to dower in the premises therein mentioned and described; and her right and title to dower should, in all respects, be and remain as if said appellant had



never joined in said deed; and she was entitled to an assignment of dower, and to an account for rents and profits for the time they have been wrongfully withheld from her. *Follansbee v. Follansbee* (1893, 1 App. D.C. 326).

When dower was not specifically assigned, the widow of the former owner and mother of the children would not be a proper party. *Baltimore & P. R. Co. v. Taylor* (1895, 6 App. D.C. 259).

Inchoate right of dower could not be broader than the estate of the husband upon which it depended. *Sis v. Boorman* (1897, 11 App. D.C. 116).

A widow being in possession of the only piece of property in which her dower could be assigned, her right thereto ought to confer upon her such continuing right of possession as to bar ejectment by the heirs at law, whose duty it was to make the proper assignment. *Wilkes v. Wilkes* (1901, 18 App. D.C. 90).

#### Equitable lien

Equitable lien was superior to dower right. *Waggaman v. Dulany* (1918, 48 App. D.C. 14).

#### Purpose

Purpose of provision of former § 18-201a that neither husband nor wife should have the right to convey, transfer or encumber his or her real property free of surviving spouse's interest in case of intestacy without joinder of other spouse was to prevent the destruction of the interstate share of one spouse by a conveyance made by other spouse during lifetime of the former. *Vito v. Bonart and Vito* (D.C.D.C. 1958, 163 F. Supp. 747).

#### Refusal to release dower

Equity would not at instance of vendee decree specific performance of a contract for the sale of land when the wife of the vendor refused to relinquish her right of dower to the vendor. *Barbour v. Hickey* (1894, 2 App. D.C. 207, 24 L.R.A. 763).

Where wife of vendor is entitled to dower in the lands, conveyance of good title can not be made without her consent, and where she refuses to release her dower, equity will not enforce specific performance of husband's contract to sell. *Reilly v. Cullinane* (1923, 287 F. 994, 58 App. D.C. 17).

#### Retroactive effect

A retrospective operation will not be given to a statute which interferes with antecedent rights, or by which human action is regulated, unless such be the unequivocal and inflexible import of the terms and the manifest intention of the legislature. *Vito v. Vito and Bonart* (1959, 272 F. 2d 555, 106 U.S. App. D.C. 326).

#### Rights of incompetent wife

Where before the effective date of former § 18-201a providing that an intestate share would attach to all realty owned by husband or wife during coverture, husband entered into a contract to convey certain realty acquired subsequent to his wife's adjudication of incompetency, husband was authorized to convey the realty without his wife's signature, as fully as if he were unmarried, under former § 18-204 providing for such a conveyance where a married woman has been found upon inquisition to be a lunatic or insane. *Vito v. Vito and Bonart* (1959, 272 F. 2d 555, 106 U.S. App. D.C. 326).

### § 19-103. Forfeiture of dower by desertion and adultery

(a) A person who voluntarily abandons or deserts his or her spouse and lives with another person with whom he or she commits adultery, and who is convicted of the adultery by a court having jurisdiction, forfeits the right to dower, and is forever barred of an action to demand it.

(b) Subsection (a) of this section does not apply if the aggrieved spouse willingly, and without coercion, pardons the offending spouse and permits the resumption of cohabitation. (Sept. 14, 1965, 79 Stat. 694, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-203 (13 Edw. 1, ch. 34, § 4, 1285; Kilty's Rept., p. 213; Alex. Brit. Stat., p. 138; Comp. St. D.C., p. 36, § 165).

The old British statute, 13 Edw. 1, ch. 34, § 4, cited above, as set forth in section 18-203 of D.C. Code, 1961 ed., provided:

"If a wife willingly leave her husband, and go away, and continue with the advouterer, she shall be barred forever of action to demand her dower, that she ought to have of her husband's lands, if she be convict thereupon, except that her husband willingly, and without coercion reconcile her, and suffer her to dwell with him; in which case she shall be restored to her action."

The provisions are rewritten to modernize the language, and to embrace husbands, as well as wives. See section 19-102 herein, also revision note under section 19-102.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Deserting widow's rights

District of Columbia statute setting forth no exceptions to widow's right to elect to take against will except where she by adulterous conduct is barred from claiming dower right permitted widow to attack will although she had deserted testator, had filed divorce proceedings against him, was found to be the guilty party, and divorce was granted to testator, where he died less than six months after entry of decree. *In re Estate of S. D. Hanson* (D.C.D.C. 1962, 210 F. Supp. 377).

### § 19-104. Absent or incompetent spouse

The spouse of a person who is insane, and has been so adjudicated by a court of competent jurisdiction and the adjudication remains in force, or who has been absent or unheard of for seven years, may grant and convey by a separate deed, whether it is absolute or by way of lease or mortgage, as fully as if he were unmarried, any real property acquired by him since the adjudication or since the beginning of the absence. (Sept. 14, 1965, 79 Stat. 694, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-204 (Mar. 3, 1901, ch. 854 § 1165, 31 Stat. 1375; Sept. 14, 1961, Pub. L. 87-246, § 5, 75 Stat. 517).

The references to lunatic are omitted as covered by the references to "insane" person. For definition of "insane person", see section 21-501 herein.

Changes are made in phraseology.

#### CROSS REFERENCES

Release of dower generally, see § 30-216.

Renunciation of dower rights, see § 30-216.

Renunciations, see § 19-113.

Right of dower of husband and wife, see § 19-102.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Construction with other laws

This section depriving wife who has been adjudged incompetent of her rights of dower in any real property acquired by husband subsequent to adjudication of incompetency and while adjudication is in force, and § 18-201a providing that husband or wife does not have right to convey his or her property free of surviving spouse's interest in case of intestacy without joinder of other spouse, are not repugnant or inconsistent, and former § 18-201a did not repeal former § 18-204. *Vito v. Bonard and Vito* (D.C.D.C. 1958, 163 F. Supp. 747).

##### Rights of incompetent wife

Where before the effective date of former § 18-201a providing that an intestate share would attach to all realty owned by husband or wife during coverture, husband entered into a contract to convey certain realty acquired subsequent to his wife's adjudication of incompetency, husband was authorized to convey the realty without his wife's signature, as fully as if he were unmarried, under this section providing for such a conveyance where a married woman has been found upon



inquisition to be a lunatic or insane. *Vito v. Vito and Bonart* (1959, 272 F. 2d 555, 106 U.S. App. D.C. 326).

### § 19-105. Jointure before marriage as bar to dower

(a) Where real estate is conveyed to persons who intend to marry, or to one of them alone, or to a person and his heirs and assigns, to the use of persons who intend to marry, or to the use of one of them alone, for the purpose of creating for the latter person mentioned in either case a freehold estate for that person's life at least, and with his assent before the marriage, to take effect in possession and profits immediately upon the death of the other, the jointure bars his right or claim of dower in all the real estate of the spouse. The assent of the person for whose benefit the estate is created is evidenced by that person's becoming a party to the conveyance by which it is settled, or, if he is a minor, by his joining with the father or guardian thereof in the conveyance.

(b) The jointure referred to in subsection (a) of this section is not a bar to dower unless it is expressly made and declared to be in satisfaction of the whole dower, and not of any particular part of it. (Sept. 14, 1965, 79 Stat. 695, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-206 (27 Henry 8, ch. 10, § 6, 1535; Kilty's Rept., p. 231; Alex. Brit. Stat., p. 296; Comp. St. D.C., p. 39, § 173).

The provisions are rewritten to omit surplusage and modernize the language, and to embrace prospective husbands, as well as prospective wives. See section 19-102 herein, also revision note under section 19-102.

The old British statute, 27 Henry 8, ch. 10, § 6, cited above, as set forth in section 18-206 of D.C. Code, 1961 ed., provided:

"Whereas divers persons have purchased, or have estate made and conveyed of and in divers lands, tenements, and hereditaments unto them and to their wives, and to the heirs of the husband, or to the husband, and to the wife, and to the heirs of their two bodies begotten, or to the heirs of one of their bodies begotten, or to the husband, and to the wife for term of their lives, or for term of life of the said wife; or where any such estate, or purchase of any lands, tenements, hereditaments, hath been, or hereafter shall be made to any husband, and to his wife, in manner and form above expressed, or to any other person or persons, and to their heirs and assigns, to the use and behoof of the said husband and wife, or to the use of the wife, as is before rehearsed, for the jointure of the wife; that then in every such case, every woman married, having such jointure made, or hereafter to be made, shall not claim, nor have title to have any dower of the residue of the lands, tenements, or hereditaments, that at any time were her said husbands, by whom she hath any such jointure, nor shall demand nor claim her dower of and against them that have the lands and inheritances of her said husband; but if she have no such jointure, then she shall be admitted and enabled to pursue, have, and remand her dower by writ of dower, after the due course and order of the common laws".

While the provisions, as herein revised, relating to when the estate, in order to bar dower, must take effect, to assent, and to the requirement that, in order to bar dower, the jointure must expressly be made and declared to be in satisfaction of the whole dower (subsec. (b)), are new to the text when compared with the old British statute, it is not considered that they state new interpretations of the law of legal jointure, as expressed in the British statute. (See, for example, 28 C.J.S. Dower, § 54; 17 Am. Jur., Dower, § 66. See, also, McKinney's N.Y. Real Property Law § 197; Laws of Mass., Ch. 189, § 7; 4 Kent's Comm., 14th ed., p. 56 et seq.

In subsec. (a), references to real estate are substituted for references to lands, tenements, and hereditaments, to conform with modern usage.

#### CROSS REFERENCE

Dower rights, see § 19-102.

### § 19-106. Jointure after marriage; election

If, after persons intermarry, real estate is given or assured for jointure of one of them, in lieu of dower, the person for whose benefit the settlement is made, if he survives the other spouse, shall elect to take the jointure or to claim the dower to which he is entitled under section 19-102. (Sept. 14, 1965, 79 Stat. 695, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-205 (27 Henry 8, ch. 10, § 9, 1535; Kilty's Rept., p. 231; Alex. Brit. Stat., p. 297; Comp. Stat. D.C. p. 40, § 175).

The old British statute, 27 Henry 8, ch. 10, § 9, cited above, as set forth in section 18-205 of the D.C. Code, 1961 ed., provided:

"If any wife have, or hereafter shall have any manors, lands, tenements, or hereditaments unto her given and assured after marriage, for term of her life, or otherwise in jointer, and the said wife after that fortune to overlive her said husband, in whose time the said jointer was made or assured unto her, that then the same wife so overliving shall and may at her liberty, after the death of her said husband, refuse to have and take the lands and tenements so to her, given, appointed, or assured during the coverture, for term of her life, or otherwise in jointer, and thereupon to have, ask, demand, and take her dower by writ of dower, or otherwise, according to the common law, of and in all such lands, tenements, and hereditaments as her husband was and stood seized of any state of inheritance at any time during the coverture".

The provisions, as herein revised, are rewritten to omit surplusage and modernize the language, and to embrace husbands, as well as wives. See section 19-102 herein, also revision note under section 19-102.

The more modern term, "real estate", is substituted for "lands, tenements, or hereditaments".

The rewritten provisions are suggested to some extent by McKinney's N.Y. Real Property Law § 199.

#### CROSS REFERENCE

Dower rights, see § 19-102.

### § 19-107. Effect of acts of one spouse

A judgment or decree confessed or recovered against one spouse, and any laches, default, covin, forfeiture, or deed or conveyance of one spouse without the assent of the other, evidenced by his acknowledgment thereof in the manner required by law to pass the contingent right of dower, does not prejudice the right of the other spouse to dower, nor preclude him from the recovery thereof. (Sept. 14, 1965, 79 Stat. 695, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-207 (13 Edw. 1, ch. 4, 1285; Kilty's Rept., p. 212; Alex. Br. Stat., p. 106; Comp. Stat. D.C., p. 37, § 169).

Section is taken from part of section 18-207 of D.C. Code 1961 ed. Remainder of Section 18-207 is carried into sections 19-108 and 19-109 herein.

The old British statute, 13 Edw. 1, ch. 4, 1285, cited above, as set forth in section 18-207 of D.C. Code, 1961 ed., provided:

"In case where the husband, being impleaded for land, giveth up the land demanded unto his adversary by covin; after the death of the husband, the justices shall award the wife her dower, if it be demanded. In case the husband loseth the land by default, if the wife, after the death of her husband, demandeth her dower, and if it be alleged, that her husband lost the land, by judg-



ment, and it be found that it was by default, the tenant must answer; then it behooveth the tenant to answer further, and to shew that he had right, and hath in the aforesaid land, according to the form of the writ that the tenant before purchased against the husband. And if he can shew that the husband of such wife had no right in the lands, nor any other but he that holdeth them, the tenant shall go quit, and the wife shall recover nothing of her dower; which thing if he can not shew, the wife shall recover her dower. Where it chanceth that a woman not having right to demand dower, the heir being within age, doth purchase a writ of dower against a gardian, and the gardian endoweth the woman by favour, or maketh default, or by collusion defendeth the plea so faintly, whereby the woman is awarded her dower in prejudice of the heir; it is provided, that the heir, when he cometh to full age, shall have an action to demand the seisin of his ancestor against such a woman, like as he should have against any other deforcior; yet so, that the woman shall have her exception saved against the demandant, to shew that she had right to her dower, which if she can shew, she shall go quit and retain her dower, and the heir shall be grievously amerced, according to the discretion of the justices; and if it not, the heir shall recover his demand, &c. In like manner the woman shall be aided, if the heir or any other do implead her for her dower, or is she lose her dower by default, in which case the default shall not be so prejudicial to her, but that she shall recover her dower, if she have right thereto."

The provisions, as divided and carried into this section and sections 19-108 and 19-109 herein, are rewritten to omit surplusage and modernize the language, and to reflect their apparent intent, scope, and implications, as construed in other jurisdictions by statutes enacted in more modern times, which obviously were derived from them. See, for example, McKinney's N.Y. Real Property Law §§ 203, 464, 465, 469; Ill. Rev. St. 1955, ch. 3, § 174; Alaska Comp. Laws Ann., 1949, §§ 63-1-16 to 63-1-120.

Further, as set out in this section and sections 19-108 and 19-109 herein, the provisions are revised to embrace husbands, as well as wives. See section 19-102 herein, also revision not under section 19-102.

## CROSS REFERENCE

Dower rights, see § 19-102.

## § 19-108. Recovery of dower withheld; damages

When, in an action brought for the purpose, a surviving spouse recovers dower in lands from the estate of the deceased spouse, the surviving spouse may also, in the discretion of the court, recover in the same action damages for the withholding of the dower. (Sept. 14, 1965, 79 Stat. 695, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961, ed., § 18-207 (13 Edw. 1, ch. 4, 1285; Kilty's Rept., p. 212; Alex. Br. Stat., p. 106; Comp. Stat. D.C., p. 37, § 169).

Section is taken from part of section 18-207 of D.C. Code, 1961 ed. Remainder of section 18-207 is carried into sections 19-107 and 19-109 herein. See revision note under such section 19-107.

## § 19-109. Recovery of dower obtained by default or collusion; damages

If, during the infancy of an heir of a deceased spouse, or of any other person entitled to the lands of the deceased spouse, the surviving spouse, not having a right of dower, recovers dower by the default or collusion of the guardian of the infant, the infant is not prejudiced thereby, and when he comes of full age he has a right of action against the surviving spouse to recover the lands so wrongfully awarded for dower, with damages in the discretion of the court; but, if it is established in an action brought under this section that the surviv-

ing spouse is entitled to the dower, he shall have judgment so declaring, and may, in the discretion of the court, recover damages from the heir or other person. (Sept. 14, 1965, 79 Stat. 695, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-207 (13 Edw. 1, ch. 4, 1285; Kilty's Rept., p. 212; Alex. Br. Stat., p. 106; Comp. Stat. D.C., p. 37, § 169).

Section is taken from part of section 18-207 of D.C. Code, 1961 ed. Remainder of section 18-207 is carried into sections 19-107 and 19-108 herein. See revision note under such section 19-107.

## § 19-110. Assignment by guardian; rights of heir

A guardian of a minor heir has the right of assignment or admeasurement of dower; but the heir, when he comes of full age, is not barred by such an assignment if it was wrongfully made pursuant to collusion between the guardian and the tenant in dower, and may have the dower properly assigned or admeasured according to law. (Sept. 14, 1965, 79 Stat. 696, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-208 (13 Edw. 1, ch. 7, 1285; Kilty's Rept., p. 212; Alex. Brit. Stat., p. 111; Comp. Stat. D.C., p. 38, § 170).

The old British statute, 13 Edw. 1, ch. 7, cited above, as set forth in section 18-208 of D.C. Code, 1961 ed., provided:

"A writ of admeasurement of dower shall be granted to a gardian; neither shall the heir, when he cometh to full age, be barred by the suit of such a gardian, that sueth against the tenant in dower feignedly, and by collusion, but that he may admeasure the dower after, as it ought to be admeasured by the law."

The provisions are rewritten to omit surplusage and modernize the language.

## CROSS REFERENCE

Dower rights, see § 19-102.

## § 19-111. Reendowment upon eviction from jointure

A spouse who is lawfully evicted from lands settled upon him as jointure in lieu of dower, or from a part thereof, is entitled to dower to the extent or value of the lands from which he was evicted. (Sept. 14, 1965, 79 Stat. 696, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-209 (27 Henry 8, ch. 10, § 7, 1535; Kilty's Rept., p. 231; Alex. Brit. Stat., p. 296; Comp. Stat. D.C., p. 40, § 174).

The old British statute, 27 Henry 8, ch. 10, § 7, cited above, as set forth in section 18-209 of D.C. Code, 1961 ed., provided:

"If any woman be lawfully expulsed or evicted from her jointer, or from any part thereof, without any fraud or covin, by lawful entry, action, or by discontinuance of her husband, then every such woman shall be endowed of as much of the residue of her husband's tenements or hereditaments, whereof she was before dowable, as the same lands and tenements so evicted and expulsed shall amount or extend unto."

The provisions are rewritten to omit surplusage and modernize the language, and to embrace husbands, as well as wives. See section 19-102 herein, also revision note under section 19-102.

## § 19-112. Devise or bequest to spouse

Subject to section 19-114, and unless it is otherwise expressed in the will, a devise of real estate or an interest therein, or a bequest of personal estate or an interest therein, to the surviving spouse, bars



his or her share in the decedent's estate, and his or her dower rights. (Sept. 14, 1965, 79 Stat. 696, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-210 (Mar. 3, 1901, ch. 854, § 1172, 31 Stat. 1376; Aug. 31, 1957, Pub. L. 85-244, § 5, 71 Stat. 561).

For the purpose of clarification, and to conform with the probable legislative intent "or" is substituted for "and", preceding "a bequest"; and, preceding "dower rights", the words "and his or her" are substituted for "including". Regarding the latter substitution, it was most probably the legislative intent to bar all dower rights in the circumstances mentioned in the section, not only such rights in the estate of the decedent, but also dower rights with respect to property not in the decedent's estate, that is, property conveyed away by the decedent during the marriage. The substitution is intended to make this clear.

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 19-113.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Common law

Under common law existing in Maryland prior to creation of District of Columbia, a husband was not permitted to deprive his wife of her reasonable share of his estate, either directly or indirectly, and a bequest to wife was not considered in lieu of her legal interest, but instead she took both. *Mead v. Phillips* (1943, 135 F. 2d 819, 77 U.S. App. D.C. 365, 147 A.L.R. 332).

##### Construction

Where will gave, devised, and bequeathed to wife of testator all her statutory rights in his realty and personalty wheresoever situated at time of his death, she was given such rights as she had in his property under controlling statutes immediately following his death testate, and she was not given intestate share in testator's property. *J. B. Nicodemus et al. v. L. W. Bain* (1965, 344 F. 2d 501, 120 U.S. App. D.C. 116).

The statutory provision for widows in District of Columbia constitutes a recognition and, in part, a restate-ment of her rights at common law, and it is not to be regarded as an abrogation of common law, but instead, to extent that former § 18-210 failed to cover the entire subject, the common law was to be looked to for amplification and definition. *Mead v. Phillips* (1943, 135 F. 2d 819, 77 U.S. App. D.C. 365, 147 A.L.R. 322).

##### Evidence

Evidence failed to establish that testator who executed will giving wife all her statutory rights in his realty and personalty and giving entire residue of his estate to wife and his two children, share and share alike, actually intended to give widow merely value of rights she would have had by statute if he had died intestate, in addition to the one-third share of the residue. *J. B. Nicodemus et al. v. L. W. Bain* (1965, 344 F. 2d 501, 120 U.S. App. D.C. 116).

##### Purpose

Former §§ 18-210 and 18-211 requiring widow to elect between husband's will and her legal interests were enacted to avoid result reached by early cases permitting widow to take both under the will and her legal interest, but it was not their purpose to deprive a widow of her common-law rights. *Mead v. Phillips* (1943, 135 F. 2d 819, 77 U.S. App. D.C. 365, 147 A.L.R. 322).

##### Renunciation after probate

Widow, who had petitioned for probate of husband's will and for letters testamentary, was not thereafter entitled to set aside former petition and resulting order for probate of will and for letters testamentary. *In re Estate of W. V. James, deceased* (D.C.D.C. 1963, 221 F. Supp. 456).

§ 19-113. Renunciation of devises and bequests; election; time limitations; renunciation or election by guardian or fiduciary; maximum rights; effect of no devise or bequest or if nothing passes under either; antenuptial or postnuptial agreements

(a) Subject to section 19-114, a surviving spouse is, by a devise or bequest specified in section 19-112, barred of any statutory rights or interest he has in the real and personal estate of the deceased spouse or dower rights, as the case may be, unless, within six months after the will of the deceased spouse is admitted to probate, he files in the Probate Court a written renunciation to the following effect:

"I, A B, widow [or surviving husband] of \_\_\_\_\_ late of \_\_\_\_\_, deceased, renounce and quit all claim to any devise or bequest made to me by the last will of my husband [or wife] exhibited and proved according to law; and I elect to take in lieu thereof my legal share of the real and personal estate of my deceased spouse (except that in lieu of my legal share of the real estate, I elect to take dower in all the real estate of my deceased spouse to which that right is applicable)."

(b) In similar manner, where the deceased spouse dies intestate of real estate, and letters of administration are issued with respect to the estate the surviving spouse is barred of dower rights, unless, within six months after the letters of administration have been issued with respect to the estate of the deceased spouse, he files in the Probate Court a written renunciation of his legal share of the intestate real estate to the following effect:

"I A B, widow [or surviving husband] of \_\_\_\_\_ deceased, in lieu of my legal share of the real estate which my deceased spouse died intestate, elect to take dower in all the real estate of my deceased spouse to which the right is applicable."

(c) If, during the period of six months specified by subsection (a) or (b) of this section, a suit is instituted to construe the will of the deceased spouse, the period of six months for the filing of the renunciation or election commences to run from the date when the suit is finally determined. A renunciation or election may be made in behalf of a spouse unable to act for himself by reason of infancy, incompetency, or inability to manage his property, by the guardian or other fiduciary acting for the spouse when so authorized by the court having jurisdiction of the person of the spouse. The time for renunciation by a spouse may be extended before its expiration by an order of the Probate Court for successive periods of not more than six months each upon petition showing reasonable cause and on notice given to the personal representative and to the other persons herein referred to in such manner as the Probate Court directs.

(d) Where a decedent has not made a devise or bequest to the spouse, or nothing passes by a purported devise or bequest, the surviving spouse is entitled to his legal share of the real and personal estate of the deceased spouse without filing a written renunciation, but may, instead, elect to take dower as provided by subsection (b) of this section.

(e) The legal share of a surviving spouse under subsection (a) or (d) of this section is such share or interest in the real or personal property of the deceased spouse, including dower if elected in lieu of



the legal share in the real estate, as he would have taken if the deceased spouse had died intestate, not to exceed one-half of the net estate bequeathed and devised by the will, or, if dower is elected, one-half of the net personal property bequeathed and dower in the real estate devised.

(f) A valid antenuptial or postnuptial agreement entered into by the spouses determines the rights of the surviving spouse in the real and personal estate of the deceased spouse and the administration thereof, but a spouse may accept the benefits of a devise or bequest made to him by the deceased spouse. (Sept. 14, 1965, 79 Stat. 696, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-211 (Mar. 3, 1901, ch. 854; § 1173, 31 Stat. 1376; Apr. 19, 1920, ch. 153, 41 Stat. 567; Aug. 31, 1957, Pub. L. 85-244, § 6, 71 Stat. 561; Sept. 14, 1961, Pub. L. 87-246, § 4, 75 Stat. 516).

Changes are made in phraseology.

#### CROSS REFERENCE

Right of dower of husband and wife, see § 19-102.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 19-114.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Claims of creditors against spendthrift trust

In a case involving the beneficiary of a spendthrift trust, the court held that the primary purpose of such a trust was to assure that the beneficiary will be provided for, independent of his own improvidence and not necessarily to immunize the income therefrom for the necessities of life. *American Security and Trust Co. v. F. Utley* (1967, 382 F. 2d 451, 127 U.S. App. D.C. 235).

##### Equitable apportionment of estate taxes

Purpose of the marital deduction provision does not modify meaning of District of Columbia statute whereby dissenting widow can take one-third of surplus after debts, and hence the amount of property received by widow's election, and thus the amount eligible for marital deduction, was a portion of the surplus remaining after deducting entire amount of estate taxes, in view of District of Columbia rule rejecting doctrine of general equitable apportionment of estate taxes. *R. H. DelMar et al. v. United States* (1968, 390 F. 2d 466, 129 U.S. App. D.C. 51).

Congress adopted the marital deduction to provide opportunity for equalization of the tax treatment of estates in common law and community property states. *Id.*

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Acceptance of terms of will

Spouse by accepting benefits of will relinquishes alternative rights to wife's or husband's property. *F. Utley v. S. C. Graves* (D.C.D.C. 1966, 258 F. Supp. 959).

When widow was aware of her rights within the six-months' period, and did not so renounce them, for the reason that she accepted an annuity instead of her right of dower, she could not make an election later for the purpose of getting refund of income tax. *Semmes v. United States* (Ct. Cl. 1934, 6 F. Supp. 119).

A widow may not defeat the general purpose of the will by a sale of the property and a division of its proceeds four years after she has elected, by acquiescence and by conduct, to take the provision the will makes for her. *Evans v. Evans* (1932, 55 F. 2d 533, 60 App. D.C. 371).

##### Caveat

Where caveat of alleged widower of deceased testatrix was not filed in District of Columbia within three months allowed by statute as to personalty, and alleged widower had filed a renunciation of provisions of will and election to take his legal share as of intestacy under statute, and there were no children born of alleged marriage, so that alleged widower had no interest by curtesy, motion to dismiss caveat would be granted because not timely filed and because alleged widower had no interest sufficient

to entitle him to maintain caveat. *In re Phillips' Estate* (D.C.D.C. 1953, 111 F. Supp. 453).

##### Common law

Under common law existing in Maryland prior to creation of District of Columbia, a husband was not permitted to deprive his wife of her reasonable share of his estate, either directly or indirectly, and a bequest to wife was not considered in lieu of her legal interest, but instead she took both. *Mead v. Phillips* (1943, 135 F. 2d 819, 77 U.S. App. D.C. 365, 147 A.L.R. 322).

The common-law rights of widow, as restated and recognized in this section barring widow's common-law rights in husband's estate unless within time specified she files written renunciation of bequests contained in her husband's will, remain intact until a valid election has been made by her, or in her behalf, against those interests. *Id.*

##### Construction

Under District of Columbia Code, where testator left no child, parent, grandchild, brother or sister or child of a brother or sister, widow who renounced will made by her husband, was entitled to the whole of her husband's personal estate. *Wegenast v. Pheyley* (1952, 195 F. 2d 776, 90 U.S. App. D.C. 277).

The statutory requirement of an election by widow between her husband's will and her common-law rights is not a "privilege" bestowed by this section but is a "limitation" upon the common-law rights of the widow and must be so construed. *Mead v. Phillips* (1943, 135 F. 2d 819, 77 U.S. App. D.C. 365, 147 A.L.R. 322).

This section barring widow's common-law rights in husband's estate unless within specified time she files written renunciation of bequest contained in her husband's will is not a "statute of limitations". *Id.*

The statutory provision for widows in District of Columbia constitutes a recognition and, in part, a restatement of her rights at common law, and it is not to be regarded as an abrogation of common law, but instead, to extent that former § 18-210 et seq. failed to cover the entire subject, the common law was to be looked to for amplification and definition. *Id.*

##### Defective bequest

If husband's bequest in favor of widow is defective, there is no requirement that widow make an election. *Mead v. Phillips* (1943, 135 F. 2d 819, 77 U.S. App. D.C. 365, 147 A.L.R. 322).

##### Defective gift

Addition of name of depositor's brother to bank account under circumstances not amounting to a gift and for purpose of permitting brother to obtain money in event of depositor's death was ineffective as amounting to an attempted testamentary disposition without compliance with testamentary requirements and as evading this section permitting widow to claim distributive share of personal estate of husband when will makes no devise in her favor. *Gibson v. Industrial Bank of Washington* (D.C. Mun. App. 1944, 36 A. 2d 62).

##### Deprivation of rights

District of Columbia statute setting forth no exceptions to widow's right to elect to take against will except where she by adulterous conduct is barred from claiming dower rights permitted widow to attack will although she had deserted testator, had filed divorce proceedings against him, was found to be the guilty party, and divorce was granted to testator, where he died less than six months after entry of decree. *In re Estate of S. D. Hanson* (D.C.D.C. 1962, 210 F. Supp. 377).

The common-law rights of dower in land and of "thirds" in personal property depended, not alone on the welfare of the widow, but of her children as well, and therefore to interpret a statutory limitation on the common-law rights in such manner as to cut them off arbitrarily, upon death of an incompetent widow, would be to disregard one of the two primary purposes of this section. *Mead v. Phillips* (1943, 135 F. 2d 819, 77 U.S. App. D.C. 365, 147 A.L.R. 322).

##### Election by court

Upon request, an equity court can act on behalf of, and in interest of, an insane widow in making election between widow's common-law rights and bequest in her



husband's will. *Mead v. Phillips* (1943, 135 F. 2d 819, 77 U.S. App. D.C. 365, 147 A.L.R. 322).

An incompetent widow cannot, personally, make an election to renounce husband's will, but court of competent jurisdiction can exercise the power, in her behalf, during statutory period or thereafter, prior to her death. *Id.*

Where widow's privilege of renouncing bequest contained in husband's will is not exercised on behalf of incompetent widow during her lifetime and matter is brought to attention of equity court, it is court's duty to make election, weighing, in doing so, the various considerations including provision which was made for care and comfort of widow, prior to her death, and the court's determination should be made as of time when widow was living, in light of circumstances then existing. *Id.*

#### Election by spouse

Spouse may renounce device or bequest left by will and elect to take such rights as would devolve to him in case of intestacy. *F. Utley v. S. C. Graves* (D.C.D.C. 1966, 258 F. Supp. 959).

#### Insane or incompetent widow

Where widow was incompetent at time of death of her husband, widow had no right to elect whether to accept or renounce husband's will, and upon death of widow her administrator had no such authority. *Boyer, Administrator C.T.A. etc., v. Bealor Executrix etc.* (1959, 271 F. 2d 845, 106 U.S. App. D.C. 262).

Where widow was incompetent and unable to exercise privilege of renouncing bequest contained in her husband's will, if determination was not made of rights of the widow and of her estate, the husband's will would be inoperative as to her and his estate would be distributed, as to her, in the same manner as if he had died intestate. *Mead v. Phillips* (1943, 135 F. 2d 819, 77 U.S. App. D.C. 365, 147 A.L.R. 322).

Where widow is incompetent, the welfare of widow is not sole consideration in determining whether bequest contained in her husband's will should be renounced on behalf of widow, but welfare of her heirs or other dependents may be considered. *Id.*

The policy of District of Columbia in regard to application to insane widow of this section barring widow of common-law rights in husband's estate unless within time specified she files a renunciation of bequest in husband's will is clearly manifested in § 12-201 governing limitation of actions, which contains a blanket exemption in favor of infants and insane persons. *Id.*

Where widow's privilege of renouncing bequest contained in husband's will was not exercised on behalf of incompetent widow during her lifetime, complaint of administratrix of widow's estate to recover widow's share of husband's estate and to recover widow's property and damages from trustee of the incompetent widow stated a cause of action. *Id.*

#### Laches

Where trustee of insane widow was also beneficiary and representative of the husband's estate, trustee's "laches" in protecting interests of widow could not deprive equity court of power to act in widow's interest in making an election between widow's common-law rights and bequest contained in her husband's will. *Mead v. Phillips* (1943, 135 F. 2d 819, 77 U.S. App. D.C. 365, 147 A.L.R. 322).

Where an equity court acts in interest of an insane widow in determining whether bequest in husband's will should be renounced, bad faith or laches of heirs or representatives may become proper considerations, along with others, to guide court, but such considerations provide no basis for concluding that an equity court has no power to act in interest of an insane widow or that inaction of her trustee constitutes an election solely by reason of lapse of time. *Id.*

#### Petition, right to

If heirs or representatives of insane widow delay in petitioning equity court to act on behalf of insane widow in making an election between widow's common-law rights and bequest in husband's will, those interested in the husband's estate can petition the court to act. *Mead v. Phillips* (1943, 135 F. 2d 819, 77 U.S. App. D.C. 365, 147 A.L.R. 322).

#### Presumptions

The fact that money was expended under husband's will for care and comfort of his insane widow did not authorize a presumption that the widow had elected to abide by the provisions of her husband's will. *Mead v. Phillips* (1943, 135 F. 2d 819, 77 U.S. App. D.C. 365, 147 A.L.R. 322).

#### Purpose

The purpose of this section barring widow's common-law rights in husband's estate unless within time specified she files written renunciation of bequest contained in husband's will is that renunciation shall constitute an "election to reject", and a failure to renounce shall constitute an "election to accept" the offer. *Mead v. Phillips* (1943, 135 F. 2d 819, 77 U.S. App. D.C. 365, 147 A.L.R. 322).

The widow's privilege of renouncing bequest contained in her husband's will and electing to enjoy her dower or statutory rights is intended to permit her to decide whether her interests will be better served by another arrangement. *Id.*

This section and § 18-210 requiring widow to elect between husband's will and her legal interests were enacted to avoid result reached by early cases permitting widow to take both under the will and her legal interest, but it was not their purpose to deprive a widow of her common-law rights. *Id.*

#### Renunciation after probate

Widow, who had petitioned for probate of husband's will and for letters testamentary, was not thereafter entitled to set aside former petition and resulting order for probate of will and for letters testamentary. *In re Estate of W. V. James, deceased* (D.C.D.C. 1963, 221 F. Supp. 456).

Widow, who failed to file renunciation within specified statutory period, and who subsequently sought leave to withdraw prior petition for probate and for letters testamentary and declaration to effect that court order for probate of will was null and void enabling widow to renounce her interest under will, should have instead proceeded for order permitting renunciation and election as of date within statutory period, nunc pro tunc. *Id.*

#### Renunciation by administrator

Right of surviving incompetent widow to renounce will of husband could not be exercised by her administrator after her death. *R. H. Payne et al. v. B. A. Newton, Jr., etc.* (1963, 323 F. 2d 621, 116 U.S. App. D.C. 319).

#### Renunciation required

A widow must file a renunciation of her rights under the will in order to take under the law; inadequate provisions under the will do not relieve her of this duty. *Cahill v. Eberly* (1930, 38 F. 2d 539, 59 App. D.C. 228).

Mere oral declarations privately made by the widow can not take the place of a written renunciation. *Id.*

#### Representative of widow

A widow's representative cannot act in her behalf to make renunciation of husband's will, except with permission of court, or unless a statute confers the power. *Mead v. Phillips* (1943, 135 F. 2d 819, 77 U.S. App. D.C. 365, 147 A.L.R. 322).

Where guardian ad litem of incompetent widow made no suggestion concerning an election in widow's behalf to renounce bequest in husband's will, it was duty of trustee to request promptly a determination by equity court of the widow's interest and where trustee had failed to act it became the duty of the widow's representative to request proper action. *Id.*

Where widow was incompetent, guardian ad litem made no suggestion concerning an election in widow's behalf to renounce bequest contained in her husband's will and widow's trustee who was also beneficiary and representative of the husband's estate failed to act for protection of interests of widow, court of equity could exercise power of renunciation after expiration of statutory period and after widow's death. *Id.*

#### Spendthrift trust

Where will of deceased spouse creates spendthrift trust for benefit of surviving spouse, spendthrift trust is not a free and voluntary gift, inasmuch as surviving



spouse gives consideration for receiving benefits of trust by surrendering statutory rights and beneficiary is in effect a purchaser of benefits, he is in same position as though he were creator of trust and provisions surrounding fund with immunity from claims of creditors are void. *F. Utley v. A. C. Graves* (D.C.D.C. 1966, 258 F. Supp. 959).

Testamentary spendthrift trust created by beneficiary's deceased spouse was invalid as to its spendthrift features, that is, it was not free of claims of creditors, since beneficiary had had right to elect either to accept benefits of will or take share that would have devolved upon him in case of intestacy and by choosing the former he surrendered his statutory rights and therefore gave consideration for receiving benefits of trust. *Id.*

#### Taxes upon renunciation

A widow who renounced will of her husband and elected to share in his estate as if he had died intestate could not claim such share in her husband's estate without diminution for Federal estate tax on theory of provisions in decedent's will. *G. B. Herson v. Mollie Mills ind.; and as co-executrix of the estate of D. L. Herson, et al.* (D.C.D.C. 1963, 221 F. Supp. 714).

#### Trust property

Where wife has vested remainder interest in trust property, but interest of wife was divested because she predeceased life tenant, husband had no estate of curtesy in the trust property on death of wife and death of life tenant. *Noreen et al. v. Sparks et al.* (D.C.D.C. 1952, 103 F. Supp. 588, motion denied 104 F. Supp. 675, cause remanded 204 F. 2d 56, 92 U.S. App. D.C. 164).

### § 19-114. Rights of surviving spouse if there is no renunciation

A surviving spouse who does not renounce as provided by section 19-113 is entitled to the benefit of all provisions in his favor in the will of the deceased spouse and shall share, in accordance with sections 19-301, 19-302, 19-303, 19-304, and 20-1901, in any estate of the deceased spouse undisposed of by the will (Sept. 14, 1965, 79 Stat. 697, Pub. L. 89-183, § 1, eff. Jan. 1, 1966).

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-212 (Mar. 3, 1901, ch. 854, § 1174, 31 Stat. 1377; Aug. 31, 1957, Pub. L. 85-244, § 7, 71 Stat. 561).

Minor changes are made in phraseology.

#### CROSS REFERENCE

Dower rights, see § 19-102.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 19-112, 19-113.

### § 19-115. Definition

For purposes of this chapter "Probate Court" means the Superior Court of the District of Columbia. (Added, July 29, 1970, Pub. L. 91-358, § 148 (2) (A) title I, 84 Stat. 566.)

#### AMENDMENT

1970—Section 148(2) (A) of Act July 29, 1970, Public Law 91-358, amended chapter by adding the above section.

#### EFFECTIVE DATE

See note preceding section 11-101 and note to 15-707.

## Chapter 3.—INTESTATES' ESTATES

#### Sec.

- 19-309. Share of brother or sister or their descendants.
- 19-310. Brothers and sisters to share equally.
- 19-311. Share of collateral relations.
- 19-312. Share of grandfather and grandmother.
- 19-313. Death of distributee before distribution.
- 19-314. Share of posthumous children.
- 19-315. No distinction between whole- and half-blood.
- 19-316. Share of illegitimate children; their issue; mother.
- 19-317. Trust estates.
- 19-318. Antenuptial children.
- 19-319. Advancements.
- 19-320. Felonious homicide as barring inheritance; insurance policies; bona fide purchasers.
- 19-321. Descent through alien ancestor no bar.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 20-1328, 20-1901, 20-2102.

### § 19-301. Course of descents generally

(a) The real estate in the District of Columbia, of a deceased person, male or female, if not devised, shall descend in fee simple, and the surplus of the personal estate of a deceased resident of the District, if not bequeathed, shall be distributed, to the surviving spouse, children, and other persons in the manner provided by this chapter. The heirs specified by this subsection take the real estate as tenants in common in the same proportions as they take the surplus personal estate as provided by this chapter.

(b) Subject to the right of dower, the real estate specified by subsection (a) of this section is liable, when the personal estate is insufficient, for the payment of the intestate's funeral expenses, debts, costs of administration, and estate, inheritance, and succession taxes in the same manner and to the same extent as the personal estate of the intestate. When the real estate is sold under a decree of a court having jurisdiction over it, the consent of the surviving spouse to the sale, is not required unless the surviving spouse elects to take dower. (Sept. 14, 1965, 79 Stat. 697, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-101 (Mar. 3, 1901, ch. 845, § 940, 31 Stat. 1342; Mar. 6, 1935, ch. 28, § 3(A), 49 Stat. 39; Aug. 31, 1957, Pub. L. 85-244, § 1, 71 Stat. 560; Sept. 14, 1961; Pub. L. 87-246, § 2, 75 Stat. 515).

The Act of August 31, 1957, cited above (of which another section abolished dower and curtesy), amended section 18-101 of D.C. Code, 1961 ed., and other sections thereof, to provide an "intestate share" for the surviving spouse, preserving, however, the wife's inchoate right of dower with respect to persons who intermarried prior to its effective date (November 29, 1957). The Act of September 14, 1961, cited above, in amending sections 18-101 and 18-201a, and other sections of D.C. Code, 1961 ed., abolished this particular type of "intestate share" with respect to persons who died or die after March 15, 1962, its effective date, and, while continuing to provide for the inheritance, by a surviving spouse, of a share of the intestate realty of the deceased spouse, provided an alternate statutory dower interest for both husbands and wives. See section 19-102 herein, and revision note thereunder.

It would seem, however, that the particular type of "intestate share" provided for by the Act of August 31, 1957, is still applicable in the settlement of estates of married persons who died before March 15, 1962, the effective date of the 1961 Act. Therefore, section 18-101 of D.C. Code, 1961 ed., as it read after its amendment by the 1957 Act, and before its amendment by the 1961 Act, is set out below in this note.

Section 18-201a of D.C. Code, 1961 ed., as last amended by the 1961 Act, referred to above, is carried into section

#### Sec.

- 19-301. Course of descents generally.
- 19-302. When surviving spouse entitled to whole.
- 19-303. When surviving spouse entitled to one-third.
- 19-304. When surviving spouse entitled to one-half.
- 19-305. Distribution of surplus after payment to surviving spouse.
- 19-306. Children to share equally.
- 19-307. Grandchildren's share.
- 19-308. Share of father and mother.



19-102 herein. It was enacted by the 1957 Act, referred to above, and for the provisions thereof as they read prior to the 1961 amendments, see revision note under such section 19-102. See, also, Mersch's "Probate Court Practice in the District of Columbia", pocket supplement (Garvey) §§ 282, 301 et seq.

The provisions of section 18-101 of D.C. Code, 1961 ed., as carried into this section, reflect, with changes in phraseology and arrangement, the amendment thereof by the 1961 Act.

References to "real estate" are substituted for references to "lands, tenements, or hereditaments" and "real property", to conform with more modern usage, and, with respect to such reference, "real property", in section 18-101 of D.C. Code, 1961 ed., to clarify the probable legislative intent. The term, "real estate", is generally regarded as being a broader scope than the term, "real property".

Section 18-101 prior to 1961 amendment.—Section 18-101 of D.C. Code, 1961 ed. (from which, as indicated above, this section is derived), after its amendment by the above-cited Act of August 31, 1957, effective November 29, 1957, and before its amendment by the Act of September 14, 1961, provided as follows:

"On the death of any person seized of an estate in fee simple in lands, tenements, or hereditaments in the District of Columbia, and intestate thereof, the same shall descend in fee simple to such person's kindred as follows: To those persons, who according to the laws of the District of Columbia now or hereafter in force relating to the distribution of the personal property of intestate, would be the distributees to take the surplus personal property of such intestate, if he or she had died a resident of the District of Columbia and possessed of such surplus of personalty; and such kindred (including the surviving spouse as such) shall take in the same proportions as are or shall be fixed by such laws relating to personal property, and shall take as tenants in common".

Section 18-101 prior to 1957 amendment.—Section 18-101 of D.C. Code, 1961 ed., after amendment of section 940 of the 1901 Act (the source of section 18-101), cited above, by the Act of March 6, 1935, cited above, and before its amendment by the Act of August 31, 1957, cited above, provided as follows:

"On the death of any person seized of an estate in fee simple in lands, tenements, or hereditaments in the District of Columbia, and intestate thereof, the same shall descend in fee simple to such person's kindred in the following order, namely:

"First. To his child or children and their descendants, if any, equally.

"Second. If there be no child or descendant of a child, then equally to the father and mother of the intestate, or the whole to the sole surviving parent.

"Third. If there be no father or mother, then to the brothers and sisters of the intestate, and their descendants equally.

"Fourth. If there be no brother or sister, or descendant from a brother or sister, then the whole shall go to the widow or widower of the intestate.

"Fifth. If none such, then one moiety of the estate shall go to the paternal, the other to the maternal kindred of the intestate in the following order:

"Sixth. First to the grandfather and grandmother equally, but if one be dead the entire moiety to the sole surviving grandparent.

"Seventh. If none, then to the uncles and aunts of the intestate, and their descendants equally.

"Eighth. If none such, then to the great-grandfathers and great-grandmothers, in the same manner prescribed for grandfather and grandmother in subdivision 6.

"Ninth. If none, then to the brothers and sisters of the grandfathers and grandmothers, and their descendants equally.

"Tenth. And so on in other cases, without end, passing to the nearest lineal ancestors and the descendants of such ancestors.

"Eleventh. If there be no paternal kindred, the whole shall go to the maternal kindred; and if there be no maternal kindred, the whole shall go to the paternal kindred. If there be neither maternal nor paternal kindred, the whole shall go to the kindred of the husband

or wife of the intestate in the like course as if such husband or wife had died entitled to the estate; and if the intestate has had more husbands or wives than one, and all have died before such intestate, then the estate shall be equally divided among the kindred of the several husbands or wives in equal degree equally."

Descent prior to 1935 amendment.—Prior to the amendment of section 940 of the 1901 Act, cited above, by the 1935 Act, cited above, that section and sections 941-951 of the 1901 Act (31 Stat. 1342, 1343) provided as follows:

"SEC. 940. CHILDREN.—On the death of any person seized of an estate in fee simple in lands, tenements, or hereditaments in the District of Columbia, and intestate thereof, the same shall descend in fee simple to such person's kindred in the following order, namely: First. To his child or children and their descendants, if any, equally.

"SEC. 941. ESTATE DESCENDED FROM FATHER.—If there be no child or descendant of a child, and the estate descended to the intestate on the part of the father, then to the brothers and sisters of the intestate, of the blood of the father, and their descendants equally.

"SEC. 942. If there be no brother or sister, as aforesaid, or descendant from a brother or sister, then to the grandfather on the part of the father; and if no such grandfather living, then to the descendants of such grandfather and their descendants in equal degree equally; and if no descendant of such grandfather, then to the father of such grandfather, and if none such living, then to the descendants of such father in equal degree; and so on, passing to the next lineal male paternal ancestor, and if none such, to his descendants in equal degree equally, without end.

"SEC. 943. If there be no paternal ancestor or descendant from such ancestor, then to the mother of the intestate, and if no mother living, then to her descendants in equal degree equally.

"SEC. 944. If there be no mother living, or descendants from such mother, then to the maternal ancestors and their descendants, in the same manner as is above directed as to the paternal ancestors and their descendants.

"SEC. 945. ESTATE DESCENDED FROM MOTHER.—If the estate descended to the intestate on the part of the mother, and said intestate shall leave no child or descendant of a child surviving him, then the estate shall go to his brothers and sisters, of the blood of the mother, and their descendants in equal degree equally.

"SEC. 946. If there be no such brother or sister or descendant of such brother or sister, then to the grandfather on the part of the mother, and if no such grandfather living, then to his descendants in equal degree equally; if no such descendant of such grandfather, then to the father of such grandfather, and if none such living, then to his descendants in equal degree; and so on, passing to the next male maternal ancestor, and, if none such living, to his descendants in equal degree equally.

"SEC. 947. If there be no such maternal ancestor or descendant from such maternal ancestor, then to the father, and if no father living, then to his descendants in equal degree equally; and if no father or descendant from the father, then to the paternal ancestors and their descendants, in the same manner as hereinbefore directed as to the maternal ancestors.

"SEC. 948. ESTATE ACQUIRED BY PURCHASE.—If the estate was acquired by the intestate by purchase, or descended to or vested in him in any other manner than as hereinbefore mentioned, and there be no child or descendant of a child of such intestate, then the estate shall descend to his brothers and sisters of the whole blood and their descendants in equal degree equally.

"SEC. 949. HALF-BLOOD BROTHERS AND SISTERS.—If there be no brother or sister of the whole blood, or descendant of such brother or sister, then to the brothers and sisters of the half blood and their descendants in equal degree equally.

"SEC. 950. PATERNAL AND MATERNAL ANCESTORS ALTERNATELY.—If there be no brother or sister of the whole or the half blood, or any descendant from such, then to the father, and if no father living, then to the mother, and if no mother living, then to the grandfather on the part of the father, and if no such grandfather living, then to the descendants of such grandfather in equal degree



equally; and if no such grandfather or any descendant from him, then to the grandfather on the part of the mother, and if no such grandfather, then to his descendants in equal degree equally, and so on without end, alternating the next male paternal ancestor and his descendants, and the next male maternal ancestor and his descendants, and giving preference to the paternal ancestor and his descendants.

"SEC. 951. HUSBAND AND WIFE.—If there be no descendants or kindred of the intestate, as aforesaid, to take the estate, then the same shall go to the husband or wife, if any, as the case may be; and if the husband or wife be dead, then to his or her kindred, in the life course as if such husband or wife had survived the intestate and had then died entitled to the estate by purchase; and if the intestate has had more husbands or wives than one, and all shall have died before such intestate, then the estate shall be equally divided among the kindred of the several husbands or wives in equal degree equally."

The 1935 Act repealed sections 941-951.

#### CROSS REFERENCES

Distribution of death benefits of fraternal benefit association, see § 35-901.

Distribution of personal property, see §§ 20-1901, 19-302 et seq., 20-1902 to 20-1907.

Distribution of proceeds of action for wrongful death, see § 16-2703.

Dower rights of husband and wife, see § 19-102.

Inheritance by adopted children, see § 16-312.

Renunciations, see § 19-113.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14-504, 19-114, 19-317.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Agreements between kin

Where deceased's cousins entered into agreement admitting that other claimants were deceased's uncle and aunt and providing for distribution of deceased's estate but in plenary proceedings to determine heirship cousins refused to execute answer admitting such relationship, and instead filed answer which denied such relationship and stated that the cousins were deceased's sole heirs, after which the alleged uncle and aunt filed answer claiming to be deceased's sole heirs, in cousin's action for declaratory relief, evidence sustained finding that the cousins had not repudiated the agreement and justified determination that the agreement was enforceable. *Wueger v. Braun* (1943, 132 F. 2d 25, 77 U.S. App. D.C. 50).

##### Ancestral property

Real estate devised to testatrix by her grandmother was ancestral property, and would have descended to her surviving brother as her sole heir at law in the absence of a will under the prior law. *Thomas v. Young* (1928, 22 F. 2d 588, 57 App. D.C. 282).

##### Construction of wills

Where will gave, devised, and bequeathed to wife of testator all her statutory rights in his realty and personalty wheresoever situated at time of his death, she was given such rights as she had in his property under controlling statutes immediately following his death testate, and she was not given intestate share in testator's property. *J. B. Nicodemus et al. v. L. W. Bain* (1965, 344 F. 2d 501, 120 U.S. App. D.C. 116).

Where will devised the residue consisting of personal property to heirs at law and next of kin in accordance with existing laws of that District, the surviving next of kin, who were first cousins, are entitled to take all the personality as against second cousins who would have been heirs had really been devised. *Binford v. Diller* (1950, 177 F. 2d 731, 85 U.S. App. D.C. 365).

##### Evidence

Evidence failed to establish that testator who executed will giving wife all her statutory rights in his realty and personality and giving entire residue of his estate to wife and his two children, share and share alike, actually intended to give widow merely value of rights she would have had by statute if he had died intestate, in addition to the one-third share of the residue. *J. B. Nicodemus*

*et al. v. L. W. Bain* (1965, 344 F. 2d 501, 120 U.S. App. D.C. 116).

To establish pedigree there must be some competent evidence of relationship between himself and declarants. *Welch v. Lynch* (1907, 30 App. D.C. 122).

##### Per stirpes or per capita

Where property descends to descendants of the maternal grandfather, the distribution is per stirpes of the grandfather and not per capita. *McManus v. Lynch* (1906, 28 App. D.C. 381).

#### § 19-302. When surviving spouse entitled to whole

When the intestate leaves a surviving spouse and no child, parent, grandchild, brother, or sister, or the child of a brother or sister of the intestate, the surviving spouse is entitled to the whole. (Sept. 14, 1965, 79 Stat. 698, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-702 (Mar. 3, 1901, ch. 854, § 374, 31 Stat. 1249; Apr. 19, 1920, ch. 153, § 1, 41 Stat. 563).

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14-504, 19-114.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Renunciation of will

Under District of Columbia Code; where testator left no child, parent, grandchild, brother or sister or child of a brother or sister, widow who renounced will made by her husband, was entitled to the whole of her husband's personal estate. *Wegenast v. Pheylan* (1952, 195 F. 2d 776, 90 U.S. App. D.C. 277).

#### § 19-303. When surviving spouse entitled to one-third

When the intestate leaves a surviving spouse and a child, or a descendant of a child, the surviving spouse is entitled to one-third. (Sept. 14, 1965, 79 Stat. 698, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-703 (Mar. 3, 1901, ch. 854, § 375, 31 Stat. 1249; Apr. 19, 1920, ch. 153, § 1, 41 Stat. 563).

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14-504, 19-114.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Equitable apportionment of estate taxes

Purpose of the marital deduction provision does not modify meaning of District of Columbia statute whereby dissenting widow can take one-third of surplus after debts, and hence the amount of property received by widow's election, and thus the amount eligible for marital deduction, was a portion of the surplus remaining after deducting entire amount of estate taxes, in view of District of Columbia rule rejecting doctrine of general equitable apportionment of estate taxes. *R. H. DelMar et al. v. United States* (1968, 390 F. 2d 466, 129 U.S. App. D.C. 51).

Congress adopted the marital deduction to provide opportunity for equalization of the tax treatment of estates in common law and community property states. *Id.*

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Causa mortis gifts

The United States Supreme Court has held in cases involving a gift causa mortis that title to the property passes at the time of delivery, subject to a condition subsequent that the grantor may revoke the transfer if he lives and that it cannot, therefore, be considered as property of which the grantor dies possessed. *Wilkins v. Woodruff* (D.C. Mun. App. 1950, 74 A. 2d 59).



**Decedent's earned income**

Code subdivision, providing for compensation for period between discharge and reinstatement and that reinstated employee shall "for all purposes" be deemed to have rendered service during such period, must be read in its entirety with all of Code provisions for payment of compensation "due" deceased employee, and under the Code provisions, so read, widow, rather than estate, of deceased employee who had not designated beneficiary was entitled to amount paid in settlement of deceased employee's claim for back salary even though it had not yet been determined at time of death that he was entitled to reinstatement and back pay. *Joyce v. Scott* (1959, 265 F. 2d 369, 105 U.S. App. D.C. 177).

**Life estate**

Will construed to give wife life estate in realty during widowhood, consent of devisees necessary to sale. *Evans v. Evans* (1932, 55 F. 2d 533, 60 App. D.C. 371).

**§ 19-304. When surviving spouse entitled to one-half**

When the intestate leaves a surviving spouse and no child or descendant of the intestate, but a father or mother, or brother or sister, or child of a brother or sister, the surviving spouse is entitled to one-half. (Sept. 14, 1965, 79 Stat. 698, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 18-704 (Mar. 3, 1901, ch. 854, § 376, 31 Stat. 1249; Apr. 19, 1920, ch. 153, § 1, 41 Stat. 563).

Changes are made in phraseology.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 19-114.

**NOTES TO DECISIONS UNDER PRESENT LAW****Federal estate tax marital deduction**

Where decedent died intestate survived by her husband, two grandnephews, and six nieces, and surviving husband was entitled to one-half of estate under District of Columbia law, and such one-half qualified for federal estate tax marital deduction, share of husband was not to bear any part of federal estate tax. *In the Matter of the Estate of F. W. Collins* (1967, 269 F. Supp. 633).

**NOTES TO DECISIONS UNDER PRIOR LAW****War-risk insurance**

Distributees of war-risk insurance policy after death of the widow were to be determined as of the date of the death of the insured, under this section and § 385 of the Code (§ 18-713). *Condon v. Mallan* (1929, 30 F. 2d 995, 58 App. D.C. 371).

Where decedent's estate consisted of proceeds from war risk insurance policy and decedent was resident of District of Columbia at the date of death, the law of the District is controlling. *Id.*

**Widow's preference**

Under District of Columbia law, a widow has a statutory preference to letters of administration, but this preference is subject to court's discretion. *Randall v. Bockhorst* (1956, 232 F. 2d 334, 98 U.S. App. D.C. 77).

Where District Court revoked letters of administration granted to decedent's sister, and it appeared that decedent's widow had a claim against major portion of estate, had been long separated from decedent and had delayed a year after death before seeking to be appointed administratrix, district court should have considered an alternative to appointment of widow as administratrix. *Id.*

**Wrongful death**

Under the Wrongful Death Act, § 3, the proceeds of the recovery are required to be distributed among the next of kin, which includes both the widow and father, where the decedent leaves no surviving child. *Doleman v. Levine* (1935, 55 S. Ct. 741, 295 U.S. 221, 79 L. Ed. 1402).

**§ 19-305. Distribution of surplus after payment to surviving spouse**

The surplus, above the share of the surviving spouse, or the whole surplus, when there is no surviving spouse, descends and is distributed as provided by this chapter and by section 19-701. (Sept. 14, 1965, 79 Stat. 698, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 18-705 (Mar. 3, 1901, ch. 854, § 377, 31 Stat. 1250; Apr. 19, 1920, ch. 153, § 1, 41 Stat. 563).

Changes are made in phraseology.

**NOTES TO DECISIONS UNDER PRIOR LAW****Wrongful death**

Under the Wrongful Death Act, § 3, the proceeds of the recovery are required to be distributed among the next of kin, which includes both the widow and father, where the decedent leaves no surviving child. *Doleman v. Levine* (1935, 55 S. Ct. 741, 295 U.S. 221, 79 L. Ed. 1402).

**§ 19-306. Children to share equally**

When the intestate leaves children and no other descendants, the surplus is divided equally among them. (Sept. 14, 1965, 79 Stat. 698, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 18-706 (Mar. 3, 1901, ch. 854, § 378, 31 Stat. 1250).

A minor change in phraseology.

**NOTES TO DECISIONS UNDER PRESENT LAW****Illegitimate children**

District of Columbia intestate succession statute (§ 19-316), whereby illegitimate children may inherit from their mother only, does not discriminate against illegitimate children in violation of due process. *E. L. Watts et al. v. J. G. Veneman et al.* (1971, 334 F. Supp. 482).

**Stepchild's right of inheritance**

Under District of Columbia statute abolishing common-law distinction between kindred of the whole and half blood, a stepchild may inherit from a stepparent who dies intestate. *In re Estate of W. F. Humphrey* (D.C.D.C. 1966, 254 F. Supp. 33; reversed 384 F. 2d 987, 128 U.S. App. D.C. 18).

The statute abolishing common-law distinction between kindred of the whole and half blood is not restricted to particular types of situations, but governs whenever there arises a problem of reciprocal rights as between persons of the whole and half blood; wherever such a situation is confronted irrespective of its form, no distinction may be made. *Id.*

**NOTES TO DECISIONS UNDER PRIOR LAW****Indebtedness to children**

When mother dies indebted to children and bequeaths to them a portion of her own estate which is more than the indebtedness, such bequest is not in satisfaction for they would inherit the entire estate if no will had been made. *Patten v. Glover* (1893, 1 App. D.C. 466, affirmed 17 S. Ct. 411, 165 U.S. 394, 41 L. Ed. 760).

When mother borrowed money on real estate and gave it to son to establish him in business, taking no security therefor but under agreement that it would be deducted from his share of estate, such advancement operates as an ademption of a legacy. *Miller v. Payne* (1906, 28 App. D.C. 396).

**§ 19-307. Grandchildren's share**

(a) Subject to subsection (b) of this section, and to section 19-319, when the intestate leaves a child and a child of a deceased child, the child of the deceased child takes such share as his deceased parent would, if living, be entitled to, and every other



descendant in existence at the death of the intestate stands in the place of his deceased ancestor.

(b) Those in equal degree claiming in the place of an ancestor take equal shares. (Sept. 14, 1965, 79 Stat. 698, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-707 (Mar. 3, 1901, ch. 854, § 379, 31 Stat. 1250; June 30, 1902, ch. 1329, 32 Stat. 530).

Section is based on that part of section 18-707 of D.C. Code, 1961 ed., which related to the shares of grandchildren generally. The provisions of section 18-707 which related to advancements are carried into section 19-319 herein.

Changes are made in phraseology and arrangement.

#### CROSS REFERENCE

Advancement as satisfaction of legacy, see § 18-307.

### § 19-308. Share of father and mother

When the intestate leaves no child, or descendant, the whole is divided equally between the father and mother or their survivor. (Sept. 14, 1965, 79 Stat. 698, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Sept. 10, 1966, 80 Stat. 738, Pub. L. 89-567, § 1.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-708 (Mar. 3, 1901, ch. 854, § 380, 31 Stat. 1250; Mar. 6, 1935, ch. 28, § 1, 49 Stat. 39).

Minor changes are made in phraseology.

#### AMENDMENT

1966—Act Sept. 10, 1966, substituted "survivor" for "survivors".

### NOTES TO DECISIONS UNDER PRIOR LAW

#### Wrongful death

Under the Wrongful Death Act, § 3, the proceeds of the recovery are required to be distributed among the next of kin, which includes both the widow and father, where the decedent leaves no surviving child. *Doleman v. Levine* (1935, 55 S. Ct. 741, 295 U.S. 221, 79 L. Ed. 1402).

### § 19-309. Share of brother or sister or their descendants

When the intestate leaves a brother or sister, or child or descendant of a brother or sister, and no child, descendant, or father or mother, the brother, sister, or child or descendant of a brother or sister is entitled to the whole. (Sept. 14, 1965, 79 Stat. 698, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-709 (Mar. 3, 1901, ch. 854, § 381, 31 Stat. 1250).

Minor changes are made in phraseology.

### NOTES TO DECISIONS UNDER PRIOR LAW

#### Construction

A decision of the Maryland court, though not binding in this jurisdiction, should be given great weight in interpreting a statute of the District of Columbia which was presumably derived from the same source as the Maryland statute. *Wilson v. Charlent* (D.C.D.C. 1949, 81 F. Supp. 690).

### § 19-310. Brothers and sisters to share equally

Each brother and sister of the intestate is entitled to an equal share, and the children or descendants of a brother or sister of the intestate, stand in the place of their deceased parents respectively. (Sept. 14, 1965, 79 Stat. 698, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-710 (Mar. 3, 1901, ch. 854, § 382, 31 Stat. 1250).

Changes are made in phraseology.

### NOTES TO DECISIONS UNDER PRIOR LAW

#### Construction

A decision of the Maryland court, though not binding in this jurisdiction, should be given great weight in interpreting a statute of the District of Columbia which was presumably derived from the same source as the Maryland statute. *Wilson v. Charlent* (D.C.D.C. 1949, 81 F. Supp. 690).

#### Per stirpes or per capita

In construing an illiterate will children of testator's brothers held to take per capita rather than per stirpes under residuary clause, although testator had used the words "divided between my Brother Edwin and Charles children." *McIntire v. McIntire* (1933, 24 S. Ct. 196, 192 U.S. 116, 48 L. Ed. 369).

### § 19-311. Share of collateral relations

After children, descendants, parents, brothers, and sisters of the deceased and their descendants, all collateral relations in equal degree share, and representation among the collaterals is not allowed. (Sept. 14, 1965, 79 Stat. 699, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-711 (Mar. 3, 1901, ch. 854, § 383, 31 Stat. 1250; June 30, 1902, ch. 1329, 32 Stat. 530).

Changes are made in phraseology.

### NOTES TO DECISIONS UNDER PRIOR LAW

#### Cousins

Where will devised the residue consisting of personal property to heirs at law and next of kin in accordance with existing laws of the District, the surviving next of kin, who were first cousins, are entitled to take all the personalty as against second cousins who would have been heirs had realty been devised. *Binford v. Diller* (1949, 177 F. 2d 731, 85 U.S. App. D.C. 365).

### § 19-312. Share of grandfather and grandmother

The grandparents, or such of them as survive, share alike where there are no collaterals. (Sept. 14, 1965, 79 Stat. 699, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-712 (Mar. 3, 1901, ch. 854, § 384, 31 Stat. 1250; Mar. 6, 1935, ch. 28, § 2, 49 Stat. 39).

Minor changes are made in phraseology.

### NOTES TO DECISIONS UNDER PRIOR LAW

#### In general

The widow on the death of her husband was a distributee of one-half of his personal estate. Owing to her being the beneficiary, this portion could not be ascertained until her death. Her estate then became entitled to her share, and her next of kin, her daughter, inherited her estate. *Condon v. Mallan* (1929, 30 F. 2d 995, 58 App. D.C. 371).

### § 19-313. Death of distributee before distribution

When a person entitled to distribution dies before the distribution is made, his share goes to his estate or legal representatives. (Sept. 14, 1965, 79 Stat. 699, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-713 (Mar. 3, 1901, ch. 854, § 385, 31 Stat. 1250).

Changes are made in phraseology.



**§ 19-314. Share of posthumous children**

A right in the inheritance to real or personal property does not accrue to or vest in a person other than the children of the intestate and their descendants, unless the person is in being and capable in law to take as heir or distributee at the time of the intestate's death; but a child or descendant of the intestate born after the death of the intestate has the same right of inheritance as if born before his death. (Sept. 14, 1965, 79 Stat. 699, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 18-714 (Mar. 3, 1901, ch. 854, § 386, 31 Stat. 1250; Aug. 31, 1957, Pub. L. 85-244, § 9(a), 71 Stat. 562).

Changes are made in phraseology.

**NOTES TO DECISIONS UNDER PRIOR LAW****In general**

"A child en ventre sa mere is deemed to be in esse for the purpose of taking a remainder, or any other estate or interest which is for his benefit, whether by descent, by devise, or under the statute of distribution." *Craig v. Rowland* (1897, 10 App. D.C. 402).

**§ 19-315. No distinction between whole- and half-blood**

There is no distinction between the kindred of the whole- and the half-blood. (Sept. 14, 1965, 79 Stat. 699, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 18-715 (June 30, 1902, ch. 1329, 32 Stat. 530; Aug. 31, 1957, Pub. L. 85-244, § 9(b), 71 Stat. 562).

Changes are made in phraseology.

**NOTES TO DECISIONS****Generally**

Under District of Columbia statute abolishing common-law distinction between kindred of the whole and half blood, a stepchild may inherit from a stepparent who dies intestate. *In re Estate of W. F. Humphrey* (D.C.D.C. 1966, 254 F. Supp. 33; reversed 384 F. 2d 987, 128 U.S. App. D.C. 18).

The statute abolishing common-law distinction between kindred of the whole and half blood is not restricted to particular types of situations, but governs whenever there arises a problem of reciprocal rights as between persons of the whole and half blood; wherever such a situation is confronted irrespective of its form, no distinction may be made. *Id.*

**§ 19-316. Share of illegitimate children; their issue; mother**

The illegitimate children of a female and the issue of illegitimate children of a female are capable to take real and personal estate by inheritance from their mother, or from each other, or from the descendants of each other, as the case may be, in like manner as if born in lawful wedlock.

When an illegitimate child of a female dies leaving no descendants, or brothers or sisters, or descendants of brothers or sisters, the mother of the illegitimate child is entitled to the real and personal estate of the illegitimate child, and if the mother is dead, the heirs or distributees of the mother share in like manner as if the illegitimate child had been born in lawful wedlock. (Sept. 14, 1965, 79 Stat. 699, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 18-716 (Mar. 3, 1901, ch. 854, § 387, 31 Stat. 1250; Aug. 31, 1957, Pub. L. 85-244, § 9(c), 71 Stat. 562).

Changes are made in phraseology.

**CROSS REFERENCE**

Antenuptial children, see § 19-318.

**NOTES TO DECISIONS UNDER PRESENT LAW****Constitutionality**

This section, whereby illegitimate children may inherit from their mother only, does not discriminate against illegitimate children in violation of due process. *E. L. Watts et al. v. J. G. Veneman et al.* (1971, 334 F. Supp. 482).

**NOTES TO DECISIONS UNDER PRIOR LAW****Construction**

A decision of the Maryland court, though not binding in this jurisdiction, should be given great weight in interpreting a statute of the District of Columbia which was presumably derived from the same source as the Maryland statute. *Wilson v. Charlent* (D.C.D.C. 1949, 81 F. Supp. 690).

**Construction of terms**

"The mother of illegitimate children may be their next of kin, and illegitimate children of any female are next of kin to each other," and the phrase "next of kin" in section 1301 of the Code (§ 16-1201) is used in the same sense. *Southern R. Co. v. Hawkins* (1910, 35 App. D.C. 313, 21 Ann. Cas. 926).

**Legislative intent**

"It was evidently the intent of Congress in enacting this statute to remove the common-law disability of inheritance through the maternal line, and to that extent places illegitimates upon the same basis as legitimates. This amounted to a declaration of public policy." *Southern R. Co. v. Hawkins* (1910, 35 App. D.C. 313, 21 Ann. Cas. 926).

Congress intended that an illegitimate child, insofar as inheritance is concerned, is to be considered in all respects at the child of its mother. It would be highly artificial to draw a distinction between property of which the mother was seized and possessed at the time of her death and the property of which she should have become seized and possessed had she lived. *Wilson v. Charlent* (D.C.D.C. 1949, 81 Supp. 690).

**Proceeds of insurance policy**

Where claim under Federal Employee's Group Life Insurance Act arose in District of Columbia, wherein, with regard to descent of personality, illegitimate children are on equal standing with those born in lawful wedlock insofar as mother's estate is concerned, illegitimate children of insured were entitled to share proportionately with her legitimate children in proceeds of policy. *Brantley and Mathis v. Skeens, Guardian ad litem* (1959, 266 F. 2d 447, 105 U.S. App. D.C. 246).

**§ 19-317. Trust estates**

When a trustee is seized of the naked legal estate in real estate in fee simple, and dies intestate thereof, the legal estate descends according to section 19-301 to the persons who would inherit the beneficial estate if it were vested in them. (Sept. 14, 1965, 79 Stat. 699, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 18-102 (Mar. 3, 1901, ch. 854, § 952, 31 Stat. 1343).

Reference to "real estate" is substituted for "lands, tenements, or hereditaments", to conform with more modern usage.

Changes are made in phraseology.

**§ 19-318. Antenuptial children**

When a man has a child by a woman whom he afterwards marries, the child, if acknowledged by the man, is, in virtue of the marriage and acknowledgment, legitimated and capable in law of inheriting and transmitting heritable property as if born in wedlock. (Sept. 14, 1965, 79 Stat. 699, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)



## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-106 (Mar. 3, 1901, ch. 854, § 957, 31 Stat. 1344).

Changes are made in phraseology.

## NOTES TO DECISIONS UNDER PRIOR LAW

**Children born out of wedlock**

Child born out of wedlock are legitimated under this section. *Thomas v. Murphy* (1940, 107 F. 2d 268, 71 App. D.C. 69).

There was no evidence introduced before the court that the father had married either of the women and acknowledged the children as his own, both of which acts, marriage and acknowledgment, are necessary to legitimize children in this jurisdiction under the Code. *Blethyn v. Bidder* (D.C.D.C. 1949, 80 F. Supp. 962).

## § 19-319. Advancements

(a) If a child or descendant has been advanced by the intestate during the intestate's lifetime, by settlement or portion, real estate or personal estate, the value thereof is reckoned for the purposes of descent and distribution as part of the estate of the intestate descendible and to be divided among his heirs or distributed to his distributees. Where the advancement is equal to or greater than a share, the child or descendant is excluded from any further share in the estate of the intestate and is not liable to refund any part of the amount so advanced; but the surviving spouse has no advantage by bringing the advancement into reckoning. Where the advancement is less than a share, the child or descendant receives so much, only, of the personal estate, and inherits so much, only, of the real estate, of the intestate, as is sufficient to make all the shares of all the children in the whole property, including the advancement, equal. The value of real or personal estate so advanced shall be estimated according to the worth thereof when given. Maintenance or education of a child or descendant, or giving him money or real estate, without a view to a portion or settlement in life, is not an advancement.

(b) Where an advancement to be adjusted, as provided by subsection (a) of this section, consisted of real estate, the adjustment shall be made out of the real estate descendible to the heirs. Where the advancement was in personal estate, the adjustment shall be made out of the surplus of the personal estate to be distributed to the distributees. Where either species of estate is insufficient to enable the adjustment to be fully made, the deficiency shall be adjusted out of the other. (Sept. 14, 1965, 79 Stat. 699, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 18-108, 18-707 (Mar. 3, 1901, ch. 854, §§ 379, 959, 31 Stat. 1250, 1344; June 30, 1902, ch. 1329, 32 Stat. 530, 537).

Section consolidates section 18-108 of D.C. Code, 1961 ed., relating to advancements of real estate, and that part of section 18-707 of the Code relating to advancements of personal estate. Since, in cases of intestacy, real estate and surplus personal estate now go to the same people (see section 19-301 herein), there is no longer any reason for making a distinction between them by having separate sections on advancements. The remainder of section 18-707 of D.C. Code, 1961 ed., is carried into section 19-307 herein.

While the provisions, as consolidated, are considerably rephrased and modernized, it is not considered that, as so revised in the light of the present state of the law, they effect any important substantive change. For one thing, the provisions of section 18-108 of D.C. Code, 1961

ed., giving an election to children of an intestate, or their issue, who have received an advancement of real estate, to come into partition with the intestate's other heirs, on bringing the advancement, or the value thereof at the time the advancement was received, into hotchpot with the estate descended, is omitted. The statement in 4 Kent's Commentaries, 14th Ed., p. 420, that "I do not find this privilege of election conceded by the laws of the other states [that is, by the laws of states other than the few states mentioned], to the child who has been advanced; and there is nothing which would appear to render the privilege of any consequence" seems to the revisers to be just as cogent today. Further, the right of election in respect of advancements of personal estate was not conferred by section 18-707 of D.C. Code, 1961 ed., and, since, as above stated, real estate and surplus personal estate of an intestate are now taken by the same people and, with respect to children, are taken in the same proportions, it would seem that the provisions for equalizing and adjusting advancements of both types of estates should be uniform.

The language of the provisions, as revised in this section, is suggested, not only by the two sections of D.C. Code, 1961 ed., on which this section is based, but also, in part, by provisions in McKinney's N.Y. Decedent Estate Law §§ 85, 86. See, also, Vermont Statutes Annotated, Title 14, §§ 1723-1725. This section requires that any advancement, whether of real estate or of personal estate, be figuratively brought into hotchpot for the purpose of equalization and adjustment, but, as heretofore provided, the person who received the advancement is not required to refund any part of the amount or value of the advancement, if it equals or is greater than an intestate share; and, in such a case, he would be excluded from any further share in the estate. And if the amount or value of the advancement is less than a share, there is to be an equalization and adjustment in the manner provided by the section.

The reference to the widow in section 18-707 of D.C. Code, 1961 ed., is, in subsection (a) of this section, changed to "surviving spouse", to conform with other provisions which had been amended prior to their being carried into this revised Part (see Act Apr. 19, 1920, ch. 153, 41 Stat. 563, and the preceding sections in this chapter), and with the change in the course of descents provided by the laws carried into section 19-301 herein.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 19-307.

## § 19-320. Felonious homicide as barring inheritance; insurance policies; bona fide purchasers

(a) A person convicted of felonious homicide of another person, by way of murder or manslaughter, takes no estate or interest in property of any kind from that other person by way of:

(1) inheritance, distribution, devise, or bequest;  
or

(2) remainder, reversion, or executory devise dependent upon the death of the other person.

The estate, interest, or property to which the person so convicted would have succeeded or would have taken in any way from or after the death of the decedent goes, instead, as if the person so convicted had died before the decedent.

(b) Policies of insurance directly or indirectly procured by a person convicted as specified by subsection (a) of this section, for his own benefit or payable to him upon the life of the person killed by him, are void.

(c) This section does not affect the rights of bona fide purchasers of property specified by subsection (a) of this section, for value and without notice. (Sept. 14, 1965, 79 Stat. 700, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)



## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-109 (Mar. 3, 1901, ch. 854, § 961, 31 Stat. 1344).

Changes are made in phraseology.

**§ 19-321. Descent through alien ancestor no bar**

In making title by descent it is no bar to a party claiming as heir that an ancestor, whether living or dead, through whom he derives his descent from the intestate, is or has been an alien. (Sept. 14, 1965, 79 Stat. 700, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-110 (Mar. 3, 1901, ch. 854, § 960, 31 Stat. 1344).

Minor changes are made in phraseology.

### Chapter 5.—SIMULTANEOUS DEATHS— UNIFORM LAW

Sec.

- 19-501. No sufficient evidence of survivorship.
- 19-502. Survival of beneficiaries.
- 19-503. Joint tenants or tenants by the entirety.
- 19-504. Insurance policies.
- 19-505. Chapter does not apply if decedent provides otherwise.
- 19-506. Short title; effective date; chapter not retroactive; construction.

## REVISION NOTES

This chapter continues the Uniform Simultaneous Death Act adopted in the District of Columbia by act March 28, 1958, Pub. L. 85-356, 72 Stat. 67. The Uniform Act was promulgated by the National Conference of Commissioners on Uniform State Laws in 1940.

**§ 19-501. No sufficient evidence of survivorship**

Where the title to property or the devolution thereof depends upon priority of death and there is not sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise by this chapter. (Sept. 14, 1965, 79 Stat. 700, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-902 (Mar. 28, 1958, Pub. L. 85-356, § 2, 72 Stat. 67).

The source of the provisions is section 1 of the Uniform Simultaneous Death Act. See revision note preceding this section.

Changes are made in phraseology.

**§ 19-502. Survival of beneficiaries**

Where property is so disposed of that the right of a beneficiary to succeed to any interest therein is conditional upon his surviving another person, and both persons die, and there is not sufficient evidence that the two have died otherwise than simultaneously, the beneficiary is deemed not to have survived. Where there is not sufficient evidence that two or more beneficiaries have died otherwise than simultaneously and property has been disposed of in such a way that at the time of their death each would have been entitled to the property if he had survived the others, the property shall be divided into as many equal portions as there were beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each of the beneficiaries had survived. (Sept. 14, 1965, 79 Stat. 700, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-903 (Mar. 28, 1958, Pub. L. 85-356, § 3, 72 Stat. 67).

The source of the provisions is section 2 of the Uniform Simultaneous Death Act. See revision note preceding section 19-501 herein.

Changes are made in phraseology.

**§ 19-503. Joint tenants or tenants by the entirety**

Where there is not sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously the property so held shall be distributed, or descend as the case may be, one-half as if one had survived and one-half as if the other had survived. Where there are more than two joint tenants and all have so died the property thus distributed or descended shall be in the proportion that one bears to the whole number of joint tenants.

The term "joint tenants" includes owners of property held under circumstances which entitled one or more to the whole of the property on the death of the others. (Sept. 14, 1965, 79 Stat. 701, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-904 (Mar. 28, 1958, Pub. L. 85-356, § 4, 72 Stat. 67).

The source of the provisions is section 3 of the Uniform Simultaneous Death Act. See revision note preceding section 19-501 herein.

Changes are made in phraseology.

**§ 19-504. Insurance policies**

When the insured and the beneficiary in a policy of life or accident insurance have died and there is not sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary. (Sept. 14, 1965, 79 Stat. 701, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-905 (Mar. 28, 1958, Pub. L. 85-356, § 5, 72 Stat. 673).

The source of the provisions is section 5 of the Uniform Simultaneous Death Act. See revision note preceding section 19-501 herein. Section 4 of the Uniform Act, relating to community property, was not adopted by the Act of March 28, 1958, cited above, nor is it adopted in this revision. It has no relevancy in the District of Columbia.

Changes are made in phraseology.

## NOTES TO DECISIONS

## Federal estate taxes

Where further premiums remained to be paid on policies owned by wife on life of her husband, and wife was the primary beneficiary thereunder and husband and wife died simultaneously, and pursuant to presumption under this section that insured survived the beneficiary the proceeds were paid to secondary beneficiaries, policies should have been included in wife's estate for federal estate tax purposes at their interpolated terminal reserve values and not at the aggregate proceeds payable under the policies. *Estate of N. Meltzer et al. v. Commissioner of Internal Revenue* (1971, 439 F.2d 798).

**§ 19-505. Chapter does not apply if decedent provides otherwise**

This chapter does not apply in the case of wills, living trusts, deeds, or contracts of insurance, or any other situation where provision is made for distribution of property different from the provisions of this chapter, or where provision is made for a presump-



tion as to survivorship which results in a distribution of property different from that here provided. (Sept. 14, 1965, 79 Stat. 701, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-906 (Mar. 28, 1958, Pub. L. 85-356, § 6, 72 Stat. 67).

The source of the provisions is section 6 of the Uniform Simultaneous Death Act. See revision note preceding section 19-501 herein.

§ 19-506. Short title; effective date; chapter not retroactive; construction

(a) This chapter may be cited as the "District of Columbia Uniform Simultaneous Death Act". It is in effect in the District of Columbia as of March 28, 1958, and it does not apply to the distribution of property of a person who died before that date.

(b) Where there is a conflict or inconsistency between a provision of this chapter and other provisions of this Part or other law, the provision of this chapter controls. (Sept. 14, 1965, 79 Stat. 701, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 18-901, 18-907, 18-909 (Mar. 28, 1958, Pub. L. 85-356, § 1, 7, 10, 72 Stat. 67, 68), and on Act Mar. 28, 1958, Pub. L. 85-356, § 9, 72 Stat. 68 (classified as a note under D.C. Code, 1961 ed., § 18-901).

Section consolidates sections 18-901, 18-907, 18-909 of D.C. Code, 1961 ed., with section 9 of Act Mar. 28, 1958, Pub. L. 85-356, 72 Stat. 68, which was classified as a note under such section 18-901.

The first sentence of subsec. (a) is from section 9 of the 1958 Act. The source of this sentence is section 8 of the Uniform Simultaneous Death Act.

The first clause of the second sentence of subsec. (a) (through "March 28, 1958,") is based, with changes in phraseology, on section 18-901 of D.C. Code, 1961 ed., from which the phrase "providing for the disposition of property where there is no sufficient evidence that persons have died otherwise than simultaneously and to make uniform the law with reference thereto," is omitted as surplusage, considering the rearrangement of the provisions in this chapter to follow more closely the order of the provisions in the Uniform Simultaneous Death Act. The first clause of the second sentence of subsec. (a), as retained (through "March 28, 1958,") has as its source section 11 of the Uniform Simultaneous Death Act. The phrase omitted was not contained in that section.

The second clause of the second sentence of subsec. (a) is based on section 18-907 of D.C. Code, 1961 ed. There is no corresponding provision in the Uniform Simultaneous Death Act as last amended by the National Conference of Commissioners on Uniform State Laws in August, 1953, although, prior to that time, there was a section 5 of that Act containing provisions corresponding with this clause.

Section 18-909 of D.C. Code, 1961 ed., in connection with the provisions carried into this chapter, repealed all laws inconsistent therewith. This provision is omitted as executed, or obsolete in any event, as the bill to enact this revised Part repeals specifically all prior laws, as such, the provisions of which have been carried into this revised Part. However, subsec. (b) of this section provides that this chapter controls, if there is any conflict or inconsistency with other laws.

Section 18-910 of D.C. Code, 1961 ed., which related to separability of provisions with respect to chapter 9 of Title 18 of the Code (in which the simultaneous death provisions, as enacted by the Act of March 28, 1958, cited above, were set out), is omitted as inappropriate in a code of general and permanent law. A separate section in the bill to enact this revised Part provides for separability of provisions with respect to the entire Part.

CROSS REFERENCES

Descent and distribution generally, see Title 19, chapters 1 to 7.

Joint contracts, see § 16-2101 et seq.

Joint tenants action for accounting, see § 16-101.

Negligence causing death, see §§ 16-2701, 16-2702.

Chapter 7.—ESCHEAT

Sec.

19-701. Escheatment generally.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 20-1328, 20-1901.

§ 19-701. Escheatment generally

Where there is no surviving spouse or relations of the intestate within the fifth degree, reckoned by counting down from the common ancestor to the more remote, the surplus of real and personal property escheats to the District of Columbia to be used by the Commissioner of the District of Columbia for the benefit of the poor. (Sept. 14, 1965, 79 Stat. 701, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 148(1), 84 Stat. 566.)

AMENDMENT

1970—Section 148(1) of Act July 29, 1970, Public Law 91-358 amended section by striking out "Commissioners" and inserting "Commissioner".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-717 (Mar. 3, 1901, ch. 854, § 388, 31 Stat. 1251; Aug. 31, 1957, Pub. L. 85-244, § 9(d), 71 Stat. 562).

Changes are made in phraseology.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-906, 19-305.

NOTES TO DECISIONS UNDER PRESENT LAW

Descent and distribution

On the basis of the majority rule in the District, testator's attempt to disinherit his caveator brothers and their heirs was ineffective, since he made no gift over of the forfeited estate. *J. C. Wilkes, Trustee etc. v. E. L. Freer et al.* (1967, 271 F. Supp. 602).

NOTES TO DECISIONS UNDER PRIOR LAW

Conversion of property

Where, in 1879, one died without known heirs or next of kin and a sum of money was found on his person which the authorities turned over to the policemen's pension fund, an administrator appointed in 1886 could recover such fund in tort for conversion since there was no authority in law for turning the money over to the pension fund. *Tucker v. Nebeker* (1894, 2 App. D.C. 326).

Power of court

The probate court, upon a finding that there are no heirs of deceased intestate, has power to decree distribution to District of Columbia as escheatee. *Frazier v. Kutz* (1944, 139 F. 2d 380, 78 U.S. App. D.C. 241).

The probate court's jurisdiction to hear, determine and decree upon all claims between executors and administrators and legatees or persons entitled to a distributive share of an intestate estate includes duty of finding that there are or that there are not statutory heirs, and upon the finding to make distribution as this section requires. *Id.*

The probate court has power, in absence of next of kin, to order in a proper case the payment of residuum of intestate's estate to an escheatee, as this section provides. *Id.*



**Presumptions**

There is a presumption that an intestate left heirs and the presumption obtains until claimant by escheat overcomes it by strong and convincing evidence. *Frazier v. Kutz* (1944, 139 F. 2d 380, 78 U.S. App. D.C. 241).

**Remand for further proof**

Where creditor filed petition for administration of deceased's estate stating that after diligent search, creditor was satisfied that deceased died intestate and without surviving relation, and District of Columbia relied upon allegations of creditor's petition, pleadings and evidence were insufficient to authorize probate court to determine whether the District was entitled to distribution under this section, and case was remanded for determination of question whether intestate died without heirs. *Frazier v. Kutz* (1944, 139 F. 2d 380, 78 U.S. App. D.C. 241).

**Remoteness of relationship**

A bequest to each one of testatrix's cousins living at the time of testatrix's death, irrespective of the remoteness of relationship, and of whether his or her parent cousin should be living, was not intended to incorporate this section, which provides that intestate property shall pass to the District, when there are no relations within the fifth

degree. *Dalton v. White* (1942, 129 F. 2d 55, 76 U.S. App. D.C. 93).

**Soldiers' Home inmates**

Inmate of United States Soldiers' Home in District of Columbia, retired from regular army, and a resident of District of Columbia, who died without legal heirs or next of kin, was a "soldier" within statute providing for funds for support of the Soldiers' Home, and United States rather than District of Columbia was entitled to escheat of his moneys. *District of Columbia v. Wolverton* (1961, 298 F. 2d 684, 112 U.S. App. D.C. 23).

**Time when title vests**

If on death of an intestate there were no kin within classes named in this section, property after payment of debts eo instante vested in and became property of the District of Columbia as statutory escheatee. *Frazier v. Kutz* (1944, 139 F. 2d 380, 78 U.S. App. D.C. 241).

**Veterans Administration payments**

Estate of decedent derived from payments made by Veterans Administration for benefit of decedent, who was not survived by next of kin, and whose last legal residence was in the District of Columbia escheated, under express terms of statute, to the Government and not to the District of Columbia. *In re Germanovich's Estate* (D.C.D.C. 1954, 122 F. Supp. 169).





## TITLE 20.—ADMINISTRATION OF DECEDENTS' ESTATES

*Title 20 was enacted by Pub. L. 89-183*

For distribution of former sections of this title, see table following Title 49

Chap.	Sec.
1. General Provisions.....	20-101
3. Executors and Administrators.....	20-301
5. Collectors .....	20-501
7. Inventory of Assets.....	20-701
9. Assets of Estate.....	20-901
11. Sale of Assets.....	20-1101
13. Claims of Creditors.....	20-1301
15. Suits .....	20-1501
17. Accounts .....	20-1701
19. Distribution of Surplus.....	20-1901
21. Administration of Small Estates.....	20-2101
23. Estates of Absentees and Absconders.....	20-2301

### Chapter 1.—GENERAL PROVISIONS

Sec.  
20-101. Definitions.

#### § 20-101. Definitions

The definitions in section 18-101 apply to this title. (Sept. 14, 1965, 79 Stat. 702, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Section is new, and is inserted for the same reason given in revision note under section 18-101 herein.

### Chapter 3.—EXECUTORS AND ADMINISTRATORS

#### SUBCHAPTER I.—EXECUTORS

Sec.
20-301. Letters testamentary; oath; corporations.
20-302. Bond of executor.
20-303. Bonds for debts only; removal of executor for waste.
20-304. Special bond of executor.
20-305. Joint or separate bonds of co-executors.
20-306. Failure to qualify; letters of administration with the will annexed.
20-307. Absent executor; summons; notice.
20-308. Summons to each of several executors.
20-309. Renunciation.
20-310. Disqualification of executor.
20-311. No power to act without letters.
20-312. Form of letters testamentary.
20-313. Executor of executor.

#### SUBCHAPTER II.—ADMINISTRATORS

20-331. Granting of letters of administration.
20-332. Oath and bond of administrator.
20-333. Special bond in intestacy.
20-334. Persons entitled to administer; order of preference.
20-335. Notice of application.
20-336. Declining administration.
20-337. Form of letters of administration.
20-338. Administrator with the will annexed; preference.
20-339. Administrator de bonis non; form of letters; duties.

#### SUBCHAPTER III.—MISCELLANEOUS PROVISIONS RELATING TO EXECUTORS AND ADMINISTRATORS

20-351. Competency to serve as executor or administrator; determination.
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Sec.
20-352. Persons between 18 and 21 years of age.
20-353. Application for letters; contents; bond; sale of real estate.
20-354. Will proved after letters of administration granted; revocation; pending actions; judgments; accounting; liability.
20-355. Will declared invalid after distribution; liability.
20-356. Removal of co-executor or co-administrator for negligence or misconduct; complaint; recovery of loss or damage.
20-357. Additional bond; failure to provide; revocation; delivery of assets.
20-358. Counter security; application of surety; delivery of property; inventory; duties and liabilities of surety.
20-359. Accounting by representative of deceased executor or administrator; enforcement.
20-360. Executor of his own wrong.
20-361. Liability of executor or administrator of deceased executor or administrator for waste or conversion.
20-362. Investment of funds.
20-363. Continuing decedent's business; petition and affidavits; accounting; debts as expenses of administration.
20-364. Recordation of executor's and administrator's bond; copies to interested parties; actions on bonds.
20-365. Service on nonresident executor or administrator; failure to give power of attorney.
20-366. Resignation; petition; accounting; liability.

#### SUBCHAPTER I.—EXECUTORS

#### § 20-301. Letters testamentary; oath; corporations

(a) When a will or codicil respecting real or personal property has been authenticated and admitted to probate, letters testamentary on the will or codicil shall be issued to the executor named therein, if he:

(1) is legally competent and will accept the trust;

(2) executes the bond required by section 20-302; and

(3) takes, subscribes, and files an oath that he will administer the estate of the deceased according to law and will give a just account of his administration when lawfully called to account.

(b) The conditions of this section as to bond and oath do not apply to corporations authorized under the District of Columbia laws to act as executors. (Sept. 14, 1965, 79 Stat. 703, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-301 (Mar. 3, 1901, ch. 854, § 262, 31 Stat. 1232).

Section is derived from part of section 20-301 of D.C. Code, 1961 ed. Remainder of section 20-301, relating to bond of the executor, is carried into section 20-302 herein.

Changes are made in phraseology, and surplusage is omitted.

## CROSS REFERENCES

Appointment and tenure of administrator and executors, see §§ 20-338, 20-339, 20-351 et seq.

Jurisdiction, pleading and practice in probate court, see §§ 11-921 and 16-3101 et seq.

Naming debtor as executor does not discharge debt, see § 20-903.

Trust companies authorized to act, see §§ 26-309 to 26-312, 26-316, 26-333, 26-334.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20-306.

## NOTES TO DECISIONS UNDER PRESENT LAW

## Refusal of letters to nominated executors

Probate court may refuse letters testamentary to nominated executors only when they are expressly disqualified by statute. *H. M. Berryman et al. v. The Riggs National Bank, etc.* (1968, 401 F. 2d 993, 131 U.S. App. D.C. 42).

Compliance with statute relating to competency of person to serve as executor is what is contemplated by the terms "legally competent" as used in statute requiring issuance of letters testamentary to executor named in will if he is legally competent. *Id.*

## Testator's choice

Testator's choice should be granted letters testamentary unless he is disqualified under statute relating to competency of person to serve as executor or administrator. *H. M. Berryman et al. v. The Riggs National Bank, etc.* (1968, 401 F. 2d 993, 131 U.S. App. D.C. 42)

## NOTES TO DECISIONS UNDER PRIOR LAW

## Ancillary letters

Where testatrix, who was domiciled in Michigan and whose estate and beneficiaries were largely in Michigan but who had intangible property in District of Columbia, named resident of District of Columbia, as sole executor, but Michigan court appointed Michigan resident as administrator with will annexed, because Michigan law forbids appointment of a nonresident executor, it was within discretion of District of Columbia court to appoint the Michigan executor as ancillary administrator. *Purcell v. Cramton* (1944, 143 F. 2d 22, 79 U.S. App. D.C. 99).

The requirement of this section that when any will shall have been authenticated and admitted to probate letters testamentary thereon shall be issued to the executor named therein, if he is legally competent and will accept the trust, does not apply to ancillary letters. *Id.*

## Liability of executor

An executor executing a general bond is responsible for payment of debts and claims to extent of assets collected only, and cannot be sued on general bond until determination is made of the extent to which creditors can be paid from assets. *Hawley v. Hawley* (1940, 114 F. 2d 745, 72 App. D.C. 376).

## § 20-302. Bond of executor

Before letters testamentary are issued to an executor, other than a local corporation authorized by the laws of the District of Columbia to act as an executor, named in a will or codicil, he shall execute a bond, with security to be approved by the court, in such penalty as the court requires, with a condition that he will administer according to law and to the will of the testator all his goods, chattels, rights, credits, and the proceeds of all his real estate that may be sold for the payment of his debts or legacies, which, at any time, come to his possession or to the possession of another person for him, and in all other respects faithfully perform the trusts reposed in him. (Sept. 14, 1965, 79 Stat. 703, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 149(1), 84 Stat. 566.)

## AMENDMENT

1970—Section 149(1) of Act July 29, 1970, Public Law 91-358 amended section by striking out "to the United States".

## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-301 (Mar. 3, 1901, ch. 854, § 262, 31 Stat. 1232).

Section is derived from part of section 20-301 of D.C. Code, 1961 ed. Remainder of section 20-301, relating to issuance of letters testamentary, and oath, are carried into section 20-301 herein.

Changes are made in phraseology.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 20-301, 20-304.

## § 20-303. Bonds for debts only; removal of executor for waste

(a) Where a testator, by last will and testament, requests that his executor be not required to give bond for the performance of his duty, the bond required of the executor shall be in such penalty as the court considers sufficient to secure the payment of the debts due by the testator, of not more than double the value of the personal estate. Where the bond is less than this sum the court may increase it to require an additional bond if the court deems the bond as given to be insufficient to secure the payment of the debts of the testator.

(b) If a party interested makes it appear to the court that an executor who has given a bond only as is provided for by this section is wasting the assets of the estate, or that the assets are in danger of being lost, wasted, or misappropriated, the court may remove the executor or require him to give additional bond with security in a penalty sufficient to secure the interests of all the creditors, distributees, and legatees entitled to take the estate. On his failure to give bond as required, his letters may be revoked and he shall deliver forthwith to the substituted executor all the assets of his testator in his possession or under his control. (Sept. 14, 1965, 79 Stat. 703, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-302 (Mar. 3, 1901, ch. 854, § 263; 31 Stat. 1232; June 30, 1902, ch. 1329, 32 Stat. 528).

Changes are made in phraseology and arrangement.

## CROSS REFERENCES

Bonds required of trust companies, see §§ 26-333, 26-334.

Liability of sureties for debt due from executor to estate, see § 20-903.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 20-304, 20-353.

## NOTES TO DECISIONS UNDER PRIOR LAW

## Avoidance of deed

If deed was procured by undue influence and deceased grantor left a valid will, her executor had right to avoid the deed. *Kashouty v. Deep* (1942, 126 F. 2d 233, 75 U.S. App. D.C. 259).

## § 20-304. Special bond of executor

(a) When the executor is the residuary legatee of the personal estate of the testator, or if the residuary legatee of full age notifies his consent to the court, he may, instead of the bond prescribed by section 20-302 or 20-303, give bond with security approved by the court, in a penalty prescribed by the court, conditioned to pay all the debts and just claims against the testator, all damages which may be recovered against him as executor, and all legacies



bequeathed by the will. In this case, he may not be required to file an inventory or render an account.

(b) If the executor gives a special bond as provided by this section, he is personally answerable for the full amount of all debts, claims, and damages that may be recovered against him as executor as if he were sued in his own right, and a legatee may recover the full amount of his legacy in a suit on the executor's bond, and the giving of the bond shall be considered an assent to the legacy. The sureties on the bond are not liable for a greater amount than the penalty thereof. (Sept. 14, 1965, 79 Stat. 704, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-303 (Mar. 3, 1901, ch. 854, § 264, 31 Stat. 1232).

With respect to recovery by a legatee by suit on the bond, the words "or in equity" are omitted, as there is only one form of action in the District Court, which is known as a "civil action". See Rule 2 of the Federal Court of Civil Procedure. See, also, Rule 2 of the civil rules of the Court of General Sessions.

In the first sentence of subsec. (b), "personally answerable" is substituted for "answerable", for the purpose of clarification. See section 20-333 herein, relating to special bond of administrators.

Changes are made in phraseology and arrangement.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 20-333, 20-353, 20-701, 20-702.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Actions on bonds

This section does not prevent recovery on special bond until debt or claim sued upon has been recovered in a separate action brought against executor. *Hawley v. Hawley* (1940, 114 F. 2d 745, 72 App. D.C. 376).

##### Executor's special undertaking

Although executrix in giving a special undertaking rendered herself personally liable for all debts and just claims against testator, special bond given by executrix did not guarantee claimant's right to recover on claim rejected by executrix and claimants were required to sue within statutory period. *McNeill and Fuller v. Selby* (D.C. Mun. App. 1955, 116 A. 2d 160).

##### Liability of executor

A special bond given by an executor who is also residuary legatee operates as an admission that there are sufficient assets in the estate to pay all debts and forecloses that question, and executor assumes thereby responsibility of payment of debts to the full extent of his personal estate. *Hawley v. Hawley* (1940, 114 F. 2d 745, 72 App. D.C. 376).

#### § 20-305. Joint or separate bonds of co-executors

Where two or more persons are appointed executors, the court may take a separate bond with security from each of them or a joint bond with security from all of them together. (Sept. 14, 1965, 79 Stat. 704, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-304 (Mar. 3, 1901, ch. 854, § 265, 31 Stat. 1233).

A minor change is made in phraseology.

#### § 20-306. Failure to qualify; letters of administration with the will annexed

Where the sole executor named in the will was present at the probate of the will, and does not, within 20 days thereafter, file a bond as required by this subchapter, and qualify as executor by taking the oath required by section 20-301, letters of administration with the will annexed may be granted as

if an executor had not been named. (Sept. 14, 1965, 79 Stat. 704, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-305 (Mar. 3, 1901, ch. 854, § 266, 31 Stat. 1233).

Changes are made in phraseology.

#### § 20-307. Absent executor; summons; notice

Where the sole executor named in the will was not present at the probate of the will, but is within the District, a summons may be issued to him, either at the instance of a person interested or ex officio by the Register of Wills, requiring him to appear and file his bond as required by law within 5 days after service of the summons. If he is not found in the District of Columbia, notice shall be given to him by publication to appear within 10 days after publication of notice, and on his failure to appear and give his bond and qualify by taking the prescribed oath, letters of administration with the will annexed may be granted as if an executor had not been named. (Sept. 14, 1965, 79 Stat. 704, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-306 (Mar. 3, 1901, ch. 854, § 267, 31 Stat. 1233; June 24, 1949, ch. 242, § 2, 63 Stat. 268).

Changes are made in phraseology.

#### § 20-308. Summons to each of several executors

Where there is more than one executor named in a will, there may be the same proceeding with respect to each of them as if he were the sole executor, and any circumstances under which letters of administration with the will annexed may be granted on failure of a sole-named executor authorize the granting of letters testamentary to one or more of the executors on failure of one or more of the others. Any circumstances under which letters of administration with the will annexed may be granted on failure of a sole-named executor authorize the granting of the letters of administration on failure of all the executors named to appear and qualify as provided by this subchapter. (Sept. 14, 1965, 79 Stat. 704, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-307 (Mar. 3, 1901, ch. 854, § 268, 31 Stat. 1233).

Minor changes are made in phraseology.

#### § 20-309. Renunciation

If an executor named in a will files or transmits to the Probate Court an attested renunciation of his executorship, there shall be the same proceeding with respect to granting letters testamentary or of administration with the will annexed as if the party so renouncing had not been named in the will. (Sept. 14, 1965, 79 Stat. 705, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-308 (Mar. 3, 1901, ch. 854, § 269, 31 Stat. 1233).

Minor changes are made in phraseology.

#### § 20-310. Disqualification of executor

Where a person named as executor is disqualified from serving, letters testamentary or of administration with the will annexed may be granted as if he



had not been named as executor. (Sept. 14, 1965, 79 Stat. 705, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-309 (Mar. 3, 1901, ch. 854, § 270, 31 Stat. 1233).

Minor changes are made in phraseology.

#### § 20-311. No power to act without letters

Where letters testamentary are granted to one or more of the executors named in a will on failure of the rest, an executor not named in the letters may not, in any manner, interfere with the administration. Where letters of administration with the will annexed are granted, an executor named in the will may not, in any manner, interfere with the administration. An executor named in a will may not, before letters testamentary are granted to him, dispose of any part of the estate of the deceased or interfere therewith, further than is necessary to collect and preserve it. (Sept. 14, 1965, 79 Stat. 705, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-310 (Mar. 3, 1901, ch. 854, § 271, 31 Stat. 1233).

Changes are made in phraseology.

#### § 20-312. Forms of letters testamentary

The following is the form of letters testamentary to be issued under the seal of the Probate Court:

District of Columbia:

The United States of America.

To all persons to whom these presents come, greeting:

The last will and testament of ———, of ———, deceased, in due form of law, has been exhibited, proved, and recorded in the office of the Register of Wills of the District of Columbia, a copy of which is annexed to these presents, and administration of all the goods, chattels, and credits of the deceased is hereby granted unto ———, the executor appointed by the will.

Witness [A B], the Chief Judge of the Superior Court of the District of Columbia, this ——— day of ———.

Test:

[C D], Register of Wills.

(Sept. 14, 1965, 79 Stat. 705, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 149(2), 84 Stat. 566.)

#### AMENDMENT

1970—Section 149(2) of Act July 29, 1970, Public Law 91-358 amended section by striking out in the form referred to therein "the Chief Judge of the United States District Court for the District of Columbia" and inserting in lieu thereof "the Chief Judge of the Superior Court of the District of Columbia".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101 and note to 15-707.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-311 (Mar. 3, 1901, ch. 854, § 272, 31 Stat. 1233; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(a) (b); May 24, 1949, ch. 139, § 127, 63 Stat. 107).

In the introductory clause of the section, "Probate Court" is substituted for "probate term of the United States District Court for the District of Columbia". See revision note under section 18-110 herein.

The only other change is the capitalization of "register of wills".

#### § 20-313. Executor of executor.

The executor of an executor, as such, is not entitled to administration de bonis non on the estate of the first deceased. (Sept. 14, 1965, 79 Stat. 705, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-312 (Mar. 3, 1901, ch. 854, § 300, 31 Stat. 1237).

Minor changes are made in phraseology.

### SUBCHAPTER II.—ADMINISTRATORS

#### § 20-331. Granting of letters of administration

On the death of a person leaving real or personal estate in the District of Columbia, the Probate Court may grant letters of administration on his estate, on the application of a person interested, and on proof satisfactory to the court that the decedent died intestate. (Sept. 14, 1965, 79 Stat. 705, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-201 (Mar. 3, 1901, ch. 854, § 273, 31 Stat. 1234).

Changes are made in phraseology.

#### CROSS REFERENCES

Appointment and tenure of executors and administrators, see § 20-338, 20-339, 20-351 et seq.

Jurisdiction, pleading and practice in probate court, see §§ 11-921 and 16-3101 et seq.

Trust companies authorized to act, see §§ 26-309, 26-312, 26-316, 26-333, 26-334.

### NOTES TO DECISIONS UNDER PRIOR LAW

#### Generally

Coverage afforded decedent by automobile liability policy pursuant to automobile rental agreement made by decedent in District of Columbia while decedent was not ordinary transient in relationship with the District constituted "personal estate in District" within statute providing that on death of any person leaving personal estate in District, letters of administration on his estate may be granted. *M. Milmo v. J. Toomey* (1966, 356 F. 2d 793, 123 U.S. App. D.C. 40).

#### Contents of petition

Where petition of sister of deceased in the United States District Court for the District of Columbia properly asked for letters of administration and necessarily claimed that deceased died intestate because his holographic will was unwitnessed, the petition did not make two claims and had only one purpose, namely, the securing of administration, though it prayed that the holographic will be denied probate and record, and therefore appeal of sister from order denying motion for rehearing would not be dismissed, on ground that it offended Federal Rule of Civil Procedure, Rule 54(b), 28 U.S.C. App., providing that when more than one claim for relief is presented, court may direct entry of final judgment on one or more but less than all of the claims only on expressed determination that there is no just reason for delay and on express direction for entry of judgment. *Shaffer v. Children's Hospital Society of Los Angeles, Calif.* (1959, 285 F. 2d 107, 105 U.S. App. D.C. 123).

#### Discretion of court

Under District of Columbia statutes relating to appointment of administrators of decedents' estates, a court has discretion to select an administrator from outside the immediately preferred class, provided there is a sound reason to depart from the scheme of statutory preferences, but a next of kin who is not barred by a specific statutory disqualification and who applies for letters of administration has a mandatory preference over a creditor or a person not in any preferred classification. *Randall v. Bockhorst* (1956, 232 F. 2d 334, 98 U.S. App. D.C. 77).



**Eligibility**

Consul of Greece in the city of Washington entitled to sole administration of estate of deceased national. *Diamantopoulos v. Glekas* (1926, 11 F. 2d 200, 56 App. D.C. 151).

Appointment of administrator in Virginia does not imply a finding of domicile in Virginia. *In re Grinnage's Estate* (1939, 101 F. 2d 695, 69 App. D.C. 370).

Appointment of administrator in Virginia does not prevent granting of letters of administration of personality in the District by the District Court of the United States for the District of Columbia. *Id.*

**Jurisdiction**

District Court sitting in probate had jurisdiction to appoint ancillary administrator by reason of asset which consisted solely of protection afforded by automobile liability policy in District of Columbia to decedent who was no transient with relation to the District when entering into automobile rental contract giving rise to the policy rights. *M. Milmo v. J. Toomey* (1966, 356 F. 2d 793, 123 U.S. App. D.C. 40).

That District Court allegedly should decline jurisdiction over tort action against decedent's estate from forum non conveniens considerations did not demonstrate lack of jurisdiction to appoint ancillary administrator so that suit might be brought against him for damages arising out of Pennsylvania collision killing decedent and certain occupants of a vehicle other than that decedent rented in District of Columbia. *Id.*

**Largest creditor**

The District of Columbia statute providing that administration may be granted on application of largest creditor in absence of application for administration by one entitled to apply therefor and statute providing for service of process on nonresident motorist involved in automobile accident in District of Columbia permitted motorist who had cause of action against estate of deceased nonresident motorist for injuries sustained in collision in District to have administrator appointed for decedent, where cause of action, if established, would give motorist right to proceed against decedent's insurer, notwithstanding that decedent's widow was named as executrix in decedent's will and that she had declined or failed to come into District of Columbia and that petition for administration recited that decedent was resident of District of Columbia. *G. J. O'Sullivan v. A. G. Hicks* (1963, 313 F. 2d 900, 114 U.S. App. D.C. 219).

**Property**

A claim against the United States does not furnish the foundation for a local administration when the decedent was domiciled in another jurisdiction at the time of his death. *In re Coit's Estate* (1894, 3 App. D.C. 246).

A government check in the possession of the treasurer of the United States, payable to a particular person, is for jurisdictional purposes personal property in the District of Columbia. *In re Grinnage's Estate* (1939, 101 F. 2d 695, 69 App. D.C. 370).

**Removal of administrator**

Unless power of probate court to remove an administratrix for a particular cause can be found in this chapter or by necessary inference therefrom, it does not exist. *Perkins v. Berger* (1945, 145 F. 2d 856, 79 U.S. App. D.C. 286).

The fact that administratrix asserted a stale claim against deceased's estate did not authorize removal of administratrix. *Id.*

**§ 20-332. Oath and bond of administrator**

(a) Before an administrator, other than a local corporation authorized by the laws of the District of Columbia to act as administrator, enters upon his duties, he shall:

(1) take and subscribe an oath similar to that prescribed for executors; and

(2) file in the Probate Court his bond, with security approved by the court, in such penalty as the court requires, with condition to administer according to law all the money, goods, chattels,

rights, and credits of the deceased, and in all other respects perform the trust reposed in him.

(b) If the court orders the sale of the decedent's real estate, the administrator, other than a local corporation authorized by the laws of the District of Columbia to act as administrator, shall give a like bond conditioned to administer the proceeds from the real estate that may be sold for the payment of the decedent's debts which come into his possession or to the possession of another person for him. (Sept. 14, 1965, 79 Stat. 705, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 149(1), 84 Stat. 566.)

**AMENDMENT**

1970—Section 149(1) of Act July 29, 1970, Public Law 91-358 amended subsection (a)(2) by striking out "to the United States".

**EFFECTIVE DATE OF 1970 AMENDMENT**

See note preceding section 11-101.

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 20-202 (Mar. 3, 1901, ch. 854, § 274, 31 Stat. 1234).

Changes are made in phraseology and arrangement.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 20-333.

**NOTES TO DECISIONS UNDER PRIOR LAW****Consular officer**

A bond is required where Greek consul is appointed administrator of estate of deceased national. *Diamantopoulos v. Glekas* (1926, 11 F. 2d 200, 56 App. D.C. 151).

**CROSS REFERENCE**

Bonds required of trust companies, see §§ 26-333, 26-334.

**§ 20-333. Special bond in intestacy**

(a) Where the person appointed as administrator is entitled to the residue of the estate after the payment of the debts, he may, instead of the bond prescribed by section 20-332, execute a bond, with security approved by the court, in such penalty as the court considers sufficient, conditioned for the payment of all debts and claims against the deceased, and all damages which may be recovered against him as administrator; and if the administrator files the written consent of those entitled to the residue and they are all of full age, the court may direct that only the special bond provided by this section be given. In this case, the administrator is not required to return inventory or account.

(b) When the administrator gives a special bond as provided by this section, he is personally answerable for all debts, claims, and damages which may be recovered against him, in like manner as the executor who gives a similar bond as provided by section 20-304. The sureties on the bond are not liable for a greater amount than the penalty thereof. (Sept. 14, 1965, 79 Stat. 706, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 20-203 (Mar. 3, 1901, ch. 854, § 275, 31 Stat. 1234; June 30, 1902, ch. 1329, 32 Stat. 528).

Changes are made in phraseology and arrangement.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 20-353, 20-701, 20-702.



## NOTES TO DECISIONS UNDER PRIOR LAW

## In general

Where ordinarily dispute involved in action by widow against administrator to recover her distributive share of estate would be within jurisdiction of federal District Court for the District of Columbia sitting as a Court of Probate, but action was brought in Municipal Court of the District of Columbia because administrator had given a special bond, which relieved him from accounting and made personally answerable for debts and claims against estate, and it was determined that widow was entitled to prevail, administrator was not entitled to allowance of attorneys' fees. *Ashton v. Ashton* (D.C. Mun. App. 1955, 117 A.2d 459).

## § 20-334. Persons entitled to administer; order of preference

(a) The Probate Court may grant letters of administration of the estate of a person dying intestate to one or more of the following persons, according to the order of preference indicated:

(1) where there is a surviving spouse and a child or children, to the surviving spouse or to the child, or one or more of the children qualified to act as administrator;

(2) where there is a surviving spouse and no child, the surviving spouse shall be preferred, and, next to the surviving spouse, a grandchild shall be preferred;

(3) where there is no surviving spouse, or child, or grandchild to act, the father or mother shall be preferred;

(4) where there is no surviving spouse, or child, or grandchild, or father, or mother to act, brothers and sisters shall be preferred; and, when there is no brother or sister, the next of kin shall be preferred;

(5) relations of the whole blood shall be preferred to those of the half-blood in equal degree; and relations of the half-blood shall be preferred to those of the whole blood in a remoter degree;

(6) relations descending shall be preferred to relations ascending, in the collateral line; for example, a nephew shall be preferred to an uncle;

(7) a person may not be preferred in the ascending line beyond a father or mother, or in the descending line below a grandchild.

(b) Where a person described in subsection (a) of this section is incompetent to serve, administration shall be granted as if he or she were not living.

(c) Where there are no relations of the intestate, or those entitled to letters of administration decline to appear and apply for them, after proper summons or notice, administration may be granted to the largest creditor applying therefor. When creditors neglect to apply, the court may exercise its discretion in granting administration. (Sept. 14, 1965, 79 Stat. 706, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Aug. 11, 1971, Pub. L. 92-88, § 7, 85 Stat. 314.)

## AMENDMENT

1971—Section 7 of Act Aug. 11, 1971, Pub. L. 92-88, amended section—

(1) by striking out in clause (3) of subsection (a) "the father shall be preferred; and, where there is no father, the mother shall be preferred", and inserting in lieu thereof "the father or mother shall be preferred"; and

(2) by deleting in such subsection (a), clauses numbered (5), (9), and (10), and redesignating clauses numbered (6), (7), and (8) as (5), (6), and (7) respectively.

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 20-204 to 20-216 (Mar. 3, 1901, ch. 254 §§ 276-288, 31 Stat. 1234, 1235; Apr. 19, 1920, ch. 153, 41 Stat. 561, 562).

Section consolidates sections 20-204 to 20-216, inclusive, of D.C. Code, 1961 ed., with changes in phraseology and arrangement necessary to effect the consolidation.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20-339.

## NOTES TO DECISIONS UNDER PRIOR LAW

## Appointment by other court

The validity of appellee's appointment as administratrix by the New Jersey court is not an essential condition to her appointment as administratrix ad litem. *Welch v. Welch* (1927, 19 F.2d 686, 57 App. D.C. 212).

## Appointment of outsider

If there is next of kin, who is not barred under specific statutory disqualification, and who applies for letters, creditor or person not in any preferred classification may not be appointed administrator. *In re Estate of C. H. Lucas* (D.C.D.C. 1964, 229 F. Supp. 452).

Under this section providing that, if intestate leaves widow or child, administration shall be granted either to widow or child, appointment of complete outsider as administrator was not justified, even though widow had failed in earlier proceeding to establish documents proffered by her as decedent's will and was seeking to charge estate with expenses of that proceeding and relations between widow and decedent's child were strained. *Brooks v. De Lacy etc.* (1958, 257 F.2d 227, 103 U.S. App. D.C. 223).

## Brother or mother

Appointment of decedent's brother as administrator de bonis non upon death of decedent's father and administrator, held properly within discretion of court on motion of divorced mother for removal. *Haviland v. Harriss* (1931, 50 F.2d 1069, 60 App. D.C. 255).

## Caveat

Where testatrix by purported will left her entire estate to her son, and estate included no realty in District of Columbia, and son offered will for probate in District of Columbia, husband of testatrix lacked necessary interest in estate to file a caveat, even though husband might be appointed administrator if will should be set aside, since husband would take same share of estate whether will was or was not sustained. *Kimberland v. Kimberland* (1953, 204 F.2d 38, 92 U.S. App. D.C. 145).

## Date of appointment

Where one has so conducted himself by management of a business and sale of assets belonging to a decedent that he becomes an executor de son tort, his subsequent appointment as administrator reflects back to the death of the decedent. *Penn v. Whidden* (D.C. Mun. App. 1945, 42 A.2d 136).

## Discretion of court

Court may, for good reason, appoint administrator from among class of next of kin accorded lesser priority by statute. *J. F. Gage et al. v. The Riggs Nat'l Bank of Washington, D.C., et al.* (1964, 337 F.2d 105, 119 U.S. App. D.C. 69).

Where preferred classes contending for appointment as administrator were paternal first cousins and a maternal first cousin, appointment of bank, as outsider, with express approval of sole surviving representative of secondarily preferred class of maternal first cousins was not abuse of discretion, in view of fact that organization which was not party to proceeding held assignments of 40 percent of interests of each of paternal cousins and that if paternal first cousin was appointed, services which counsel would render for him in that capacity would be paid for by such organization. *Id.*

Where all next of kin were first cousins of deceased, and all male next of kin filed declinations, but only female next of kin applied for letters of administration, her application would be granted, and application of close friend and creditor of deceased for letters of administration would be denied. *In re Estate of C. H. Lucas* (D.C.D.C. 1964, 229 F. Supp. 452).



Fact that male next of kin of deceased filed declarations and consented to appointment of creditor of deceased as administratrix did not divest female next of kin of equal degree of statutory right to appointment as administratrix. *Id.*

Under District of Columbia statutes relating to appointment of administrator of decedents' estates, a court has discretion to select an administrator from outside the immediately preferred class, provided there is a sound reason to depart from the scheme of statutory preferences, but a next of kin who is not barred by specific statutory disqualification and who applies for letters of administration has a mandatory preference over a creditor or a person not in any preferred classification. *Randall v. Bockhorst* (1956, 232 F. 2d 334, 98 U.S. App. D.C. 77).

#### Largest creditor

The District of Columbia statute providing that administration may be granted on application of largest creditor in absence of application for administration by one entitled to apply therefor and statute providing for service of process on nonresident motorist involved in automobile accident in District of Columbia permitted motorist who had cause of action against estate of deceased nonresident motorist for injuries sustained in collision in District to have administrator appointed for decedent, where cause of action, if established, would give motorist right to proceed against decedent's insurer, notwithstanding that decedent's widow was named as executrix in decedent's will and that she had declined or failed to come into District of Columbia and that petition for administration recited that decedent was resident of District of Columbia. *G. J. O'Sullivan v. A. G. Hicks* (1963, 313 F. 2d 900, 114 U.S. App. D.C. 219).

#### Nonresident alien

Brother of deceased alien who was naturalized preferred to widow and parents who are nonresident aliens. *Lely v. Kalinoglu* (1935, 76 F. 2d 983, 64 App. D.C. 213, 100 A.L.R. 1523, certiorari denied 55 S. Ct. 925, 295 U.S. 765, 79 L. Ed. 1707).

#### Order of priority

Male paternal first cousins were preferred class over female maternal first cousins as to right to letters of administration. *J. F. Gage et al. v. The Riggs National Bank of Washington, D.C., etc.* (1963, 320 F. 2d 715, 115 U.S. App. D.C. 396).

Values of substance inhere in right to letters of administration and those upon whom that right has been conferred by statute should not be deprived of it, except as statute has provided. *Id.*

In appropriate case and for sound reasons, discretion may be exercised to select an administrator from among lesser preferred classes of next of kin. *Id.*

#### Priority of next of kin

If there is a next of kin who is not barred under a specific statutory disqualification and who applies for letters, a creditor or person not in any preferred classification may not be appointed. *J. F. Gage et al. v. The Riggs National Bank of Washington, D.C., etc.* (1963, 320 F. 2d 715, 115 U.S. App. D.C. 396).

Where neither pleadings nor oral argument brought to court's attention question that appointment of an outsider as administrator turned upon issue of whether there has been a declination by cousins, appointment of bank as administrator would be remanded for further proceedings. *Id.*

#### Remand for further proof

Where creditor filed petition for administration of deceased's estate stating that after diligent search, creditor was satisfied that deceased died intestate and without surviving relation, and District of Columbia relied upon allegations of creditor's petition, pleadings and evidence were insufficient to authorize probate court to determine whether the District was entitled to distribution under escheat statute, § 18-717, and case was remanded for determination of question whether intestate died without heirs. *Frazier v. Kutz* (1944, 139 F. 2d 380, 78 U.S. App. D.C. 241).

#### Right to appointment

These statutory regulations imply a right to appointment upon the part of the described parties, in the absence of disqualification, and consequently after they are once regularly appointed and qualified they can not be removed without notice and a trial. *Brosnan v. Brosnan* (1923, 289 F. 547, 53 App. D.C. 149).

In the absence of competent relatives or creditors administration shall be granted at the discretion of the court. *Diamantopoulos v. Glekas* (1926, 11 F. 2d 200, 56 App. D.C. 151).

#### Statutory scheme

This section setting forth scheme as to who shall be appointed administrator, court may in its discretion depart from the statutory scheme where there is a sound reason to do so. *Dial v. Johnson* (1958, 259 F. 2d 189, 104 U.S. App. D.C. 32).

#### Validation of acts

Where one has so conducted himself by management of business and sale of assets belonging to a decedent that he becomes an executor de son tort, his subsequent appointment as administrator validates any previous acts which would have been valid if done after his appointment and his acts as executor de son tort, though void, are thereby made valid. *Penn v. Whidden* (D.C. Mun. App. 1945, 42 A. 2d 136).

#### Widow's preference

Under District of Columbia law, a widow has a statutory preference to letters of administration, but this preference is subject to court's discretion. *Randall v. Bockhorst* (1956, 232 F. 2d 334, 98 U.S. App. D.C. 77).

Where District Court revoked letters of administration granted to decedent's sister, and it appeared that decedent's widow had a claim against major portion of estate, had been long separated from decedent and had delayed a year after death before seeking to be appointed administratrix, district court should have considered an alternative to appointment of widow as administratrix. *Id.*

### § 20-335. Notice of application

Upon an application for letters of administration, such notice thereof shall be given, by publication or otherwise, as the rules of the court require. (Sept. 14, 1965, 79 Stat. 707, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-217 (Mar. 3, 1901, ch. 854, § 289, 31 Stat. 1235; June 30, 1902, ch. 1329, 32 Stat. 528).

### § 20-336. Declining administration

If a person entitled to administration declines it in writing, the court shall proceed as if he or she were not entitled to it. (Sept. 14, 1965, 79 Stat. 707, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-218 (Mar. 3, 1901, ch. 854, § 291, 31 Stat. 1235).

Changes are made in phraseology.

### § 20-337. Form of letters of administration

The following is the form of letters of administration to be issued under the seal of the Probate Court: District of Columbia:

The United States of America.

To all persons to whom these presents come, greeting;

Administration of the goods, chattels, and credits of \_\_\_\_\_, late of \_\_\_\_\_ deceased, is hereby granted unto \_\_\_\_\_, of \_\_\_\_\_.



Witness [A B], the Chief Judge of the Superior Court of the District of Columbia.

Test:

[C D], Register of Wills.

(Sept. 14, 1965, 79 Stat. 707, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 149(2), 84 Stat. 337.)

#### AMENDMENT

1970—Section 149(2) of Act July 29, 1970, Public Law 91-358 amended section by striking out in the form referred to therein "the Chief Judge of the United States District Court for the District of Columbia" and inserting in lieu thereof "the Chief Judge of the Superior Court of the District of Columbia".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101 and note to 15-707.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-219 (Mar. 3, 1901, ch. 854, § 293, 31 Stat. 1235; June 30, 1902, ch. 1329, 32 Stat. 529; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(a)(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

### § 20-338. Administrator with the will annexed; preference

Where a will admitted to probate does not appoint an executor, or the executor therein appointed has died or renounced the executorship, or is incompetent to serve, administration shall be granted with the will annexed to the person who would have been entitled to administration in case of the intestacy of the deceased testator. A residuary legatee named in the will, shall be, in an appointment under this section, preferred to all, except a surviving spouse. The condition of the bond of the administrator so appointed and the oath to be taken by him and his duties and liabilities are the same as if he had been appointed executor in the will and had received letters testamentary. (Sept. 14, 1965, 79 Stat. 707, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1963 ed., § 20-103 (Mar. 3, 1901, ch. 854, § 298, 31 Stat. 1236).

The provision for preference to a widow is changed to provide for preference to a surviving spouse, to conform with the probable legislative intent, considering the Act of Apr. 19, 1920, ch. 153, 41 Stat. 561, which, with respect to preference in granting ordinary letters of administration, amended a number of other sections of the above-cited 1901 Act, referring to the widow, to add a reference to the surviving husband. Those provisions are carried into section 20-334 herein.

Changes are made in phraseology.

### § 20-339. Administrator de bonis non; form of letters; duties

If an executor or administrator dies before the administration of an estate is completed, the court may exercise its discretion in granting letters of administration de bonis non or de bonis non cum testamento annexo, as the case requires, giving preference to the person who would be entitled in the order provided by section 20-334, if he applies for the letters. The form of the letters is the same as in the case of an original administration, except that it shall be confined to the property of the deceased not already administered. The authority shall be, under the court's direction, to administer all property herein described as assets and not distributed or delivered or retained by the executor or former administra-

tors. (Sept. 14, 1965, 79 Stat. 707, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-105 (Mar. 3 1901, ch. 854, § 299, 31 Stat. 1237).

Changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Appointment of brother or mother

Where decedent's father was also his administrator, the appointment, at father's death, of brother as administrator, to exclusion of divorced mother, was proper. *Haviland v. Harriss* (1931, 50 F. 2d 1069, 60 App. D.C. 255).

##### Discretion of court

Under District of Columbia statutes relating to appointment of administrators of decedents' estates, a court has discretion to select an administrator from outside the immediately preferred class, provided there is a sound reason to depart from the scheme of statutory preferences, but a next of kin who is not barred by specific statutory disqualification and who applies for letters of administration has a mandatory preference over a creditor or a person not in any preferred classification. *Randall v. Bockhorst* (1956, 232 F. 2d 334, 98 U.S. App. D.C. 77).

### SUBCHAPTER III.—MISCELLANEOUS PROVISIONS RELATING TO EXECUTORS AND ADMINISTRATORS

### § 20-351. Competency to serve as executor or administrator; determination

(a) Letters testamentary or of administration may not be granted to a person who:

- (1) has been convicted of an infamous offense; or
- (2) is a mentally-ill person, as defined by section 21-501; or
- (3) under conservatorship as defined in section 21-1501; or
- (4) is under 18 years of age; or
- (5) is an alien.

(b) The Probate Court shall determine all questions as to the disqualification, on any of the grounds specified by subsection (a) of this section, of persons claiming to be entitled to letters testamentary or of administration, after such notice to them as the court directs. (Sept. 14, 1965, 79 Stat. 708, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 149(3), 84 Stat. 566.)

#### AMENDMENT

1970—Section 149(3) of Act July 29, 1970, Public Law 91-358 amended subsection (a)(2) by striking out "an insane person" and inserting in lieu "a mentally-ill person".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-110 (Mar. 3, 1901, ch. 854, § 261, 31 Stat. 1232).

Changes are made in phraseology.

#### CROSS REFERENCE

Jurisdiction, pleading and practice in probate court, see §§ 11-921 and 16-3101 et seq.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Refusal of letters to nominated executors

Probate court may refuse letters testamentary to nominated executors only when they are expressly disqualified by statute. *H. M. Berryman et al. v. The Riggs National Bank etc.* (1968, 401 F. 2d 993, 131 U.S. App. D.C. 42).

Compliance with statute relating to competency of person to serve as executor is what is contemplated by



the terms "legally competent" as used in statute requiring issuance of letters testamentary to executor named in will if he is legally competent. *Id.*

#### Testator's choice

Testator's choice should be granted letters testamentary unless he is disqualified under statute relating to competency of person to serve as executor or administrator. *H. M. Berryman et al. v. The Riggs National Bank etc.* (1968, 401 F. 2d 993, 131 U.S. App. D.C. 42).

### NOTES TO DECISIONS UNDER PRIOR LAW

#### Compensation although disqualified

Where petitioners failed to bring the disqualification of the administrator to the attention of the probate court until administration was almost completed, such administrator will be allowed reasonable commissions and compensation to date of appointment and qualification of his successor, including expenses and reasonable attorney's fees, and costs of the proceeding will be taxed against petitioners. *In re Allen's Estate* (D.C.D.C. 1940, 30 F. Supp. 243).

#### Construction

This section prohibiting granting of letters testamentary or of administration to person convicted of infamous crime is not discretionary, and if such disqualification is discovered after letters have been issued appointment should be revoked. *Dial v. Johnson* (1958, 259 F. 2d 189, 104 U.S. App. D.C. 32).

#### Derivation of probate system

The District of Columbia probate system is largely derived from Maryland, and, ordinarily, courts of the District follow Maryland decisions. *Randall v. Bockhorst* (1956, 232 F. 2d 334, 98 U.S. App. D.C. 77).

#### Discretion of court

Though court has power and under District of Columbia statute to select administrator from outside immediately preferred class, exercise of that discretion must take into account scheme of statutory preferences, and court must have sound reason to depart therefrom. *In re Estate of C. H. Lucas* (D.C.D.C. 1964, 229 F. Supp. 452).

Under District of Columbia statutes relating to appointment of administrators of decedents' estates, a court has discretion to select an administrator from outside the immediately preferred class, provided there is a sound reason to depart from the scheme of statutory preferences, but a next of kin who is not barred by specific statutory disqualification and who applies for letters of administration has a mandatory preference over a creditor or a person not in any preferred classification. *Randall v. Bockhorst* (1956, 232 F. 2d 334, 98 U.S. App. D.C. 77).

#### Disqualification or removal

In proceeding on petition for removal of administrator on ground that he had been convicted of an infamous crime, order refusing removal must be vacated and set aside in order that there could be an express judicial finding made as to whether administrator had been convicted as alleged, and order entered for his removal if finding was against him on that issue. *Dial v. Johnson* (1958, 259 F. 2d 189, 104 U.S. App. D.C. 32).

An order removing a disqualified administrator is a final appealable order. *Perry v. Wilson* (1931, 48 F. 2d 1021, 60 App. D.C. 109).

Petitioners whose knowledge of the disqualification of administrator existed at the time of his appointment are reprimanded by the court for failure to disclose it at that time. *In re Allen's Estate* (D.C.D.C. 1940, 30 F. Supp. 243).

Conviction of conspiracy to violate the National Prohibition Act is sufficient to disqualify and cause removal of an administrator. *Id.*

#### Fraud in securing appointment

If trial court found that administrator had perpetrated fraud in securing appointment, trial court should exercise its discretion to determine whether fraud was a sound reason for it to depart from statutory scheme in designating administrator. *Dial v. Johnson* (1958, 259 F. 2d 189, 104 U.S. App. D.C. 32).

### § 20-352. Persons between 18 and 21 years of age

When letters testamentary or of administration are granted to a person above 18, but under 21, years of age, the bond executed by him for the faithful performance of his duties is as binding as if he were of full age. (Sept. 14, 1965, 79 Stat. 708, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-102 (Mar. 3, 1901, ch. 854, § 294, 31 Stat. 1236).

Changes are made in phraseology.

### § 20-353. Application for letters; contents; bond; sale of real estate

When a person applies to the Probate Court for letters testamentary or of administration, he shall set forth, under oath, as fully as possible, all the personal and real estate left by the decedent and the amount of his debts as far as can be ascertained. The penalty of the bond required of him, except in the cases provided for by sections 20-303, 20-304, and 20-333, shall be sufficient to secure the proper application of all the personal estate of the testator or intestate. If it becomes necessary to sell the real estate of the decedent, in part or in whole, the executor or administrator shall give such additional bond, with approved security, as the court directs, to secure the proper application of the proceeds arising from the sale. Where an executor is empowered by the will to sell the real estate of the testator, for any purpose, he shall account for the proceeds in the court. (Sept. 14, 1965, 79 Stat. 708, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-104 (Mar. 3, 1901, ch. 854, § 295, 31 Stat. 1236).

Changes are made in phraseology.

### § 20-354. Will proved after letters of administration granted; revocation; pending actions; judgments; accounting; liability

(a) Where administration is granted, and, afterwards, a will disposing of the estate of the deceased is proved according to law, and letters testamentary are issued thereon, the letters testamentary constitute a revocation of the letters of administration. The executor obtaining letters may prosecute civil actions commenced by the administrator and obtain judgment in his own name, and may defend suits commenced against the administrator. The executor shall have the benefit of all judgments obtained by the administrator, and is bound by all judgments obtained against the administrator to the extent of assets received by the executor, unless the judgments were obtained by fraud.

The administrator, without delay, shall account for and deliver to the executor all personal estate and proceeds of realty sold in his possession, belonging to the deceased, in default of which his bond may be sued upon by the executor or administrator with the will annexed.

(b) The administrator may not be held to answer for acts lawfully done by him, in good faith and in ignorance of the will, before an actual or implied revocation of his letters. When distribution of the estate, or part of it, has been lawfully made by him, the distributees, and their personal representatives,



and not the administrator, are answerable for the property so distributed, or its value, to the persons entitled to it. (Sept. 14, 1965, 79 Stat. 708, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-106 (Mar. 3, 1901, ch. 854, § 290, 31 Stat. 1235; June 30, 1902, ch. 1329, 32 Stat. 528).

Section is derived from the first two paragraphs of section 20-106 of D.C. Code, 1961 ed. The third (final) paragraph of section 20-106 is carried into section 20-355 herein.

In the first paragraph, "civil actions" is substituted for "any actions at law or in equity". In ordinary civil cases in the District Court, and the Court of General Sessions, there is now only one form of action, known as a "civil action". See Rule 2 of the Federal Rules of Civil Procedure, and Rule 2 of the civil rules of the Court of General Sessions.

Changes are made in phraseology.

#### CROSS REFERENCE

Revocation of letters and accounting, see § 16-3110.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Defenses to compulsory accounting

That time within which a caveat to will could be filed by heirs not found within jurisdiction but given notice of application for probate of will by publication had not yet expired was not a sufficient defense to residuary legatee's action against executor to compel an accounting and distribution of residuary estate. *Cashell v. Eslin* (D.C.D.C. 1944, 55 F. Supp. 747).

##### Duty of executor

After probate of a will and until its revocation, executor is required to act in accordance with terms of will, and, in absence of wrongdoing on his part, is fully protected in so doing. *Cashell v. Eslin* (D.C.D.C. 1944, 55 F. Supp. 747).

##### Effect of letters of administration

Letters of administration granted on a petition setting out the existence of a will and averring that no proceedings had been taken for its probate and seeking no adjudication as to the will, and the order being silent on that point, is not an adjudication that decedent died intestate. *Morris v. Foster* (1922, 278 F. 321, 51 App. D.C. 238, certiorari denied 42 Ct. 586, 259 U.S. 582, 66 L. Ed. 1074).

A subsequent probate of the will and granting of letters testamentary revoke the letters of administration. *Id.*

#### § 20-355. Will declared invalid after distribution; liability

When a will is adjudged invalid in an action begun after lawful distribution of the estate, or a part of it, by the executor, in good faith and without his knowledge of the invalidity of the will, and without notice to him that the action was intended, the distributees of the property, and their personal representatives, and not the executor, are answerable for the property so distributed, or its value, to the persons entitled to it. (Sept. 14, 1965, 79 Stat. 709, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-106 (Mar. 3, 1901, ch. 854, § 290, 31 Stat. 1235; June 30, 1902, ch. 1329, 32 Stat. 528).

Section is derived from the third (final) paragraph of section 20-106 of D.C. Code, 1961 ed. The first and second paragraphs of section 20-106 are carried into section 20-354 herein.

Changes are made in phraseology.

#### § 20-356. Removal of co-executor or co-administrator for negligence or misconduct; complaint; recovery of loss or damage

If a joint executor or administrator apprehends that he is in danger of suffering by the negligence or misconduct in the administration or the improper use or misapplication of the assets of the estate by a co-executor or co-administrator, he may make complaint to the court. Upon adjudging the complaint to be well founded, the court may revoke the letters of the executor or administrator so complained of and compel the delivery and surrender to the remaining executor or administrator of the assets, books, papers, and evidences of debt, of the estate in the possession or control of the person whose letters have been revoked. The remaining executors or administrators may recover, in a civil action, for loss or damage they may suffer through the executor or administrator whose letters have been revoked. (Sept. 14, 1965, 79 Stat. 709, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-107 (Mar. 3, 1901, ch. 854, § 125, 31 Stat. 1210).

Section is based on section 20-107 of D.C. Code, 1961 ed., insofar as the latter related to executors and administrators. Insofar as it related to collectors, it is carried into section 20-505 herein.

In the provision authorizing the remaining executors, etc., to recover for loss or damage, "civil action" is substituted for "action on the case". See revision note under section 20-354 herein.

Changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Grounds for removal

Where executor has made improper payment of claims but has not disposed of salable property unauthorizedly, court's only direct sanction is to order executor to correct or protect against his impropriety, and if executor fails to comply, then to remove him. *C. P. Henry v. J. A. Grimes, Jr.* (1964, 334 F. 2d 550, 118 U.S. App. D.C. 160).

Executor's commission is not fixed by Probate Court until final settlement of his accounts, and he may not ordinarily collect any fees on account before his services terminate. *Id.*

This section providing that if any joint executor, administrator, or collector shall apprehend that he is likely to suffer by negligence or misconduct in administration or improper use or misapplication of assets of estate by any coexecutor, coadministrator, or cocollector, he may make complaint to court, and if complaint shall be adjudged "well founded," court shall have authority, in its discretion, to revoke powers and authority of executor, administrator, or collector, does not necessarily require that complaint be adjudged "well founded" in sense that there be a final determination on merits of question of ownership of controverted property, before removal can be had. *Goldsborough v. Marshall* (1957, 243 F. 2d 240, 100 U.S. App. D.C. 134).

Where husband of deceased wife and a daughter of deceased wife by former marriage were appointed as co-administrators of estate of deceased wife, and controversy arose as to whether certain realty standing in name of deceased wife and sum of money deposited in husband's name were in fact property of husband, and daughter filed a motion under this section as administrator for removal of husband as coadministrator, husband's removal was authorized by this section, on ground that daughter's complaint was "well founded." *Id.*

##### Jurisdiction

Where husband of deceased wife and one of deceased wife's daughters were appointed as coadministrators of estate of wife, and daughter filed motion for removal of husband as coadministrator, because of controversy as to whether realty standing in deceased wife's name and



sum of money deposited in husband's name were in fact property of husband, and federal District Court entered first order removing husband and appointing a neutral party as administrator, and husband then appealed from first order, District Court had jurisdiction to enter second order appointing another neutral party as administrator, when first neutral party declined appointment. *Goldsborough v. Marshall* (1957, 243 F. 2d 240, 100 U.S. App. D.C. 134).

**§ 20-357. Additional bond; failure to provide; revocation; delivery of assets**

Where the Probate Court is satisfied that the bond already given by an executor or administrator is insufficient, it may require the executor or administrator to file an additional bond, and on his failure to do so may revoke his letters. Upon the revocation of letters under this section, the executor or administrator whose letters are so revoked shall forthwith deliver to any substituted executor or administrator all the assets of his testator or intestate in his possession or control. (Sept. 14, 1965, 79 Stat. 709, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 20-108 (Mar. 3, 1901, ch. 854, § 296, 31 Stat. 1236).

Minor changes are made in phraseology.

**CROSS REFERENCE**

Bonds required of trust companies, see §§ 26-333, 26-334.

**NOTES TO DECISIONS UNDER PRIOR LAW**

**Petition for additional bond**

Court has power, upon petition of attorney who has contract with executrix for payment of a fee, but no lien on proceeds of judgment, alleging insolvency of executrix and her intention to remove the fund from the jurisdiction on its receipt, to require the executrix to give additional bond, or revoke her letters and thus prevent collection of judgment by her. *Parish v. McGowan* (1912, 39 App. D.C. 184, reversed on other grounds 35 S. Ct. 543, 237 U.S. 285, 59 L. Ed. 955). See, also, *Cropper v. McLane* (1895, 6 App. D.C. 119, dismissed 16 S. Ct. 1200, 163 U.S. 682, 41 L. Ed. 316).

**§ 20-358. Counter security; application of surety; delivery of property; inventory; duties and liabilities of surety**

(a) If a surety of an executor or administrator apprehends that he is in danger of suffering from the suretyship, he may apply for relief to the Probate Court. The court may call upon the party to give counter security, to be approved by the court. If the party so called on does not, within a fixed reasonable time, give counter security, the court may order the property remaining in his hands as executor or administrator to be delivered up to the surety, and the court may enforce the delivery by process. Without delay, the executor or administrator shall return an inventory of the property delivered to the surety. Under the immediate order of the court, the surety shall sell, distribute, and deliver up the property contained in the inventory, as the case requires, as if the surety were the executor or administrator.

(b) To prevent a double administration and consequent inconvenience to creditors and other persons interested in the estate, the executor or administrator specified by subsection (a) of this section shall continue to discharge his trust, unless the court revokes his letters for a just cause, and he shall be answerable for the property in the same manner as if it were not, on his default, delivered to the surety.

The executor or administrator may sue the surety and recover damages if he suffers from the misconduct of the surety, in diminishing any part of the property, without obtaining an allowance therefor from the court. The surety shall bring into court, to be deposited with the Register of Wills, the money arising from the sale of any property as provided by this section, to be applied according to this Part. (Sept. 14, 1965, 79 Stat. 709, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 20-109 (Mar. 3, 1901, ch. 854, § 128, 31 Stat. 1211).

Changes are made in phraseology and arrangement.

**CROSS REFERENCE**

Bonds required of trust companies, see §§ 26-333, 26-334.

**NOTES TO DECISIONS UNDER PRIOR LAW**

**"Property" defined**

Term "property" as herein used includes the proceeds of the sale of property. *In re McKnight's Estate* (1893, 1 App. D.C. 28).

**§ 20-359. Accounting by representative of deceased executor or administrator; enforcement**

(a) On the application of an administrator de bonis non the court may order the executor or the administrator of a deceased executor or administrator to deliver over to him all the personal property that was in the hands of the deceased executor or administrator, as such, and also all the money, bonds, notes, accounts, and evidences of debt that the deceased executor or administrator may have taken, received, and held at the time of his death, including the proceeds of sale of either personal or real estate made by the deceased executor or administrator, which shall be deemed unadministered assets.

(b) If an executor or administrator of a deceased executor or administrator fails to comply, by a day named, with an order issued under subsection (a) of this section, the court may enforce its order by attachment against him, and may direct that his bond, or the bond of the deceased executor or administrator, or both, be sued upon for the use of the administrator de bonis non. (Sept. 14, 1965, 79 Stat. 710, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., §§ 20-110, 20-111 (Mar. 3, 1901, ch. 854, §§ 301, 302, 31 Stat. 1237).

Section consolidates sections 20-110 and 20-111 of D.C. Code, 1961 ed.

Minor changes are made in phraseology.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 20-1710.

**§ 20-360. Executor of his own wrong**

Whoever, without authority of law, takes, receives, or injuriously interferes with personal property of a deceased person who died intestate, is liable as an executor of his own wrong:

(1) to the persons aggrieved; and

(2) to the rightful administrator for the full value of the personal property taken or received by him and for all damages caused to the estate by his acts.

He may not retain or deduct any part of the estate, except for funeral expenses or debts of the deceased



or other charges which rightful executors or administrators might have been compelled to pay. (Sept. 14, 1965, 79 Stat., 710, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-113 (43 Eliz., ch. 8, § 2, 1601; Kilty's Rep., p. 236; Alex. Br. Stat., p. 427; Comp. Stat. D.C., p. 41, § 178).

The old British statute, 43 Eliz., ch. 8, § 2, 1601, cited above, as set forth in section 20-113 of D.C. Code, 1961 ed., provided:

"Every person and persons that shall obtain, receive, and have any goods or debts of any person dying intestate, or a release or other discharge of any debt or duty that belonged to the intestate, upon any fraud, or without valuable consideration as shall amount to the value of the same goods or debts, or near thereabouts (except it be in or towards satisfaction of some just and principal debt of the value of the same goods or debts to him owing by the intestate at the time of his decease) shall be charged and chargeable as executor of his own wrong; and so far only as all such goods and debts coming to his hands, or whereof he is released or discharged by such administrator, will satisfy, deducting nevertheless to and for himself allowance of all just, due and principal debts upon good consideration, without fraud, owing to him by the intestate at the time of his decease, and of all other payments made by him, which lawful executors or administrators may and ought to have and pay by law."

The provisions are rewritten to omit surplusage and to simplify and modernize the language. See Laws of Mass., ch. 195, § 14, 15.

The reference to funeral expenses is new, but it does not constitute a change in substance, as these expenses are one of the "charges which rightful executors or administrators might have been compelled, by law to pay".

#### § 20-361. Liability of executor or administrator of deceased executor or administrator for waste or conversion

The executor or administrator of a person who, as executor, either of right or of his own wrong, or as administrator, wasted or converted to his own use any part of the estate of a deceased person, is liable and chargeable in the same manner as his testator or intestate would have been, if living. (Sept. 14, 1965, 79 Stat. 710, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 20-112, 20-114 (30 Car. 2, ch. 7, § 2, 1677; 4 and 5 Wm. and Mary, ch. 24, § 12, 1692; Kilty's Rep., p. 176; Alex. Br. Stat., pp. 567, 585; Comp. Stat. D.C., p. 41, §§ 179, 180).

Section consolidates sections 20-112 and 20-114 of D.C. Code, 1961 ed.

The two old British statutes, 30 Car. (Charles) 2, ch. 7 § 2, 1677, and 4 and 5 Wm. and Mary, ch. 24, § 12, 1692, cited above, as set forth in sections 20-114 and 20-112, respectively, of D.C. Code, 1961 ed., provided:

(30 Car. 2, ch. 7, § 2, 1677)

"All and every the executors and administrators of any person or persons, who as executor or executors in his or their own wrong, or administrators, shall waste or convert any goods, chattels, estate or assets of any person deceased to their own use, shall be liable and chargeable in the same manner as their testator or intestate would have been if they had been living."

(4 and 5 Wm. and Mary, ch. 24, § 12, 1692)

"All and every the executor and executors, administrator or administrators of an executor or administrator of right, who shall waste or convert to his own use, goods, chattels, or estate of his testator or intestate, shall from henceforth be liable and chargeable in the same manner as his or their testator or intestate should or might have been."

The provisions are rewritten to omit surplusage and to simplify and modernize the language. See McKinney's N.Y. Decedent Estate Law § 112.

#### § 20-362. Investment of funds

Where, under the provisions of a will, it is necessary for an executor or an administrator with the will annexed to retain in his hands the personal estate, or a part thereof, after all just claims are discharged, as in a case where money or another thing is directed to be paid at a distant period or upon a contingency, he shall apply to the Probate Court for a decree or directions relating thereto. The court may decree or direct:

(1) what part of the personal estate shall be retained or appropriated for the purpose and in what manner it shall be disposed of;

(2) in what manner the legacy or benefit shall be secured to the person entitled thereto at a future period or upon the happening of a contingency;

(3) how the necessary part of the personal estate to be appropriated for the purpose shall be prevented from being unproductive; and

(4) how the necessary part of the personal estate to be appropriated for the purpose shall be applied, agreeably to the intent of the will or the construction of law, should the contingency not take place.

(Sept. 14, 1965, 79 Stat. 710, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-115 (Mar. 3, 1901, ch. 854, § 369, 30 Stat. 1248).

Changes are made in phraseology and arrangement.

#### CROSS REFERENCES

Investment of funds, see also, § 16-3108.

Obligations of Washington Metropolitan Area Transit Authority as lawful investments, see § 1-1449.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Income—Distribution

A reading of the entire will of testatrix was sufficient to establish her intent to distribute the proceeds from the sale of corporate stock to those named as specific legatees, not to the residuary legatee; therefore, the income which was earned by investment of the proceeds of the sale of the corporate stock was properly distributed to the named specific legatees in the will. *In re Estate of M. I. Stone* (1972, 463 F. 2d 1316, 150 U.S. App. D.C. 225).

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Duties of executor

Under a bequest of the income of a fund to a life tenant, with remainder over, it is the duty of the executor to invest the fund, pay the income to the person entitled for life, and preserve the principal for the remainderman. *Payne v. Robinson* (1905, 26 App. D.C. 283, 6 Ann. Cas. 784).

##### Status of executor

"The executor does not cease to be executor because the period of administration, so called, may be passed. He is still executor as long as he has anything under the will to execute." *Marfield v. McCurdy* (1905, 25 App. D.C. 342).

"The principal difference between an executor during the period of administration and an executor after the lapse of the period of administration is that the former is responsible to the probate court for the faithful execution of his trust, the latter to a court of equity." *Id.*

#### § 20-363. Continuing decedent's business; petition and affidavits; accounting; debts as expenses of administration

(a) The Probate Court may authorize a fiduciary accountable to it to continue a business of the decedent until further order of the court and may order the discontinuance of the business at any time.



(b) An order under subsection (a) of this section authorizing the continuance of a business may not be entered until after the fiduciary has filed a petition under oath, supported by the affidavits of two reputable persons familiar with the decedent's business, setting forth:

- (1) the appraised value of the business;
- (2) whether the decedent conducted the business at a profit or loss; and
- (3) the estimated amount of the monthly expenses necessary to be incurred in order to continue the business.

(c) A fiduciary who is given an authorization to conduct the decedent's business shall file with the Register of Wills monthly statements showing:

- (1) receipts and disbursements;
- (2) debts contracted, and obligations incurred; and
- (3) the profit or loss.

(d) Debts contracted and obligations incurred in continuing a business of the decedent constitute an expense of administration of the estate. (Sept. 14, 1965, 79 Stat. 711, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1960 ed., § 20-116 (Mar. 3, 1901, ch. 854, § 123a, as added Apr. 19, 1920, ch. 153, § 1, 41 Stat. 556; June 18, 1953, ch. 131, § 1, 67 Stat. 66).

Changes are made in phraseology and arrangement.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Computation of commissions

No case is made for payment to executor in operating decedent's business over and above the amount already permitted by the Code. *Stoner v. Doherty* (1950, 182 F. 2d 673, 86 U.S. App. D.C. 368).

##### Continuing business

Executor is not required to continue the business of a decedent although he followed the appropriate practice in obtaining the approval of the court to do so. *Stoner v. Doherty* (1950, 182 F. 2d 673, 86 U.S. App. D.C. 368).

§ 20-364. Recordation of executor's and administrator's bond; copies to interested parties; actions on bonds

(a) The Register of Wills shall record in his office every bond executed by an executor or administrator. The Register of Wills shall deliver, on demand, to a person conceiving himself to be interested in the administration of the estate, a copy of the bond, under his hand and seal. Upon this copy, an action may be maintained, in the name of the District of Columbia, for the use of the party interested. In the action, judgment may be recovered for the damage actually sustained.

(b) In the manner provided by subsection (a) of this section, an administrator appointed in the place of an executor or administrator who has resigned, or has been removed, or whose letters have been revoked, may maintain an action against the former executor or administrator, and his sureties, on his administration bond, for loss and damage to the estate resulting from this breach of duty.

(c) A creditor may not maintain an action on a testamentary or administration bond for a claim against the testator or intestate:

(1) until, when practicable, an action has been commenced against the executor or administrator of the deceased and:

(A) a summons issued in the action has been returned "Not to be found"; or

(B) a writ of fieri facias or of attachment, issued on a judgment against the executor or administrator, has been returned "nulla bona"; or

(2) until, in the judgment of the court before whom the action may be tried, there is such apparent insolvency of the executor or administrator or insufficiency of his effects as to leave the creditor without remedy except by action on the bond.

(Sept. 14, 1965, 79 Stat. 711, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 149(4), 84 Stat. 566.)

#### AMENDMENT

1970—Section 149(4) of Act July 29, 1970, Public Law 91-358 amended subsection (a) by striking out "in the name of the United States" and inserting in lieu thereof "in the name of the District of Columbia".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101 and note to 15-707.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-109 (Mar. 3, 1901, ch. 854, § 297, 31 Stat. 1236; June 30, 1902, ch. 1329, 32 Stat. 529).

Changes are made in phraseology and arrangement.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Actions within section

This section was inapplicable to action against an executrix, on a special bond, to recover value of a note executed by testator. *Hawley v. Hawley* (1940, 114 F. 2d 745, 72 App. D.C. 376).

This section governs actions on general bonds and the normal "administration of estates" which involves the collection, management, and distribution of estate, including legal proceedings necessary to satisfy claims of creditors, next of kin, legatees, or whatever other parties may have any claim to property of a deceased person. *Id.*

##### Construction by Maryland court

A decision of the Maryland Court of Appeals interpreting Maryland statute from which a section of District of Columbia Code was derived was not controlling because rendered after law was adopted by the District, but was persuasive of proper interpretation of the District statute. *Hawley v. Hawley* (1940, 114 F. 2d 745, 72 App. D.C. 376).

##### Effect of judgment

Whether a judgment or decree against an administrator is conclusive evidence of the debt in an action against the surety on his bond, although the preponderance of authority seems to affirm that it is, see *Bonding Co. v. United States ex rel. Paynter* (1904, 23 App. D.C. 535).

##### Execution and return

"The requirement of execution and return was satisfied, notwithstanding the return was made the next day after issue, by order of the plaintiff's attorney." *Bonding Co. v. United States ex rel. Paynter* (1904, 23 App. D.C. 535).

##### Special undertaking

That executor with consent of residuary legatee gave a special undertaking instead of a general bond did not affect executor's obligation to account to residuary legatee and make distribution of such legatee's share of residuary estate within a reasonable time after such residue could be determined. *Cashell v. Eskin* (D.C.D.C. 1944, 55 F. Supp. 747).

The giving of a special undertaking by executor creates a personal obligation to creditors and legatees not present where a general bond is given. *Id.*



**§ 20-365. Service on nonresident executor or administrator; failure to give power of attorney**

Before original or ancillary letters testamentary or of administration are issued, the person designated, if a nonresident of the District of Columbia, shall file in the office of the Register of Wills an irrevocable power of attorney designating the Register of Wills and his successors in office as the person upon whom all notices and process issued by a competent court in the District may be served, with like effect as personal service, in relation to all suits, matters, causes, or things affecting or pertaining to the estate in which the letters are to be issued. The Register of Wills shall forthwith forward by registered or certified mail to the address of the executor or administrator, which shall be stated in the power of attorney, all notices and process served upon the Register under this section.

If the person fails to file the power of attorney within 10 days after the entry of the order of appointment, the order shall stand revoked, and he shall forfeit all rights to the office. (Sept. 14, 1965, 79 Stat. 712, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 20-118 (Mar. 3, 1901, ch. 854, 308a as added Apr. 19, 1920, ch. 153, § 1, 41 Stat. 562).

Section is based on section 20-118 of D.C. Code, 1961 ed., insofar as the latter related to service on nonresident executors and administrators. Insofar as it related to service on collectors and guardians, it is carried into chapter 5 of this title, and chapter 1 of Title 21, respectively. See tables.

In the provision of the first paragraph requiring the Register of Wills to forward all notices and process to the executor or administrator by registered mail, a reference to certified mail is added so that either type of mail transmission may be utilized. Act June 11, 1960, Pub. L. 86-507, 74 Stat. 200, specifically amended many Federal and District of Columbia laws theretofore requiring the use of registered mail with respect to various matters, to provide for the alternative use of certified mail. While it did not amend section 20-118 of D.C. Code, 1961 ed., on which this section is based, it is considered to have been the legislative intent to amend most, if not all, existing laws on the subject. See Senate Report No. 1489, May 26, 1960, to accompany H.R. 10996, 86th Cong., 2d Sess., the bill which, upon enactment, became the Act of June 11, 1960.

Changes are made in phraseology.

**§ 20-366. Resignation; petition; accounting; liability**

Where a person, after having accepted the office of executor or administrator, desires to resign the office, he may file his petition to that effect, accompanied by a full and particular account, under oath, of his receipts and disbursements, if any. The court shall thereupon direct such notice as it deems proper to be given of the application, and, if cause is not shown to the contrary, may release and discharge him from his office and enter such order as to costs and commissions and impose such terms in other respects as the nature of the case requires. The executor or administrator is not, by the discharge, released from liability for past acts, defaults, or omissions of duty. (Sept. 14, 1965, 79 Stat. 712, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 20-119 (Mar. 3, 1901, ch. 854, § 292, 31 Stat. 1235).

Changes are made in phraseology.

**Chapter 5.—COLLECTORS****Sec.**

20-501. Letters of collection, or ad colligendum.

20-502. Oath and bond of collector; form.

20-503. Service on nonresident collector; failure to give power of attorney.

20-504. Duties of collector; liability; commission; additional bond requirements if real estate to be possessed.

20-505. Removal of co-collector for negligence or misconduct; complaint; recovery of loss or damage.

20-506. Cessation of powers.

20-507. Liability of collector for refusing to deliver estate.

**§ 20-501. Letters of collection, or ad colligendum**

(a) Letters of collection, or ad colligendum, may be granted to one or more persons, when:

(1) there is a contest in relation to a will; or

(2) the executor is absent from the District of Columbia; or

(3) there is a delay in the executor's qualifying; or

(4) there is other sufficient cause.

(b) The form of letters of collection is as follows: To all persons to whom these presents come, greeting:

Whereas ———, of ———, deceased, had, as is said, at his decease, personal property within the District of Columbia, administration whereof can not immediately be granted, but which, if speedy care be not taken, may be lost, destroyed, or diminished, to the end that the same may be preserved for those who may appear to have a legal right or interest therein, we do hereby request and authorize ———, of ———, to secure and collect the property, wheresoever the same may be, in the District, whether goods, chattels, debts, or credits, and to make a true inventory thereof and exhibit it with all convenient speed, with an account of his collections, into the office of the Register of Wills.

Witness [A B], the Chief Judge of the Superior Court of the District of Columbia.

Test:

[C D], Register of Wills.

(Sept. 14, 1965, 79 Stat. 712, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 149(2), 84 Stat. 566.)

**AMENDMENT**

1970—Section 149(2) of Act July 29, 1970, Public Law 91-358 amended subsection (b) by striking out in the forms referred to therein "the Chief Judge of the United States District Court for the District of Columbia" and inserting in lieu thereof "the Chief Judge of the Superior Court of the District of Columbia".

**EFFECTIVE DATE OF 1970 AMENDMENT**

See note preceding section 11-101 and note to 15-707.

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 20-401 (Mar. 3, 1901, ch. 854, § 304, 31 Stat. 1237; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(a)(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

No change is made in the form, but elsewhere changes are made in phraseology and arrangement.

**CROSS REFERENCES**

Jurisdiction, pleading and practice in probate court, see §§ 11-921 and 16-3101 et seq.

Trust companies authorized to act, see §§ 26-309 to 26-312, 26-316, 26-334.



## NOTES TO DECISIONS UNDER PRIOR LAW

## Appointment

Where judgment creditor, who had become resident and domiciliary of Virginia, died in Virginia while appeal from such judgment was pending, and person named as executor in judgment creditor's purported will had filed such will with clerk of court in Virginia but had not taken further proceedings thereunder, the district court should have appointed a collector of assets of estate of judgment creditor. *Belt v. Lynn* (1954, 211 F. 2d 431, 94 U.S. App. D.C. 1).

## § 20-502. Oath and bond of collector; form

(a) Before letters are issued to a collector other than a local corporation authorized under the laws of the District of Columbia to act as collector, he shall take and subscribe the following oath:

"I, ———, do swear that I will well and truly discharge the office of collector of the personal estate of ———, deceased, according to the tenor of the letters granted me by the Probate Court and the directions of law, to the best of my knowledge, so help me God."

(b) The collector shall also, before letters are issued to him, execute a bond, in a penalty and with security to be approved by the court, with the following condition: "The condition of the above obligation is such that if the above bounden ——— shall well and honestly discharge the office of collector of the personal estate of ———, deceased, in the District of Columbia, and shall make or cause to be made a true and perfect inventory or inventories of such of the personal estate, and debts as come to his possession or knowledge and make return of them to the Probate Court, and shall also deliver to the person or persons who shall be authorized by the court to receive them such of the goods, chattels, personal estate, and debts as shall come to his possession, except such as shall be allowed for by the court, then the obligation shall be void; it shall otherwise be in full force at law." (Sept. 14, 1965, 79 Stat. 713, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Sept. 29, 1970, Pub. L. 91-358, title I, § 149 (1), (5), 84 Stat. 566, 567.)

## AMENDMENT

1970—Section 149(1) of Act July 29, 1970, Public Law 91-358 amended subsection (b) by striking out "to the United States".

Sec. 149(5) amended section by striking out in the form referred to therein "Probate Court of the District of Columbia" and "Probate Court of the District" and inserting in lieu thereof "Probate Court".

## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-402 (Mar. 3, 1901, ch. 854, § 305, 31 Stat. 1238).

Changes are made in phraseology and arrangement.

## CROSS REFERENCE

Bonds required of trust companies, see §§ 26-333, 26-334.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20-504.

## § 20-503. Service on nonresident collector; failure to give power of attorney

Before original or ancillary letters of collection are issued, the person designated, if a nonresident of the District of Columbia, shall file in the office of the Register of Wills an irrevocable power of at-

torney designating the Register of Wills and his successors in office as the person upon whom all notices and process issued by a competent court in the District may be served, with like effect as personal service, in relation to suits, matters, causes, or things affecting or pertaining to the estate in which the letters are to be issued. The Register of Wills shall forthwith forward by registered or certified mail to the address of the collector, which shall be stated in the power of attorney, all notices or process served upon the Register under this section.

If the person fails to file the power of attorney within 10 days after the entry of the order of appointment, the order shall stand revoked, and he shall forfeit all rights to the office. (Sept. 14, 1965, 79 Stat. 713, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-118 (Mar. 3, 1901, ch. 854, § 308a, as added Apr. 19, 1920, ch. 153, § 1, 41 Stat. 562).

Section is based on section 20-118 of D.C. Code, 1961 ed., insofar as the latter related to service on nonresident collectors. Insofar as it related to service on nonresident executors and administrators, and guardians, it is carried into sections 20-365 and 21-110 herein, respectively.

In the provision of the first paragraph requiring the Register of Wills to forward all notices and process to the collector by registered mail, a reference to certified mail is added for the same reason stated in revision note under section 20-365 herein.

Changes are made in phraseology.

## § 20-504. Duties of collector; liability; commission; additional bond requirements if real estate to be possessed

(a) The collector shall collect the personal estate of the deceased, including the debts due him, and cause them to be appraised, and return an inventory thereof, as an administrator is required to do, and may, under the authority of the court, sell perishable articles and bring suits for debts or other property, as an administrator may do, and shall account for the money recovered. The collector may, if authorized by the court, take possession of, hold, manage, conserve, and control all real estate affected by the will in dispute, and shall discharge, pendente lite, all the duties of an administrator, including the payment of debts. He is liable to an action by a creditor of the deceased and is entitled to the protection of all provisions of law expressly relating to executors and administrators.

(b) The collector may be allowed a commission not exceeding 10 per centum on the personal property, debts due the estate, and rentals from real estate actually collected by him.

(c) Where the collector is authorized by the court to take possession of the real estate affected by the will or wills in dispute, the letters of collection shall so expressly specify, and his bond as collector, in addition to the several matters set forth in section 20-502, shall specifically include the faithful performance of his duties with respect to the real estate. (Sept. 14, 1965, 79 Stat. 713, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-403 (Mar. 3, 1901, ch. 854, § 306, 31 Stat. 1238; Apr. 19, 1920, § 1, ch. 153, 41 Stat. 562).

Changes are made in phraseology and arrangement.



## CROSS REFERENCE

Inventory after appointment of executor or administrator, see § 20-707.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20-506.

## NOTES TO DECISIONS UNDER PRIOR LAW

## Attorney's fees

An attorney whose services are rendered to an estate at request of collector of estate may look to the estate for his compensation and measure of allowance to the attorney is such as court may consider proper in light of applicable facts. *Buck v. Putnam* (1945, 146 F. 2d 662, 79 U.S. App. D.C. 295).

Where account of collector of estate showed collection of assets to amount of approximately \$580,000, allowance of fee of \$6,000 to collector's attorney for services rendered by him to collector in administration of estate was not an abuse of discretion. *Id.*

## Commission

Where account of collector of an estate showed collection of assets to amount of approximately \$580,000, allowance of a commission of 1½ percent of fund handled by collector during the 10-month period which he served was not an abuse of discretion. *Buck v. Putnam* (1945, 146 F. 2d 662, 79 U.S. App. D.C. 295).

## Decisions under prior law

Probate court has authority, in case of the contest of a will, to appoint a collector of the personal estate, under § 304 of the 1901 Code (31 Stat. 1237 ch. 854 (§ 20-401)), and his powers, when so appointed, are those in general of a temporary administrator. *Hutchins v. Dante* (1913, 40 App. D.C. 262).

Duty of executors and trustees in respect to the payment of income is merely ministerial, and the collector, acting as administrator, may, under the court's direction, temporarily perform that duty. *Hutchins v. Hutchins* (1913, 41 App. D.C. 122).

Under §§ 306-308 of the 1901 Code (31 Stat. 1238, ch. 854 (§§ 20-403 to 20-405)), collectors may bring suits, but there is no expression permitting suits to be brought against them. *Berry & Whitmore Co. v. Dante* (1915, 43 App. D.C. 110).

Attorneys rendering services to the estate may recover fees from collector when such services were requested by collector in his representative capacity. *Brandenburg v. Dante* (1920, 261 F. 1021, 49 App. D.C. 141).

## Powers of collector

Collector has no power under this section (as amended) to prosecute appeal from order disbaring his decedent from practice of law. *Metzger v. O'Donoghue* (1923, 288 F. 461, 53 App. D.C. 107).

A collector of an estate for time being performs all duties and exercises all powers of an administrator. *Buck v. Putnam* (1945, 146 F. 2d 662, 79 U.S. App. D.C. 295).

## § 20-505. Removal of co-collector for negligence or misconduct; complaint; recovery of loss or damage

If a joint collector apprehends that he is in danger of suffering by the negligence or misconduct by a co-collector in the administration or the improper use or misapplication of the assets of the estate, he may apply to the court for relief. Upon adjudging the complaint to be well founded, the court may revoke the powers and authority of the collector so complained of and compel the delivery and surrender to the remaining collector of the assets, books, papers, and evidences of debt, of the estate that may be in the possession or control of the person so dismissed from the administration. The remaining collectors may recover, in a civil action, for any loss or damage they may suffer through the collector whose powers have been revoked. (Sept. 14,

1965, 79 Stat. 714, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-107 (Mar. 3, 1901, ch. 854, § 125, 31 Stat. 1210).

Section is based on section 20-107 of D.C. Code, 1960 ed., insofar as the latter related to collectors. Insofar as it related to executors and administrators, it is carried into section 20-356 herein.

In the provision authorizing the remaining collectors to recover for loss or damage, "civil action" is substituted for "action on the case". See revision note under section 20-354 herein.

Changes are made in phraseology.

## § 20-506. Cessation of powers

On the granting of letters testamentary or of administration the power of a collector cease. He shall deliver, on demand, all the property and money of the decedent in his hands and excepted by section 20-504, to the person obtaining the letters, and the latter may be permitted to prosecute suits commenced by the collector as if they had been begun by him, and may also defend suits brought against the collector by a creditor of the deceased. (Sept. 14, 1965, 79 Stat. 714, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1960 ed., § 20-404 (Mar. 3, 1901, ch. 854, § 307, 31 Stat. 1238; Apr. 19, 1920, § 1, ch. 153, 41 Stat. 562).

Changes are made in phraseology.

## NOTES TO DECISIONS UNDER PRIOR LAW

## Action commenced by collector

Upon granting of letters testamentary or of administration, power of collector of assets of estate of judgment creditor would cease, and executor or administrator could be permitted to prosecute any action commenced by collector. *Belt v. Lynn* (1954, 211 F. 2d 431, 94 U.S. App. D.C. 1).

## Services of attorney

This section contemplates that the collector may bind the estate for the services of counsel. *Brandenburg v. Dante* (1920, 261 F. 1021, 49 App. D.C. 141).

## Variance between decree and order

Where petitioner, seeking writ of habeas corpus, had been ordered to turn over concealed assets to collector of deceased's estate, whereas petitioner was held in contempt on petition of executor of estate for failing to deliver assets to the executor who had been appointed subsequent to the entry of the turn-over order, alleged variance between contempt decree and the turn-over order was not "fatal," since, upon the grant of letters to the executor, he was entitled to prosecute any suit commenced by the collector as if the suit had been begun by the executor. *Watkins v. Rives* (1942, 125 F. 2d 33, 75 U.S. App. D.C. 109).

## § 20-507. Liability of collector for refusing to deliver estate

If a collector neglects or refuses to deliver over the property and estate to the executor or administrator, the court may, by citation and attachment, compel him to do so, and the executor or administrator may also proceed, by civil action, to recover the value of the assets from him and his sureties by action on his bond. (Sept. 14, 1965, 79 Stat. 714, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-405 (Mar. 3, 1901, ch. 854, § 308, 31 Stat. 1238; Apr. 19, 1920, ch. 153, § 1, 41 Stat. 562).

Minor changes are made in phraseology.



## NOTES TO DECISIONS UNDER PRIOR LAW

## Right to sue

Congress was careful to use words that in no way abridged the right to pursue such a remedy of one in whose favor the remedy was inferentially recognized in the preceding sections. *Brandenburg v. Dante* (1920, 261 F. 1021, 49 App. D.C. 141).

## Chapter 7.—INVENTORY OF ASSETS

## Sec.

- 20-701. Inventory; when made; contents; exceptions.
- 20-702. Appraisers.
- 20-703. Death of appraisers; failure to act.
- 20-704. Appraisal; notice; return.
- 20-705. Contents of inventory.
- 20-706. Exceptions to inventory.
- 20-707. Collector's inventory.
- 20-708. Co-executor or co-administrator may file inventory if others neglect to do so.

## CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 20-901.

## § 20-701. Inventory; when made; contents; exceptions

An executor or administrator who has not filed a special bond provided for by sections 20-304 and 20-333, or a collector shall, within two months after his appointment, or such longer time as the court allows, make and return, upon oath, into court a true inventory of all the personal estate of the deceased which are by law to be administered and which have come to his possession or knowledge. Where the court deems it proper, it may also order him to include in the inventory all the real estate of the deceased. (Sept. 14, 1965, 79 Stat. 714, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-401 (Mar. 3, 1901, ch. 854, § 309, 31 Stat. 1238; June 24, 1949, ch. 242, § 3, 63 Stat. 268).

Changes are made in phraseology and arrangement.

## CROSS REFERENCES

Assets of estate, see §§ 20-901 to 20-905.  
Jurisdiction, pleading, and practice in probate court, see §§ 11-921 and 16-3101 et seq.

## § 20-702. Appraisers

On the granting of letters testamentary or of administration or letters of collection, a warrant, except in the cases provided by sections 20-304 and 20-333, shall issue to two suitable persons not interested in the estate, to appraise the estate of the deceased, known to them or shown to them by the executor, administrator, or collector. They shall severally take and subscribe an oath well and truly, without partiality or prejudice, to value the personal estate and, if so directed, the real estate, of the deceased, as far as these items and properties come to their knowledge, to the best of their skill and judgment. (Sept. 14, 1965, 79 Stat. 715, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-402 (Mar. 3, 1901, ch. 854, § 310, 31 Stat. 1239; Apr. 19, 1920, ch. 153, § 1, 41 Stat. 563).

Changes are made in phraseology.

## § 20-703. Death of appraisers; failure to act

If an appraiser dies, or refuses or neglects to act, another person may be appointed in his stead. (Sept. 14, 1965, 79 Stat. 715, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-403 (Mar. 3, 1901, ch. 854, § 311, 31 Stat. 1239).

Changes are made in phraseology.

## § 20-704. Appraisal; notice; return

The executor, administrator, collector or appraisers shall give notice to the persons immediately interested in the administration, or at least two of them, if they are numerous, of the time and place of making the appraisal. Thereupon, they shall proceed at that time and place to value the property and estate, setting down each article or item separately, with the value thereof, in dollars and cents. When the appraisal is completed, they shall certify it under their hands and seals, and return it with the inventory. (Sept. 14, 1965, 79 Stat. 715, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-404 (Mar. 3, 1901, ch. 854, § 312, 31 Stat. 1239; June 30, 1902, ch. 1329, 32 Stat. 529).

Changes are made in phraseology.

## § 20-705. Contents of inventory

The inventory shall contain a particular statement of all other securities for the payment of moneys belonging to the deceased, and of all other debts and accounts due him, which are known to the executor, administrator, or collector, who shall designate those debts which he considers good, as distinguished from those which he considers desperate or doubtful, and also an account of all moneys belonging to the deceased which come to his hands. When, after an inventory is returned, assets not therein included come to the knowledge of the executor, administrator, or collector, an additional inventory and appraisal shall be promptly prepared and filed in the same manner. (Sept. 14, 1965, 79 Stat. 715, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 19-405 (Mar. 3, 1901, ch. 854, § 313, 31 Stat. 1239).

Changes are made in phraseology.

## § 20-706. Exceptions to inventory

There shall be excepted from the inventory the wearing apparel of the deceased, family pictures, the family Bible, and schoolbooks used in the family, and provisions for the support of the family, on hand at the time of the decedent's death. Where the decedent was the head of a family, or a householder, the property exempt under sections 15-501 to 15-503 shall so continue exempt from all claims against the decedent, and shall be distributed by the court to such members of the family or household as in the judgment of the court the exigencies of the particular case require. (Sept. 14, 1965, 79 Stat. 715, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-406 (Mar. 3, 1901, ch. 854, § 314, 31 Stat. 1239).

Changes are made in phraseology.

## CROSS REFERENCE

Damages in action for wrongful death, see § 16-2703.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20-901.



## NOTES TO DECISIONS UNDER PRIOR LAW

## Family portraits

Family portraits "seem to have been recognized as heirlooms at common law, and as such went to the heirs at law, and not to the executor \* \* \*." By custom they are not included in the inventories in the District. *Brown v. Easterhazy* (25 W.L.R. 478).

## Sale of exempted property

Exemption follows proceeds of sale. *Howard v. Howard* (1912, 38 App. D.C. 575).

## § 20-707. Collector's inventory

If an inventory is returned by a collector the executor or administrator thereafter administering shall, within two months after his appointment, return either a new inventory in place of the collector's inventory or an acknowledgment in writing that he has received from the collector the articles contained in the first inventory, and consents to be answerable for it, as if the inventory had been made out by him as executor or administrator, unless it appears that he has been prevented from making the return by the improper detention of the personal estate of the deceased by the collector. (Sept. 14, 1965, 79 Stat. 715, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-407 (Mar. 3, 1901, ch. 854, § 315, 31 Stat. 1239; June 24, 1949, ch. 242, § 4, 63 Stat. 268).

Changes are made in phraseology.

## § 20-708. Co-executor or co-administrator may file inventory if others neglect to do so

Where there is more than one executor or administrator, any one or more of them, on the neglect of the others, may, if authorized by the court, return an inventory. (Sept. 14, 1965, 79 Stat. 716, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-408 (Mar. 3, 1901, ch. 854, § 316, 31 Stat. 1239).

Minor changes are made in phraseology.

## Chapter 9.—ASSETS OF ESTATE

## Sec.

- 20-901. Assets to be included in inventory and administered.
- 20-902. Discharge or bequest of debt or demand not valid against creditors; disposition.
- 20-903. Claims of testator against executor not discharged; disposition; liability of surety.
- 20-904. Failure of executor to include claims of testator against executor in inventory; remedy.
- 20-905. Debt due by administrator or collector.

## § 20-901. Assets to be included in inventory and administered

(a) The inventory required by chapter 7 of this title shall include:

- (1) leases for years;
- (2) estates for the life of other persons;
- (3) all goods, wares, merchandise, utensils, and furniture, and things annexed to the freehold which may be removed without prejudice thereto;
- (4) the growing crop on the land of the deceased; and
- (5) every other species of personal property, except the clothing of the widow and minor children of the deceased and personal ornaments

suitable to their station, and except the property exempted by section 20-706.

(b) The items specified by subsection (a) of this section, except those excluded from the inventory by clause (5) thereof, together with the proceeds of real estate sold for the payment of debts, constitute assets to be administered by an executor or administrator. (Sept. 14, 1965, 79 Stat. 716, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-301 (Mar. 3, 1901, ch. 854, § 317, 31 Stat. 1240; June 30, 1902, ch. 1329, 32 Stat. 529).

Changes are made in phraseology and arrangement.

## CROSS REFERENCES

Criminal penalty for concealing or converting assets of estate, see § 22-1404.

Jurisdiction, pleading and practice in probate court, see §§ 11-921 and 16-3101 et seq.

Proceeds of group life insurance policies, see § 35-718.

Transfer of motor vehicles without administration when only assets requiring administration consist of not more than two motor vehicles see § 40-102.

## NOTES TO DECISIONS UNDER PRESENT LAW

## Totten trusts

Bank account, that contained over signature of the decedent what purported to be a trust agreement which provided that decedent was grantor, to himself as trustee, of funds represented by the account and that he could withdraw or transfer such funds in whole or in part, thus removing them from the trust, and, in the event of his death, funds represented by the account should be transferred or paid to account of beneficiary, constituted a valid revocable inter vivos trust that was terminated upon death of decedent, thus entitling the beneficiary to receive the corpus. *Enterprise Federal Savings and Loan Association v. A. Q. Ehrlich et al.* (1972, 337 F. Supp. 1332).

## NOTES TO DECISIONS UNDER PRIOR LAW

## Effect of solvency

Where it is substantially stated in the bill that decedent's estate will be solvent, plaintiff's remedy may best be sought in the probate court rather than in court of equity. *Street v. Stubblefield* (1927, 20 F. 2d 1017, 57 App. D.C. 276, certiorari denied 48 S. Ct. 121, 275 U.S. 564, 72 L. Ed. 428).

## Gifts causa mortis

Money paid defendant by his brother shortly before the latter's death, at a time when his illness was expected to result in death at any time, was a valid gift causa mortis, where decedent was of sound mind at the time of the gift, the defendant cared for him during his last illness and paid the final expenses, and there was sufficient personalty remaining to satisfy the widow's claim. *Railey v. Railey* (D.C.D.C. 1940, 30 F. Supp. 121).

## Option to purchase real estate

Ninety-nine-year lease, with option to purchase, is personalty. *Bean v. Reynolds* (1899, 15 App. D.C. 143).

## Rents

If there is enough personalty to pay debts, the rents accruing after death of testator need not be used. *Brosnan v. Fox* (1923, 284 F. 923, 52 App. D.C. 143).

## § 20-902. Discharge or bequest of debt or demand not valid against creditors; disposition

A discharge or bequest in a will, of a debt or demand of a testator is not valid as against the creditors of the deceased, but constitutes only as<sup>1</sup> a specific bequest of the debt or demand, and the amount thereof shall be included in the inventory of the effects of the deceased and included as an asset for the payment of his debts, if necessary for that pur-

<sup>1</sup> So in original. Word "as" probably should be deleted.



pose, and, if not so necessary, shall be paid in the same manner and proportion as other specific legacies. (Sept. 14, 1965, 79 Stat. 716, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-302 (Mar. 3, 1901, ch. 854, § 318, 31 Stat. 1210).

Changes are made in phraseology.

#### § 20-903. Claims of testator against executor not discharged; disposition; liability of surety

The naming of a person as executor in a will is not a discharge or bequest of a just claim which the testator had against him. The claim shall be included among the credits and effects of the deceased in the inventory, and the executor is liable for it, as for so much money in his hands, at the time the debt or demand becomes due. He shall apply and distribute it, in the payment of debts and legacies and among the next of kin, as part of the personal estate of the deceased. However, the sureties of the executor are not liable where the claim against the executor would have been uncollectible if another person had been executor. (Sept. 14, 1965, 79 Stat. 716, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-303 (Mar. 3, 1901, ch. 854, § 319, 31 Stat. 1240; June 30, 1902, ch. 1329, 32 Stat. 529).

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 20-904, 20-905.

#### § 20-904. Failure of executor to include claims of testator against executor in inventory; remedy

If an executor fails to include a claim which the testator had against him in the list of debts due the deceased, a person interested in the administration may allege the failure by petition to the Probate Court. The court, with the consent of the parties, may decide the matter, or it may be referred by the parties, with the court's approval; or at the instance of either party the court may direct an issue to be tried by a jury. If the claim in any such proceedings is decided to be a just claim of the decedent against the executor, the executor shall be charged with the amount thereof as provided by section 20-903. (Sept. 14, 1965, 79 Stat. 717, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-304 (Mar. 3, 1901, ch. 854, § 320, 31 Stat. 1240).

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20-905.

#### § 20-905. Debt due by administrator or collector

In like manner as provided by section 20-903, an administrator or collector shall include a claim against himself, and on his including it, or failure to do so, there shall be the same proceeding as described in section 20-903 or 20-904 with regard to an executor. The rule provided by section 20-903 applies to his sureties. (Sept. 14, 1965, 79 Stat. 717, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-305 (Mar. 3, 1901, ch. 854, § 321, 31 Stat. 1240; June 30, 1902, ch. 1329, 32 Stat. 529; Apr. 19, 1920, ch. 153, § 1, 41 Stat. 563).

Changes are made in phraseology.

### Chapter 11.—SALE OF ASSETS

#### Sec.

- 20-1101. Sale of personal estate.
- 20-1102. Order for sale.
- 20-1103. Sale of real estate directed in will; procedure; failure to act.
- 20-1104. Power of co-executors to sell real estate under will.
- 20-1105. Survivor of several trustees.
- 20-1106. Authority of court regarding sales of realty; responsibility for proceeds; restrictions on sales; auditor's report; sales without reference to auditor.
- 20-1107. Bond to prevent sale of real estate.
- 20-1108. Sale of real estate to satisfy debts and legacies.
- 20-1109. Sale of property subject to dower.
- 20-1110. Appointment of trustee to sell real estate; bond.
- 20-1111. Proceeding by creditors to have real estate sold.

#### AMENDMENT

1971—Section 9 of Act Aug. 11, 1971, Pub. L. 92-88, amended item 20-1106 by inserting “; sales without reference to the auditor” immediately preceding the period at the end thereof.

#### § 20-1101. Sale of personal estate

Where an executor or administrator does not have money sufficient to discharge the just debts of and claims against the decedent, the Probate Court shall, on his application, made after the return of an inventory, direct a sale of the personal property contained therein, or of such part as the court considers proper, and in such manner and on such terms as the court directs. The court may direct a sale if it deems it advantageous to the persons interested in the administration, on the application of any of them. (Sept. 14, 1965, 79 Stat. 717, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-601 (Mar. 3, 1901, ch. 854, § 322, 31 Stat. 1240).

Changes are made in phraseology.

#### CROSS REFERENCES

Exemption from operation of Bulk Sales Law, see § 28: 6-103.

Jurisdiction, pleading and practice in probate court, see §§ 11-921 and 16-3101 et seq.

Sale of property to make distribution, see §§ 20-1902, 20-1903.

#### § 20-1102. Order for sale

An executor not so authorized by the will, or an administrator, may not sell property of his decedent without an order of the Probate Court. A sale made without a previous order authorizing it is void and does not pass title to the purchaser. If an executor or administrator sells, pledges, or disposes of property without a previous order, his letters may be revoked and an administrator appointed, who shall immediately recover possession of the property; and the removed executor or administrator may be proceeded against by attachment. Where there are two or more executors or administrators, and a sale, pledge, or disposition of property has been made without the consent of all, the revocation extends only to the persons so offending, and the remaining executors or administrators may discharge the duties



of their office and institute proceedings for the recovery of the property and attachment as provided by this section. (Sept. 14, 1965, 79 Stat. 717, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 18-602, 18-603 (Mar. 3, 1901, ch. 854, §§ 323, 324, 31 Stat. 1240).

The words "not so authorized by the will", in the first line are from former section 18-603.

Changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Application of section

This section should be applied where an administrator not only has become actively a party to an arrangement by which another makes an appropriation of estate assets such as a business before his appointment but during the course of his administration confirms it by refusing to include the property within his inventory, to report, or to account for the profits of the business, and to take steps to secure its recovery or legal disposition after full warning that that might be required. *Burke v. Canfield* (1941, 121 F. 2d 877, 74 App. D.C. 6).

##### Common law

"At common law an executor or administrator had absolute power of disposal over all personal property coming into his hands, including choses in action, and such sales protected purchasers, except where fraud appeared." *Phoenix Mut. Life Ins. Co. v. Harris* (1916, 45 App. D.C. 474).

##### Construction

"Owing to this rule of the common law, statutes providing for the granting of decrees of court as to sales generally are construed to be for the protection of the administrator and not as a limitation of his power." *Phoenix Mut. Life Ins. Co. v. Harris* (1916, 45 App. D.C. 474).

"The provisions of section 323 (this section) of our code were intended to apply merely to local executors and administrators dealing with property within this jurisdiction. The section declares, \* \* \*, his letters may be revoked, clearly indicating, we think, that the prohibition was not intended to extend to contracts made by executors and administrators of other jurisdictions. In other words, this statute was addressed to the constituent elements or validity of a local contract by executors and administrators, rather than to the procedure to be followed in establishing all contracts by executors and administrators, wherever made." *Id.*

##### Jurisdiction

District court, in an action for construction of a will, had no authority to order sale of testatrix' realty, such matter being one to be determined by probate court in accordance with applicable sections of District of Columbia. *Littlepage et al. v. Hart and Littlepage Jr.* (1958, 250 F. 2d 774, 102 U.S. App. D.C. 111).

##### Revocation of letters

Statute providing that letters of executor or administrator may be revoked if he shall sell, pledge or dispose of any property without previous order applies only to unauthorized disposal of salable property and not to improper payment of claims. *C. P. Henry v. J. A. Grimes Jr.* (1964, 334 F. 2d 550, 118 U.S. App. D.C. 160).

Probate Court was not authorized to remove executor on ground that executor on his own initiative paid himself sum from assets of estate on account of his commission as executor and as fees for his services as attorney-in-fact for decedent before her death. *Id.*

#### § 20-1103. Sale of real estate directed in will; procedure; failure to act

Where a testator has directed his real estate to be sold for the payment of his debts or legacies, the executor may sell and convey it, and shall account for the proceeds of the sale to the Probate Court in the same manner as for the proceeds of personal

estate. Such a sale is not valid unless it is ratified by the court after notice given by publication according to the practice in equity. If the executor refuses or declines to act, or dies without executing the power vested in him, the court, on the application of a person interested, may appoint an administrator de bonis non with the will annexed to execute the power in the same manner in which the executor appointed by the will might have done. (Sept. 14, 1965, 79 Stat. 718, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-604 (Mar. 3, 1901, ch. 854, § 325, 31 Stat. 1241).

For a discussion of what is meant by the phrase "according to the practice in equity", as used in section 18-604 of D.C. Code, 1961 ed. (and as carried into this section), see Mersch's Probate Court Practice in the District of Columbia, 2d ed. (1952), § 1671 et seq. See, also, *De Marco v. Kertz* (1945), 151 F. 2d 305, 80 U.S. App. D.C. 204.

Changes are made in phraseology.

#### CROSS REFERENCE

Tolling statute of limitations, see § 12-306.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Specific performance

Where probate judge had rejected executor's sale of realty to plaintiffs and had accepted a higher offer, plaintiffs were not entitled to specific performance of contract or to recover damages from executor for breach of contract in absence of showing that procedures followed by probate judge were contrary to law. *E. H. Savage, etc. v. C. L. Pinderhughes, Executor etc.* (1967, 382 F. 2d 171, 127 U.S. App. D.C. 222).

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Approval of court

Where executor was empowered by will to sell real estate at his discretion, court's refusal to approve sale by executor because of a higher bid would not be disturbed, except that before accepting the higher bid the court should afford the original bidder, and other bidders, opportunity to submit further bids if desired. *De Marco v. Kertz* (1945, 151 F. 2d 305, 80 U.S. App. D.C. 204).

The Judicial Sales Act, 28 U.S.C. §§ 847-849, and the local civil rules of the District Court for the District of Columbia adopted thereunder are applicable only to sales which are required or authorized by court order, and not those under a power created by will; hence, for sales made by executor under terms of a will, ratification by the probate court according to the practice in equity is required, and not in accordance with provisions of said sections. *Id.*

##### Price of bid

Where a will authorizes executor to sell real estate at his discretion, the bidder makes his offer to the executor subject to the approval of the court, as required by this section, and in selling the property the court is acting as trustee for the parties in interest and must exercise a wise, judicial discretion to secure for the estate the highest price consistent with a just regard for the rights of the bidder. *De Marco v. Kertz* (1945, 151 F. 2d 305, 80 U.S. App. D.C. 204).

The general rule applicable to public judicial sales of property, that the court will not ordinarily set aside a sale made in the manner prescribed by law because of mere inadequacy of price, grew out of the necessity of encouraging free bidding at public sales, and rule is not applicable to a private sale. *Id.*

##### Rejection of offer or bid

Where a will authorizes executor at his discretion to sell real estate, a private offer, which is made subject to ratification by the court under this section, may be rejected when a higher bid is made at any time prior to ratification. *De Marco v. Kertz* (1945, 151 F. 2d 305, 80 U.S. App. D.C. 204).



**§ 20-1104. Power of co-executors to sell real estate under will**

Where a power to sell lands, tenements, or other hereditaments is given by a will to executors as such, and a person named as executor refuses, after the death of the testator, to act or accept the trust, sales under the power made by the executors who qualify and accept the trust are as effectual in law as if the other executors had joined in the sale. (Sept. 14, 1965, 79 Stat. 718, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 18-605 (21 Henry 8, ch. 4, § 1, 1529; Kilty's Rept., p. 230; Alex. Br. Stat., p. 280; Comp. Stat. D.C., p. 20, § 85).

The old British statute, 21 Henry 8, ch. 4, § 1, 1529, cited above, as set forth in section 18-605 of D.C. Code, 1961 ed., provided:

"Where part of the executors named in any testament of any person so making or declaring any will of any lands, tenements, or other hereditaments to be sold by his executors, after the death of any such testator, do refuse to take upon him or them the administration and charge of the same testament and last will wherein they be so named to be executors, and the residue of the same executors do accept and take upon them the cure and charge of the same testament and last will; then all bargains and sales of such lands, tenements, or other hereditaments, so willed to be sold by the executors of any such testator, as well heretofore made, so hereafter to be made by him or them, only of the said executors that so doth accept, or that heretofore hath accepted and taken upon him or them any such cure or charge of administration of any such will or testament, shall be as good and as effectual in the law, as if all the residue of the same executors named in the said testament, so refusing the administration of the same testament, had joined with him or them in the making of the bargain and sale of such lands, tenements, or other hereditaments so willed to be sold by the executors of any such testators, which heretofore hath made or declared, or that hereafter shall make or declare any such will, of any such lands, tenements or other hereditaments after his decease, to be sold by his executors."

The provisions are rewritten to omit surplusage and modernize the language. See New York Surrogate's Court Act § 224.

**§ 20-1105. Survivor of several trustees**

Where two or more trustees are appointed by the will to execute a trust, or are empowered to sell, dispose of, or convey lands or other property devised to them jointly, upon the death of any one or more of them the survivors may execute the trust or power. If one of the trustees, in writing, signed by him and attested by a witness, relinquishes or disclaims the trust or refuses to act under the will, and delivers the writing to the Probate Court for record, his right to act ceases, and the remaining trustees appointed by the will may execute the trusts of the will and make sales and execute conveyances and other acts necessary for that purpose. (Sept. 14, 1965, 79 Stat. 718, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 18-606 (Mar. 3, 1901, ch. 854, § 326, 31 Stat. 1241).

Changes are made in phraseology.

**NOTES TO DECISIONS UNDER PRIOR LAW****Effect of death**

A trust charged upon the executors, as such, does not become extinct by the death of one of them, and if the executors were authorized to sell real estate, the survivor can sell it. *Kennedy v. Mangan* (1922, 278 F. 1009, 51 App. D.C. 296).

When will devised real property in trust for missing brother and if not heard from in seven years to have trustees sell, in such case the trustees had power to sell the property after seven years for the benefit of legatees, and equity would limit power to sell only if required by express terms of the will. *Id.*

**§ 20-1106. Authority of court regarding sales of realty; responsibility for proceeds; restrictions on sales; auditor's report; sales without reference to auditor**

The Probate Court has plenary authority to administer the real estate situated in the District of Columbia of decedents as far as may be necessary for the payment of funeral expenses, debts, costs of administration, and estate, inheritance and succession taxes, and legacies, and to distribute among those entitled thereto the surplus proceeds of sales of real estate made in the course of the administration. The bonds of executors and administrators are responsible for the proceeds of sale of real estate sold by them under the order of the court for purposes of administration. A sale of real estate may not be made unless it is required for the purposes of paying the above-mentioned charges and such legacies as are chargeable upon the real estate, or, except where consents have been filed with the court as hereinafter provided, until the auditor of the court has ascertained and reported those debts and legacies, the deficiency of personal assets, and the real estate necessary to be sold for the payment of the charges and legacies. Objections to the report may be filed, heard and determined as provided by rules of court. Upon a proper showing by the fiduciary of an estate that the personal estate of a decedent is insufficient to meet all of the aforesaid charges and that all or part of the decedent's real estate must be sold to pay all or part of the said charges, the court may order the sale of all or part of said real estate without reference to the auditor, provided all persons who have an interest in the real estate to be sold shall have filed with the court their consents to the sale thereof. In the event a person having an interest in the said real estate is not sui juris, the court may accept on his behalf the consent of a fiduciary duly appointed for the estate of said person, or may appoint a guardian ad litem who shall have the right to file a consent on behalf of said person. (Sept. 14, 1965, 79 Stat. 718, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Aug. 11, 1971, Pub. L. 92-88, § 8, 85 Stat. 314.)

**AMENDMENT**

1971—Section 8 of Act Aug. 11, 1971, Pub. L. 92-88, amended section—

(1) by inserting in the third sentence immediately after the word "or" the following: ", except where consents have been filed with the court as hereinafter provided,";

(2) by adding the fifth and sixth sentences relating to consent to sale without reference to auditor; and

(3) by adding at the end of the section heading "sales without reference to auditor".

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 18-607 (Mar. 3, 1901, ch. 854, § 146, 31 Stat. 1214; June 30, 1902, ch. 1329, 32 Stat. 527).

With respect to the auditor's report, the fourth sentence, "Objections to the report may be filed, heard and determined as provided by rules of court", is substituted for the final phrase of section 18-607 of D.C. Code, 1961 ed., "and such report shall be subject to exception", to bring this provision into line with current terminology



and with what presumably is current practice in any event. See Rule 53(e)(II) of the Federal Rules of Civil Procedure. Under Rule 81 thereof those rules do not apply to probate proceedings in the District Court except to appeals in such proceedings, but Rule 1 of the District Court's General Rules provides that the General Rules "apply so far as practicable and to the extent matters of procedure are not specifically provided by statutes to all suits and proceedings in this Court", and that they "shall supplement the Federal Rules of Procedure, Civil and Criminal, and shall be construed in harmony therewith"; and Rule 43(b) of the Court's Probate Rules, provides, with respect to reference to the Court's auditor, as required by the provisions carried into this section, that the "period prescribed by Rule 53(e)(2) of the Federal Rules of Civil Procedure for the filing of objects to the report of the Auditor may be waived in writing if such waiver is signed by all parties who have received notice of the filing of the report".

In the second sentence of the provisions as revised, the reference "the court" is substituted for "said justice" for the purpose of uniformity with the other provisions of the section. There was no other reference to a "justice" in section 18-607 of D.C. Code, 1961 ed.

Changes are made in phraseology.

#### CROSS REFERENCES

Bond to sell real estate, see § 20-332.

Exemption from operation of law requiring license to deal in real estate, see § 45-1402.

Form of executor's deed, see § 45-301.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20-1111.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Allowance of litigation costs

Where testator, prior to his second marriage, had made will giving his property to his stepchildren, but shortly after testator's death a child was born of the second marriage, resulting in litigation and a holding that the will was revoked by the marriage and birth of the child, and the personal estate was insufficient to pay all costs of litigation, the court properly charged against the real estate an allowance to executors for services of their attorneys and an allowance to the infant's guardian ad litem. *Pascucci v. Hart* (1947, 160 F. 2d 255, 82 U.S. App. D.C. 12).

The authority of the probate court to sell real estate to pay debts and legacies includes the right to sell to pay the ordinary and necessary administration costs, and where litigation was necessary in the establishment of an infant's right to title to realty, the costs of such litigation would be entitled to priority over debts and legacies. *Id.*

##### Collateral attack

If the court had jurisdiction, the sale cannot be attacked collaterally. *Duncanson v. Manson* (1894, 3 App. D.C. 260, affirmed 17 S. Ct. 647, 166 U.S. 533, 41 L. Ed. 1105).

##### Decisions under prior law

Prior to the enactment of the Code, the Supreme Court of this District had "jurisdiction and power to decree the sale of the real estate of a deceased debtor, whether the title be legal or equitable, for the payment of debts; and upon the allegation that the deceased was seized \* \* \* and died indebted, there would be furnished a foundation for a decree of sale of such real estate." *Duncanson v. Manson* (1894, 3 App. D.C. 260, affirmed 17 S. Ct. 647, 166 U.S. 533, 41 L. Ed. 1105).

##### Distribution after payment of debts

When the real estate of an intestate is sold in administration proceeding in the District of Columbia for the payment of his debts, there can be no distribution of any part of the proceeds until after payment of all of the estate's debts, and this provision is not limited to debts payable to residents of the District. *Wiggins v. Mayer* (1928, 22 F. 2d 869, 57 App. D.C. 293).

##### Executors' expenses

Where a suit to cancel a deed was not for the purpose contemplated by former §§ 18-607 to 18-609 and consequently compliance with the terms of these sections was

not a condition precedent to executors' right to institute action, court erred in disallowing their expenses. *Ramsey v. Curtis* (1950, 182 F. 2d 687, 86 U.S. App. D.C. 386).

##### Jurisdiction

District court, in an action for construction of a will, had no authority to order sale of testatrix' realty, such matter being one to be determined by probate court in accordance with applicable sections of District of Columbia. *Littlepage et al. v. Hart and Littlepage Jr.* (1958, 250 F. 2d 774, 102 U.S. App. D.C. 111).

##### Personal property must be found to be insufficient

The statute contemplates a prior determination of the insufficiency of the personal property before an administrator can claim rents. *Shields v. Shields* (1940, 101 F. 2d 255, 69 App. D.C. 331).

#### § 20-1107. Bond to prevent sale of real estate

An order for the sale of real estate may not be granted if a person interested in the estate gives bond, with security to be approved by the Probate Court, conditioned to pay all the debts, or legacies, or both, as the case may be, that shall eventually be found due, and the costs of administration. (Sept. 14, 1965, 79 Stat. 719, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 149(1), 84 Stat. 566.)

#### AMENDMENT

1970—Section 149(1) of Act July 29, 1970, Public Law 91-358 amended section by striking out "to the United States".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-608 (Mar. 3, 1901, ch. 854, § 147, 31 Stat. 1214).

Changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Executors' expenses

Where a suit to cancel a deed was not for the purpose contemplated by former §§ 18-607 to 18-609 and consequently compliance with the terms of these sections was not a condition precedent to executors' right to institute action, court erred in disallowing their expenses. *Ramsey v. Curtis* (1950, 182 F. 2d 687, 86 U.S. App. D.C. 386).

#### § 20-1108. Sale of real estate to satisfy debts and legacies

Where the Probate Court is satisfied, upon a report of the auditor, that it is necessary to sell the real estate, or a part thereof, it shall authorize the executor or administrator to sell the property, or so much thereof as may be necessary for the payment of the debts or legacies, or both, on such terms as the court directs. Any surplus of the proceeds of the sale, after payment of debts and legacies and costs of administration, is deemed real estate, and shall be distributed among the heirs or devisees as their interests may appear. (Sept. 14, 1965, 79 Stat. 719, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-609 (Mar. 3, 1901, ch. 854, § 148, 31 Stat. 1214).

Changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Effect of directions in will

A conveyance of real estate to trustees with specific directions to sell as soon as possible, converted such property into personalty, by the doctrine of equitable conversion, and was therefore subject to federal estate tax. *Tait v. Dante* (C.C.A. 4, 1935, 78 F. 2d 303, certiorari denied 56 S. Ct. 134, 296 U.S. 614, 80 L. Ed. 436).



**Executors' expenses**

Where a suit to cancel a deed was not for the purpose contemplated by former §§ 18-607 to 18-609 and consequently compliance with the terms of these sections was not a condition precedent to executors' right to institute action, court erred in disallowing their expenses. *Ramsey v. Curtis* (1950, 182 F. 2d 687, 86 U.S. App. D.C. 386).

**§ 20-1109. Sale of property subject to dower**

Where there is a surviving spouse entitled to dower in the real estate of the decedent, the Probate Court, before authorizing a sale of the real estate, shall issue a commission to one or more suitable persons to set off and assign the dower out of the estate, and the dower shall be so assigned. If the court finds that the surviving spouse's dower cannot be set off without injury to the property, if he consents thereto by answer to the petition, the real estate may be sold free of the dower, and the surviving spouse shall receive out of the proceeds a commutation of dower according to the practice in equity. (Sept. 14, 1965, 79 Stat. 719, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 18-610 (Mar. 3, 1901, ch. 854, § 149, 31 Stat. 1215).

The provisions are revised to refer to the dower of a surviving spouse, rather than to that of a widow only, as a surviving husband now also has a right of dower, given to him by statute. See section 19-102 herein, and revision note thereunder.

Changes are made in phraseology.

**CROSS REFERENCE**

Dower rights, see § 19-102.

**§ 20-1110. Appointment of trustee to sell real estate; bond**

When a person dies having devised real estate to be sold, without having appointed a trustee to sell the property, or if the person so appointed neglects or refuses to execute the trust, or dies before the execution of the trust, the Probate Court may, on the application of a person interested, appoint a trustee to sell and convey the property and apply the proceeds of sale to the purposes intended. Where a trustee is appointed by last will to execute a trust, and a person interested in the execution of the trust makes it appear that it is necessary for the safety of those interested therein that the trustee should give bond and security for the due execution of the trust, the Court may order and direct that a bond be given by the trustee by a day named, and on failure of the trustee to give the bond, with security to be approved by the court as directed, the court may displace the trustee and appoint another in his stead, who shall give the bond. The bond may be sued on for the use of a person interested. (Sept. 14, 1965, 79 Stat. 719, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 149(6), 84 Stat. 567.)

**AMENDMENT**

1970—Section 149(6) of Act July 29, 1970, Public Law 91-358 amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Probate Court", and by striking out "shall be given to the United States and".

**EFFECTIVE DATE OF 1970 AMENDMENT**

See note preceding section 11-101 and note to 15-707.

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 18-611 (Mar. 3, 1901, ch. 854, § 94, 31 Stat. 1204).

"United States District Court for the District of Columbia" and "District Court" are substituted for "equity court" and "said court", respectively, to conform the terms with the existing organization and practice of the court. See revision note under section 18-110 herein. The District Court possesses general equity powers.

Changes are made in phraseology.

**NOTES TO DECISIONS UNDER PRIOR LAW****Removal of trustee**

Where testator devised realty in trust to cotrustees, and the trustees were incompatible, and one trustee had employed obstructionist tactics to hinder execution of trust by the other, and had taken no steps himself to execute the trust, under District of Columbia Code, court would appoint other trustee as sole trustee. *Hughes et al. v. Hughes* (D.C.D.C. 1953, 112 F. Supp. 899).

**§ 20-1111. Proceeding by creditors to have real estate sold**

When a person dies leaving real estate in possession, remainder, or reversion, and not leaving personal estate sufficient to pay his debts, the Court, on a suit instituted by any of his creditors, may decree that all the real estate left by the person, or so much thereof as may be necessary, be sold to pay the charges mentioned in section 20-1106. This section applies whether the heirs or devisees are residents or nonresidents, are of full age or infants, and are of sound mind or are insane, and also where the deceased left no heirs or it is not known whether he left heirs or devisees or the heirs or devisees are unknown. Where there are no known heirs the United States attorney for the District of Columbia shall be notified of the suit and appear therein. (Sept. 14, 1965, 79 Stat. 719, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 18-612 (Mar. 3, 1901, ch. 854, § 96, 31 Stat. 1204).

"United States District Court for the District of Columbia" is substituted for "said equity court". See revision notes under sections 20-1111 and 18-110 herein.

Words "or are insane" are substituted for "or non compos mentis", for the purpose of uniformity. For definition of "insane person", see section 21-501 herein.

Changes are made in phraseology.

**NOTES TO DECISIONS UNDER PRIOR LAW****Collateral attack**

If sale of real estate is made under a decree, an infant cannot successfully in later proceeding, collaterally attack the decree when he was present in person and did not object to appointment of guardian for him. *Duncanson v. Manson* (1894, 3 App. D.C. 260, affirmed 17 S. Ct. 647, 166 U.S. 533, 41 L. Ed. 1105).

**Parties**

In a creditors' bill filed for purpose of subjecting real estate of a deceased person as assets to payment of his debts, the executor or administrator is a necessary party, but if there are no personal assets, and consequently no qualified executor or administrator, a creditors' bill may be maintained without executor or administrator. *Plumb v. Bateman* (1894, 2 App. D.C. 156).

**Personal estate insufficient**

Allegation and proof of deficiency in personal assets is jurisdictional in proceedings under this section. *Dahlgren v. National Sav. & Trust Co.* (1913, 41 App. D.C. 201).

In suit brought under this section by creditors of a decedent, a decree ordering the sale of decedent's real estate for payment of creditors' claims was affirmed, the personal estate being insufficient to pay them. *West v. McLaughlin* (1927, 18 F. 2d 813, 57 App. D.C. 163).



## Chapter 13.—CLAIMS OF CREDITORS

## Sec.

- 20-1301. Debts to be proved.
- 20-1302. Judgment or decree; voucher or proof.
- 20-1303. Bond, note, check, protested bill of exchange; original or copy of instrument to constitute voucher.
- 20-1304. Proof by assignee.
- 20-1305. Proof of commercial papers.
- 20-1306. Claims for rent.
- 20-1307. Open account.
- 20-1308. Claims outside of District.
- 20-1309. Executor's or administrator's claim to be under oath.
- 20-1310. Plea of limitations within discretion of executor or administrator.
- 20-1311. Claims may be rejected and disputed.
- 20-1312. Passing of claims not conclusive.
- 20-1313. Payment of claims.
- 20-1314. Notice of distribution.
- 20-1315. Retaining for claims.
- 20-1316. Executor or administrator to withhold amount claimed pending litigation.
- 20-1317. Claims of executors and administrators to be passed by Court.
- 20-1318. Period during which creditors may file suit after claim is contested.
- 20-1319. Executor or administrator not responsible for claims made after distribution.
- 20-1320. Notice to creditors to file claims.
- 20-1321. Report and proof of notice.
- 20-1322. Report of notice as prima facie evidence; copy as legal evidence.
- 20-1323. Docket of claims.
- 20-1324. Filed claim no evidence of correctness if disputed; filing as tolling limitations.
- 20-1325. Priorities.
- 20-1326. No claim to be noticed unless legally authenticated.
- 20-1327. Meeting of creditors.
- 20-1328. Distribution of residue.
- 20-1329. Creditors' rights against property of nonresident decedent; limitation.<sup>1</sup>

## § 20-1301. Debts to be proved

An executor or administrator may not discharge a claim against his decedent, otherwise than at his own risk, unless it is first passed by the Probate Court or is proved according to the rules prescribed by this chapter. (Sept. 14, 1965, 79 Stat. 720, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-503 (Mar. 3, 1901, ch. 854, § 330, 31 Stat. 1243).

Changes are made in phraseology.

## NOTES TO DECISIONS UNDER PRIOR LAW

## Disputed claims

"Under section 330 of the code (this section) the approval of a claim properly proved relieves the executor or administrator from liability if he elects to pay it; but, by section 342 (§ 18-516) he may contest it at law, and in such action the approval of the probate court is deprived of even evidentiary value \* \* \*. It is settled in this District that the probate court is without jurisdiction to compel an executor or administrator to pay a claim asserted against a decedent's estate." *Miniggio v. Hutchins* (1915, 43 App. D.C. 117).

## Liability of executor or administrator

This section was designed to relieve the executor or administrator from liability if he should elect to pay claims passed upon by the court, or properly proved. *Clawans v. Sheets* (1937, 92 F. 2d 517, 67 App. D.C. 366).

## Suit

There is nothing in this section which prevents suit on a claim which has neither been exhibited to the executor

legally authenticated nor passed by the probate court. *Clawans v. Sheets* (1937, 92 F. 2d 517, 67 App. D.C. 366).

## § 20-1302. Judgment or decree; voucher or proof

The voucher or proof of a judgment or decree shall be a short copy thereof under seal, attested by the clerk of the court where it was obtained, who shall certify that the judgment or decree has not been satisfied. There shall likewise be a certificate of a person authorized to administer oaths, indorsed on or annexed to a statement of the debt due on the judgment or decree, that the creditor or his agent since the death of the deceased has taken before him the following oath: "That the creditor has not received any part of the sum for which the judgment or decree was passed except such part (if any) as is credited". Where the creditor on the judgment or decree is an assignee of the person who obtained it, the oath shall continue, as follows: "and that to the best of his knowledge or belief no other person has received any part of the sum except such part (if any) as is credited". An assignee shall also produce the assignment under the hand of the assignor. Where there is more than one assignment, each assignment shall be produced under the hand of the party assigning. (Sept. 14, 1965, 79 Stat. 720, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-504 (Mar. 3, 1901, ch. 854, § 331, 31 Stat. 1243).

Changes are made in phraseology.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20-1303.

## § 20-1303. Bond, note, check, protested bill of exchange; original or copy of instrument to constitute voucher

In case of a specialty, bond, note, check, or protested bill of exchange, the vouchers shall be the instrument of writing itself, or a proved copy in case it is lost, with a certificate of the oath taken as prescribed by section 20-1302 since the death of the decedent and indorsed on or annexed to the instrument, or a statement of the claim "that no part of the money intended to be secured by the instrument has been received or any security or satisfaction given for it except what (if any) is credited." (Sept. 14, 1965, 79 Stat. 720, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-505 (Mar. 3, 1901, ch. 854, § 332, 31 Stat. 1243).

Changes are made in phraseology.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20-1304.

## § 20-1304. Proof by assignee

Where the creditor in an instrument specified by section 20-1303 is an assignee, the creditor or agent shall take and subscribe the same oath, according to the best of his knowledge and belief, with respect to any payments prior to the time of the assignment. (Sept. 14, 1965, 79 Stat. 721, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

<sup>1</sup> Analysis does not conform to section catchline.



## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-506 (Mar. 3, 1901, ch. 854, § 333, 31 Stat. 1243).

Changes are made in phraseology.

## § 20-1305. Proof of commercial papers

Where the claim consists of a bill of exchange or other commercial paper, the protest or whatever would be required, if the deceased were alive, is necessary to justify an executor or administrator in making payment or distribution. (Sept. 14, 1965, 79 Stat. 721, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-507 (Mar. 3, 1901, ch. 854, § 334, 31 Stat. 1243).

Changes are made in phraseology.

## § 20-1306. Claims for rent

Where the claim is for rent, there shall be produced the lease itself, or the deposition of a credible witness, or an acknowledgment in writing of the deceased, establishing the contract and the time which has elapsed during which rent was chargeable, and a statement of the sum due for the rent, with an oath of the creditor or agent indorsed thereon "that no part of the sum due for the rent or any security or satisfaction for the same has been received except what (if any) is credited."

The proof of a claim for rent in arrears, in order to render the claim a preferred claim, shall be the proofs and vouchers for rent specified by this section, and proof that the claim is such that an attachment therefor might be levied on the deceased's goods and chattels in the hands of the administrator. The preference given for rent does not impair the landlord's right of attachment where he believes it proper to exercise the right. (Sept. 14, 1965, 79 Stat. 721, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-508 (Mar. 3, 1901, ch. 854, § 335, 31 Stat. 1243).

Changes are made in phraseology.

## § 20-1307. Open account

The vouchers or proofs of a claim on open account shall be a certificate of an oath taken by the creditor or agent since the death of the decedent, indorsed on or annexed to the account, that the account as stated is just and true, and that he, the creditor, or any one for him, has not received any part of the money stated to be due or any security or satisfaction for it except what (if any) is credited. (Sept. 14, 1965, 79 Stat. 721, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-509 (Mar. 3, 1901, ch. 854, § 336, 31 Stat. 1243).

Changes are made in phraseology.

## NOTES TO DECISIONS UNDER PRIOR LAW

## Statute of Limitations

Proof and presentation of claim under this section would operate to suspend the running of the statute of limitations. *Berry & Whitmore Co. v. Dante* (1915, 43 App. D.C. 110).

## § 20-1308. Claims outside of District

When an affidavit or deposition to prove claims has been taken out of the District of Columbia, it

is valid if taken and certified by a notary public as provided by this chapter, or by a person there authorized to administer oaths, and certified to be such under the seal of the clerk of a court of record, or by an officer having official cognizance of the fact, and the oath shall be as available as if taken before an officer authorized to administer oaths within the District of Columbia. The additional certificate specified by this section is not required as to notaries public within the United States or a place under the jurisdiction thereof when the seal of the notary is attached. (Sept. 14, 1965, 79 Stat. 721, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-510 (Mar. 3, 1901, ch. 854, § 337, 31 Stat. 1244; June 30, 1902, ch. 1329, 32 Stat. 529).

Changes are made in phraseology.

## § 20-1309. Executor's or administrator's claim to be under oath

Where a creditor is an executor or an administrator his claim may not be received, although vouched and approved as provided by this chapter, unless he makes oath, to be certified as provided by this chapter, "that it does not appear from any book or writing of his decedent that any part of the claim has been discharged except what (if any) is credited, and that to the best of the deponent's knowledge and belief no part of the claim has been discharged and no security or satisfaction given for it except what (if any) is credited." (Sept. 14, 1965, 79 Stat. 721, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-511 (Mar. 3, 1901, ch. 854, § 338, 31 Stat. 1244).

Changes are made in phraseology.

## § 20-1310. Plea of limitations within discretion of executor or administrator

An executor or administrator is not required to avail himself of the statute of limitations to bar what he supposes to be a just claim. (Sept. 14, 1965, 79 Stat. 722, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-515 (Mar. 3, 1901, ch. 854, § 341, 31 Stat. 1244).

Changes are made in phraseology.

## CROSS REFERENCE

Limitations of actions, see § 12-301.

## NOTES TO DECISIONS UNDER PRIOR LAW

## Approval of court

Under this section providing that it shall not be duty of executor or administrator to avail himself of act of limitations to bar what he supposes to be just claim but matter shall be left to his honesty and discretion, administrator first passes upon justice of barred claims then, such claims must be critically examined by probate court and they may not be allowed unless court is satisfied that they are just. *Helen Rothenberg, Caveator, etc. v. Rothenberg* (1959, 273 F. 2d 825, 107 U.S. App. D.C. 11).

## § 20-1311. Claims may be rejected and disputed

An executor or administrator is not required to discharge a claim of which vouchers and proofs have been exhibited as provided by this chapter, but may reject and at law dispute the claim where he has reason to believe that the deceased never



owed the debt, or had discharged it, or a part thereof, or had a claim in bar. (Sept. 14, 1965, 79 Stat. 722, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-516 (Mar. 3, 1901, ch. 854, § 342, 31 Stat. 1244).

Changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### In general

An executor or administrator may contest a claim properly proved at law. *Clawans v. Sheetz* (1937, 92 F. 2d 517, 67 App. D.C. 366).

##### Executors special undertaking

Although executrix in giving a special undertaking rendered herself personally liable for all debts and just claims against testator, special bond given by executrix did not guarantee claimant's right to recover on claim rejected by executrix and claimants were required to sue within statutory period. *Selby and Fuller v. McNeill* (D.C. Mun. App. 1955, 116 A. 2d 160).

#### § 20-1312. Passing of claims not conclusive

An order made by the Probate Court that an account or claim will pass when paid is not valid to establish the claim or account. Where the executor or administrator thinks fit to contest it, the account or claim does not derive validity from the order, but shall be proved in the same manner as if the order had not been made. (Sept. 14, 1965, 79 Stat. 722, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-517 (Mar. 3, 1901, ch. 854, § 343, 31 Stat. 1244).

Changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Effect of passing claim

The probate court is without jurisdiction to compel an executor to pay a claim asserted against a decedent's estate. *J. F. Bird et al., Executors etc. v. C. B. Sullivan Jr.* (1963, 316 F. 2d 675, 115 U.S. App. D.C. 24).

A probate court's approval, however expressed, of a claim against an estate is in legal effect an order that claim will pass when paid, but if executor or administrator contests claim, probate court's order approving it is deprived of even evidential effect. *Id.*

An executor or administrator may contest at law a claim properly proved, and, in such action, the approval of the probate court by this section is deprived of even evidentiary effect. *Clawans v. Sheetz* (1937, 92 F. 2d 517, 67 App. D.C. 366).

#### § 20-1313. Payment of claims

An executor or administrator shall, within thirteen months from the date of his letters, or within such further time, not exceeding four months, as the Probate Court allows on his making oath that he has reason to apprehend that the personal estate and assets which are or shall be in his hands will be insufficient to discharge the just debts of and claims against the deceased, discharge all the claims known to him or pay each claimant his just proportion of the money then in his hands, retaining as directed by this chapter. Also, he shall, once in every six months after the first distribution, make a distribution of the money which has since come to his hands until he has fully administered, and on failure his administration bond may be sued upon. (Sept. 14, 1965, 79 Stat. 722, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-519 (Mar. 3, 1901, ch. 854, § 344, 31 Stat. 1244).

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20-1315.

#### § 20-1314. Notice of distribution

When an executor or administrator is to make payment or distribution among the creditors of his decedent, he may give notice three successive weeks previously in a convenient newspaper of the time and place for making it. If a creditor does not attend in person or by agent or attorney to receive the amount or proportionable part of his claim, all interest on the claim or proportionable part ceases from that time. The executor or administrator shall at any time thereafter, on demand, pay the claims, or a proportionable part, to the party, his agent, or duly authorized attorney. When the executor or administrator proceeds to make an additional payment or dividend he may advertise as provided by this section, and interest ceases as also provided by this section. If, at the time for the making of an additional dividend, a just claim, established as directed by this chapter, is exhibited, the creditor is entitled to such sum as will place him on an equal footing with those who have already received a dividend. (Sept. 14, 1965, 79 Stat. 722, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-522 (Mar. 3, 1901, ch. 854, § 345, 31 Stat. 1244).

Changes are made in phraseology.

#### § 20-1315. Retaining for claims

An executor or administrator shall pay all just claims against his decedent exhibited to him, or a just proportionable part thereof, according to the assets. Where a claim is known to him, although it is not exhibited, he shall retain the assets, or a just proportionable part, for the benefit of the creditor. Where an executor or administrator has actual knowledge of a claim which has not been exhibited or passed he shall give notice in writing to the creditor, requiring the claim to be either exhibited or passed, as provided by this chapter, within 30 days if the creditor is a resident of the District of Columbia, and within 90 days if he is a nonresident. After the expiration of that period, and after the expiration of the period for distribution provided by section 20-1313, the executor or administrator may not be required to retain any part of the estate for the benefit of the creditor, unless in the meantime the claim has been so exhibited or passed. (Sept. 14, 1965, 79 Stat. 722, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-523 (Mar. 3, 1901, ch. 854, § 346, 31 Stat. 1245).

Changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Basis for rejection

Where claimant filed a duly authenticated claim with the office of the register of wills and the claim was entered on the claims docket, ruling that the executor could take notice of the claim from the court's records, and effectively reject it, was erroneous, since the only way



in which the executor could reject the claim was if there was an actual exhibition of the claim to him, legally authenticated. *Lewis v. Smith, Executor, etc.* (D.C. Mun. App. 1959, 151 A. 2d 188).

#### Failure to exhibit

This section does not provide that failure to exhibit in response to the notice will bar the claim. *Clawans v. Sheetz* (1937, 92 F. 2d 517, 67 App. D.C. 366).

#### Sufficiency of exhibition

The exhibition of an authenticated claim prior to the appointment of the executor was a sufficient exhibition so that, upon qualification, executor could make an effective rejection of it, and where the claimant did not bring suit thereon within three months, he was barred by the short statute of limitations. *Lewis v. Smith, Executor, etc.* (D.C. Mun. App. 1959, 151 A. 2d 188).

### § 20-1316. Executor or administrator to withhold amount claimed pending litigation

Where an action is commenced against an executor or administrator for the recovery of a larger debt or damages than he considers due, so that it cannot be ascertained before verdict, the executor or administrator may retain such sum to meet the debt or damages as the Probate Court allows. Where more than enough is allowed, the party shall afterwards account for it, but a sum may not be retained on account of the further debt or damages when the court is satisfied that there will be money sufficient coming in after the dividend to meet the damages, or a just proportion thereof, regard being had to other claims. (Sept. 14, 1965, 79 Stat. 723, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-524 (Mar. 3, 1901, ch. 854, § 347, 31 Stat. 1245).

Changes are made in phraseology.

### § 20-1317. Claims of executors and administrators to be passed by Court

An executor or administrator may not be allowed to retain for his own claim against the decedent, unless the claim is passed by the Probate Court. Such a claim stands on an equal footing with other claims of the same nature. (Sept. 14, 1965, 79 Stat. 723, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-512 (Mar. 3, 1901, ch. 854, § 339, 31 Stat. 1244).

Changes are made in phraseology.

### NOTES TO DECISIONS UNDER PRIOR LAW

#### Examination by court

Administratrix' claims against estate will be critically examined by probate court and will not be allowed unless the court is satisfied that they are good. *Perkins v. Berger* (1945, 145 F. 2d 856, 79 U.S. App. D.C. 286).

#### Submission to court

An executrix was precluded from asserting her claim to certain securities on theory that she was entitled thereto under a joint venture agreement with decedent, where executrix failed to submit her claim to the probate court, filed an account which omitted all reference to her purported claim, and without authority of the court retained assets bequeathed by terms of the will to decedent's sister. *M. J. de Pingre v. M. Weissappel* (1963, 322 F. 2d 415, 116 U.S. App. D.C. 202).

### § 20-1318. Period during which creditors may file suit after claim is contested

If a claim is exhibited against an executor or administrator which he considers his duty to dispute or reject, he may retain in his hands assets propor-

tioned to the amount of the claim, which assets shall be liable to other claims, or to be delivered up or distributed in case the claim is not established. If, on a claim exhibited and disputed, the creditor or claimant does not, within three months after the dispute or rejection, commence a suit for recovery, he is forever barred. On a dividend to be made three months after the dispute or rejection and failure to bring suit, the executor or administrator may proceed to pay or distribute as if he had no knowledge or notice of the claim or as if it did not exist. If the claim is sued upon within the three-month period, it may be ascertained by verdict or otherwise, and the court shall proceed as directed by this chapter, regard being had to the rules laid down by this chapter as to the notice to be given by the executor or administrator and distribution or payment shall be made after the notice. (Sept. 14, 1965, 79 Stat. 723, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-518 (Mar. 3, 1901, ch. 854, § 348, 31 Stat. 1245; June 24, 1949, ch. 242, § 5, 63 Stat. 268).

Immediately after the provision that the creditor should be forever barred if the creditor should not commence suit within three months after the dispute or rejection, the following provision appeared in section 18-518 of D.C. Code, 1961 ed.: "and the executor or administrator may plead this section in bar, together with the general issue or other plea proper to bring the merits of the cause to trial". This provision is omitted as obsolete, as such matters of procedure are now covered by court rules—in the District Court, by the Federal Rules of Civil Procedure; and in the Court of General Sessions, by its rules governing practice and procedure in civil actions in its civil division, promulgated pursuant to former section 11-756(b) of D.C. Code, 1961 ed., which, along with other former sections, is now section 13-101 of the Code. See, particularly, Rules 7, 8 and 12 in each group of rules.

Changes are made in phraseology.

### NOTES TO DECISIONS UNDER PRESENT LAW

#### Computation of time

If legally authenticated claim is exhibited to executor or administrator and he rejects it, his rejection sets in motion running of three-month statute of limitations and any claim sued on more than three months after rejection is barred. *F. M. Graham, formerly F. M. Frel, Administratrix etc. v. S. Gordon etc.* (D.C. App. 1968, 242 A. 2d 838).

Where endorser of installment note had brought action against estate for face amount of note but was awarded judgment only for installments which he had paid, subsequent action which sought to recover additional installments paid and which was commenced more than three months after administratrix had rejected his prior claim was not barred by three-month statute of limitations. *Id.*

#### Construction

Statute creating three-month limitation period for asserting claim which had been rejected by executor or administrator must be strictly construed. *F. M. Graham, formerly F. M. Frel, Administratrix etc. v. S. Gordon etc.* (D.C. App. 1968, 242 A. 2d 838).

Administrator may not start running of short statute of limitations by rejecting claim which has not been authenticated. *Id.*

Where claim originally rejected is different in form from claim sued upon, short statute of limitations does not bar suit. *Id.*

#### Effect of other decision on issue of jurisdiction

In an action to enforce default judgment rendered by New York court, federal court's dismissal of defendants' counterclaim was not res judicata on issue of validity of the New York judgment, where issue of jurisdiction of New York Court to render that judgment, although



mentioned in defendants' points and authorities in opposition to motion to dismiss, was apparently not the determinative factor in that decision, and order of dismissal did not indicate that it was based on finding that New York court had jurisdiction, and there was no reference in the order to question of jurisdiction. *Franklin National Bank v. B. Krakow, as Co-executor et al., etc.* (1969, 295 F. Supp. 910).

Plaintiff who sued to enforce default judgment rendered by New York court was not entitled to judgment on pleadings because the federal court for District of Columbia previously had granted plaintiff's motion to dismiss defendants' counterclaim which had alleged invalidity of the New York judgment, where the reason for dismissing counterclaim was not enunciated. *Id.*

#### Enforcement of foreign judgment

Plaintiff's motion for judgment on the pleadings treated as a motion for summary judgment, in an action to enforce a default judgment rendered by a New York court on a note executed by defendants' decedent would be denied, where defendants' allegations in opposition to the motion including showing that only connection with New York state was that note provided that the note should be governed by New York laws raised genuine issues of material fact which, if proved, would establish that New York court lacked jurisdiction. *Franklin National Bank v. B. Krakow, as Co-executor, et al., etc.* (1969, 295 F. Supp. 910).

#### Full faith and credit

Full faith and credit clause of the Constitution did not preclude an inquiry by the federal court in District of Columbia in an action brought to enforce a default judgment entered by New York Supreme Court into jurisdiction of the New York court to render the judgment sought to be enforced. *Franklin National Bank v. B. Krakow, as Co-executor, et al., etc.* (1969, 295 F. Supp. 910).

#### Inquiry into jurisdiction of foreign court

In an action to enforce default judgment rendered by a New York court, in making inquiry into jurisdiction of the New York court to render the judgment federal court was bound to apply the law of New York applicable to question of jurisdiction rather than the District of Columbia law notwithstanding the jurisdictional standards of the District of Columbia might not support a judgment such as the one rendered by the New York court. *Franklin National Bank v. B. Krakow, as Co-executor, et al., etc.* (1969, 295 F. Supp. 910).

In an action to enforce a default judgment rendered by a New York court against defendants who were not served in New York, federal court was not precluded from inquiring into jurisdiction of the New York court to render the judgment on grounds that defendants were required to go into New York state to contest jurisdiction since defendants were free to ignore the proceedings and ultimately resist any enforcement of default judgment since if judgment-rendering court lacked jurisdiction, the judgment was a nullity. *Id.*

### NOTES TO DECISIONS UNDER PRIOR LAW

#### Action against devisee

A right of action by decedent's creditors to subject decedent's property in hands of devisee under decedent's will to payment of plaintiffs' claims was not extinguished by their failure to institute action against executor of decedent's estate within three months, limited by this section, after executor's rejection of claims. *Robinson v. Henderson* (D.C.D.C. 1956, 145 F. Supp. 463).

#### Claim in process of administration

The 1949 amendment to this section reducing from nine to three months the period for bringing suit on rejected claim against estate was not intended to apply to claim against estate in process of administration at time of enactment of statute, and hence action for services rendered deceased and not compensated for in deceased's will as promised by deceased could be instituted within nine months after rejection of claim, where this section was amended after administration of estate had begun. *Kalis v. Leahy* (1951, 183 F. 2d 633, 88 U.S.

App. D.C. 166, certiorari denied 71 S. Ct. 797, 341 U.S. 926, 95 L. Ed. 1858)

#### Computation of time

A claim so exhibited and disputed is specifically barred, unless suit for its recovery is commenced within nine months after its rejection. *National Sav. & Trust Co. v. Ryan* (1920, 262 F. 613, 49 App. D.C. 159). See, also, *Clawans v. Sheets* (1937, 92 F. 2d 517, 67 App. D.C. 366).

If a claim is exhibited to the executor, legally authenticated, and the executor rejects it, his rejection sets in motion the running of the three-month statute of limitations, and any claim sued upon more than three months after rejection is barred. *Lewis v. Smith, Executor, etc.* (D.C. Mun. App. 1959, 151 A. 2d 188).

The exhibition of an authenticated claim prior to the appointment of the executor was a sufficient exhibition so that, upon qualification, executor could make an effective rejection of it, and where the claimant did not bring suit thereon within three months, he was barred by the short statute of limitations. *Id.*

Action on claim against testator's estate filed more than two years and 11 months after rejection of claim by executrix was barred. *McNeill and Fuller v. Selby* (D.C. Mun. App. 1955, 116 A. 2d 160).

Although executrix in giving a special undertaking rendered herself personally liable for all debts and just claims against testator, special bond given by executrix did not guarantee claimant's right to recover on claim rejected by executrix and claimants were required to sue within statutory period. *Id.*

#### Construction

This section is designed to facilitate the administration and distribution of estate, but since it is an exceptional abbreviation of the general statute of limitations, it must be given a construction almost penal in its strictness, and hence if an executor rejects a claim which has not been exhibited to him, legally authenticated, his attempted rejection does not start the running of the short statute of limitations. *Lewis v. Smith, Executor, etc.* (D.C. Mun. App. 1959, 151 A. 2d 188).

#### Decisions under prior law

Prior to enactment of the Code, law of Maryland as to limitations was in force in the District. *Glover v. Patten* (1897, 17 S. Ct. 411, 165 U.S. 394, 41 L. Ed. 760).

### § 20-1319. Executor or administrator not responsible for claims made after distribution

When all the assets have been paid away, delivered, or distributed as directed by this chapter, and afterwards a claim is exhibited of which the executor or administrator has no knowledge or notice by the exhibition of the claim legally authenticated, as required by this chapter, he is not answerable for it. When he is sued for a claim and makes it appear to the court in which suit is brought that he has so paid away, delivered, or distributed, and the plaintiff cannot prove that the defendant had notice as herein specified before the payment, delivery, or distribution, the court, although the amount of the claim against the deceased may be ascertained, may not give judgment until the plaintiff is able to show further assets coming into the defendant's hands; but if the plaintiff proves notice, as herein specified, of the claim against the defendant, judgment may be immediately given for such sum as the plaintiff ought to have received at the dividend, and fieri facias may issue and have effect, and further judgment may be given on the coming in of further assets. (Sept. 14, 1965, 79 Stat. 723, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D. C. Code, 1961 ed., § 18-525 (Mar. 3, 1901, ch. 854, § 349, 31 Stat. 1245).

Changes are made in phraseology.



## NOTES TO DECISIONS UNDER PRIOR LAW

## In general

An executor is exonerated as to any claims as to which he had not legal notice prior to distribution. *Clawans v. Sheetz* (1937, 92 F. 2d 517, 67 App. D.C. 366).

## § 20-1320. Notice to creditors to file claims

An executor or administrator who, after six months from the date of his letters, pays away assets to the discharge of just claims is not answerable for any claim of which he had no knowledge or notice by an exhibition of the claim legally authenticated, if, at least three months before he makes distribution he causes to be inserted in as many newspapers as the Probate Court directs, a notice to the following effect: "This is to give notice that the subscriber, of \_\_\_\_\_, has obtained from the Probate Court letters testamentary (or of administration) on the personal estate of \_\_\_\_\_, late of \_\_\_\_\_, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the \_\_\_\_\_ day of \_\_\_\_\_ next; they may otherwise by law be excluded from all benefit of the estate.

"Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_." (Sept. 14, 1965, 79 Stat. 724, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 149(7), 84 Stat. 567.)

## AMENDMENT

1970—Section 149(7) of Act July 29, 1970, Public Law 91-358 amended section striking out "Probate Court of the District of Columbia" and inserting in lieu thereof "Probate Court".

## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-526 (Mar. 3, 1901, ch. 854, § 350, 31 Stat. 1246; June 24, 1949, ch. 242, § 6, 63 Stat. 268).

Changes are made in phraseology.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20-1321.

## NOTES TO DECISIONS UNDER PRIOR LAW

## Claim in process of administration

The 1949 amendment to former § 18-518 reducing from nine to three months the period for bringing suit on rejected claim against estate was not intended to apply to claim against estate in process of administration at time of enactment and hence action for services rendered deceased and not compensated for in deceased's will as promised by deceased could be instituted within nine months after rejection of claim, where former § 18-518 was amended after administration of estate had begun. *Kalis v. Leahy* (1951, 188 F. 2d 633, 88 U.S. App. D.C. 166, certiorari denied 71 S. Ct. 797, 341 U.S. 926, 95 L. Ed. 1358).

## Historical

This section is similar to the Maryland Act of 1798 as amended (Acts 1828, ch. 131, § 2). *Clawans v. Sheetz* (1937, 92 F. 2d 517, 67 App. D.C. 366).

## Necessity of exhibit

Knowledge or notice of a claim to an executor must be on an exhibition of the claim, legally authenticated. *Parish v. Hedges* (1909, 34 App. D.C. 21).

## § 20-1321. Report and proof of notice

The executor or administrator may report to the court, with an affidavit of the proof thereof annexed, the fact of having given the notice specified by

section 20-1320, and the court, on being satisfied that its order has been complied with and the notice has been given, shall indorse on the report its certificate that it has been proven to its satisfaction that the notice has been given as therein reported, and shall order the report and certificate to be recorded among the records of the court. (Sept. 14, 1965, 79 Stat. 724, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-527 (Mar. 3, 1901, ch. 854, § 351, 31 Stat. 1246; June 30, 1902, ch. 1329, 32 Stat. 529).

Changes are made in phraseology.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20-1322.

## § 20-1322. Report of notice as prima facie evidence; copy as legal evidence

The report and certificates specified by section 20-1321 are prima facie evidence of the giving of the notice as therein stated; and a copy of the report, certificate, and order, under the seal of the Register of Wills, is legal and competent evidence. (Sept. 14, 1965, 79 Stat. 724, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 18-528, 18-529 (Mar. 3, 1901, ch. 854, §§ 352, 353, 31 Stat. 1246).

Section consolidates sections 18-528 and 18-529 of D.C. Code, 1961 ed.

Changes are made in phraseology.

## § 20-1323. Docket of claims

The Register of Wills shall enter in a suitable book, to be provided by him for that purpose, all claims against a decedent as they are regularly passed by the Probate Court, giving the date of the passage, the name of the creditor, the character of the claim, whether on note or open account, bond, bill, obligation, judgment, or other evidence of debt, and the amount thereof; and the entry of a claim upon the docket constitutes notice to the executor or administrator of its existence. (Sept. 14, 1965, 79 Stat. 724, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-513 (Mar. 3, 1901, ch. 854, § 354, 31 Stat. 1246).

Changes are made in phraseology.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20-1324.

## NOTES TO DECISIONS UNDER PRIOR LAW

## Notice of claim

The executor is charged with notice of claims only in case they shall be exhibited to him, legally, and then treated, or shall have been passed by the probate court and entered by the register of wills upon his docket. *Clawans v. Sheetz* (1937, 92 F. 2d 517, 67 App. D.C. 366).

## § 20-1324. Filed claim no evidence of correctness if disputed; filing as tolling limitations

A claim entered on the docket as provided by section 20-1323 does not afford evidence as to the justice or correctness of a debt therein entered when it is controverted by an executor or administrator in a suit instituted for the recovery of the debt; and it does not take a debt out of the operation of a defense of limitations. (Sept. 14, 1965, 79 Stat. 724, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)



## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-514 (Mar. 3, 1901, ch. 854, § 355, 31 Stat. 1246).

Word "defense" is substituted for "plea", to conform with current practice and procedure. See Rules 7, 8 and 12 of the Federal Rules of Civil Procedure, and the rules governing civil actions in the civil division of the Court of General Sessions, respectively.

Changes are made in phraseology.

## CROSS REFERENCES

Provisions in will as tolling statute of limitations, see § 20-306.

Statute of limitations, see § 20-1310.

## § 20-1325. Priorities

(a) The debts of the decedent shall be paid according to the following priority:

(1) funeral expenses, according to the condition and circumstances of the deceased, not exceeding \$600;

(2) claims for rent in arrears for which an attachment might be levied by law;

(3) judgments and decrees of courts in the District of Columbia;

(4) all other just claims, which shall be on an equal footing, without priority.

(b) Where there are not sufficient assets to discharge all the judgments and decrees specified in item (3) of subsection (a) of this section, a proportionate dividend shall be made between the judgment and decree creditors.

(c) This section is subject to section 19-101 and chapter 21 of this title relating to the family allowance and the administration of small estates. (Sept. 14, 1965, 79 Stat. 724, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-520 (Mar. 3, 1901, ch. 854, § 356, 31 Stat. 1246).

The provisions set out as subsec. (c) are new as text, but are in accordance with existing law, considering the enactment, in 1949, of section 18-801 et seq. of D.C. Code, 1961 ed., relating to family allowance and the administration of small estates, the provisions of which are carried into section 19-101 herein and chapter 21 of this revised title.

Changes are made in phraseology and arrangement.

## CROSS REFERENCE

Order of payment, see also, § 20-1705.

Priority of taxes, see §§ 47-1301, 47-1402, 47-1527.

Public assistance in the form of old-age assistance or aid to the disabled, preferred claim, see § 3-217.

## NOTES TO DECISIONS UNDER PRIOR LAW

## Application of statutes

The statutes are equally applicable to the administration of all estates in the District, whether domiciliary or ancillary. *Duehay v. Acacia Mut. Life Ins. Co.* (1939, 105 F. 2d 768, 70 App. D.C. 245, 124 A.L.R. 1268).

## Funeral expenses

Former §§ 18-520 and 20-605 limiting the amount for funeral expenses to \$600 merely provided for a limitation on the amount which might be given priority over claims of other creditors and beneficiaries, and not an invariable maximum that was required always to be observed, and therefore claim for funeral expenses in amount of \$3,863 was properly ordered to be paid pro rata with other general claims lawfully payable out of deceased's estate. *National Metropolitan Bank of Washington v. Joseph Gawler's Sons* (D.C. Mun. App. 1947, 52 A. 2d 280).

Executors were not controlled by limitation of former §§ 18-520 and 20-605 in view of discretionary authority granted them by will empowering executors to pay fu-

neral expenses in such amount as they deemed proper, but they were bound to act in good faith and expend only such amount as in their discretion they deemed proper. *National Metropolitan Bank of Washington v. Joseph Gawler's Sons* (1948, 168 F. 2d 571, 83 U.S. App. D.C. 307, 4 A.L.R. 2d 990).

Executors did not have burden to establish good faith and sound discretionary action under provision of will empowering them to pay funeral expenses in such amount as they deemed proper, and burden was on funeral establishment which attacked their action, to prove the charge. *Id.*

Former §§ 18-520 and 20-605 relating to funeral expenses limited amount allowable for funeral expenses in absence of authority by testator to contrary and even then such sections should have controlled where estate was solvent. *Id.*

## Judgment not docketed

Judgment of municipal court not docketed in Supreme Court is not entitled to preference. *In re Neuland's Estate* (44 W. L. R. 378).

## Monument

An allowance to executrix for purchase of monument placed over grave of deceased is proper, where the rights of creditors have not been prejudiced. *Sinnott v. Kenaday* (1899, 14 App. D.C. 1, reversed on other grounds 21 S. Ct. 233, 179 U.S. 606, 45 L. Ed. 339).

## § 20-1326. No claim to be noticed unless legally authenticated

An executor or administrator is not bound to discharge a claim against his decedent unless it is exhibited to him, legally authenticated, or unless the claim has been passed by the Probate Court and entered by the Register of Wills upon his docket. (Sept. 14, 1965, 79 Stat. 725, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-502 (Mar. 3, 1901, ch. 854, § 357, 31 Stat. 1247).

Changes are made in phraseology.

## NOTES TO DECISIONS UNDER PRIOR LAW

## Construction

The meaning of this section is to be deduced from the language of its heading as well as from the language of the body thereof. *Clawans v. Sheetz* (1937, 92 F. 2d 517, 67 App. D.C. 366).

The phrase "To be noticed" and the words "To discharge" must be read together to determine the meaning of the statute. *Id.*

## § 20-1327. Meeting of creditors

An executor or administrator may appoint a meeting of creditors on a day approved by the court, and passage of claims, payment, or distribution may be there made under the court's direction and control. (Sept. 14, 1965, 79 Stat. 725, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-521 (Mar. 3, 1901, ch. 854, § 358, 31 Stat. 1247).

Changes are made in phraseology.

## § 20-1328. Distribution of residue

When it appears by the first or other account of an executor or administrator that all the claims against, or debts of, the decedent which have been known by or notified to him have been discharged or allowed for in his account, he shall deliver up and distribute the surplus or residue of the personal estate not disposed of by a will, as directed by chapters 3 and 7 of title 19, but his power and duty with



respect to future assets do not cease. After the delivery he is not liable for debts afterwards notified to him, when he has advertised as directed by this chapter, unless assets afterwards come into his hands which are answerable for debts. (Sept. 14, 1965, 79 Stat. 725, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-521 (Mar. 3, 1901, ch. 854, § 359, 31 Stat. 1247).

Changes are made in phraseology.

§ 20-1329. Creditor's rights against property of non-resident decedent; limitation

(a) On the death of a person not domiciled in the District of Columbia at the time of his death so much of his real and personal estate in the District of Columbia as may be necessary for the payment and discharge of just claims against him of creditors and persons domiciled in the District of Columbia are also the subject of administration under authority and direction of the Probate Court, irrespective of the personal estate of the decedent at his place of domicile or elsewhere.

(b) The prosecution of claims referred to by subsection (a) of this section shall be commenced within six months after the death of the decedent. (Sept. 14, 1965, 79 Stat. 725, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-501 (Mar. 3, 1901, ch. 854, § 260, 31 Stat. 1231; June 30, 1902, ch. 1329, 32 Stat. 528; June 24, 1949, ch. 242, § 1, 63 Stat. 268).

Changes are made in phraseology.

#### CROSS REFERENCES

Discharge of debt by will construed to be a specific bequest and invalid as to creditors, see § 20-902.

Duty to file schedule of personal property for taxation, distraint of property for nonpayment, see §§ 47-1203, 47-1301.

Jurisdiction, pleading and practice in probate court, see §§ 11-921 and 16-3101 et seq.

Liability as stockholder of business corporation, see § 29-220.

Liability for income taxes, duty to file return, see §§ 47-1523, 47-1524.

Liability of estate for public property held by decedent as officer in the army, see §§ 39-505, 39-511.

Priorities, see § 20-1325.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Effect of appointment of guardian of nonresident minor's estate

Appointment by a local court of a guardian of a non-resident minor's estate on basis that situs of property in which minor had alleged interest was in District of Columbia did not change domicile of minor and the appointment did not, in and of itself, make the nonresident a local creditor or give local-creditor-basis for denying transfer of funds of deceased from local ancillary proceedings to domiciliary proceedings in Florida. *M. N. Suydam, etc., et al. v. J. E. Suydam* (1968, 404 F. 2d 1332, 131 U.S. App. D.C. 355).

##### Transfer of funds to domiciliary administration

Granting of motion to transfer funds from ancillary to domiciliary proceedings in Florida after full evidentiary hearing was an exercise of discretion. *M. N. Suydam, etc., et al. v. J. E. Suydam* (1968, 404 F. 2d 1332, 131 U.S. App. D.C. 355).

Court on motion of ancillary administratrix properly transferred funds of deceased to Florida where domiciliary administration took place where there were no locally domiciled creditors but rather only a nonresident's claim presented locally. *Id.*

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Constitutionality

This section properly construed does not give an unconstitutional preference to local creditors over non-resident creditors. *Duehay v. Acacia Mut. Life Ins. Co.* (1939, 105 F. 2d 768, 70 App. D.C. 245, 124 A.L.R. 1268).

##### Insolvent estates

The correct rule in the administration of an insolvent estate is to marshal the assets and distribute them ratably among creditors of the same class, irrespective of their source. *Sackett, Chapman, Brown & Cross v. Osgood* (1945, 149 F. 2d 825, 80 U.S. App. D.C. 99).

##### Law governing interest

In ancillary administration proceedings in estate of a Maryland resident, question as to rate of interest allowable on claims against estate was to be determined under District of Columbia law. *Hightstown Rug Co. v. National Sav. & Trust Co.* (1947, 162 F. 2d 10, 82 U.S. App. D.C. 204).

##### Liability for non-payment

Fact that voluntary payment by local debtor of local assets to a foreign domiciliary executor or administrator might afford a valid acquittance of the debt under some circumstances does not establish that a debtor who refuses to pay such assets voluntarily to such foreign representative should be held liable in damages. *Cameron v. Riggs Nat. Bank of Washington, D.C.* (D.C.D.C. 1944, 53 F. Supp. 56).

A bank which refused to make payment to foreign domiciliary executor of testatrix's funds held by bank in checking and savings accounts until elapse of period of one year within which local debtors could assert their claims against the assets, unless otherwise protected against such claims, was not liable for interest on the funds withheld, as damages. *Id.*

##### Measure of tax on encumbered property

While a tax on inheritance or succession is not a property tax but a duty or excise laid on the privilege of taking property by descent, it is measured by the market value of the transferred property at the time the owner died. *Hyman v. District of Columbia* (1957, 247 F. 2d 585, 101 U.S. App. D.C. 179).

Where an unqualified devise transfers legal title, if it is encumbered at the date of death, the then market value of the property transferred is the gross value, less the encumbrance for inheritance tax purposes. *Id.*

Where decedent owed her brother a large sum of money and her will provided that if he had a claim on her realty interest, devise thereof should be "subject to such claim or lien" District of Columbia Inheritance Tax should have been computed not on the gross value of the realty received by the brother, but on the value thereof after the brother's claim thereon had been deducted. *Id.*

##### Participating creditors

Where insolvent nonresident died possessed of property in the District of Columbia, ancillary administrator was appointed, but no claims were filed by local creditors, and only two nonresident creditors presented claims, the District Probate Court had discretionary power to require that other creditors, who had filed claims in the domiciliary estate, be given notice and allowed to participate with creditors who had filed claims in ancillary estate. *Sackett, Chapman, Brown & Cross v. Osgood* (1945, 149 F. 2d 825, 80 U.S. App. D.C. 99).

##### Purpose

This section is intended for the protection of local creditors. *Sackett, Chapman, Brown & Cross v. Osgood* (1945, 149 F. 2d 825, 80 U.S. App. D.C. 99).

##### Remedy

Under this section, local creditors are given an opportunity to assert their claims against local assets of a decedent domiciled elsewhere. *Cameron v. Riggs Nat. Bank of Washington, D.C.* (D.C.D.C. 1944, 53 F. Supp. 56).

##### Time for action against ancillary

This section, making property of nonresident decedent subject of administration in District of Columbia " \* \* \* Provided, The prosecution of such claims is begun in said court within six months after the death of such



decedent", does not place time limitation on filing of action by local creditor against ancillary administrator. *Stitt v. Simpson Admt'x etc.* (D.C. Mun. App. 1959, 154 A. 2d 719).

#### Time for assertion of claims

Former § 18-518 reducing from nine to three months the period for bringing suit on rejected claim against estate was not intended to apply to claim against estate in process of administration at time of enactment of statute, and hence action for services rendered deceased and not compensated for in deceased's will as promised by deceased could be instituted within nine months after rejection of claim, where section was amended after administration of estate had begun. *Kalis v. Leahy* (1951, 183 F. 2d 633, 88 U.S. App. D.C. 166, certiorari denied 71 S. Ct. 797, 341 U.S. 926, 95 L. Ed. 1358).

Former § 18-501 providing that District of Columbia assets of a nonresident decedent were subject to claims of persons domiciled in District, and subject to administration in District, provided prosecution of claims was begun within six months after death of decedent, was intended to extend protection to local creditors for six months only, and where no claims were filed against bank account of a nonresident decedent within six months of death bank was required to honor demand of nonresident representative *Gearheart, Jr., Administrator, v. Bank of Commerce & Savings* (D.C.D.C. 1956, 138 F. Supp. 472).

Ordinarily, the period of one year fixed by former § 18-501 was period that local debtor might reasonably await assertion of claims of local creditors before making payment to a foreign domiciliary executor or administrator, unless otherwise protected against such claims. *Cameron v. Riggs Nat. Bank of Washington, D.C.* (D.C.D.C. 1944, 53 F. Supp. 56).

#### Transmission of funds

Where there were no locally domiciled creditors, the probate court might, in its discretion, order the funds in hands of ancillary administrator to be transmitted to the domiciliary administrator, even though some creditors from other states had presented their claims locally. *Sackett, Chapman, Brown & Cross v. Osgood* (1945, 149 F. 2d 825, 80 U.S. App. D.C. 99).

### Chapter 15.—SUITS

#### Sec.

- 20-1501. Suits by and against executors and administrators.
- 20-1502. Judgments against executor or administrator; amount of damages; when assessed.
- 20-1503. Concealment of assets by strangers.
- 20-1504. Concealment by executor or administrator.
- 20-1505. Suits by foreign executors and administrators.
- 20-1506. Suits on bonds against heirs.

#### § 20-1501. Suits by and against executors and administrators

(a) Executors and administrators may commence and prosecute any civil action which the testator or intestate might have commenced and prosecuted, and may be sued in any civil action which might have been maintained against the deceased.

(b) In a civil action based on a tort claim, brought by or against an executor or administrator, the right of action conferred by this section is limited to damages for personal injury. It does not include the right to recover for pain and suffering. (Sept. 14, 1965, 79 Stat. 725, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-501 (Mar. 3, 1901, ch. 854, § 327, 31 Stat. 1241; June 30, 1902, ch. 1329, 32 Stat. 529; June 25, 1936, ch. 804, 49 Stat. 1921; June 19, 1948, ch. 508, § 2, 62 Stat. 488; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

In one place, "civil action" is substituted for "personal action at law or in equity", and in another, "civil action" is substituted for "action at law or in equity", to conform with Rules 2, respectively, of the Federal Rules of Civil Procedure, and the civil rules of the Court of General Sessions. Those rules provide that in ordinary civil cases there shall be only one form of action, to be known as a "civil action".

The restriction, in section 20-501 of D.C. Code, 1961 ed., of suits against executors and administrators to the United States District Court for the District of Columbia, is omitted from this section as superseded by former section 11-755(a) of D.C. Code, 1961 ed., which is now section 11-961(a) of the Code, and under which such suits, if within the jurisdictional amount therein specified, shall be brought in the Court of General Sessions.

The provision excluding damages for pain and suffering in civil actions based on tort claims is separated from the other provisions and placed in subsec. (b) of this section, where it is reworded for the purpose of clarification. See *Phillips v. Lust* (D.C.D.C. 1949), 82 F. Supp. 63.

Changes are made in phraseology.

#### CROSS REFERENCES

Action for wrongful death, see § 16-2701 et seq.

Jurisdiction, pleading, and practice in probate court, see §§ 11-921 and 16-3101 et seq.

Prosecution of suits begun by collectors, see § 20-506.

Set-off, see § 13-505.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Attachment or garnishment

The District Court for District of Columbia has exclusive jurisdiction of suits against an executor on claims against the estate, but an attachment or garnishment directed to an executor, in connection with an action against a third party who claims an interest in the estate, is not a "suit against executor" within jurisdiction of district court. *Frank v. Malone* (1942, 126 F. 2d 651, 75 U.S. App. D.C. 296).

##### Compromise

Where executor reasonably believed that estate was entitled to claim Government bonds notwithstanding their registration in names of decedent or another person, and reasonably claimed an interest in savings account deposits which were made entirely from decedent's money, and when question of ownership of bonds and deposits was first raised, such other person might have made claim of complete ownership of both, the situation furnished the basis for a valid compromise and settlement of the respective claims. *Magruder v. National Metropolitan Bank of Wash.* (D.C. Mun. App. 1945, 40 A. 2d 828).

##### Construction

While perhaps proviso excepting damages for pain and suffering is somewhat inartistically drawn, nevertheless it is not ambiguous and the legislative history supports this conclusion. *Phillips v. Lust* (D.C.D.C. 1949, 82 F. Supp. 63).

##### Jurisdiction

"An executor or administrator cannot be sued in another jurisdiction than that which the administration of the estate is depending, for an accounting, or for acts involving the administration of the estate, or the assets thereof in his hands as such executor or administrator." *Johns v. Herbert* (1894, 2 App. D.C. 485).

If, however, he becomes a trustee of the property, after the estate should be closed, "he is amenable to suit in the courts of any jurisdiction within which he may be found." *Id.*

"An administrator or executor cannot sue or be sued in his representative capacity in any other jurisdiction than the one of his appointment, except where it is permitted by the laws of the jurisdiction in which the suit is sought to be maintained." *Bryan v. Curtis* (1908, 30 App. D.C. 234).

The right conferred by § 329 of the 1901 code (§ 20-505) does not imply "that suit can be maintained in the courts of the District against such administrator or executor." *Id.*

Section 1 of the Municipal Court Act (41 Stat. 1310), this section, and § 328 of the 1901 code (§ 20-502) are



in part materia, and must be construed together. The municipal court has no jurisdiction over suits against executors or administrators. *Sanford v. Sanford* (1923, 286 F. 777, 52 App. D.C. 315).

#### Parties

Where mortgagor executed mortgage covering Pennsylvania realty and died resident of Pennsylvania, mortgagor's administrator was a "necessary party" to suit for an accounting against mortgagees by executrix of estate of mortgagor's mother who was the mortgagor's sole heir. *Cain v. Hutson* (1942, 127 F. 2d 19, 75 U.S. App. D.C. 335, certiorari denied 63 S. Ct. 53, 317 U.S. 656, 87 L. Ed. 527).

#### Reliance on status

In a prior case, former § 20-501 was construed as not only permitting but requiring the presence of an executor as a plaintiff in action of this nature, and as such case has not been changed or overruled, etc., executors were warranted in relying upon the Code provision, so construed, as direct statutory authority to institute action to avoid a deed. *Ransey v. Curtis* (1950, 182 F. 2d 687, 86 U.S. App. D.C. 386).

#### Res judicata

Where success of executrix in suit to set aside testator's sale of realty would inure solely to individual benefit of executrix as sole beneficiary under will, ordinary distinction between her representative and her individual capacity was not material for purposes of application of doctrine of res judicata by virtue of prior ejectment suit against executrix individually. *Jamison v. Garrett* (1953, 92 U.S. App. D.C. 232, 205 F. 2d 15).

Where former ejectment action brought by grantee of realty against possessor who claimed an equitable title under grantor's oral agreement to devise was settled by stipulation which provided that possessor should receive payment for all rights and should deliver to grantee a quitclaim deed, judgment therein, which incorporated stipulation, was res judicata of subsequent suit by possessor, as executrix of grantor's will of which she was sole beneficiary, to set aside sale of realty to grantee, but in which she failed to assert any ground which was unknown to her at time of ejectment action. *Id.*

#### Sale by executor

When will directs the executor to sell the real estate of testator, the legal title vests in him and he has the power to convey, and also authority to enforce specific performance of contract for the sale. *Griffith v. Stewart* (1908, 31 App. D.C. 29, affirmed 30 S. Ct. 528, 217 U.S. 323, 54 L. Ed. 782, 19 Ann. Cas. 639).

### § 20-1502. Judgments against executor or administrator; amount of damages; when assessed

(a) When the verdict of the jury in a suit against an executor or administrator is against the defendant, or he is willing to confess judgment, and the debt or damages which the deceased, if alive, ought to pay, is ascertained by verdict, or confession, or otherwise, the court shall assess the sum which the executor or administrator ought to pay, regard being had to the amount of assets in his hands and the debts due to other persons. When it appears to the court that there are assets to discharge all just claims against the deceased, the judgment shall be for the whole debt or damages found by the jury, or confessed, or otherwise ascertained, and costs. When it appears to the court that there are not sufficient assets to discharge all just claims against the deceased, the judgment shall be for such sum only as bears a just proportion to the amount of the debt or damages and costs, regard being had to the amount of all the just claims and of the assets.

(b) The court may not assess, as provided by subsection (a) of this section, and enter judgment against an executor or administrator until the time

limited by law or by the court for the executor or administrator to pass his account has expired and the executor or administrator has made oath that he does not have assets to discharge all the just claims. The account settled by the Probate Court, in which the debt or damages sued for ought to be stated, is evidence to show the amount of assets and claims; and the court may, when the actual debt or damages are ascertained, refer the matter to an auditor to ascertain the sum for which judgment shall be given. When the judgment is for a sum inferior to the real or actual damage and costs, it shall also stipulate "that the plaintiff be entitled to such further sum as the court shall hereafter assess on discovery of further assets in the hands of the defendant". The court, at any time afterwards, when applied to by the plaintiff, on three days' notice to the defendant or his attorney, may assess and give judgment for such further proportionable sum as the plaintiff appears entitled to, regard being had as provided by this section to the amount of the debt and other claims. On a judgment entered as provided by this section a fieri facias may issue against the defendant, and either his own goods or the goods of the deceased may be thereupon taken and sold. The executor or administrator shall discharge the judgment or put it on a footing with other just claims, and on failure his bond may be sued upon by the plaintiff. (Sept. 14, 1965, 79 Stat. 726, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1951 ed., § 20-502 (Mar. 3, 1901, ch. 854, § 328, 31 Stat. 1242).

Changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Assets

"Assets" for purpose of determining sufficiency of "assets" to discharge just claims of estate means property, real or personal, tangible or intangible, legal or equitable, which can be made available for, or can be appropriated to, the payment of debts. *Stoner v. National Metropolitan Bank of Washington* (D.C.D.C. 1948, 77 F. Supp. 699).

##### Attachment

Statute providing that on judgment entered against personal representative fieri facias may issue and either the representative's own goods or those of the deceased may be taken and sold contemplates use of writs of attachment and garnishment where indicated to supplement the discovery of goods and credits and the satisfaction of judgment against representative. *R. A. Bishop, Executor, etc. v. G. L. Baker et al.* (D.C. App. 1966, 221 A. 2d 912).

Estate funds on deposit in bank were not in custodia legis and were subject to attachment for satisfaction of judgment obtained against executor by creditor of estate in District of Columbia Court of General Sessions to which United States District Court holding probate court had certified suit against executor. *Id.*

##### Defenses

Executors sued for debt or damages and making oath under this section as to insufficiency of assets cannot successfully raise such defense by merely raising doubt as to sufficiency of assets or leaving matter vague, but must establish precisely the condition of estate so that court may not know exactly what part of claim should be allowed, and hence oath that "executors cannot determine that they will have sufficient assets to pay all claims" was insufficient. *Stoner v. National Metropolitan Bank of Washington* (D.C.D.C. 1948, 77 F. Supp. 699).



**Judgment**

In action against an executor on a demand, unless defense of insufficiency of assets is interposed, judgment may be entered for the full amount of demand sued on. *Hawley v. Hawley* (1940, 114 F. 2d 745, 72 App. D.C. 376).

In action against an executor on a demand, a *feri facias* may issue against the executor, and either his own goods or goods of deceased may be taken and sold. *Id.*

Final judgment would not be entered against administratrix of one liable for accounting until plaintiff had complied with this section governing judgments against executor or administrator, and court would retain jurisdiction for purpose of enabling plaintiff to comply and of entering final judgment. *Cafritz v. Corporation Audit Co.* (D.C.D.C. 1945, 60 F. Supp. 627).

**Jurisdiction**

Section 1 of the Municipal Court Act (former § 11-703) and sections 327 and 328 of the 1901 Code (former §§ 20-501, 20-502) were in *pari materia*, and were required to be construed together. Cases covered by said sections 327 and 328 were to be treated as exceptions to those coming within the purview of section 1. *Sanford v. Sanford* (1923, 286 F. 777, 52 App. D.C. 315).

**Procedure in collection of claims**

Proceeding for collection of claims against estate is against executor in his official capacity to determine amount of demand sued on, the value of assets in hands of executor, and proration of the two. *Hawley v. Hawley* (1940, 114 F. 2d 745, 72 App. D.C. 376).

**§ 20-1503. Concealment of assets by strangers**

When an executor, administrator, or collector believes that a person is concealing any part of his decedent's estate, he may file a petition in the court alleging the concealment, and the court may compel an answer thereto on oath. When the court is satisfied, upon an examination of the whole case, that the party charged has concealed any part of the estate of the deceased, it may order the delivery thereof to the executor, administrator, or collector, and may enforce obedience to the order in the same manner in which orders of the court may be enforced. (Sept. 14, 1965, 79 Stat. 726, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 20-503 (Mar. 3, 1901, ch. 854, § 122, 31 Stat. 1209).

Changes are made in phraseology.

**CROSS REFERENCE**

Criminal penalty for concealing or converting assets of estate, see § 22-1404.

**NOTES TO DECISIONS UNDER PRIOR LAW****Determination of ownership**

On petition of creditor, court is without jurisdiction to order fund in possession of third person (who claims an interest therein) paid into the registry of the court. *Cook v. Speare* (1898, 13 App. D.C. 446).

Purpose of section is to furnish prompt remedy for discovery of assets and their reduction to possession when discovered. "But we are unable to find a further intention to confer upon the probate court jurisdiction to determine the question of the actual ownership of such property" as between executor and rival claimant. *Richardson v. Daggett* (1904, 24 App. D.C. 440).

**Jurisdiction**

The probate court of the District of Columbia does not have jurisdiction to decide disputes concerning title or possession of property, as between representatives of an estate and strangers who claim adversely to the estate. *Watkins v. Rives* (1942, 125 F. 2d 33, 75 U.S. App. D.C. 109).

Where petitioner had offered for probate a will in which he was named executor and he acted upon his testamentary authority and did not question jurisdiction of

probate court of District of Columbia over him until after an earlier will had been admitted to probate, and rule had been sought by new executor to require the petitioner to show cause why he should not be adjudged in contempt for failure to comply with a turn-over order, the petitioner's conduct constituted a "waiver" of objection that he became a stranger to the estate from the moment that the will which he had offered for probate was declared invalid, and that therefore probate court was without jurisdiction to adjudge him in contempt. *Id.*

**§ 20-1504. Concealment by executor or administrator**

If a person interested in a decedent's estate by petition alleges that the executor, administrator, or collector has concealed or has in his hands and has omitted to return in the inventory or list of debts any part of his decedent's assets, and the court finally adjudges and decrees in favor of the allegations of the petition, in whole or in part, it shall order an additional inventory or list of debts, as the case may be, to be returned by the executor, administrator, or collector, and appraisement to be made accordingly, to comprehend the assets omitted. The court may compel obedience to the order, and, if it is not complied with, revoke the letters and order the bond of the executor, administrator, or collector to be put in suit. (Sept. 14, 1965, 79 Stat. 726, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 20-504 (Mar. 3, 1901, ch. 854, § 124, 31 Stat. 1210).

Changes are made in phraseology.

**CROSS REFERENCE**

Criminal penalty for concealing or converting assets of estate, see § 22-1404.

**NOTES TO DECISIONS UNDER PRIOR LAW****Jurisdiction**

Where an executor asserts title to assets adversely to the decedent's estate, the probate court of the District of Columbia has jurisdiction under statute to try the question of title thereby presented. *Watkins v. Rives* (1942, 125 F. 2d 33, 75 U.S. App. D.C. 109).

**Right to hearing**

Petition charging executor with concealing assets is a pleading only and not evidence; and executor is entitled to his day in court—in other words, to a trial upon the evidence. *Brosnan v. Brosnan* (1923, 289 F. 547, 53 App. D.C. 149).

**§ 20-1505. Suits by foreign executors and administrators**

A person to whom letters testamentary or of administration have been granted by the proper authority in any of the United States or the territories thereof may maintain a suit or action and prosecute and recover a claim in the District of Columbia in the same manner as if the letters had been granted to him in the District. The letters, or a copy thereof certified under the seal of the authority granting them, are sufficient evidence to prove the granting of the letters, and that the person has administration. The Probate Court may, however, upon the petition of any one interested, require from the person the security required by law in like cases from a resident administrator or executor, or the court may grant auxiliary or ancillary letters, if the case requires, to the same person or other persons. (Sept. 14, 1965, 79 Stat. 727, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 149(7), 84 Stat. 567.)



## AMENDMENT

1970—Section 149(7) of Act of July 29, 1970, Public Law 91-358 amended section by striking out "Probate Court of the District of Columbia" and inserting in lieu thereof "Probate Court."

## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-505 (Mar. 3, 1901, ch. 854, § 329, 31 Stat. 1242.)

Changes are made in phraseology.

## NOTES TO DECISIONS UNDER PRIOR LAW

## Ancillary letters

Where testatrix, who was domiciled in Michigan and whose estate and beneficiaries were largely in Michigan but who had intangible property in District of Columbia, named resident of District of Columbia as sole executor, but Michigan court appointed Michigan resident as administrator with will annexed, because Michigan law forbids appointment of a nonresident executor, it was within discretion of District of Columbia court to appoint the Michigan executor as ancillary administrator. *Purcell v. Cramton* (1944, 143 F. 2d 22, 79 U.S. App. D.C. 99).

The requirement of former § 20-301, that when any will should have been authenticated and admitted to probate letters testamentary thereon should be issued to the executor named therein, if he was legally competent and would accept the trust, did not apply to ancillary letters. *Id.*

Ordinarily ancillary letters are granted to the domiciliary executor or administrator. *Id.*

## Law governing

"Letters of administration obtained in the jurisdiction of the domicile of the decedent prevail over letters of administration de bonis non granted in this District, and the statute confers upon such foreign administrator the right 'to recover from any individual within the District of Columbia effects or money belonging to the testator or intestate, and that letters testamentary or of administration obtained in either of the States or Territories of this Union give a right to the person having them to receive or give discharges for assets, without suit, which may be in the hands of any person in the District of Columbia.' *Kane v. Paul* (1840, 14 Pet. (39 U.S.) 33, 10 L. Ed. 341)." *Southern R. Co. v. Hawkins* (1910, 35 App. D.C. 313, 21 Ann. Cas. 926).

A suit filed by a Maryland executor for specific performance of a contract to buy realty located in Maryland must be governed by the law of that state. *Griffith v. Stewart* (1908, 31 App. D.C. 29, affirmed 30 S. Ct. 528, 217 U.S. 323, 54 L. Ed. 782, 19 Ann. Cas. 639).

Local administrator, however, may maintain action for death by wrongful act over the objection of the defendant where "the foreign executor did not attempt to bring this suit, and is not here complaining because it was brought by appellee. In such a situation, we think, he may be presumed to have waived any right conferred upon him by the local statute, and that such waiver may be taken advantage of by the real party in interest." *Southern R. Co. v. Hawkins* (1910, 35 App. D.C. 313, 21 Ann. Cas. 926). See, also, *Western Union Tel. Co. v. Lipscomb* (1903, 22 App. D.C. 104).

Under this section, the domiciliary administrator of a Michigan decedent's estate might have the estate in the District of Columbia administered by the probate court, or might apply for the appointment of an ancillary administrator. *Wiggins v. Mayer* (1928, 22 F. 2d 869, 57 App. D.C. 293).

While authorizing a domiciliary administratrix to sue in the courts of the District of Columbia, this section limits the purposes of such suits and, by implication, limits exercise of the power to situations in which no ancillary administration has been granted in the District. *Duehay v. Acacia Mut. Life Ins. Co.* (1939, 105 F. 2d 768, 70 App. D.C. 245, 124 A.L.R. 1268).

Nothing contained in this section reveals an intention on the part of Congress to abandon the well-established principle of law which governs ancillary administrations. *Id.*

## Parties in specific performance

Such an executor may maintain specific performance without joining heirs. *Griffith v. Stewart* (1908, 31 App. D.C. 29, affirmed 30 S. Ct. 528, 217 U.S. 323, 54 L. Ed. 782, 19 Ann. Cas. 639).

## § 20-1506. Suits on bonds against heirs

A creditor by a bond which purports to bind the heirs of the obligor may not sue the heirs in respect of assets descended to them, but shall make his claim against the estate in the same manner as required of other creditors. Debts arising by specialty and by simple contract, without distinction, are payable primarily out of the personal estate, and, if that is insufficient, are payable equally and without preference out of the proceeds of the real estate. (Sept. 14, 1965, 79 Stat. 727, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-506 (Mar. 3, 1901, ch. 854, § 360, 31 Stat. 1247).

The reference in section 20-506 of D.C. Code, 1961 ed., "at common law", with respect to prohibiting suits by bond creditors against heirs, is omitted as obsolete. Under rule 2 of the Federal Rules of Civil Procedure and rule 2 of the civil rules of the District of Columbia Court of General Sessions, there is only one form of action, known as "civil action".

For the purpose of clarifying the meaning and scope of the provisions, the words "but shall make his claim against the state in the same manner as that required of other creditors" are inserted.

Changes are made in phraseology.

## NOTES TO DECISIONS UNDER PRIOR LAW

## Real estate mortgages

Debts by specialty and by simple contract, shall be payable primarily out of the personal estate. Mortgage on devised real estate must be paid out of the personal property. *Tracy v. Atwell* (1929, 32 F. 2d 392, 58 App. D.C. 397).

## Chapter 17.—ACCOUNTS

## Sec.

- 20-1701. Time for rendering first account.
- 20-1702. Subsequent accounts.
- 20-1703. Failure to account.
- 20-1704. Assets to be charged.
- 20-1705. Disbursements and allowances.
- 20-1706. Bequests to executors.
- 20-1707. Executor of deceased executor or administrator to render account.
- 20-1708. Accounts of deceased executrix or administratrix.
- 20-1709. Lost property.
- 20-1710. Executor or administrator of deceased executor or administrator entitled to commission; accounts.

## § 20-1701. Time for rendering first account

An executor or administrator shall render to the Probate Court within twelve months from the date of his letters the first account of his administration, and may render the account six months after the date of his letters. (Sept. 14, 1965, 79 Stat. 727, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-601 (Mar. 3, 1901, ch. 854, § 361, 31 Stat. 1247; June 24, 1949, ch. 242, § 7, 63 Stat. 268).

Changes are made in phraseology.

## CROSS REFERENCE

Jurisdiction, pleading and practice in probate court, see §§ 11-921 and 16-3101 et seq.



## NOTES TO DECISIONS UNDER PRIOR LAW

## Annual account of fiduciaries

Where will creating trust and naming trustee did not require trustee to account to court, mere appointment of substitute trustee and his choosing to ask court's instruction in regard to a particular matter did not bring trustee within court rule requiring fiduciary administering estate under "supervision" of court to file annual account and report. *Smithson v. Callahan* (1944, 141 F. 2d 13, 78 U.S. App. D.C. 355).

Under rule requiring fiduciary administering an estate under "supervision" of court to file annual account and report, quoted word implies more than power in court to intervene, in its discretion, in order to prevent or redress improper action by trustee and implies a duty in trustee to consult court before taking action. *Id.*

## § 20-1702. Subsequent accounts

When the first account of an executor or administrator does not show the estate which was on hand to be fully administered, the executor or administrator shall render other accounts from time to time until the estate is fully administered, under such rules as the court establishes. (Sept. 14, 1965, 79 Stat. 727, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-602 (Mar. 3, 1901, ch. 854, § 362, 31 Stat. 1247; June 30, 1902, ch. 1329, 32 Stat. 529; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Changes are made in phraseology.

## § 20-1703. Failure to account

If an executor or administrator fails to return an account within the time limited by law or fixed by the rules of court, or within such further time as the Probate Court allows, his letters, on application of a person interested, may be revoked and administration granted at the discretion of the court. (Sept. 14, 1965, 79 Stat. 727, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-603 (Mar. 3, 1901, ch. 854, § 363, 31 Stat. 1247; June 30, 1902, ch. 1329, 32 Stat. 529).

Changes are made in phraseology.

## § 20-1704. Assets to be charged

In the account, the executor or administrator shall state, on one side, the assets which have come to his hands, according to the inventory returned to the court, or received and appraised after the inventory returned, and the sales made under the court's direction. The inventories shall show the articles of the estate, and the sales, the amount of their value, and where they have been sold. For articles so sold the executor or administrator shall be charged the price according to the return. When articles have been sold for credit and not yet paid for they shall be accounted for in a subsequent account, and all moneys received for debts due the decedent shall be included in the account. (Sept. 14, 1965, 79 Stat. 728, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-604 (Mar. 3, 1901, ch. 854, § 364, 31 Stat. 1248).

Changes are made in phraseology.

## NOTES TO DECISIONS UNDER PRIOR LAW

## Counsel fees

Counsel fees for defending will be charged against the estate. *McIntire v. McIntire* (1904, 24 S. Ct. 196, 192 U.S. 116, 48 L. Ed. 369).

## Effect of settlement

Settlement of administrator's first and final accounts held not to be given the effect of an adjudication of distributee's rights. *Claudy v. Duvall* (1925, 5 F. 2d 381, 55 App. D.C. 319).

## Income from specific bequests

Dividends accruing after death of testatrix upon shares of stock specifically bequeathed are not subject to administrative costs until residuary bequests are exhausted. *Nash v. Ober* (1894, 2 App. D.C. 304).

## Interest on assets

If executor mingles money belonging to estate with his own or is negligent in not paying it over or investing it to render it productive, he is chargeable with interest. *Mades v. Miller* (1894, 2 App. D.C. 455).

## § 20-1705. Disbursements and allowances

On the other side of the account the executor or administrator shall state the disbursements made by him, and debts and allowances, as follows:

(1) funeral expenses, to be allowed at the discretion of the court, according to the condition and circumstances of the deceased, not exceeding \$600, except that for special cause shown the court may make an additional allowance, not exceeding \$400;

(2) the family allowance provided for by section 19-101;

(3) the debts of the deceased proved or passed as directed by this title, and paid or retained;

(4) the allowance for things lost, or which have perished without his fault, which allowance shall be according to the appraisement;

(5) the commissions of the executor or administrator, which shall be, at the discretion of the court, not under one per centum nor exceeding ten per centum on the amount of the inventories, excluding what is lost or has perished; and

(6) the allowance to the executor or administrator for his costs, attorney fees, and extraordinary expenses which the court considers proper to allow. (Sept. 14 1965, 79 Stat. 728, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-605 (Mar. 3, 1901, ch. 854, § 365, 31 Stat. 1248; June 30, 1902, ch. 1329, 32 Stat. 529; Aug. 1, 1953, ch. 308, § 1, 67 Stat. 358).

Item (2), relating to the family allowance, is new as text, but presumably should be included, considering section 19-101 herein, to which the item refers. The provision for the family allowance was enacted in 1949. See also, section 20-1325 herein, relating to priorities and preferences in the payment of debts and other expenses of the estate.

Changes are made in phraseology and arrangement.

## CROSS REFERENCE

Priority of payment, see § 20-1325.

## NOTES TO DECISIONS UNDER PRESENT LAW

## Compensation of executor or administrator

Where attorney who drew will which nominated attorney as executor and authorized payment of ten percent for his services was attesting witness to will, attorney had "financial interest" which constituted a "beneficial interest" within the meaning of § 18-104 and fixed com-



mission was void but court would allow fee for work performed. *In re Estate of M. B. Small* (1972, 346 F. Supp. 600).

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Ancillary commissions

Where commissions to ancillary executors of approximately 2.5 percent of the amount of the ancillary estate and the attorney's fees in approximately the same amount were allowed and there was nothing in the record to indicate that a caveat was pending or immediately contemplated at the domicile of the testatrix, District Court did not abuse its discretion in allowing the fees and commission. *Powell v. Ogden & Sellers, Ancillary etc.* (1960, 278 F. 2d 451, 108 U.S. App. D.C. 6).

Where commissions of approximately 2.5 percent of the amount of the ancillary estate and attorneys fees in approximately the same amount were allowed, the Court of Appeals would assume that the domiciliary court, in fixing commissions, would take into account the payments made to the same persons in their capacity as ancillary executors, notwithstanding that the 10 percent limitation in the District statute could not apply outside the jurisdiction and hence could not place a limit on the commissions allowable to the domiciliary executors. *Id.*

##### Authority for payments

An executor should not make payments to himself on account of commissions until he has been authorized by court to do so. *Doherty v. Stoner* (1948, 169 F. 2d 965, 83 U.S. App. D.C. 365).

Where it was certain, because of size of inventory and provision of will fixing his compensation at 10% thereof, that executor would ultimately be entitled to commissions largely in excess of advances on commissions which he prematurely paid to himself, and that executor had substantially completed his work, unauthorized withdrawals by executor resulted in no harm to estate, and executor would not be charged with interest on commissions which he withdrew prematurely. *Id.*

##### Compensation of executor or administrator

This section "places a limitation beyond which the court may not go in allowing compensation for the services of an executor or administrator, or executors or administrators, in administering an entire estate." *Brosnan v. Fox* (1923, 284 F. 923, 52 App. D.C. 143).

"In the case of succession the court must make only such allowances \* \* \* to the succeeding executors or administrators within the limitation fixed by the statute." *Id.*

The court has power to compensate an executor for defending the validity of a contested will, which is finally adjudicated void. *Id.*

##### Computation of commissions

Where executor sold testatrix' realty, executor was entitled to have his commission based on gross sale price rather than net sum received, notwithstanding that debts and charges were taken out of sale price by title insurance company which handled the settlement after sale and that only the net sum was turned over to executor. *Doherty v. Stoner* (1948, 169 F. 2d 965, 83 U.S. App. D.C. 365).

Where testatrix on date of her death had on deposit in local bank the sum of \$44,219.73, and bank held her note for \$25,000, and on due date, which was before executor qualified, bank charged testatrix' account with principal of note and accrued interest, so that executor succeeded to a credit of only \$19,053.06, entire deposit of \$44,219.73 was properly a part of inventory upon which executor's commissions were to be calculated. *Id.*

No case is made for payment to executor in operating decedent's business over and above the amount already permitted by the Code. *Stoner v. Doherty* (1950, 182 F. 2d 673, 86 U.S. App. D.C. 368).

##### Discretion of court

Provision in will directing that executor be allowed maximum compensation permitted by law nullified court's discretion under this section as to amount of executor's commissions. *Doherty v. Stoner* (1948, 169 F. 2d 965, 83 U.S. App. D.C. 365).

##### Effect of settlement of final accounts

Settlement of administrator's first and final accounts held not to be given the effect of an adjudication of distributee's rights *Claudy v. Duvall* (1925, 5 F. 2d 381, 55 App. D.C. 319).

##### Funeral expenses

A child's guardian would be granted permission to pay funeral expenses of child's mother in a reasonable amount out of estate received by child and where such allowances out of a decedent's estate were limited by this section to a maximum of \$600, payment would be authorized in that amount instead of the sum of \$821 prayed for. *In re Fitzwater's Guardianship* (D.C.D.C. 1947, 69 F. Supp. 866).

This section placing a limit of \$600 on disbursements by executor or administrator for funeral expenses means \$600 for a funeral within the District of Columbia, so that where a body has been transported from the District of Columbia for burial elsewhere executor or administrator may disburse not more than \$600 for expenses in the District of Columbia and not more than \$600 for expenses outside of the District of Columbia. *In re Tunison's Estate* (D.C.D.C. 1948, 75 F. Supp. 573).

##### Inventory items

Disbursements for payroll, operating and miscellaneous expenses incurred in continuing a business until its sale are not inventory items within the meaning of the section authorizing commissions. *Stoner v. Doherty* (1950, 182 F. 2d 673, 86 U.S. App. D.C. 368).

##### No allowance prior to final settlements

"An executor, prior to final settlement of the estate, or the termination of his services in connection with the estate, is not entitled to an allowance of commissions." *Brosnan v. Fox* (1923, 284 F. 923, 52 App. D.C. 143).

An executor is not entitled to commission prior to final settlement of estate or termination of his services, but such rule should not be applied in such a way as to create unnecessary hardship. *Doherty v. Stoner* (1948, 169 F. 2d 965, 83 U.S. App. D.C. 365).

##### Probate Court's authority to compel payment

An attorney may have a claim against executors or estate which he can collect in an action at law in district court but statute authorizing executors to pay attorneys' fees and probate court to allow such fees in executors' accounts does not authorize probate court to order executors to pay the fees. *J. F. Bird et al., Executors etc. v. C. B. Sullivan, Jr.* (1963, 316 F. 2d 675, 115 U.S. App. D.C. 24).

#### § 20-1706. Bequests to executors

Where anything is bequeathed to an executor by way of compensation, an allowance of commission may not be made unless the compensation appears to the court to be insufficient. Where it is insufficient, it shall be reckoned in the commission to be allowed by the court. (Sept. 14, 1965, 79 Stat. 728, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-606 (Mar. 3, 1901, ch. 854, § 366, 31 Stat. 1248).

Changes are made in phraseology.

#### NOTES TO DECISIONS

##### Financial interest

Where attorney who drew will which nominated attorney as executor and authorized payment of ten percent for his services was attesting witness to will, attorney had "financial interest" which constituted a "beneficial interest" within the meaning of § 18-104 and fixed commission was void but court would allow fee for work performed. *In re Estate of M. B. Small* (1972, 346 F. Supp. 600).



### § 20-1707. Executor of deceased executor or administrator to render account

The executor or administrator of a deceased executor or administrator who dies before an account of his administration has been rendered shall render an account showing the amount of the assets received and the payment made by his decedent. The account so rendered shall, if found by the court to be correct, be admitted to record as other administration accounts. (Sept. 14, 1965, 79 Stat. 728, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-607 (Mar. 3, 1901, ch. 854, § 370, 31 Stat. 1249).

Changes are made in phraseology.

#### CROSS REFERENCE

Accounting for deceased executor or administrator, see § 20-359.

### § 20-1708. Accounts of deceased executrix or administratrix

The husband of an executrix or administratrix who dies before a final account of her administration has been settled shall render an account, if required by the court, showing the amount of money and property received and of payments and disbursements made by the executrix or administratrix, or that may have been received or paid by him, and not before accounted for with the court. The account so rendered shall, if found by the court to be correct, be admitted to record as other administration accounts in cases where the executrix or administratrix rendered them in person. If the husband refuses to render the account, the court may proceed against him by attachment, and may commit him until he renders the account. (Sept. 14, 1965, 79 Stat. 728, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-608 (Mar. 3, 1901, ch. 854, § 371, 31 Stat. 1249).

Changes are made in phraseology.

### § 20-1709. Lost property

The Probate Court may make allowance to an executor, administrator, or collector for property of the decedent which has perished or been lost without the fault of the party. Profit may not be made and loss may not be sustained by an executor or administrator in the increase or decrease of the estate under his management. He shall return an inventory and account for the increase, and may be allowed for the decrease on the settlement of the final or other account. (Sept. 14, 1965, 79 Stat. 729, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-609 (Mar. 3, 1901, ch. 854, § 372, 31 Stat. 1249).

Changes are made in phraseology.

### § 20-1710. Executor or administrator of deceased executor or administrator entitled to commission; accounts

The executor or administrator of a deceased executor or administrator shall return, on oath, to the court, on or before the day named as provided by

section 20-359(b), a list of the bonds, notes, accounts, and money provided by subsection (a) of that section, and may retain out of the money such commission as the court allows, not exceeding ten per centum on the principal inventory. The personal estate and money turned over by him constitute assets in the hands of the administrator de bonis non, to be accounted for by him as such. (Sept. 14, 1965, 79 Stat. 729, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-610 (Mar. 3, 1901, ch. 854, § 303, 31 Stat. 1237).

Changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Agreements as to compensation

"An executor or administrator may agree to serve for less than the compensation fixed in the statute, and if he does so the agreement will be enforced." *Washington Loan & Trust Co. v. Convention of Protestant Episcopal Church of Diocese of Washington* (1924, 293 F. 833, 54 App. D.C. 14, 34 A.L.R. 913).

##### Compensation fixed by will

Executor qualifying under will fixing commission at 3 percent can not subsequently claim a larger sum, although it acted on advice of counsel that the limitation was void and stated in its petition that it based its application on that advice. *Washington Loan & Trust Co. v. Convention of Protestant Episcopal Church of Diocese of Washington* (1924, 293 F. 833, 54 App. D.C. 14, 34 A.L.R. 913).

Allowance of commission. *Sinnott v. Kenaday* (1899, 14 App. D.C. 1, followed in 14 App. D.C. 484, reversed on other grounds 21 S. Ct. 233, 179 U.S. 606, 45 L. Ed. 399). See, also, *Marfield v. McMurdy* (1905, 25 App. D.C. 342); *Howard v. Howard* (1912, 38 App. D.C. 575); *Brosnan v. Fox* (1923, 284 F. 923, 52 App. D.C. 143).

##### Time for payment

Generally, an executor's commissions should be withheld until final settlement of the estate or termination of his services, but this rule is one of caution and should not be applied so as to create unnecessary hardship. *Maloney v. Foundry M. E. Church* (1944, 139 F. 2d 388, 78 U.S. App. D.C. 263).

Where the bulk of an estate had been collected and the balance appeared to be dependent on the results of long litigation, the executor, claiming a commission of 5 percent of the principal assets converted to cash, should be given an opportunity to show that postponement of payment would be an unreasonable hardship not necessary to protect the estate against his resignation or disqualification. *Id.*

In its discretion, after hearing evidence, the court may allow advance payment of an executor's commissions if it finds that otherwise unavoidable delay in final settlement will cause an unreasonable hardship and there is no reasonable probability that the remaining amount will be insufficient to satisfy claims of a possible successor. *Id.*

## Chapter 19.—DISTRIBUTION OF SURPLUS

### Sec.

- 20-1901. Distribution; when to be made.
- 20-1902. Distribution of specific property.
- 20-1903. Distribution of specific articles; how to be made.
- 20-1904. Partial distribution.
- 20-1905. Distribution of specific bequests.
- 20-1906. Bequest to female.
- 20-1907. Meeting of legatees or next of kin.
- 20-1908. Distribution of minor's share.

#### AMENDMENT

1971—Section 1(b) of Act Aug. 11, 1971, Pub. L. 92-85, added item 20-1908.

### § 20-1901. Distribution; when to be made

When the debts of an intestate, exhibited and proved, or notified and not barred, have been dis-



charged or settled, or allowed to be retained for as directed by this title, the administrator shall make distribution of the surplus as provided by chapters 3 and 7 of Title 19. (Sept. 14, 1965, 79 Stat. 729, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-701 (Mar. 3, 1901, ch. 854, § 373, 31 Stat. 1249).

Changes are made in phraseology.

#### CROSS REFERENCES

Descent of real estate, see § 19-301 and 19-317 to 19-321.

Distribution before discovery of will or before will is declared invalid, see § 20-354, 20-355.

Distribution of death benefits of fraternal benefit associations, see § 35-901.

Distribution of proceeds of action for wrongful death, see § 16-2703.

Interest of widow who renounces under will, see § 19-113.

Jurisdiction, pleading and practice in probate court, see §§ 11-921 and 16-3101 et seq.

Life insurance for benefit of wife and children, see §§ 30-213, 30-214.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 19-114.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Equitable apportionment of estate taxes

Purpose of the marital deduction provision does not modify meaning of District of Columbia statute whereby dissenting widow can take one-third of surplus after debts, and hence the amount of property received by widow's election, and thus the amount eligible for marital deduction, was a portion of the surplus remaining after deducting entire amount of estate taxes, in view of District of Columbia rule rejecting doctrine of general equitable apportionment of estate taxes. *R. H. DelMar et al. v. United States* (1968, 390 F. 2d 466, 129 U.S. App. D.C. 51).

Congress adopted the marital deduction to provide opportunity for equalization of the tax treatment of estates in common law and community property states. *Id.*

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### In general

"It is not the full and complete administration of the estate that marks the period of distribution, but the payment of or allowance for all debts and claims made known against the estate, after notice given, and when that is done it at once becomes the duty of the administrator to deliver up and distribute the residue of the estate to those entitled thereto." *Sterrett v. National Safe Deposit, Sav. & Trust Co.* (1897, 10 App. D.C. 131).

Distribution of property of persons dying in common disaster. *Young Womens Christian Home v. French* (1903, 23 S. Ct. 184, 187 U.S. 401, 47 L. Ed. 233).

"An executor or administrator may make distribution of the surplus in his hands, after discharging the debts of the estate, without waiting for an order of the probate court." *Miller-Shoemaker Real Estate Co. v. Sturgeon* (1908, 31 App. D.C. 406).

#### § 20-1902. Distribution of specific property

Where the surplus remaining in an administrator's hands after payment of all just debts exhibited and proved or notified and not barred, or after retaining for them, consists of specific property or articles mentioned in the inventory, the administrator, if he cannot satisfy the parties, may apply to the court to make distribution. The Probate Court may appoint a day for making distribution, and by summons call on the parties to appear, and, at the appointed time,

proceed to distribute. If a majority in point of value neglect to appear, or, if appearing, object to the distribution of the articles, or if the court deems a sale of the articles or any part of them more advantageous, it shall order a sale accordingly, and the rules provided by this title relative to a sale by order of the court shall be observed. (Sept. 14, 1965, 79 Stat. 729, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-718 (Mar. 3, 1901, ch. 854, § 389, 31 Stat. 1251).

Changes are made in phraseology.

#### § 20-1903. Distribution of specific articles; how to be made

When a distribution of specific articles is to be made the court may appoint two disinterested persons, not in any way related to the parties concerned, to make the distribution among the persons entitled as to them seems proper; or when, in their opinion, upon a view of the articles, a distribution among the persons entitled could not be by them made which would operate equally, but a sale thereof would be more advantageous to the persons, they shall return to the court their opinion in writing. The court shall thereupon order a sale of the articles, upon reasonable notice, and cause the proceeds of the sale to be equally distributed among the parties entitled. (Sept. 14, 1965, 79 Stat. 729, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed. § 18-719 (Mar. 3, 1901, ch. 854, § 390, 31 Stat. 1251).

Changes are made in phraseology.

#### § 20-1904. Partial distribution

When a person applies to the Probate Court by petition, and satisfies the court that he is in want of subsistence or greatly straitened in circumstances, and that it probably will not require more than one-half of the assets to discharge the debts, the court may direct the executor or administrator to deliver to the petitioner any part of what the court believes will be his distributive share, or any part of a legacy or bequest in money not exceeding one-third part, the petitioner giving bond, with security approved by the court, to the executor or administrator for returning the part so delivered, or an equivalent, with interest, when so directed by the court. The court may determine in a summary way on the petition, after summons against the executor or administrator duly returned "summoned" or "non est". (Sept. 14, 1965, 79 Stat. 730, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-720 (Mar. 3, 1901, ch. 854, § 391, 31 Stat. 1251).

References to "executor" are inserted for the purpose of completeness and of complying with the probable original legislative content, considering the substance of the provisions.

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20-1905.



## NOTES TO DECISIONS UNDER PRIOR LAW

**In general**

"Section 391 (former § 18-720) authorizes the court to deliver any part of what the court shall suppose will be the distributive share," and the requirement of a bond was sufficient protection in the event that the beneficiary should subsequently be divested of her interest in the estate. *Hutchins v. Hutchins* (1913, 41 App. D.C. 122).

**Collectors**

Collector may be authorized to make partial distribution under this section. *Hutchins v. Hutchins* (1913, 41 App. D.C. 122).

**Trustees**

This section confers no jurisdiction on an equity court to order partial distribution of a fund administered by a trustee under its supervision. *Hutchins v. Dante* (1913, 40 App. D.C. 262).

## § 20-1905. Distribution of specific bequests

The court, in like manner as provided by section 20-1904, on a petition by a person in circumstances as described in that section, to whom a specific legacy or bequest has been made, being satisfied that the assets, exclusive of all specific legacies, will not be nearly exhausted by debts, may direct the executor or administrator with the will annexed to deliver to the petitioner the specific legacy or bequest on his giving bond as provided by section 20-1904. (Sept. 14, 1965, 79 Stat. 730, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-721 (Mar. 3, 1901, ch. 854, § 392, 31 Stat. 1251).

Changes are made in phraseology.

## § 20-1906. Bequest to female

When a bequest of personal property or money is made to a female and directed by the will to be paid on her attaining to full, mature, or to a lawful age, the female is entitled to receive and demand the personal property or money on arriving at the age of 18 years or on being married. (Sept. 14, 1965, 79 Stat. 730, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-722 (Mar. 3, 1901, ch. 854, § 393, 31 Stat. 1251).

Changes are made in phraseology.

## CROSS REFERENCES

Appointment of guardian, see § 21-106.

Infant married woman's separate estate, see § 30-201 et seq.

## NOTES TO DECISIONS UNDER PRIOR LAW

**In general**

Under a will directing the payment of income from an estate to a female "when she shall reach the age of eighteen years," she is entitled to receive it on attaining that age, and it should not be paid to her guardian. *Perin v. Perin* (41 W. L. R. 265).

This section provides an exception to the general rule under common law that infants, whether male or female, attain their majority at the age of 21 years. *Jones v. Jones* (1934, 72 F. 2d 829, 63 App. D.C. 373, 95 A.L.R. 352).

## § 20-1907. Meeting of legatees or next of kin

An administrator may appoint a meeting of persons entitled to distributive shares or legacies or a residue, on a day approved by the court, and payment or distribution may be made at the meeting under the court's direction and control. (Sept. 14, 1965, 79 Stat. 730, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-723 (Mar. 3, 1901, ch. 854, § 394, 31 Stat. 1251).

Changes are made in phraseology.

## NOTES TO DECISIONS UNDER PRIOR LAW

**In general**

"Ordinarily it would be safer for an administrator to pursue the course pointed out by this latter section (this section), but there is no express command of the law that he should do so." *Miller-Shoemaker Real Estate Co. v. Sturgeon* (1908, 31 App. D.C. 406).

"This provision merely gives expression to the well-settled rule that a legacy is payable in cash, unless some other form of payment is authorized by the person entitled. In the present case the distributee was a non-resident, and the executors, waiving their right to make payment here under the direction of the court, assumed the risk of sending the money by check to California. To absolve themselves from responsibility to the distributee, it must appear that he expressly or impliedly authorized them so to act, and, unless he did, in contemplation of law the money still is in their hands and they must respond to the order of the court" directing them to pay it. In this case the check was received and cashed by an imposter, and the executors were directed to pay the legatee his distributive share. *Moore v. Moore* (1917, 47 App. D.C. 23).

Settlement of administrator's first and final accounts was not to be given the effect of an adjudication of distributee's rights. *Claudy v. Duvall* (1925, 5 F. 2d 381, 55 App. D.C. 319).

## § 20-1908. Distribution of minor's share

If (1) any person entitled to a distributive share of a decedent's estate is under twenty-one years of age and is not otherwise under a legal disability, (2) such distributive share consists of personal property or money of the value of not more than \$1,000, and (3) there is no duly appointed and qualified guardian for such person—

(A) if such person is eighteen years of age or over, the executor or administrator may deliver such share to such person and his receipt shall be sufficient voucher therefor;

(B) if such person is under eighteen years of age, the executor or administrator may deliver such share to the custodian of such person and the receipt of such custodian shall be sufficient voucher therefor.

(Added Aug. 11, 1971, Pub. L. 92-85, § 1(a), 85 Stat. 307.)

## Chapter 21.—ADMINISTRATION OF SMALL ESTATES

**Sec.**

- 20-2101. Petition for distribution of small estate; order.
- 20-2102. Waiver of administration; notice to creditors; final order.
- 20-2103. Exemptions from liability.
- 20-2104. Waiver of bond and commissions.
- 20-2105. Forms to be furnished; fees.
- 20-2106. Discovery of additional property.
- 20-2107. Penalties for false affidavits and other violations.
- 20-2108. Application of chapter.

## CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 20-1325.

## § 20-2101. Petition for distribution of small estate; order

(a) When a person dies, leaving a small estate consisting only of personal property of a value not in excess of \$2,500, the surviving spouse or minor children entitled to the family allowance authorized



by section 19-101 may file in the Probate Court a petition, under oath, declaring:

- (1) the time and place of decedent's death;
- (2) the known next of kin;
- (3) the known assets and by whom they are held;
- (4) that the petitioner has made a diligent search to discover all assets of the deceased;
- (5) the amount of the funeral expenses and to whom they are due; and
- (6) that the assets do not exceed \$2,500 in value.

The minor children shall act through the person having their custody or a next friend.

(b) When the Probate Court is satisfied that the allegations in a petition filed under subsection (a) of this section are true, it shall enter a final order:

- (1) declaring that formal administration is not necessary and that probate of a will is not required;
- (2) fixing the amount of funeral expenses allowable and specifying to whom they are due and out of what property they are to be paid;
- (3) vesting title to the remainder of the property in the surviving spouse or minor children, as the case may be, in satisfaction of the family allowance; and
- (4) directing the persons having possession of the property to pay over, transfer, and deliver it as allotted.

The Probate Court may also authorize in the order, or by further order, the sale of any of the property as the exigencies of the situation require. (Sept. 14, 1965, 79 Stat. 730, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Aug. 11, 1971, Pub. L. 92-88, § 2, 85 Stat. 313.)

#### AMENDMENT

1971—Section 2 of Act Aug. 11, 1971, Pub. L. 92-88, amended subsec. (a) by striking out "\$500" wherever it appears and inserting "\$2,500" in lieu thereof.

#### SHORT TITLE

Section 1 of Act Aug. 11, 1971, Pub. L. 92-88, provided: "That this Act (amending sections 15-707, 18-511, 19-101, 20-334, 20-1106, 20-2101, 20-2102, 20-2105 to 20-2107) may be cited as the 'District of Columbia Administration of Estates Act'."

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-802 (Mar. 3, 1901, ch. 854, § 394(b)), as added June 24, 1949, ch. 244, 63 Stat. 269).

Changes are made in phraseology and arrangement.

#### CROSS REFERENCE

Transfer of motor vehicles without administration when only assets requiring administration consist of not more than two motor vehicles, see § 40-102.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 20-2103, 20-2105.

### § 20-2102. Waiver of administration; notice to creditors; final order

(a) When a person dies intestate, leaving a small estate consisting only of personal property of a value not in excess of \$2,500, and there is no surviving spouse or minor child, the person entitled to be preferred in the appointment of an administrator may file in the Probate Court a petition, under oath, declaring:

- (1) the time and place of the decedent's death;
- (2) the known next of kin;

(3) that diligent search has been made for a will and none has been found;

(4) the known creditors, together with the amount of each claim, including contingent and disputed claims;

(5) the amount of the funeral expenses;

(6) the known assets and by whom they are held;

(7) that the petitioner has made a diligent search to discover all assets and debts of the deceased;

(8) that the assets do not exceed \$2,500 in value; and

(9) that there are no known legal proceedings pending in which the decedent is a party.

(b) When the Probate Court is satisfied that the allegations in a petition filed under subsection (a) of this section are true, it shall enter a preliminary order declaring that formal administration is not necessary, and instructing the petitioner to publish once, in substantially the usual form, notice to creditors to exhibit their claims, duly authenticated, within 30 days after the notice. The notice shall be inserted in one newspaper of general circulation in the District of Columbia as the court directs.

(c) When a preliminary order has been entered and the notice has been published, as provided by subsection (b) of this section, and the time provided in the notice has expired, the petitioner shall file, under oath, a statement, with the usual proof of publication attached, that the notice has been published, and that the time has expired, and listing all then known creditors, including contingent and disputed claims, and the amount of each claim.

(d) When the Probate Court is satisfied that the statement filed under subsection (c) of this section is true, and after hearing and disposing of any objections filed in the court by persons interested in the estate, it shall enter a final order:

(1) directing the petitioner to pay from the estate all the claims, in the order of priority provided by law;

(2) authorizing a person having possession of any property of the estate to transfer, pay over, and deliver it in accordance with the petitioner's directions; and

(3) decreeing that, after the Register of Wills certifies upon the final order that he has seen the vouchers for the payment of the claims and is satisfied that the claims, as well as the fees provided for by this chapter, have been paid, the remaining balance of the estate, if any, shall be vested:

(A) in the adult surviving children, equally; or

(B) if there is no adult surviving child, then in those persons who would be entitled to the remaining balance of the estate under chapter 3 of Title 19.

The share of a minor is payable, in the discretion of the court, to the person having custody of the minor or to such other person as the court designates, to be used solely for the care and maintenance of the minor.

(e) The court may also provide in its final order issued under subsection (d) of this section for the



sale of any property, upon such terms as it deems advisable, and for the distribution of the proceeds in accordance with the order. (Sept. 14, 1965, 79 Stat. 731, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Aug. 11, 1971, Pub. L. 92-88, § 2, 85 Stat. 313.)

#### AMENDMENT

1971—Section 2 of Act Aug. 11, 1971, Pub. L. 92-88, amended subsec. (a) by striking out "\$500" wherever it appears and inserting "\$2,500" in lieu thereof.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-803 (Mar. 3, 1901, ch. 854, § 394(c), as added June 24, 1949, ch. 244, 63 Stat. 269).

Changes are made in phraseology and arrangement.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 20-2103, 20-2105.

### § 20-2103. Exemptions from liability

In the absence of fraud, a person who pays over, transfers, or delivers property pursuant to a final order entered under section 20-2101, or pursuant to the directions of a petitioner acting under authority of a final order under section 20-2102, is not liable for the application thereof, and he, or a person who receives any property pursuant to a final order entered under section 20-2101, or pursuant to the directions of a petitioner acting under authority of a final order under section 20-2102, is not responsible for any claims on account of the payment, transfer, delivery, or receipt of the property. The property distributed pursuant to a final order in either case becomes the absolute property of the respective distributees thereof. (Sept. 14, 1965, 79 Stat. 732, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-804 (Mar. 3, 1901, ch. 854, § 394(d), as added June 24, 1949, ch. 244, 63 Stat. 269).

Changes are made in phraseology.

### § 20-2104. Waiver of bond and commissions

A petitioner under this chapter is not required to be represented by an attorney, or to give bond, and he may not receive a commission for performing services under this chapter. (Sept. 14, 1965, 79 Stat. 732, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-805 (Mar. 3, 1901, ch. 854, § 394(e), as added June 24, 1949, ch. 244, 63 Stat. 269).

Changes are made in phraseology.

### § 20-2105. Forms to be furnished; fees

The Register of Wills shall prepare, and make available, forms whereby the petition and final order under section 20-2101, and the petition, preliminary order, the statement, the final order, and the certificate of payment under section 20-2102, shall constitute in each case one connected instrument. The Register of Wills may demand and receive for services performed by him under this chapter such fees as shall be set by the court having jurisdiction over probate matters in the District of Columbia. (Sept. 14, 1965, 79 Stat. 732, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Aug. 11, 1971, Pub. L. 92-88, § 4, 85 Stat. 313.)

#### AMENDMENT

1971—Section 4 of Act Aug. 11, 1971, Pub. L. 92-88, amended the last sentence to read as above set out. Prior to amendment the sentence read: "In lieu of all other fees, costs, or charges, the Register of Wills shall receive a fee of \$5 for all services administered under this chapter, including the taking of affidavits, plus a fee of 25 cents for each certified copy of the instruments."

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-806 (Mar. 3, 1901, ch. 854, § 394(f), as added June 24, 1949, ch. 244, 63 Stat. 269).

Minor changes are made in phraseology.

### § 20-2106. Discovery of additional property

The discovery of additional property of the decedent, after the filing of a petition in either case provided for by this chapter, shall be reported by the petitioner to the Probate Court as soon as discovered by him. The existence of the additional property does not invalidate any proceedings under this chapter except when the additional property is discovered before the entry of the final order provided for, and either (1) is real estate, or (2) increases the total value of the estate to more than \$2,500. In either case a final order may not be entered under this chapter, and the court shall require regular administration. When additional personal property is discovered after entry of the final order, which does not increase the value of the total estate to more than \$2,500, the additional property may be distributed pursuant to a new petition. In all other cases the additional property may not be distributed under this chapter. (Sept. 14, 1965, 79 Stat. 732, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Aug. 11, 1971, Pub. L. 92-88, § 2, 85 Stat. 313.)

#### AMENDMENT

1971—Section 2 of Act Aug. 11, 1971, Pub. L. 92-88, amended section by striking out "\$500" wherever it appears and inserting "\$2,500" in lieu thereof.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 18-807 (Mar. 3, 1901, ch. 854, § 394(g), as added June 24, 1949, ch. 244, 63 Stat. 269).

Changes are made in phraseology.

### § 20-2107. Penalties for false affidavits and other violations

Whoever makes a false affidavit under this chapter, or willfully violates an order of the Probate Court under this chapter, shall be fined not more than \$2,500 for each offense. (Sept. 14, 1965, 79 Stat. 733, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Aug. 11, 1971, Pub. L. 92-88, § 2, 85 Stat. 313.)

#### AMENDMENT

1971—Section 2 of Act Aug. 11, 1971, Pub. L. 92-88, amended section by striking out "\$500" and inserting "\$2,500" in lieu thereof.

#### REVISION NOTES

Based on D.C. Code 1961 ed., § 18-808 (Mar. 3, 1901, ch. 854, § 394(h), as added June 24, 1949, ch. 244, 63 Stat. 269).

Section 18-808 of D.C. Code, 1961 ed., is also carried into section 19-101 herein, to the provisions of which it also related.

Changes are made in phraseology.

### § 20-2108. Application of chapter

This chapter applies to estates of persons dying after June 24, 1949; and where there is a conflict or inconsistency between this chapter and any other



law, this chapter governs. (Sept. 14, 1965, 79 Stat. 733, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 18-809, 18-810 (Mar. 3, 1901, ch. 854, §§ 394(1)(j), as added June 24, 1949, ch. 244, 63 Stat. 269).

Section consolidates sections 18-809 and 18-810 of D.C. Code, 1961 ed. Sections 18-809 and 18-810 of D.C. Code, 1961 ed., are also carried into section 19-101 herein, to the provisions of which they also related.

Changes are made in phraseology.

### Chapter 23.—ESTATES OF ABSENTEES AND ABSCONDERS

Sec.

- 20-2301. Petition for appointment of receiver, where absentees interested in property; Corporation Counsel as party.
- 20-2302. Warrant to United States marshal; fees of marshal.
- 20-2303. Notice of hearing to absentee and interested parties.
- 20-2304. Time of hearing; publication and posting of notice.
- 20-2305. Appointment of receiver; bond; finding of date of disappearance.
- 20-2306. Transfer of property to receiver; schedule of property.
- 20-2307. Possession, by receiver, of additional property; collection of debts.
- 20-2308. Procedure where absentee left only debts due him; appointment of receiver.
- 20-2309. Care, custody, sale of property.
- 20-2310. Support of absentee's wife and minor children.
- 20-2311. Receiver may adjust claims of or against estate.
- 20-2312. Compensation of receiver; interest of absentee in property to cease after fourteen years.
- 20-2313. Distribution after fourteen years as if absentee had died intestate.
- 20-2314. Time for distribution and accounting when receiver not appointed within thirteen years.
- 20-2315. Construction with other laws.

#### AMENDMENT

1970—Section 149(8)(B) of Act July 29, 1970, Public Law 91-358 amended chapter analysis relating to item 20-2301 to read as above set out.

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

§ 20-2301. Petition for appointment of receiver, where absentees interested in property; Corporation Counsel as party

(a) If a person entitled to or having an interest in property in the District of Columbia has disappeared or absconded from the District of Columbia, and it is not known where he is, or if he, having a wife or minor child, dependent to any extent upon him for support, has disappeared or absconded without making sufficient provision for the support, and it is not known where he is, or if his whereabouts is known and he has been without the District of Columbia continuously for two years or longer, a person who would under the law of the District of Columbia be entitled to administer upon the estate of the absentee if he were deceased, or, if no one is known to be so entitled, any suitable person, or the wife, or someone in her or the minor's behalf, may file a petition, under oath, in the Probate Court, stating:

- (1) the name, age, occupation, and last known residence or address of the absentee;
- (2) the date and circumstances of the disappearance or absconding; and

(3) the names and residences of other persons, whether members of the absentee's family or otherwise, of whom inquiry may be made.

The petition shall also contain a schedule of the property, real and personal, of the absentee, as far as known, within the District of Columbia, and pray that the property be taken possession of, and a receiver be appointed under this chapter.

(b) The Corporation Counsel of the District of Columbia shall be made a party to a petition filed under subsection (a) of this section, and shall be given notice of all subsequent proceedings under this chapter. (Sept. 14, 1965, 79 Stat. 733, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Sept. 10, 1966, 80 Stat. 738, Pub. L. 89-567, § 2; July 29, 1970, Pub. L. 91-358, title I, § 149(8)(A), 84 Stat. 567.)

#### CODIFICATION

Section 10 of the act of Nov. 8, 1965, Pub. L. 89-347, amended section 20-701 by striking out "The United States attorney in and for the District of Columbia" and inserting in lieu thereof "The Corporation Counsel of the District of Columbia." However, section 20-701 was repealed by act of Sept. 14, 1965, Pub. L. 89-183 and re-enacted as section 20-2301, effective Jan. 1, 1966. For this reason this amendment is set out as a note to this new section.

#### AMENDMENTS

1970—Section 149(8)(A) of Act July 29, 1970, Public Law 91-358 amended subsection (a) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Probate Court" and by striking out "United States attorney" in the section heading and inserting in lieu thereof "Corporation Counsel".

1966—Act Sept. 10, 1966, substituted "The Corporation Counsel of the District of Columbia" for "The United States attorney for the District of Columbia", in subsection (b).

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### EFFECTIVE DATE OF ACT NOV. 8, 1965

The first sentence of section 11, act Nov. 8, 1965, provided: "Sections 5 through 8, inclusive [secs. 2-127, 2-407, 2-502 and 2-909] and section 10 [sec. 20-2301 note] shall take effect thirty days from the approval of this Act, but shall not in any case apply to proceedings instituted prior to the approval of this Act."

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-701 (Apr. 8, 1935, ch. 46, § 1, 49 Stat. 111; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

The reference to the District Court as "sitting as a court of equity" is omitted. See revision note under section 18-110.

Changes are made in phraseology.

#### CROSS REFERENCES

Jurisdiction, pleading, and practice in probate court, see §§ 11-921 and 16-3101 et seq.

Presumption of death after seven years, see § 14-701.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 20-2302, 20-2305, 20-2308.

#### NOTES TO DECISIONS UNDER PRIOR LAW

"Without the District" defined

To be "without the District of Columbia continuously for two years or longer" must be held to mean to be uninterruptedly and physically beyond the confines of the District, and not merely to establish residence outside of the District. *De Ruiz v. De Ruiz* (1937, 88 F. 2d 752, 66 App. D.C. 370).



**§ 20-2302. Warrant to United States marshal; fees of marshal**

Upon the filing of a petition under section 20-2301, the court may issue a warrant directed to the United States marshal for the District of Columbia, commanding him to take possession of the property named in the schedule and hold it subject to the order of the court, and make return of the warrant as soon as may be, with a statement of his actions thereon and a schedule of the property so taken. The marshal shall post a copy of the warrant upon each parcel of land named in the schedule and cause so much of the warrant as relates to land to be recorded with the recorder of deeds of the District of Columbia. He shall receive such fees for serving the warrant as the court allows, but not more than those established by law for similar service upon a writ of attachment. If the petition is dismissed, the fees and the cost of publishing and serving the notice provided for by this chapter shall be paid by the petitioner; but if a receiver is appointed, they shall be paid by the receiver and allowed in his account. (Sept. 14, 1965, 79 Stat. 734, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 20-702 (Apr. 8, 1935, ch. 46, § 2, 49 Stat. 111).

Changes are made in phraseology.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 20-2303, 20-2306.

**§ 20-2303. Notice of hearing to absentee and interested parties**

Upon the return of the warrant issued under section 20-2302, the court may issue a notice reciting the substance of the petition, the warrant, and the marshal's return, which shall be addressed to the absentee and to all persons who claim of record an interest in the property, or who are known to petitioner to claim an interest in the property, and to all whom it may concern, citing them to appear at a time and place named and show cause why a receiver of the property named in the marshal's schedule should not be appointed and the property held and disposed of under this chapter. (Sept. 14, 1965, 79 Stat. 734, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 20-703 (Apr. 8, 1935, ch. 46, § 3, 49 Stat. 111).

Changes are made in phraseology.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 20-2304, 20-2308.

**§ 20-2304. Time of hearing; publication and posting of notice**

The return day of the notice issued under section 20-2303 shall be not less than 30 nor more than 60 days after its date unless otherwise ordered by the court. The court shall order the notice to be published not less than once in each of three successive weeks in one or more newspapers within the District of Columbia, and a copy to be posted in a conspicuous place and upon each parcel of land named in the marshal's schedule, and a copy to be mailed to the last known address of the absentee.

The court may order other and further notice to be given within or without the District of Columbia. (Sept. 14, 1965, 79 Stat. 734, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 20-704 (Apr. 8, 1935, ch. 46, § 4, 49 Stat. 112).

Changes are made in phraseology.

**§ 20-2305. Appointment of receiver; bond; finding of date of disappearance**

The absentee or a person who claims an interest in any of the property may appear and show cause why the prayer of the petition filed under section 20-2301 should not be granted. The court may, after hearing, dismiss the petition and order the property in possession of the marshal to be returned to the person entitled thereto, or it may appoint a receiver of the property which is in the possession of the marshal and named in his schedule. When a receiver is appointed, the court shall find and record the date of the disappearance or absconding of the absentee. The receiver shall give bond to the court in such sum and with such conditions as the court orders, with a corporate surety thereon approved by the court. (Sept. 14, 1965, 79 Stat. 734, Pub. L. 89-183, § 1, eff. Jan. 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 20-705 (Apr. 8, 1935, ch. 46, § 5, 49 Stat. 112).

Changes are made in phraseology.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 20-2306 to 20-2308, 20-2314.

**§ 20-2306. Transfer of property to receiver; schedule of property**

After the approval of the bond required by section 20-2305, the court may order the marshal to transfer and deliver to the receiver the possession of the property under the warrant provided by section 20-2302, and the receiver shall file in the court a schedule of the property received by him. (Sept. 14, 1965, 79 Stat. 735, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 20-706 (Apr. 8, 1935, ch. 46, § 6, 49 Stat. 112).

Changes are made in phraseology.

**§ 20-2307. Possession, by receiver, of additional property; collection of debts**

Upon petition of a receiver appointed under section 20-2305, the court may direct him to take possession of any additional property within the District of Columbia which belongs to the absentee and to demand and collect all debts due the absentee from any person within the District of Columbia, and hold the property and moneys collected as if they had been transferred and delivered to him by the marshal. (Sept. 14, 1965, 79 Stat. 735, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 20-707 (Apr. 8, 1935, ch. 46, § 7, 49 Stat. 112).

Changes are made in phraseology.



## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20-2308.

**§ 20-2308. Procedure where absentee left only debts due him; appointment of receiver**

When the absentee has left no corporeal property within the District of Columbia, but there are debts and obligations due or owing to him from persons within the District of Columbia, a petition may be filed, as provided by section 20-2301, stating the nature and amount of the debts and obligations, as far as known, and praying that a receiver thereof be appointed. The court may thereupon issue a notice as provided by section 20-2303, without issuing a warrant, and may, upon the return of the notice and after a summary hearing, dismiss the petition or appoint a receiver and direct him to demand and collect the debts and obligations specified in the petition. The receiver shall give bond as provided by section 20-2305, and shall hold the proceeds of the debts and obligations and all property received by him, and distribute them as hereafter provided by this chapter. The court may confer upon the receiver such further authority as may be conferred under section 20-2307. (Sept. 14, 1965, 79 Stat. 735, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-708 (Apr. 8, 1935, ch. 46, § 8, 49 Stat. 112).

Changes are made in phraseology.

**§ 20-2309. Care, custody, sale of property**

The court may make orders for the care, custody, leasing, and investing of property and its proceeds in the possession of a receiver appointed under this chapter. After the appointment of a receiver, upon his petition and after notice, the court may order all or part of the property, including the rights of the absentee in land, to be mortgaged, or sold at public or private sale, to supply money for payments authorized by this chapter or for reinvestment approved by the court. (Sept. 14, 1965, 79 Stat. 735, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-709 (Apr. 8, 1935, ch. 46, § 9, 49 Stat. 112).

Changes are made in phraseology.

**§ 20-2310. Support of absentee's wife and minor children**

The court may order the property held by the receiver under this chapter, or its proceeds acquired by mortgage, lease, or sale, to be applied in payment of charges incurred or that may be incurred in the support and maintenance of the absentee's wife and minor children, and to the discharge of debts and claims for alimony proved against the absentee. (Sept. 14, 1965, 79 Stat. 735, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-710 (Apr. 8, 1935, ch. 46, § 10, 49 Stat. 113).

Changes are made in phraseology.

**§ 20-2311. Receiver may adjust claims of or against estate**

The court may authorize a receiver appointed under this chapter to adjust by arbitration or com-

promise demands in favor of or against the estate of the absentee. (Sept. 14, 1965, 79 Stat. 735, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-711 (Apr. 8, 1935, ch. 46, § 11, 49 Stat. 113).

Changes are made in phraseology.

**§ 20-2312. Compensation of receiver; interest of absentee in property to cease after fourteen years**

A receiver appointed under this chapter shall be allowed such compensation and disbursements as the court orders, to be paid out of the property or proceeds. If within 14 years after the date of the disappearance and absconding as found and recorded by the court, the absentee appears, or an administrator, executor, assignee in insolvency, or trustee in bankruptcy of the absentee is appointed, the receiver shall account for, deliver, and pay over to him the remainder of the property. If the absentee does not appear and claim the property within the 14-year period specified, all his right, title, and interest in the property, real or personal, or the proceeds thereof shall cease, and no action may be brought by him on account thereof. (Sept. 14, 1965, 79 Stat. 736, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-712 (Apr. 8, 1935, ch. 46, § 12, 49 Stat. 113).

Changes are made in phraseology.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 20-2313, 20-2314.

**§ 20-2313. Distribution after fourteen years as if absentee had died intestate**

When, at the expiration of the 14-year period specified by section 20-2312, the property has not been accounted for, delivered, or paid over under section 20-2312, the court shall order the distribution of the remainder to the persons to whom, and in the shares and proportions in which, it would have been distributed if the absentee had died intestate within the District of Columbia on the day 14 years after the date of the disappearance or absconding as found and recorded by the court. (Sept. 14, 1965, 79 Stat. 736, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-713 (Apr. 8, 1935, ch. 46, § 13, 49 Stat. 113).

Changes are made in phraseology.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20-2314.

**§ 20-2314. Time for distribution and accounting when receiver not appointed within thirteen years**

When a receiver is appointed more than 13 years after the date found by the court under section 20-2305, the time limited for accounting for, or fixed for distributing, the property or its proceeds, or for barring actions relative thereto, is one year after the date of his appointment instead of the 14 years provided by sections 20-2312 and 20-2313; except that the time limited for accounting for, or fixed for distributing, any additional property or its proceeds within the District of Columbia coming into the possession of the receiver during the one year period,

or for barring actions relative thereto, is one year after the date possession is taken by the receiver. (Sept. 14, 1965, 79 Stat. 736, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-714 (Apr. 8, 1935, ch. 46, § 14, 49 Stat. 113).

Changes are made in phraseology.

§ 20-2315. Construction with other laws

This chapter does not modify sections 14-701 and 14-702. (Sept. 14, 1965, 79 Stat. 736, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 20-715 (Apr. 8, 1935, ch. 46, § 15, 49 Stat. 113).

Changes are made in phraseology.



## TITLE 21.—FIDUCIARY RELATIONS AND THE MENTALLY ILL

*Title 21 was enacted by Pub. L. 89-183*

For distribution of former sections of this title, see table following Title 49

Chap.	Sec.
1. Guardianship of Infants.....	21-101
3. Gifts to Minors—Uniform Law.....	21-301
5. Hospitalization of the Mentally Ill.....	21-501
7. Property of Mentally Ill Persons.....	21-701
9. Mentally Ill Persons Found in Certain Federal Reservations.....	21-901
11. Commitment and Maintenance of Substantially Retarded Persons.....	21-1101
13. Alcoholics and Drug Addicts.....	21-1301
15. Conservators .....	21-1501
17. Uniform Fiduciaries Act.....	21-1701
18. Charitable and split-interest trusts.....	21-1801

### AMENDMENTS

1971—Section 4 of Act Dec. 6, 1971, Pub. L. 92-177, amended analysis by inserting "18. Charitable and split-interest trusts". In the section column for item 18, "'21-1801'" has been supplied editorially.

1970—Section 2(b) of Act Oct. 22, 1970, Pub. L. 91-490, amended analysis by striking out "Feeble-Minded" in item 11 and inserting in lieu thereof "Substantially Retarded".

Section 150(j) of Act July 29, 1970, Pub. L. 91-358, amended analysis by striking out "Feeble-Minded" in item 11 and inserting in lieu "Substantially Retarded".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91-358

See note preceding section 11-101.

### Chapter 1.—GUARDIANSHIP OF INFANTS

#### SUBCHAPTER I.—APPOINTMENT OF GUARDIAN; BOND

Sec.
21-101. Natural guardians of the person.
21-102. Testamentary guardians of the person.
21-103. Appointment of guardians of the person by court; limitation of number of wards.
21-104. Termination of guardianship of the person.
21-105. Appointment by deed or will for child inheriting from parent.
21-106. Guardian of estate.
21-107. Preferences in appointment of guardian of estate.
21-108. Selection of guardian by infant.
21-109. Husband as guardian of estate.
21-110. Service on nonresident guardian; failure to give power of attorney.
21-111. Ancillary guardian of estate of nonresident infant.
21-112. Suits by ancillary guardian.
21-113. Enjoining husband, parent, or testamentary guardian from interfering with minor's estate. <sup>1</sup>
21-114. Bond from parents of child entitled to property.
21-115. Bond of guardian of estate.
21-116. One bond for several wards.
21-117. Additional bond.
21-118. Counter security; petition by surety.
21-119. Allowances made before bond given.
21-120. Settlement of actions involving minor children; appointment of guardian of estate.

<sup>1</sup> Analysis does not conform to section catchline.

#### SUBCHAPTER II.—PROPERTY OF INFANTS

Sec.
21-141. Possession of property.
21-142. Inventory.
21-143. Duties; accounts; maintenance and education; sales; compensation.
21-144. Property subject to liens.
21-145. Property subject to executory contract.
21-146. Contract for sale by adult in behalf of himself and infant.
21-147. Sale of infant's principal for maintenance or education.
21-148. Sale or exchange of real estate; proceedings.
21-149. Parties.
21-150. Proof.
21-151. Decree of sale; costs.
21-152. Terms of sale; lien.
21-153. Exchanges; appointment of trustees.
21-154. Ratification of sales by court.
21-155. Sale or exchange of particular estate or remainder; application of income.
21-156. Lease of infant's estate.
21-157. Mortgage of infant's estate.
21-158. Final account.

#### SUBCHAPTER III.—INDIGENT BOYS

21-181. Enlistment of indigent boys.
21-182. Preparation of guardianship papers.

#### SUBCHAPTER I.—APPOINTMENT OF GUARDIAN; BOND

##### § 21-101. Natural guardians of the person

(a) The father and mother are the natural guardians of the person of their minor children. When either dies or is incapable of acting, the natural guardianship of the person devolves upon the other.

(b) This section does not affect the power of a court of competent jurisdiction to appoint another person guardian of the children when it appears to the court that the welfare of the children requires it. (Sept. 14, 1965, 79 Stat. 737, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 21-101, 21-108 (Mar. 3, 1901, ch. 854, § 1123, 31 Stat. 1369).

Subsec. (b) is new to the provisions as they were set out in section 21-101 of D.C. Code 1961 ed., but the provisions of subsec. (b) were contained in a proviso in the basic statute, that is, section 1123 of the 1901 Act cited above. The latter section was divided into two parts upon classification to the District of Columbia Code, one part comprising section 21-101 of D.C. Code, 1961 ed., which is carried into subsec. (a) of this section, and the other comprising section 21-108 thereof, which is carried into section 21-105 herein. The proviso was included in section 21-108, but was not included in section 21-101, although, in the original enactment, it apparently related to the provisions set out in both. Therefore, it is restored to this section as subsec. (b). In the provisions as so restored, "court of competent jurisdiction" is substituted for "court of equity". The district court, which



has both legal and equitable jurisdiction, no longer has a special term known as "equity court". See revision note under section 18-110 herein.

The part of § 21-108, preceding the proviso, is set out as subsection (a) of section 21-105.

Changes are made in phraseology.

#### CROSS REFERENCES

Adoption, see § 16-301 et seq.

Ancillary guardian for nonresident infants and persons non compos mentis, see §§ 21-111, 21-112.

Application of chapter to drunkards and drug addicts, see §§ 21-1301 to 21-1304.

Appointment of guardian for infant owners of buildings sought to be condemned by Board for Condemnation of Insanitary Buildings, see § 5-£24.

General provisions concerning substantially retarded persons, including inquests, commitments and discharges, see §§ 32-603 to 32-606 and 21-1102 to 21-1122.

General provisions concerning management and control of infant and estate, see § 21-143.

Guardian ad litem for persons under disabilities in condemnation proceedings to obtain land for streets, see § 7-204.

Guardian ad litem in proceedings to condemn land for United States, see Fed. Rules of Civil Procedure 17(c) and 71A(g).

Guardian ad litem in proceedings to probate will, see § 18-511.

Guardian ad litem in proceedings to sell infant's real estate, see § 21-149.

Guardian ad litem in proceedings to sell real estate held by tenant for life with a contingent limitation, see § 45-1102.

Trust companies authorized to act, see §§ 26-309 to 26-312, 26-316, 26-333, 26-334.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21-106.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Custody of child

In action by wife for maintenance and support, exclusive custody of minor children of the parties should not have been awarded to wife where husband and wife and the children remained living together in the same household. *R. L. Clements v. R. Clements* (D.C. Mun. App. 1962, 184 A. 2d 195).

In habeas corpus proceeding brought by illegitimate child's mother who sought control and custody of child who was in control of nonparent, awarding of custody of child to mother was not an abuse of discretion, where mother had made persistent efforts to obtain child and evidence indicated that she was a presently fit mother. *Bell and Bell v. Leonard* (1958, 251 F. 2d 890, 102 U.S. App. D.C. 179).

Custody of child awarded to mother notwithstanding that after divorce she committed adultery with the man she subsequently married, the father of child having died and left the child in the possession of grandfather. *Sardo v. Villapiano* (1936, 81 F. 2d 255, 65 App. D.C. 121).

It is established both by statute and common law that as between the grandfather and the mother the child should be entrusted to the mother, unless such a course is inconsistent with the child's welfare. *Id.*

A child of parties to divorce proceeding is a "ward of court" and the court has power to change the custody of the child, to enforce parental obligations to provide for maintenance, and if necessary to remove the child from the custody of both parents. *Emrich v. McNeil* (1942, 126 F. 2d 841, 75 U.S. App. D.C. 307, 146 A.L.R. 1146).

A reservation in original divorce decree is not necessary for the exercise of court's continuing jurisdiction concerning custody and maintenance of minor child. *Id.*

Where husband established a separate domicile in the District of Columbia, the wife remaining in North Carolina with the minor children by agreement, in granting husband a divorce the District of Columbia court was without jurisdiction to make an award of custody of children, since their domicile remained in North Carolina. *Oxley v. Oxley* (1947, 159 F. 2d 10, 81 U.S. App. D.C. 346).

#### § 21-102. Testamentary guardians of the person

When one parent is dead, the other, whether of full age or not, may, by last will and testament, appoint a guardian of the person to have the care, custody, and tuition of his infant child, other than a married female; and if the person so appointed refuses the trust, the Probate Court may appoint another person in his place. (Sept. 14, 1965, 79 Stat. 737, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-102 (Mar. 3, 1901, ch. 854, 1124, 31 Stat. 1369).

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21-106.

#### § 21-103. Appointment of guardians of the person by court; limitation of number of wards

(a) When an infant has neither a natural nor testamentary guardian, a guardian of the person may be appointed by the Probate Court in its own discretion or on the application of a next friend of the infant.

(b) Only trust companies may act as guardian of the person for more than five infants at one time, unless the infants are members of one family. (Sept. 14, 1965, 79 Stat. 738, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-103 (Mar. 3, 1901, ch. 854, § 1125, 31 Stat. 1369; Mar. 3, 1927, ch. 350, 44 Stat. 1383).

Section 21-103 of D.C. Code, 1961 ed., is divided into subsections (a) and (b), the latter containing the substance of the proviso.

The words "and the same" in the expression "at one and the same time" are omitted as surplusage.

Changes are made in phraseology and arrangement.

#### CROSS REFERENCES

Jurisdiction, pleading, and practice in probate court, see §§ 11-921 and 16-3101 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21-106.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Continuance of jurisdiction

Where United States District Court holding Probate Court once assumed jurisdiction over parties to proceedings involving guardianship of child, that jurisdiction continued for all purposes, and if either party felt aggrieved by the orders of the court his remedy lay with that court or on appeal therefrom. *Johnson v. Austin, Guardian, etc.* (D.C. Mun. App. 1960, 162 A. 2d 495).

Jurisdiction of the United States District Court holding Probate Court did not stop short of enforcing its own decrees in proceedings to remove guardian of child and appoint another guardian. *Id.*

##### Enforcement of decrees

Although recourse to District Court may be necessary to effectuate decrees of District Court holding Probate Court, Probate Court is but an arm of District Court and the full judicial machinery of the District Court is available to enforce lawful decrees of its component parts. *Johnson v. Austin, Guardian, etc.* (D.C. Mun. App. 1960, 162 A. 2d 495).

Even if the United States District Court holding Probate Court were powerless to enforce a custody decree, other avenues are open in the District Court to give litigants relief through enforcement of such a decree. *Id.*

##### Jurisdiction

The United States District Court holding Probate Court has jurisdiction to grant custody of minors in guardianship cases. *Johnson v. Austin, Guardian, etc.* (D.C. Mun. App. 1960, 162 A. 2d 495).



Jurisdiction over guardianship matters is given to United States District Court holding Probate Court, while Domestic Relations jurisdiction is vested in Domestic Relations Branch of the Municipal Court. *Id.*

#### § 21-104. Termination of guardianship of the person

A natural guardianship or an appointive guardianship of the person of an infant ceases, in the case of a male infant when he becomes 21 years of age, and in the case of a female infant when she becomes 18 years of age or marries. (Sept. 14, 1965, 79 Stat. 738, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-129 (Mar. 3, 1901, ch. 854, § 1126, 31 Stat. 1369).

Changes are made in phraseology.

##### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21-106.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Majority of female infants

Under this section, an 18-year-old female alone has power over her person and is entitled to consent for herself to any form of medical treatment; thus, her application for appointment of a special guardian, after receiving information from hospital that it would not permit use of its facilities to perform scheduled therapeutic abortion unless it received written consent of a parent or guardian or a court order of similar legal effect, would be denied. *In re Guardianship of B. Boe* (1971, 322 F. Supp. 873).

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Majority of female infants

There is no statute in force in the District of Columbia which clearly provides that female infants shall as a general rule attain their majority at the age of 18 years; exceptions to the common-law rule have been provided by statute, but these recognize the continued existence of the general rule of the common law. *Jones v. Jones* (1934, 72 F. 2d 829, 63 App. D.C. 373, 95 A.L.R. 352).

##### Marriage of infant

Where a 13-year-old girl, legally married, was committed to the Board of Children's Guardians two years later as destitute and homeless, and later committed to the Reform School as incorrigible, she was not entitled to release on habeas corpus, on the ground of her marriage. *Richardson v. Browning* (1927, 18 F. 2d 1008, 57 App. D.C. 186).

#### § 21-105. Appointment by deed or will for child inheriting from parent

(a) In case of the death of either parent from whom his or her minor children inherit or take by devise or bequest, the parent may by deed or last will and testament appoint a guardian of the property of the children, subject to the approval of the proper court of the District of Columbia.

(b) This section does not limit or affect the power of a court of competent jurisdiction to appoint another person guardian of the children when it appears to the court that the welfare of the children requires it. (Sept. 14, 1965, 79 Stat. 738, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-108 (Mar. 3, 1901, ch. 854, § 1123, 31 Stat. 1369).

In subsec. (b), "court of competent jurisdiction" is substituted for "court of equity". The district court, which has both legal and equitable jurisdiction, no longer has a special term known as "equity court". See revision note under section 18-110 herein.

Changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### In general

By this provision the power of equity to guard the welfare of the child is preserved. *Church v. Church* (1921, 270 F. 359, 50 App. D.C. 237).

#### § 21-106. Guardian of estate

(a) Subject to sections 21-101 to 21-104, when land descends or is devised to an infant under 21 years of age, or the infant is entitled to a distributive share of the personal estate of an intestate, or to a legacy or bequest under a last will, or acquires real or personal property by gift or purchase, the Probate Court may appoint a guardian of the infant's estate; and if there is a guardian of the person of the infant the guardian of the estate so appointed may be the same or a different person.

(b) The appointment may be made at any time after the probate of the will or the grant of administration when the infant is entitled as a devisee, legatee, or next of kin.

(c) Only trust companies may act as guardian of the estate of more than five infants at one time, unless the infants are entitled to shares of the same estate. (Sept. 14, 1965, 79 Stat. 738, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-110 (Mar. 3, 1901, ch. 854, § 1127, 31 Stat. 1369; Mar. 3, 1927, ch. 350, 44 Stat. 1383).

Changes are made in phraseology and arrangement.

##### CROSS REFERENCES

Guardians generally, see notes to § 21-101.

Majority of female who is beneficiary under a will, see § 20-1006.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Law governing

A guardian of the estate should be appointed "in accordance with the laws of the place in which the property is found." *Lehmer v. Hardy* (1924, 294 F. 407, 54 App. D.C. 51).

##### Nonresident infants

"The courts of the District of Columbia have no authority to appoint guardians of the persons of infants who do not reside and are not domiciled within their territorial jurisdiction." *Lehmer v. Hardy* (1924, 294 F. 407, 54 App. D.C. 51).

#### § 21-107. Preferences in appointment of guardian of estate

In appointing a guardian of the estate of an infant, unless said infant be over 14 years of age as hereinafter directed in section 21-108, the court shall give preference to—

(1) the father, if living; or

(2) if he is dead, then to the mother, if living;

or

(3) if the infant is a married female, to her husband—

when in the judgment of the court the parent or husband is a suitable person to have the management of the infant's estate. (Sept. 14, 1965, 79 Stat. 738, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-112 (Mar. 3, 1901, ch. 854, § 1128, 31 Stat. 1369).

Changes are made in phraseology.



**§ 21-108. Selection of guardian by infant**

(a) When a guardian, either of the person or the estate, of an infant is appointed, the infant shall, if practicable, be brought before the court, and, if over 14 years of age, shall be entitled to select and nominate his or her guardian.

(b) When a guardian has been appointed before the infant has attained the age of 14 years, the infant, upon arriving at that age, may select a new guardian, notwithstanding the appointment before made.

(c) The court shall pass upon the character and competency of the guardian selected by the infant, and the guardian shall be:

- (1) required to give bond as in other cases;
- (2) subject to the control of the court; and
- (3) under the same obligations and discharge the same duties—as if selected by the court.

(d) When, after a guardian of the estate has been appointed, the infant selects a new guardian upon arriving at the age of 14 years, and the new selection is approved by the court, and the person selected is duly appointed and qualified, the guardian previously appointed shall settle his final account and turn over his ward's estate to the newly appointed guardian. (Sept. 14, 1965, 79 Stat. 738, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., §§ 21-111, 21-113 (Mar. 3, 1901, ch. 854, §§ 155, 1130, 31 Stat. 1215, 1369).

Sections 21-111 and 21-113 of D.C. Code, 1961 ed., are consolidated. Section is basically section 21-111 of D.C. Code, 1961 ed. Those provisions of the subsection (c) which relate to the giving of bond and to control of the court over the guardian are derived from section 21-113 of D.C. Code, 1961 ed. The consolidation avoids the duplication of provisions which exists in sections 21-111 and 21-113 of D.C. Code, 1961 ed.

Changes are made in phraseology and arrangement.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 21-107.

**§ 21-109. Husband as guardian of estate**

When a female infant to whom a guardian of her estate has been appointed marries, she may select her husband as the guardian of her estate, with the approval of the court; and after he is duly appointed and qualified by giving bond, as is required in other cases, the powers of the guardian previously appointed shall cease, and he shall settle his final account and turn over his ward's estate to her husband, according to the order and directions of the court. (Sept. 14, 1965, 79 Stat. 739, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 21-114 (Mar. 3, 1901, ch. 854, § 1140, 31 Stat. 1371).

Changes are made in phraseology.

**§ 21-110. Service on nonresident guardian; failure to give power of attorney**

Before original or ancillary letters of guardianship are issued, the person designated, if a nonresident of the District of Columbia, shall file in the office of the Register of Wills an irrevocable power of attorney designating the Register of Wills and his successors in office as the person upon whom all notices and process issued by a competent court in

the District may be served, with like effect as personal service, in relation to all suits, matters, causes, or things affecting or pertaining to the estate in which the letters are to be issued. The Register of Wills shall forthwith forward by registered or certified mail to the address of the guardian, which shall be stated in the power of attorney, all notices or process served upon the Register under this section.

If the person fails to file the power of attorney within 10 days after the entry of the order of appointment, the order shall stand revoked, and he shall forfeit all rights to the office. (Sept. 14, 1965, 79 Stat. 739, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 20-118 (Mar. 3, 1901, ch. 854, § 308a, as added Apr. 19, 1920, ch. 153, § 1, 41 Stat. 562).

Section is based on section 20-118 of D.C. Code, 1961 ed., insofar as the latter related to service on nonresident guardians. Insofar as it related to service on executors and administrators, and collectors, it is carried into sections 20-365 and 20-503 herein, respectively.

In the provision of the first paragraph requiring the Register of Wills to forward all notices and process to the guardian by registered mail, a reference to certified mail is added for the same reason stated in revision note under section 20-365 herein.

Changes are made in phraseology.

**CROSS REFERENCE**

Bonds required of trust companies, see §§ 26-333, 26-334.

**§ 21-111. Ancillary guardian of estate of nonresident infant**

When an infant residing outside the District of Columbia is entitled to property or to maintain an action in the District of Columbia, a general guardian or committee of his estate, appointed by a court of competent jurisdiction in the State or territory where the infant resides, or a person at the request of the guardian or committee, may petition the court for ancillary letters as guardian or committee. The petition shall be under oath, accompanied by certified copies of as much of the record and proceedings as shows the appointment of the guardian or committee and that he has given a sufficient bond to account for all property and money that may come into his hands by virtue of the authority conferred. The court may thereupon issue to the guardian or committee ancillary letters as such guardian or committee, without citation, or may cite such persons as it believes proper to show cause why the application should be refused; and the court shall require the security required by law in like cases from a resident guardian or committee. (Sept. 14, 1965, 79 Stat. 739, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 21-115 (Mar. 3, 1901, ch. 854, § 1141, 31 Stat. 1371; June 30, 1902, ch. 1329, 32 Stat. 542; Mar. 3, 1905, ch. 1441, 33 Stat. 1006).

Section relates only to infants. Section 21-115 of D.C. Code, 1961 ed., insofar as it related to mentally ill persons is carried into section 21-705.

Changes are made phraseology.

**NOTES TO DECISIONS UNDER PRIOR LAW****Veterans' legislation**

Sections 44 and 45, D.C. 1929 (this section and § 21-116), are of local application and must give way to laws of



Congress relating to veterans' affairs. *First Nat. Bank v. United States* (D.C.D.C. 1940, 30 F. Supp. 730).

Colorado bank may sue in the courts of the District of Columbia, as conservator, for the recovery of monthly payments of a veteran's government insurance, and is not required to have an ancillary guardian appointed. *Id.*

#### § 21-112. Suits by ancillary guardian

(a) Upon the granting of ancillary letters, the guardian may institute and prosecute to judgment any action in the courts of the District of Columbia, take possession of all property of his ward, and collect and receive all moneys belonging and due to him therein, give full receipt and acquittances for debts, and release all claims, liens, and mortgages belonging to the ward, on property in the District of Columbia, in the same manner as if his authority had been originally conferred by the Probate Court.

(b) The guardian shall give security for the costs which may accrue in an action brought by him, in the same manner as other nonresidents bringing suit in the courts of the District. (Sept. 14, 1965, 79 Stat. 740, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(a)(1), 84 Stat. 567.)

#### AMENDMENT

1970—Section 150(a)(1) of Act July 29, 1970, Public Law 91-358, amended subsec. (a) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Probate Court".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101 and note to 15-707.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-116 (Mar. 3, 1901, ch. 854, § 1142, 31 Stat. 1371; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Section 21-116 of D.C. Code, 1961 ed., insofar as it related to mentally ill persons is carried into section 21-706, Changes are made in phraseology and arrangement.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Ancillary proceedings

Word "ancillary" as used differentiates between original jurisdiction and proceedings which are subordinate and auxiliary thereto. *First Nat. Bank v. United States* (D.C.D.C. 1940, 30 F. Supp. 730).

##### Suit under original appointment

One who had been appointed guardian of her two minor children by courts of Virginia, and who also had been appointed ancillary guardian by the United States District Court for District of Columbia, could bring suit in Municipal Court under her original appointment and was not required to sue as ancillary guardian. *De Bobula v. Coppedge* (D.C. Mun. App. 1944, 40 A. 2d 255).

#### § 21-113. Enjoining husband, parents, or testamentary guardian from interfering with minor's estate

On application of a friend of an infant entitled to real or personal estate, or in the exercise of its own discretion, the court may enjoin a parent or husband or testamentary guardian from interfering with the infant's estate without being appointed and giving bond as guardian of the estate. (Sept. 14, 1965, 79 Stat. 740, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-107 (Mar. 3, 1901, ch. 854, § 1129, 31 Stat. 1369).

Changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Felonies

Under this section prescribing fine not exceeding \$1,000 or imprisonment for not more than five years, or both, as punishment for any offense not specifically covered by sections of this code, all common-law misdemeanors, not embodied in any act of Congress, became felonies in District of Columbia, since any offense potentially punishable by imprisonment for more than one year is a "felony." *United States v. Davis* (D.C.D.C. 1947, 71 F. Supp. 749, 83 U.S. App. D.C. 99, 167 F. 2d 228, certiorari denied 68 S. Ct. 1501, 334 U.S. 849, 92 L. Ed. 1772).

#### § 21-114. Bond from parents of child entitled to property

When an infant whose father or mother is living becomes entitled to property, the Probate Court may require the father or mother, as guardian, to give bond and security to account for the property, and on his or her failure or refusal so to do may appoint another person guardian, who shall give bond as in other cases. (Sept. 14, 1965, 79 Stat. 740, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-106 (Mar. 3, 1901, ch. 854, § 152, 31 Stat. 1215).

Changes are made in phraseology.

#### § 21-115. Bond of guardian of estate

A guardian appointed by the court, other than a corporation authorized to act as guardian, and a testamentary guardian, unless otherwise directed by the will making the appointment, before entering upon or taking possession of or interfering with the estate of the infant, shall execute a bond in such penalty and with such surety as the court approves, to be recorded and to be liable to be sued upon for the use of a person interested, with the condition that if he, as guardian, faithfully accounts to the court, as required by law, for the management of the property and estate of the infant under his care, and delivers up the property agreeably to the order of the court or the directions of law, and in all respects performs the duty of guardian according to law, then the obligation shall cease; it shall otherwise remain in full force. (Sept. 14, 1965, 79 Stat. 740, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(a)(2), 84 Stat. 567.)

#### AMENDMENT

1970—Section 150(a)(2) of Act July 29, 1970, Public Law 91-358 amended section by striking out "to the United States".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101 and note to 15-707.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 21-118, 21-119 (Mar. 3, 1901, ch. 854, §§ 151, 1131, 31 Stat. 1215, 1370).

Section is basically section 21-119, D.C. Code, 1961 ed. Provisions making section applicable to testamentary guardians are based on section 21-118, D.C. Code, 1961 ed., thus consolidating in one section provisions relating to bonds for court-appointed and testamentary guardians.

Changes are made in phraseology.

#### § 21-116. One bond for several wards

When a person is guardian to a number of persons entitled to shares of the same estate the court may accept one bond instead of separate bonds for each ward, and the bond shall be liable to be sued upon



for the use of all or any of the wards as fully as separate bonds might be. (Sept. 14, 1965, 79 Stat. 740, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-120 (Mar. 3, 1901, ch. 854, § 1132, 31 Stat. 1370).

Changes are made in phraseology.

#### § 21-117. Additional bond

The court may at any time require a guardian to give bond or additional bond, when the interests of the infant require it, and on his failure or refusal so to do, may revoke his appointment and appoint another guardian in his place, and require the estate of the infant to be forthwith delivered to the newly appointed guardian, and may direct the latter to bring suit upon the bond of his predecessor. (Sept. 14, 1965, 79 Stat. 740, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-121 (Mar. 3, 1901, ch. 854, § 153, 31 Stat. 1215).

A minor change is made in phraseology.

#### § 21-118. Counter security; petition by surety

If a surety of a guardian by petition sets forth that he apprehends himself to be in danger of loss in consequence of his suretyship, and prays the court to be relieved, the court, after summoning the guardian to answer the petition, may require him to give counter security to indemnify his original surety or to deliver his ward's estate into the hands of the surety or of another person. In either case, the court shall require sufficient security for the proper management and application of the estate to be given by the person into whose hands the estate is delivered, and make such other order as seems just. (Sept. 14, 1965, 79 Stat. 740, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 21-122, 21-123 (Mar. 3, 1901, ch. 854, §§ 154, 1138, 31 Stat. 1215, 1371).

Section consolidates sections 21-122 and 21-123 of D.C. Code, 1961 ed.

Changes are made in phraseology.

#### § 21-119. Allowances made before bond given

An allowance made to a guardian for the clothing, support, maintenance, education or other expenses incurred for the ward or his estate, before the guardian gives bond or is appointed, has the same effect in law as if made subsequently to the appointment of the guardian and his giving bond. (Sept. 14, 1965, 79 Stat. 741, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-127 (Mar. 3, 1901, ch. 854, § 1137, 31 Stat. 1371).

Changes are made in phraseology.

#### § 21-120. Settlement of actions involving minor children; appointment of guardian of estate

(a) A person entitled to maintain or defend an action on behalf of a minor child, including an action relating to real estate, is competent to settle an action so brought and, upon settlement thereof or upon satisfaction of a judgment obtained therein, is competent to give a full acquittance and release of all liability in connection with the action, but

such a settlement is not valid unless approved by a judge of the court in which the action is pending.

(b) A person may not receive money or other property on behalf of a minor in settlement of an action brought on behalf of or against the minor or in satisfaction of a judgment in the action, where, after deduction of fees, costs and all other expenses incident to the matter, the net value of the money and property due the minor exceeds \$3,000, before he is appointed by a court of competent jurisdiction as guardian of the estate of the minor to receive the money or property, and qualifies as such. (Sept. 14, 1965, 79 Stat. 741, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-121a (Mar. 3, 1901, ch. 854, § 153A, as added Sept. 14, 1959, Pub. L. 86-268, 73 Stat. 553).

Paragraphs (1) and (2) of section 21-212a of D.C. Code, 1961 ed., are designated subsections (a) and (b), respectively.

Changes are made in phraseology.

### SUBCHAPTER II.—PROPERTY OF INFANTS

#### § 21-141. Possession of property

On the execution of his bond, a guardian is entitled to an order of the court directing the real and personal estate of the ward to be delivered into his possession, and all legacies and distributive shares to which the ward is entitled to be paid or delivered to him when they are properly payable or distributable according to law. (Sept. 14, 1965, 79 Stat. 741, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-124 (Mar. 3, 1901, ch. 854, § 1133, 31 Stat. 1370).

Changes are made in phraseology.

#### NOTES TO DECISIONS

##### Will as being a part of a ward's estate

Requiring adult children of ward to transfer to conservators alleged testamentary document entrusted to children by ward was not improper on ground that will was not part of ward's estate in his lifetime. *C. M. Price and G. P. Marshall, Jr., etc. v. E. B. Williams et al.* (1968, 393 F. 2d 348, 129 U.S. App. D.C. 239).

#### § 21-142. Inventory

Within three months after the execution and approval of his bond, a guardian shall return to the court, under oath, an inventory of the real and personal estate of his ward and of the probable annual income thereof, and the court may direct the estate to be appraised and the annual income thereof to be ascertained by two competent persons, to be appointed by the court, who shall report their appraisal and finding under oath. (Sept. 14, 1965, 79 Stat. 741, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-125 (Mar. 3, 1901, ch. 854, § 1134, 31 Stat. 1370).

Minor changes are made in phraseology.

#### CROSS REFERENCES

Other provisions concerning property of infants, see § 21-147 et seq.

Separate estate of infant married women, see § 30-201 et seq.



### § 21-143. Duties; accounts; maintenance and education; sales; compensation

A guardian shall manage the estate for the best interests of the ward, and once in each year, or oftener if required, he shall settle an account of his trust under oath. He shall account for all profit and increase of his ward's estate and the annual value thereof, and shall be allowed credit for taxes, repairs, improvements, expenses, and commissions, and he is not answerable for any loss or decrease sustained without his fault. The court shall determine the amounts to be expended annually in the maintenance and education of the infant, regard being had to his future condition and prospects in life; and if it deems it advantageous to the ward, may allow the guardian to exceed the income of the estate and to make use of the principal and sell it or part thereof, under the court's order, as provided by this subchapter; but a guardian may not sell any property of his ward without an order of the court previously had therefor. The court shall allow a reasonable compensation for services rendered by the guardian not exceeding a commission of five per centum of the amounts collected, if and when disbursed. (Sept. 14, 1965, 79 Stat. 741, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-126 (Mar. 3, 1901, ch. 854, § 1135, 31 Stat. 1370; Feb. 10, 1927, ch. 101, 44 Stat. 1067).

Changes are made in phraseology.

#### CROSS REFERENCES

Capacity to contract for life insurance, see § 35-430.  
Child labor and work permits, see § 36-201 et seq.  
Criminal liability for failure to provide and care for minor children, see § 22-901 et seq.  
Duty to file income tax returns, see § 47-1515.  
Duty to file schedule of personal property for taxation, distraint of property for nonpayment, see §§ 47-1203, 47-1301.  
Guardians generally, see notes to § 21-101.  
Indorsement of negotiable instrument passes title, see §§ 28-3-201 to 28-3-208.  
Liability as stockholder of business corporation, see § 29-220.  
Liability for income taxes, see § 47-1524.  
Liability for necessities, see § 28-3505.  
Marriage, consent of parents or guardian, see § 30-111.  
May redeem from tax sales within one year after majority, see § 47-1003.  
Minimum wages for minors, see § 36-401 et seq.  
Rights under real estate leases, see §§ 45-927 to 45-930.  
Suits to annul marriage, see § 30-104.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Reasonable compensation

A figure of 5% as a flexible rule of thumb for fixing reasonable compensation, in ordinary case, to guardians ad litem and conservators appointed pursuant to statute governing guardians of property of mentally incompetent persons, is permissible. *E. D. Mitchell v. C. D. Ensor, et al* (1969, 412 F. 2d 155, 134 U.S. App. D.C. 24).

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Compensation of conservator

In view of facts that duties of conservator and guardian are basically the same, and that District of Columbia Code providing for appointment of conservators is silent as to compensation of conservators and merely provides that conservators shall have same rights and powers as guardians and that court shall have the same powers with respect to property of any person for whom conservator has been appointed as it has with respect to property of infants under guardianships, compensation of conserva-

tor should be fixed under this section limiting compensation of guardians to fixed percentage of amounts actually collected if and when disbursed. *In re Searle* (D.C.D.C. 1953, 118 F. Supp. 273).

##### Compensation of temporary conservator

Compensation of temporary conservator would not be determined under this section fixing compensation of guardian but would be determined by considering the character of services rendered, the size of the estate, and the compensation awarded guardian ad litem and attorney for the guardian. *In re Searle* (D.C.D.C. 1953, 118 F. Supp. 273).

##### Limitation of compensation

Limitation of compensation of committee of insane person to five per cent of amount received and disbursed precludes allowance of additional fees. *Hines v. Paregol* (1935, 77 F. 2d 953, 64 App. D.C. 306).

Committee who has wisely and judiciously preserved the estate of a lunatic should not be denied reasonable compensation merely because he had preserved the estate instead of expending it. *In re Gallen* (D.C.D.C. 1937, 18 F. Supp. 683).

### § 21-144. Property subject to liens

When an infant is entitled to real or personal estate in the District of Columbia which is liable to a mortgage, trust, or lien, or is in any way charged with the payment of money, the court may decree in the case as if the infant were of full age. (Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-202 (Mar. 3, 1901, ch. 854, § 91, 31 Stat. 1203).

Provisions of section 21-202 of D.C. Code, 1961 ed., relating to persons non compos mentis are carried into section 21-702 herein.

Changes are made in phraseology.

#### CROSS REFERENCES

Rights and duties of persons non compos mentis under real estate mortgage, see § 45-620.

Rights of infants under mortgages, see § 45-608, 45-609.

### § 21-145. Property subject to executory contract

When an infant is:

(1) entitled to real or personal estate in the District of Columbia bound by executory contract entered into by the person from whom the infant derived title; or

(2) claims a right or interest in property under such a contract—

the court may decree the execution of the contract or enter a just and proper decree, as if the parties were of full age. (Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-203 (Mar. 3, 1901, ch. 854, § 92, 31 Stat. 1203).

Provisions of section 21-203 of D.C. Code, 1961 ed., relating to persons non compos mentis are carried into section 21-703 herein.

Changes are made in phraseology.

### § 21-146. Contract for sale by adult in behalf of himself and infant

When a contract is made for the sale of real estate by persons interested therein jointly or in common with an infant, for and in behalf of all the persons so interested, which the court, upon a hearing and examination of the circumstances, considers to be for the interest and advantage both of the infant and of the other persons interested



therein to be confirmed, the court may confirm the contract and order a deed to be executed according to it. Sales and deeds made in pursuance of the order are sufficient in law to transfer the estate and interest of the infant in the real estate. (Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-213 (Mar. 3, 1901, ch. 854, § 93, 31 Stat. 1203; Dec. 23, 1963, Pub. L. 88-241, § 13, 77 Stat. 618).

Provisions of section 21-213 of D.C. Code, 1961 ed., relating to idiots or persons non compos mentis are carried into section 21-704 herein.

The term, "real estate", is substituted for "lands, tenements, or hereditaments", to conform with more modern usage.

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16-2901.

### § 21-147. Sale of infant's principal for maintenance or education

When it appears, upon the verified petition of a guardian, or in a case of his refusal to act, a next friend of an infant, and the appearance and answer of the infant by guardian to be appointed by the court, and proof by deposition of one or more disinterested witnesses, that a sale of the principal of the infant's estate, or of a part thereof, whether real or personal, is necessary for his maintenance or education, regard being had to his condition and prospects in life, the Probate Court may decree the sale on terms which to it seem proper. (Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-201 (Mar. 3, 1901, ch. 854, § 165, 31 Stat. 1217).

Changes are made in phraseology.

#### CROSS REFERENCES

Ancillary guardian for nonresident infants and persons mentally ill, see §§ 21-111, 21-112, 21-707.

Application of chapter to drunkards and drug addicts, see § 21-1301 to 21-1304.

Contesting will after majority, see § 18-509.

General provisions concerning rights, liabilities, and property of infants, see § 21-143.

Guardians generally, see notes to § 21-101.

Jurisdiction pleading and practice in probate court, see §§ 11-921 and 16-3101 et seq.

New promise after majority, see § 28-3505.

Provisions concerning property of infants and persons mentally ill, see §§ 21-144, 21-145, 21-701 et seq.

### § 21-148. Sale or exchange of real estate; proceedings

When a guardian or, in case of his refusal to act, a next friend, deems that the interests of the ward will be promoted by a sale of his freehold or leasehold estate in lands, for the purpose of reinvesting the proceeds in other property or securities, or by an exchange of the property for other property, he may file a verified petition in the court, setting forth all the estate of the ward, real and personal, and all the facts which, in his opinion, tend to show whether the ward's interest will be promoted by the sale or exchange. (Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 21-128, 21-204 (Mar. 3, 1901, ch. 854, §§ 156, 1136, 31 Stat. 215, 1371).

Section consolidates sections 21-128 and 21-204 of D.C. Code, 1961 ed. Section is essentially section 21-204 of such Code. In order to incorporate the provisions of both sections into this section, reference to securities is added and references to "infants" are either deleted or changed to refer to "wards".

"Petition" is substituted for "bill", to conform with modern usage.

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21-149 to 21-151, 21-155.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Historical

Prior to enactment of the Code, orphan's court of the District had jurisdiction to decree sale of infant's real estate for his support or education. *Thaw v. Ritchie* (1890, 10 S. Ct. 1037, 136 U.S. 519, 34 L. Ed. 531).

##### Sale for reinvestment

Decree of District Court of the United States for the District of Columbia for sale of infant's property for purpose of reinvestment is not subject to collateral attack *United States ex rel. Hine v. Morse* (1911, 31 S. Ct. 37, 218 U.S. 493, 54 L. Ed. 1123).

### § 21-149. Parties

The infant, together with those who would succeed to the estate if he were dead, shall be made parties defendant in the proceeding provided by section 21-148; and the court shall appoint a fit and disinterested person to be guardian ad litem for the infant, who shall answer the petition under oath. The infant also, if above the age of 14 years, shall answer the petition in proper person, under oath. (Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-205 (Mar. 3, 1901, ch. 854, § 157, 31 Stat. 1216).

References to "petition" are substituted for references to "bill", to conform with modern usage.

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21-155.

### § 21-150. Proof

Every fact material to determine the propriety of a sale or exchange shall be clearly proved, in a proceeding brought pursuant to section 21-148, by disinterested witnesses, whose testimony shall be taken in writing in the presence of the guardian ad litem or upon interrogatories agreed upon by him. (Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-206 (Mar. 3, 1901, ch. 854, § 158, 31 Stat. 1216).

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21-155.

### § 21-151. Decree of sale; costs

When, in a proceeding brought pursuant to section 21-148, the court is satisfied from the evidence that the interests of the infant require a sale or exchange, as prayed, and the rights of others will not be violated thereby, the sale or exchange may be decreed, and the costs of the suit shall be paid out



of the infant's estate; otherwise they shall be paid by the complainant. (Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-207 (Mar. 3, 1901, ch. 854, § 159, 31 Stat. 1216).

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21-152, 21-153, 21-155.

### § 21-152. Terms of sale; lien

A sale pursuant to a decree issued pursuant to section 21-151 may be made upon such terms as to cash and credit as the court directs, and a lien shall be retained on the property sold for the purchase money. (Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-208 (Mar. 3, 1901, ch. 854, § 160, 31 Stat. 1216).

Section 21-208 of D.C. Code, 1961 ed., contained additional provisions as follows: "and the proceeds of such sale shall be invested for the infant's benefit in other real estate or in such other manner as the court may direct; and if the infant, after any such sale, shall die intestate or under twenty-one years of age, the proceeds of such sale, or so much thereof as may remain at his death, if not reinvested in other real estate, shall be considered as real estate, and shall pass accordingly to such persons as would have been entitled to the estate if it had not been sold". These provisions are omitted as obsolete or, in any event, unnecessary, in view of later developments in the laws of inheritance in the District of Columbia, under which real and personal property now go to the same persons (see section 19-301 et seq. herein). Apparently, the only effect the omitted provisions, if retained, would have under existing law would be procedural, that is, the re-invested proceeds would not go into the hands of the administrator and would not be available for sale to satisfy debts unless all other property were exhausted. Considering the said change made by Congress in the inheritance laws, it is not deemed to have been the legislative intent to maintain such an (now) undesirable distinction, or that the omission of the quoted provisions from this section effects a substantive change.

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21-155.

### § 21-153. Exchanges; appointment of trustees

In decreeing an exchange of an infant's estate for other property, pursuant to section 21-151, the court need not require equality or sameness in the quantity or character of the estate or interest, and the court may appoint trustees to execute the deeds necessary to carry the exchange into effect. (Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-209 (Mar. 3, 1901, ch. 854, § 161, 31 Stat. 1216).

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21-155.

### § 21-154. Ratification of sales by court

A sale of property of an infant is not effectual to pass title to the property sold until it is reported to and ratified by the court. (Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Section is new, but its provisions were part of law of the District of Columbia until the enactment of the Act of September 15, 1964, Pub. L. 88-597, 78 Stat. 944, section 19(e) of which repealed section 115e of the D.C. Code of 1901 (as added by Act June 30, 1902, ch. 1329, 32 Stat. 524), which had been classified to section 21-305 of D.C. Code, 1961 ed. Section 115e of the 1901 Code contained provisions corresponding with those of this new section, but related to both infants and persons non compos mentis. The Act of September 15, 1964, in its other provisions, enacted new laws relating to the mentally ill, only, and those provisions are carried into chapter 5 of Title 21 of this revised Part. It was probably not intended to repeal section 115e of the 1901 Code, insofar as it related to infants. Therefore, the provisions, with respect to infants, are restored in this section.

### § 21-155. Sale or exchange of particular estate or remainder; application of income

Where an infant is entitled to a particular estate, as for life or years, and another person is entitled to an estate in remainder or reversion or by way of executory devise in the same property, or the other person is entitled to the particular estate and the infant is entitled in remainder or reversion or executory devise, the court may decree a sale or exchange as provided by sections 21-148 to 21-153, having reference solely to the interests of the infant, if the other person so interested consents to the sale or exchange and execute the conveyances necessary to carry it into effect. The court shall direct the annual income from the fund or property acquired by the sale or exchange to be applied according to the interests of the respective parties. (Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-210 (Mar. 3, 1901, ch. 854, § 162, 31 Stat. 1216; June 30, 1902, ch. 1320, 32 Stat. 527).

Section 21-210 of D.C. Code, 1961 ed., contained an additional provision as follows: "And in case of the death of said infant under twenty-one years of age the proceeds of any such sale not invested in real estate shall be deemed real estate and pass to those who would be entitled if the property had not been sold". This provision is omitted for the same reason stated in revision note under section 21-152 herein for omitting certain provisions from that section.

Changes are made in phraseology.

### § 21-156. Lease of infant's estate

Where it appears to the court that it will be to the advantage of the infant that his real estate be demised, the court shall decree that it be demised for a term of years not to exceed the minority of the infant, yielding such rents and on such terms and conditions as the court directs. Where the infant is entitled to only a part of the estate, the decree demising the estate shall be made only if all the owners of the other interests assent. (Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-211 (Mar. 3, 1901, ch. 854, § 163, 31 Stat. 1216; June 30, 1902, ch. 1329, 32 Stat. 527).

Changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Assignment of contract

Assignment of an existing lease is not a "demise" within this section providing for court approval of any demise of an infant's real estate. *Sweeney v. Jacobsen* (D.C.D.C.



1952, 103 F. Supp. 393, 92 U.S. App. D.C. 93, affirmed 202 F. 2d 461).

#### Mortgage of minor's realty

Orphans court had power to authorize sale of minor's realty for his support, and hence power to authorize a mortgage. *Middleton v. Parke* (1894, 3 App. D.C. 149).

#### § 21-157. Mortgage of infant's estate

Where it appears to the court by proof that it would be for the advantage of the infant to raise money by mortgage for his maintenance or to improve his real property or to pay off charges, liens, or incumbrances thereon, the court may, on the application of the guardian or of the infant by next friend, decree a conveyance of the property, by mortgage or deed of trust, to be executed by the guardian, on such terms as to the court seem expedient. This section also applies where the infant holds jointly or in common with other persons of full age or holds a portion of the estate, as a particular estate, for life or years or in remainder or reversion, if the other owners interested, all being of full age, consent to the decree and unite in the mortgage or deed of trust. (Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-210 (Mar. 3, 1901, ch. 854, § 164, 31 Stat. 1216; June 30, 1902, ch. 1329, 32 Stat. 527).

Changes are made in phraseology.

#### § 21-158. Final account

On arrival of a ward at the age of 21 years the guardian shall exhibit a final account of his trust to the court, and shall, agreeably to the court's order, deliver up to the ward all the property of the ward in his hands and if he fails to do so, his bond may be sued upon for the use of the party interested, and he may be attached. (Sept. 14, 1965, 79 Stat. 744, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(a)(3), 84 Stat. 567.)

#### AMENDMENT

1970—Section 150(a)(3) of Act July 29, 1970, Public Law 91-358 amended section by striking out "in the name of the United States".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101 and note to 15-707.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-130 (Mar. 3, 1901, ch. 854, § 1139, 31 Stat. 1371).

Changes are made in phraseology.

### SUBCHAPTER III.—INDIGENT BOYS

#### § 21-181. Enlistment of indigent boys

The Probate Court may appoint guardians to indigent boys for the purpose of securing their enlistment in the naval or marine service of the United States, as provided by law, free of costs on account of the proceeding. (Sept. 14, 1965, 79 Stat. 744, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-104 (Mar. 3, 1901, ch. 854, § 166, 31 Stat. 1217).

Changes are made in phraseology.

#### § 21-182. Preparation of guardianship papers

The Register of Wills shall prepare papers in connection with appointment of guardians to enable indigent boys to enlist in the United States Navy as provided by law, without making a charge therefor. (Sept. 14, 1965, 79 Stat. 744, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-105 (July 14, 1892, ch. 171, 27 Stat. 154).

Minor changes are made in phraseology.

### Chapter 3.—GIFTS TO MINORS—UNIFORM LAW

#### Sec.

- 21-301. Definitions.
- 21-302. Gifts of securities, money, life insurance, or annuity contracts to minors; manner of making.
- 21-303. Gift irrevocable; rights and duties of guardian or custodian.
- 21-304. Custodian to be one person; rights, powers, and duties of custodian.
- 21-305. Compensation of custodian or guardian; bond; liability of custodian serving without compensation.
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- 21-307. Successor custodians; eligibility; rights, powers, and duties; manner of resignation; removal.
- 21-308. Accounting by custodian or his legal representative.
- 21-309. Construction of chapter.
- 21-310. Short title.
- 21-311. Preservation of prior rights and liabilities; construction with other laws.

#### REVISION NOTES

This chapter continues the Uniform Gifts to Minors Act adopted in the District of Columbia by Act Oct. 15, 1962, Pub. L. 87-821, § 1, 76 Stat. 938-942 (D.C. Code, 1961 ed., Supp. II, secs. 21-225 to 21-234). Actually section 1 of the 1962 Act amended generally sections 1-11 of Act Aug. 3, 1956, ch. 947, 70 Stat. 1028-1031, which, in the main volume of D.C. Code, 1961 ed., had been set out as sections 21-214 to 21-224. The Uniform Gifts to Minors Act was promulgated by the National Conference of Commissioners on Uniform State Laws in 1956, and is based upon a "Model Act Concerning Gifts of Securities to Minors", which was drafted and sponsored by the New York Stock Exchange and the Association of Stock Exchange Firms. The above-cited Act Aug. 3, 1956, ch. 947, 70 Stat. 1028-1031, had been based, prior to its general amendment by the 1962 Act cited, upon the Model Act.

Minor changes are made in phraseology and style.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 11-501, 11-921.

#### § 21-301. Definitions

As used in this chapter:

- (1) "adult" means a person who has attained the age of twenty-one years;
- (2) "bank" means a person or association of persons carrying on the business of banking, whether incorporated or not, in the District of Columbia;
- (3) "broker" means a person who is lawfully engaged in the business of effecting transactions in securities for the account of others; a financial institution which effects such transactions; and one who is lawfully engaged in buying and selling securities for his own account, through a broker or otherwise, as a part of a regular business;
- (4) "court" means the Superior Court of the District of Columbia;
- (5) "custodial property" means:
  - (A) securities, money, life insurance and annuity contracts under the supervision of the same



custodian for the same minor as a consequence of gifts made to the minor in the manner prescribed by this chapter;

(B) the income from the custodial property; and

(C) the proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment, or other disposition of securities, money, life insurance and annuity contracts, and income;

(6) "custodian" means a person so designated in the manner prescribed by this chapter;

(7) "Financial institution" means—

(A) any bank,

(B) any homestead or building association, building and loan association, savings and loan association, or Federal savings and loan association, or

(C) any Federal credit union, having an office in the District of Columbia.

(8) "guardian of a minor" means the general guardian, guardian, tutor, or curator of the minor's property, estate, or person;

(9) "issuer" means a person who places or authorizes the placing of his name, other than as a transfer agent, on a security to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of such a person;

(10) "legal representative" means the executor, administrator, general guardian, committee, conservator, tutor, or curator of a person's property or estate;

(11) "life insurance and annuity contracts" include only insurance and annuity contracts on the life of a minor or a member of the minor's family as defined by clauses (11) and (12);

(12) "member of a minor's family" includes a minor's parent, grandparent, brother, sister, uncle, and aunt, whether of the whole blood or the half blood, or by or through legal adoption;

(13) "minor" means a person who has not attained the age of 21 years;

(14) "security" means a note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate transferable, share, voting trust certificate, or, in general, an interest or instrument commonly known as a security, or a certificate of interest of participation in, a temporary or interim certificate, receipt, or certificate of deposit for, or a warrant or right to subscribe to or purchase, any of the foregoing; "security" does not include a security of which the donor is the issuer; a "security" is in "registered form" when it specifies a person entitled to it or to the right it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer;

(15) "transfer agent" means one who acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrender securities;

(16) "trust company" means a bank authorized to exercise trust powers. (Sept. 14, 1965, 79 Stat. 744, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Apr. 19, 1968, Pub. L. 90-290, § 1(1), 82 Stat. 98; July 29, 1970, Pub. L. 91-358, § 150(b), title I, 84 Stat. 567.)

#### AMENDMENTS

1970—Section 150(b) of Act of July 29, 1970, Public Law 91-358, amended paragraph (4) of section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

1968—Section 1(1), act Apr. 19, 1968, Pub. L. 90-290 amended section by striking "bank" in par. (3) and inserting "financial institution"; by renumbering former pars. (7) to (15) as (8) to (16); and by inserting a new par. (7) as above set out.

#### EFFECTIVE DATES OF 1970 AMENDMENTS TO CERTAIN SECTIONS OF TITLE 21

Section 199(b) (3) (A) and part of (B) of Pub. L. 91-358, provided:

(3) The amendments made by the following sections of this title (title I) (relating to those matters over which the United States District Court for the District of Columbia retains temporary jurisdiction) shall take effect as follows:

(A) Immediately following the expiration of the eighteenth month period beginning on the effective date of this title in the case of amendments made by sections 150(b), 150(c) (1), 150(c) (3), 150(c) (5) (A) (ii), 150(e), 150(f), 150(g) (3) (A), 150(g) (4), 150(g) (5), 150(g) (8), 150(h), and 150(i) (1).

\* \* \* \* \*

The amendments made by section 150 to chapter 5 of title 21 of the District of Columbia Code (relating to hospitalization of the mentally ill) shall not apply with respect to any case pending before the United States District Court for the District of Columbia or the Commission on Mental Health at the expiration of such eighteen-month period.

[The D.C. Code sections amended by the above enumerated sections of Pub. L. 91-358 are: 21-301, 21-501, 21-502, 21-521, 21-544, 21-564, 21-581, 21-584, 21-590, 21-592, 21-703, 21-906, 21-1103, 21-1104, 21-11C9, 21-1116, 21-1122, 21-1301, 21-1302, 21-1501.]

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-225 (Oct. 15, 1962, Pub. L. 87-821, § 1, 76 Stat. 938).

The reference is re-translated to refer to "this chapter".

This source of the provisions is section 1 of the Uniform Gifts to Minors Act. See revision note preceding this section.

§ 21-302. Gifts of securities, money, life insurance, or annuity contracts to minors; manner of making

(a) An adult may, during his lifetime, make a gift of a security, money, life insurance or annuity contract to one who is a minor on the date of the gift, if the subject of the gift is a security:

(1) in registered form, by registering it in the name of the donor, another adult, or a trust company, followed, in substance, by the words: "as custodian for [name of minor] under the District of Columbia Uniform Gifts to Minors Act";

(2) not in registered form, by delivering it to an adult other than the donor or a trust company, accompanied by a statement of gift in the following form, in substance, signed by the donor and the designated custodian:

#### GIFT UNDER THE DISTRICT OF COLUMBIA UNIFORM GIFTS TO MINORS ACT

I, [name of donor], hereby deliver to [name of custodian] as custodian for [name of minor] under the District of Columbia Uniform Gifts



to Minors Act, the following security(ies); [insert an appropriate description of the security or securities delivered sufficient to identify it or them].

-----  
[Signature of donor]

Dated:-----

[Name of custodian] hereby acknowledges receipt of the above described security(ies) as custodian for the above minor under the above Act.

-----  
[Signature of custodian]

Dated:-----

(3) Where the subject of the gift is a life insurance or annuity contract, the donor shall register the ownership of the contract in his own name or in the name of an adult member of the minor's family or in the name of a guardian of the minor, followed by the words "as custodian for [name of minor] under the District of Columbia Uniform Gifts to Minors Act", and the contract shall be delivered to the person in whose name it is thus registered as custodian. Where the contract is registered in the name of the donor as custodian, the registration of itself constitutes the delivery required by this section.

(4) Where the subject of the gift is money, by paying or delivering it to a broker or a financial institution for credit to an account in the name of the donor, another adult, or a trust company, followed, in substance, by the words: "as custodian for [name of minor] under the District of Columbia Uniform Gifts to Minors Act."

(b) A gift made in the manner prescribed by subsection (a) of this section may be made to only one minor.

(c) A donor who makes a gift to a minor as prescribed by subsection (a) of this section shall promptly do all things within his power to put the subject of the gift in the possession and control of the custodian, but neither the donor's failure to comply with this subsection, nor his designation of an ineligible person as custodian, nor renunciation by the person designated as custodian affects the consummation of the gift. (Sept. 14, 1965, 79 Stat. 745, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Apr. 19, 1968, Pub. L. 20-290, § 1(2), 82 Stat. 98.)

#### AMENDMENTS

1968—Section 1(2), act Apr. 19, 1968, Pub. L. 90-290, amend subsec. (a) (4) by striking out "bank" and inserting "financial institution"; and by striking out "bank with trust powers" and inserting "trust company".

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-226 (Oct. 15, 1962, Pub. L. 87-821, § 1, 76 Stat. 938 (939)).

The source of the provisions is section 2 of the Uniform Gifts to Minors Act. See revision note preceding section 21-301 herein.

Minor changes are made in phraseology.

### § 21-303. Gift irrevocable; rights and duties of guardian or custodian

(a) A gift made as prescribed by this chapter is irrevocable and conveys to the minor indefeasibly vested legal title to the security, money, life insurance or annuity contract given, but a guardian of

the minor does not have a right, power, duty, or authority with respect to the custodial property, except as provided by this chapter.

(b) By making a gift in the manner prescribed by this chapter, the donor incorporates in his gift all the provisions of this chapter and grants to the custodian, and to any issuer, transfer agent, financial institution, broker, insurance company, or third person dealing with a custodian, the respective powers, rights, and immunities provided by this chapter. (Sept. 14, 1965, 79 Stat. 746, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Apr. 19, 1968, Pub. L. 90-290, § 1(3), 82 Stat. 98.)

#### AMENDMENT

1968—Section 1(3), act Apr. 19, 1968, Pub. L. 90-290, amended subsection (b) by striking "bank" and inserting "financial institution".

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-227 (Oct. 15, 1962, Pub. L. 87-821, § 1, 76 Stat. 938 (940)).

The references are re-translated to refer to "this chapter".

The source of the provisions is section 3 of the Uniform Gifts to Minors Act. See revision note preceding section 21-301 herein.

Minor changes are made in phraseology.

### § 21-304. Custodian to be one person; rights, powers, and duties of custodian

(a) Only one person may be the custodian. He shall collect, hold, manage, invest, and reinvest the custodial property.

(b) The custodian shall pay over to the minor for expenditure by him, or expend for the minor's benefit, so much of or all the custodial property as the custodian deems advisable for the support, maintenance, education, and benefit of the minor in the manner, at the times, and to the extent that the custodian in his discretion deems proper, with or without court order, with or without regard to the duty of himself or of any other person to support the minor or his ability to do so, and with or without regard to any other income or property of the minor which may be applicable or available for any such purpose.

(c) The court, on the petition of a parent or guardian of the minor, or of the minor if he has attained the age of 14 years, may order the custodian to pay over to the minor for expenditure by him or to expend so much of or all the custodial property as is necessary for the minor's support, maintenance, or education.

(d) To the extent that the custodial property is not so expended, the custodian shall:

(1) deliver or pay it over to the minor on his attaining the age of 21 years; or

(2) if the minor dies before attaining that age, thereupon deliver or pay it over to the estate of the minor.

(e) A custodian, notwithstanding statutes restricting investments by fiduciaries, may invest and reinvest the custodial property as would a prudent person of discretion and intelligence who is seeking a reasonable income and the preservation of capital, or he may, without liability to the minor or his estate, retain a security given to the minor in the manner prescribed by this chapter.



(f) A custodian may dispose of custodial property in the manner, at the times, for the prices, and upon the terms he deems advisable. He may vote in person or by general or limited proxy a security which is custodial property. He may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of an issuer, a security which is custodial property, and to the sale, lease, pledge, or mortgage of any property by or to the issuer, and to any other action by the issuer. He may execute and deliver all instruments in writing which he deems advisable to carry out any of his powers as custodian.

(g) A custodian shall register each security which is custodial property and in registered form in the name of the custodian, followed in substance, by the words: "as custodian for [name of minor] under the District of Columbia Uniform Gifts to Minors Act". He shall hold all money which is custodial property in an account with a broker or in a financial institution in the name of the custodian, followed, in substance, by the same words. He shall keep all other custodial property separate and distinct from his own property in a manner to identify it clearly as custodial property.

(h) A custodian shall keep records of all transactions with respect to the custodial property, and make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if he has attained the age of 14 years.

(i) A custodian has, as powers in trust, with respect to the custodial property, in addition to the rights and powers provided by this chapter, all the rights and powers which a guardian has with respect to property not held as custodial property.

(j) Where the subject of the gift is a life insurance or annuity contract, the custodian has all the incidents of ownership in the contract which he may hold as custodian to the same extent as if he were the owner thereof personally. The designated beneficiary of contract held by a custodian shall be the minor or, in the event of his death, the minor's estate. (Sept. 14, 1965, 79 Stat. 747, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Apr. 19, 1968, Pub. L. 90-290 § 1(3), 82 Stat. 98.)

#### AMENDMENT

1968—Section 1(3), act Apr. 19, 1968, Pub. L. 90-290 amended subsection (g) by striking "bank" and inserting "financial institution".

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-228 (Oct. 15, 1962, Pub. L. 87-821, § 76 Stat. 938 (940)).

The references are re-translated to refer to "this chapter".

The source of the provisions is section 4 of the Uniform Gifts to Minors Act. See revision note preceding section 21-301 herein.

Minor changes are made in style.

### § 21-305. Compensation of custodian or guardian; bond; liability of custodian serving without compensation

(a) A custodian is entitled to reasonable compensation for his services and to reimbursement from the custodial property for his reasonable expenses incurred in the performance of his duties, but may act without compensation.

(b) Compensation for a guardian or custodian shall be according to:

(1) any direction of the donor when the gift is made, where it is not in excess of a statutory limitation of the District of Columbia for guardians or custodians;

(2) any statute of the District of Columbia applicable to custodians or guardians;

(3) any order of the court.

(c) A custodian may not be required to give a bond for the performance of his duties.

(d) A custodian not compensated for his services is not liable for losses to the custodial property unless they result from his bad faith, intentional wrongdoing, or gross negligence, or from his failure to maintain the standard of prudence in investing the custodial property prescribed by this chapter. (Sept. 14, 1965, 79 Stat. 748, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D. C. Code, 1961 ed., § 21-229 (Oct. 15, 1962, Pub. L. 87-821, § 1, 76 Stat. 938 (941)).

The references are re-translated to refer to "this chapter".

The source of the provisions is section 5 of the Uniform Gifts to Minors Act. See revision note preceding section 21-301 herein.

### § 21-306. Exemption of third persons from liability

An issuer, transfer agent, financial institution, broker, insurance company, or other person acting on the instructions of or otherwise dealing with a person purporting to act as a donor or in the capacity of a custodian is not responsible for determining whether the person designated by the purported donor or purporting to act as a custodian has been duly designated or whether a purchase, sale, or transfer to or by or other act of a person purporting to act in the capacity of custodian is in accordance with or authorized by this chapter, and is not obliged to inquire into the validity of propriety under this chapter of an instrument or instructions executed or given by a person purporting to act as a donor or in the capacity of a custodian, and is not bound to see to the application by any person purporting to act in the capacity of a custodian of any money or other property paid or delivered to him. (Sept. 14, 1965, 79 Stat. 748, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Apr. 19, 1968, Pub. L. 90-290, § 1(3), 82 Stat. 98.)

#### AMENDMENT

1968—Section 1(3), act Apr. 19, 1968, Pub. L. 90-290, amended section by striking "bank" and inserting "financial institution".

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-232 (Oct. 15, 1962, Pub. L. 87-821, § 1, 76 Stat. 938 (942)).

The references are re-translated to refer to "this chapter".

The source of the provisions is section 6 of the Uniform Gifts to Minors Act. See revision note preceding section 21-301 herein.

### § 21-307. Successor custodians; eligibility; rights, powers, and duties; manner of resignation; removal

(a) Only an adult, a guardian of the minor, or a trust company is eligible to become a successor custodian. A successor custodian has all the rights, powers, duties, and immunities of a custodian designated in the manner prescribed by this chapter.



(b) A custodian, other than the donor, may resign and designate his successor by:

(1) executing an instrument of resignation designating the successor custodian; and

(2) causing each security which is custodial property and in registered form and each life insurance or annuity contract to be registered in the name of the successor custodian followed, in substance, by the words: "as custodian for [name of minor] under the District of Columbia Uniform Gifts to Minors Act"; and

(3) delivering to the successor custodian the instrument of resignation, each security registered in the name of the successor custodian, each life insurance or annuity contract registered in the name of the successor custodian, and all other custodial property, together with any additional instruments required for the transfer thereof.

(c) A custodian, whether or not a donor, may petition the court for permission to resign and for the designation of a successor custodian.

(d) When the person designated as custodian is not eligible, renounces or dies before the minor attains the age of 21 years, the guardian of the minor shall be successor custodian. When the minor has no guardian, a donor, his legal representative, the legal representative of the custodian, an adult member of the minor's family, or the minor, if he has attained the age of 14 years, may petition the court for the designation of a successor custodian.

(e) A donor, the legal representative of a donor, an adult member of the minor's family, a guardian of the minor, or the minor if he has attained the age of 14 years, may petition the court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated or, in the alternative, that the custodian be required to give bond for the performance of his duties.

(f) Upon the filing of a petition as provided by this section, the court shall grant an order, directed to those persons and returnable on such notice as the court requires, to show cause why the relief prayed for in the petition should not be granted and, in due course, grant such relief as the court finds to be in the best interests of the minor. (Sept. 14, 1965, 79 Stat. 748, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-230 (Oct. 15, 1962, Pub. L. 87-821, § 1, 76 Stat. 938 (942)).

The reference is re-translated to refer to "this chapter".

The source of the provisions is section 7 of the Uniform Gifts to Minors Act. See revision note preceding section 21-301 herein.

Minor changes are made in style.

#### § 21-308. Accounting by custodian or his legal representative

(a) A minor, if he has attained the age of 14 years, or the legal representative of a minor, an adult member of the minor's family, or a donor or his legal representative, may petition the court for an accounting by the custodian or his legal representative.

(b) The court, in a proceeding under this chapter or otherwise, may require or permit the custodian

or his legal representative to account and, if the custodian is removed, shall so require and order delivery of all custodial property to the successor custodian and the execution of all instruments required for the transfer thereof. (Sept. 14, 1965, 79 Stat. 749, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-231 (Oct. 15, 1962, Pub. L. 87-821, § 1, 76 Stat. 938 (942)).

The reference is re-translated to refer to "this chapter".

The source of the provisions is section 8 of the Uniform Gifts to Minors Act. See revision note preceding section 31-301 herein.

A minor change is made in style.

#### § 21-309. Construction of chapter

The method for making gifts to minors provided by this chapter is not exclusive. (Sept. 14, 1965, 79 Stat. 749, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-233 (Oct. 15, 1962, Pub. L. 87-821, § 1, 76 Stat. 938 (942)).

The references are re-translated to refer to "this chapter".

The source of the provisions is section 9 of the Uniform Gifts to Minors Act. See revision note preceding section 21-301 herein.

Section 21-234 of D.C. Code, 1961 ed., which provided for separability of provisions, and the source of which was section 11 of the Uniform Gifts to Minors Act, is omitted as covered by a separate section of the bill to enact this revision. It provides for separability of provisions with respect to this entire revised Part.

#### § 21-310. Short title

This chapter may be cited as the "District of Columbia Uniform Gifts to Minors Act". (Sept. 14, 1965, 79 Stat. 749, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-225 note (Act Oct. 15, 1962, Pub. L. 87-821, § 1, 76 Stat. 938 (942)).

The reference "This Act" is re-translated to refer to "this chapter".

The source of the provisions is section 10 of the Uniform Gifts to Minors Act. See revision note preceding section 21-301 herein.

#### § 21-311. Preservation of prior rights and liabilities—construction with other laws

This chapter does not affect rights and liabilities under the Act approved August 3, 1956 (chapter 947, 70 Stat. 1028), existing on December 31, 1962; nor does it supersede or modify the Internal Revenue Code of 1954, as amended (Title 26, United States Code), or the District of Columbia Income and Franchise Tax Act of 1947, as amended (subchapter II of chapter 15 of Title 47 of this Code). (Sept. 14, 1965, 79 Stat. 749, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 21-214 to 21-224 note, 21-225 note (Act Oct. 15, 1962, Pub. L. 87-821, § 2(b)(c), 76 Stat. 943).

The provisions, as enacted by section 2(b)(c) of the Act of October 15, 1962, cited above, apparently were suggested by section 12 of the Uniform Gifts to Minors Act (see revision note preceding section 21-301 herein), relating to repeals and the preservation of existing rights and liabilities.

Changes are made in phraseology.



## Chapter 5.—HOSPITALIZATION OF THE MENTALLY ILL

### SUBCHAPTER I.—DEFINITIONS; COMMISSION ON MENTAL HEALTH

Sec.

- 21-501. Definitions.
- 21-502. Commission on Mental Health; composition; appointment and terms of members; organization; chairman; salaries.
- 21-503. Examinations and hearings; subpoenas; witnesses; place.

### SUBCHAPTER II.—VOLUNTARY AND NONPROTESTING HOSPITALIZATION

- 21-511. Voluntary hospitalization.
- 21-512. Release of voluntary patients.
- 21-513. Hospitalization of nonprotesting persons.
- 21-514. Release of patients hospitalized under section 21-513.

### SUBCHAPTER III.—EMERGENCY HOSPITALIZATION

- 21-521. Detention of persons believed to be mentally ill; transportation and application to hospital.
- 21-522. Examination and admission to hospital; notice.
- 21-523. Court order requirement for hospital detention beyond 48 hours; maximum period for observation.
- 21-524. Determination and order of court.
- 21-525. Hearing by court.
- 21-526. Extension of maximum periods of time.
- 21-527. Examination and release of person; notice.
- 21-528. Detention of person pending judicial proceedings.

### SUBCHAPTER IV.—HOSPITALIZATION UNDER COURT ORDER

- 21-541. Petition to Commission; copy to person affected.
- 21-542. Hearing by Commission; presence and rights of person affected; hearing regarding liability.
- 21-543. Representation by counsel; compensation; recess.
- 21-544. Determinations of Commission; report to court; copy to person affected; right to jury trial.
- 21-545. Hearing and determination by court or jury; order; witnesses; jurors.
- 21-546. Periodic requests for examination of hospitalized patient; procedure for examination and detention or release; petition to court.
- 21-547. Judicial determination of petition filed under section 21-546; order; physicians as witnesses.
- 21-548. Periodic examinations by hospital authorities; release.
- 21-549. Preservation of other rights to release.
- 21-550. Surety.
- 21-551. Nonresidents.

### SUBCHAPTER V.—RIGHT TO COMMUNICATION; EXERCISE OF OTHER RIGHTS

- 21-561. Mail privileges; censored mail; return to sender; visiting hours.
- 21-562. Medical and psychiatric care and treatment; records.
- 21-563. Use of mechanical restraints; record of use.
- 21-564. Exercise of property and other rights; notice of inability; persons hospitalized prior to September 15, 1964.
- 21-565. Statement of release and adjudication procedures and of other rights.

### SUBCHAPTER VI.—MISCELLANEOUS PROVISIONS

- 21-581. Proceedings instituted by Commissioner of the District of Columbia.
- 21-582. Petitions, applications, or certificates of physicians.
- 21-583. Physicians and psychiatrists as witnesses.
- 21-584. Witness fees.
- 21-585. Confinement in jail prohibited.
- 21-586. Financial responsibility for care of hospitalized person; judicial enforcement.
- 21-587. Veterans' Administration and military hospital facilities.

Sec.

- 21-588. Forms.
- 21-589. Persons hospitalized prior to September 15, 1964.
- 21-590. Discharge as cured; restoration to legal status.
- 21-591. Offenses and penalties.
- 21-592. Return to hospital of an escaped mentally ill person.

#### AMENDMENTS

1970—Section 150(c) (5) (B) of Act July 29, 1970, Public Law 91-358 amended chapter analysis relating to item 21-581 to read as above set out.

Section 150(c) (7) (B) of Act July 29, 1970, Public Law 91-358 amended chapter analysis by adding item 21-592.

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2-2222, 11-501, 11-921, 11-1101, 16-2315, 16-2321, 24-528.

### SUBCHAPTER I.—DEFINITIONS; COMMISSION ON MENTAL HEALTH

#### § 21-501. Definitions

As used in the chapter:

"administrator" means a person in charge of a public or private hospital or his delegate;

"chief of service" means the physician charged with overall responsibility for the professional program of care and treatment in the particular administrative unit of the hospital to which the patient has been admitted or such other member of the medical staff as the chief of service designates;

"Commission" means the Commission on Mental Health;

"court" means the Superior Court of the District of Columbia;

"mental illness" means a psychosis or other disease which substantially impairs the mental health of a person;

"mentally ill person" means a person who has a mental illness, but does not include a person committed to a private or public hospital in the District of Columbia by order of the court in a criminal proceeding;

"physician" means a person licensed under the laws of the District of Columbia to practice medicine, or a person who practices medicine in the employment of the Government of the United States or of the District of Columbia;

"private hospital" means a nongovernmental hospital or institution, or part thereof, in the District of Columbia, equipped and qualified to provide inpatient care and treatment for a person suffering from a physical or mental illness; and

"public hospital" means a hospital or institution, or part thereof, in the District of Columbia, owned and operated by the Government of the United States or of the District of Columbia, equipped and qualified to provide inpatient care and treatment for persons suffering from physical or mental illness. (Sept. 14, 1965, 79 Stat. 751, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(c) (1), 84 Stat. 567.)

#### AMENDMENT

1970—Section 150(c) (1) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."



## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101 and note to 21-301.

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-351 (Sept. 15, 1964, Pub. L. 88-597, § 2, 78 Stat. 944).

Definitions of "Commission" and "court" are inserted (see section 21-502 and other sections of this chapter), and minor changes are made in arrangement and phraseology.

## CROSS REFERENCES

Commitment of substantially retarded persons, see § 21-1116.

General provisions concerning substantially retarded person, including inquests, commitment, and discharge, see §§ 21-1102 to 21-1122.

Interstate Compact on Mental Health, see § 6-1601 et seq.

Jurisdiction of the Family Division of the Superior Court, see § 11-1101.

Other provisions concerning mentally ill persons, criminally insane, inquests, commitment, payment of expenses, see §§ 24-301 to 24-303, 32-401 to 32-407, 21-701 to 21-705, 21-901 to 21-908.

## FEDERAL RULES OF CIVIL PROCEDURE

The rules do not apply to mental health proceedings, see Rule 81(a) (1), 28 U.S.C. App.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16-2301, 20-351, 21-701, 21-901, 21-1501.

## NOTES TO DECISIONS

## Construction

Under sections 22-3501 to 22-3511, term "not insane" must be read to mean "not 'mentally ill'" within meaning of sections 21-501 to 21-591 and sections 22-3501 to 22-3511 apply only to those who are not mentally ill while compulsory treatment of those who are mentally ill is governed by sections 21-501 to 21-591. *T. B. Cross v. D. W. Harris* (1969, 418 F. 2d 1095, 135 U.S. App. D.C. 259).

## — With other laws

The District of Columbia Sexual Psychopath Act was not repealed by the 1964 Hospitalization of Mentally Ill Act. *M. I. Millard v. D. W. Harris, Acting Sup't, etc.* (1968, 406 F. 2d 964, 132 U.S. App. D.C. 146; rev'g 373 F. 2d 468).

Court of Appeals would not read into the District of Columbia Sexual Psychopath Act the procedural protections of the Hospitalization of the Mentally Ill Act. *Id.*

## Limitation of applicability of chapter

The protection of the District of Columbia Hospitalization of the Mentally Ill Act is limited to those who are declared insane or of unsound mind pursuant to a court order and does not include any person previously committed under the Sexual Psychopath Act. *M. I. Millard v. D. W. Harris, Acting Sup't, etc.* (1968, 406 F. 2d 964, 132 U.S. App. D.C. 146; rev'g 373 F. 2d 468).

### § 21-502. Commission on Mental Health; composition; appointment and terms of members; organization; chairman; salaries

(a) The Commission on Mental Health is continued. The Superior Court of the District of Columbia shall appoint the members of the Commission, and the Commission shall be composed of nine members. One member shall be a member of the bar of the court, who has engaged in active practice of law in the District of Columbia for a period of at least five years prior to his appointment. He shall be the Chairman of the Commission and act as the administrative head of the Commission and its staff. He shall preside at all hearings and direct all of the proceedings before the Commission. He shall devote his entire time to the work of the Commission. Eight members of the Commission shall be physicians who have been practicing medicine in the District

of Columbia and who have had not less than five years' experience in the diagnosis and treatment of mental illnesses.

(b) Appointment of members of the Commission shall be for terms of four years each, which shall be staggered as provided by section 2 of the Act approved June 8, 1938 (chapter 326, 52 Stat. 625), under which, except for the original four-year term of the lawyer-member, staggered terms of one year for two members, two years for two members, three years for two members, and four years for two members, were made.

(c) The physician-members of the Commission shall serve on a part-time basis and shall be rotated by assignment of the Chief Judge of the court, so that at any one time the Commission shall consist of the Chairman and two physician-members. Physician-members of the Commission may practice their profession during their tenure of office, but may not participate in the disposition of the case of a person in which they have rendered professional service or advice.

(d) The court shall also appoint an alternate lawyer-member of the Commission who shall have the same qualifications as the lawyer-member of the Commission and who shall serve on a part-time basis and act as Chairman in the absence of the permanent Chairman.

(e) The salaries of the members of the Commission and its employees shall be fixed in accordance with the provisions of section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]. The alternate Chairman shall be paid on a per diem basis at the same rate of compensation as fixed for the permanent Chairman. (Sept. 14, 1965, 79 Stat. 751, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(c) (1), 84 Stat. 567.)

## CODIFICATION

In subsec. (e) the reference "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code, relating to the classification of government employees and related matters" was substituted for "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89-554, set out in note under § 1-251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

## AMENDMENT

1970—Section 150(c) (1) of Act July 29, 1970, Public Law 91-358, amended subsection (a) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101 and note to 21-301.

## CONTINUATION IN OFFICE EXISTING MEMBERS OF COMMISSION

Section 150(d), of Act July 29, 1970, Pub. L. 91-358 provided:

"Members of the Commission on Mental Health established under section 21-502 of title 21 of the District of Columbia Code who are in office on the effective date of this title shall continue in office as provided in subsection (b) of that section."



CONTINUANCE OF EXISTING COMMISSION ON MENTAL  
HEALTH

Section 2 of act Sept. 14, 1965, provided:

"The Commission on Mental Health continued by section 21-502 of Part III, District of Columbia Code, as set out in section 1 of this Act, [Titles 18 to 21] is the Commission established by the Act approved June 8, 1938 (chapter 326, 52 Stat. 625), as amended, and continued by section 20 of the Act approved September 15, 1964 (Pub. Law 88-597, 78 Stat. 954). Chapter 5 of Title 21 of Part III, District of Columbia Code, as set out in section 1 of this Act, [Titles 18 to 21] does not affect or impair the existence of the Commission so established and continued, and does not alter the pay or the terms of office of the members of the Commission serving as such on December 31, 1965."

REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-352 (Sept. 15, 1964, Pub. L. 88-597, § 3, 78 Stat. 944).

Section is from part of section 21-352 of D.C. Code, 1961 ed. Remainder of section 21-352 is carried into section 21-503 of this revised Part. The provisions carried into this section are subdivided into subsections for the purpose of easier reference.

Section 20 of Act Sept. 15, 1964, Pub. L. 88-597 (78 Stat. 954) provided: "The Commission on Mental Health to which reference is made in section 3 of this Act [section 21-352 of D.C. Code, 1961 ed.] is the Commission established by the Act of June 8, 1938 (52 Stat. 625), as amended. Nothing contained in any amendment made by this Act shall be construed to affect or impair the existence of the Commission so established, or to alter the pay or the terms of office of the members of such Commission serving as such on the day preceding the date of enactment of this Act." The Commission was established by the Act of June 8, 1938 (52 Stat. 625), as had been classified to section 21-308 of D.C. Code, 1961 ed., and which was repealed by the Act of Sept. 15, 1964. Section 20 of the latter Act, quoted above is not carried into this revised Part, as it is inappropriate in a code of general and permanent law, and it, as well as all other provisions of the Act of Sept. 15, 1964, is repealed by this revision. However, provisions based on all other provisions of that Act are carried into this chapter, and a separate section of the bill to enact this revised Part contains provisions corresponding with those of section 20 of the 1964 Act.

Section 21-352 of D.C. Code, 1961 ed., continued the provision of former section 21-308 of the Code by providing that the terms of physician-members of the Commission should be staggered. In subsec. (b) of this section, these provisions are revised to give a clearer understanding of how these terms are staggered, by referring back to the Act of June 8, 1938, ch. 326, 52 Stat. 625, which established the Commission, and by preserving the more detailed provisions thereof (D.C. Code, 1961 ed., former § 21-308) with respect to the staggered terms, which terms commenced with the original appointments under that Act.

Changes are made in phraseology.

CROSS REFERENCES

Annual estimates of expenditures, see § 47-213.

Drunkards and drug addicts, see §§ 21-1301 to 21-1304.

§ 21-503. Examinations and hearings; subpoenas; witnesses; place

(a) The Commission shall examine alleged mentally ill persons, inquire into their affairs and the affairs of persons who may be legally liable for their support, and make reports and recommendations to the court.

(b) Except as otherwise provided by this chapter, the Commission may conduct its examinations and hearings either at the courthouse or elsewhere at its discretion. The court may issue subpoenas at the request of the Commission returnable before the Commission, for the appearance of the alleged

mentally ill person, witnesses, and persons who may be liable for his support. The Commission, or any of the members thereof, are competent and compellable witnesses at any trial, hearing or other proceeding conducted pursuant to this chapter and the physician-patient privilege is not applicable. (Sept. 14, 1965, 79 Stat. 752, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-352 (Sept. 15, 1964, Pub. L. 88-597, § 3, 78 Stat. 944).

Section is from that part of section 21-352 of D.C. Code, 1961 ed., that is not carried into section 21-502 of this revised Part.

The provisions are subdivided into subsections for easier reference, and minor changes are made in phraseology.

NOTES TO DECISIONS

Sufficiency of record

Since examining doctors concluded that person committed under sections 22-3501 to 22-3511 was not insane but they had no occasion to consider whether he was nonetheless mentally ill, there was no record on the question and habeas corpus petition must be remanded for hearing and findings of fact necessary to determine whether statute was properly applied to petitioner. *T. B. Cross v. D. W. Harris* (1969, 418 F. 2d 1095, 135 U.S. App. D.C. 259).

SUBCHAPTER II.—VOLUNTARY AND NONPRO-  
TESTING HOSPITALIZATION

§ 21-511. Voluntary hospitalization

A person may apply to a public or private hospital in the District of Columbia for admission to the hospital as a voluntary patient for the purposes of observation, diagnosis, and care and treatment of a mental illness. Upon the request of such a person 18 years of age or over, or, in the case of a person under 18 years of age, of his spouse, parent, or legal guardian, the administrator of the public hospital to which application is made shall, if an examination by an admitting psychiatrist reveals the need for hospitalization, or the administrator of the private hospital to which application is made may, admit the person as a voluntary patient to the hospital for the purposes described by this section, in accordance with this chapter. (Sept. 14, 1965, 79 Stat. 752, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-353 (Sept. 15, 1964, Pub. L. 88-597, § 4, 78 Stat. 945).

Section is from subsec. (a) of section 21-353 of D.C. Code, 1961 ed. Remainder of section 21-353 which consisted of subsec. (b) is carried into section 21-512 and 21-526 of this revised Part.

Changes are made in phraseology.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21-512.

§ 21-512. Release of voluntary patients

(a) A voluntary patient admitted to a hospital pursuant to section 21-511 may, at any time, if he is 18 years of age or over, obtain his release from the hospital by filing a written request with the chief of service. Within a period of 48 hours after the receipt of the request, the chief of service shall release the patient making the request. A voluntary patient under 18 years of age, so admitted, may, at any time, obtain his release from the hos-



pital in the same manner, upon the written request of his spouse, parent, or legal guardian.

(b) When the chief of service determines that a voluntary patient hospitalized pursuant to section 21-511 has recovered or that continued hospitalization of the patient is no longer beneficial to him, or advisable, the chief of service may release him from the hospital. (Sept. 14, 1965, 79 Stat. 752, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-353 (Sept. 15, 1964, Pub. L. 88-597, § 4, 78 Stat. 945).

Section is from part of subsec. (b) of section 21-353 of D.C. Code, 1961 ed. Subsec. (a) of section 21-353 and remainder of subsec. (b) thereof are carried into sections 21-511 and 21-526 of this revised Part.

The provisions are subdivided into subsections for easier reference and changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21-526.

### § 21-513. Hospitalization of nonprotesting persons

A friend or relative of a person believed to be suffering from a mental illness may apply on behalf of that person to the admitting psychiatrist of a hospital by presenting the person, together with a referral from a practicing physician. For the purpose of examination and treatment, a private hospital may accept a person so presented and referred, and a public hospital shall accept a person so presented and referred, if, in the judgment of the admitting psychiatrist, the need for examination and treatment is indicated on the basis of the person's mental condition and the person signs a statement at the time of the admission stating that he does not object to hospitalization. The statement shall contain in simple, nontechnical language the fact that the person is to be hospitalized and a description of the right to release set out in section 21-514. The admitting psychiatrist may admit a person so presented, without referral from a practicing physician, if the need for an immediate admission is apparent to the admitting psychiatrist upon preliminary examination. (Sept. 14, 1965, 79 Stat. 753, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-354 (Sept. 15, 1964, Pub. L. 88-597, § 5, 78 Stat. 946).

Section is from subsec. (a) of section 21-354 of D.C. Code, 1961 ed. Remainder of section 21-354, which consisted of subsec. (b), is carried into section 21-514 of this revised Part.

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21-514.

#### NOTES TO DECISIONS

##### Review

Absent jury demand, trial court at hearing (after Commission on Mental Health found patient was mentally ill and likely to injure others if allowed to remain at liberty and recommended hospitalization) had authority to evaluate Commission hearing and to reject Commission report and on remand court should consider merits of patient's contentions (including contention that it was improper to commit patient as an involuntary patient because he was already hospitalized as a nonprotesting patient under this section) and take additional evidence if necessary. *In re A. Walls* (1971, 442 F.2d 749, 143 U.S. App. D.C. 27).

### § 21-514. Release of patients hospitalized under section 21-513

Unless proceedings for hospitalization under court order have been initiated under subchapter IV of this chapter, a hospital, upon the written request of a patient hospitalized pursuant to section 21-513, shall immediately release him. (Sept. 14, 1965, 79 Stat. 753, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-354 (Sept. 15, 1964, Pub. L. 88-597, § 5, 78 Stat. 946).

Section is from subsec. (b) of section 21-354 of D.C. Code, 1961 ed. Subsec. (a) of section 21-354 is carried into section 21-513 of this revised Part.

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21-513.

## SUBCHAPTER III.—EMERGENCY HOSPITALIZATION

### § 21-521. Detention of persons believed to be mentally ill; transportation and application to hospital

An accredited officer or agent of the Department of Public Health of the District of Columbia, or an officer authorized to make arrests in the District of Columbia, or a physician of the person in question, who has reason to believe that a person is mentally ill and, because of the illness, is likely to injure himself or others if he is not immediately detained may, without a warrant, take the person into custody, transport him to a public or private hospital, and make application for his admission thereto for purposes of emergency observation and diagnosis. The application shall reveal the circumstances under which the person was taken into custody and the reasons therefor. (Sept. 14, 1965, 79 Stat. 753, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(c) (2), 84 Stat. 567.)

#### AMENDMENT

1970—Section 150(c) (2) of Act July 29, 1970, Public Law 91-358 amended section by striking out "the family physician" and inserting "a physician".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101 and note to 21-301.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-355 (Sept. 15, 1964, Pub. L. 88-597, § 6, 78 Stat. 946).

Section is from subsec. (a) of section 21-355 of D.C. Code, 1961 ed. Remainder of section 21-355 is carried into sections 21-522 to 21-528 and 21-583.

Changes are made in phraseology.

#### CROSS REFERENCES

Care and commitment of mentally ill persons at St. Elizabeths Hospital, see, also §§ 32-401 et seq. and 21-901 to 21-908.

Drunkards and drug addicts, see §§ 21-1301 to 21-1304.

Duty to file income tax returns, see § 47-1515.

Duty to file schedule of personal property for taxation, distraint of property for nonpayment, see §§ 47-1203, 47-1301.

Exemption from military service, see § 39-101.

Guardian ad litem for persons under disabilities in condemnation proceedings to obtain land for streets, see § 7-204.

Guardian ad litem in proceedings for appointment of conservator, see § 21-1502.

Guardian ad litem in proceedings to condemn land for United States, see Fed. Rules of Civil Procedure 17(c) and 71A(g).



Guardian ad litem in proceedings to probate will, see § 18-511.

Liability for income taxes, see § 47-1524.

May redeem from tax sales within one year after removal of disability, see § 47-1003.

Other provisions concerning property and estates of persons mentally ill, see § 21-701 et seq.

Release of dower generally, see § 30-216.

Rights under real estate leases, see §§ 45-924 to 45-930.

Suits to annul marriage, see § 30-104.

#### FEDERAL RULES OF CIVIL PROCEDURE

One form of action, see Rule 2, 28 U.S.C. App.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21-522, 21-582.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Commencement of judicial proceedings

Physician's petition for judicial hospitalization of patient commenced the judicial proceedings so that detention of patient during course of proceedings was authorized even though petition was not filed until almost four weeks after patient had been admitted to hospital. *In the Matter of H. Perry* (1967, 269 F. Supp. 729).

##### Constitutionality

Statutes providing for involuntary commitments must meet the challenge that they are unconstitutionally vague whether the proceedings are labeled civil or penal. *In re M. Alexander* (1972, 336 F. Supp. 1305).

Statutory standard for involuntary commitment, requiring, inter alia, that one be likely "to injure himself or other persons," is sufficiently definite to survive constitutional challenge of vagueness. *Id.*

##### Observation and diagnosis

Section 21-562, requiring that a person hospitalized in a public hospital for mental illness shall, during his hospitalization, be entitled to medical and psychiatric care and treatment, covers persons hospitalized under any statutory authorization but every patient hospitalized for observation is not necessarily entitled to an immediate and full-blown therapeutic program. *In re J. Curry* (1971, 452 F. 2d 1360, 147 U.S. App. D.C. 28).

##### Seizure

Although there was no arrest of person who was involuntarily detained on ground that he was mentally ill and likely to injure himself or others, he was "seized" within meaning of Fourth Amendment when he was taken into custody and involuntarily deprived of his liberty. *In re J. Barnard* (1971, 455 F. 2d 1370, 147 U.S. App. D.C. 302).

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Arrest

A policeman may not make, without the superintendent's order, an arrest which he may not make with such order. *Jillson v. Caprio* (1950, 181 F. 2d 523, 86 U.S. App. D.C. 168).

##### Construction with other laws

Former § 21-326 providing for apprehension and detention by police of insane persons found in public places was required to be read together with other sections of former civil insanity statute, and particularly former §§ 21-310 and 21-311 implementing procedure initiated under former § 21-326. *In the Matter of Dallas O. Williams* (D.C.D.C. 1958, 157 F. Supp. 871, affirmed 252 F. 2d 629, 102 U.S. App. D.C. 248).

##### False imprisonment

Where the basis in action for false imprisonment was an arrest made at the request of appellee physician, the arrest was unlawful since such arrest of alleged insane persons have been permitted by Congress in only two sorts of circumstances, both absent here. *Jillison v. Caprio* (1950, 181 F. 2d 523, 86 U.S. App. D.C. 168).

##### Grounds for apprehension

This section providing emergency procedure for apprehension of persons thought to be insane should not be defeated by over-technical construction, but it does require that arresting officer reasonably believe that person

apprehended is insane and incapable of managing his own affairs or that he is a menace to public peace; and such section authorizes only initial arrest and detention. *In the Matter of Dallas O. Williams* (D.C.D.C. 1958, 157 F. Supp. 871, affirmed 252 F. 2d 629, 102 U.S. App. D.C. 248).

##### Interim detention

Where police officer had woman, who cut her wrist taken to hospital where she was placed in psychiatric ward, on ground that she had attempted suicide, doctors at hospital were not civilly liable in false imprisonment action for interim detention of woman prior to receipt of court order. *Orvis v. Brickman* (1952, 196 F. 2d 762, 90 U.S. App. D.C. 266).

##### Petition

Government's verified petition which failed to allege that person arrested by police was of unsound mind or insane did not comply with this section permitting a commitment proceeding to be commenced by arrest of an alleged insane person and defect in petition was not remedied by two psychiatric reports attached thereto where such reports were unverified and ambiguous in terms employed and conclusions reached. *Overholser Supt. etc. v. Williams* (1958, 252 F. 2d 629, 102 U.S. App. D.C. 248).

Under no statute is court authorized to commit any person for mental examination on petition which fails to state facts upon which an allegation of present insanity is based. *In the Matter of Dallas O. Williams* (D.C.D.C. 1958, 157 F. Supp. 871, affirmed 252 F. 2d 629, 102 U.S. App. D.C. 248).

##### Privileged affidavit

Defendant had probable cause to sign affidavits submitted to District of Columbia police as basis for arrest of plaintiff as person of unsound mind, and consequently affidavit was privileged under District of Columbia law, where plaintiff had disclosed to defendant her fears that people were trying to kill her, that unknown persons had damaged her personal possessions and had tried to poison her food, a psychiatrist's report that plaintiff was suffering from paranoid condition was read at hearing held by committee, of which defendant was a member, considering plaintiff's fitness for continued federal employment. *G. L. King v. L. H. Hildebrandt* (D.C.D.C. 1963, 216 F. Supp. 814).

##### Privileged statements

Government psychologist who had several interviews with plaintiff and who considered expert medical opinion before making affidavit used in arrest of plaintiff as person of unsound mind, preliminary to lunacy proceeding in District of Columbia, had probable cause to sign affidavit, statements contained in affidavit were privileged and plaintiff could not recover from psychologist for libel after being discharged. *G. L. King v. L. H. Hildebrandt* (1964, 331 F. 2d 476, U.S. App. 2d Ct.).

##### Sufficiency of evidence

If one adjudged insane never saw or talked with physicians who filed affidavits prior to his arrest, and spoke only momentarily after arrest to physician who testified that examination disclosed need for hospital care, adjudication of insanity must be vacated. *In re R. V. Helman* (1961, 288 F. 2d 159, 109 U.S. App. D.C. 375).

#### § 21-522. Examination and admission to hospital; notice

Subject to the provisions of section 21-523, the administrator of a private hospital, may, and the administrator of a public hospital shall, admit and detain for purposes of emergency observation and diagnosis a person with respect to whom application is made under section 21-521, if the application is accompanied by a certificate of a psychiatrist on duty at the hospital stating that he has examined the person and is of the opinion that he has symptoms of a mental illness and, as a result thereof, is likely to injure himself or others unless he is immediately hospitalized. Not later than 24 hours after the admission pursuant to this subchapter of



a person to a hospital, the administrator of the hospital shall serve notice of the admission, by registered mail, to the spouse, parent, or legal guardian of the person and to the Commission on Mental Health. (Sept. 14, 1965, 79 Stat. 753, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-355 (Sept. 15, 1964, Pub. L. 88-597, § 6, 78 Stat. 946).

Section is from subsec. (b) of section 21-355 of D.C. Code, 1961 ed. Remainder of section 21-355 is carried into sections 21-521, 21-523 to 21-528 and 21-583.

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21-523, 21-524.

#### NOTES TO DECISIONS

##### Observation and diagnosis

Section 21-522, requiring that a person hospitalized in a public hospital for mental illness shall, during his hospitalization, be entitled to medical and psychiatric care and treatment, covers persons hospitalized under any statutory authorization but every patient hospitalized for observation is not necessarily entitled to an immediate and full-blown therapeutic program. *In re J. Curry* (1971, 452 F. 2d 1360, 147 U.S. App. D.C. 28).

One confined in a mental hospital involuntarily for limited period for purposes of "observation and diagnosis" has right to be given the attention incident to such observation and diagnosis. *Id.*

There is no irrebuttable presumption that involuntary patient in mental hospital is receiving appropriate program of observation merely because he is hospitalized under statute that permits "emergency observation and diagnosis." *Id.*

The overall therapeutic process, that begins with observation and diagnosis to determine whether treatment is required, must be initiated as soon as the period of involuntary hospitalization in public mental hospital begins. *Id.*

#### § 21-523. Court order requirement for hospital detention beyond 48 hours; maximum period for observation

A person admitted to a hospital under section 21-522 may not be detained in the hospital for a period in excess of 48 hours from the time of his admission, unless the administrator of the hospital has, within that period, filed a written petition with the court for an order authorizing the continued hospitalization of the person for emergency observation and diagnosis for a period not to exceed 7 days from the time the order is entered. (Sept. 14, 1965, 79 Stat. 753, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-355 (Sept. 15, 1964, Pub. L. 88-597, § 6, 78 Stat. 946).

Section is from part of subsec. (c) of section 21-355 of D.C. Code, 1961 ed. Remainder of section 21-355 is carried into sections 21-521, 21-522, 21-524 to 21-528 and 21-583.

The provisions are subdivided into subsections for easier reference, and changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21-522, 21-524, 21-526.

#### NOTES TO DECISIONS

##### Construction

Statute providing that a person admitted to hospital for emergency observation and diagnosis may not be detained for period over 48 hours unless hospital administrator has filed petition for order authorizing continued hospitalization must be read in connection with another

provision providing that hospital administrator may, if judicial proceedings for hospitalization have been commenced, detain person in hospital during course of the judicial proceedings. *In the Matter of H. Perry* (1967, 269 F. Supp. 729).

#### § 21-524. Determination and order of court

(a) Within a period of 24 hours after the court receives a petition for hospitalization of a person for emergency observation and diagnosis, filed by the administrator of a hospital pursuant to section 21-523, the court shall:

(1) order the hospitalization; or

(2) order the person's immediate release.

(b) The court, in making its determination under this section, shall consider the written reports of the agent, officer, or physician who made the application under section 21-522, the certificate of the examining psychiatrist which accompanied it, and any other relevant information. (Sept. 14, 1965, 79 Stat. 754, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-355 (Sept. 15, 1964, Pub. L. 88-597, § 6, 78 Stat. 946).

Section is from part of subsec. (d) of section 21-355 of D.C. Code, 1961 ed. Remainder of section 21-355 is carried into sections 21-521 to 21-523, 21-525 to 21-528 and 21-583.

The provisions are subdivided into subsections for easier reference, and changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21-525 to 21-527

#### NOTES TO DECISIONS

##### Appointment of counsel

Public Defender Service should be appointed to represent patient who has been involuntarily detained on grounds that he has symptoms of mental illness and is likely to injure himself or others, at least until retained counsel notes his appearance. *In re J. Barnard* (1971, 455 F. 2d 1370, 147 U.S. App. D.C. 302).

##### Notice

Notice of signing of order under statute providing, inter alia, that within 24 hours after court receives a petition for hospitalization of a person for emergency observation and diagnosis the court shall order the hospitalization or order the person's immediate release, which statute authorizes a seven-day commitment, should be given within 24 hours so that a hearing may be had within the first two days of the seven-day period since, when personal freedom is at issue, due process demands that a person's legal status be determined at the earliest possible time. *In re J. Barnard* (1971, 455 F. 2d 1370, 147 U.S. App. D.C. 302).

#### § 21-525. Hearing by court

The court shall grant a hearing to a person whose continued hospitalization is ordered under section 21-524, if he requests the hearing. The hearing shall be held within 24 hours after receipt of the request. (Sept. 14, 1965, 79 Stat. 754, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-355 (Sept. 15, 1964, Pub. L. 88-597, § 6, 78 Stat. 946).

Section is from part of subsec. (e) of section 21-355 of D.C. Code, 1961 ed. Remainder of section 21-355 is carried into sections 21-521 to 21-524, 21-526 to 21-528 and 21-583.

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21-526.



## NOTES TO DECISIONS

## Appointment of counsel

Public Defender Service should be appointed to represent patient who has been involuntarily detained on grounds that he has symptoms of mental illness and is likely to injure himself or others, at least until retained counsel notes his appearance. *In re J. Barnard* (1971, 455 F. 2d 1370, 147 U.S. App. D.C. 302).

## Burden of proof

The Government has the initial burden of producing evidence showing probable cause justifying further detention of an involuntary mental patient. *In re J. Barnard* (1971, 455 F. 2d 1370, 147 U.S. App. D.C. 302).

## Evidence—Sufficiency

Commitment papers containing mere conclusory statements will not suffice to provide probable cause at hearing in relation to person who has been involuntarily detained on grounds that he is likely to injure himself or others; conclusions in the papers must be sufficiently detailed and supported by facts to allow the court to perform its function of passing on their credibility in determining whether probable cause exists for continued incarceration. *In re J. Barnard* (1971, 455 F. 2d 1370, 147 U.S. App. D.C. 302).

When neither the validity of documents signed by physician and psychiatrist relating to emergency hospitalization of person who was alleged to be mentally ill nor the accuracy of the opinions and information in the documents is contested, there is an adequate basis for continuing the emergency hospitalization. *Id.*

## Hearing

In the future, in relation to hearing on emergency hospitalization of person who is alleged to be mentally ill, conferences should be held in open court on the record, reporter should be present for conferences in chambers, or judge should state for the record in the presence of counsel what was discussed and agreed upon at a conference at which no reporter was present, in order that there might be effective review. *In re J. Barnard* (1971, 455 F. 2d 1370, 147 U.S. App. D.C. 302).

## Notice

Notice of signing of order under statute providing, *inter alia*, that within 24 hours after court receives a petition for hospitalization of a person for emergency observation and diagnosis the court shall order the hospitalization or order the person's immediate release, which statute authorizes a seven-day commitment, should be given within 24 hours so that a hearing may be had within the first two days of the seven-day period since, when personal freedom is at issue, due process demands that a person's legal status be determined at the earliest possible time. *In re J. Barnard* (1971, 455 F. 2d 1370, 147 U.S. App. D.C. 302).

## Probable cause

Probable cause to believe that a patient should be hospitalized must be shown by the Government to justify seven-day commitment order at hearing held under statute providing that the court shall grant a hearing to a person whose continued hospitalization is ordered under statute, if he requests a hearing, which hearing shall be held within 24 hours after receipt of the request. *In re J. Barnard* (1971, 455 F. 2d 1370, 147 U.S. App. D.C. 302).

At a hearing on involuntary detention of person who is alleged to be mentally ill and likely to injure himself or others if not immediately detained, the Government may rely upon the papers that were before the judge who authorized the seven-day commitment under statute; if the judge at the hearing concludes from these papers that there is probable cause to believe the person is mentally ill and, as result thereof, is likely to injure himself or others if not detained, he may find the hospitalization legal unless the person offers evidence that sufficiently rebuts the documentary evidence. *Id.*

Rational basis exists for allowing Government, at hearing on detention of patient believed to be mentally ill and likely to injure himself or others if not immediately detained, to make a showing of probable cause on the papers alone, without the personal testimony of physicians; only if counsel for patient makes a proffer of con-

trary proof or challenges the accuracy of the facts or diagnoses in the papers should the Government be compelled to offer live testimony. *Id.*

## Treatment

Allegations of involuntary patient in District of Columbia public mental hospital, in hospital's proceeding to extend period of hospitalization, warranted hearing on whether hospital had taken any step toward observation and diagnosis or whether hospital had provided only custodial care; if patient establishes truth of his allegations, he must either be released or be provided care that is consonant with goals of observation and diagnosis, and ultimately of treatment if considered necessary under diagnoses. *In re J. Curry* (1971, 452 F. 2d 1360, 147 U.S. App. D.C. 28).

## § 21-526. Extension of maximum periods of time

If the maximum period of time prescribed by section 21-512, 21-523, 21-524, or 21-525, during which an action or determination may or shall be taken, expires on a Saturday, Sunday, or legal holiday, the period may be extended to not later than noon of the next succeeding day which is not a Saturday, Sunday, or legal holiday. (Sept. 14, 1965, 79 Stat. 754, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-353, § 21-355 (Sept. 15, 1964, Pub. L. 88-597, § 6, 78 Stat. 946).

To eliminate repetition, those provisions of subsec. (b) of section 21-353, and of subsecs. (c), (d) and (e) of section 21-355, of D.C. Code, 1961 ed., which, with respect to the maximum periods of time prescribed by those subsections, provided for identical extensions of time if the maximum period expired on a Saturday, Sunday, or legal holiday, are consolidated into this revised section. The remaining provisions of those subsections are carried, respectively, into the sections referred to in this section, and remainders of sections 21-353 and 21-355 are carried into sections 21-511, 21-512, 21-521 to 21-525, 21-527, 21-528 and 21-583.

Changes necessary to effect the consolidation are made.

## § 21-527. Examination and release of person; notice

The chief of service of a hospital in which a person is hospitalized under a court order entered pursuant to section 21-524 shall, within 48 hours after the order is entered, have the person examined by a physician. If the physician, after his examination, certifies that in his opinion the person is not mentally ill to the extent that he is likely to injure himself or others if not presently detained, the person shall be immediately released. The chief of service shall, within 48 hours after the examination has been completed, send a copy of the results thereof by certified or registered mail to the spouse, parents, attorney, legal guardian, or nearest known adult relative of the person examined. (Sept. 14, 1965, 79 Stat. 754, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-355 (Sept. 15, 1964, Pub. L. 88-597, § 6, 78 Stat. 946).

Section is from subsec. (f) of section 21-355 of D.C. Code, 1961 ed. Remainder of section 21-355 is carried into sections 21-521 to 21-526, 21-528 and 21-583.

With respect to notice, the reference to certified mail is inserted to give the chief of service an alternative method of furnishing a copy of the results to the spouse or parents, etc. A similar provision is in most statutes requiring the mailing of notices, documents, etc. See Act June 11, 1960, Pub. L. 86-507, 74 Stat. 200; also, 39 U.S.C., § 5013; also, House Report No. 1492, Apr. 12, 1960, and Senate Report No. 1489, May 26, 1960, both



86th Cong., 2d sess., to accompany H.R. 10996, 86th Cong., which, upon enactment, became said Act of June 11, 1960.

Changes are made in phraseology.

#### § 21-528. Detention of person pending judicial proceedings

Notwithstanding any other provision of this subchapter, the administrator of a hospital in which a person is hospitalized under this subchapter may, if judicial proceedings for his hospitalization have been commenced under subchapter IV of this chapter, detain the person in the hospital during the course of the judicial proceedings. (Sept. 14, 1965, 79 Stat. 754, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-355 (Sept. 15, 1964, Pub. L. 88-597, § 6, 78 Stat. 946).

Section is from subsec. (h) of section 21-355 of D.C. Code, 1961 ed. Remainder of section 21-355 is carried into sections 21-521 to 21-527 and 21-583.

Changes are made in phraseology.

##### NOTES TO DECISIONS

###### Construction

Statute providing that a person admitted to hospital for emergency observation and diagnosis may not be detained for period over 48 hours unless hospital administrator has filed petition for order authorizing continued hospitalization must be read in connection with another provision providing that hospital administrator may, if judicial proceedings for hospitalization have been commenced, detain person in hospital during course of the judicial proceedings. *In the Matter of H. Perry* (1967, 269 F. Supp. 729).

#### SUBCHAPTER IV.—HOSPITALIZATION UNDER COURT ORDER

##### SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 21-514, 21-528, 21-581.

#### § 21-541. Petition to Commission; copy to person affected

(a) Proceedings for the judicial hospitalization of a person in the District of Columbia may be commenced by the filing of a petition with the Commission on Mental Health by his spouse, parent, or legal guardian, by a physician, by a duly accredited officer or agent of the Department of Public Health, or by an officer authorized to make arrests in the District of Columbia. The petition shall be accompanied by:

(1) a certificate of a physician stating that he has examined the person and is of the opinion that the person is mentally ill, and because of the illness is likely to injure himself or other persons if allowed to remain at liberty; or

(2) a sworn written statement by the petitioner that:

(A) the petitioner has good reason to believe that the person is mentally ill, and, because of the illness, is likely to injure himself or other persons if allowed to remain at liberty; and

(B) the person has refused to submit to examination by a physician.

(b) Within three days after the Commission receives a petition filed under subsection (a) of this section, the Commission shall send a copy of the petition by registered mail to the person with respect to whom it was filed. (Sept. 14, 1965, 79 Stat. 754, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-356 (Sept. 15, 1964, Pub. L. 88-597, § 7, 78 Stat. 947).

Section is from subsecs. (a) and (b) of section 21-356 of D.C. Code, 1961 ed. Remainder of section 21-356 is carried into this chapter. See tables.

With respect to furnishing a copy of the petition to the person affected, a reference to certified mail is inserted for the same reason stated in revision note under section 21-527.

Changes are made in phraseology.

##### CROSS REFERENCE

Payment of hospitalization expense of criminally insane, see § 24-301.

##### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21-542, 21-551, 21-582.

##### NOTES TO DECISIONS UNDER PRESENT LAW

###### Commencement of judicial proceedings

Physician's petition for judicial hospitalization of patient commenced the judicial proceedings so that detention of patient during course of proceedings was authorized even though petition was not filed until almost four weeks after patient had been admitted to hospital. *In the Matter of H. Perry* (1967, 269 F. Supp. 729).

###### Constitutionality

Statutes providing for involuntary commitments must meet the challenge that they are unconstitutionally vague whether the proceedings are labeled civil or penal. *In re M. Alexander* (1972, 336 F. Supp. 1305).

Statutory standard for involuntary commitment, requiring, *inter alia*, that one be likely "to injure himself or other persons," is sufficiently definite to survive constitutional challenge of vagueness. *Id.*

###### Habeas corpus

Interest of justice and furtherance of congressional objective required application, to pending habeas corpus proceeding by petitioner confined in Saint Elizabeths Hospital in District of Columbia as insane person, of principles adopted in District of Columbia Hospitalization of Mentally Ill Act, passed after commitment. *C. Lake v. D. C. Cameron, Superintendent, etc.* (1966, 364 F. 2d 657, 124 U.S. App. D.C. 264).

Habeas corpus proceeding by petitioner, who was found to be somewhat senile, had poor memory, had wandered away on few occasions, and was unable to care for herself at all times, and who had been confined in Saint Elizabeths Hospital in District of Columbia as insane person, would be remanded to District Court, for inquiry into other alternative courses of treatment. *Id.*

###### Review

Absent jury demand, trial court at hearing (after Commission on Mental Health found patient was mentally ill and likely to injure others if allowed to remain at liberty and recommended hospitalization) had authority to evaluate Commission hearing and to reject Commission report and on remand court should consider merits of patient's contentions and take additional evidence if necessary. *In re A. Walls* (1971, 442 F. 2d 749, 143 U.S. App. D.C. 27).

###### Scope of mandatory commitment

Notwithstanding fact that appeal of denial of petition for writ of habeas corpus by person who was acquitted by reason of insanity and summarily committed to mental hospital pursuant to mandatory provisions of District of Columbia statute raised substantial questions concerning scope of mandatory commitment and its relationship to the Hospitalization of the Mentally Ill Act, in view of petitioner's unconditional release from hospital while appeal was pending, appeal was dismissed as moot. *S. I. Solomon v. D. C. Cameron, Sup't etc.* (1967, 377 F. 2d 170, 126 U.S. App. D.C. 285).

##### NOTES TO DECISIONS UNDER PRIOR LAW

###### Construction with other laws

Former § 21-326 providing for apprehension and detention by police of insane persons found in public places was required to be read together with other sections of



former civil insanity statute, and particularly former §§ 21-310 and 21-311 implementing procedure initiated under former § 21-326. *In the Matter of Dallas O. Williams* (D.C.D.C. 1958, 157 F. Supp. 871, affirmed 252 F. 2d 629, 102 U.S. App. D.C. 248).

#### Sufficiency of petition

Government's verified petition which failed to allege that person arrested by police was of unsound mind or insane did not comply with former § 21-310 permitting a commitment proceeding to be commenced by arrest of an alleged insane person and defect in petition was not remedied by two psychiatric reports attached thereto where such reports were unverified and ambiguous in terms employed and conclusions reached. *Overholser Supt. etc. v. Williams* (1958, 252 F. 2d 629, 102 U.S. App. D.C. 248).

#### § 21-542. Hearing by Commission; presence and rights of person affected; hearing regarding liability

(a) The Commission shall promptly examine a person alleged to be mentally ill after the filing of a petition under section 21-541 and shall thereafter promptly hold a hearing on the issue of his mental illness. The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the mental health of the person named in such petition. In conducting the hearing, the Commission shall hear testimony of any person whose testimony may be relevant and shall receive all relevant evidence which may be offered. A person with respect to whom a hearing is held under this section may, in his discretion, be present at the hearing, to testify, and to present and cross-examine witnesses.

(b) The Commission shall also hold a hearing in order to determine liability under the provisions of section 21-586 for the expenses of hospitalization of the alleged mentally ill person, if it is determined that he is mentally ill and should be hospitalized as provided under this chapter. The hearing may be conducted separately from the hearing on the issue of mental illness. If conducted separately, it may be conducted by the Chairman of the Commission alone. (Sept. 14, 1965, 79 Stat. 755, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-356 (Sept. 15, 1964, Pub. L. 88-597, § 7, 78 Stat. 947).

Section is from subsec. (c) of section 21-356 of D.C. Code, 1961 ed. Remainder of section 21-356 is carried into this chapter. See tables.

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21-544.

#### NOTES TO DECISIONS

##### Habeas corpus

Aid of District of Columbia Commission on Mental Health is available in habeas corpus proceedings as well as commitment proceedings. *C. Lake v. D. C. Cameron, Superintendent, etc.* (1966, 364 F. 2d 657, 124 U.S. App. D.C. 264).

#### § 21-543. Representation by counsel; compensation; recess

The alleged mentally ill person shall be represented by counsel in any proceeding before the Commission or the court, and if he fails or refuses to obtain counsel, the court shall appoint counsel to represent him. The counsel so appointed shall be awarded compensation by the court for his services

in an amount determined by it to be fair and reasonable. The compensation shall be charged against the estate of the individual for whom the counsel was appointed, or against any unobligated funds of the Commission, as the court in its discretion directs. The Commission or the court, as the case may be, shall, at the request of the counsel so appointed, grant a recess in the proceeding to give the counsel an opportunity to prepare his case. A recess may not be granted for more than five days. (Sept. 14, 1965, 79 Stat. 755, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-356 (Sept. 15, 1964, Pub. L. 88-597, § 7, 78 Stat. 947).

Section is from subsec. (d) of section 21-356 of D.C. Code, 1961 ed. Remainder of section 21-356 is carried into this chapter. See tables.

Changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Appointment of counsel

Public Defender Service should be appointed to represent patient who has been involuntarily detained on grounds that he has symptoms of mental illness and is likely to injure himself or others, at least until retained counsel notes his appearance. *In re J. Barnard* (1971, 455 F. 2d 1370, 147 U.S. App. D.C. 302).

##### Procedural safeguards

Transfer of prisoners to mental hospital requires protective procedures at least similar to those provided in 1964 Civil Commitment Act (now title 21, section 501 et seq., D.C. Code) providing full system of procedural safeguards before finding of mental illness can be made. *R. E. Mathews, Jr. v. K. L. Hardy et al.* (1969, 420 F. 2d 607, 137 U.S. App. D.C. 39).

Under section 24-302 providing that if director of department of corrections believes prisoner is mentally ill, he can refer prisoner to psychiatrist and, if psychiatrist concurs in that belief, director can then transfer prisoner to mental hospital, before prisoner may be involuntarily transferred he is entitled to judicial hearing, jury trial, and same rights of notice, counsel and cross-examination as are provided for in title 21, section 501 et seq., and same procedures for release from hospital as are embodied in those sections. *Id.*

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Appointment of counsel

Alleged insane person has a right to be represented by counsel in proceeding to commit him as a person of unsound mind, and if he is not so represented independently the court shall appoint either an attorney or guardian ad litem. *Dooling v. Overholser* (1957, 243 F. 2d 825, 100 U.S. App. D.C. 247).

Where proceeding was commenced to commit person to hospital as a person of unsound mind, and court appointed counsel for such person and granted her request that counsel be discharged, such person was not represented by counsel or guardian ad litem at proceeding, and her commitment was invalid. *Id.*

##### Costs and attorney's fees

Petitioner for writ de lunatico inquirendi, who contracted with counsel voluntarily, must bear expense of counsel and taxable costs of proceedings and costs and expense of petitioner's counsel were not chargeable against patient. *In re Colohan* (D.C.D.C. 1950, 93 F. Supp. 641).

Petitioner for writ de lunatico inquirendi was not required to rely on corporation counsel but could secure counsel of own choice. *Id.*

##### Grounds for commitment

Only those who need treatment and may be dangerous may be confined to hospital for mentally ill. *F. C. Lynch v. W. Overholser, Supt., etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).



**Representation by counsel**

In proceedings before commission on mental health relative to sanity of person, such person must be represented either by an attorney or a guardian ad litem who is an impartial person not otherwise interested in the proceeding; the guardian ad litem need not always be an attorney; he may be a relative or friend selected by the court. *Dooling v. Overholser* (1957, 243 F. 2d 825, 100 U.S. App. D.C. 247).

Where question was raised whether representation by counsel or guardian ad litem was required in incompetency proceeding before Mental Health Commission and Court of Appeals held the commitment invalid because of absence of representation before both the commission and the court, the ruling as to need for representation before commission was not obiter dictum even if commitment could have been found to be invalid for lack of representation in court alone. *Id.*

**§ 21-544. Determinations of Commission; report to court; copy to person affected; right to jury trial**

If the Commission finds, after a hearing under section 21-542, that the person with respect to whom the hearing was held is not mentally ill or if mentally ill, is not mentally ill to the extent that he is likely to injure himself or other persons if allowed to remain at liberty, the Commission shall immediately order his release and notify the court of that fact in writing. If the Commission finds, after the hearing, that the person with respect to whom the hearing was held is mentally ill, and because of the illness is likely to injure himself or other persons if allowed to remain at liberty, the Commission shall promptly report that fact, in writing, to the Superior Court of the District of Columbia. The report shall contain the Commission's findings of fact, conclusions of law, and recommendations. A copy of the report of the Commission shall be served personally on the alleged mentally ill person and his attorney. An alleged mentally ill person with respect to whom the report is made has the right to demand a jury trial, and the Commission, orally and in writing, shall advise him of this right. (Sept. 14, 1965, 79 Stat. 755, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(c) (3), 84 Stat. 567.)

**AMENDMENT**

1970—Section 150(c) (3) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

**EFFECTIVE DATE OF 1970 AMENDMENT**

See note preceding section 11-101 and note to 21-301.

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 21-356 (Sept. 15, 1964, Pub. L. 88-597, § 7, 78 Stat. 947).

Section is from subsec. (e) of section 21-356 of D.C. Code, 1961 ed. Remainder of section 21-356 is carried into this chapter. See tables.

Changes are made in phraseology.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 21-545.

**NOTES TO DECISIONS UNDER PRESENT LAW****Acquiescence in plea of insanity**

Where petitioner had not himself sought introduction of insanity defense at his trial and had not acquiesced in assertion of that defense, his commitment to hospital for the mentally ill following his acquittal by reason of insanity was not authorized and he was entitled to habeas corpus. *C. C. Rouse v. D. C. Cameron, Sup't etc.* (1967, 387 F. 2d 241, 128 U.S. App. D.C. 283).

**Construction**

Statute to effect that when it appears to court that accused is of unsound mind or is mentally incompetent so as to be unable to understand proceedings against him court may order accused committed for observation and treatment if necessary did not authorize trial judge's affording hearing to determine for commitment purposes mental condition of accused found not guilty by reason of insanity, applying release standards of 1964 Hospitalization of the Mentally Ill Act or extending to accused rights which the 1964 Act guaranteed only to those civilly committed. *D. C. Cameron, Sup't etc. v. C. Mullen etc.* (1967, 387 F. 2d 193, 128 U.S. App. D.C. 235).

**Danger to community**

Consideration of a person's likely danger to community is appropriate in civil commitment proceedings but is irrelevant in a criminal trial. *C. C. Rouse v. D. C. Cameron, Sup't etc.* (1967, 387 F. 2d 241, 128 U.S. App. D.C. 283).

**Habeas corpus**

Aid of District of Columbia Commission on Mental Health is available in habeas corpus proceedings as well as commitment proceedings. *C. Lake v. D. C. Cameron, Superintendent, etc.* (1966, 364 F. 2d 657, 124 U.S. App. D.C. 264).

**Least restrictive alternative**

The principle of the least restrictive alternative consistent with the legitimate purposes of a commitment inheres in the very nature of civil commitment, which entails an extraordinary deprivation of liberty justifiable only when the respondent is "mentally ill to the extent that he is likely to injure himself or other persons if allowed to remain at liberty." *J. Covington v. D. W. Harris* (1969, 419 F. 2d 617, 136 U.S. App. D.C. 35).

The court held that the principle of the least restrictive alternative is equally applicable to alternative dispositions within a mental hospital. *Id.*

**Purpose of confinement**

The court held that in reviewing on habeas corpus a civilly committed patient's confinement in a mental hospital, it should satisfy itself that no less onerous disposition would serve purpose of commitment. *J. Covington v. D. W. Harris* (1969, 419 F. 2d 617, 136 U.S. App. D.C. 35).

**Review**

Absent jury demand, trial court at hearing (after Commission on Mental Health found patient was mentally ill and likely to injure others if allowed to remain at liberty and recommended hospitalization) had authority to evaluate Commission hearing and to reject Commission report and on remand court should consider merits of patient's contentions and take additional evidence if necessary. *In re A. Walls* (1971, 442 F. 2d 749, 143 U.S. App. D.C. 27).

**Treatability**

Treatability of one having a mental disease or defect is not an appropriate consideration at a criminal trial, and its relevance may even be doubtful in a civil commitment determination. *C. C. Rouse v. D. C. Cameron, Sup't etc.* (1967, 387 F. 2d 241, 128 U.S. App. D.C. 283).

**NOTES TO DECISIONS UNDER PRIOR LAW****Commission's report**

Where petitioner made no demand for a jury trial or a further hearing by the court under this section after Commission on Mental Health adjudged him of unsound mind and ordered his commitment, the District Court, in habeas corpus proceeding brought to effect petitioner's transfer to Colorado, was authorized to act on commission's report and recommendations without more, except to examine them and find them sufficient. *Hovard v. Overholser* (1942, 130 F. 2d 429, 76 U.S. App. D.C. 166).

**§ 21-545. Hearing and determination by court or jury; order; witnesses; jurors**

(a) Upon the receipt by the court of a report referred to in section 21-544, the court shall promptly set the matter for hearing and shall cause



a written notice of the time and place of the final hearing to be served personally upon the person with respect to whom the report was made and his attorney, together with notice that he has five days following the date on which he is so served within which to demand a jury trial. The demand may be made by the person or by anyone in his behalf. If a jury trial is demanded within the five-day period, it shall be accorded by the court with all reasonable speed. If a timely demand for jury trial is not made, the court shall determine the person's mental condition on the basis of the report of the Commission, or on such further evidence in addition to the report as the court requires.

(b) If the court or jury, as the case may be, finds that the person is not mentally ill, the court shall dismiss the petition and order his release. If the court or jury finds that the person is mentally ill and, because of that illness, is likely to injure himself or other persons if allowed to remain at liberty, the court may order his hospitalization for an indeterminate period, or order any other alternative course of treatment which the court believes will be in the best interests of the person or of the public. The Commission, or a member thereof, shall be competent and compellable witnesses at a hearing or jury trial held pursuant to this chapter. The jury to be used in any case where a jury trial is demanded under this chapter shall be impaneled, upon order of the court, from the jurors in attendance upon other branches of the court, who shall perform the services in addition to and as part of their duties in the court. (Sept. 14, 1965, 79 Stat. 756, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-356 (Sept. 15, 1964, Pub. L. 88-597, § 7, 78 Stat. 947).

Section is from subsec. (f) of section 21-356 of D.C. Code, 1961 ed. Remainder of section 21-356 is carried into this chapter. See tables.

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21-546, 21-551.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Acquiescence in plea of insanity

Where petitioner had not himself sought introduction of insanity defense at his trial and had not acquiesced in assertion of that defense, his commitment to hospital for the mentally ill following his acquittal by reason of insanity was not authorized and he was entitled to habeas corpus. *C. C. Rouse v. D. C. Cameron, Sup't etc.* (1967, 387 F. 2d 241, 128 U.S. App. D.C. 283).

##### Appeal and error

Patient, who was committed under this chapter, whose testimony was responsive to questions of court and counsel, and who evinced capacity to observe and full knowledge of events in relation to which he testified, is not entitled to relief on appeal on theory that, due to his mental illness, his testimony was so inherently unreliable that no conclusions could be drawn from it. *In re E. L. Penn* (1970, 443 F. 2d 663, 143 U.S. App. D.C. 248).

##### Burden of proof

Burden of proof, in habeas corpus proceeding by one committed to mental hospital after being found not guilty by reason of insanity, is the same as that for civilly committed patients. *G. C. Bolton v. D. W. Harris, Acting Superintendent etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

Rule that habeas corpus petitioner must prove that his detention is illegal by preponderance of evidence applies in habeas corpus proceeding by one committed to mental

hospital after being found not guilty of offense by reason of insanity, and thus court must find, by preponderance of evidence, that patient's commitment is no longer valid, that is, that he is no longer likely to injure himself or other persons due to illness. *Id.*

##### Civil commitment of alleged criminal

Defendant who was insane for purpose of responsibility at time of offense may not be insane for purpose of civil commitment at time of verdict, or although competent to stand trial, he may be insane, dangerous and in need of treatment for purpose of civil commitment. *G. C. Bolton v. D. W. Harris, Acting Superintendent etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

##### Civil commitment, when warranted

In order to warrant civil commitment, it is not essential that illness fit specifically into any of various classes of mental illnesses recognized by American Psychiatric Association. *G. C. Bolton v. D. W. Harris, Acting Superintendent etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

##### Commitment procedure

Commission of criminal acts does not give rise to a presumption of dangerousness which, standing alone, justifies substantial difference in commitment procedures and confinement conditions for mentally ill, and that, while prior criminal conduct is relevant to the determination whether person is mentally ill or dangerous, it cannot justify denial of procedural safeguards for such determination, and that while prior criminal conduct is a relevant consideration it does not provide automatic basis for allowing significant and arbitrary differences in such conditions where defendant is acquitted on his own plea of insanity. *G. C. Bolton v. D. W. Harris, Acting Superintendent etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

Prior criminal conduct cannot be deemed sufficient justification for substantial differences in procedures and requirements for commitment of those found not guilty by reason of insanity and other mentally ill persons. *Id.*

Rule that prior criminal conduct cannot be deemed sufficient justification for substantial differences in procedures and requirements for commitment of those found not guilty by reason of insanity and other mentally ill persons applies whether plea of insanity is raised by defendant, prosecutor or court. *Id.*

There is no reasonable basis for distinction for commitment purposes between those who plead insanity and those who have defense thrust upon them, and neither may be automatically deprived of type of protection afforded by 1964 Hospitalization of Mentally Ill Act. *Id.*

Fact that persons acquitted by reason of insanity have committed criminal acts and that such fact may tend to show they meet requirements for commitment does not remove such requirements nor justify total abandonment of procedures used in civil commitment proceedings to determine whether such requirements have been satisfied. *Id.*

Persons found not guilty by reason of insanity must be given judicial hearing with procedures substantially similar to those in civil commitment proceedings. *Id.*

Where feasible, requirements of Hospitalization of Mentally Ill Act as to notice, counsel, and jury trial should be followed in connection with judicial hearing afforded persons found not guilty by reason of insanity. *Id.*

Rule that persons found not guilty by reason of insanity must be given judicial hearing with procedures substantially similar to those in civil commitment proceedings is applicable prospectively only. *Id.*

##### Construction

Statute sanctioning commitment of mentally ill person, a drastic curtailment of the rights of citizens, must be narrowly construed in order to avoid deprivations of liberty without due process of law. *J. Covington v. D. W. Harris* (1969, 419 F. 2d 617, 136 U.S. App. D.C. 35).

Interest of justice and furtherance of congressional objective required application, to pending habeas corpus proceeding by petitioner confined in Saint Elizabeths Hospital in District of Columbia as insane person, of principles adopted in District of Columbia Hospitalization of Mentally Ill Act, passed after commitment. *C. Lake v. D. C. Cameron, Superintendent, etc.* (1966, 364 F. 2d 657, 124 U.S. App. D.C. 264).



Habeas corpus proceeding by petitioner, who was found to be somewhat senile, had poor memory, had wandered away on few occasions, and was unable to care for herself at all times, and who had been confined in Saint Elizabeths Hospital in District of Columbia as insane person, would be remanded to District Court for inquiry into other alternative courses of treatment. *Id.*

#### Danger to community

Consideration of a person's likely danger to community is appropriate in civil commitment proceedings but is irrelevant in a criminal trial. *C. C. Rouse v. D. C. Cameron, Sup't etc.* (1967, 387 F. 2d 241, 128 U.S. App. D.C. 283).

#### Evidence

Evidence supported finding that patient, who was committed under this chapter, was likely to injure himself or others. *In re E. L. Penn* (1970, 443 F. 2d 663, 143 U.S. App. D.C. 248).

Even if admission of certain testimony by psychiatrists, in proceeding in which patient was committed under this chapter, was error on ground that testimony was hearsay violating patient's rights to confrontation, such error was not prejudicial, in view of sufficient other evidence warranting finding that patient was likely to injure himself or others. *Id.*

In absence of evidence that husband was of sound mind or had requisite mental capacity to execute any documents, ratify acts of another or authorize the signing of his name at time wife completed form requesting Veterans Administration to pay her a portion of husband's disability benefits, the previous adjudication of incompetence is presumed to be of continuing validity and trial court's findings that all representations made by wife to Veterans Administration were at husband's request and were ratified by him, and that he authorized wife to sign his name on benefit form were erroneous. *A. D. Martin v. L. P. Martin* (D.C. App. 1970, 270 A. 2d 141).

In view of psychiatrists' testimony that person was suffering from condition which substantially impaired his health, that the condition was interrelated with his mental deficiency, and that his antisocial behavior occurred as result and manifestation of underlying mental illness, there was sufficient evidence for jury to find that person in addition to being mentally deficient was suffering from a mental illness. *In re M. W. Alexander, Patient* (1967, 372 F. 2d 925, 125 U.S. App. D.C. 352).

#### Grounds for commitment

To sustain a civil commitment under District of Columbia Code it is insufficient to find that a person is mentally deficient even when such condition is accompanied by some antisocial behavior, and government must prove by preponderance of evidence that individual suffers from mental illness, whether related or unrelated to mental deficiency, and that danger-productive behavior of individual results from mental illness. *In re M. W. Alexander, Patient* (1967, 372 F. 2d 925, 125 U.S. App. D.C. 352).

#### Hearing

Court's review of hospital's treatment plan for patient involuntarily committed because of mental illness is of very limited nature, and the court may not decide whether hospital has made best possible decision as to course of treatment but only whether it has made permissible decision based on relevant information and within broad range of discretion given to the hospital administrator. *In re H. Jones* (1972, 338 F. Supp. 428).

Primary function of doctors is treating sick, not testifying in court; and, therefore, to maximum extent possible, court will rely on written record, rather than personal testimony of treating physicians, in reviewing treatment plan for patient involuntarily committed because of mental illness. *Id.*

Patient suffering from mental illness that was treated with care designed to maintain his health and see that his physical needs were satisfied is singularly deserving of judicial overview to guaranty that least restrictive alternatives are explored before his initial commitment proceedings are terminated. *Id.*

#### Instructions

To extent that district court's instruction reflected government trial counsel's view that mental deficiency in and of itself constituted a mental illness within District

of Columbia statute relating to civil commitment instruction was improper, but when court's charge was taken in its entirety the jury had been clearly and properly informed they could not commit person simply because of his mental deficiency. *In re M. W. Alexander, Patient* (1967, 372 F. 2d 925, 125 U.S. App. D.C. 352).

#### Investigation discretionary

Provision of the District of Columbia Hospitalization of the Mentally Ill Act providing that court may order hospitalization or any other alternative course of treatment makes court's duty to investigate discretionary and not mandatory. *C. Lake v. Dr. D. C. Cameron* (1967, 267 F. Supp. 155).

#### Justification for treatment

Evidence in committed petitioner's habeas corpus proceeding established that actual medical and psychiatric treatment extended to petitioner was fully warranted and that, in view of petitioner's tendency to wander, there was no facility within district, other than mental hospital with closed wards, presently capable of treating her. *C. Lake v. Dr. D. C. Cameron* (1967, 267 F. Supp. 155).

#### Procedural safeguards

Transfer of prisoners to mental hospital requires protective procedures at least similar to those provided in 1964 Civil Commitment Act (now title 21, section 501 et seq., D.C. Code) providing full system of procedural safeguards before finding of mental illness can be made. *R. E. Mathews, Jr. v. K. L. Hardy et al.* (1969, 420 F. 2d 607, 137 U.S. App. D.C. 39).

Under section 24-302 providing that if director of department of corrections believes prisoner is mentally ill, he can refer prisoner to psychiatrist and, if psychiatrist concurs in that belief, director can then transfer prisoner to mental hospital, before prisoner may be involuntarily transferred he is entitled to judicial hearing, jury trial, and same rights of notice, counsel and cross-examination as are provided for in title 21, section 501 et seq., and same procedures for release from hospital as are embodied in those sections. *Id.*

#### Purpose of confinement

The court held that in reviewing on habeas corpus a civilly committed patient's confinement in a mental hospital, it should satisfy itself that no less onerous disposition would serve purpose of commitment. *J. Covington v. D. W. Harris* (1969, 419 F. 2d 617, 136 U.S. App. D.C. 35).

#### Review

Absent jury demand, trial court at hearing (after Commission on Mental Health found patient was mentally ill and likely to injure others if allowed to remain at liberty and recommended hospitalization) had authority to evaluate Commission hearing and to reject Commission report and on remand court should consider merits of patient's contentions and take additional evidence if necessary. *In re A. Walls* (1971, 442 F. 2d 749, 143 U.S. App. D.C. 27).

#### Treatability

Treatability of one having a mental disease or defect is not an appropriate consideration at a criminal trial, and its relevance may even be doubtful in a civil commitment determination. *C. C. Rouse v. D. C. Cameron, Sup't etc.* (1967, 387 F. 2d 241, 128 U.S. App. D.C. 283).

#### Treatment

Court has authority to explore alternative courses and facilities for treatment of patient involuntarily committed because of mental illness, both outside and within the hospital complex. *In re H. Jones* (1972, 338 F. Supp. 428).

Patient's right to review his conditions of hospital treatment under statute and his right to petition for writ of habeas corpus at any time does not preclude court from making its inquiry to guaranty that its commitment order is implemented with least restrictive alternatives. *Id.*

#### Validity of prison officials' policy

The simple fact that the prisoner was back in prison at time case was heard did not relieve court of obligation to appraise validity of prison officials' continuing policy of commitments without hearing to mental institutions,



inasmuch as prisoner was still subject to that policy. *R. E. Mathews, Jr. v. K. L. Hardy et al.* (1969, 420 F. 2d 607, 137 U.S. App. D.C. 39).

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Burden of proof

Burden of proof is on party seeking civil commitment for insanity and only if trier of fact is satisfied that alleged insane person is insane may he be committed. *F. C. Lynch v. W. Overholser, Sup't, etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

##### Commitment procedure

Supreme Court granted certiorari, where important questions were raised as to procedure for confining criminally insane in District of Columbia and as to possible constitutional infirmities in statute under which commitment was made as applied to circumstances in case. *F. C. Lynch v. W. Overholser, Sup't etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

When person suspected of insanity is also accused of crime, trial court is not to be permitted to commit such person to a mental hospital without benefit of a jury or of the Mental Health Commission, even though the person is competent to stand trial, but there must be a report and recommendation by the commission, a jury's verdict if demanded, and a district court order. *Williams v. Overholser, Sup't etc.* (1958, 259 F. 2d 175, 104 U.S. App. D.C. 18).

##### Community interest

The community is not without means of protecting itself if at time that a prisoner's sentence ends he is found to be a sexual psychopath, or to be insane or mentally incompetent. *Carter v. United States* (1960, 283 F. 2d 200, 108 U.S. App. D.C. 405).

The existence of possibilities to protect society from, and to treat, prisoner convicted of sodomy, or other sexual crimes, in the event he is found to be a sexual psychopath, or insane, of unsound mind or otherwise defective during imprisonment or at time his sentence ends, does not relieve bench and bar of responsibility of endeavoring to reach at the earliest possible stage, ideally prior to trial and sentence, the approach to a particular case which appears to be most just and appropriate, having regard to the individual's mental condition, his history, and the possibility of rehabilitating him and restoring him to usefulness in the community. *Id.*

##### Confinement without trial

Where petitioner, seeking writ of habeas corpus, was under indictment for an assault but court found that he was of unsound mind and dangerous, his confinement without criminal trial in ward of hospital which resembled a prison did not deprive him of constitutional rights, since confinement was not due to the indictment. *Knighton v. Overholser* (1945, 145 F. 2d 860, 79 U.S. App. D.C. 294).

##### Construction

Where aunt was of unsound mind, she could not care for herself and her property, niece was interested in her welfare, and suitable committee had been appointed after proceedings in which all relatives took part and to which none objected, the description under this section of the person who may file petition for appointment of committee should be liberally construed. *Duvall v. Humphrey* (1946, 153 F. 2d 798, 80 U.S. App. D.C. 403).

##### Construction with other laws

Former § 21-326 providing for apprehension and detention by police of insane persons found in public places must be read together with other sections of civil insanity statute, and particularly former §§ 21-356 and 21-311 implementing procedure initiated under former § 21-326. *In the Matter of Dallas O. Williams* (D.C.D.C. 1958, 157 F. Supp. 871, affirmed 252 F. 2d 629, 102 U.S. App. D.C. 248).

##### Costs and attorney's fees

Petitioner for writ de lunatico inquirendi, who contracted with counsel voluntarily, must bear expense of counsel and taxable costs of proceedings and costs and expense of petitioner's counsel were not chargeable against patient. *In re Colohan* (D.C.D.C. 1950, 93 F. Supp. 641).

##### District not a voluntary creditor

District of Columbia was entitled to reimbursement for expenses of treatment of incompetent veteran from committee of the veteran from date of her appointment until the veteran was transferred to the rolls of the Veterans Administration which now bears the costs involved, since the District was not a voluntary "creditor" within the statute exempting from claims of "creditors" payments of benefits due or to become due under any law administered by the Veterans Administration. *T. Savoid, Committee etc. v. District of Columbia* (1961, 288 F. 2d 851, 110 U.S. App. D.C. 39).

##### Evidence

In habeas corpus proceeding brought to effect transfer of petitioner, a committed insane person, to Colorado as the state of his residence, petitioner was not entitled to relief in absence of evidence that Colorado was willing to receive him as a legal resident entitled to admission into the custody of Colorado officials having charge of insane persons. *Howard v. Overholser* (1942, 130 F. 2d 429, 76 U.S. App. D.C. 166).

Where an inmate of National Soldiers' Home in Togus, Maine, shot and killed one of the physicians of the home and was thereafter committed to St. Elizabeths Hospital in the District of Columbia on finding that he was insane, such person was not entitled to be transferred to Maine on ground that he was a citizen and resident of the State of Maine and not a resident of the District of Columbia in absence of proof that State of Maine was willing to receive and care for him, or to be discharged without proper provision for his care and restraint. *Williams v. Overholser* (1943, 137 F. 2d 545, 78 U.S. App. D.C. 95).

##### Findings of court

Appointment of committee was not invalid because of absence of finding that ward was dangerous, unfit to be at large, and in need of treatment, where ward was not arrested and detained pending trial. *Duvall v. Humphrey* (1946, 153 F. 2d 798, 80 U.S. App. D.C. 403).

##### Grounds for commitment

Only those who need treatment and may be dangerous may be confined to hospital for mentally ill. *F. C. Lynch v. W. Overholser, Sup't, etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

No District of Columbia statute or inherent equity power permits commitment to institution upon mere showing that man is potentially dangerous to others. *In the Matter of Dallas O. Williams* (D.C.D.C. 1958, 157 F. Supp. 871, affirmed 252 F. 2d 629, 102 U.S. App. D.C. 248).

##### Habeas corpus

Findings, on habeas corpus application for release from mental institution to which petitioner had been confined upon his acquittal for insanity, that petitioner was free from mental disease and mental defect and could not be dangerous by reason of any mental disease or defect did not meet standards required by statute in not containing finding of freedom from such abnormal mental condition as would make individual dangerous to himself or community in reasonably foreseeable future, irrespective of fact that his mental health might have improved. *W. Overholser v. H. T. O'Bierne* (1962, 302 F. 2d 852, 112 U.S. App. D.C. 267).

That one confined to mental institution because of his acquittal of criminal charges for insanity would no longer be committable under civil procedure could constitute no ground for his release where there was no showing that he had recovered to point where he was free from abnormal mental condition or that his release would not expose himself or public to danger in reasonably foreseeable future. *Id.*

Evidence adduced by petitioner seeking release on habeas corpus from mental institution to which he had been confined pursuant to his acquittal of criminal charges for insanity was insufficient to establish that he had made necessary recovery to point where he would be free from abnormal mental condition or that his release would not expose him or public to danger in reasonably foreseeable future. *Id.*



Where, after setting aside accused's plea of guilty to charge of public drunkenness, and committing accused to hospital for examination and observation, the municipal court found accused of unsound mind and ordered him confined to another hospital but did not determine whether accused was competent to stand trial, accused would be entitled to release on writ of habeas corpus unless the municipal court determined that he was mentally incompetent to stand trial and ordered him confined on that ground or unless proper lunacy proceedings were instituted. *Williams v. Overholser, Sup't etc.* (1958, 259 F. 2d 175, 104 U.S. App. D.C. 18).

Even though it appears factually on a habeas corpus hearing that petitioner is insane, if he has been confined under a void statute or a void proceeding, he is entitled to order of discharge so far as his then confinement is concerned. *Dooley v. Overholser* (1957, 243 F. 2d 825, 100 U.S. App. D.C. 247).

Where person of unsound mind had been committed to hospital under invalid proceeding, habeas corpus proceeding would be remanded to district court for discharge of party from custody unless within five days after entry of order new incompetency proceedings were instituted. *Id.*

The trial court still has the authority which it has always had to order the immediate discharge of a patient if, after a hearing on habeas corpus proceeding, it be of the opinion that the patient is of sound mind. Such remedy is expressly reserved to it by § 21-325. Prior cases to the contrary are overruled. *Overholser v. Boddie* (1950, 184 F. 2d 240, 87 U.S. App. D.C. 186, 21 A.L.R. 2d 999).

Where evidence of petitioner seeking release from detention and of doctor-psychiatrist in charge of petitioner was insufficient to create doubt on judgment of those detaining petitioner as insane, trial judge did not abuse his discretion in failing to submit without request, question of petitioner's mental condition to the Commission on Mental Health. *Appel v. Overholser* (1948, 164 F. 2d 511, 82 U.S. App. D.C. 379).

In habeas corpus proceeding by petitioner who had been duly committed to hospital for insane pursuant to this chapter, the record raised sufficient doubt as to petitioner's insanity at present time to require a re-examination of his mental condition by the Commission on Mental Health in accordance with this chapter, under which he was committed. *Ex parte De Marcos* (D.C.D.C. 1946, 65 F. Supp. 231).

In habeas corpus proceeding by petitioner who had been duly committed to hospital for insane pursuant to statutory provisions therefor, the only question before court was whether record raised sufficient doubt as to petitioner's insanity at present time to justify reopening commitment proceeding. *Id.*

The issue of sanity or insanity cannot be determined on merits on habeas corpus proceeding instituted by persons confined in a hospital for insane, but, if petitioner makes a sufficient showing that he was committed improperly, the judge may enter an order providing for discharge of petitioner unless within a reasonable time a proper proceeding is initiated. *Overholser v. Treibly* (1945, 147 F. 2d 705, 79 U.S. App. D.C. 389, certiorari denied 65 S. Ct. 38, 326 U.S. 730, 90 L. Ed. 434).

Where question arose regarding whether procedure in lunacy proceedings was proper but order of adjudication and commitment was set aside and procedure thereafter adopted conformed to legal requirements and resulted in order of adjudication of insanity and of commitment, the allegedly insane person was not entitled to writ of habeas corpus. *Wrobel v. Overholser* (1945, 145 F. 2d 859, 79 U.S. App. D.C. 293, certiorari denied 65 S. Ct. 712, 324 U.S. 854, 89 L. Ed. 1413).

Where petitioner seeks writ of habeas corpus to obtain release from confinement in mental hospital on ground that his mental health is restored, and petitioner demands an examination by independent experts, or in a doubtful case, even in absence of such a demand, it is the right of court to seek assistance of Commission on Mental Health in determining sanity of petitioner. *De Marcos v. Overholser* (1943, 137 F. 2d 698, 78 U.S. App. D.C. 131, certiorari denied 64 S. Ct. 157, 320 U.S. 785, 88 L.

Ed. 472, rehearing denied 64 S. Ct. 204, 320 U.S. 813, 88 L. Ed. 491).

This section establishing the Commission of Mental Health vests a discretion in court to require the Commission's expert assistance in a habeas corpus proceeding in which by reason of his poverty petitioner is unable to secure the testimony of other professional witnesses. *Id.*

In habeas corpus proceeding where petitioner sought release from confinement on ground that his mental health was restored, and requested that court provide expert witnesses in petitioner's behalf, not members of Commission on Mental Health, court denying request should have offered petitioner an examination by the Commission, but defect was cured by petitioner's insistence in appellate court that such relief if offered would be refused. *Id.*

#### Hearing

This section providing that when mental health commission has made determination that person is found not to be sane, commission has duty to apply to court for hearing and commission shall cause to be served personally upon patient written notice of time and place of final hearing, hearing for which notice is required is hearing before court rather than hearing before mental health commission. *Lafferty v. District of Columbia* (1960, 277 F. 2d 348, 107 U.S. App. D.C. 318).

Where patient was not given required statutory notice of court hearing leading to adjudication that he was of unsound mind and he did not learn of decree until he returned to District of Columbia, after an absence, about a year after its date, he was entitled to have decree set aside, and court's denial of a petition which he had filed before he had learned that he had been adjudged of unsound mind and which sought review of mental health commission report and recommendations did not make issues presented on petition for review of decree adjudging him of unsound mind res judicata. *Id.*

Petitioner's delay of some two and one-half years in instituting proceedings for review of decree adjudging him to have been of unsound mind after he learned of decree which was entered without his having been afforded required statutory notice of hearing did not, under circumstances, constitute an unreasonable delay or a ground for denial of relief. *Id.*

#### In general

The statute as a whole makes clear that a proceeding in equity is contemplated for initial determination of insanity, and not the writ of habeas corpus. *Barry v. Hall* (1938, 98 F. 2d 222, 69 App. D.C., 350).

#### Judicial determination required

If accused denies that he is mentally ill, he is entitled to judicial in determination of his mental state despite hospital board's certification that he is of unsound mind. *F. C. Lynch v. W. Overholser, Sup't, etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 283 F. 2d 388).

#### Jurisdiction

The United States District Court is not shown to have lost jurisdiction over either the subject matter of the criminal prosecution or the person of petitioner, by reason of the proceedings to determine his sanity, or those connected therewith or consequent thereon (D.C. 1901 Edit. § 927). *Ormsby v. United States* (C.C.A. 6, 1921, 273 F. 977).

#### Nearest relative available

Under this section authorizing "nearest relative available" to file petition for writ of de lunatico inquirendo and for appointment of committee, the quoted phrase is an elastic term, and is not intended to require an aged relative, who might make himself available, if no one else were available, to bear the burden of starting a proceeding, but it is intended to exclude officious intermeddling. *Duwall v. Humphrey* (1946, 153 F. 2d 798, 80 U.S. App. D.C. 403).

Niece was "nearest relative available" entitled to file petition for writ of de lunatico inquirendo and for appointment of committee for aunt, where her 81-year-old brother and her 84-year-old sister joined with other relatives in requesting appointment of a committee. *Id.*



**Presumptions**

Adjudication of insanity, as long as not rescinded, creates rebuttable presumption that mental incapacity of person continues thereafter, and strength of such presumption is affected by character and causes of the mental disturbance, possibility of lucid intervals, and various other considerations. *Life Ins. Co. of Virginia v. Herrmann* (D.C. Mun. App. 1944, 35 A. 2d 828).

**Probable cause**

Question of whether undisputed facts constitute probable cause for believing person named in District of Columbia lunacy proceeding to be insane or of unsound mind is one of law to be decided by court. *G. L. King v. L. H. Hildebrandt* (1964, 331 F. 2d 476, U.S. App. 2d Ct.).

**Procedure**

Where a motion to amend findings of fact and a decree of adjudication and commitment as a person of unsound mind was made eight months after entry of such order, relief from part of judgment ruling that defendant was not a resident of the District of Columbia could be granted by court under rule providing for relief from judgment or order by a court, rather than under rule providing that motions to amend findings of fact must be made not later than ten days after entry of judgment. *District of Columbia v. Stackhouse* (1956, 239 F. 2d 62, 99 U.S. App. D.C. 242).

**Right to counsel**

Alleged insane person has a right to be represented by counsel in proceeding to commit him as a person of unsound mind, and if he is not so represented independently the court shall appoint either an attorney or guardian ad litem. *Dooling v. Overholser* (1957, 243 F. 2d 825, 100 U.S. App. D.C. 247).

Where proceeding was commenced to commit person to hospital as a person of unsound mind, and court appointed counsel for such person and granted her request that counsel be discharged, such person was not represented by counsel or guardian ad litem at proceeding, and her commitment was invalid. *Id.*

**Sufficiency of petition**

Government's verified petition which failed to allege that person arrested by police was of unsound mind or insane did not comply with this section permitting a commitment proceeding to be commenced by arrest of an alleged insane person and defect in petition was not remedied by two psychiatric reports attached thereto where such reports were unverified and ambiguous in terms employed and conclusions reached. *Overholser Supt. etc. v. Williams* (1958, 252 F. 2d 629, 102 U.S. App. D.C. 248).

**§ 21-546. Periodic requests for examination of hospitalized patient; procedure for examination and detention or release; petition to court**

(a) A patient hospitalized pursuant to a court order obtained under section 21-545, or his attorney, legal guardian, spouse, parent, or other nearest adult relative, may, upon the expiration of 90 days following the order and not more frequently than every 6 months thereafter, request, in writing, the chief of service of the hospital in which the patient is hospitalized, to have a current examination of his mental condition made by one or more physicians. If the request is timely it shall be granted. The patient may, at his own expense, have a duly qualified physician participate in the examination. In the case of such a patient who is indigent, the Department of Public Health shall, upon the written request of the patient, assist him in obtaining a duly qualified physician to participate in the examination in the patient's behalf. A physician so obtained by an indigent patient shall be compensated for his services out of any unobligated funds of Department of Public Health in an amount determined by it to

be fair and reasonable. If the chief of service, after considering the reports of the physicians conducting the examination, determines that the patient is no longer mentally ill to the extent that he is likely to injure himself or other persons if not hospitalized, the chief of service shall order the immediate release of the patient. However, if the chief of service, after considering the reports, determines that the patient continues to be mentally ill to the extent that he is likely to injure himself or other persons if not hospitalized, but one or more of the physicians participating in the examination reports that the patient is not mentally ill to that extent, the patient may petition the court for an order directing his release. The petition shall be accompanied by the reports of the physicians who conducted the examination of the patient. (Sept. 14, 1965, 79 Stat. 756, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 21-357 (Sept. 15, 1964, Pub. L. 88-597, § 8, 78 Stat. 950).

Section is from subsec. (a) of section 21-357 of D.C. Code, 1961 ed. Remainder of section 21-357 is carried into this chapter.

Changes are made in phraseology.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 21-547, 21-549, 21-589.

**NOTES TO DECISIONS****Administrators discretion**

The court held that efficient hospital administration requires the courts to accord administrators much broader discretion in determining the appropriateness of an intra-hospital disposition of mentally ill person than in assaying the need for hospitalization ab initio; however, additional restrictions beyond those necessarily entailed by hospitalization are as much in need of justification as any other deprivations of liberty; and judicial review of internal decisions is not precluded. *J. Covington v. D. W. Harris* (1969, 419 F. 2d 617, 136 U.S. App. D.C. 35).

**Basis of Confinement**

Confinement of the mentally ill rests upon basis substantially different from that which supports confinement of those convicted of crime since confinement of mentally ill depends not only upon validity of initial commitment but also upon continuing status of the patient. *D. A. Dixon v. L. Jacobs, Supt etc.* (1970, 427 F. 2d 589, 138 U.S. App. D.C. 319).

**Burden of proof**

Mental patient who seeks complete release from confinement by writ of habeas corpus need only establish, by the preponderance of the evidence, that he is no longer likely to injure himself or other persons because of mental illness. *D. A. Dixon v. L. Jacobs, Supt etc.* (1970, 427 F. 2d 589, 138 U.S. App. D.C. 319).

Since habeas corpus proceeding on petition of mental patient for complete release from confinement is not strictly adversary in nature, conventional rules regarding the burden of coming forward with evidence do not apply, and the hearing court and the parties bear equal responsibility to see that decision is had upon all the relevant evidence. *Id.*

**Exhaustion of administrative remedy**

The administrative remedy for mental patient that must be exhausted prior to petition for habeas corpus is the medical examination, rather than request for examination, and if the examination has been conducted within six months prior to habeas corpus petition, the administrative remedy is exhausted. *D. A. Dixon v. L. Jacobs, Supt etc.* (1970, 427 F. 2d 589, 138 U.S. App. D.C. 319).

Only if the required medical examination is in progress when the mental patient's habeas corpus petition is filed has the patient failed to exhaust his administrative remedy of complete medical examination. *Id.*



If the mental hospital has ignored its duty to the patient in its care, its misconduct may not be imputed to the patient and thereby prejudice patient's right to judicial review of his custody. *Id.*

If a mental patient is undergoing medical examination at the time his petition for habeas corpus is filed, the district court should defer action on the petition pending mental hospital's completion of the examination and if, after completion, the patient desires to continue with his petition, the district court should proceed to determination of the issues. *Id.*

Delay of plenary hearing on mental patient's petition for habeas corpus is not justified by patient's failure to avail himself of his right to be examined by an outside psychiatrist. *Id.*

Mental hospital is adequately informed of a patient's desire to invoke such internal remedies as exist in hospital by the filing of a petition seeking judicial review in district court. *Id.*

If adequate internal remedies of mental hospital are in process at the time mental patient files habeas corpus petition, proper procedure is to delay action on petition rather than to dismiss it. *Id.*

#### Mentally ill person

A person is "mentally ill" if he suffers from an abnormal condition of mind that substantially affects mental or emotional processes, and substantially impairs behavioral control. *D. A. Dixon v. L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, 138 U.S. App. D.C. 319).

#### Periodic examinations

Statute governing release of persons acquitted by reason of insanity entitles patient to periodic examinations by hospital staff and right to be examined by outside psychiatrist and, if one of examining physicians believes he should no longer be hospitalized, he is entitled to court hearing. *G. C. Bolton v. D. W. Harris, Acting Superintendent, etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

Rule that patient committed to mental hospital after being found not guilty of offense by reason of insanity is entitled to periodic examinations by hospital staff and right to be examined by outside psychiatrist, and that if one of examining physicians believes he should no longer be hospitalized, he is entitled to court hearing applies to all cases including those previously committed under statute providing for mandatory commitment of persons acquitted by reason of insanity. *Id.*

#### Petition for release

When a mental hospital patient's habeas corpus petition for release from mental hospital is based on his mental health at time petition was filed, the petition is not subject to dismissal on grounds that the merits of his claim had been determined in prior proceedings or that failure to present the issues in prior proceedings amounted to inexcusable neglect. *D. A. Dixon v. L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, 138 U.S. App. D.C. 319).

Since ten months had elapsed between denial of previous petition for habeas corpus and mental patient's subsequent petition, sufficient time had passed for patient to raise issue that his condition at time of petition warranted his release from confinement in mental institution. *Id.*

Under this section, petition for habeas corpus by mental patient seeking his release on ground that his present status no longer justifies commitment may be dismissed as repetitive only if that ground was adequately heard and determined adversely to the patient in a judicial proceeding within six months preceding the new application. *Id.*

Under this section, even if previous application by mental patient on same grounds was heard and determined within six months preceding the new application, the district court has full power to hold plenary hearing, on the issue of patient's present mental condition, if the court believes that the interests of justice would thereby be served. *Id.*

Under this section, if mental patient's petition for habeas corpus is based solely on grounds relating not to present status but rather to specific past events, the question of whether a new hearing is required is equivalent to that in case of a prisoner seeking release under habeas corpus or equivalent process. *Id.*

#### Procedural safeguards

Transfer of prisoners to mental hospital requires protective procedures at least similar to those provided in 1964 Civil Commitment Act (now title 21, section 501 et seq., D.C. Code) providing full system of procedural safeguards before finding of mental illness can be made. *R. E. Mathews, Jr. v. K. L. Hardy et al.* (1969, 420 F. 2d 607, 137 U.S. App. D.C. 39).

Under section 24-302 providing that if director of department of corrections believes prisoner is mentally ill, he can refer prisoner to psychiatrist and, if psychiatrist concurs in that belief, director can then transfer prisoner to mental hospital, before prisoner may be involuntarily transferred he is entitled to judicial hearing, jury trial, and same rights of notice, counsel and cross-examination as are provided for in title 21, section 501 et seq., and same procedures for release from hospital as are embodied in those sections. *Id.*

#### Questions of fact

The presence of an abnormal mental condition, and the extent to which it impairs mental or emotional processes and controls, are questions of fact; how substantial such an impairment must be to be considered a mental illness is a matter of law. *D. A. Dixon v. L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, 138 U.S. App. D.C. 319).

The likelihood of future misconduct of the mental patient who seeks release from confinement, the type of misconduct to be expected, and its probable frequency are questions of fact; whether the expected harm, and its apparent likelihood, are sufficiently great to warrant coercive intervention are questions of law. *Id.*

#### Release provisions

Release provisions of statute governing commitment to mental hospital of one found not guilty by reason of insanity are valid even though they differ from civil commitment procedures by authorizing court review of hospital's decision to release patient. *G. C. Bolton v. D. W. Harris, Acting Superintendent etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

Equal protection is not offended by allowing government or court opportunity to insure that standards for release of civilly committed patients are faithfully applied to patients committed after having been found not guilty by reason of insanity. *Id.*

#### Scope of judicial review

When the mental patient is seeking complete release from confinement, the scope of judicial review of hospital administrator's decision is broader and the function of the hearing court is not simply to review the hospital's decision for unreasonableness, but rather itself to decide ultimate the question of whether the present status of the patient is such that continued confinement is justifiable. *D. A. Dixon v. L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, 138 U.S. App. D.C. 319).

#### Sufficiency of return to petition for release

In this case, the court held that the mental hospital's return to habeas corpus petition filed by mental hospital was not sufficient to warrant trial court in denying plenary hearing on patient's mental condition at time of filing of petition. *D. A. Dixon v. L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, 138 U.S. App. D.C. 319).

#### Validity of prison officials' policy

The simple fact that the prisoner was back in prison at time case was heard did not relieve court of obligation to appraise validity of prison officials' continuing policy of commitments without hearing to mental institutions, inasmuch as prisoner was still subject to that policy. *R. E. Mathews, Jr. v. K. L. Hardy et al.* (1969, 420 F. 2d 607, 137 U.S. App. D.C. 39).

#### § 21-547. Judicial determination of petition filed under section 21-546; order; physicians as witnesses

In considering a petition filed under section 21-546, the court shall consider the testimony of the physicians who participated in the examination of the patient, and the reports of the physicians accompanying the petition. After considering the testimony and reports, the court shall either (1) re-



ject the petition and order the continued hospitalization of the patient, or (2) order the chief of service to immediately release the patient. A physician participating in the examination shall be a competent and compellable witness at any trial or hearing held pursuant to this chapter. (Sept. 14, 1965, 79 Stat. 757, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-357 (Sept. 15, 1964, Pub. L. 88-597, § 8, 78 Stat. 950).

Section is from subsec. (b) of section 21-357 of D.C. Code, 1961 ed. Remainder of section 21-357 is carried into this chapter. See tables.

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21-549, 21-589.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Periodic examinations

Statute governing release of persons acquitted by reason of insanity entitles patient to periodic examinations by hospital staff and right to be examined by outside psychiatrist and, if one of examining physicians believes he should no longer be hospitalized, he is entitled to court hearing. *G. C. Bolton v. D. W. Harris, Acting Superintendent etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

Rule that patient committed to mental hospital after being found not guilty of offense by reason of insanity is entitled to periodic examinations by hospital staff and right to be examined by outside psychiatrist, and that if one of examining physicians believes he should no longer be hospitalized, he is entitled to court hearing applies to all cases including those previously committed under statute providing for mandatory commitment of persons acquitted by reason of insanity. *Id.*

##### Procedural safeguards

Transfer of prisoners to mental hospital requires protective procedures at least similar to those provided in 1964 Civil Commitment Act (now title 21, section 501 et seq., D.C. Code) providing full system of procedural safeguards before finding of mental illness can be made. *R. E. Mathews, Jr. v. K. L. Hardy, et al.* (1969, 420 F. 2d 607, 137 U.S. App. D.C. 39).

Under section 24-302 providing that if director of department of corrections believes prisoner is mentally ill he can refer prisoner to psychiatrist and, if psychiatrist concurs in that belief, director can then transfer prisoner to mental hospital, before prisoner may be involuntarily transferred he is entitled to judicial hearing, jury trial, and same rights of notice, counsel and cross-examination as are provided for in title 21, section 501 et seq., and same procedures for release from hospital as are embodied in those sections. *Id.*

##### Release provisions

Release provisions of statute governing commitment to mental hospital of one found not guilty by reason of insanity are valid even though they differ from civil commitment procedures by authorizing court review of hospital's decision to release patient. *G. C. Bolton v. D. W. Harris, Acting Superintendent etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

Equal protection is not offended by allowing government or court opportunity to insure that standards for release of civilly committed patients are faithfully applied to patients committed after having been found not guilty by reason of insanity. *Id.*

##### Validity of prison officials' policy

The simple fact that the prisoner was back in prison at time case was heard did not relieve court of obligation to appraise validity of prison officials' continuing policy of commitments without hearing to mental institutions, inasmuch as prisoner was still subject to that policy. *R. E. Mathews, Jr. v. K. L. Hardy et al.* (1969, 420 F. 2d 607, 137 U.S. App. D.C. 39).

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Burden of proof

Burden of proof is on party seeking civil commitment for insanity and only if trier of fact is satisfied that alleged insane person is insane may he be committed. *F. C. Lynch v. Overholser, Sup't, etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

##### Judicial determination required

If accused denies that he is mentally ill, he is entitled to judicial determination of his mental state despite hospital board's certification that he is of unsound mind. *F. C. Lynch v. W. Overholser, Sup't, etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

#### § 21-548. Periodic examinations by hospital authorities; release

The chief of service of a public or private hospital shall, as often as practicable, but not less often than every six months, examine or cause to be examined each patient admitted to a hospital pursuant to this subchapter and if he determines on the basis of the examination that the conditions which justified the involuntary hospitalization of the patient no longer exist, the chief of service shall immediately release the patient. (Sept. 14, 1965, 79 Stat. 757, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-357 (Sept. 15, 1964, Pub. L. 88-597, § 8, 78 Stat. 950).

Section is from subsec. (c) of section 21-357 of D.C. Code, 1961 ed. Remainder of section 21-357 is carried into this chapter. See tables.

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21-549, 21-589.

#### NOTES TO DECISIONS

##### Basis of confinement

Confinement of the mentally ill rests upon basis substantially different from that which supports confinement of those convicted of crime since confinement of mentally ill depends not only upon validity of initial commitment but also upon continuing status of the patient. *D. A. Dixon v. L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, 138 U.S. App. D.C. 319).

##### Exhaustion of administrative remedy

The administrative remedy for mental patient that must be exhausted prior to petition for habeas corpus is the medical examination, rather than request for examination, and if the examination has been conducted within six months prior to habeas corpus petition, the administrative remedy is exhausted. *D. A. Dixon v. L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, 138 U.S. App. D.C. 319).

Only if the required medical examination is in progress when the mental patient's habeas corpus petition is filed has the patient failed to exhaust his administrative remedy of complete medical examination. *Id.*

If the mental hospital has ignored its duty to the patient in its care, its misconduct may not be imputed to the patient and thereby prejudice patient's right to judicial view of his custody. *Id.*

If a mental patient is undergoing medical examination at the time his petition for habeas corpus is filed, the district court should defer action on the petition pending mental hospital's completion of the examination and if, after completion, the patient desires to continue with his petition, the district court should proceed to determination of the issues. *Id.*

##### Mentally ill person

A person is "mentally ill" if he suffers from an abnormal condition of mind that substantially affects mental or emotional processes, and substantially impairs behavioral control. *D. A. Dixon v. L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, 138 U.S. App. D.C. 319).



## Periodic examinations

Statute governing release of persons acquitted by reason of insanity entitles patient to periodic examinations by hospital staff and right to be examined by outside psychiatrist and, if one of examining physicians believes he should no longer be hospitalized, he is entitled to court hearing. *G. C. Bolton v. D. W. Harris, Acting Superintendent, etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

Rule that patient committed to mental hospital after being found not guilty of offense by reason of insanity is entitled to periodic examinations by hospital staff and right to be examined by outside psychiatrist, and that if one of examining physicians believes he should no longer be hospitalized, he is entitled to court hearing applies to all cases including those previously committed under statute providing for mandatory commitment of persons acquitted by reason of insanity. *Id.*

## Petition for release

When a mental hospital patient's habeas corpus petition for release from mental hospital is based on his mental health at time petition was filed, the petition is not subject to dismissal on grounds that the merits of his claim had been determined in prior proceedings or that failure to present the issues in prior proceedings amounted to inexcusable neglect. *D. A. Dixon v. L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, 138 U.S. App. D.C. 319).

Since ten months had elapsed between denial of previous petition for habeas corpus and mental patient's subsequent petition, sufficient time had passed for patient to raise issue that his condition at time of petition warranted his release from confinement in mental institution. *Id.*

## Question of fact

The presence of an abnormal mental condition, and the extent to which it impairs mental or emotional processes and controls, are questions of fact; how substantial such an impairment must be to be considered a mental illness is a matter of law. *D. A. Dixon v. L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, 138 U.S. App. D.C. 319).

The likelihood of future misconduct of the mental patient who seeks release from confinement, the type of misconduct to be expected, and its probable frequency are questions of fact; whether the expected harm, and its apparent likelihood, are sufficiently great to warrant coercive intervention are questions of law. *Id.*

## Release provisions

Release provisions of statute governing commitment to mental hospital of one found not guilty by reason of insanity are valid even though they differ from civil commitment procedures by authorizing court review of hospital's decision to release patient. *G. C. Bolton v. D. W. Harris, Acting Superintendent, etc.* (1969, 395 F. 2d 642, 130 U.S. App. D.C. 1).

Equal protection is not offended by allowing government or court opportunity to insure that standards for release of civilly committed patients are faithfully applied to patients committed after having been found not guilty by reason of insanity. *Id.*

## Sufficiency of return to petition for release

In this case, the court held that the mental hospital's return to habeas corpus petition filed by mental hospital was not sufficient to warrant trial court in denying plenary hearing on patient's mental condition at time of filing of petition. *D. A. Dixon v. L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, 138 U.S. App. D.C. 319).

## § 21-549. Preservation of other rights to release

Sections 21-546 to 21-548 do not prohibit a person from exercising a right presently available to him for obtaining release from confinement, including the right to petition for a writ of habeas corpus. (Sept. 14, 1965, 79 Stat. 757, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-357 (Sept. 15, 1964, Pub. L. 88-597, § 8, 78 Stat. 950).

Section is from subsec. (d) in section 21-357 of D.C. Code, 1961 ed. Remainder of section 21-357 is carried into this chapter. See tables.

Changes are made in phraseology.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21-589.

## § 21-550. Surety

The court in its discretion may require a petitioner under this subchapter to file an undertaking with surety to be approved by the court in such amount as the court deems proper, conditioned to save harmless the respondent by reason of costs incurred, including attorney's fees, if any, and damages suffered by the respondent, as a result of any action under this subchapter. (Sept. 14, 1965, 79 Stat. 757, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-365 (Sept. 15, 1964, Pub. L. 88-597, § 16, 78 Stat. 953).

Changes are made in phraseology.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21-589.

## § 21-551. Nonresidents

(a) If a person ordered committed to a public hospital by the court pursuant to section 21-545 is found by the Commission, subject to a review by the court, not to be a resident of the District of Columbia, and to be a resident of another place, he shall be transferred to the State of his residence if an appropriate institution of that State is willing to accept him. If the person is an indigent, the expense of transferring him, including the traveling expenses of necessary attendants, shall be borne by the District of Columbia.

(b) For the purposes of this section, "resident of the District of Columbia" means a person who has maintained his principal place of abode in the District of Columbia for more than one year immediately prior to the filing of the petition referred to in subsection (a) of section 21-541. (Sept. 14, 1965, 79 Stat. 757, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-361 (Sept. 15, 1964, Pub. L. 88-597, § 12, 78 Stat. 952).

The provisions are subdivided into subsections for easier reference, and changes are made in phraseology.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21-589, 21-906.

## NOTES TO DECISIONS UNDER PRIOR LAW

## Burden of proof

A committed insane person to establish and enforce his right to be transferred to Colorado as the state of his residence was required to show either that Colorado was willing to receive him into its custody or that there was means of enforcing his right to be received as against the state and its officials. *Howard v. Overholser* (1942, 130 F. 2d 429, 76 U.S. App. D.C. 166).

## Indigent insane

In contemplation of the law, the public health service is a friend of the indigent insane. *Barry v. Hall* (1938, 98 F. 2d 222, 62 App. D.C. 350).

## In general

This section providing for commitment of an insane person found not to be a resident of the District of Columbia and for transfer to the state of his residence does not purport to confer the right of transfer on persons found not to be resident in the District or whose residence cannot be ascertained, and the finding referred to is the one made in the commitment proceedings. *Howard v. Overholser* (1942, 130 F. 2d 429, 76 U.S. App. D.C. 166).

This section providing for commitment of an insane person found not to be a resident of the District of Columbia and for transfer to the state of his residence does not



contemplate that a committed insane person shall be transferred in any case to the state of his residence without regard to its willingness to receive him, and it is intended that the person shall be delivered into the hands of state officials charged with custody of insane residents. *Id.*

#### Jurisdiction

In habeas corpus proceeding brought to effect transfer of committed insane person to Colorado as the state of his residence under this section, District of Columbia courts had no power or jurisdiction to enforce Colorado's obligation, even if section obligated Colorado to receive person on showing of residence made, where neither Colorado nor its officials were made parties to proceeding. *Howard v. Overholser* (1942, 130 F. 2d 429, 76 U.S. App. D.C. 166).

#### Petition

Where petition for writ of habeas corpus to effect transfer of petitioner, a committed insane person, to Colorado did not state a cause of action in that respect, petitioner was not prejudiced by inadequacy of hearing conducted by petitioner in his own behalf with regard to the admission of evidence and other action which competent counsel would have taken, except in a procedural sense, and that was not sufficient to require another hearing. *Howard v. Overholser* (1942, 130 F. 2d 429, 76 U.S. App. D.C. 166).

#### Principal place of abode

The phrase "principal place of abode" as used in this section providing that a resident of the District of Columbia, as used in such section, means a person who has maintained his principal place of abode in the District of Columbia for more than one year prior to filing of petition for commitment, does not require physical presence. *District of Columbia v. Stackhouse* (1956, 239 F. 2d 62, 99 U.S. App. D.C. 242).

Where defendant, who was committed to a hospital as an insane person, had her residence in the District of Columbia during her childhood, her subsequent confinement in numerous mental institutions did not effect a change in her residence, nor did the fact that she lived in college towns as a student, during which times she returned home for summer vacations, result in the loss of her District of Columbia residence. *Id.*

#### Waiver

Where committed insane person was ably represented on appeal from judgment dismissing habeas corpus petition by counsel who raised no issue concerning sanity and conceded at argument that a hearing on question of sanity could result only in remand to custody, and adequacy of hearing was questioned only in respect to alleged right of transfer of person to Colorado, counsel's action constituted a "waiver" of any right to further hearing on question of sanity. *Howard v. Overholser* (1942, 130 F. 2d 429, 76 U.S. App. D.C. 166).

### SUBCHAPTER V.—RIGHT TO COMMUNICATION; EXERCISE OF OTHER RIGHTS

#### SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 21-589.

#### § 21-561. Mail privileges; censored mail; return to sender; visiting hours

(a) A person hospitalized in a public or private hospital pursuant to this chapter may:

- (1) communicate by sealed mail or otherwise with an individual or official agency inside or outside the hospital; and
- (2) receive uncensored mail from his attorney or personal physician.

(b) All incoming mail or communications other than mail or communications referred to in subsection (a) of this section may be read before being delivered to the patient, if the chief of service believes the action is necessary for the medical welfare of the patient who is the intended recipient.

Mail or other communication which is not delivered to the patient for whom it is intended shall be immediately returned to the sender.

(c) This section does not prohibit the administrator from making reasonable rules regarding visitation hours and the use of telephone and telegraph facilities. (Sept. 14, 1965, 79 Stat. 758, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-358 (Sept. 15, 1964, Pub. L. 88-597, § 9, 78 Stat. 951).

Section is from subsec. (a) of section 21-358 of D.C. Code, 1961 ed: Remainder of section 21-358 is carried into this subchapter.

Changes are made in phraseology.

#### § 21-562. Medical and psychiatric care and treatment; records

A person hospitalized in a public hospital for a mental illness shall, during his hospitalization, be entitled to medical and psychiatric care and treatment. The administrator of each public hospital shall keep records detailing all medical and psychiatric care and treatment received by a person hospitalized for a mental illness and the records shall be made available, upon that person's written authorization, to his attorney or personal physician. The records shall be preserved by the administrator until the person has been discharged from the hospital. (Sept. 14, 1965, 79 Stat. 758, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-358 (Sept. 15, 1964, Pub. L. 88-597, § 9, 78 Stat. 951).

Section is from subsec. (b) of section 21-358 of D.C. Code, 1961 ed. Remainder of section 21-358 is carried into this subchapter.

Changes are made in phraseology.

#### NOTES TO DECISIONS

##### Availability of treatment

Availability of treatment for persons civilly committed to hospital as mentally ill had been sufficiently demonstrated in case so that it was not necessary to decide question of whether court erred in ordering hospitalization at particular hospital in absence of showing that he would receive medical and psychiatric treatment there. *In re M. W. Alexander, Patient* (1967, 372 F. 2d 925, 125 U.S. App. D.C. 352).

##### Basis for indefinite commitment

Indefinite commitment under sexual psychopath law is justifiable only upon a theory of therapeutic treatment. *M. I. Millard v. D. C. Cameron, Sup't etc.* (1966, 373 F. 2d 468, 125 U.S. App. D.C. 383).

##### Construction

Neither federal statute pertaining to mental incompetency after arrest, nor this section pertaining to mail privileges, conferred "a broad confidentiality" upon letters sent by defendant to various people while he was undergoing court-ordered mental observation at hospital. *United States v. R. L. Ammidown* (1972, 341 F. Supp. 1355).

##### Construction with other laws

The District of Columbia Sexual Psychopath Act was not repealed by the 1964 Hospitalization of Mentally Ill Act. *M. I. Millard v. D. W. Harris, Acting Sup't, etc.* (1968, 406 F. 2d 964, 132 U.S. App. D.C. 146; rev'g 373 F. 2d 468).

Court of Appeals would not read into the District of Columbia Sexual Psychopath Act the procedural protections of the Hospitalization of the Mentally Ill Act. *Id.*

##### Disclosure of records

When a patient is committed to a public mental hospital for treatment, the hospital has a statutory obligation to make its records available to his counsel and to his



personal physician, and justice demands no less for a patient who is committed to hospital for observation in preparation for criminal trial. *United States v. E. A. Schappel* (1971, 445 F. 2d 716, 144 U.S. App. D.C. 240; aff'g 336 F. Supp. 12).

The court held that hospital to which mentally ill person has been civilly committed may not disclose hospital records to outside parties without patient's consent does not imply that it is forbidden to introduce them in court where they are relevant to patient's contentions on habeas corpus. *J. Covington v. D. W. Harris* (1969, 419 F. 2d 617, 136 U.S. App. D.C. 35).

#### Evidence

Evidence, including testimony of examining and observing doctors that the defendant was without mental disorder, established that the defendant, whose defense was insanity, was not suffering from mental illness at time of robbery and assault with a dangerous weapon. *United States v. E. A. Schappel* (1969, 336 F. Supp. 12, aff'd 445 F. 2d 716, 144 U.S. App. D.C. 240).

In view of psychiatrists' testimony that person was suffering from condition which substantially impaired his health, that the condition was interrelated with his mental deficiency, and that his antisocial behavior occurred as result and manifestation of underlying mental illness, there was sufficient evidence for jury to find that person in addition to being mentally deficient was suffering from a mental illness. *In re M. W. Alexander, Patient* (1967, 372 F. 2d 925, 125 U.S. App. D.C. 352).

#### Habeas corpus

Alleged denial of mental patients' right to treatment would require remand of habeas corpus petition for a new hearing. *S. A. Dobson and R. Stultz v. D. C. Cameron, Sup't etc.* (1967, 383 F. 2d 519, 127 U.S. App. D.C. 324).

Petitioner involuntarily committed to mental hospital on being acquitted of an offense by reason of insanity had right to treatment that was cognizable in habeas corpus, and law and justice required remand for hearing and findings on whether petitioner had received adequate treatment and, if not, the details and circumstances underlying the reason why he had not. *C. C. Rouse v. D. C. Cameron, Sup't etc.* (1967, 373 F. 2d 451, 125 U.S. App. D.C. 366).

Habeas corpus relief would be available to one involuntarily committed to public hospital as sexual psychopath but who is not receiving reasonably suitable and adequate treatment, and lack of such treatment could not be justified by lack of staff or facilities. *M. I. Millard v. D. C. Cameron, Sup't etc.* (1966, 373 F. 2d 468, 125 U.S. App. D.C. 388; rev'd and remanded 406 F. 2d 964).

#### Hearings

Allegations of involuntary patient in District of Columbia public mental hospital, in hospital's proceeding to extend period of hospitalization, warranted hearing on whether hospital had taken any step toward observation and diagnosis or whether hospital had provided only custodial care; if patient establishes truth of his allegations, he must either be released or be provided care that is consonant with goals of observation and diagnosis, and ultimately of treatment if considered necessary under diagnosis. *In re J. Curry* (1971, 452 F. 2d 1360, 147 U.S. App. D.C. 28).

#### Instructions

To extent that district court's instruction reflected government trial counsel's view that mental deficiency in and of itself constituted a mental illness within District of Columbia statute relating to civil commitment instruction was improper, but when court's charge was taken in its entirety the jury had been clearly and properly informed they could not commit person simply because of his mental deficiency. *In re M. W. Alexander, Patient* (1967, 372 F. 2d 925, 125 U.S. App. D.C. 352).

#### Reasonable opportunity to initiate treatment

If court finds that a mandatorily committed patient is in custody in violation of Constitution and laws, for failure to receive treatment, it may allow hospital a reasonable opportunity to initiate treatment, but if opportunity for treatment has been exhausted or is otherwise inappropriate, conditional or unconditional release may be in

order. *C. C. Rouse v. D. C. Cameron, Sup't etc.* (1967, 373 F. 2d 451, 125 U.S. App. D.C. 366).

#### Records—Sufficiency

Generally, when a patient at a public mental hospital seeks to challenge the legality of decisions regarding treatment accorded him or manner of his confinement, hospital may not rely upon information or explanations not in the patient's hospital record to justify decision: records on their face must be adequate to demonstrate propriety of challenged decisions and may not be rehabilitated by subsequent demonstration in court. *D. Williams v. L. D. Robinson, Acting Sup't etc.* (1970, 432 F. 2d 637, 139 U.S. App. D.C. 204).

Until the hospital can demonstrate existence and adequacy of mechanisms to insure complaining patient fair opportunity to place facts and arguments in administrative record, patient complaining of treatment or manner of confinement must be allowed opportunity to show, by reference to evidence outside hospital records, that even decision proper on face of records did not meet applicable standards; if the patient relies upon evidence outside face of records, hospital may rebut showing by going beyond records as well. *Id.*

In a habeas corpus proceeding by patient in public mental hospital complaining of manner of confinement, government is entitled to remand, despite insufficiency of hospital records in record to support confinement, where importance, for purposes of judicial review, of inclusion of additional records may not have been sufficiently clear and government claimed that the records were available to justify confinement. *Id.*

Public mental hospital records disclosing only reports from hospital's security force detailing investigation of robbery and conclusion that patient was perpetrator and doctor's memorandum stating that the patient had been identified as one who had threatened employee are, while sufficient to support interim determination that hospital security required patient's prompt transfer to maximum security unit, insufficient to support continued confinement in absence of showing that patient had been afforded reasonable opportunity to test evidence against him or that there was adequate plan of treatment. *Id.*

#### Right to treatment

One involuntarily committed to mental hospital on being acquitted of an offense by reason of insanity has a right to treatment. *C. C. Rouse v. D. C. Cameron, Sup't etc.* (1967, 373 F. 2d 451, 125 U.S. App. D.C. 366).

On issue of right to treatment of one involuntarily committed on being acquitted of an offense by reason of insanity, hospital need not show that treatment will cure or improve him but only that there is bona fide effort to do so, and this requires hospital to show that initial and periodic inquiries are made into needs and conditions of patient with view to providing suitable treatment for him, and that the program provided is suited to his particular needs. *Id.*

On issue of right to treatment of one involuntarily committed to mental hospital on being acquitted of an offense by reason of insanity, effort should be to provide treatment which is adequate in light of present knowledge. *Id.*

Continuing failure to provide suitable and adequate treatment of one involuntarily committed to mental hospital on being acquitted of an offense by reason of insanity cannot be justified by lack of staff or facilities. *Id.*

#### Scope of judicial review

Where the decision of the hospital's administration challenged by mental patient relates essentially to internal administration of the hospital such as the patient's right to adequate treatment, transfer to less restrictive ward, or conditional release, judicial review is limited to determination whether the administrator of hospital has made permissible and reasonable decision in view of relevant information and within broad range of discretion. *D. A. Dixon v. L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, 138 U.S. App. D.C. 319).

#### Treatment of patient

One hospitalized involuntarily cannot be relegated to unattended ward while hospital officials maintain pretext that he is being observed and diagnosed; custodial care is no more justified by labeling it "diagnosis" than by



labeling it "treatment." *In re J. Curry* (1971, 452 F. 2d 1360, 147 U.S. App. D.C. 28).

Under this section providing that a person hospitalized in public hospital for a mental illness shall be entitled to medical and psychiatric care and treatment, the hospital may be required to show that it is making "a bona fide effort" to cure or improve the patient and that the treatment provided "is suited to his particular needs." *J. Covington v. D. W. Harris* (1969, 419 F. 2d 617, 136 U.S. App. D.C. 35).

#### § 21-563. Use of mechanical restraints; record of use

A mechanical restraint may not be applied to a patient hospitalized in a public or private hospital for a mental illness unless the use of restraint is prescribed by a physician. If so prescribed, the restraint shall be removed whenever the condition justifying its use no longer exists. A use of a mechanical restraint, together with the reasons therefor, shall be made a part of the medical record of the patient. (Sept. 14, 1965, 79 Stat. 758, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-358 (Sept. 15, 1964, Pub. L. 88-597, § 9, 78 Stat. 951).

Section is from subsec. (c) of section 21-358 of D.C. Code, 1961 ed. Remainder of section 21-358 is carried into this subchapter.

Changes are made in phraseology.

#### § 21-564. Exercise of property and other rights; notice of inability; persons hospitalized prior to September 15, 1964

(a) A patient hospitalized pursuant to this chapter may not, by reason of the hospitalization, be denied the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, vote, and hold a driver's license, unless the patient has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity. If the chief of service of the public or private hospital in which the patient is hospitalized is of the opinion that the patient is unable to exercise any of the rights referred to in this section, the chief of service shall immediately notify the patient and the patient's attorney, legal guardian, spouse, parents, or other nearest known adult relative, the Superior Court of the District of Columbia, the Commission on Mental Health, and the Commissioner of the District of Columbia of that fact.

(b) A person in the District of Columbia who, by reason of a judicial decree ordering his hospitalization entered prior to September 15, 1964, is considered to be mentally incompetent and is denied the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, vote, or hold a driver's license solely by reason of the decree, shall, upon the expiration of the one-year period immediately following September 15, 1964, be deemed to have been restored to legal capacity unless, within the one-year period, affirmative action is commenced to have the person adjudicated mentally incompetent by a court of competent jurisdiction: *Provided, however,* That in those cases in which a committee has heretofore been appointed and the committee'ship has not been terminated by court action, such committee shall continue to act under the supervision of the Superior Court of the District of Columbia under its equity powers. (Sept. 14, 1965,

79 Stat. 758, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(c) (3), (4), 84 Stat. 567.)

##### AMENDMENT

1970—Section 150(c) (3) of Act July 29, 1970, Public Law 91-358, amended subsections (a) and (b) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

Section 150(c) (4) further amended subsection (a) by striking out "Board of Commissioners" and inserting in lieu "Commissioner."

##### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101 and note to 21-301.

##### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

##### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-358 (Sept. 15, 1964, Pub. L. 88-597, § 9, 78 Stat. 951).

Section is from subsecs. (d) and (e) of section 21-358 of D.C. Code, 1961 ed. Remainder of section 21-358 is carried into this subchapter.

In subsec. (b) of this revised section, the date "September 15, 1964," is substituted for "the date of enactment of sections 21-351 to 21-366" in one place, and for "such date of enactment" in another place, The Act of September 15, 1964, Pub. L. 88-597, cited in first paragraph of this note, enacted sections 21-351 to 21-366 of D.C. Code. 1961 ed.

Changes are made in phraseology.

##### NOTES TO DECISIONS UNDER PRESENT LAW

###### Construction

Only those hospitalized pursuant to Hospitalization of Mentally Ill Act are guaranteed by the civil rights act to dispose of property, execute instruments, make purchases, enter into contractual relationships, vote, or hold driver's license. *D. C. Cameron, Sup't etc. v. C. Mullen etc.* (1967, 387 F. 2d 193, 128 U.S. App. D.C. 235).

###### Effect of commitment

Commitment to St. Elizabeth's hospital does not automatically render person incompetent for most purposes. *D. C. Cameron, Sup't etc. v. C. Mullen etc.* (1967, 387 F. 2d 193, 128 U.S. App. D.C. 235).

##### NOTES TO DECISIONS UNDER PRIOR LAW

###### Adjudication as necessary

This section is not operative until a person has been adjudged non compos mentis except in case of application for an ancillary committee. *Cooper v. Burton* (1942, 127 F. 2d 741, 75 U.S. App. D.C. 298).

A general or domiciliary committee for an allegedly insane person in New Jersey could not be appointed by District of Columbia courts without an adjudication of insanity, and there could not be an adjudication of insanity in absence of personal jurisdiction over the person. *Id.*

This section relates solely to appointment of committees or trustees for persons who have been adjudged non compos mentis, and it could not be relied on in support of a petition to obtain an adjudication to that effect. *Id.*

###### Allegations of petition

Under no statute is court authorized to commit any person for mental examination on petition which fails to state facts upon which an allegation of present insanity is based. *In the Matter of Dallas O. Williams* (D.C.D.C. 1958, 157 F. Supp. 871, affirmed 252 F. 2d 629, 102 U.S. App. D.C. 248).

###### Costs and maintenance of ward committed to Government Hospital

District of Columbia has an action against the committee of an insane person with homicidal tendencies, who has been committed to Government Hospital for the Insane, to recover from his estate for costs and main-



tenance. *DePue v. District of Columbia* (1916, 45 App. D.C. 54, Ann. Cas. 1917E, 414).

#### Functions of committee

Under law of District of Columbia, committee of an incompetent is the mere conservator of the ward's estate and his authority is mainly ministerial or administrative. *In re Estate of Church* (D.C.D.C. 1956, 141 F. Supp. 703).

Under law of District of Columbia, committee of an incompetent cannot, without authority of the court which appointed him, exercise a right which is personal to the incompetent or perform an act which is contrary to the incompetent's intentions expressed before his disability. *Id.*

This section conferring on equity court full power and authority to superintend and direct affairs of persons non compos mentis, implies that any discretionary power of committee of an incompetent must be exercised under supervision of the appointing court. *Id.*

#### Hearing to be allowed relatives

Appointment before hearing relatives is voidable and not void. *Coleman v. Schwartz* (1921, 268 F. 701, 50 App. D.C. 111).

#### Jurisdiction of court

Courts of equity have no inherent jurisdiction to decree sale of lunatic's property for better investment. *Clark v. Mathewson* (1896, 7 App. D.C. 382).

#### Lunatic's suit for annulment of marriage

Lunatic may file suit for annulment of marriage, through next friend, but committee should be joined as party defendant. *Mackey v. Peters* (1903, 22 App. D.C. 341).

#### Procedural requirements

Procedural requirements of civil insanity statute were enacted by Congress for protection of all persons alleged to be insane in civil proceedings, and those statutory safeguards are not to be withheld from those with criminal records. *In the Matter of Dallas O. Williams* (D.C.D.C. 1958, 157 F. Supp. 871, affirmed 252 F. 2d 629, 102 U.S. App. D.C. 248).

#### Procedure for commitment

This section dealing with court's power to superintend and direct affairs of persons who have been adjudged non compos mentis provides no procedure for commitment of insane persons. *In the Matter of Dallas O. Williams* (D.C.D.C. 1958, 157 F. Supp. 871, affirmed 252 F. 2d 629, 102 U.S. App. D.C. 248).

#### Property, jurisdiction over

District of Columbia courts have power to grant protection to property of insane persons wherever they may be at a particular time, if the property itself is located in the District. *Cooper v. Burton* (1942, 127 F. 2d 741, 75 U.S. App. D.C. 298).

#### Property rights of surviving co-owner

Where one purchased United States Savings Bonds in her own name and in name of her son as co-owners, and mother then became incompetent and her committee unnecessarily redeemed bonds without authorization of court or notice to co-owner son, and mother then died, son was entitled to substituted bearer bonds or to whatever funds could be traced to bearer bonds which existed at time of mother's death. *In re Estate of Church* (D.C.D.C. 1956, 141 F. Supp. 703).

#### Reimbursement

Under former § 21-318 providing for commitment of insane person and that committee of such person, if estate was sufficient for purpose, should pay cost to District of Columbia for maintenance, and that, if it appeared that insane person had not sufficient estate out of which his maintenance might "properly" be fully met, then court might order payment by relatives of such sum necessary to provide for maintenance, the word "properly" did not refer to adequacy of estate after making allowance for support of dependents, but referred to general equity power of court to make such orders and decrees for management and preservation of insane person's estate as to court might seem proper, and hence act did not give au-

thority to fix payments by committee at less than full cost of care where funds of estate were adequate. *District of Columbia v. Graves* (D.C.D.C. 1952, 104 F. Supp. 538).

Provision that the committee or trustee of insane person shall reimburse the District for care and expenses up to the time of the appointment of such committee or trustee was intended to relate back to the date of the passage of the act and no further. *Baker v. District of Columbia* (1912, 39 App. D.C. 42).

#### Residence

The United States District Court for the District of Columbia has no power to adjudicate the mental condition of a lunatic in New Jersey because she formerly lived in the District. *Cooper v. Burton* (1942, 127 F. 2d 741, 75 U.S. App. D.C. 298).

#### Selection of committee

Court has discretion in selection of committee. *Coleman v. Schwartz* (1921, 268 F. 701, 50 App. D.C. 111).

#### Statute of limitations

Statute of limitations did not begin to run against repayment of loans made to incompetent's estate by estate's committee until committee's death, when account of estate remained open and unsettled throughout committee's tenure up to and including time of his death. *W. H. Clarke, executor etc. v. V. K. Hickman, Jr., Committee etc.* (1962, 307 F. 2d 660, 113 U.S. App. D.C. 323).

### § 21-565. Statement of release and adjudication procedures and of other rights

Upon the admission of a person to a hospital under a provision of this chapter, the administrator shall deliver to him, and to his spouse, parents, or other nearest known adult relative, a written statement outlining in simple, nontechnical language all release procedures provided by this chapter, setting out all rights accorded to patients by this chapter, and describing procedures provided by law for adjudication of incompetency and appointment of trustees or committees for the hospitalized person. (Sept. 14, 1965, 79 Stat. 759, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-358 (Sept. 15, 1964, Pub. L. 88-597, § 9, 78 Stat. 951).

Section is from subsec. (f) of section 21-358 of D.C. Code, 1961 ed. Remainder is carried into this subchapter.

Changes are made in phraseology.

### SUBCHAPTER VI.—MISCELLANEOUS PROVISIONS

#### § 21-581. Proceedings instituted by Commissioner of the District of Columbia

Proceedings instituted by the Commissioner of the District of Columbia to determine the mental condition of an alleged indigent mentally ill person or a person alleged to be mentally ill, with homicidal or otherwise dangerous tendencies, shall be according to the provisions of subchapter IV of this chapter. (Sept. 14, 1965, 79 Stat. 759, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(c) (5) (A), 84 Stat. 567.)

#### AMENDMENT

1970—Section 150(c) (5) (A) of Act July 29, 1970, Public Law 91-358 amended section, (i) by striking out "Commissioners" in subsection (a) and in the section heading and inserting in lieu thereof "Commissioner", and (ii) by striking out "(a)" and subsection (b).

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101 and note to 21-301.



## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 21-306, 21-307 (Feb. 23, 1905, ch. 738, § 1, 33 Stat. 740; Apr. 1, 1942, ch. 207, § 1, 56 Stat. 190).

Subsection (a) is from section 21-306 of D.C. Code, 1961 ed., and subsection (b) is from section 21-307 of the Code, as last amended by Act Sept. 15, 1964, Pub. L. 88-597, § 19(f), 78 Stat. 954, which repealed a former last sentence of section 21-307.

The provisions carried into this section were not a part of Act Sept. 15, 1964, Pub. L. 88-597, 78 Stat. 944 (D.C. Code, 1961, ed., § 21-351 et seq.), on which nearly all other provisions of this revised chapter are based, but, as carried into this section, are revised and integrated with this revised chapter, by substituting, in subsection (a), "mentally ill" for "insane", and "subchapter IV of this chapter" for "the code of law for the District of Columbia relating to lunacy proceedings". The provisions of 21-351 of D.C. Code, 1961 ed., as revised and carried into 21-501 of this revised Part, by use of the term "this chapter" in the introductory clause, extend the definition of "mentally ill person" to that term as used in this section.

In subsection (b) references to the criminal courts of the district are changed to refer to the District Court, to conform with the present organization of the courts and court procedure in the District. References to municipal court are changed to refer to the Court of General Sessions pursuant to Act Oct. 23, 1962, Public Law 87-873, § 1, 76 Stat. 1171, and Act July 8, 1963, Public Law 88-60, § 1, 77 Stat. 77, both of which changed the name of the municipal court to the District of Columbia Court of General Sessions. See section 11-901 et seq. of the D.C. Code, 1961 ed., Supp. IV.

Changes are made in phraseology.

## § 21-582. Petitions, applications, or certificates of physicians

(a) A petition, application, or certificate authorized under section 21-521 and subsection (a) of section 21-541 may not be considered if made by a physician who is related by blood or marriage to the alleged mentally ill person, or who is financially interested in the hospital in which the alleged mentally ill person is to be detained, or, except in the case of physicians employed by the United States or the District of Columbia, who are professionally or officially connected with the hospital.

(b) A petition, application, or certificate of a physician may not be considered unless it is based on personal observation and examination of the alleged mentally ill person made by the physician not more than 72 hours prior to the making of the petition, application, or certificate. The certificate shall set forth in detail the facts and reasons on which the physician based his opinions and conclusions. (Sept. 14, 1965, 79 Stat. 759, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code 1961 ed., § 21-356 (Sept. 15, 1964, Pub. L. 88-597, § 7, 78 Stat. 947).

Section is from subsec. (h) of section 21-356 of D.C. Code, 1961 ed. Remainder of section 21-356 is carried into this chapter. See tables.

Changes are made in phraseology.

## § 21-583. Physicians and psychiatrists as witnesses

A physician or psychiatrist making application or conducting an examination under this chapter is a competent and compellable witness at any trial, hearing or other proceeding conducted pursuant to

this chapter and the physician-patient privilege is not applicable. (Sept. 14, 1965, 79 Stat. 760, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-355 (Sept. 15, 1964, Pub. L. 88-597, § 6, 78 Stat. 946).

Section is from subsec. (g) of section 21-355 of D.C. Code, 1961 ed. Remainder of section 21-355 is carried into this chapter. See tables.

Changes are made in phraseology.

## § 21-584. Witness fees

Witnesses subpoenaed under the provisions of this chapter shall be paid the same fees and mileage as are paid to other witnesses in the court. (Sept. 14, 1965, 79 Stat. 760, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(c) (6), 84 Stat. 567.)

## AMENDMENT

1970—Section 150(c) (6) of Act July 29, 1970, Public Law 91-358 amended section by striking out "witnesses in the courts of the United States" and inserting in lieu thereof "other witnesses in the court".

## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101 and note to 21-301.

## REVISION NOTES

Based on D. C. Code, 1961 ed., § 21-362 (Sept. 15, 1964, Pub. L. 88-597, § 13, 78 Stat. 952).

The only change is the substitution of "chapter" for "sections 21-351 to 21-366". Sections 21-351 to 21-366 of D.C. Code, 1961 ed., are carried into this chapter.

## § 21-585. Confinement in jail prohibited

A person apprehended, detained, or hospitalized under any provision of this chapter may not be confined in jail or in a penal or correctional institution (Sept. 14, 1965, 79 Stat. 760, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-363 (Sept. 15, 1964, Pub. L. 88-597, § 14, 78 Stat. 952).

Changes are made in phraseology.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21-589.

## NOTES TO DECISIONS

## Basis for court's determination

The court concluded that before it can determine that hospital's decision to confine patient in maximum security ward is, within its broad discretion, "permissible and reasonable in view of the relevant information," it must be able to conclude that hospital has considered and found inadequate all relevant alternative dispositions within hospital. *J. Covington v. D. W. Harris* (1969, 419 F. 2d 617, 136 U.S. App. D.C. 35).

## § 21-586. Financial responsibility for care of hospitalized persons; judicial enforcement

(a) The father, mother, husband, wife, and adult children of a mentally ill person, if of sufficient ability, and the estate of the mentally ill person, if the estate is sufficient for the purpose, shall pay the cost to the District of Columbia of the mentally ill person's maintenance, including treatment, in a hospital in which the person is hospitalized under this chapter. The Commission on Mental Health shall examine, under oath, the father, mother, husband, wife, and adult children of an alleged mentally ill person whenever those relatives live within the District of Columbia, and ascertain their ability or the ability of the estate to maintain or contribute toward



the maintenance of the mentally ill person. The relatives or estate may not be required to pay more than the actual cost to the District of Columbia of maintenance of the alleged mentally ill person.

(b) If a person made liable by subsection (a) of this section for the maintenance of a mentally ill person fails so to provide or pay for the maintenance, the court shall issue to him a citation to show cause why he should not be adjudged to pay a portion or all of the expenses of maintenance of the patient. The citation shall be served at least 10 days before the hearing thereon. If, upon the hearing, it appears to the court that the mentally ill person has not sufficient estate out of which his maintenance may properly be fully met and that he has relatives of the degree referred to in subsection (a) of this section who are parties to the proceedings, and who are able to contribute thereto, the court may make an order requiring payment by the relatives of such sums as it finds that they are reasonably able to pay and as may be necessary to provide for the maintenance and treatment of the mentally ill person. The order shall require the payment of the sums to the District of Columbia treasurer annually, semiannually, quarterly, or monthly as the court directs. The treasurer shall collect the sums due under this section, and turn them into the Treasury of the United States to the credit of the District of Columbia. The order may be enforced against any property of the mentally ill person or of the person liable or undertaking to maintain him in the same way as if it were an order for temporary alimony in a divorce case. (Sept. 14, 1965, 79 Stat. 760, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-356 (Sept. 15, 1964, Pub. L. 88-597, § 7, 78 Stat. 947).

Section is from subsec. (g) of section 21-356 of D.C. Code, 1961 ed. Remainder of section 21-356 is carried into this chapter. See tables.

Changes are made in phraseology.

#### PRESERVATION OF ACTIONS AND LIABILITIES UNDER REPEALED LAWS

Section 4 of act Sept. 14, 1965, provided: "The repeal by section 8 of this Act, of section 19(b) of the Act approved September 15, 1964 (Pub. Law 88-597, 78 Stat. 953; D.C. Code, 1961 ed., Supp. IV, 1965, sec. 21-308 note), and the prior repeal, by section 19(a) of such Act approved September 15, 1964 (78 Stat. 953) of the Act approved June 8, 1938 (chapter 326, 52 Stat. 625; D.C. Code, 1961 ed., sec. 21-308), as amended, and of the Act approved August 9, 1939 (chapter 620, 53 Stat. 1293; D.C. Code, 1961 ed., secs. 21-310 to 21-318, 21-320 to 21-325), as amended, do not affect (1) any action or proceeding brought prior to September 15, 1964, and existing on December 31, 1965, or (2) any liability incurred by a person for the payment of the costs of maintenance and treatment of an insane or incompetent person hospitalized in the District of Columbia prior to September 15, 1964, and any such action or proceeding shall be heard or determined and such liability continued in accordance with the provisions of those Acts in the same manner and to the same extent as if they had not been repealed."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21-542, 21-589.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Estoppel

Since the estate of a mentally ill person is statutorily obligated in District of Columbia to pay full cost of his care and maintenance if it is sufficient to do so, and since

decendent's estate was sufficient to pay for his care, hospital employee was without authority to relieve decedent or his estate from this obligation imposed by law, and the District of Columbia is not estopped from bringing an action for reimbursement by virtue of conduct of employee in purporting to contract to accept a lesser amount in satisfaction of obligation. *District of Columbia v. M. Stewart, Administratrix, etc.* (D.C. App. 1971, 278 A. 2d 117).

##### Support and education of adult child

A father is not legally required to support and educate an adult child, except as specified by statute when the child is in need of public assistance or is hospitalized because of mental illness. *W. T. Spence v. F. A. Spence* (D.C. App. 1970, 266 A. 2d 29).

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Claim against veterans' committee

District of Columbia could not recover, out of funds paid by Veterans' Administration to committee of veteran, for payments made to hospital for veteran's maintenance and treatment prior to appointment of committee for veteran. *District of Columbia v. Reilly etc.* (1957, 249 F. 2d 524, 102 U.S. App. D.C. 9).

##### Construction

Statute governing liability of father for cost of maintenance and treatment of insane child is not violative of due process. *C. N. Beach v. Government of the District of Columbia* (1963, 320 F. 2d 790, 116 U.S. App. D.C. 68).

District of Columbia statute governing liability of father for cost of maintenance and treatment of insane child creates liability which is not limited to father living in District. *Id.*

Former § 21-319 giving consideration to support of insane person's dependents in fixing amount of payments to be made to hospital caring for such insane person was repealed by former §§ 21-310 to 21-318, 21-320 to 21-325 which provided in terms for repeal of inconsistent statutes and which did not authorize giving consideration to support of insane person's dependents in fixing payments to be made by committee of insane person's estate to hospital for cost of care. *District of Columbia v. Graves* (D.C.D.C. 1952, 104 F. Supp. 538).

##### Construction with other laws

Former § 21-319 giving consideration to support of insane person's dependents in fixing amount of payments to be made to hospital caring for such insane person was repealed by former §§ 21-310 to 21-318, 21-320 to 21-325, which provided in terms for repeal of inconsistent statutes and which did not authorize giving consideration to support of insane person's dependents in fixing payments to be made by committee of insane person's estate to hospital for cost of care. *District of Columbia v. Graves* (D.C.D.C. 1952, 104 F. Supp. 538).

##### District not a voluntary creditor

District of Columbia was entitled to reimbursement for expenses of treatment of incompetent veteran from committee of the veteran from date of her appointment until the veteran was transferred to the rolls of the Veterans Administration which now bears the costs involved, since the District was not a voluntary "creditor" within the statute exempting from claims of "creditors" payments of benefits due or to become due under any law administered by the Veterans Administration. *T. Savoid, Committee etc. v. District of Columbia* (1961, 288 F. 2d 851, 110 U.S. App. D.C. 39).

##### Evidence

Evidence supported finding that father of mental incompetent was financially able to pay \$75 per month toward cost of maintenance and treatment of incompetent in public hospital. *C. N. Beach v. Government of the District of Columbia* (1963, 320 F. 2d 790, 116 U.S. App. D.C. 68).

##### In general

The effect of act Feb. 23, 1905, 33 Stat. 740, ch. 738, requiring the committee or trustee of an incompetent to reimburse the District for care and expenses up to time of appointment of committee was to prevent the running of the statute of limitations. *Fitzhugh v. District of Columbia* (1940, 109 F. 2d 837, 71 App. D.C. 290).



**Liability for expenses of incompetent**

The reference in District of Columbia Mental Health Statute for issuance of citations to show cause to persons "hereinabove made liable" for expenses and maintenance of mentally ill person does not refer merely to persons found by Commission to be able to pay, but refers to first clause stating that certain close relatives as well as committee or guardian of ward's estate must pay maintenance expenses if able. *Harris v. District of Columbia* (1966, 357 F. 2d 593, 123 U.S. App. D.C. 133).

An order requiring relative to pay past expenses for maintenance of mentally ill person is not limited to those cases where relative was able to pay the amount at the time the expenses were incurred, and if obligation cannot be satisfied at time it arises, equity and statute demand that it be satisfied when and if relative becomes of sufficient ability. *Id.*

A determination by the District of Columbia Mental Health Commission of ability of relative to pay expenses for maintenance of committed mentally ill person is not a prerequisite to relative's liability for those expenses. *Id.*

Liability of relative of a mentally ill person for past maintenance expenses is not subject to a hard and fast rule, but is to be resolved according to the equities. *Id.*

Father's liability for portion of cost of maintenance of mental incompetent in public hospital commenced as of date on which authorities demanded contribution from him. *C. N. Beach v. Government of the District of Columbia* (1963, 320 F. 2d 790, 116 U.S. App. D.C. 68).

The question of a husband's liability for the maintenance of an insane wife in a public institution, "when it shall arise in the future, will be settled" under the act of June 8, 1938, ch 326. *Fitzhugh v. District of Columbia* (1940, 109 F. 2d 837, 71 App. D.C. 290).

**Liability of parent's estate**

It was not inequitable to charge estate of incompetent mother, who had participated in proceedings for commitment of her mentally ill child which had resulted in an order requiring monthly payments of \$30, for expense incurred above amount paid in maintaining child in institution for the past 17 years, where conservator of mother's estate did not contend judgment for that amount was unreasonable or beyond the means of the estate. *Harris v. District of Columbia* (1966, 357 F. 2d 593, 123 U.S. App. D.C. 133).

**Payment of expenses of incompetent**

It is the duty of the committee or trustee to pay maintenance charges up to the date of appointment, and the expense thereafter becomes a liability of the lunatic's estate, to be enforced under the general statutes for the administration of lunatic's property. *Fitzhugh v. District of Columbia* (1940, 109 F. 2d 837, 71 App. D.C. 290).

St. Elizabeths Hospital is a United States Government institution, but insane persons residing in the District of Columbia are admitted and the expense of their support and treatment is chargeable to the District of Columbia. *Id.*

**Reimbursement**

Estate of patient committed to hospital while resident of District of Columbia was liable to District of Columbia for her maintenance. *J. B. Cullen, Administrator, etc. v. District of Columbia* (D.C. App. 1966, 221 A. 2d 914).

Even though a ward's estate was entirely derived from veterans benefit payments, the entire estate was not exempt, and portion of the estate converted into permanent investments was subject to claims of the District of Columbia for reimbursement of funds expended in caring for the ward. *District of Columbia v. G. A. Phillips, committee, etc.* (1965, 347 F. 2d 795, 121 U.S. App. D.C. 11).

Where insane person was committed to hospital and committee appointed of his person and estate, and committee was ordered to pay certain sum to District of Columbia for hospital care, which sum was less than actual cost because of need of support of insane person's wife, upon insane person's death, estate was liable for portion of cost of care for which District had not been reimbursed, and in rendering judgment for unpaid balance District Court had no authority to consider need of deceased insane person's dependents for support.

*District of Columbia v. Graves* (D.C.D.C. 1952, 104 F. Supp. 538).

Under former § 21-310 et seq., providing for commitment of insane person and that committee of such person, if estate was sufficient for purpose, should pay cost to District of Columbia for maintenance, and that, if it appeared that insane person had not sufficient estate out of which his maintenance might "properly" be fully met, then court might order payment by relatives of such sum necessary to provide for maintenance, the word "properly" did not refer to adequacy of estate after making allowance for support of dependents, but referred to general equity power of court to make such orders and decrees for management and preservation of insane person's estate as to court might seem proper, and hence act did not give authority to fix payments by committee at less than full cost of care where funds of estate were adequate. *Id.*

Where insane person was committed to hospital and committee was appointed of person and estate, and committee was ordered to pay certain sum, less than actual cost, to District of Columbia for hospital care, upon death of insane person, even if estate were inadequate to satisfy entire amount of balance of cost of care, District of Columbia would be entitled to judgment for entire balance and to be paid its pro rata share of proceeds of estate on same basis as any other creditor. *Id.*

**Support of dependents**

In committing insane person to hospital and appointing committee of his person and estate and in fixing amount of payments to District of Columbia on account of cost of care of insane person to be made out of insane person's estate, there is no authority to consider support of dependents. *District of Columbia v. Graves* (D.C.D.C. 1952, 104 F. Supp. 538).

**§ 21-587. Veterans' Administration and military hospital facilities**

This chapter does not require the admission of a person to a Veterans' Administration or military hospital facility unless the person is otherwise eligible for care and treatment in the facility. (Sept. 14, 1965, 79 Stat. 760, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 21-359 (Sept. 15, 1964, Pub. L. 88-597, § 10, 78 Stat. 952).

Changes are made in phraseology.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 21-589.

**§ 21-588. Forms**

All applications and certificates for the hospitalization of a person in the District of Columbia under this chapter shall be made on forms approved by the Commission on Mental Health and furnished by it. (Sept. 14, 1965, 79 Stat. 760, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 21-364 (Sept. 15, 1964, Pub. L. 88-597, § 15, 78 Stat. 952).

Changes are made in phraseology.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 21-589.

**§ 21-589. Persons hospitalized prior to September 15, 1964**

(a) Subject to subsection (b) of this section, the provisions of sections 21-546 to 21-551, subchapter V of this chapter and sections 21-585 and 21-588 apply to a person, who, on or after January 1, 1966, is a patient in a hospital in the District of Columbia by reason of having been declared insane or of un-



sound mind pursuant to a court order entered in a noncriminal proceeding prior to September 15, 1964.

(b) A request made by a patient referred to in subsection (a) of this section for an examination authorized by section 21-546 may be made on April 15, 1966, by the patient, or his attorney, legal guardian, spouse, parent, or other nearest adult relative, and not more frequently than every six months thereafter. (Sept. 14, 1965, 79 Stat. 761, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-366 (Sept. 15, 1964, Pub. L. 88-597, § 17, 78 Stat. 953).

The dates, January 1, 1966, September 15, 1964, and April 15, 1966, which is the order in which they appear in the provisions as revised in this section, are substituted for the corresponding provisions in section 21-366 of D.C. Code, 1961 ed., to conform with the revision. September 15, 1964, was the date of enactment and effective date of section 21-366. January 1, 1966, is the effective date of this revised Part, and also of the repeal of all provisions of former Part III of the Code (including section 21-366), on which this revised Part is based. Section 21-366 permitted the first request for an examination authorized by the provisions that have been carried into subchapter IV of this chapter to be made at the expiration of a 30-day period following September 15, 1964, or approximately on October 15, 1964, and "not more frequently than every six months thereafter". In computing six-month periods following October 15, 1964, it is determined that the date of April 15, 1966, is the first of such periods to expire after January 1, 1966, the effective date of this revised Part.

Changes are made in phraseology.

#### § 21-590. Discharge as cured; restoration to legal status

When a person adjudged to be of unsound mind in the District of Columbia who is committed to Saint Elizabeths Hospital, or any other institution, recovers his reason, and is discharged from the institution as cured, the Superintendent of Saint Elizabeths Hospital, or the official in charge of the institution where he has been under treatment and has been so discharged, shall immediately file with the clerk of the Superior Court of the District of Columbia his sworn statement that, in his opinion, the person was not of unsound mind at the time of his discharge. The statement is sufficient to authorize the court to order the person restored to his former legal status as a person of sound mind. (Sept. 14, 1965, 79 Stat. 761, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(c) (3), 84 Stat. 567.)

#### AMENDMENT

1970—Section 150(c) (3) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101 and note to 21-301.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 32-330 (Feb. 23, 1905, ch. 738, § 2, 33 Stat. 740; July 1, 1916, ch. 209, § 1, 39 Stat. 309; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Commitment by Secretary of Navy

Where retired officer in military service had been committed on order of Secretary of Navy to hospital for insane and statutes made no provision for reexamination of person committed on order of Secretary, or for initiation, by the person committed of a proceeding to secure such reexamination, procedure of habeas corpus was available for the latter purpose. *Overholser v. Treibly* (1945, 147 F. 2d 705, 79 U.S. App. D.C. 389, certiorari denied 66 S. Ct. 38, 326 U.S. 730, 90 L. Ed. 434).

##### Discretionary relief

Patient who, after adjudication that she was of unsound mind, eloped from District of Columbia mental hospital and subsequently recovered mental health, had no right, in seeking restoration to status of person of sound mind, to statutory hearing before Mental Health Commission, or, since she was free, to habeas corpus, but was entitled to discretionary relief within court's inherent power. *In re Harriet DuBois* (D.C.D.C. 1962, 207 F. Supp. 909).

##### Habeas corpus proceedings

Where a petition for writ of habeas corpus has been presented, legally sufficient on its face to start the court's machinery in motion, the judge should appoint either a guardian or counsel to represent the petitioner in the further stages of the proceeding. *Overholser v. Treibly* (1945, 147 F. 2d 705, 79 U.S. App. D.C. 389, certiorari denied 66 S. Ct. 38, 326 U.S. 730, 90 L. Ed. 434).

##### Recommitment without hearing

Where petitioner had been committed to public mental hospital in District of Columbia in 1958 and after petitioner had left without permission an entry was made in hospital records showing that petitioner was discharged as "improved," petitioner could not four years later be recommitment under the prior order without a further hearing on ground that petitioner had not been legally restored. *W. G. Gillis v. D. C. Cameron, Sup't etc.* (1963, 324 F. 2d 419, 116 U.S. App. D.C. 387).

#### § 21-591. Offenses and penalties

##### Whoever:

(1) without probable cause for believing a person to be mentally ill:

(A) causes or conspires with or assists another person to cause the hospitalization, under this chapter, of the person first referred to; or

(B) executes a petition, application, or certificate pursuant to this chapter, by which he secures or attempts to secure the apprehension, hospitalization, detention, or restraint of the person first referred to;

or

(2) causes or conspires with or assists another person to cause the denial to a person of a right accorded to him by this chapter;

or

(3) being a physician or psychiatrist, knowingly makes a false certificate or application pursuant to this chapter as to the mental condition of a person—

shall be fined not more than \$5,000 or imprisoned not more than three years, or both. (Sept. 14, 1965, 79 Stat. 761, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-360 (Sept. 15, 1964, Pub. L. 88-597, § 11, 78 Stat. 952).

Changes are made in phraseology.

#### § 21-592. Return to hospital of an escaped mentally ill person

When a person has been ordered confined in a hospital or institution for the mentally ill pursuant



to this chapter and has left such hospital or institution without authorization or has failed to return as directed, the court which ordered confinement shall, upon the request of the administrator of such hospital or institution, order the return of such person to such hospital or institution. (Added, July 29, 1970, Pub. L. 91-358, § 150(c) (7) (A), title I, 84 Stat. 568.)

#### EFFECTIVE DATE

See note preceding section 11-101 and note to 21-301.

### Chapter 7.—PROPERTY OF MENTALLY ILL PERSONS

Sec.

- 21-701. Definition.
- 21-702. Property subject to liens.
- 21-703. Property subject to executory contract.
- 21-704. Contract for sale by adult in behalf of himself and mentally ill person.
- 21-705. Ancillary guardian of nonresident mentally ill person.
- 21-706. Suits by ancillary guardian.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 11-501, 11-921.

#### § 21-701. Definition

As used in this chapter, "mentally ill person" has the same meaning as that given to the term by section 21-501. (Sept. 14, 1965, 79 Stat. 761, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Section is new, and is inserted to conform the provision carried into this chapter with those of Act Sept. 15, 1964, Pub. L. 88-597, 78 Stat. 944, which are carried into chapter 5 of this title (section 21-501 et seq.), in which the terms "mental illness" and "mentally ill person" are defined and used. See Senate Report No. 925, Feb. 27, 1964, and House Report No. 1833, Aug. 20, 1964, both to accompany S. 935, 88th Cong., 2d Sess., the bill which became the Act of September 15, 1964.

For the purpose described above, the term "mentally ill person" is substituted, in the provisions carried into this chapter, for the terms "person non compos mentis", "idiot", and "lunatic".

#### § 21-702. Property subject to liens

Where a mentally ill person is entitled to real or personal estate in the District of Columbia which is liable to a mortgage, trust, or lien, or is in any way charged with the payment of money, the court may decree in the case as if the mentally ill person were of sound mind. (Sept. 14, 1965, 79 Stat. 762, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-202 (Mar. 3, 1901, ch. 854, § 91, 31 Stat. 1203).

Provisions of section 21-202 of D.C. Code, 1961 ed., that related to infants are carried into section 21-144 herein.

The term "mentally ill persons" is substituted for "person non compos mentis". See section 21-701 and revision note thereunder.

#### § 21-703. Property subject to executory contract

Where a mentally ill person:

- (1) is entitled to real or personal estate in the District of Columbia bound by an executory contract entered into by the person from whom he derived title; or
- (2) claims a right or interest in property under such a contract—

the court in either case may decree the execution of the contract or enter a proper decree, as if the parties were of sound mind. (Sept. 14, 1965, 79 Stat. 762, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-203 (Mar. 3, 1901, ch. 854, § 92, 31 Stat. 1203).

Provisions of section 21-203 of D.C. Code, 1961 ed., that related to infants are carried into section 21-145 herein.

The term "mentally ill persons" is substituted for "persons non compos mentis". See section 21-701 and revision note thereunder.

Changes are made in phraseology.

#### § 21-704. Contract for sale by adult in behalf of himself and mentally ill person

When, upon a hearing and an examination of the circumstances, the court considers a contract for the sale of real estate by persons interested therein jointly or in common with a mentally ill person, to be for the interest and advantage both of the mentally ill person, and of the other persons interested therein, the court may confirm the contract and order a deed to be executed according to it. Sales and deeds made in pursuance of the order are sufficient in law to transfer the estate and interest of the mentally ill person in the real estate. (Sept. 14, 1965, 79 Stat. 762, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-213 (Mar. 3, 1901, ch. 854, § 93, 31 Stat. 1203; Dec. 23, 1963, Pub. L. 88-2411; § 13, 77 Stat. 618).

Provisions of section 21-213 of D.C. Code, 1961 ed., that related to infants are carried into section 21-146 herein.

The term "mentally ill person" is substituted for "idiot, or person non compos mentis". See section 21-701 and revision note thereunder.

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16-2901.

#### § 21-705. Ancillary guardian of nonresident mentally ill person

When a mentally ill person residing outside the District of Columbia is entitled to property or to maintain an action in the District of Columbia, a general guardian or committee of his estate, appointed by a court of competent jurisdiction in the State or territory where the mentally ill person resides, or a person at the request of the guardian or committee, may petition the court for ancillary letters as guardian or committee. The petition shall be under oath, accompanied by certified copies of as much of the record and proceedings as shows the appointment of the guardian or committee and that he has given a sufficient bond to account for all property and money that may come into his hands by virtue of the authority conferred. The court may thereupon issue to the guardian or committee ancillary letters as such guardian or committee, without citation, or may cite such persons as it believes proper to show cause why the application should be refused; and the court shall require the security required by law in like cases from a resident guardian or committee. (Sept. 14, 1965, 79 Stat. 762, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)



## REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-115 (Mar. 3, 1901, ch. 854, § 1141, 31 Stat. 1371; June 30, 1902, ch. 1329, 32 Stat. 542; Mar. 3, 1905, ch. 1441, 33 Stat. 1006).

So much of section 21-115 of D.C. Code, 1961 ed., as related to lunatics is carried into this section. Provisions thereof that related to infants are carried into section 21-111 herein.

The term "mentally ill person" is substituted for "lunatic". See section 21-701 and revision note thereunder. Changes are made in phraseology.

## § 21-706. Suits by ancillary guardian

(a) Upon the granting of ancillary letters, the guardian may institute and prosecute to judgment any action in the courts of the District of Columbia, take possession of all property of his ward, and collect and receive all moneys belonging and due to him therein, give full receipt and acquittances for debts, and release all claims, liens, and mortgages belonging to the ward, on property in the District of Columbia, in the same manner as if his authority had been originally conferred by the Superior Court of the District of Columbia.

(b) The guardian shall give security for the costs which may accrue in an action brought by him, in the same manner as other nonresidents bringing suit in the courts of the District. (Sept. 14, 1965, 79 Stat. 762, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(e), 84 Stat. 568.)

## AMENDMENT

1970—Section 150(e) of Act July 29, 1970, Public Law 91-358, amended subsection (a) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101 and note to 21-301.

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-116 (Mar. 3, 1901, ch. 854, § 1142, 31 Stat. 1371; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Provisions of section 21-116 of D.C. Code, 1961 ed., to infants are carried into section 21-112 herein.

Changes are made in phraseology.

## Chapter 9.—MENTALLY ILL PERSONS FOUND IN CERTAIN FEDERAL RESERVATIONS

Sec.

21-901. Definition.

21-902. Commitments by special commissioners of certain district courts.

21-903. Apprehension by certain officials of persons believed to be mentally ill; proceedings.

21-904. Admission upon written application; right of release.

21-905. Superintendent to receive persons committed or apprehended under sections 21-902 and 21-903.

21-906. Examinations; adjudications; laws applicable; expense of care and treatment.

21-907. Transfer of military personnel.

21-908. Care in a Veterans' Administration facility.

21-909. Payment of expenses of transfers.

## § 21-901. Definition

As used in this chapter, "mentally ill person" has the same meaning as that given to the term by section 21-501. (Sept. 14, 1965, 79 Stat. 763, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

## REVISION NOTES

Section is new, and is inserted for the same purpose stated in revision note under section 21-701.

For that purpose, the terms "a mentally ill person" and "mentally ill" are substituted, in the provisions carried into this chapter, for such terms as "of unsound mind" and "a person of unsound mind"; and the terms "if not found to be mentally ill" and "if found to be mentally ill" are substituted for the terms "if found to be of sound mind" and "if found to be of unsound mind", respectively.

## § 21-902. Commitments by special commissioners of certain district courts

(a) A United States commissioner specially designated by the United States District Court for the Eastern District of Virginia or by the United States District Court for the District of Maryland may commit to Saint Elizabeths Hospital, for observation and diagnosis, a person found in a place over which the United States has exclusive or concurrent jurisdiction in Arlington County, Fairfax County, Loudoun County or the city of Alexandria, in the State of Virginia, or in Montgomery County or Prince Georges County in the State of Maryland, who is alleged, and is believed by the commissioner, to be a mentally ill person. A United States commissioner specially designated by the United States District Court for the District of Columbia has like jurisdiction and authority in the case of any person temporarily detained in Saint Elizabeths Hospital, pursuant to section 21-903.

(b) A commitment provided for by subsection (a) of this section shall be for not more than 30 days and may be made only after a hearing before the commissioner upon:

(1) the testimony under oath of at least two witnesses as to their belief that the person is a mentally ill person; and

(2) the testimony under oath or affidavit of two physicians, at least one of whom is skilled in the treatment and diagnosis of nervous and mental disorders, that they have examined the alleged mentally ill person and believe him to be a mentally ill person and not fit to remain at liberty and go unrestrained, and that he should be in custody in a hospital for the treatment of mental or nervous disorders for his own safety and welfare and for the preservation of the peace and good order.

(c) The head of the agency of the United States in control of the place where a person is apprehended for a hearing pursuant to this section shall forthwith notify the spouse or a near relative or friend of the person so apprehended whose address is known to him or can by reasonable inquiry be ascertained by him. In the case of a person described by section 21-907, the agency head shall notify the head of the department having jurisdiction over the service to which the person belongs.

(d) The agency of the United States in control of the place where a person is apprehended for a hearing pursuant to this section may employ physicians for the purpose and pay compensation for their services and pay expenses of witnesses in the proceedings out of funds available therefor. Physicians who are officers or employees of the United States or who are members of the armed forces of the United States may render the services without



additional compensation. (Sept. 14, 1965, 79 Stat. 763, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REFERENCE IN TEXT

The Act of Oct. 17, 1968, Pub. L. 90-578, terminated the office of United States commissioner and established in place thereof the office of United States magistrate. The Act became operative in the District of Columbia on June 27, 1969, when two United States magistrates assumed the office pursuant to appointment by order of the District Court dated June 20, 1969. See §§ 401(a) and 402(a) (b) of said Act (28 U.S.C. 631 note).

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 32-417 (Oct. 11, 1949, ch. 672, § 1, 63 Stat. 759; Aug. 30, 1964, 78 Stat. 638, Pub. L. 88-505, § 1).

Changes are made in phraseology and arrangement.

In several places, "a mentally ill person" is substituted for "of unsound mind". See revision note under section 21-901.

#### CROSS REFERENCE

Saint Elizabeths Hospital, see 24 U.S.C. § 161 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21-903 to 21-906.

#### § 21-903. Apprehension by certain officials of persons believed to be mentally ill; proceedings

(a) An officer or employee of the United States authorized to make arrests, and a guard or watchman employed by the United States, may apprehend and detain a person whom he believes to be a mentally ill person and found in a place specified by section 21-902, and, except as provided by section 21-904, bring the person for a hearing before a United States commissioner for the district where the person was apprehended, and designated as provided by section 21-902. When an immediate hearing before a commissioner cannot be had, the officer or employee may take the person to Saint Elizabeths Hospital. The Superintendent of Saint Elizabeths Hospital may detain the person pending a hearing before a United States commissioner for the District of Columbia, designated as provided by section 21-902, for a period not exceeding 72 hours.

(b) The United States commissioner specified by subsection (a) of this section shall hold a hearing as promptly as practicable after the apprehension of a person pursuant to that subsection and in any event not later than 72 hours thereafter. The hearing shall be conducted at Saint Elizabeths Hospital if the Superintendent of the hospital certifies that in his opinion it would be prejudicial to the health of the person or unsafe to produce him at a hearing elsewhere. If, after a hearing at a place other than Saint Elizabeths Hospital, the commissioner commits a person to Saint Elizabeths Hospital, an officer, employee, guard, or watchman specified by subsection (a) of this section may transport the person to Saint Elizabeths Hospital in accordance with the order of the commissioner. (Sept. 14, 1965, 79 Stat. 764, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REFERENCE IN TEXT

The Act of Oct. 17, 1968, Pub. L. 90-578, terminated the office of United States commissioner and established in place thereof the office of United States magistrate. The Act became operative in the District of Columbia on June 27, 1969, when two United States magistrates assumed the office pursuant to appointment by order of the District Court dated June 20, 1969. See §§ 401(a) and 402(a) (b) of said Act (28 U.S.C. 631 note).

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 32-417a (Oct. 11, 1949, ch. 672, § 2, 63 Stat. 760).

The term "a mentally ill person" is substituted for "of unsound mind". See revision note under section 21-901.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21-902, 21-905, 21-906.

#### § 21-904. Admission upon written application; right of release

A person in a place specified by section 21-902 may, upon his written application, be admitted for observation and diagnosis to Saint Elizabeths Hospital in the discretion of the Superintendent of the hospital for a period not exceeding 30 days. If, after admission to Saint Elizabeths Hospital, he expresses a desire for release from the hospital, he shall be released within 72 hours thereafter, unless proceedings for his adjudication as a mentally ill person have been instituted as provided for by section 21-906. (Sept. 14, 1965, 79 Stat. 764, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 32-417b (Oct. 11, 1949, ch. 672, § 3, 63 Stat. 761).

The term "a mentally ill person" is substituted for "a person of unsound mind". See revision note under section 21-901.

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21-903, 21-906, 21-909.

#### § 21-905. Superintendent to receive persons committed or apprehended under sections 21-902 and 21-903

The Superintendent of Saint Elizabeths Hospital shall receive for observation and diagnosis a person apprehended or committed as provided by sections 21-902 and 21-903 for the periods therein prescribed, unless the person is sooner discharged or returned to his home or to the State of his residence. (Sept. 14, 1965, 79 Stat. 764, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 32-417c (Oct. 11, 1949, ch. 672, § 4, 63 Stat. 761).

Changes are made in phraseology.

#### § 21-906. Examinations; adjudications; laws applicable; expense of care and treatment

(a) The Superintendent of Saint Elizabeths Hospital shall promptly examine a person committed as provided by sections 21-902 and 21-903, and, if not found to be mentally ill, shall forthwith discharge him, or, if found to be mentally ill, shall return him to the State of his residence or to his relatives, if practicable.

(b) Proceedings for the adjudication of a person referred to by subsection (a) of this section, or of a person admitted to the hospital pursuant to section 21-904, as a mentally ill person, and for the appointment of a committee of his person or property, may be instituted in the Superior Court of the District of Columbia by the Secretary of Health, Education, and Welfare or by a party interest. The laws of the District of Columbia apply to the proceedings. This chapter does not impose upon the District of Columbia the expense of care and treatment



of a person apprehended, detained, or committed under this chapter, unless the person is a resident of the District of Columbia as defined by subsection (b) of section 21-551. (Sept. 14, 1965, 79 Stat. 765, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(f), 84 Stat. 568.)

#### AMENDMENT

1970—Section 150(f) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101 and note to 21-301.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 32-417d (Oct. 11, 1949, ch. 672, § 5, 63 Stat. 761; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631).

The words "if not found to be mentally ill" and "if found to be mentally ill" are substituted for "if found to be of sound mind" and "if found to be of unsound mind", respectively. See revision note under section 21-901.

Changes are made in phraseology and arrangement.

#### CROSS REFERENCE

Saint Elizabeths Hospital, see, also, 24 U.S.C. § 161 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21-904.

### § 21-907. Transfer of military personnel

A person belonging to the armed forces arrested, apprehended, detained, or committed pursuant to this chapter shall, upon the request of the head of the department having jurisdiction over the service to which he belongs, be transferred forthwith to the custody of his service. (Sept. 14, 1965, 79 Stat. 765, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 32-417e (Oct. 11, 1949, ch. 672, § 6, 63 Stat. 761).

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21-902.

### § 21-908. Care in a Veterans' Administration facility

(a) If a person adjudicated to be a mentally ill person under this chapter is entitled to care and treatment in a Veterans' Administration facility, the United States District Court for the District of Columbia may commit him to the custody of the Administrator of Veterans' Affairs for placement in an available facility, or the Superintendent of Saint Elizabeths Hospital may transfer him to such a facility.

(b) This chapter does not limit, restrict, or deprive the courts of a State or the District of Columbia of jurisdiction to commit to the Veterans' Administration a mentally ill person entitled to care and treatment by the Veterans' Administration in accordance with the laws of the State or the District of Columbia. (Sept. 14, 1965, 79 Stat. 765, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 32-417f (Oct. 11, 1949, ch. 672, § 7, 63 Stat. 761).

The term "a mentally ill person" is substituted for "of unsound mind". See revision note under section 21-901.

Changes are made in phraseology and arrangement.

## NOTES TO DECISIONS UNDER PRIOR LAW

### District not a voluntary creditor

District of Columbia was entitled to reimbursement for expenses of treatment of incompetent veteran from committee of the veteran from date of her appointment until the veteran was transferred to the rolls of the Veterans Administration which now bears the costs involved, since the District was not a voluntary "creditor" within the statute exempting from claims of "creditors" payments of benefits due or to become due under any law administered by the Veterans Administration. *T. Savoid, Committee etc. v. District of Columbia* (1961, 288 F.2d 851, 110 U.S. App. D.C. 39).

### § 21-909. Payment of expenses of transfers

The Superintendent of Saint Elizabeths Hospital may arrange for and pay the expenses of the transfer of a person committed to his custody pursuant to this chapter or admitted to the hospital pursuant to section 21-904 to his relatives or to a hospital in the State of his residence, and, in connection with the transfer, may pay the transportation and expenses of attendants necessary to insure safe travel. (Sept. 14, 1965, 79 Stat. 765, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 32-417g Oct. (11, 1949, ch. 676, § 8, 63 Stat. 761).

Changes are made in phraseology.

## Chapter 11.—COMMITMENT AND MAINTENANCE OF SUBSTANTIALLY RETARDED PERSONS

### Sec.

- 21-1101. Definitions.
- 21-1102. Persons received in Forest Haven; age limit.
- 21-1103. Petition as to substantial retardation; contents; verification; notice; process.
- 21-1104. Summons; contents; answer not required; return day; service.
- 21-1105. Appointment and qualifications of physicians; examination; certificate.
- 21-1106. Warrant to take into custody; detention or temporary guardianship; place of detention.
- 21-1107. Hearing; continuances; character of proofs; jury trial.
- 21-1108. Dismissal and discharge, or placement in Forest Haven; controlling considerations.
- 21-1108A. Voluntary admission to Forest Haven.
- 21-1009. Private and public patients; bond for support and maintenance; sufficiency and justification of sureties.
- 21-1110. Liability of estate of public patient for maintenance.
- 21-1111. Proceedings to charge relatives legally responsible for maintenance of public patient; collection of maintenance payments; enforcement of order; liability of decedent's estate.
- 21-1112. Public patients may become private patients by filing bond and paying advance.
- 21-1113. Restriction on discharge; petition for discharge; causes for discharge; superintendent to be notified; notice of variation of order; denial of one petition not a bar to another.
- 21-1114. Proceeding when child brought before Family Division appears substantially retarded.
- 21-1115. Inquiry under this chapter if person convicted of offense.
- 21-1116. Transfer to Saint Elizabeths Hospital when person becomes insane.
- 21-1117. Separate docket of cases brought under section 21-1103; reports of commissions.
- 21-1118. Transfer of substantially retarded from National Training Schools for Boys or Girls.
- 21-1119. Removal from school of nonresidents of the District of Columbia.
- 21-1120. Paroles; conditions; expense; discretion of superintendent; violation; return.



## Sec.

- 21-1121. Citation, order, or process on patients to be served only by superintendent.  
 21-1122. Approval of patients' contracts, etc., by court.  
 21-1123. Offenses and penalties.

## AMENDMENTS

1970—Section 2(a) (17) of Act Oct. 22, 1970, Pub. L. 91-490, amended chapter heading by striking out "Feeble-Minded" and inserting in lieu thereof "Substantially Retarded".

Section 2(a) (3) (B) of Act Oct. 22, 1970, Pub. L. 91-490, inserted a new item relating to section 21-1108A.

Section 2(a) (9)-(16) of Act Oct. 22, 1970, Pub. L. 91-490, amended analysis as follows:

- (1) by striking out "District Training School" in items relating to sections 21-1102 and 21-1108 and inserting in lieu thereof "Forest Haven";
- (2) by striking out "feeble-mindedness" in the item relating to section 21-1103 and inserting in lieu thereof "substantial retardation";
- (3) by striking out "feeble-minded" in the items relating to sections 21-1114 and 21-1118 and inserting in lieu thereof "substantially retarded";
- (4) by striking out "of feeble-minded cases" in the item relating to section 21-1117 and inserting in lieu thereof "of cases brought under section 21-1103";
- (5) by striking out "inmates" and "inmates'" in the items relating to sections 21-1121 and 21-1122 and inserting in lieu thereof "patients" and "patients'", respectively.

Section 150(g) (11) of Act July 29, 1970, Public Law 91-358 amended chapter heading by striking out "Feeble-minded" and inserting in lieu thereof "Substantially Retarded."

Section 150(g) (10) of Act July 29, 1970, Public Law 91-358 amended analysis as follows:

- (A) by striking out "of District Court as to feeble-mindedness" in the item relating to section 21-1103 and inserting in lieu thereof "as to substantial retardation", and
- (B) by striking out "before juvenile court appears feeble-minded" in the item relating to section 21-1114 and inserting in lieu thereof "before Family Division appears substantially retarded", and
- (C) by striking out "feeble-minded" in the items relating to sections 21-1117 and 21-1118 and inserting in lieu thereof "substantially retarded".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91-358

See note preceding section 11-101.

## CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 11-501, 11-921, 11-1101, 16-2315, 16-2321.

## § 21-1101. Definitions

For purposes of this chapter—

"Forest Haven" means the institution established pursuant to section 32-601, and designated "Forest Haven" by section 32-602, or any successor to that institution; and

"substantially retarded person" means any person afflicted with mental defectiveness from birth or from an early age, so pronounced that he is incapable of managing himself and his affairs, and who requires supervision, control, and care for his own welfare, for the welfare of others, or for the welfare of the community, and who is not insane nor of unsound mind to such an extent as to require his commitment to a hospital for the mentally ill. (Sept. 14, 1965, 79 Stat. 766, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(g) (1) (A), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91-490, § 2(a) (4), 84 Stat. 1088.)

## AMENDMENTS

1970—Section 2(a) (4) of Act Oct. 22, 1970, Pub. L. 91-490, amended section generally.

Section 150(g) (1) (A) of Act July 29, 1970, Pub. L. 91-358, amended section by striking out "feeble-minded" and inserting in lieu "substantially retarded."

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91-358

See note preceding section 11-101.

## REVISION NOTES

Section is new as statutory text in this title, but its definition of "feeble-minded person" is largely patterned upon section 32-603 of this Code, which, in addition to relating to sections remaining in chapter 6 of Title 32, also related to the sections formerly set out in that title the provisions of which are revised and transferred to this chapter of revised Title 21.

The definition of "District Training School" is set out herein for the purpose of clarification, considering the transfer of the above-mentioned provisions to this revised title. In this definition, the words referring to any successor to the institution are inserted for the purpose of preserving the scope or application of this chapter, should any reorganizational changes, with respect to the commitment and care of feeble-minded persons, be made in the future.

Under Reorganization Order No. 58, June 30, 1953, as amended, of the Commissioners of the District of Columbia, issued under authority of Presidential Reorg. Plan No. 5 of 1952, 66 Stat. 852, and set out in the Appendix to Title 1 of this Code, the District Training School was made a component of the Children's Center within the Department of Public Welfare.

For definitions of "mental illness" and "mentally ill person", see section 21-501, which is in chapter 5 of this title, referred to in this section.

## CROSS REFERENCE

Interstate Compact on Mental Health, see § 6-1601 et seq.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16-2301.

## § 21-1102. Persons received in Forest Haven; age limit

Subject to such regulations as the District of Columbia Council adopts, and pursuant to this chapter and chapter 6 of Title 32, substantially retarded persons of not more than 45 years of age at the time of commitment shall be received into Forest Haven. (Sept. 14, 1965, 79 Stat. 766, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(g) (1) (A), (2), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91-490, § 2(a) (1) (2) (9), 84 Stat. 1087, 1089.)

## AMENDMENTS

1970—Section 2(a) (1) (2) (9) of Act Oct. 22, 1970, Pub. L. 91-490 amended section (1) by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded", (2) by striking out "the District Training School" and inserting in lieu thereof "Forest Haven", and (3) by striking out "District Training School" in the heading and inserting in lieu thereof "Forest Haven".

Section 150(g) (1) (A) of Act July 29, 1970, Pub. L. 91-358, amended section by striking out "feeble-minded" and inserting in lieu "substantially retarded".

Sec. 150(g) (2) of same act amended section, also, by striking out "Department of Public Welfare" and inserting in lieu "District of Columbia Council".

EFFECTIVE DATE OF 1970 AMENDMENTS BY PUB. L. 91-358

See note preceding section 11-101.

## TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(202) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory function of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia



Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 32-607 (Mar. 3, 1925, ch. 460, § 6, 43 Stat. 1135; Mar. 16, 1926, ch. 58, §§ 1, 2, 44 Stat. 208).

"Department of Public Welfare" is substituted for "Board of Public Welfare", to conform with Reorganization Order No. 58, June 30, 1953, as amended, of the Commissioners of the District of Columbia which abolished the Board of Public Welfare, and, insofar as the functions of the former Board with respect to the commitment, maintenance, etc., of the feeble-minded were concerned, transferred them to the Department of Public Welfare created by that order. The order was issued under authority of Presidential Reorg. Plan No. 5 of 1952, 66 Stat. 852, and is set out in the Appendix to Title 1 of this Code. See, particularly, Part IV, par. G, subpar. 2, thereof.

The reference to chapter 6 of Title 32 is inserted because, while most of the provisions of the Act of March 3, 1925, cited above, which were classified to that chapter and title, are transferred to this chapter of revised Title 21, some of them remain there, and the reference in this section, at least, should accordingly cite chapter 6 of Title 32, as well as this chapter.

Words "at the time of commitment" are inserted after "not more than 45 years of age", for the purpose of clarification, and also to conform with Reorganization Order No. 58, mentioned above, in which similar words are used.

Changes are made in phraseology.

#### CROSS REFERENCES

Powers and duties of the Board of Public Welfare generally, see § 3-101 et seq.

### § 21-1103. Petition as to substantial retardation; contents; verification; notice; process

(a) When a person who is a resident of the District of Columbia is supposed to be substantially retarded, his guardian, or a relative, or a reputable citizen of the District of Columbia may file with the clerk of the Superior Court of the District of Columbia a petition, in writing, setting forth:

(1) that the person named in the petition is substantially retarded;

(2) such other facts as are necessary to bring the person within the purview of this chapter;

(3) the name and address of any person actually supervising, caring for, or supporting the person, or that the name and address thereof are unknown to the petitioner;

(4) the name and address of any person legally chargeable with the supervision, care, or support of the person, or that the name and address thereof are unknown to the petitioner;

(5) the names and addresses of the parents or guardians, or that they are unknown to the petitioner; and

(6) whether or not the person has been examined by a qualified physician having personal knowledge of his condition.

The petition shall be verified by affidavit, which is sufficient if it states that it is based upon information and belief.

(b) On a petition filed pursuant to subsection (a) of this section, there shall be indorsed the names and addresses of witnesses known to the petitioner, by whom the truth of the allegations of the petition may be proved, as well as the name and address of a qualified physician, if any is known to the petitioner, having personal knowledge of the case.

(c) Persons named in a petition filed pursuant to this section or whose names are endorsed thereon shall be notified of the proceedings by summons issued by the clerk of the court. Process shall be issued against those persons mentioned in the petition whose names are unknown to the petitioner, by the designation "To all whom it may concern", and the designation and notice are sufficient to authorize the court to hear and determine the proceedings as though the parties had been summoned by their proper names. (Sept. 14, 1965, 79 Stat. 766, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(g)(1)(A)(3), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91-490, § 2(a)(1)(10), 84 Stat. 1087, 1089.)

#### AMENDMENTS

1970—Section 2(a)(1)(10) of Act Oct. 22, 1970, Pub. L. 91-490, amended section (1) by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded", and (2) by striking out "feeble-mindedness" in the heading and inserting in lieu thereof "substantial retardation".

Section 150(g)(1)(A) of Act July 29, 1970, Pub. L. 91-358, amended subsection (a) by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded".

Sec. 150(g)(3) further amended section as follows:

(A) by striking out "United States District Court for the District of Columbia" in subsection (a) and inserting in lieu thereof "Superior Court of the District of Columbia", and

(B) by striking out "of District Court as to feeble-mindedness" in the section heading and inserting in lieu thereof "as to substantial retardation".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91-358

See note preceding section 11-101 and note to 21-301.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 32-608 (Mar. 3, 1925, ch. 460, § 7, 43 Stat. 1135; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Changes are made in phraseology and arrangement.

#### CROSS REFERENCES

Jurisdiction of the Family Division of the Superior Court, see § 11-1101.

Mentally ill persons, see § 21-501 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21-1104 to 21-1107, 21-1108A, 21-1117, 21-1118.

### § 21-1104. Summons; contents; answer not required; return day; service

The summons prescribed by section 21-1103 shall require all persons upon whom it is served to appear personally at the time and place stated therein and to bring into court the alleged substantially retarded person. A written answer to the petition is not required, but the cause shall stand for hearing upon the petition on the return day of the summons. The summons shall be made returnable at any time within 20 days after the date thereof. Service of process upon any of the persons named in the petition or whose names are endorsed thereon is not necessary if they appear or are brought before the court personally without service of summons. The summons may be served by any officer authorized by law to serve processes of the Superior Court of the District of Columbia. (Sept. 14, 1965, 79 Stat. 767, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(g)(1)(A), (4), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91-490, § 2(a)(1), 84 Stat. 1087.)



## AMENDMENTS

1970—Section 2(a) (1) of Act Oct. 22, 1970, Pub. L. 91-490, amended section by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded".

Section 150(g) (1) (A) of Act July 29, 1970, Pub. L. 91-358, amended section by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded".

Section 150(g) (4) of Act of July 29, 1970, Public Law 91-358, further amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENTS BY PUB. L. 91-358

See note preceding section 11-101 and note to 21-301.

## REVISION NOTES

Based on D.C. Code, 1961, ed., § 32-609 (Mar. 3, 1925, ch. 460, § 8, 43 Stat. 1136).

Changes are made in phraseology.

### § 21-1105. Appointment and qualifications of physicians; examination; certificate

Pursuant to the filing of a petition under section 21-1103, the court shall appoint two physicians, at least one of whom is skilled in the diagnosis and treatment of mental diseases, to make an examination of the alleged substantially retarded person to determine his mental and physical condition. Their certificate shall be filed with the court on or before the hearing on the petition. The persons so appointed may make such personal examination of him as will enable them to offer an opinion as to his physical and mental condition. A certificate may not be made by them until after the examination. (Sept. 14, 1965, 79 Stat. 767, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(g) (1) (A), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91-490, § 2(a) (1), 84 Stat. 1087.)

## AMENDMENTS

1970—Section 2(a) (1) of Act Oct. 22, 1970, Pub. L. 91-490, amended section by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded".

Section 150(g) (1) (A) of Act July 29, 1970, Pub. L. 91-358, amended section by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91-358

See note preceding section 11-101.

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 32-610 (Mar. 3, 1925, ch. 460, § 9, 43 Stat. 1136).

Changes are made in phraseology.

### § 21-1106. Warrant to take into custody; detention or temporary guardianship; place of detention

Pursuant to the filing of a petition under section 21-1103, or upon motion at any time thereafter, where it is made to appear to the court by evidence given under oath that it is for the best interest of the alleged substantially retarded person or of other persons or of the community that he be at once taken into custody, or that the service of summons will be ineffectual to secure his presence, a warrant may issue on the order of the court directing that he be taken into custody and brought before the court forthwith or at such time and place as the court appoints. Pending the hearing of the petition, the court may order the detention of the alleged substantially retarded person, or the placing of him under temporary guardianship of a suitable person, on the latter person's entering into a recognizance

for his appearance, as the court deems proper. Pending the hearing of the petition, the alleged substantially retarded person may not be detained in a place provided for the detention of persons charged with or convicted of a criminal or quasi-criminal offense. (Sept. 14, 1965, 79 Stat. 768, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(g) (1) (A), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91-490, § 2(a) (1), 84 Stat. 1087.)

## AMENDMENTS

1970—Section 2(a) (1) of Act Oct. 22, 1970, Pub. L. 91-490, amended section by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded".

Section 150(g) (1) (A) of Act July 29, 1970, Pub. L. 91-358, amended section by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91-358

See note preceding section 11-101.

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 32-611 (Mar. 3, 1925, ch. 460, § 10, 43 Stat. 1136).

Changes are made in phraseology.

### § 21-1107. Hearing; continuances; character of proofs; jury trial

After the filing of a petition under section 21-1103 and pending the final disposition of the case, the court may continue the hearing from time to time. The court shall take proofs as to the financial circumstances of the alleged substantially retarded persons and of his relatives legally liable for his support, and as to the alleged condition of the person and his personal and family history, and shall fully investigate the facts before making an order. When a jury is not required, the court shall determine the question of whether the person is substantially retarded. If the court deems it necessary, or if the alleged substantially retarded person or a relative or a person with whom he resides so demands, a jury shall be summoned to determine the question of whether the person is substantially retarded. The jury shall be selected from the jurors in attendance upon the court or a special jury may be summoned to determine the question. (Sept. 14, 1965, 79 Stat. 768, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(g) (1) (A), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91-490, § 2(a) (1), 84 Stat. 1087.)

## AMENDMENTS

1970—Section 2(a) (1) of Act Oct. 22, 1970, Pub. L. 91-490, amended section by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded".

Section 150(g) (1) (A) of Act July 29, 1970, Pub. L. 91-358, amended section by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91-358

See note preceding section 11-101.

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 32-612 (Mar. 3, 1925, ch. 460, § 11, 43 Stat. 1137).

Changes are made in phraseology.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21-1108.

### § 21-1108. Dismissal and discharge, or placement in Forest Haven; controlling considerations

Where, at a hearing under section 21-1107, the court or the jury finds that the alleged substantially retarded person is not substantially retarded as de-



fined by this chapter, the court shall order the petition dismissed and the person discharged. Where the court or the jury finds that the alleged substantially retarded person is substantially retarded and subject to be dealt with under this chapter, have<sup>1</sup> regard to all the circumstances appearing at the hearing, the controlling factor throughout the proceedings being the welfare of the persons of the community, the court shall enter a decree directing that the substantially retarded person be placed in Forest Haven. The decree so entered is binding upon all persons whom it may concern until rescinded or otherwise superseded or set aside. (Sept. 14, 1965, 79 Stat. 768, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(g) (1) (A), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91-490, § 2(a) (1) (2) (11), 84 Stat. 1087, 1089.)

#### AMENDMENTS

1970—Section 2(a) (1) (2) (11) of Act Oct. 22, 1970, Pub. L. 91-490, amended section (1) by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded", (2) by striking out "the District Training School" and inserting in lieu thereof "Forest Haven", and (3) by striking out "District Training School" in the heading and inserting in lieu thereof "Forest Haven".

Section 150(g) (1) (A) of Act July 29, 1970, Pub. L. 91-358, amended section by striking out "feeble-minded" and inserting in lieu "substantially retarded".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91-358

See note preceding section 11-101.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 32-613 (Mar. 3, 1925, ch. 460, § 12, 43 Stat. 1137).

Near the beginning of the second sentence, the words "or the jury" are inserted after "If the court", for the purpose of clarification and completeness, considering the reference to the jury in the first sentence.

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21-1109.

#### § 21-1108A. Voluntary admission to Forest Haven

(a) The Director of Public Welfare (hereinafter in this section referred to as the "Director") may admit a person to Forest Haven as a patient under this section only if—

(1) such person is certified by the Director of Public Health to be substantially retarded and in need of care at Forest Haven;

(2) such person either by himself, his parents, his spouse, or his legal guardian makes written application for admission to Forest Haven; and

(3) any contract required by subsection (d) has been executed.

(b) Any person admitted to Forest Haven pursuant to subsection (a) of this section shall be released therefrom no later than five days after receipt by the Superintendent of Forest Haven of a written request for release, except that if within such five-day period a petition concerning such person, as provided by section 21-1103, is filed in the United States District Court for the District of Columbia, such person shall be detained until a final judgment is entered by the court upon such petition.

(c) The Director may discharge any patient of Forest Haven admitted under this section if the Director is satisfied that such discharge will not ad-

versely affect the welfare or interests of the person, the community, or others.

(d) (1) If the Director finds that any person with respect to whom an application for admission to Forest Haven has been made, as provided in this section, or any parent, spouse, adult child, or legal guardian of such person, is able to pay all or any part of the cost of maintenance and care of such person, the Director shall not admit such person unless a contract for payment, satisfactory to the Director, is executed by such person, parent, spouse, adult child, or legal guardian.

(2) The Director is authorized to enter into any agreement he deems necessary with any applicant to become a patient in Forest Haven, or with his parent, spouse, adult child, or legal guardian, for payment to the District of Columbia of all or part of the cost of such maintenance and care. Upon default of payment provided by any contract entered into under this section, the Director is authorized to discharge the patient of Forest Haven with respect to whose cost of maintenance and care the contract was entered into, and, in addition, he may utilize the procedures provided for in sections 21-1110 and 21-1111 to secure payment.

(e) The District of Columbia Council is authorized to issue regulations to carry out the purposes of this section.

(f) The authority contained in this section shall extend to January 1, 1975, unless repealed prior to that date. (Added Oct. 22, 1970, Pub. L. 91-490, § 2(a) (3) (A), 84 Stat. 1087.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21-1110, 21-1111.

#### § 21-1109. Private and public patients; bond for support and maintenance; sufficiency and justification of sureties

(a) If, at the time of or before the making of an order for placement in Forest Haven pursuant to section 21-1108, a bond in the penal sum of \$1,000, executed by a surety company authorized to do business in the District of Columbia, or by two or more sureties to be approved by the court, and conditioned for the payment of the support and maintenance of the person in the manner prescribed by law, is delivered to the court, together with the sum of \$50 as an advance payment toward the support of the patient, the court shall order the admission of the person as a private patient. If the bond and advance payment are not given, the court shall order the admission of the person as a public patient. The bond and advance payment, together with the order of admission and bond, shall be transmitted by the clerk of the court to the Superintendent of Forest Haven. Until the bond and advance payment are delivered to the Superintendent, he shall admit the person to the institution only as a public patient.

(b) At the request of the Superintendent of Forest Haven, the court shall require the sureties on the bond provided by subsection (a) of this section to justify their responsibility anew or order that a new bond be given in place of the original. The justification or new bond shall be transmitted to the superintendent. Unless it is delivered to the Superintendent within 30 days, the patient shall from the time of the request be regarded as a public patient.

<sup>1</sup> So in original. Probably should read "having".



(Sept. 14, 1965, 79 Stat. 768, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 159(g) (5), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91-490, § 2(a) (2), 84 Stat. 1087.)

#### AMENDMENTS

1970—Section 2(a) (2) of Act Oct. 22, 1970, Pub. L. 91-490, amended section by striking out "the District Training School" and inserting in lieu thereof "Forest Haven".  
Section 150(g) (5) of Act July 29, 1970, Public Law 91-358 amended subsection (a) by striking out "running to the United States".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91-358

See note preceding section 11-101 and note to 21-301.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 32-614 (Mar. 3, 1925, ch. 460, § 13, 43 Stat. 1137).

Changes are made in phraseology and arrangement.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21-1112.

### § 21-1110. Liability of estate of public patient for maintenance

When the court orders the admission of a person to Forest Haven as a public patient or when a person is admitted to Forest Haven as a patient under section 21-1108A, and it appears then or thereafter that the patient has an estate out of which the Government may be reimbursed for his maintenance, in whole or in part, the court shall order the payment out of the estate of the whole or such part of the cost of maintenance of the patient at the institution as it deems just, regard being had for the needs of those having a legal right to support out of the estate. The order shall remain in full force and effect unless modified by the court. Upon the death of the substantially retarded person while an inmate at the institution, or within five years after his discharge therefrom, his estate is liable to the District of Columbia for the cost of his maintenance at the institution, and the claim of the District of Columbia is a preferred claim. (Sept. 14, 1965, 79 Stat. 769, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(g) (1) (A), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91-490, § 2(a) (1) (2) (5), 84 Stat. 1087, 1088.)

#### AMENDMENTS

1970—Section 2(a) (1) (2) (5) of Act Oct. 22, 1970, Pub. L. 91-490, amended section (1) by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded", (2) by striking out "the District Training School" and inserting in lieu thereof "Forest Haven", and (3) by inserting in the first sentence immediately after "as a public patient" the following: "or when a person is admitted to Forest Haven as a patient under section 21-1108A".

Section 150(g) (1) (A) of Act July 29, 1970, Pub. L. 91-358, amended section by striking out "feeble-minded" and inserting in lieu "substantially retarded".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91-358

See note preceding section 11-101.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 32-615 (Mar. 3, 1925, ch. 460, § 14, 43 Stat. 1137; Apr. 28, 1945, ch. 102, 59 Stat. 100).

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21-1108A, 21-1111.

§ 21-1111. Proceedings to charge relatives legally responsible for maintenance of public patient; collection of maintenance payments; enforcement of order; liability of decedent's estate

(a) When a court orders the admission of a person to Forest Haven as a public patient or when a person is admitted to Forest Haven as a patient under section 21-1108A, and the court finds at any time that the patient does not have an estate out of which the District of Columbia may be fully reimbursed for his maintenance, a parent, spouse, and adult children of the substantially retarded person, if of sufficient financial ability, shall pay the cost to the District of Columbia of his maintenance at the institution. The Commissioner of the District of Columbia may petition the court, during the commitment of the substantially retarded person to the institution, to direct any of those relatives to pay the District of Columbia, in whole or in part, for his maintenance at the institution. They may not be required to pay more than the actual cost to the District of Columbia of his maintenance.

(b) When the court finds that a relative specified by subsection (a) of this section is able to pay for the maintenance of the substantially retarded person, in whole or in part, it may make an order requiring payment by him or all the relatives of such sums as it finds that he or they are reasonably able to pay and as may be necessary to provide for his maintenance. The order shall require the payment of the sums to the Finance Office of the Department of General Administration, or its successor, or its authorized representative or agency, of the District monthly, as the court directs. The Finance Office, or its successor, or its authorized representative or agency, as the case may be, shall collect the sums due under this section and section 21-1110, and turn them into the Treasury of the United States to the credit of the District of Columbia.

(c) If a relative made liable for the maintenance of the substantially retarded person fails to provide or pay for the maintenance, or his part thereof, in accordance with the order of the court, the court shall issue to him a citation to show cause why he should not be adjudged in contempt. The citation shall be served at least 10 days before the hearing thereon.

(d) An order issued under this section may be enforced against any property of a relative made liable for the maintenance of the substantially retarded person, in the same way as if it were an order for temporary alimony in a divorce case.

(e) Upon the death of a relative ordered by the court to pay for the maintenance of the substantially retarded person in whole or in part, the estate of the relative is liable to the District of Columbia for the unpaid amount due the District of Columbia under the order of court at the time of his death, and the claim of the District of Columbia is a preferred claim against his estate. (Sept. 14, 1965, 79 Stat. 769, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(g) (1) (A), (6), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91-490, § 2(a) (1) (2) (6), 84 Stat. 1087, 1089.)

#### AMENDMENTS

1970—Section 2(a) (1) (2) (6) of Act Oct. 22, 1970, Pub. L. 91-490, amended section (1) by striking out "feeble-



mind" and inserting in lieu thereof "substantially retarded", (2) by striking out "the District Training School" and inserting in lieu thereof "Forest Haven", and (3) by striking out "and finds" in the first sentence and inserting in lieu thereof "or when a person is admitted to Forest Haven as a patient under section 21-1108A, and the court finds".

Section 150(g) (1) (A) of Act July 29, 1970, Pub. L. 91-358, amended section by striking out "feeble-minded" and inserting in lieu "substantially retarded".

Section 150(g) (6) of Act July 29, 1970, Public Law 91-358 further amended subsection (a) by striking out "Commissioners" and inserting "Commissioner".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91-358

See note preceding section 11-101.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### TRANSFER OF FUNCTIONS

Organization Order No. 121, dated Dec. 12, 1957, provided for the Finance Office in the Department of General Administration composed of the Office of the Finance Officer, Property Tax Division, Treasury Division, Accounting Division, and Data Processing Division. The Treasury Division had the function of collecting revenues of the District and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated Dec. 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. Functions of the Finance Office as stated in Part IVC of Org. Ord. No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order [Organization Action] No. 69-96, dated Mar. 7, 1969.

The Orders are set out in the appendix to title 1.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 32-616 (Mar. 3, 1925, ch. 460, § 15, 43 Stat. 1138; Apr. 28, 1945, ch. 102, 59 Stat. 100; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

In two places, "court" is substituted for "United States District Court for the District of Columbia", as there should be no question as to what court is referred to. The references are to the District Court. See section 21-1103 herein. The provisions carried into the sections following thereafter did not refer to the court by its full name.

In subsec. (b), the references "Finance Office of the Department of General Administration, or its successor, or its authorized representative or agency" and "Finance Office, or its successor, or its authorized representative or agency, as the case may be" are substituted, respectively, for the two references in section 32-616 of D.C. Code, 1961 ed., to the Collector of Taxes, to conform with Reorganization Order No. 20, Nov. 10, 1952, as amended, and Organization Order No. 121, Dec. 12, 1957, as amended, of the Commissioners of the District of Columbia, issued under authority of Presidential Reorg. No. 5 of 1952, 66 Stat. 852, and set out in the Appendix to Title 1 of this Code, Organization Order No. 121 having rescinded and superseded Reorganization Order No. 20. Under those orders, the office of Collector of Taxes was abolished, and the functions thereof are now performed by the Finance Office of the Department of General Administration through one or more of its constituent agencies or divisions. The words referring to "its successor" are included in these references to preserve the scope and application of the provisions in which the references appear, should there be further reorganizational changes affecting the terms used or functions prescribed therein.

Changes are made in phraseology and arrangement.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21-1108A.

#### § 21-1112. Public patients may become private patients by filing bond and paying advance

When a person is admitted to Forest Haven as a public patient, and thereafter the bond and advance payment referred to in section 21-1109 are executed and delivered to the court, the court shall make an order changing the status of the person from a public to a private patient. (Sept. 14, 1965, 79 Stat. 770, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Oct. 22, 1970, Pub. L. 91-490, § 2(a) (2), 84 Stat. 1087.)

#### AMENDMENT

1970—Section 2(a) (2) of Act Oct. 22, 1970, Pub. L. 91-490, amended section by striking out "the District Training School" and inserting in lieu thereof "Forest Haven".

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 32-617 (Mar. 3, 1925, ch. 460, § 16, 43 Stat. 1138).

Changes are made in phraseology.

#### § 21-1113. Restrictions on discharge; petition for discharge; causes for discharge; superintendent to be notified; notice of variation of order; denial on<sup>1</sup> one petition not a bar to another

(a) A substantially retarded person admitted to Forest Haven pursuant to an order of court may not be discharged therefrom except as provided by this section, but the right of petition for the writ of habeas corpus may not be abridged.

(b) After the admission of a substantially retarded person pursuant to an order of court provided by this chapter, a relative or friend of the substantially retarded person, or a reputable citizen, or the superintendent of the institution, or the Department of Public Welfare, may petition the court that entered the order of admission to discharge the substantially retarded person, or to vary the order of the court admitting him to the institution.

(c) When, on the hearing of a petition filed pursuant to subsection (b) of this section, the court is satisfied that the welfare of the substantially retarded person or of the other persons or of the community requires his discharge or a variation of the order, it may enter an order of discharge or variation as it deems proper.

(d) Discharges and variations of orders may be ordered or made if:

(1) the person adjudged to be substantially retarded is not substantially retarded; or

(2) the person has so far improved as to be capable of caring for himself; or

(3) the relatives or friends of the substantially retarded person are able and willing to supervise, control, care for, and support him, and request his discharge, and, in the judgment of the Superintendent of Forest Haven, evil consequences are not likely to follow the discharge.

(e) The enumeration of grounds of discharge or variation by subsection (d) of this section does not exclude other grounds of discharge or variation which the court deems adequate, having regard for the welfare of the person concerned or of other persons or of the community.

(f) On a petition for discharge or variation filed pursuant to this section, the court may discharge the substantially retarded person from all supervision, control, and care, or make such variation of the

<sup>1</sup> So in original. Probably should read "of".



order as to maintenance as the court deems fit under all the circumstances appearing at the hearing of the petition.

(g) The Superintendent of Forest Haven shall be notified of the time and place of hearing on a petition for discharge or variation filed pursuant to this section, as the court directs, and an order of discharge or variation may not be entered without giving the Superintendent a reasonable opportunity to be heard. The court may notify such other persons, relatives, and friends of the substantially retarded person as it deems proper, of the time and place of the hearing on the petition.

(h) A person may not be charged with any greater degree of financial responsibility for the support of a substantially retarded person by variation of the order as to maintenance without notice and a reasonable opportunity to be heard.

(i) The denial of one petition for discharge or variation is not a bar to another petition on the same or different ground filed within a reasonable time thereafter, the reasonable time to be determined by the court in its discretion, discouraging frequent, repeated, frivolous, ill-founded petitions for discharge or variation of a prior order. (Sept. 14, 1965, 79 Stat. 770, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(g) (1) (A), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91-490, § 2(a) (1), (2), 84 Stat. 1087.)

#### AMENDMENTS

1970—Section 2(a) (1) (2) of Act Oct. 22, 1970, Pub. L. 91-490, amended section (1) by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded", and (2) by striking out "the District Training School" and inserting in lieu thereof "Forest Haven".

Section 150(g) (1) (A) of Act July 29, 1970, Pub. L. 91-358, amended section by striking out "feeble-minded" and inserting in lieu "substantially retarded".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91-358

See note preceding section 11-101.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 32-618 (Mar. 3, 1925, ch. 460, § 17, 43 Stat. 1138; Mar. 16, 1926, ch. 58, §§ 1, 2, 44 Stat. 208).

In subsec. (b), "Department of Public Welfare" is substituted for "Board of Public Welfare", for the same reason given in revision note under section 21-1102 herein.

Changes are made in phraseology and arrangement.

#### § 21-1114. Proceeding when child brought before Family Division appears substantially retarded

When a child is brought before the Family Division of the Superior Court upon allegations that he is delinquent, neglected, or in need of supervision, and it appears to the court, on the testimony of a physician or psychologist or other evidence, that the child is substantially retarded within the meaning of this chapter, the court may adjourn the proceedings, other than proceedings on a motion to transfer pursuant to section 16-2307, and direct a suitable officer of the court or other suitable reputable person to file a petition under this chapter. The court may order that, pending the preparation, filing, and hearing of the petition, the child be detained in a place of safety, or be placed under the guardianship of a suitable person, if that person enters into a recognizance for his appearance. (Sept.

14, 1965, 79 Stat. 771, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(g) (7), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91-490, § 2(a) (1) (12), 84 Stat. 1087.)

#### AMENDMENT

1970—Section 2(a) (1) (12) of Act Oct. 22, 1970, Pub. L. 91-490, amended section (1) by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded", and (2) by striking of "feeble-minded" in the heading and inserting in lieu thereof "substantially retarded."

Section 150(g) (7) of Act July 29, 1970, Public Law 91-358 amended section (A) by striking out "juvenile court of the District of Columbia as a dependent or delinquent child" and inserting in lieu thereof "Family Division of the Superior Court upon allegations that he is delinquent, neglected, or in need of supervision".

(B) by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded",

(C) by inserting ", other than proceedings on a motion to transfer pursuant to section 16-2307," after "the proceedings" in the first sentence, and

(D) by striking out "brought before juvenile court appears feeble-minded" in the section heading and inserting in lieu thereof "brought before Family Division appears substantially retarded".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91-358

See note preceding section 11-101.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 32-620 (Mar. 3, 1925, ch. 460, § 19, 43 Stat. 1139).

Since, in section 32-620 of D.C. Code, 1961 ed., the first reference, near the beginning, was to "child", only, and a reference was made, also, to the juvenile court, it would seem that the section was intended to relate only to children. Therefore, the term "person", in other references in that section to "person or child", is omitted from the revised provisions as surplusage.

Changes are made in phraseology.

#### § 21-1115. Inquiry under this chapter if person convicted of offense

(a) On the conviction by a court of record of competent jurisdiction of a person of an offense, or of a violation of an ordinance which is in whole or in part a violation of a statute of the District of Columbia, the court when satisfied on the testimony of a physician or a psychologist or other evidence that the person is substantially retarded within the meaning of this chapter, may suspend sentence, or suspend the entering of an order sending the person to a jail, prison, or reformatory, or to a training or industrial school, and direct that a petition be filed pursuant to this chapter.

(b) When the court directs a petition to be filed pursuant to subsection (a) of this section, it may order that, pending the preparation, filing and hearing of the petition, the person be detained in a place of safety, or be placed under the guardianship of a suitable person, if that person enters into a recognizance for his appearance.

(c) Where, upon the hearing of a petition filed pursuant to this section or pursuant to a subsequent hearing under this chapter, the person is found not to be substantially retarded, the court shall impose sentence. (Sept. 14, 1965, 79 Stat. 771, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(g) (1) (A), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91-490, § 2(a) (1), 84 Stat. 1087.)



## AMENDMENTS

1970—Section 2(a)(1) of Act Oct. 22, 1970, Pub. L. 91-490, amended section by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded".

Section 150(g)(1)(A) of Act July 29, 1970, Pub. L. 91-358, amended section by striking out "feeble-minded" and inserting in lieu "substantially retarded".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91-358

See note preceding section 11-101.

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 32-621 (Mar. 3, 1925, ch. 460, § 20, 43 Stat. 1139).

Since, in section 32-621 of D.C. Code, 1961 ed., the first reference is to "person", only, it would seem that the section was intended to relate to adults, as well as children. Therefore, the term "person" is substituted, in the revised provisions, for a single reference in section 32-621 to "child"; the term "child", in other references in that section to "person or child", is omitted; and references to "jail" and "prison" are inserted before the reference to "reformatory", etc. The term "person" includes "child".

Changes are made in phraseology and arrangement.

### § 21-1116. Transfer to Saint Elizabeths Hospital when person becomes insane

When a person becomes insane while confined in Forest Haven and the Superintendent of the institution certifies in writing that the person is insane and is not a fit subject for care and maintenance at the institution, the Superior Court of the District of Columbia shall issue an order for his admission to Saint Elizabeths Hospital. The transfer does not affect the liability on a bond for private support, or an order for reimbursement for public support. All bonds and orders for reimbursement are liable and in force for the cost of maintenance at Saint Elizabeths Hospital. (Sept. 14, 1965, 79 Stat. 771, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(g)(8), 84 Stat. 569; Oct. 22, 1970, Pub. L. 91-490, § 2(a)(2), 84 Stat. 1087.)

## AMENDMENTS

1970—Section 2(a)(2) of Act Oct. 22, 1970, Pub. L. 91-490, amended section by striking out "the District Training School" and inserting in lieu thereof "Forest Haven".

Section 150(g)(8) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91-358

See note preceding section 11-101 and note to 21-301.

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 32-622 (Mar. 3, 1925, ch. 460, § 21, 43 Stat. 1140; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

In two places, "mentally ill" is substituted for "insane", to conform with terms as used in chapter 5 of this title. For definitions of "mental illness" and "mentally ill person", see section 21-501, which is in that chapter.

Changes are made in phraseology.

## CROSS REFERENCE

Saint Elizabeths Hospital, see, also, 24 U.S.C. § 161 et seq.

### § 21-1117. Separate docket of cases brought under section 21-1103; reports of commissions

The court shall keep a separate docket of proceedings initiated by a petition filed section 21-1103, upon which shall be made such entries as will, together with the papers filed, preserve a complete

record of each case, the original petitions, writs, and returns made thereto. The reports of commissions shall be filed with the clerk of the court. (Sept. 14, 1965, 79 Stat. 772, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(g)(9), 84 Stat. 569; Oct. 22, 1970, Pub. L. 91-490, § 2(a)(7)(13), 84 Stat. 1089.)

## AMENDMENTS

1970—Section 2(a)(7)(13) of Act Oct. 22, 1970, Pub. L. 91-490, amended section (1) by striking out "in feeble-mindedness" and inserting in lieu thereof "initiated by a petition filed under section 21-1103", and (2) by striking out "of feeble-minded cases" in the catchline and inserting in lieu thereof "of cases brought under section 21-1103".

Section 150(g)(9) of Act July 29, 1970, Public Law 91-358 amended section (A) by striking out "feeble-mindedness" and inserting in lieu thereof "substantial retardation", and

(B) by striking out "feeble-minded" in the section heading and inserting in lieu thereof "substantially retarded".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91-358

See note preceding section 11-101.

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 32-623 (Mar. 3, 1925, ch. 460, § 22, 43 Stat. 1140; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Changes are made in phraseology.

### § 21-1118. Transfer of substantially retarded from National Training Schools for Boys or Girls

When the Superintendent of the National Training School for Boys or of the National Training School for Girls certifies to the court that in his opinion an inmate thereof is substantially retarded, the court shall permit him or any other reputable citizen of the District of Columbia to file a petition as provided by section 21-1103. If the inmate is found and adjudged to be substantially retarded, the court shall immediately issue an order for his admission as a public patient to Forest Haven. (Sept. 14, 1965, 79 Stat. 772, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(g)(1), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91-490, § 2(a)(1)(2)(14), 84 Stat. 1087, 1089.)

## AMENDMENTS

1970—Section 2(a)(1)(2)(14) of Act Oct. 22, 1970, Pub. L. 91-490, amended section (1) by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded", (2) by striking out "the District Training School" and inserting in lieu thereof "Forest Haven", and (3) by striking out "feeble-minded" in the heading and inserting in lieu thereof "substantially retarded".

Section 150(g)(1)(A) of Act July 29, 1970, Pub. L. 91-358, amended section by striking out "feeble-minded" and inserting in lieu "substantially retarded".

Sec. 150(g)(1)(B) amended the section heading in the same manner.

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91-358

See note preceding section 11-101.

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 32-624 (Mar. 3, 1925, ch. 460, § 23, 43 Stat. 1140).

Changes are made in phraseology.

### § 21-1119. Removal from school of nonresidents of the District of Columbia

The Department of Public Welfare shall cause a person who has been admitted to Forest Haven, but who has not acquired a legal residence in the



District, to be removed as soon as possible to the State in which he belongs. (Sept. 14, 1965, 79 Stat. 772, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Oct. 22, 1970, Pub. L. 91-490, § 2(a)(2), 84 Stat. 1087.)

#### AMENDMENT

1970—Section 2(a)(2) of Act Oct. 22, 1970, Pub. L. 91-490, amended section by striking out "the District Training School" and inserting in lieu thereof "Forest Haven".

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 32-625 (Mar. 3, 1925, ch. 460, § 24, 43 Stat. 1140; Mar. 16, 1926, ch. 58, §§ 1, 2, 44 Stat. 208).

"Department of Public Welfare" is substituted for "Board of Public Welfare" for the same reason given in revision note under section 21-1102 herein.

### § 21-1120. Paroles; conditions; expense; discretion of superintendent; violation; return

Under general conditions prescribed by the District of Columbia Council, the Superintendent of Forest Haven may grant paroles to patients in the institution where the conditions in the home in which they are to reside are satisfactory and where the paroles are deemed by the Superintendent as not injurious to the interests of the patients or the public. The expense of the vacation shall be borne by the guardian, relatives, or other persons responsible for the care of the patient while on vacation. The Superintendent may grant a parole for an indefinite period to a patient who has improved sufficiently to warrant the opportunity and when satisfactory supervision for the patient while on leave is assured. If the conditions of a parole granted under this chapter are violated, the patient may be taken up and returned as an escaped patient. (Sept. 14, 1965, 79 Stat. 772, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150 (g)(2), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91-490, § 2(a)(2), 84 Stat. 1087.)

#### AMENDMENTS

1970—Section 2(a)(2) of Act Oct. 22, 1970, Pub. L. 91-490, amended section by striking out "the District Training School" and inserting in lieu thereof "Forest Haven".

Section 150(g)(2) of Act July 29, 1970, Public Law 91-358 amended section by striking out "Department of Public Welfare" and inserting in lieu "District of Columbia Council".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91-358

See note preceding section 11-101.

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(203) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of prescribing general conditions under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 32-626 (Mar. 3, 1925, ch. 460, § 25, 43 Stat. 1140; Mar. 16, 1926, ch. 58, §§ 1, 2, 44 Stat. 208).

"Department of Public Welfare" is substituted for "Board of Public Welfare" for the same reason given in revision note under section 21-1102.

Changes are made in phraseology.

### § 21-1121. Citation, order, or process on patients to be served only by superintendent

Only the Superintendent of Forest Haven, or a person designated in writing by him, may serve a

citation, order, or process required by law to be served on a patient of the institution. Return thereof to the court from which it issued may be made by the Superintendent. The service and return have the same force and effect as if it had been made by the United States marshal of the District of Columbia, or his deputy, or by the sheriff of the county in which the institution is located. (Sept. 14, 1965, 79 Stat. 772, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Oct. 22, 1970, Pub. L. 91-490, § 2(a)(2)(8)(15), 84 Stat. 1087, 1089.)

#### AMENDMENT

1970—Section 2(a)(2)(8)(15) of Act Oct. 22, 1970, Pub. L. 91-490, amended section (1) by striking out "the District Training School" and inserting in lieu thereof "Forest Haven", (2) by striking out "and inmate" and inserting in lieu thereof "a patient", and (3) by striking out "inmates" in the heading and inserting in lieu thereof "patients".

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 32-627 (Mar. 3, 1925, ch. 460, § 26, 43 Stat. 1140).

Words "or his deputy," are inserted after "United States marshal of the District of Columbia", for the purpose of completeness. See 28 U.S.C. § 542 (now 28 U.S.C. § 562).

Changes are made in phraseology.

### § 21-1122. Approval of patients' contracts, etc., by court

A public or private patient in Forest Haven may not be allowed to execute a contract, deed, will, or other instrument unless the execution has first been allowed and approved by an order entered of record by the Superior Court of the District of Columbia. A certified copy of the order shall be furnished to the Superintendent of the institution at the time of the execution of the instrument.

The order of the court is evidence only of the capacity of the patient to make the instrument. (Sept. 14, 1965, 79 Stat. 773, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(g)(8), 84 Stat. 569; Oct. 22, 1970, Pub. L. 91-490, § 2(a)(2)(16), 84 Stat. 1087, 1889.)

#### AMENDMENTS

1970—Section 2(a)(2)(16) of Act Oct. 22, 1970, Pub. L. 91-490, amended section (1) by striking out "the District Training School" and inserting in lieu thereof "Forest Haven", and (2) by striking out "inmates" in the heading and inserting in lieu thereof "patients".

Section 150(g)(8) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91-358

See note preceding section 11-101 and note to 21-301.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 32-628 (Mar. 3, 1925, ch. 460, § 27, 43 Stat. 1140; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Changes are made in phraseology.

### § 21-1123. Offenses and penalties

Whoever:

(1) knowingly contrives, or conspires to have a person adjudged substantially retarded under the provisions of this chapter, unlawfully and improperly; or

(2) violates a provisions<sup>1</sup> of this chapter—

<sup>1</sup> So in original. Probably should read "provision".



shall be fined not more than \$1,000 or imprisoned not more than one year, or both. (Sept. 14, 1965, 79 Stat. 773, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(g) (1) (A), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91-490, § 2(a) (1), 84 Stat. 1087.)

## AMENDMENTS

1970—Section 2(a) (1) of Act Oct. 22, 1970, Pub. L. 91-490, amended section by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded".

Section 150(g) (1) (A) of Act July 29, 1970, Pub. L. 91-358, amended section by striking out "feeble-minded" and inserting in lieu "substantially retarded".

## EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91-358

See note preceding section 11-101.

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 32-619 (Mar. 3, 1925, ch. 460, § 18, 43 Stat. 1139).

Words, "and upon conviction thereof," which followed the reference to misdemeanor, are omitted as surplusage. The omission conforms with the policy adopted in the revision of Title 18, United States Code, which became effective September 1, 1948.

Words, "in the discretion of the court in which such conviction is had", which followed "or both", are also omitted as surplusage.

Changes are made in phraseology.

## Chapter 13.—ALCOHOLICS AND DRUG ADDICTS

Sec.

21-1301. Appointment of committee.

21-1302. Bond; powers and duties.

21-1303. Jurisdiction of court over property.

21-1304. Discharge.

## CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 11-501, 11-921.

## § 21-1301. Appointment of committee

When a person residing in the District of Columbia, and owning an estate, real or personal, situate therein, is alleged to be unfit, from the habitual use of intoxicating liquors, opium, cocaine, or similar substance, or compound or derivative thereof, to manage or control his estate properly, the Superior Court of the District of Columbia, on the petition of a creditor or relative of the person, or if there is not a creditor or relative, upon the petition of a person living in the District of Columbia, and upon summons being served upon the person alleged to be unfit, commanding him to appear and answer the petition, may order a jury to be summoned to ascertain whether the person is an alcoholic or addicted to the habitual use of opium, cocaine, or similar substance or compound derivative thereof and unfit from any of these causes to manage and control his property. If the jury finds that the person is an alcoholic or a habitual user of opium, cocaine, or similar substance or a compound or derivative thereof and unfit to manage or control his property, the finding, when confirmed by the court, shall be entered of record in the cause, and the court shall thereupon appoint a fit person to be committee of the person so declared unfit to manage or control his property. (Sept. 14, 1965, 79 Stat. 773, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(h) (1), 84 Stat. 569.)

## AMENDMENT

1970—Section 150(h) (1) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United

States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101 and note to 21-301.

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-401 (Mar. 3, 1901, ch. 854, § 115f, as added June 30, 1902, ch. 1329, 32 Stat. 524; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Section is from first paragraph of section 21-401 of D.C. Code, 1961 ed. Reference to equity court was changed to United States District Court for the District of Columbia. See revision note under section 18-110. Changes are made in phraseology.

## CROSS REFERENCE

Exemption from military service, see § 39-101.

## NOTES TO DECISIONS UNDER PRIOR LAW

## Unfitness to manage property

Finding of unfitness to manage property in a proceeding under this section is conclusive of condition on date of rendition; "it is not so as of a date prior thereto, but at the same time it has the tendency to raise some inference that the helpless condition must have existed for some space of time." *Knott v. Giles* (1906, 27 App. D.C. 581).

## § 21-1302. Bond; powers and duties

The committee before entering upon the discharge of his duties shall execute a bond, with surety, to be approved by the court or a judge thereof, in a penalty equal to the amount of the personal property and the yearly rents to be derived from the real estate of the person, conditioned for the faithful performance of his duties as the committee. He shall have control of the estate, real and personal, with power to collect all debts due the alcoholic or drug addict, and to adjust and settle all accounts owing by him, and to sue and be sued in his representative capacity. He shall apply the annual income of the estate to the support of the person, and the maintenance of his family and education of his children; and shall in all other respects perform the same duties and have the same rights as pertain to committees of lunatics and idiots. (Sept. 14, 1965, 79 Stat. 773, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(h) (2), 84 Stat. 569.)

## AMENDMENT

1970—Section 150(h) (2) of Act July 29, 1970, Public Law 91-358 amended section by striking out in the first sentence "to the United States".

## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101 and note to 21-301.

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-401 (Mar. 3, 1901, ch. 854, § 115f, as added June 30, 1902, ch. 1329, 32 Stat. 524; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Section is from second paragraph of section 21-401 of D.C. Code, 1961 ed.

References to drug addict are inserted to conform with section 21-1301 herein and with the probable legislative intent.

Changes are made in phraseology and arrangement.

## § 21-1303. Jurisdiction of court over property

The court has the same powers as to the property of a person for whom a committee has been appointed pursuant to this chapter as it has in re-



spect of the property of infants. (Sept. 14, 1965, 79 Stat. 774, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-401 (Mar. 3, 1901, ch. 854, § 115f, as added June 30, 1902, ch. 1329, 32 Stat. 524; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Section is from part of the third paragraph of section 21-401 of D.C. Code, 1961 ed.

The provisions are rewritten for purposes of clarification.

#### § 21-1304. Discharge

When a person for whom a committee has been appointed under this chapter becomes competent to manage his property on account of reformation in his habits, he may apply to the court to have the committee discharged and the care and control of his property restored to him. When it appears by the verdict of a jury summoned therefor, or by affidavits, or other evidence to the satisfaction of the court, that the applicant is a fit person to have the care or control of his property, it shall enter an order restoring him to all the rights and privileges enjoyed before the committee was appointed. (Sept. 14, 1965, 79 Stat. 774, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-401 (Mar. 3, 1901, ch. 854, § 115f, as added June 30, 1902, ch. 1329, 32 Stat. 524; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Section is from part of the third paragraph of section 21-401 of D.C. Code, 1961 ed.

Changes are made in phraseology.

### Chapter 15.—CONSERVATORS

Sec.

- 21-1501. Appointment of conservators.
- 21-1502. Filing of petition; requirements; time and place of hearing; appointment of guardian ad litem.
- 21-1503. Bond; powers and duties.
- 21-1504. Discharge.
- 21-1505. Appointment of temporary conservator.
- 21-1506. Personal welfare of person under conservatorship.
- 21-1507. Lis pendens.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 11-501, 11-921.

#### § 21-1501. Appointment of conservators

When an adult residing in or having property in the District of Columbia is unable, by reason of advanced age, mental weakness not amounting to unsoundness of mind, mental illness, as the latter term is defined by section 21-501, or physical incapacity, properly to care for his property, the Superior Court of the District of Columbia may, upon his petition or the sworn petition of one or more of his relatives or any other person or persons, appoint a fit person to be conservator of his property. (Sept. 14, 1965, 79 Stat. 774, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150 (i) (1), 84 Stat. 569.)

#### AMENDMENT

1970—Section 150(i)(1) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101 and note to 21-301.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-501 (Oct. 24, 1951, ch. 545, § 1, 65 Stat. 608; Sept. 15, 1964, Pub. L. 88-597, § 18, 78 Stat. 953).

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 20-351, 21-1502.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Capacity to make a will

Provision in section 21-1507 voiding transfer of real and personal property by person subject to conservatorship does not render that person, per se. incapable of making valid will. *D. H. Rossi v. E. A. Fletcher* (1969, 418 F. 2d 1169, 135 U.S. App. D.C. 333; cert. denied 90 S. Ct. 568).

Congress in adopting provisions in section 18-102 that will was not valid unless person making it was of required age and at time of executing or acknowledging it was of sound and disposing mind and capable of executing valid deed or contract did not intend to deprive mentally competent person of testamentary capacity merely because he was subject to conservatorship. *Id.*

##### Colorable jurisdiction

A determination that conservator was properly appointed was correct where the initial appointments of guardian ad litem, temporary conservator and permanent conservator of person and estate were based on colorable jurisdiction. *E. D. Mitchell v. C. D. Ensor, et al.* (1969, 412 F. 2d 155, 134 U.S. App. D.C. 24).

##### Control over property in other jurisdiction

Local statutes cannot by themselves give conservator power to assert control over property in other jurisdictions, and local conservator has authority and power to take control over property located in another state only so far as allowed by comity of that state. *E. D. Mitchell v. C. D. Ensor, et al.* (1969, 412 F. 2d 155, 134 U.S. App. D.C. 24).

##### Determination of benefits accruing to estate

Determination as to benefits accruing to estate and size of estate for purposes of compensation of former conservators and guardian ad litem required that record be supplemented to determine extent conservators actually assumed, or had power to assume, control over appellant's stock and specific findings of fact as to whether value of her stock may have increased regardless of efforts of conservators and whether services of guardian and conservators actually inured to her benefit. *E. D. Mitchell v. C. D. Ensor, et al.* (1969, 412 F. 2d 155, 134 U.S. App. D.C. 24).

##### Discretion of trial judge

In a case where there is any property within District of Columbia, appointment of conservator is within discretion of trial judge in view of lack of statutory specification of the minimum amount of property necessary for appointment of conservator. *E. D. Mitchell v. C. D. Ensor, et al.* (1969, 412 F. 2d 155, 134 U.S. App. D.C. 24).

Where the appellant had \$850 worth of property in the District, appointment of a conservator pursuant to statute governing guardians of property of mentally incompetent persons was not an abuse of discretion. *Id.*

##### Remand

Since this proceeding leading to the appointment of a conservator for the person and property of wife, the husband has returned to the United States and was residing in New Jersey, and since wife remained in her mother's home in New Jersey, the case would be remanded for determination as to whether District of Columbia conservatorship should be continued to protect parties' single asset in the District. *G. J. Davis v. B. Corrin* (1969, 417 F. 2d 1157, 135 U.S. App. D.C. 210).

##### Residence requirement

The evidence in this case on issue whether federal district court for the District of Columbia had jurisdiction to appoint a conservator for wife was sufficient to authorize a finding that wife was a resident of the District, not-



withstanding fact that the wife was being cared for by her mother in mother's home in New Jersey. *G. J. Davis v. B. Corrin* (1969, 417 F. 2d 1157, 135 U.S. App. D.C. 210).

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Redemption by conservator

Neither conservator nor his ward must wait for removal of legal disability to redeem property from tax sale, and conservator may not be denied right to redeem in proper case because he is conservator, under District of Columbia statutes. *Shenandoah Corp. v. E. F. Jackson* (1962, 298 F. 2d 324, 111 U.S. App. D.C. 410).

#### § 21-1502. Filing of petition; requirements; time and place of hearing; appointment of guardian ad litem

(a) Pursuant to the filing of the petition under section 21-1501, the court shall fix a time and place for a hearing; and shall cause at least 14 days' notice thereof to be given to the person for whom a conservator is sought to be appointed, if he is not the petitioner, and to such other persons as the court directs. The petition shall include, among other things—

- (1) the reasons for the appointment of a conservator;
- (2) the name and address of the person for whom the conservator is sought;
- (3) the date and place of his birth, if known; and
- (4) the names and addresses of the nearest known heirs at law, or the next of kin, if any.

(b) The court may appoint a disinterested person to act as guardian ad litem in a proceeding under this section. Upon a finding that the person for whom the conservator is sought is incapable of caring for his property, the court shall appoint a conservator who shall have the charge and management of the property of the person subject to the direction of the court. (Sept. 14, 1965, 79 Stat. 774, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-502 (Oct. 24, 1951, ch. 545, § 2, 65 Stat. 608).

Changes are made in phraseology and arrangement.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Court's duties in relation to conservator

Court appointing conservators should be willing to receive complaints and reports from any source concerning alleged misconduct or conflict of interest. *C. M. Price and G. P. Marshall, Jr., etc. v. E. B. Williams et al.* (1968, 393 F. 2d 348, 129 U.S. App. D.C. 239).

##### Joint services of guardian and conservator

Permitting services of guardian ad litem to continue after permanent conservators were appointed was not improper. *C. M. Price and G. P. Marshall, Jr., etc. v. E. B. Williams et al.* (1968, 393 F. 2d 348, 129 U.S. App. D.C. 239).

##### Liability of conservator

In a case where a bank honored checks drawn without authority by an incompetent upon account carried in the name of conservatorship estate, which had been created for the incompetent, and where the conservator recovered judgment against bank in the amount of the checks and the bank against the incompetent, who had been impleaded by bank, in same amount, refusal to require conservator to pay judgment recovered by bank against the incompetent was not error. *In re Appointment of a Conservator for B. Justice, Jr.; et ano. etc.* (1969, 418 F. 2d 1162, 135 U.S. App. D.C. 326).

##### Notice to husband

Under this section which requires that the district court shall cause at least 14 days' notice of hearing to be given to the person for whom a conservator is sought to

be appointed, if he is not the petitioner, and to such other persons as the court directs, the husband of the person for whom a conservator was sought was not an indispensable party to the proceeding leading to the appointment of the conservator and failure to notify him of hearing did not vitiate that proceeding. *G. J. Davis v. B. Corrin* (1969, 417 F. 2d 1157, 135 U.S. App. D.C. 210).

##### Remand

Since this proceeding leading to the appointment of a conservator for the person and property of wife, the husband has returned to the United States and was residing in New Jersey, and since wife remained in her mother's home in New Jersey, the case would be remanded for determination as to whether District of Columbia conservatorship should be continued to protect parties' single asset in the District. *G. J. Davis v. B. Corrin* (1969, 417 F. 2d 1157, 135 U.S. App. D.C. 210).

##### Reversal on appeal

The Court of Appeals should not reverse lower court's decision regarding conservatorship matters unless a clear abuse of discretion is shown. *C. M. Price and G. P. Marshall, Jr., etc. v. E. B. Williams et al.* (1968, 393 F. 2d 348, 129 U.S. App. D.C. 239).

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Appointment of guardian

Under this section providing for appointment of a guardian ad litem in a proceeding to have a conservator appointed, selection and supervision of guardian ad litem are matters within sound discretion of trial court. *Mazza v. Pechacek* (1956, 233 F. 2d 666, 98 U.S. App. D.C. 175).

##### Selection of private counsel

Person for whose estate appointment of a conservator is sought may select private counsel of his own choice to advocate his position in opposition to appointment of a conservator. *Mazza v. Pechacek* (1956, 233 F. 2d 666, 98 U.S. App. D.C. 175).

#### § 21-1503. Bond; powers and duties

The conservator before entering upon the discharge of his duties shall execute an undertaking with surety to be approved by the court in such amount as the court orders, conditioned on the faithful performance of his duties as conservator. He shall have control of the estate, real and personal, of the person for whom he has been appointed conservator, with power to collect all debts due the person, and upon authority of the court to adjust and settle all accounts owing by him, and to sue and be sued in his representative capacity. He shall apply such part of the annual income and of the principal of the estate as the court authorizes to the support of the person and the maintenance and education of his family and children; and shall in all other respects perform the same duties and have the same rights and powers with respect to the property of the person as have guardians of the estates of infants. (Sept. 14, 1965, 79 Stat. 775, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-503 (Oct. 24, 1951, ch. 545, § 3, 65 Stat. 608).

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21-1505.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Accountable assets

Where the conservator of estate of incompetent ward collected rents from property owned by ward and her husband as tenants by the entirety, she is accountable to her ward for one-half of them from beginning of conservatorship until death of ward's husband. *In re G. Kosmadakes* (1971, 444 F. 2d 999, 144 U.S. App. D.C. 124).



**Control over property in other jurisdiction**

Local statutes cannot by themselves give conservator power to assert control over property in other jurisdictions, and local conservator has authority and power to take control over property located in another state only so far as allowed by comity of that state. *E. D. Mitchell v. C. D. Ensor, et al.* (1969, 412 F. 2d 155, 134 U.S. App. D.C. 24).

**Determination of benefits accruing to estate**

Determination as to benefits accruing to estate and size of estate for purposes of compensation of former conservators and guardian ad litem required that record be supplemented to determine extent conservators actually assumed, or had power to assume, control over appellant's stock and specific findings of fact as to whether value of her stock may have increased regardless of efforts of conservators and whether services of guardian and conservators actually inured to her benefit. *E. D. Mitchell v. C. D. Ensor, et al.* (1969, 412 F. 2d 155, 134 U.S. App. D.C. 24).

**Liability of conservator**

Prior to entry of money judgment against former conservator of estate of incompetent ward in favor of successor conservator as recommended in auditor's report, former conservator is entitled to be heard on her objection to report and since notice of hearing was not sent to her and she was not afforded requisite opportunity to be heard on her objection, district court should have granted former conservator's motion to vacate money judgment in favor of successor conservator and rescheduled hearing on her objection. *In re G. Kosmadakes* (1971, 444 F. 2d 999, 144 U.S. App. D.C. 124).

Where conservator of estate of incompetent ward was directed by the court to file a final account within 20 days thereafter and when she disregarded that direction court referred matter to auditor to state her account and time and expense were furthered in preparation of account because of conservator's refusal to meet reasonable requests of auditor for her assistance, and conservator did not challenge reasonableness of \$570 charged in favor of court auditor, it was not an abuse of discretion to deny conservator's motion to vacate judgment for \$570 in favor of the auditor. *Id.*

In a case where a bank honored checks drawn without authority by an incompetent upon an account carried in the name of conservatorship estate, which had been created for the incompetent, and where the conservator recovered judgment against bank in the amount of the checks and the bank against the incompetent, who had been impleaded by bank, in same amount, refusal to require conservator to pay judgment recovered by bank against the incompetent was not error. *In re Appointment of a Conservator for B. Justice, Jr., et ano. etc.* (1969, 418 F. 2d 1162, 135 U.S. App. D.C. 326).

**Reasonable compensation**

A figure of 5% as a flexible rule of thumb for fixing reasonable compensation, in ordinary case, to guardians ad litem and conservators appointed pursuant to statute governing guardians of property of mentally incompetent persons, is permissible. *E. D. Mitchell v. C. D. Ensor, et al.* (1969, 412 F. 2d 155, 134 U.S. App. D.C. 24).

**Remand**

Since this proceeding leading to the appointment of a conservator for the person and property of wife, the husband has returned to the United States and was residing in New Jersey, and since wife remained in her mother's home in New Jersey, the case would be remanded for determination as to whether District of Columbia conservatorship should be continued to protect parties' single asset in the District. *G. J. Davis v. B. Corrin* (1969, 417 F. 2d 1157, 135 U.S. App. D.C. 210).

**Settlement of accounts**

Expense is involved in the proper care of an incompetent ward and her income-producing real estate but freedom of action in spending money of an incompetent ward is not given to court-appointed fiduciary, and conservator of estate of incompetent ward is required to make a reasonable showing that an expense that she alleged had, in fact, been incurred by her before she might receive therefor credit and allowance. *In re G. Kosmadakes* (1971, 444 F. 2d 999, 144 U.S. App. D.C. 124).

Auditor could not properly give conservator of estate of incompetent ward credit and allowance for unauthor-

ized and unauthenticated expenditures and if conservator proffered required verification of her alleged expenditures the court, after hearing of her objection to auditor's report, might receive further evidence or might recommit the report with instructions. *Id.*

**NOTES TO DECISIONS UNDER PRIOR LAW****Compensation**

In view of facts that duties of conservator and guardian are basically the same, and that former chapter 5, providing for appointment of conservators was silent as to compensation of conservators and merely provided that conservators should have same rights and powers as guardians and that court should have the same powers with respect to property of any person for whom conservator had been appointed as it had with respect to property of infants under guardianships, compensation of conservator should be fixed under former § 21-126 limiting compensation of guardians to fixed percentage of amounts actually collected if and when disbursed. *In re Searle* (D.C.D.C. 1954, 118 F. Supp. 273).

**Evidence as to personal liability**

Because agreement between landlords and conservator of estate of tenant to pay increased rent for premises occupied by tenant was oral, evidence was admissible to show understanding of parties as to whether conservator was to be bound personally by agreement. *W. E. Summerbell et ano. v. W. B. McDonnell, individually etc.* (D.C. App. 1964, 197 A. 2d 150).

Evidence supported trial court's finding that landlords and conservator of tenant's estate who had orally agreed to pay increased rent for premises occupied by tenant did not intend to bind conservator in his individual capacity. *Id.*

**Redemption by conservator**

Neither conservator nor his ward must wait for removal of legal disability to redeem property from tax sale, and conservator may not be denied right to redeem in proper case because he is conservator, under District of Columbia statutes. *Shenandoah Corp. v. E. F. Jackson* (1962, 298 F. 2d 324, 111 U.S. App. D.C. 410).

**§ 21-1504. Discharge**

When a person for whom a conservator has been appointed under this chapter becomes competent to manage his property, he may apply to the court to have the conservator discharged and to be restored to the care and control of his property. If the court finds him to be competent, it shall enter an order restoring the care and control of his property to him. The court has the same powers with respect to the property of a person for whom a conservator has been appointed as it has with the<sup>1</sup> respect to the property of infants under guardianships. (Sept. 14, 1965, 79 Stat. 775, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 21-504 (Oct. 24, 1951, ch. 545, § 4, 65 Stat. 608).

Changes are made in phraseology.

**NOTES TO DECISIONS****Reasonable compensation**

A figure of 5% as a flexible rule of thumb for fixing reasonable compensation, in ordinary case, to guardians ad litem and conservators appointed pursuant to statute governing guardians of property of mentally incompetent persons, is permissible. *E. D. Mitchell v. C. D. Ensor, et al.* (1969, 412 F. 2d 155, 134 U.S. App. D.C. 24).

**Title to property**

There is no restriction upon district court, sitting in probate, which limits its power to adjudicate right to possession of personalty. *C. M. Price and G. P. Marshall, Jr., etc. v. E. B. Williams et al.* (1968, 393 F. 2d 348, 129 U.S. App. D.C. 239).

<sup>1</sup> So in original.



**§ 21-1505. Appointment of temporary conservator**

Upon the filing of a petition as provided by this chapter, the court may, with or without notice or hearing, appoint a temporary conservator of the estate of a person, if it deems the action necessary for the protection of the estate, subject to the provisions for an undertaking specified by section 21-1503. The temporary conservator shall serve only until a permanent conservator can be appointed or until sooner discharged. (Sept. 14, 1965, 79 Stat. 775, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 21-505 (Oct. 24, 1951, ch. 545, § 5, 65 Stat. 608).

Changes are made in phraseology.

**NOTES TO DECISIONS UNDER PRIOR LAW****Compensation of temporary conservator**

Compensation of temporary conservator would not be determined under former § 21-126 fixing compensation of guardian but would be determined by considering the character of services rendered, the size of the estate, and the compensation awarded guardian ad litem and attorney for the guardian. *In re Searle* (D.C.D.C. 1954, 118 F. Supp. 273).

**§ 21-1506. Personal welfare of person under conservatorship**

The court may at any time order that the conservator or another person shall be responsible for the personal welfare of the person whose property is under conservatorship. In that event the conservator or other person, subject to the direction and control of the court, has the same powers and duties with respect to the personal welfare of the person whose property is under conservatorship as have the guardians of the persons or infants under guardianships. (Sept. 14, 1965, 79 Stat. 775, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(1)(2), 84 Stat. 569.)

**AMENDMENT**

1970—Section 150(1)(2) of Act July 29, 1970, Public Law 91-358 amended section by striking out “of the Civil Division”.

**EFFECTIVE DATE OF 1970 AMENDMENT**

See note preceding section 11-101.

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 21-506 (Oct. 24, 1951, ch. 545, § 6, 65 Stat. 609).

Changes are made in phraseology.

**§ 21-1507. Lis pendens**

Upon the filing of a petition under this chapter, a certified copy of the petition may be filed for record in the office of the Recorder of Deeds of the District of Columbia. If a conservator is appointed on the petition, all contracts, except for necessities, and all transfers of real and personal property made by the ward after the filing and before the termination of the conservatorship are void. (Sept. 14, 1965, 79 Stat. 775, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 21-507 (Oct. 24, 1951, ch. 545, § 7, 65 Stat. 609).

Changes are made in phraseology.

**NOTES TO DECISIONS****Capacity to make a will**

Provision in section 21-1507 voiding transfer of real and personal property by person subject to conservator-

ship, does not render that person, per se, incapable of making valid will. *D. H. Rossi v. E. A. Fletcher* (1969, 418 F. 2d 1169, 135 U.S. App. D.C. 333; cert. denied 90 S. Ct. 568).

Congress in adopting provisions in section 18-102 that will was not valid unless person making it was of required age and at time of executing or acknowledging it was of sound and disposing mind and capable of executing valid deed or contract did not intend to deprive mentally competent person of testamentary capacity merely because he was subject to conservatorship. *Id.*

**Purpose of lis pendens**

Purpose of filing lis pendens is, at least in part, to give constructive notice of pending suit or petition. *In re Appointment of a Conservator for B. Justice, Jr., et ano.* etc. (1969, 418 F. 2d 1162, 135 U.S. App. D.C. 326).

Filing of lis pendens is not required against one who has actual notice of suit or petition. *Id.*

**Chapter 17.—UNIFORM FIDUCIARIES ACT****Sec.**

21-1701. Definitions.

21-1702. Application of payment made to fiduciaries.

21-1703. Transfer of negotiable instruments by fiduciary.

21-1704. Check drawn by fiduciary payable to third person.

21-1705. Check drawn by and payable to fiduciary.

21-1706. Deposit in name of fiduciary as such.

21-1707. Deposit in name of principal; check drawn thereon by fiduciary; check payable to drawee bank.

21-1708. Deposit in fiduciary's personal account.<sup>1</sup>

21-1709. Deposit in names of two or more trustees.

21-1710. Law not retroactive.

21-1711. Cases not provided for by chapter.

21-1712. Short title.

**REVISION NOTES**

This chapter continues the Uniform Fiduciaries Act adopted in the District of Columbia by act May 14, 1928, ch. 545, 45 Stat. 509. The Uniform Act was promulgated by the National Conference of Commissioners on Uniform State Laws in 1922.

**§ 21-1701. Definitions**

(a) In this chapter unless the context otherwise requires:

“bank” includes a person or association of persons, whether incorporated or not, carrying on the business of banking;

“fiduciary” includes a trustee under a trust, express, implied, resulting or constructive, executor, administrator, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer, or other person acting in a fiduciary capacity for a person, trust, or estate;

“person” includes a corporation, partnership, or other association, or two or more persons having a joint or common interest;

“principal” includes a person to whom a fiduciary as such owes an obligation.

(b) A thing is done “in good faith” within the meaning of this chapter, when it is in fact done honestly, whether negligently or not. (Sept. 14, 1965, 79 Stat. 776, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 21-601 (May 14, 1928, ch. 545, § 1, 45 Stat. 509).

References to subchapter are changed to refer to chapter.

<sup>1</sup> Analysis does not conform to section catchline.



The source of the provisions is section 1 of the Uniform Fiduciaries Act. See revision note preceding this section.

Minor changes are made in phraseology and style.

#### CROSS REFERENCE

Transfer of securities to and by fiduciaries, see § 28: 8-308, 28: 8-402 et seq.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### In general

Considered in its entirety, it is manifest that the effect of the act (this subchapter) is to enlarge the ability of fiduciaries to avoid the limitations imposed by the common law, although the liabilities of the fiduciaries as such are not affected, but only those of persons dealing with them. *Colby v. Riggs Nat. Bank* (1937, 92 F. 2d 183, 67 App. D.C. 259, 114 A.L.R. 1065).

#### § 21-1702. Application of payment made to fiduciaries

A person who in good faith pays or transfers to a fiduciary money or other property which the fiduciary as such is authorized to receive, is not responsible for the proper application thereof by the fiduciary; and any right or title acquired from the fiduciary in consideration of the payment or transfer is not invalid in consequence of a misapplication by the fiduciary. (Sept. 14, 1965, 79 Stat. 776, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-602 (May 14, 1928, ch. 545, § 2, 45 Stat. 510).

The source of the provisions is section 2 of the Uniform Fiduciaries Act. See revision note preceding section 21-1701 herein.

Minor changes are made in phraseology.

#### CROSS REFERENCE

Trust or joint accounts, deposits, or safe-deposit boxes, see § 26-201 et seq.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Incompetent's committee

Where corporation lending money to incompetent made checks payable to members of incompetent's committee without adding word "committee" to checks and members of committee allegedly embezzled proceeds of checks, recovery against indorsees cashing checks for members of committee was not precluded merely by absence of word "committee" from checks, and corporation would not be responsible for loss on such theory, in absence of evidence that indorsees had knowledge that members of committee were breaching their fiduciary obligation or had knowledge of such facts rendering the taking of checks by indorsees bad faith. *Espey v. Lawyers Title Ins. Corp. of Richmond, Va.* (1954, 210 F. 2d 728, 93 U.S. App. D.C. 280).

##### Misappropriation

The word "misappropriation" means wrong appropriation, or the use of a fund for a different purpose than that for which it was created, but not necessarily a dishonest purpose. *Colby v. Riggs Nat. Bank* (1937, 92 F. 2d 183, 67 App. D.C. 259, 114 A.L.R. 1065).

#### § 21-1703. Transfer of negotiable instruments by fiduciary

If a negotiable instrument payable or indorsed to a fiduciary as such is indorsed by the fiduciary, or if a negotiable instrument payable or indorsed to his principal is indorsed by a fiduciary empowered to indorse the instrument on behalf of his principal, the indorsee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in indorsing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual

knowledge of the breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, the instrument is transferred by the fiduciary in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is transferred in a transaction known by the transferee to be for the personal benefit of the fiduciary, the creditor or other transferee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in transferring the instrument. (Sept. 14, 1965, 79 Stat. 776, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-604 (May 44, 1928, ch. 545, § 4, 45 Stat. 510).

The source of the provisions is section 4 of the Uniform Fiduciaries Act. See revision note preceding section 21-1701 herein.

Section 21-603 of D.C. Code, 1961 ed., which was derived from section 3 of the Uniform Fiduciaries Act, was repealed by Act July 5, 1960, Pub. L. 86-584, § 12, 74 Stat. 324.

Minor changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Knowledge of bad faith

Where plaintiff's check was presented at a bank by president of the payee personally who endorsed on the back of it the name of the company and his own name as president and in addition signed his own name as individual and the bank credited the amount of the check to the personal account of the president, maker was not entitled to recover the amount thereof from the bank where there was no suggestion of bad faith by the bank and no proof which would have put it on notice that the president was guilty of a breach of faith in negotiating the check and depositing the proceeds to his own credit. *Evans v. Prentice et al.* (D.C. Mun. App. 1951, 79 A. 2d 396).

##### Liability of lender

Where court authorized members of incompetent's committee to negotiate loan on security of incompetent's realty, lender made checks payable to members of committee without adding word "committee" and such members thereafter allegedly embezzled proceeds of checks, omission of word "committee" was not cause of alleged embezzlement, making lender responsible therefor, in view of fact that presence of word would not have prevented members from cashing checks or from embezzling proceeds. *Espey v. Lawyers Title Ins. Corp. of Richmond, Va.* (1954, 210 F. 2d 728, 93 U.S. App. D.C. 280).

#### § 21-1704. Check drawn by fiduciary payable to third person

If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of his principal by a fiduciary empowered to draw such an instrument in the name of his principal, the payee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in drawing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of the breach or with knowledge of facts that his action in taking the instrument amounts to bad faith. Where, however, the instrument is payable to a personal creditor of the fiduciary and delivered to the creditor in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is drawn and delivered in a transaction known by the payee to be for the personal



benefit of the fiduciary, the creditor or other payee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the instrument. (Sept. 14, 1965, 79 Stat. 777, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-605 (May 14, 1928, ch. 545, § 5, 45 Stat. 510).

The source of the provisions is section 5 of the Uniform Fiduciaries Act. See revision note preceding section 21-1701 herein.

Minor changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### In general

A third person who knowingly participates in the breach of a fiduciary's obligation can be required to make good the resulting loss. *Anacostia Bank v. United States Fidelity & Guaranty Co.* (1941, 119 F. 2d 455, 73 App. D.C. 388, 134 A.L.R. 995).

#### § 21-1705. Check drawn by and payable to fiduciary

If a check or other bill of exchange is drawn by a fiduciary as such or in the name of his principal by a fiduciary empowered to draw such an instrument in the name of his principal, payable to the fiduciary personally, or payable to a third person and by him transferred to the fiduciary, and is thereafter transferred by the fiduciary, whether in payment of a personal debt of the fiduciary or otherwise, the transferee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in transferring the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligations as fiduciary unless he takes the instrument with actual knowledge of the breach or with knowledge of facts that his action in taking the instrument amounts to bad faith. (Sept. 14, 1965, 79 Stat. 777, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-606 (May 14, 1928, ch. 545, § 6, 45 Stat. 511).

Source of provisions is section 6 of the Uniform Fiduciaries Act. See revision note preceding section 21-1701 herein.

Minor changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Trust deposit transferred

Where trust deposit in the name of the individual trustees and trustee corporation was transferred by check to the account of the corporation, the result being to settle an overdraft of the corporation, the transaction was not covered by this section, but comes within the scope of § 28-2312 and must be decided under common-law principles. *Colby v. Riggs Nat. Bank* (1937, 92 F. 2d 183, 67 App. D.C. 259, 114 A.L.R. 1065).

#### § 21-1706. Deposit in name of fiduciary as such

If a deposit is made in a bank to the credit of a fiduciary as such, the bank is authorized to pay the amount of the deposit or any part thereof upon the check of the fiduciary, signed with the name in which the deposit is entered, without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing the check or with knowledge of facts that its action in paying the check amounts to bad faith. If, however, the check is payable to the drawee bank

and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check. (Sept. 14, 1965, 79 Stat. 777, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-607 (May 14, 1928, ch. 545, § 7, 45 Stat. 511).

Source of provisions is section 7 of the Uniform Fiduciaries Act. See revision note preceding section 21-1701 herein.

Minor changes are made in phraseology.

#### NOTES TO DECISIONS

##### Knowledge of breach of trust

Notice from adverse claimant asserting by affidavit that depositor is trustee and that claimant believes such trustee is about to misappropriate the funds in account constitutes "actual knowledge" by the bank under the Uniform Fiduciary Act with respect to breach of obligation by the fiduciary. *R. S. Goldstein v. The Riggs National Bank* (1972, 459 F. 2d 1161, 148 U.S. App. D.C. 137).

Evidence in mining workers' derivative action against welfare fund trustees, union, and bank controlled by union compelled conclusion that bank knowingly accepted and participated in continuing breach of trust that redounded substantially to its own benefit, i.e., leaving of large amounts of uninvested cash in demand deposits in bank; proof was sufficient despite statute requiring, for bank's liability for transactions with trustee, actual knowledge of breach of trust or knowledge of such facts that its action amounts to bad faith. *W. R. Blankenship et al. v. W. A. Boyle et al.* (1971, 329 F. Supp. 1089).

#### § 21-1707. Deposit in name of principal; check drawn thereon by fiduciary; check payable to drawee bank

If a check is drawn upon a bank account of his principal by a fiduciary who is empowered to draw checks upon his principal's account, the bank is authorized to pay the checks without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing the check, or with knowledge of facts that its action in paying the check amounts to bad faith. If, however, the check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check. (Sept. 14, 1965, 79 Stat. 777, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-608 (May 14, 1928, ch. 545, § 8, 45 Stat. 511).

Source of provisions is section 8 of the Uniform Fiduciaries Act. See revision note preceding section 21-1701 herein.

Minor changes are made in phraseology.

#### § 21-1708. Deposit in fiduciary personal account

When a fiduciary deposits in a bank to his personal credit checks:

- (1) drawn by him upon an account in his own name as fiduciary; or
- (2) payable to him as fiduciary; or
- (3) drawn by him upon an account in the name of his principal if he is empowered to draw checks thereon; or
- (4) payable to his principal and indorsed by him, if he is empowered to indorse such checks—



or if he otherwise deposits funds held by him as fiduciary, the bank receiving the deposit is not bound to inquire whether the fiduciary is committing thereby a breach of his obligation as fiduciary, and may pay the amount of the deposit or any part thereof upon the personal check of the fiduciary without being liable to the principal, unless the bank receives the deposit or pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in making the deposit or in drawing the check, or with knowledge of facts that its action in receiving the deposit or paying the check amounts to bad faith. (Sept. 14, 1965, 79 Stat. 778, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-609 (May 14, 1928, ch. 545, § 9, 45 Stat. 511).

Source of provisions is section 9 of the Uniform Fiduciaries Act. See revision note preceding section 21-1701 herein.

Minor changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Knowledge of breach of trust

Notice from adverse claimant asserting by affidavit that depositor is trustee and that claimant believes such trustee is about to misappropriate the funds in account constitutes "actual knowledge" by the bank under the Uniform Fiduciary Act with respect to breach of obligation by the fiduciary. *R. S. Goldstein v. The Riggs National Bank* (1972, 459 F. 2d 1161, 148 App. D.C. 137).

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Trust deposit transferred

Where trust deposit in the name of the individual trustees and the trustee corporation was transferred by check to the account of the corporation, the result being to settle an overdraft of the corporation, it was not the case of a transfer by the fiduciary in payment of a personal debt, but was a transfer by one set of fiduciaries to another, and the bank was not liable unless it had actual knowledge of misappropriation. *Colby v. Riggs Nat. Bank* (1937, 67 App. D.C. 259, 92 F. 2d 183, 114 A.L.R. 1065).

#### § 21-1709. Deposit in names of two or more trustees

When a deposit is made in a bank in the name of two or more persons as trustees and a check is drawn upon the trust account by any trustee authorized by the others to draw checks upon the trust account, neither the payee nor other holder nor the bank is bound to inquire whether it is a breach of trust to authorize the trustee to draw checks upon the trust account, and is not liable unless the circumstances be such that the action of the payee or other holder or the bank amounts to bad faith. (Sept. 14, 1965, 79 Stat. 778, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-610 (May 14, 1928, ch. 545, § 10, 45 Stat. 512).

Source of provisions is section 10 of the Uniform Fiduciaries Act. See revision note preceding section 21-1701 herein.

Minor changes are made in phraseology.

#### § 21-1710. Law not retroactive

This chapter does not apply to transactions that took place prior to May 14, 1928. (Sept. 14, 1965, 79 Stat. 778, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-611 (May 14, 1928, ch. 545, § 11, 45 Stat. 512).

Reference to subchapter is changed to refer to chapter.

Source of provisions is section 11 of the Uniform Fiduciaries Act. See revision note preceding section 21-1701 herein.

A minor change is made in phraseology.

#### § 21-1711. Cases not provided for by chapter

In a case not provided for by this chapter the rules of law and equity, including the law merchant and those rules of law and equity relating to trusts, agency, negotiable instruments, and banking, continue to apply. (Sept. 14, 1965, 79 Stat. 778, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-612 (May 14, 1928, ch. 545, § 12, 45 Stat. 512).

Reference to subchapter is changed to refer to chapter. Comma is placed after "agency" to conform to Uniform Act.

Source of provisions is section 12 of the Uniform Fiduciaries Act. See revision note preceding section 21-1701 herein.

Minor changes are made in phraseology.

#### § 21-1712. Short title

This chapter may be cited as the "Uniform Fiduciaries Act". (Sept. 14, 1965, 79 Stat. 778, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 21-614 (May 14, 1928, ch. 545, § 14, 45 Stat. 512).

Reference to subchapter is changed to refer to chapter.

Source of provisions is section 14 of the Uniform Fiduciaries Act. See revision note preceding section 21-1701 herein.

## Chapter 18.—CHARITABLE AND SPLIT-INTEREST TRUSTS

### Sec.

21-1801. Charitable and split-interest trusts.

#### § 21-1801. Charitable and split-interest trusts

(a) Notwithstanding any provision to the contrary in the governing instrument or under any law applicable to the District of Columbia, except as provided in subsection (e) of this section, the governing instrument of any trust which is treated during a particular year as a private foundation described in section 509 of the Internal Revenue Code of 1954 (including any nonexempt charitable trust described in section 4947(a)(1) of the Code which is treated as a private foundation) and the governing instrument of any nonexempt split-interest trust described in section 4947(a)(2) of the Code (but only to the extent that section 508(e) of the Code is applicable to such nonexempt split-interest trust) shall be deemed during such particular year to contain all of the following provisions:

(1) The trust shall not engage in any act of self-dealing which is taxable under section 4941 of the Code.

(2) The trust shall make distributions at such time and in such manner as not to subject it to tax under section 4942 of the Code.

(3) The trust shall not retain any excess business holdings which would subject it to tax under section 4943 of the Code.

(4) The trust shall not make any investments which would subject it to tax under section 4944 of the Code.



(5) The trust shall not make any taxable expenditures which would subject it to tax under section 4945 of the Code.

With respect to any such trust created prior to January 1, 1970, subsection (a) shall apply to taxable years beginning on or after January 1, 1972.

(b) Notwithstanding any provision to the contrary in the governing instrument, the trustee or trustees of any trust described in subsection (a), other than a trust described in section 4947(a) (2) of the Code, may, without application to any court, amend the governing instrument expressly to include the provisions required by section 508(e) of the Code by executing a written amendment to the trust and delivering a copy thereof, by certified mail, to each named beneficiary, if any.

(c) Notwithstanding any provision to the contrary in the governing instrument, the trustee or trustees of any trust described in section 4947(a) (2) of the Code to which subsection (a) is applicable may, after obtaining the written consent of the creator of such trust if then living and competent to give such consent, and without application to any court, amend the governing instrument expressly to include the provisions required by section 508(e) of the Code by executing a written amendment to the trust and delivering a copy thereof by certified mail, to each named beneficiary, if any.

(d) Notwithstanding any provision to the contrary in the governing instrument, the trustee or trustees of any trust described in section 4947(a) (2) of the Code to which subsection (a) is applicable, with the consent of each beneficiary named in such governing instrument, may, without application to any court, amend the governing instrument to conform to the provisions of section 664 of the Code by executing a written amendment to the trust for such purpose. Consent shall not be required as to individual named beneficiaries not living at the time of the amendment. In the case of any individual beneficiary not competent to give consent, the consent of a guardian, appointed by a court of competent jurisdiction, shall be treated as consent of the beneficiary. In the case of any amendment to a trust

created by will, such amendment may, if provided in the amendment, be deemed to apply as of the date of death of the testator.

(e) The provisions of subsection (a) shall not apply to any trust to the extent that a court of competent jurisdiction shall determine that such application would be contrary to the terms of the governing instrument and that such instrument may not properly be amended to conform with subsection (a).

(f) For purposes of this section, the term "trust" includes (1) any trust created by will of a resident of the District of Columbia admitted to probate in the District of Columbia, (2) any trust created by a resident of the District of Columbia and executed in the District of Columbia, (3) any trust of which the trustee or a co-trustee is a bank or trust company doing business in the District of Columbia, (4) any trust of which a majority of the trustees are resident in the District of Columbia, (5) any trust of real property located in the District of Columbia, and (6) any trust the governing instrument of which provides that it is governed by the laws of the District of Columbia.

(g) For the purposes of this section, the term "Code" means the Internal Revenue Code of 1954. (Added Dec. 6, 1971, Pub. L. 92-177, § 1, 85 Stat. 494.)

#### REFERENCE IN TEXT

Sections 508, 509, 664, 4941-4945, and 4947 of the Internal Revenue Code of 1954, referred to in text, are classified to 26 U.S.C. 508, 509, 644, 4941-4945, and 4947.

#### EFFECTIVE DATE

Section 3 of Act Dec. 6, 1971, Pub. L. 92-177, provided: "Except as otherwise provided in this Act, or in the Amendments made by this Act, the provisions of this Act (enacting sections 21-1801 and 29-1030a) shall first apply with respect to taxable years of trusts and corporations beginning on or after January 1, 1970."

#### CROSS REFERENCE

For similar provisions relating to corporations, see § 29-1030a.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-1030a.



# PART IV

## CRIMINAL LAW AND PROCEDURE

TITLE 22—CRIMINAL OFFENSES.  
TITLE 23—CRIMINAL PROCEDURE.

TITLE 24—PRISONERS AND THEIR TREATMENT.

### TITLE 22.—CRIMINAL OFFENSES

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Sec.
22-106. Accessories after the fact.
22-107. Punishment for offenses not covered by provisions of code.
22-108. Offenses committed beyond District of Columbia.
22-109. Prosecutions.

#### § 22-101. "Writing" and "paper" defined.

Except where such a construction would be unreasonable, the words "writing" and "paper," wherever mentioned in this title, are to be taken to include instruments wholly in writing or wholly printed, or partly printed and partly in writing. (Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 904.)

#### § 22-102. "Anything of value" defined.

The words "anything of value," wherever they occur in this title, shall be held to include not only things possessing intrinsic value, but bank notes and other forms of paper money, and commercial paper and other writings which represent value. (Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 905.)

#### § 22-103. Attempts to commit crime.

Whoever shall attempt to commit any crime, which attempt is not otherwise made punishable by this title, shall be punished by a fine not exceeding one thousand dollars or by imprisonment for not more than one year, or both. (Mar. 3, 1901, 31 Stat. 1337, ch. 854, § 906.)

#### NOTES TO DECISIONS

##### In general

Mere preparation is not an attempt, but preparation may progress to the point of attempt, and question whether it has is one of degree which can be resolved only on basis of facts of each case. *Sellers Jr. v. United States* (D.C. Mun. App. 1957, 131 A. 2d 300).

The general attempt statute covers attempted petit larceny not expressly covered by any other statute. *United States v. R. Pearson* (D.C. App. 1964, 202 A. 2d 392).

##### Assault

One who assaults a female under 16 years of age, with intent to carnally know her, is punishable under 1901 Code, § 803 (§ 22-501) and not 1901 Code, § 906 (§ 22-103). *Sanselo v. United States* (1916, 44 App. D.C. 508).

##### Attempted petit larceny

The fact that the fine was greater under general attempt statute than for completed offense of petit larceny did not mean that Congress intended to exclude attempted petit larceny from scope of the general attempt statute. *United States v. R. Pearson* (D.C. App. 1964, 202 A. 2d 392).

##### Attempted unauthorized use of motor vehicle

Attempted unauthorized use of a motor vehicle is a crime under statutes prohibiting the taking, use, operation, or removal of a vehicle without owner's consent and calling for punishment of whoever shall attempt to com-



mit any crime, which attempt is not otherwise punishable. *B. O. Greenwood III v. United States* (D.C. App. 1967, 225 A. 2d 878).

#### Completed offense

If an information admits of conviction of attempt to commit a felony, an accused may be found guilty of the attempt, though the evidence shows a completed offense. *United States v. Fleming* (D.C. App. 1966, 215 A. 2d 839).

The government's proof at trial that a completed act of sodomy has taken place will not entitle defendant to an acquittal on the only charge against him, an attempt to commit sodomy. *Id.*

The general attempt statute permits one to be convicted of an attempt to commit sodomy. *Id.*

#### Continuance

The granting or refusal of a continuance is largely left to discretion of the trial judge, and his decision will not be disturbed without a clear showing of abuse in the exercise of that discretion. *W. E. Smith v. United States* (D.C. App. 1967, 235 A. 2d 574).

#### Corroborating witness

Failure of prosecution to produce second officer who as a corroborating witness could only have testified to time and place of defendant's arrest for attempted procuring because he did not hear conversation between arresting officer and defendant was not error in view of prosecution's effort to secure a continuance because second officer was in another court and defendant's then counsel's willingness to proceed to trial in second officer's absence. *R. Blakney v. United States* (D.C. App. 1967, 225 A. 2d 654).

#### Elements of offense

The elements of the crime of attempted false pretenses, like other attempts to commit a crime, are an intent to commit it, the doing of some act towards its commission, and the failure to consummate its commission. *J. R. Marganella v. United States* (D.C. App. 1970, 268 A. 2d 803).

#### Evidence

Evidence supported conviction for attempted unauthorized use of automobile. *N. Dickson v. United States* (D.C. App. 1967, 226 A. 2d 364).

Evidence supported conviction for attempted unauthorized use of motor vehicle. *B. O. Greenwood III v. United States* (D.C. App. 1967, 225 A. 2d 878).

#### — Admissibility

Screwdriver which was dropped by a defendant as police officer approached was abandoned property since the defendant subsequently denied ownership, and screwdriver was admissible in prosecution for petit larceny, destruction of property and attempted burglary. *C. E. Campbell v. United States* (D.C. App. 1971, 273 A. 2d 252).

#### — Sufficiency

Evidence was sufficient to support conviction for attempted burglary in the second degree of defendant who was found by police officers in building next to building which had been scene of prior attempted break-in and which had bricks contiguous to upstairs room on side of party wall having been removed and whose trousers had dust on them matching dust in broken wall which had additional bricks removed after the prior break-in. *M. Valentino v. United States* (D.C. App. 1972, 296 A. 2d 173).

Evidence that the defendant was standing in front of a broken window of store that was being burglarized by two other men, one of whom had a casual acquaintance with the defendant, while perhaps raising a possibility or even strong suspicion of participation in criminal activity, is not sufficient to find defendant guilty beyond a reasonable doubt of attempted burglary in the second degree and of attempted petit larceny. *W. T. Perry v. United States* (D.C. App. 1971, 276 A. 2d 719).

Evidence that the defendant and his companion were the only people in hall near apartment when witness alighted from elevator after hearing suspicious noises, that door to witness' apartment had large hole in it, and that defendant's companion dropped screwdriver while being followed is sufficient to support conclusion of guilt beyond reasonable doubt of attempted burglary II and

destruction of property. *W. W. Hopkins v. United States* (D.C. App. 1971, 274 A. 2d 418).

Evidence, including testimony identifying defendant as one of two men attempting to pry open window with crowbar, is sufficient to sustain convictions for attempted second-degree burglary, destroying property and attempted petit larceny. *H. Manning v. United States* (D.C. App. 1970, 270 A. 2d 504).

The evidence sustained conviction for attempted false pretenses involving misuse of a credit card. *J. R. Marganella v. United States* (D.C. App. 1970, 268 A. 2d 803).

In prosecution for attempted false pretenses involving misuse of credit card in connection with motel registration, the necessity of producing motel desk clerk was obviated by introduction of motel's records. *Id.*

In this case, the court held that testimony as to ownership of damaged vending machine, purportedly based on witness' own knowledge, was not hearsay and was sufficient to prove ownership as alleged in information charging malicious injuring of property and attempted petit larceny. *L. Killens v. United States* (D.C. App. 1970, 263 A. 2d 44).

In this case the evidence in prosecution of defendant for attempted burglary permitted inference of an intent to commit a crime to be made by the jury who was found in warehouse amongst scattered papers, opened desk drawers and office machinery which had been moved into hall. *P. E. Hebble v. United States* (D.C. App. 1969, 257 A. 2d 483).

Evidence that tenant of apartment heard what sounded like someone attempting to enter vacant apartment and that defendant and companion were seen leaving building and fled when pursued by officer was sufficient to sustain conviction of attempted housebreaking. *T. H. Adams v. United States* (D.C. App. 1968, 245 A. 2d 640).

Evidence that fingerprints of defendant appeared on glass surface, which had once been outside surface of drugstore entrance was insufficient to sustain conviction of attempted housebreaking, destroying property, and petit larceny. *A. W. Townsley v. United States* (D.C. App. 1967, 236 F. 2d 63).

The record contains sufficient evidence from which the jury could have found or inferred that the car left by owner in the parking garage and the one driven onto the parking lot by appellant were one and the same. *F. E. Wesley v. United States* (D.C. App. 1967, 233 A. 2d 514).

Cigarettes found in defendants' possession, with same "wholesale numbers" as cigarettes left in store, but not otherwise identified as having come from store, had little, if any, probative value. *S. C. Davis and C. L. Colbert v. United States* (D.C. App. 1967, 230 A. 2d 485).

Evidence of defendants' physical and chronological proximity to scene of housebreaking, and their leaving at a trot, was insufficient to sustain conviction for attempted housebreaking and petit larceny. *Id.*

#### False pretenses

In prosecution for attempting by false pretenses to obtain money from an insurance company on a fraudulent claim for stolen furs evidence of defendants' guilt was sufficient for the jury. *Cooper and Williams v. United States* (D.C. Mun. App. 1956, 123 A. 2d 918).

#### Inconsistent verdict

The trial court could have found defendant, who was carrying goods stolen from an apartment building, which he later abandoned when he attempted to flee, guilty of both attempted burglary and petit larceny charges on inference of guilt raised by defendant's unexplained possession of recently stolen property or even on the basis of this inference the trier of the facts could have had a reasonable doubt that defendant had necessary criminal intent upon entering apartment building to be convicted of attempted burglary, and thus verdicts of acquittal on attempted burglary charge and guilty on petit larceny charge were not necessarily inconsistent or irreconcilable. *H. Barnes v. United States* (D.C. App. 1969, 254 A. 2d 724).

Evidence was sufficient to sustain petit larceny conviction. *Id.*

#### Information—Amendment

Where amendment of information charging attempted second-degree burglary, destroying private property, and petit larceny to reflect that property in question belonged



to corporation in care and custody of individual, as opposed to individual alone as charged in original information, conformed to testimony at trial and no prejudice was occasioned by the defense, permitting the amendment was not error. *J. L. King v. United States* (D.C. App. 1970, 271 A. 2d 556).

#### Instructions

In a prosecution for attempted procuring involving contents of conversation that concededly took place between defendant and officer at street corner, instruction that if witness testified falsely concerning any material fact, about which the witness could not be reasonably mistaken, all testimony of such witness could be disregarded, except such parts as were corroborated by other testimony, was not plain error requiring reversal in absence of objection. *W. E. Smith v. United States* (D.C. App. 1970, 269 A. 2d 446).

In this case, instruction by trial court, in prosecution for attempted procuring, that jury must decide whether defendant had intent to procure female for immoral purposes, was proper when placed in context with entire charge as obviously referring to illegal sexual immoralities. *J. R. Langley v. United States* (D.C. App. 1970, 264 A. 2d 503).

In this case, since the jury had convicted defendant of more serious crime of attempted burglary, any error in instruction on lesser included offense of unlawful entry was not demonstrated to be prejudicial. *P. E. Hebble v. United States* (D.C. App. 1969, 257 A. 2d 483).

#### Lapse of time between theft and arrest

Lapse of five days between theft of automobile and arrest of defendant operating it did not insulate him from criminal liability for attempted unauthorized use of motor vehicle. *B. O. Greenwood III v. United States* (D.C. App. 1967, 225 A. 2d 878).

#### Lesser included offense

Except for the requirement of intent to commit crime, unlawful entry is substantially identical to and hence lesser included offense of burglary in second degree. *P. E. Hebble v. United States* (D.C. App. 1969, 257 A. 2d 483).

#### Maximum penalty

The maximum penalty for attempted petit larceny can be no greater than the maximum penalty for the completed offense. *United States v. R. Pearson* (D.C. App. 1964, 202 A. 2d 392).

#### Probable cause

Police officers, who observed defendant carrying a screwdriver and companion carrying a television set, who had not been expressly advised of commission of a particular crime and who then approached companion and defendant who dropped screwdriver and then denied ownership thereof, did not have probable cause to believe a crime had been committed and thus did not have probable cause to make arrest, and seizure of television set during that arrest was illegal and set could not have been properly admitted into evidence in prosecution for petit larceny, destruction of property, and attempted burglary II. *O. E. Campbell v. United States* (D.C. App. 1971, 273 A. 2d 252).

#### Procuring

In this case the evidence was sufficient to sustain convictions for attempted procuring. *J. R. Langley v. United States* (D.C. App. 1970, 264 A. 2d 503).

#### Proof of ownership

Any failure of prosecution to show who owned automobile involved in prosecution for attempted unauthorized use of motor vehicle did not preclude conviction where it was established that ownership was in some third party. *D. Dickson v. United States* (D.C. App. 1967, 226 A. 2d 364).

#### Prostitution

Showing that defendant and complaining witness bargained until they had agreed upon exchange of money, although uncertain in amount, for services of prostitute, and that immediately thereafter defendant led complaining witness a considerable distance to hotel unknown to witness where prostitute was supposedly waiting was sufficient evidence to sustain conviction for attempted

procuring. *W. Walker, Jr. v. United States* (D.C. App. 1968, 248 A. 2d 187).

Where defendant, upon obtaining affirmative reply to his question whether police officers were looking for girls, inquired what type they wanted, priced the girls at \$10 each, and revealed, in answer to question put by one officer, that defendant's fee was \$2, fact that defendant's actions never progressed beyond stage of conversation and that no money was received was not fatal to a conviction for an attempt to receive money for arranging for a female to have sexual intercourse, and, had the money passed, the principal crime itself would have been consummated. *Sellers Jr. v. United States* (D. C. Mun. App. 1957, 131 A. 2d 300).

Evidence sustained conviction for attempt to receive money for arranging for a female to have sexual intercourse. *Id.*

#### Review

Defendant could not be heard to complain on appeal of conviction for attempted unauthorized use of motor vehicle in view of proof of completion of offense of unauthorized use of the vehicle. *B. O. Greenwood III v. United States* (D.C. App. 1967, 225 A. 2d 878).

#### Search and seizure

As an incident of arrest based on probable cause, police may seize items of evidence of the crime which are found on the arrestee. *M. Valentino v. United States* (D.C. App. 1972, 296 A. 2d 173).

Seizure of defendant's trousers was not objectionable as being analogous to court-condemned forcible stomach pumping, blood sampling and the like. *Id.*

#### Sentences

Statutory provision for two-year mandatory minimum sentence for burglary do not operate to prevent prosecution and sentencing for lesser misdemeanors of attempted burglary in second degree, destroying private property, and petit larceny, for which offenses the defendant was actually sentenced for one-half year more than two-year felony minimum. *J. J. King v. United States* (D.C. App. 1970, 271 A. 2d 556).

Rule of lenity is to be applied, and concurrent sentences imposed for destruction of property and attempted second-degree burglary, since in this case both offenses involved single course of conduct, i.e., prying of window. *H. Manning v. United States* (D.C. App. 1970, 270 A. 2d 504).

Consecutive sentences could properly be imposed for attempted second-degree burglary and attempted petit larceny, since it is apparent from facts of case, including use of panel truck, that defendant intended to invade two distinct societal interests. *Id.*

In this case the court held that since the District of Columbia Code expressly limits maximum prison sentence for attempted burglary to one year and crimes of attempted second-degree burglary and malicious destruction of property are offenses against same societal interest and since there was nothing to show that offenses were animated by different criminal intents, defendant's convictions for attempted second-degree burglary and for malicious destruction of property with respective consecutive sentences of one year and six months are not appropriate case for cumulative punishment and case would be remanded for resentencing. *M. A. Johnson, Jr. v. United States* (D.C. App. 1970, 265 A. 2d 780).

Under the facts of this case where defendant's true crime was burglary in the second degree, a felony carrying a mandatory minimum sentence of two years, and prosecution reduced felony to the three separate misdemeanors of attempted burglary in second degree, destroying private property, and petit larceny, trial judge did not abuse discretion in imposing two consecutive one-year sentences and one concurrent one-year sentence following defendant's conviction on all three separate misdemeanors. *R. M. Weeks v. United States* (D.C. App. 1969, 252 A. 2d 907).

#### Store breaking

Evidence warranted conviction for attempted store breaking, where defendant's fingerprints were on top of paper bag which contained burglary tools and which was found beside broken skylight over store, that area was



generally inaccessible to public, and that bag was dry although roof was damp. *E. Patten v. United States* (D.C. App. 1968, 248 A. 2d 182).

#### Validity of statute

The general attempt statute is not invalid as applied to attempted petit larceny on theory that it authorizes greater penalty than authorized for completed offense. *United States v. R. Pearson* (D.C. App. 1964, 202 A. 2d 392).

### § 22-104. Second conviction.

#### (a) If any person—

(1) is convicted of a criminal offense (other than a non-moving traffic offense) under a law applicable exclusively to the District of Columbia, and

(2) was previously convicted of a criminal offense under any law of the United States or of a State or territory of the United States which offense, at the time of the conviction referred to in paragraph (1), is the same as, constitutes, or necessarily includes, the offense referred to in that paragraph,

such person may be sentenced to pay a fine in an amount not more than one and one-half times the maximum fine prescribed for the conviction referred to in paragraph (1) and sentenced to imprisonment for a term not more than one and one-half times the maximum term of imprisonment prescribed for that conviction. If such person was previously convicted more than once of an offense described in paragraph (2), he may be sentenced to pay a fine in an amount not more than three times the maximum fine prescribed for the conviction referred to in paragraph (1) and sentenced to imprisonment for a term not more than three times the maximum term of imprisonment prescribed for that conviction. No conviction with respect to which a person has been pardoned on the ground of innocence shall be taken into account in applying this section.

(b) This section shall not apply in the event of conflict with any other provision of law which provides an increased penalty for a specific offense by reason of a prior conviction of the same or any other offense. (Mar. 3, 1901, 31 Stat. 1337, ch. 854, § 907; July 29, 1970, Pub. L. 91-358, § 201(a), title II, 84 Stat. 598.)

#### AMENDMENT

1970—Section 201(a) of Act July 29, 1970, Public Law 91-358, amended section generally. For provisions of this section prior to this amendment, see 1967 edition of the code.

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### APPLICABILITY OF AMENDMENT

Section 901(b) (3) of Pub. L. 91-358, provided as follows: (3) The amendments made by sections 201 [sections 22-104 and 22-104a] and 205 [sections 22-3202 and 22-3213] of this Act shall apply with respect to any person who commits an offense after the effective date of this Act. [For effective date see note preceding § 11-101.]

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33-423.

#### NOTES TO DECISIONS

##### Appeal after service of sentence

That defendant had served his sentence did not render case moot in view of effect of felony conviction on civil

rights and punishment upon subsequent conviction. *O. Dancy, Jr. v. United States* (1966, 361 F. 2d 75, 124 U.S. App. D.C. 58).

Defendant, who had served sentence, was entitled to have conviction for assault reversed and case remanded, where alleged assault was committed on witness who testified against defendant at preliminary hearing at which defendant had not been accorded right to counsel, and no preliminary hearing was granted on assault charge. *Id.*

#### Attack on former indictment

When defendant appeared and pleaded to an information for petit larceny, and was tried in the police court without objection, he admits the validity of the information, and, if convicted, can not afterwards, when indicted for petit larceny as a second offense, deny the legal sufficiency of the information as not being sworn to, or claim that his first arrest was illegal. *Latney v. United States* (1901, 18 App. D.C. 265).

#### Notice

Defendant has right to be given notice of government's intention to prosecute as second offender and ask for heavier penalties under second offender statute; the notice should be formal; and informal notice, originating with court, acquiesced in by prosecution, with burden on defendant's counsel to convey notice to defendant, is insufficient. *S. Brandon, Jr. v. United States* (D.C. App. 1968, 239 A. 2d 159).

Where defendant was not given timely notice that he would be prosecuted as a second offender and sentenced in accordance with the penalties of recidivist statute, he was subject only to the one-year maximum penalty that could be imposed upon a first offender, and additional six months' sentence on the petit larceny charge had to be set aside. *E. P. Lawrence v. United States* (D.C. App. 1966, 224 A. 2d 306).

Where no notice was given to defendant that government intended to ask for greater penalties as second offender, defendant was only subject to penalty that could be imposed on first offender. *A. Dobkin v. District of Columbia* (D.C. App. 1963, 194 A. 2d 657).

In second offender cases, government must advise defendant of penalty to be demanded in time for him to demand jury trial. *Id.*

#### Practice with respect to second offender prosecutions

The practice of district attorney's office, when intending to prosecute as second offender, to file written notice to that effect, specifically referring to former conviction, its nature and date, and to deliver copy of such notice to defendant personally is approved. *S. Brandon, Jr. v. United States* (D.C. App. 1968, 239 A. 2d 159).

The practice of prosecuting defendant as second offender only on suggestion of trial court and not at suggestion of district attorney's office is disapproved. *Id.*

#### Proof of prior conviction

The admission of defendant's counsel, in answer to court's question, that defendant had prior conviction of either petit larceny or attempted petit larceny was not waiver of proof of prior conviction. *S. Brandon, Jr. v. United States* (D.C. App. 1968, 239 A. 2d 159).

Trial court's reference at bench conference to grand larceny in 1964, apparently based on information obtained from paper produced by prosecuting attorney, did not constitute proof of former conviction. *Id.*

#### Prosecution

In view of statutes proscribing the carrying of a dangerous weapon and possession of prohibited weapon, prosecution had no authority to charge the defendant under § 22-104 as a "general" repeat offender for carrying a dangerous weapon and possessing a prohibited weapon, and as the defendant received no proper and timely notice that he was subject to as much as ten years' imprisonment under the statutes specifically covering the offenses, the defendant in effect was merely tried as a first offender on a misdemeanor and the Court of General Sessions did not lack jurisdiction on theory that the defendant faced possibility of being sentenced to up to ten years in prison. *W. P. Martin v. United States* (D.C. App. 1971, 283 A. 2d 448).



## Sentence

Sentence of defendant as second offender was invalid where defendant had no proper notice that he would be prosecuted as second offender, prosecutor did not intend to prosecute defendant as second offender and did so only at suggestion of trial court, and there was no proof of former conviction. *S. Brandon, Jr. v. United States* (D.C. App. 1968, 239 A. 2d 159).

§ 22-104a. Punishment of persons convicted of a felony with a prior record of at least two felony convictions—Definitions—Effect of convictions pardoned on the ground of innocence.

(a) If—

(1) any person (A) is convicted in the District of Columbia of a felony, and (B) before the commission of such felony, was convicted of at least two felonies; and

(2) the court is of the opinion that the history and character of such person and the nature and circumstances of his criminal conduct indicate that extended incarceration or lifetime supervision, or both, will best serve the public interest, the court may, in lieu of any sentence otherwise authorized for the felony referred to in clause (A) of paragraph (1), impose such greater sentence as it deems necessary, including imprisonment for the natural life of such person.

(b) For purposes of paragraph (1) of subsection (a)—

(1) a person shall be considered as having been convicted of a felony if he was convicted (A) of a felony in a court of the District of Columbia or of the United States, or (B) in any other jurisdiction of a crime classified as a felony under the laws of that jurisdiction or punishable by imprisonment for more than two years; and

(2) a person shall be considered as having been convicted of two felonies if his initial sentencing under a conviction of one felony preceded the commission of the second felony for which he was convicted.

No conviction with respect to which a person has been pardoned on the ground of innocence shall be taken into account in applying this section. (Mar. 3, 1901, ch. 854, § 907A; as added July 29, 1970, Pub. L. 91-358, § 201(b), title II, 84 Stat. 599.)

## APPLICABILITY

Section 901(b)(3) of Pub. L. 91-358, provided as follows: (3) The amendments made by sections 201 [sections 22-104 and 22-104a] and 205 [sections 22-3202 and 22-3213] of this Act shall apply with respect to any person who commits an offense after the effective date of this Act. [For effective date, see note preceding § 11-101.]

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33-423.

§ 22-105. Persons advising, inciting, or conniving at criminal offense to be charged as principals.

In prosecutions for any criminal offense all persons advising, inciting, or conniving at the offense, or aiding or abetting the principal offender, shall be charged as principals and not as accessories, the intent of this section being that as to all accessories before the fact the law heretofore applicable in cases of misdemeanor only shall apply to all crimes, whatever the punishment may be. (Mar. 3, 1901, 31 Stat. 1337, ch. 854, § 908.)

## NOTES TO DECISIONS

## Accessory after fact

Defendant could be convicted as accessory after fact, even though he was present before, during and after crime. *J. S. Smith v. United States* (1962, 306 F. 2d 286, 113 U.S. App. D.C. 126).

## Accessory before the fact

Under this section a person shown to be an accessory before the fact is chargeable and criminally responsible as a principal. *Williams v. United States* (1925, 4 F. 2d 432, 55 App. D.C. 239).

In prosecution of doctor and his wife for attempted bribery of witness in abortion case against the doctor, where there was sufficient evidence to justify the jury's conclusion that doctor was an accessory before the fact to the attempt at bribery by his wife, he was properly found guilty as a principal. *Ladrey v. United States* (1946, 155 F. 2d 417, 81 U.S. App. D.C. 127, certiorari denied 67 S. Ct. 68, 329 U.S. 723, 91 L. Ed. 627).

## Accomplice

Defendant who participated in robbery of cab driver that resulted in killing was guilty of murder in first degree even though defendant was accomplice of codefendant who did the actual shooting. *United States v. J. R. Carter* (1971, 445 F. 2d 669, 144 U.S. App. D.C. 193; cert. denied 92 S.Ct. 988, 405 U.S. 932).

In cases of carnal knowledge, the prosecutrix is not an accomplice of the defendant. "An accomplice is one who is associated with another, or others, in the commission of a crime. Liability to indictment, under ordinary conditions, is a reasonable test of the legal relation of the party to the crime and its perpetrator." *Yeager v. United States* (1900, 16 App. D.C. 356, certiorari denied 20 S. Ct. 1031, 178 U.S. 615, 44 L. Ed. 1217).

Woman upon whom a miscarriage is produced in violation of 1901 Code, § 809 (§ 22-201), is not an accomplice of the person who produces it. *Thompson v. United States* (1908, 30 App. D.C. 352, 12 Ann. Cas. 1004).

"Persons engaged in wagering contests are not accomplices." *Paylor v. United States* (1914, 42 App. D.C. 428, LRA 1915D, 682, certiorari denied 35 S. Ct. 209, 235 U.S. 704, 59 L. Ed. 434).

The giver of a bribe is an accomplice of the person bribed. *Egan v. United States* (1923, 287 F. 958, 52 App. D.C. 384).

"Anyone knowingly and voluntarily co-operating with, aiding, assisting, advising, or encouraging another in the commission of a crime is an accomplice; and this is true, regardless of the degree of his guilt." *Egan v. United States* (1923, 287 F. 958, 52 App. D.C. 384). See, also, *Tomlinson v. United States* (1935, 93 F. 2d 652, 68 App. D.C. 106, 114 ALR 1315, certiorari denied 58 S. Ct. 645, 303 U.S. 646, 82 L. Ed. 1102).

## Aid and abet

To sustain conviction of an aider and abettor for commission of the crime, it is only necessary that the defendant was associated with the principal offender in the venture and made a conscious effort to help it succeed. *In the matter of Reeder* (D.C. App. 1970, 264 A. 2d 893).

One who aids in commission of crime is as responsible for that act as if he committed it directly. *H. L. Williams and D. G. Reeves v. United States* (D.C. App. 1963, 190 A. 2d 269).

Evidence supported conviction of appealing defendants of assault and of attempted petit larceny, since court could conclude that defendants were associated with principal offender in the venture and made a conscious effort to help it succeed. *Id.*

Evidence supported conviction of defendant, who at no time struck or pushed assault victim during altercation between victim, defendant and two others, and who could not be said by victim to have joined the other two in searching victim's pockets, for assault either on theory that concert of action by defendant and the other two threatened or menaced the victim or that defendant aided and abetted the other two. *J. T. Rogers and B. F. Herring v. United States* (D.C. Mun. App. 1961, 174 A. 2d 356).



Aiding and abetting assault renders one guilty of crime even if he does not actively participate. *Id.*

One aiding and abetting unauthorized use of automobile stands in same shoes as principal offender. *Allen v. United States* (1958, 257 F. 2d 188, 103 U.S. App. D.C. 184).

Defendant who aided and abetted the taking of an automobile and other property within the District of Columbia was liable as a principal. *Williams v. United States* (1954, 215 F. 2d 35, 94 U. S. App. D. C. 219).

Without determining whether each of defendants was then displaying a placard in front of embassy, all are guilty under provisions of the local law making it an offense to aid and abet in a violation of a law. *Frend v. United States* (1939, 100 F. 2d 691, 69 App. D.C. 281, certiorari denied 59 S. Ct. 488, 306 U.S. 640, 83 L. Ed. 1040).

Public utilities commission (now public service commission) regulation, forbidding owner or operator of vehicle for hire to authorize any person to operate such vehicle unless such person possessed a valid character license, was directed only to owners and operators who permitted unlicensed persons to drive; and defendant, who had an arrangement with corporation to rent taxicabs or to provide drivers but did not himself operate taxicabs and had no proprietary interest in corporation or its vehicles, could not properly be convicted under statute, where he was not accused of aiding and abetting corporation, and evidence did not comport with that of a case tried on theory of aiding and abetting. *Sellers v. District of Columbia* (D.C. Mun. App. 1958, 143 A. 2d 96).

Although an offense may be so defined by statute or regulation that it can only be committed by members of a certain class, one outside the class may, by aiding or abetting another who is within the scope of the definition, render himself criminally liable for the offense. *Jack Berman Inc., et al. v. District of Columbia* (D.C. Mun. App. 1957, 132 A. 2d 147).

Under statute, although one may not be the principal actor, he may be charged as a principal under the same information in conjunction with principal offender for acts of aiding and abetting. *Id.*

The District of Columbia vehicle title and registration regulations and the commissioners' order concerning automobile conditional sales contracts were applicable only to licensed automobile dealers, and unlicensed dealer, even though he aided and abetted a licensed dealer, could not be convicted for violations of regulations and order on the sole basis that he was a dealer under their purview. *Id.*

#### Charged as principal

Where defendants are charged as principals under aiding and abetting statute, act of one defendant is act of each. *E. E. Turberville, B. T. Williams and J. H. Simpson v. United States* (1962, 303 F. 2d 411, 112 U.S. App. D.C. 400, cert. denied 82 S. Ct. 1596).

"One who procures, commands, advises, instigates, or incites the commission of an offense, though not personally present at its commission, is, by the common law, an accessory before the fact. \* \* \* The section of the code above quoted (§ 22-105) makes all such persons principals. And it is not essential that any specific time or mode of committing the offense shall have been advised or commanded, or, if so, that it shall have been committed in the particular way instigated. \* \* \* Nor is it necessary that there shall have been any direct communication between the actual perpetrator and the accessory, who, under the code, is now a principal." *Maxey v. United States* (1907, 30 App. D.C. 63).

Indictment charging that A, B, and C made an assault on X with a brick held in the hand of B is not defective as charging A and C with an impossible act. "The defendants were charged as principals. They were acting together and the act of one was the act of each. The question is set at rest by section 908 of the code (this section)." *Polen v. United States* (1913, 41 App. D.C. 4).

In an indictment charging defendants with engaging in unlawful prize fight, for which appellant charged an admission fee, the appellant was rightly indicted as a principal. *Dane v. United States* (1927, 18 F. 2d 811, 57 App. D.C. 161, certiorari denied 48 S. Ct. 35, 275 U.S. 538, 72 L. Ed. 413).

One who procures, commands, advises, instigates or incites the commission of an offense, though not personally present at its commission is by the common law an accessory before the fact, and by this section all such persons are made principals. *Ladrey v. United States* (1946, 155 F. 2d 417, 81 U.S. App. D.C. 127, certiorari denied 67 S. Ct. 68, 329 U.S. 723, 91 L. Ed. 627).

Where tenant of premises, wherein gaming tables were kept, was an incorporated club, but there was evidence that defendants took part in carrying on its gambling activities, defendants were responsible as principals. *Warde v. United States* (1947, 158 F. 2d 651, 81 U.S. App. D.C. 355).

#### Construction

Under District of Columbia law, the conviction of the principal perpetrator of the offense is not a prerequisite to conviction of the aider and abettor. *United States v. J. E. McCall* (1972, 460 F. 2d 952, 148 U.S. App. D.C. 444).

#### Design or plan

In prosecution of Puerto Rican defendant, whose companion shot and killed guard in front of dwelling of President of the United States, for first-degree murder, wherein defendant interposed defense that he and companion had no intent to kill anyone but merely wished to create an incident in order to bring to the attention of the American people conditions in Puerto Rico, jury, in determining whether the killing by defendant's companion was within design or plan of defendant and his companion, was entitled to consider whether it was a natural and probable result of the acts which defendant and his companion concerted to perform. *Collazo v. United States* (1952, 196 F. 2d 573, 90 U. S. App. D. C. 241, certiorari denied 72 S. Ct. 1065, 343 U. S. 968, 96 L. Ed. 1364).

#### Elements of offense

In order to aid and abet another to commit a crime it is necessary, under District of Columbia law, that a defendant in some sort associate himself with the venture, that he participate in it as in something that he wishes to bring about, that he seek by his action to make it succeed. *United States v. J. E. McCall* (1972, 460 F. 2d 952, 148 U.S. App. D.C. 444).

In order to convict passenger as aider and abettor in unauthorized use of motor vehicle, government must establish that he had actual knowledge of criminal act being committed. *In the Matter of D. M. L.* (D.C. App. 1972, 293 A. 2d 277).

Mere presence at scene of the crime is not sufficient to convict one of aiding and abetting; what is required is evidence that the accused knowingly associated himself in some way with the criminal venture, that he participated in it as something that he wished to bring about, and that he sought by his action to make it succeed. *United States v. W. D. Lumpkin* (1971, 448 F. 2d 1085, 145 U.S. App. D.C. 162).

#### Evidence—Admissibility

Statements made by the defendant, who initially had claimed he was a victim of the robbery along with the complaining witness but who was subsequently charged with aiding and abetting the robber, were not made at a point in the investigation which brought defendant within the protection of *Miranda*, nor, furthermore, did the interview of defendant by the police amount to the "custodial interrogation" which is a prerequisite to the necessity of a *Miranda* warning. *United States v. W. Thompson* (1972, 463 F. 2d 1258, 150 U.S. App. D.C. 167).

#### — Sufficiency

Evidence that defendant was identified by owner of credit card as person who had previously robbed him at gunpoint of wallet which contained a credit card, plus evidence that robbery had occurred on morning of forgery that defendant was charged with aiding and abetting, and evidence that defendant accompanied admitted forger of sales slip to store and selected one of suits which were charged to owner of credit card was sufficient to support conviction on charges that defendant aided and abetted forgery and uttering offenses. *United States v. J. A. Conner* (1972, 462 F. 2d 296, 149 U.S. App. D.C. 192).

Evidence including testimony showing that defendant walked behind victims and tried to remove wallet from



victim's pocket was sufficient to support the implicit finding of verdict that defendant aided and abetted the offense of assault with intent to commit robbery while armed with a dangerous weapon and the offense of assault with a dangerous weapon. *United States v. J. Prater* (1972, 462 F. 2d 292, 149 U.S. App. D.C. 188).

Uncontroverted testimony afforded ample basis for trier of fact to draw reasonable and permissible inference that the juvenile was involved as aider and abettor in the criminal conduct of robbing and assaulting another juvenile notwithstanding there was contradictory testimony by complaining witness. *In the Matter of T.J.W.* (D.C. App. 1972, 294 A. 2d 174).

Evidence, including evidence that automobile was "hot wired" in a manner visible to anyone in rear seat, sustained delinquency adjudication of juvenile who was found in rear seat and charged as aider and abettor in unauthorized use of vehicle. *In the Matter of D. M. L.* (D.C. App. 1972, 293 A. 2d 277).

Evidence that, inter alia, the defendant and two other men entered store together, that they conversed together until other customers left the store, that defendant did not lie on the floor when one of the codefendants, with a gun, announced a "stick-up" and said "To the floor.", and that defendant moved from near the door to near the cash register after a codefendant ordered store employee to open it is sufficient to support defendant's conviction for armed robbery and assault with a dangerous weapon, and conflicting testimony of defendant and his codefendants whereby they all sought to establish that defendant and one of his codefendants were innocent bystanders did not destroy the permissible inference of defendant's guilt. *United States v. W. D. Lumpkin* (1971, 448 F. 2d 1085, 145 U.S. App. D.C. 162).

In this case, the evidence was sufficient to support juvenile court's finding that juvenile participated as an aider and abettor in assault with intent to commit robbery on a school teacher. *In the matter of Reeder* (D.C. App. 1970, 264 A. 2d 893).

Evidence was not sufficient to sustain a conviction for aiding and abetting petit larceny on a showing that at time officer observed suspected criminal activity defendant was standing near the right side of automobile at a point somewhere between automobile, which contained wine and beer allegedly stolen from store, and the store. *T. Williams and B. L. Short v. United States* (D.C. App. 1969, 254 A. 2d 722).

Evidence did not sustain conviction of petit larceny of wine and beer in violation of District Code. *Id.*

The evidence portrayed in a view most favorable to the Government, of defendant's presence at scene of crime, his slight association with actual perpetrator, and subsequent flight, did not sustain conviction for robbery. *J. L. Bailey v. United States* (1969, 416 F. 2d 1110, 135 U.S. App. D.C. 95).

#### Guilty knowledge

To be an "aider and abettor" in unauthorized use of motor vehicle, a mere passenger must be shown to have had guilty knowledge, and this requires more than showing that he rode in automobile, pushed automobile, and repaired a punctured tire. *Wm. H. Kemp, Jr. v. United States* (1962, 311 F. 2d 774, 114 U.S. App. D.C. 88).

Evidence was insufficient to convict defendant as aider and abettor of another in unauthorized use of motor vehicle. *Id.*

#### Information—Validity

Evidence was sufficient to prove that defendant aided and abetted the principal offender in sales and deliveries of drugs, in violation of law, and was not prejudiced by informations charging him alone as principal where there was adequate evidence to establish that principal offender committed violations charged, since statute provided that all persons aiding or abetting principal were to be charged as principals and not as accessories. *R. W. Mason v. United States* (D.C. App. 1969, 256 A. 2d 565).

#### Instructions

Where nowhere in the instructions was there to be found one setting forth essential elements constituting crime of attempted robbery, the underlying felony upon which defendant's conviction of felony-murder was predicated, omission was plain error. *United States v. L. L. Williams* (1972, 463 F. 2d 958, 150 U.S. App. D.C. 122).

Instruction, in prosecution for burglary and petty larceny, pursuant to request for clarification of aiding and abetting, that if B came out of bank and said "I have just robbed it, I have the sack full of money, let's go," and then B got into A's automobile and A took off and ran knowing that crime had been committed, and helped in the escape, he could be liable, is reversibly erroneous since the indictment did not charge defendant with being accessory after the fact and since the jury returned with guilty verdict less than fifteen minutes after being given such instruction. *United States v. M. F. Irving* (1970, 437 F. 2d 649, 141 U.S. App. D.C. 216).

Testimony of assault victim that defendant and two other men were "after" him authorized instruction to jury on theory of aiding and abetting even if defendant's actions did not assume proportions of assault. *J. T. Rogers and B. F. Herring v. United States* (D.C. Mun. App. 1961, 174 A. 2d 356).

In action against two defendants for murder a requested instruction was properly refused which stated that "if no force of arms was contemplated, then defendant was not liable for the consequences of the shot by the codefendant," for the testimony and instruction must show that before the crime has been done he honestly and in good faith withdraws and tries to get away and does not take any part in the offense. *Marcus v. United States* (1937, 86 F. 2d 854, 66 App. D.C. 298).

Fact that there was evidence that one of the three defendants jointly indicted on charge of murder in perpetration of robbery threw away the gun and bullets after the murder did not require an instruction that jury could find such defendant guilty as accessory after the fact, where such defendant's testimony and other circumstances stamped him as an accessory before the fact and therefore guilty as a principal. *Hall v. United States* (1948, 168 F. 2d 161, 83 U.S. App. D.C. 166, 4 A.L.R. 2d 1193, certiorari denied 68 S. Ct. 1509, 334 U.S. 853, 92 L. Ed. 1775, rehearing denied 69 S. Ct. 9, 335 U.S. 839, 93 L. Ed. 391).

Defendants were not entitled to complain that the trial court erroneously failed to tell the jury that a defendant was an accomplice rather than a principal where the trial judge gave instructions which were full and correct and reflected the statutory provision that all who aid or abet in the commission of a crime are charged as principals. *Cooper and Williams v. United States* (D.C. Mun. App. 1956, 123 A. 2d 918).

#### Intent

In prosecution of Puerto Rican defendant, whose companion shot and killed guard in front of dwelling of President of the United States, for first-degree murder, wherein defendant interposed defense that he and companion had no intent to kill anyone but merely wished to create an incident in order to bring to the attention of the American people conditions in Puerto Rico, defendant was properly allowed to testify as to his own intent. *Collazo v. United States* (1952, 196 F. 2d 573, 90 U. S. App. D. C. 241, certiorari denied 72 S. Ct. 1065, 343 U. S. 968, 96 L. Ed. 1364).

#### Lender of automobile

"If the owner of a dangerous instrumentality like an automobile knowingly puts that instrumentality in the immediate control of a careless and reckless driver, sits by his side, and permits him without protest so carelessly and negligently to operate the car as to cause the death of another, he is as much responsible as the man at the wheel." *Story v. United States* (1927, 16 F. 2d 342, 57 App. D.C. 3, 53 A.L.R. 246, certiorari denied 47 S. Ct. 576, 274 U.S. 739, 71 L. Ed. 1318).

#### Participation

Evidence was sufficient to establish defendant's guilty participation in crime of housebreaking and larceny. *Lanham v. United States* (1951, 185 F. 2d 435, 87 U. S. App. D. C. 357).

#### Presence at commission

When defendant was not present when the actual conversion took place, he was a mere artificial principal and not an actual one, that is, he was subject to the same punishment as though he actually had assisted in the final act of larceny; but that does not prevent his prosecution for the distinct offense of receiving stolen goods.



*Weisberg v. United States* (1919, 258 F. 284, 49 App. D.C. 28).

#### Prosecution of aider and abettor

In this jurisdiction, an aider and abettor is prosecuted as a principal, and conviction of principal offender is not prerequisite to conviction of the aider and abettor. *J. L. Bailey v. United States* (1969, 416 F. 2d 1110, 135 U.S. App. D.C. 95).

#### Testimony of accomplice

There may be a conviction on the uncorroborated testimony of an accomplice, "provided the jury is admonished by the court that the testimony of an accomplice 'ought to be received with suspicion, and with the very greatest care and caution.'" *Egan v. United States* (1923, 287 F. 958, 52 App. D.C. 384).

### § 22-105a. Punishment of persons convicted of conspiracies to commit crimes—Proof—Conspiracies to commit crimes within or outside of the District.

(a) If two or more persons conspire either to commit a criminal offense or to defraud the District of Columbia or any court or agency thereof in any manner or for any purpose, each shall be fined not more than \$10,000 or imprisoned not more than five years, or both, except that if the object of the conspiracy is a criminal offense punishable by less than five years, the maximum penalty for the conspiracy shall not exceed the maximum penalty provided for that offense.

(b) No person may be convicted of conspiracy unless an overt act is alleged and proved to have been committed by one of the conspirators pursuant to the conspiracy and to effect its purpose.

(c) When the object of a conspiracy contrived within the District of Columbia is to engage in conduct in a jurisdiction outside the District of Columbia which would constitute a criminal offense under an Act of Congress applicable exclusively to the District of Columbia if performed therein, the conspiracy is a violation of this section if (1) such conduct would also constitute a crime under the laws of the other jurisdiction if performed therein, or (2) such conduct would constitute a criminal offense under an Act of Congress exclusively applicable to the District of Columbia even if performed outside the District of Columbia.

(d) A conspiracy contrived in another jurisdiction to engage in conduct within the District of Columbia which would constitute a criminal offense under an Act of Congress exclusively applicable to the District of Columbia if performed within the District of Columbia is a violation of this section when an overt act pursuant to the conspiracy is committed within the District of Columbia. Under such circumstances, it is immaterial and no defense to a prosecution for conspiracy that the conduct which is the object of the conspiracy would not constitute a crime under the laws of the other jurisdiction. (Mar. 3, 1901, ch. 854, § 908 A; as added July 29, 1970, Pub. L. 91-358, § 202, title II, 84 Stat. 599.)

#### EFFECTIVE DATE

See note preceding section 11-101.

### § 22-106. Accessories after the fact.

Whoever shall be convicted of being an accessory after the fact to any crime punishable by death shall be punished by imprisonment for not more than twenty years. Whoever shall be convicted of being accessory after the fact to any crime punishable by

imprisonment shall be punished by a fine or imprisonment, or both, as the case may be, not more than one-half the maximum fine or imprisonment, or both, to which the principal offender may be subjected. (Mar. 3, 1901, 31 Stat. 1337, ch. 854, § 909.)

#### NOTES TO DECISIONS

##### Accessory after the fact

Where apartment dweller, who had fled scene of fatal shooting with defendant, attempted to impede police search of her apartment for defendant, her actions provided grounds for her arrest as an accessory after the fact. *United States v. C. R. Honesty* (1971, 459 F. 2d 1279, 148 U.S. App. D.C. 255).

Defendant could be convicted as accessory after fact, even though he was present before, during and after crime. *J. S. Smith v. United States* (1962, 306 F. 2d 286, 113 U.S. App. D.C. 126).

##### Instructions

Instruction, in prosecution for burglary and petty larceny, pursuant to request for clarification of aiding and abetting, that if B came out of bank and said "I have just robbed it, I have the sack full of money, let's go," and then B got into A's automobile and A took off and ran knowing that crime had been committed, and helped in the escape, he could be liable, is reversibly erroneous since the indictment did not charge defendant with being accessory after the fact and since the jury returned with guilty verdict less than fifteen minutes after being given such instruction. *United States v. M. F. Irving* (1970, 437 F. 2d 649, 141 U.S. App. D.C. 216).

##### Miranda warning

Where police entry into apartment of female, who had left scene of fatal shooting with defendant, was in pursuit of defendant and when police arrived at apartment female was neither accused nor suspected of having committed any substantive crime and it was only after she attempted to impede search that she was arrested as an accessory after the fact, any failure to administer warning of right to counsel and right to remain silent immediately on entering did not make any of her statements or actions prior to arrest inadmissible. *United States v. C. R. Honesty* (1971, 459 F. 2d 1279, 148 U.S. App. D.C. 255).

##### Severance

Female, charged with being an accessory after the fact to crime of assault with dangerous weapon, was not improperly denied trial separate from defendant, charged with assault with a dangerous weapon and carrying a dangerous weapon, where trial judge diligently exercised his responsibility to keep the evidence and issues separated, both during trial and in his instructions. *United States v. C. R. Honesty* (1971, 459 F. 2d 1279, 148 U.S. App. D.C. 255).

### § 22-107. Punishment for offenses not covered by provisions of code.

Whoever shall be convicted of any criminal offense not covered by the provisions of any section of this code, or of any general law of the United States not locally inapplicable in the District of Columbia, shall be punished by a fine not exceeding one thousand dollars or by imprisonment for not more than five years, or both. (Mar. 3, 1901, 31 Stat. 1337, ch. 854, § 910.)

#### NOTES TO DECISIONS

##### In general

"This section obviously was enacted to cover offenses not embraced in any other section of the District Code or of any general law of the United States not locally inapplicable. It was enacted out of abundant caution, and to cover any offense for which no other provision had been made. \* \* \* A prosecution under this section, when the facts show that the offense is covered by some specific statute, is clearly unauthorized. In other words, this section was intended to supplement, and not supersede or modify, specific statutory provisions." *Fletcher v. United States* (1914, 42 App. D.C. 53, certiorari denied 35 S. Ct. 283, 235 U.S. 706, 59 L. Ed. 434).



**Conspiracy**

Defendant convicted of common-law conspiracy was properly sentenced under this section, for no overt act being charged, the indictment was not under § 37 of the federal penal code, 18 U.S.C. § 371, and the rule that there are no common-law offenses against the United States is not applicable in the District of Columbia. *Harrison v. Moyer* (D.C. Ga. 1915, 224 F. 224).

**Disorderly house**

Offense of keeping a disorderly house being punishable under this section of the Code by imprisonment, its prosecution is exclusively within jurisdiction of the District Court, and a conviction therefor in the police court is void. *Palmer v. Lenovitz* (1910, 35 App. D.C. 303).

**Negligent escape**

Under this section prescribing fine not exceeding \$1,000 or imprisonment for not more than five years or both as punishment for any offense not specifically covered by statute, conviction of negligent escape, punishment for which is not specifically prescribed, invokes the punishment of a felony, although it was apparently classified as a misdemeanor at common law. *United States v. Davis* (1948, 167 F. 2d 228, 83 U.S. App. D.C. 99, certiorari denied 68 S. Ct. 1501, 334 U.S. 849, 92 L. Ed. 1772).

**§ 22-108. Offenses committed beyond District of Columbia.**

Any person who by the commission outside of the District of Columbia of any act which, if committed within the District of Columbia, would be a criminal offense under the laws of said District, thereby obtains any property or other thing of value, and is afterwards found with any such property or other such thing of value in his possession in said District, or who brings any such property or other such thing of value into said District, shall, upon conviction, be punished in the same manner as if said act had been committed wholly within said District. (Mar. 3, 1901, ch. 854, § 836a, as added Dec. 21, 1911, 37 Stat. 45, ch. 2.)

**NOTES TO DECISIONS****Stolen goods**

District Court for the District of Columbia has jurisdiction of case involving conspiracy to bring stolen stock into the District, as such court is a District Court of the United States. *Arnstein v. United States* (1924, 296 F. 946, 54 App. D.C. 199, certiorari denied 44 S. Ct. 454, 264 U.S. 595, 68 L. Ed. 867).

**§ 22-109. Prosecutions.**

All prosecutions for violations of section 22-1121 or any of the provisions of any of the laws or ordinances provided for by this Act shall be conducted in the name of and for the benefit of the District of Columbia, and in the same manner as provided by law for the prosecution of offenses against the laws and ordinances of the said District. Any person convicted of any violation of section 22-1121 or any of the provisions of this Act, and who shall fail to pay the fine or penalty imposed, or to give security where the same is required, shall be committed to the workhouse of the District of Columbia for a term not exceeding six months for each and every offense. The second sentence of this section shall not apply with respect to any violation of section 22-1112 (b). (July 29, 1892, 27 Stat. 325, ch. 320, § 18; June 29, 1953, 67 Stat. 93, 98, ch. 159, §§ 202 (a) (2), 211 (b).)

**REFERENCES IN TEXT**

This Act, referred to in the text, refers to act July 29, 1892. Existing provisions of act July 29, 1892, are classified to sections 4-120, 22-109, 22-1107 to 22-1110,

22-1112 to 22-1114, 22-1117, 22-1118 and 22-3110 to 22-3113. Provisions of section 7 of act July 29, 1892, were repealed by act Aug. 15, 1935, 49 Stat. 652, ch. 546, § 4, and are now covered by section 22-2701. Provisions of section 8 of act July 29, 1892, were repealed by act Dec. 17, 1941, 55 Stat. 810, ch. 589, § 5, and are now covered by sections 22-3302 and 22-3304. Provisions of section 12 of act July 29, 1892, prohibited the fast riding and driving of any animal of the horse kind and imposed a maximum penalty of twenty-five dollars for violation thereof and were superseded by act June 29, 1906, 34 Stat. 621, ch. 3615, § 1, which was repealed by act Mar. 3, 1925, 43 Stat. 1125, ch. 443, § 16(a).

**AMENDMENT**

1953—Act June 29, 1953, added the last sentence which excepted application of the section to a violation of section 22-1112 (b) and inserted references to section 22-1121 in two instances, respectively.

**CROSS REFERENCES**

Adulteration of food and drugs, see § 33-101 et seq.  
Alcoholic Beverage Control Act, see § 25-101 et seq.  
Institutions of learning, penal provisions, see § 29-419.  
Prosecutions, generally, see § 23-101.  
Public utilities, penal provisions, see § 43-901 et seq.  
Traffic Act, penalties, see § 40-601 et seq.  
Uniform Narcotic Drug Act, see § 33-401 et seq.  
Warehouse Receipts Act, criminal offenses, see § 22-3701 et seq.

**NOTES TO DECISIONS****Information—Sufficiency**

Defendants, who were arrested after refusing to move out of corridor in House wing of Capitol building when ordered to do so by Capitol police, were entitled to know with certainty offense with which they were charged and possible penalty threatened and were entitled to definite reference to the law which they had allegedly violated, and thus where, notwithstanding request of defense, no one had given citation of statute under which prosecution was being had, other than statement of prosecutor that two sections were involved, convictions under section carrying lighter sentence, as requested by prosecutor, were required to be set aside. *D. Smith et al. v. District of Columbia* (1967, 387 F. 2d 233, 128 U.S. App. D.C. 275).

**Prosecution by Corporation Counsel**

Office of Corporation Counsel did not lack jurisdiction to prosecute for violations of disorderly conduct statute on ground that prosecution of offenses punishable by fine and imprisonment must be conducted by the United States Attorney, since the statute relating to prosecutions by United States Attorney specifically excepts prosecutions under disorderly conduct statute from operation of such rule. *D. Feeley, A. Uhrig, B. Dunlap v. District of Columbia* (D.C. App. 1966, 220 A. 2d 325).

The disorderly conduct statute and statute providing that all prosecutions for a violation of disorderly conduct statute shall be conducted in name of and for benefit of District of Columbia and in same manner as provided by law for prosecution of offenses against laws and ordinances of the District must be read together. *Id.*

Informations charging disorderly conduct were properly prosecuted by the Corporation Counsel on behalf of the District of Columbia even though the informations charged an offense punishable by a fine or by imprisonment, or both. *Smith v. District of Columbia* (D.C. App. 1966, 219 A. 2d 842).

**Chapter 2.—ABORTION****Sec.**

22-201 Definition and penalty.

**§ 22-201. Definition and penalty.**

Whoever, by means of any instrument, medicine, drug or other means whatever, procures or produces, or attempts to procure or produce an abortion or miscarriage on any woman, unless the same were done as necessary for the preservation of the mother's life or health and under the direction of a competent licensed practitioner of medicine, shall be imprisoned in the penitentiary not less than one



year or not more than ten years; or if the death of the mother results therefrom, the person procuring or producing, or attempting to procure or produce the abortion or miscarriage shall be guilty of second degree murder. (Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 809; June 29, 1953, 67 Stat. 93, ch. 159, § 203.)

#### AMENDMENT

1953—Act June 29, 1953, provided for a penalty of imprisonment for from one to ten years in lieu of the previous provision of "not more than five years" and that in the event of death, the person procuring the abortion would be guilty of second degree murder whereas the previous provision was for imprisonment of from three to twenty years.

#### CROSS REFERENCE

Nonmailable matter pertaining to abortion, penalties, see 18 U.S.C. § 1461.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-502.

#### NOTES TO DECISIONS

##### Attempt

Crime as denounced by this section and charged by the indictment does not necessarily contemplate an actual miscarriage by the woman, but is complete when an attempt to procure a miscarriage by such means is made, regardless of whether it results in an actual miscarriage of the pregnant woman or not. *Crichton v. United States* (1937, 92 F. 2d 224, 67 App. D.C. 300, certiorari denied 58 S. Ct. 22, 302 U.S. 707, 82 L. Ed. 542).

##### Burden of proof

In a prosecution under this section, the burden is on the prosecution to plead and prove that abortion was not necessary for the preservation of the mother's life or health. *United States v. M. Vuitch* (1971, 91 S. Ct. 1294, 402 U.S. 62).

In abortion prosecution brought under this section and containing exception in case abortion is performed to preserve life or health, the burden of proving that act was justified on therapeutic grounds was on defendants and the prosecution was not required as part of its case to negative application of the exception. *Williams v. United States* (1943, 138 F. 2d 81, 78 U.S. App. D.C. 147, 153 A.L.R. 1213).

##### Civil contempt

Civil contempt proceeding for alleged violation of preliminary injunction requiring D.C. General Hospital to comply with hospital's own regulations concerning grounds for performing abortions and to end practice of limiting abortions performed to protect woman's mental health to those patients who could establish history of mental illness predating pregnancy will be remanded to district court since that court presently has before it the merits of the litigation and a full evidentiary hearing would be necessary to fashion adequate safeguards to prevent recurrent violations of injunction. *M. Doe et al. v. General Hospital of the District of Columbia et al.* (1970, 434 F. 2d 427, 140 U.S. App. D.C. 153).

##### Congressional police power

Congress has the police power to outlaw abortions that are not performed under a qualified licensed practitioner of medicine. *United States v. M. Vuitch and S. A. Boyd* (1969, 305 F. Supp. 1032; rev'd and rem'd 91 S. Ct. 1249, 402 U.S. 62).

##### Constitutionality

Provisions in this section making the inducing of an abortion a felony unless it is done as necessary for preservation of mother's life or health, is invalid for failure to give that certainty which due process of law considers essential in criminal statute and for impinging to an appreciable extent on significant constitutional rights of individuals. *United States v. M. Vuitch and S. A. Boyd* (1969, 305 F. Supp. 1032; rev'd and rem'd 91 S. Ct. 1249, 402 U.S. 62).

##### Construction

Under this section prohibiting abortions unless "necessary for the preservation of the mother's life or health,"

abortion is permitted for mental health reasons whether or not the patient has previous history of mental defects. *United States v. M. Vuitch* (1971, 91 S. Ct. 1294, 402 U.S. 62).

Within this section, "health" is the state of being sound in body or mind and includes psychological as well as physical well-being. *Id.*

This section, as properly construed, is not unconstitutionally vague. *Id.*

In the case, the court held that neither this section nor the rules and regulations governing therapeutic abortions at general hospital of district precludes D.C. General Hospital from making available its facilities for performance of therapeutic abortions for mental health reasons whether or not patient has had previous history of mental defects. *M. Doe et al. v. General Hospital of the District of Columbia et al.* (1970, 313 F. Supp. 1170).

##### Corroboration

Testimony of physician and detective as to statements which were made to them by prosecuting witness while in hospital after alleged attempted abortion and which were consistent with her trial testimony was relevant and proper to evaluation of credibility of prosecuting witness which had been attacked by defense counsel in cross-examination relating to prior inconsistent statements and to evaluation of her motive for making prior consistent statements, her motive having been put in issue by the defense. *C. A. Copes v. United States* (1964, 345 F. 2d 723, 120 U.S. App. D.C. 234).

##### Criminal Contempt

Where trial judge in abortion prosecution permitted himself to become personally embroiled with defense counsel throughout trial and made statement to jury indicating his hostility toward counsel, trial judge, instead of finding counsel guilty of criminal contempt and imposing punishment, should have invited the Chief Judge of the District Court to assign another judge to sit in hearing of charge against counsel. *Offutt v. United States* (1954, 75 S. Ct. 11, 348 U.S. 11, 99 L. Ed. 11).

##### Direct appeal to Supreme Court

Appeal lay directly to the Supreme Court under the Criminal Appeals Act (18 U.S.C. 3731) from district court judgment dismissing indictment on ground that this section, on which the indictment was based, was unconstitutionally vague, though such section applies only to the District, as such section was duly enacted by both Houses of Congress and signed by the President, and thus is a "statute" within the meaning of such Act. *United States v. M. Vuitch* (1971, 91 S. Ct. 1294, 402 U.S. 62).

##### Equal protection of the laws

Principles of equal protection under our Constitution require that abortion policies in public hospitals be liberalized and it is legally proper that uniform medical abortion services be provided to all segments of the population, the poor as well as the rich. *United States v. M. Vuitch and S. A. Boyd* (1969, 305 F. Supp. 1032; rev'd and rem'd 91 S. Ct. 1249, 402 U.S. 62).

##### Evidence

In abortion prosecution of physician, wherein physician admitted treating complaining witness at time and place alleged by her and in manner described by her, but claimed that the treatment was not designed to cause an abortion, trial court properly permitted introduction of the testimony of two other women that physician agreed to and did perform an abortion on each in substantially the same manner as described by the complaining witness about the same time as the alleged abortion testified to by the complaining witness. *Harper v. United States* (1956, 239 F. 2d 945, 99 U. S. App. D. C. 324).

It was not error to admit evidence concerning three treatments by defendant when only one was charged in the indictment, as the three treatments, taken together, and their joint result, constituted the crime with which the defendant was charged. *Harrod v. United States* (1929, 29 F. 2d 454, 58 App. D.C. 254).

Evidence was sufficient to sustain conviction. *Harrod v. United States* (1929, 29 F. 2d 454, 58 App. D.C. 254). See, also, *Hart v. United States* (1939, 105 F. 2d 792, 70 App. D.C. 269).



Evidence supported conviction of criminal abortion as against defendant's claim that there was no evidence that the crime had been committed in the District of Columbia. *Miller v. United States* (1948, 169 F. 2d 967, 83 U.S. App. D.C. 367).

#### Indictment

The preservation of life or health provisions in this section forbidding the prescribing or administering of medicine, drug or other substance or use of instrument to procure miscarriage unless when necessary to preserve woman's life or health and under direction of competent licensed medical practitioner are intended to furnish the defense an opportunity for justification and are not part of description of offense required to be alleged or proved by prosecution. *Peckham v. United States* (1954, 210 F. 2d 693, 93 U.S. App. D.C. 136).

#### Instructions

Failure to instruct jury that testimony of physician and detective as to statements which were made to them by prosecuting witness while in hospital after alleged attempted abortion and which were consistent with her trial testimony should be considered only as bearing on her credibility as witness and not as proof of defendant's guilt was not error, in view of instructions as whole and fact that point as to witness' credibility was extensively argued in summations. *C. A. Copes v. United States* (1964, 345 F. 2d 723, 120 U.S. App. D.C. 234).

In prosecution for using instruments upon and administering drugs to named woman, then pregnant, with intent to procure her miscarriage, charge of court that it was immaterial whether or not woman was pregnant, if at time defendant believed she was pregnant, was not erroneous. *Peckham v. United States* (1955, 226 F. 2d 34, 96 U.S. App. D.C. 312, certiorari denied 76 S. Ct. 195, 350 U.S. 912, 100 L. Ed. 800, rehearing denied 76 S. Ct. 341, 350 U.S. 955, 100 L. Ed. 831).

Instruction on necessity of finding guilt beyond reasonable doubt and instruction requiring government to establish that defendant prescribed or administered a medicine, drug or other substance or used on the woman some instrument or means, that she was pregnant at the time and that defendant did the act with intent to procure a miscarriage adequately defined all essential elements of crime of abortion and adequately instructed jury as to necessity of proof beyond reasonable doubt that complaining witness was pregnant and that defendant did some act or administered some treatment or drug with intent to procure an abortion. *Peckham v. United States* (1954, 210 F. 2d 693, 93 U.S. App. D.C. 136).

In prosecution for abortion in May 1951, and in January 1952, instruction that witness who testified that he had assisted in arranging and furthering the first alleged abortion must be deemed an accomplice and that his testimony should be received with care and scrutinized with caution was not erroneous as carrying inference that defendant was guilty. *Id.*

Fact that disproportionate amount of charge was devoted to outlining Government's side of case in connection with second count of indictment alleging abortion as to which the defense won acquittal did not require reversal of conviction on first count alleging abortion on different date where defense of such first count consisted almost entirely of case as outlined in the charge. *Id.*

#### License, revocation of

District of Columbia Code provision authorizing revocation of license of person convicted in United States District Court for the District of Columbia of any felony, without further hearing or procedure, provides an additional remedy for revocation of license and did not preclude resort to action in equity by Commission on License to Practice the Healing Art for revocation of license under statute authorizing same in case of misconduct. *Ladrey v. Commission on Licensure, etc.* (1958, 261 F. 2d 68, 104 U.S. App. D.C. 239, certiorari denied 79 S. Ct. 288, 358 U.S. 920, 3 L. Ed. 2d 239, rehearing denied 79 S. Ct. 351, 358 U.S. 948, 3 L. Ed. 2d 353).

Under District of Columbia Code permitting revocation of license because of misconduct after institution of action in United States District Court for the District of Columbia sitting as a court of equity, where complaint charged in words of criminal statute that physician had

performed an abortion physician could not contend that the word "misconduct" was too vague and indefinite to meet requirements of due process. *Id.*

Under statute authorizing District Court of the United States for the District of Columbia sitting as a court of equity to suspend license upon evidence showing that licentiate has been guilty of misconduct, licentiate has available to him full protection of rules and "misconduct" as a ground for suspension or revocation is not left as a matter of opinion but is susceptible to complete exposition under rules and requires proof as a matter of fact accordingly. *Id.*

#### Prejudicial error

In prosecution for abortion, excessive injection of trial judge into examination of witnesses and judge's numerous comments to defense counsel, indicating at times hostility, though under provocation, demonstrated a bias and lack of impartiality which may well have influenced the jury and required reversal of conviction. *Peckham v. United States* (1954, 210 F. 2d 693, 93 U.S. App. D.C. 136).

In prosecution for abortion on two counts, refusal to allow defense counsel to examine whole file of hospital records of doctor who examined prosecuting witness at hospital and who used a part of file to refresh his recollection and who expressed opinion as to induced abortion relating only to second count of which defendant was acquitted was not prejudicial error. *Id.*

#### Sentence

Where defendant was indicted on two charges and plead guilty to both, and the court inadvertently pronounced the sentences to run concurrently, the court had power to amend the sentences to run consecutively where defendant was still in the custody of the officers of the court. *Rouley v. Welch* (1940, 114 F. 2d 499, 72 App. D.C. 351).

#### Severability of statute

The valid provision of this section outlawing abortions except when performed under the direction of competent physician is severable from invalid provision prohibiting abortion unless it is done as necessary for preservation of mother's life or health and entire statute is not invalid. *United States v. M. Vutch and S. A. Boyd* (1969, 305 F. Supp. 1032; rev'd and rem'd 91 S. Ct. 1249, 402 U.S. 62).

#### Woman not accomplice

"This section applies to the person or persons committing the act which produces the miscarriage, and not to the person upon whom it is committed, notwithstanding it may be done with her knowledge and consent. Not being liable to indictment thereunder, she is not an accomplice in the legal sense." *Marey v. United States* (1907, 30 App. D.C. 63). See, also, *Thompson v. United States* (1908, 30 App. D.C. 352), 12 Ann. Cas. 1004).

### Chapter 3.—ADULTERY

#### Sec.

22-301. Definition and penalty.

#### § 22-301. Definition and penalty.

Whoever commits adultery in the District shall, on conviction thereof, be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding one year, or both; and when the act is committed between a married woman and a man who is unmarried both parties to such act shall be deemed guilty of adultery; and when such act is committed between a married man and a woman who is unmarried, the man only shall be deemed guilty of adultery. (Mar. 3, 1901, 31 Stat. 1332, ch. 854, § 874.)

#### NOTES TO DECISIONS

#### Credibility of testimony

Where two women who later became witnesses for prosecution first told police sergeant they knew nothing about the case and gave unsworn statements to that effect but later each gave a second statement in which full story was told, after which sergeant destroyed first statements in belief that they had become valueless, offi-



cer's act in destroying first statement did not afford basis for instruction that jury might disregard all or any portion of officer's testimony. *Miller v. United States* (1948, 169 F. 2d 967, 83 U.S. App. D.C. 367).

Where two women who testified as witnesses for prosecution did not admit having falsified as to any issue but merely stated that they had first refrained from giving any information because they did not want to become publicly involved in a scandalous situation, defendant was not entitled to an instruction requiring jury to give careful scrutiny to testimony of the two women on ground that they had admitted swearing falsely. *Id.*

#### Indictment

Two charges of adultery with the same person may be joined under R.S. § 1024, now covered by Fed. Rules Cr. Proc. rules 8, 13, 14, 18 U.S.C. App. *Kleindienst v. United States* (1918, 48 App. D.C. 190).

#### Law governing

One convicted of adultery should be sentenced under this section and not under section 316 of the Penal Code (18 U.S.C. § 516). *Kleindienst v. United States* (1918, 48 App. D.C. 190).

On an indictment for adultery which under the District Code is a misdemeanor and under the Federal Penal Code a felony, the accused on his conviction should be sentenced under the former and not the latter *O'Brien v. United States* (1938, 99 F. 2d 368, 69 App. D.C. 135, certiorari denied 59 S. Ct. 95, 305 U.S. 562, 83 L. Ed. 354).

#### Proof

When indictment charges two specific acts of adultery, and the proof shows "repeated offenses of adultery" extending over a period of more than a year, it is error to refuse to require the government to specify, at the close of its case, the specific acts for which the government asks a conviction. *Kleindienst v. United States* (1918, 48 App. D.C. 190).

#### Unmarried woman

If committed by her while unmarried, the act would not have been indictable; but such act would have been indictable if committed by her while married. *O'Neil v. O'Neil* (1924, 299 F. 914, 55 App. D.C. 40).

### Chapter 4.—ARSON

#### Sec.

22-401. Definition and penalty.

22-402. Burning one's own property with intent to defraud or injure another.

22-403. Malicious burning, destruction, or injury of another's movable property.

22-404. Malicious burning of fences, woods, crops.

#### § 22-401. Definition and penalty.

Whoever shall maliciously burn or attempt to burn any dwelling, or house, barn, or stable adjoining thereto, or any store, barn, or outhouse, or any shop, office, stable, store, warehouse, or any other building, or any steamboat, vessel, canal boat, or other watercraft, or any railroad car, the property, in whole or in part, of another person, or any church, meetinghouse, schoolhouse, or any of the public buildings in the District, belonging to the United States or to the District of Columbia, shall suffer imprisonment for not less than one year nor more than ten years. (Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 820.)

#### CROSS REFERENCE

Kindling bonfires, see § 22-1113.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-2401, 23-546.

#### NOTES TO DECISIONS

##### Defendant's absence during trial

Where record on appeal from convictions for house-breaking, arson, and malicious destruction of personal property failed to show that defendant's absence during

trial, after trial had commenced in his presence, constituted deliberate failure to appear without reason that might bear on court's latitude to have continued trial, case would be remanded for development of such issue including circumstances in which defendant was taken into custody after trial. *M. Cureton v. United States* (1968, 396 F. 2d 671, 130 U.S. App. D.C. 22).

#### Evidence

In arson and murder prosecution, evidence was sufficient to establish that victim's death had been caused by the fire in house in which her body was found. *Green v. United States* (1955, 218 F. 2d 856, 95 U.S. App. D.C. 45).

Evidence sustained conviction for arson committed by malicious burning of building of another. *Lichtenwalter v. United States* (1951, 190 F. 2d 36, 89 U.S. App. D.C. 187).

#### — Admissibility

Where officer responding to trouble call was met by defendant and third person who told officer that defendant had set fire and officer asked defendant whether it was true, defendant accepted blame and responded affirmatively to officer's question whether he had set fire, defendant's responses were admissible despite lack of Miranda warnings, defendant not having been in custody or suspected or arrested or otherwise deprived of his freedom of action in any significant way. *United States v. B. E. Barnes* (1972, 464 F. 2d 828, 150 U.S. App. D.C. 319; cert. denied 93 S. Ct. 1514, 410 U.S. 986).

#### Indictment

Counts are properly joined in the same indictment which charge defendant with setting fire to his own property and with attempt to burn another person's property. *Posey v. United States* (1905, 26 App. D. C. 302).

#### Part owner

One burning a dwelling-house occupied in part by him and in part by another, with intent to defraud an insurance company, is guilty of arson. *Posey v. United States* (1905, 26 App. D. C. 302).

#### Review

Errors in trial of charge of arson require reversal. *Parlton v. United States* (1896, 75 F. 2d 772, 64 App. D.C. 169).

#### Tenant

"It is not to be presumed that Congress intended to exempt from liability a tenant who should maliciously burn, or attempt to burn, a building belonging to another though temporarily occupied by him" *Posey v. United States* (1905, 26 App. D. C. 302).

#### § 22-402. Burning one's own property with intent to defraud or injure another.

Whoever maliciously burns or sets fire to any dwelling, shop, barn, stable, store, or warehouse or other building, or any steamboat, vessel, canal boat, or other watercraft, or any goods, wares, or merchandise, the same being his own property, in whole or in part, with intent to defraud or injure any other person, shall be imprisoned for not more than fifteen years. (Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 821.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-2401, 23-546.

#### § 22-403. Malicious burning, destruction, or injury of another's movable property.

Whoever maliciously injures or breaks or destroys, or attempts to injure or break or destroy, by fire or otherwise, any public or private property, whether real or personal, not his own, of the value of \$200 or more, shall be fined not more than \$5,000 or shall be imprisoned for not more than ten years, or both, and if the value of the property be less than \$200 shall be fined not more than \$1,000 or imprisoned for not more than one year, or both. (Mar. 3, 1901,



31 Stat. 1327, ch. 854, § 848; Aug. 12, 1937, 50 Stat. 629, ch. 599; Nov. 8, 1965, 79 Stat. 1307, Pub. L. 89-347, § 1.)

#### AMENDMENTS

1965—Section 1 of act Nov. 8, 1965, amended section. For provisions of this section prior to this amendment see 1961 edition of the code.

1937—Act Aug. 12, 1937, substituted \$50 for \$35 in two instances.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23-546.

#### NOTES TO DECISIONS

##### Arrest without warrant

Police officer may arrest without a warrant for misdemeanor of destroying private property only when that crime is committed, or attempt is made to commit it, in his presence or view. *S. Smith and W. Jeffries v. United States* (D.C. App. 1968, 247 A. 2d 293).

Officer had probable cause to arrest defendant who had been observed tearing up back seat of automobile which he admitted was not his on charge of destroying private property. *Id.*

##### Defendant's absence during trial

Where record on appeal from convictions for house-breaking, arson, and malicious destruction of personal property failed to show that defendant's absence during trial, after trial had commenced in his presence, constituted deliberate failure to appear without reason that might bear on court's latitude to have continued trial, case would be remanded for development of such issue including circumstances in which defendant was taken into custody after trial. *M. Cureton v. United States* (1968, 396 F. 2d 671, 130 U.S. App. D.C. 22).

##### Evidence—Admissibility

In prosecution for malicious burning of another's property, record sustained trial court's ruling that defendant had failed to prove unnecessary delay in presentment to committing magistrate or that unnecessary delay had induced confession, and confession was properly admitted. *Gladys M. Tillotson v. United States* (1956, 231 F. 2d 736, 97 U. S. App. D. C. 402, certiorari denied 76 S. Ct. 1055, 351 U. S. 989, 100 L. Ed. 1502).

##### — Sufficiency

Evidence showing, among things, that the defendant, who had had an altercation with tavern owner, was found behind tavern with bottle full of gasoline and a book of matches with the cover torn off, is sufficient to present a jury issue as to whether the defendant was guilty of attempted destruction of property. *R. L. Williams v. United States* (D.C. App. 1971, 283 A. 2d 212).

Evidence that the defendant and his companion were the only people in hall near apartment when witness alighted from elevator after hearing suspicious noises, that door to witness' apartment had large hole in it, and that defendant's companion dropped screwdriver while being followed is sufficient to support conclusion of guilt beyond reasonable doubt of attempted burglary II and destruction of property. *W. W. Hopkins v. United States* (D.C. App. 1971, 274 A. 2d 418).

Evidence, including testimony identifying defendant as one of two men attempting to pry open window with crowbar, is sufficient to sustain convictions for attempted second-degree burglary, destroying property and attempted petit larceny. *H. Manning v. United States* (D.C. App. 1970, 270 A. 2d 504).

In this case, the court held that testimony as to ownership of damaged vending machine, purportedly based on witness' own knowledge, was not hearsay and was sufficient to prove ownership as alleged in information charging malicious injuring of property and attempted petit larceny. *L. Killens v. United States* (D.C. App. 1970, 263 A. 2d 44).

Possession by defendant of stolen television set, in alley at rear of store which was broken into and from which television set was taken, within a few minutes after the breaking of window and theft was sufficient evidence from which the trial court could infer breaking of the window, as predicate for conviction for destroying

property. *F. Green v. United States* (D.C. App. 1969, 251 A. 2d 652).

Evidence that fingerprints of defendant appeared on glass surface, which had once been outside surface of drugstore entrance was insufficient to sustain conviction of attempted housebreaking, destroying property, and petit larceny. *A. W. Townsley v. United States* (D.C. App. 1967, 236 A. 2d 63).

Evidence was sufficient to sustain conviction for house-breaking, larceny and destroying movable property. *Braddy v. United States* (1955, 225 F. 2d 551, 96 U. S. App. D. C. 251).

##### Indictment

Quaere: Whether prosecution can be in the name of the District of Columbia, if value of property is more than \$35, not decided by appellate court, but it did say, it is very doubtful under Code of 1929, title 6, § 351 (§ 23-101) which provides that prosecutions of "all penal regulations, where the maximum punishment is a fine only or imprisonment not exceeding one year, shall be conducted in the name of the District of Columbia, and by the city solicitor or his assistants." *Nation v. District of Columbia* (1910, 34 App. D.C. 453, 26 L.R.A., N.S., 996).

Indictment or information must allege value of property injured. *Id.*

##### Inference of malice

Malice in damaging of right front vent of automobile window could be inferred from intentional wrongdoing and value of property could be inferred from evidence respecting its useful, functional purpose. *F. L. Paige v. United States* (D.C. Mun. App. 1962, 183 A. 2d 759).

##### Information—Amendment

Where amendment of information charging attempted second-degree burglary, destroying private property, and petit larceny to reflect that property in question belonged to corporation in care and custody of individual, as opposed to individual alone as charged in original information, conformed to testimony at trial and no prejudice was occasioned by the defense, permitting the amendment was not error. *J. L. King v. United States* (D.C. App. 1970, 271 A. 2d 556).

##### Prejudicial error

In prosecution for housebreaking, larceny and destruction of property, wherein one defendant was permitted to change his plea in open court and in presence of jury and was asked by trial judge whether he admitted committing offense and replied that he did admit being with "them," there was error which, in view of circumstantial and inconclusive nature of evidence, would require reversal of another defendant's conviction. *Gaynor v. United States* (1957, 247 F. 2d 583, 101 U. S. App. D. C. 177).

##### Sentences

Rule of lenity is to be applied, and concurrent sentences imposed for destruction of property and attempted second-degree burglary, since in this case both offenses involved single course of conduct, i.e., prying of window. *H. Manning v. United States* (D.C. App. 1970, 270 A. 2d 504).

Consecutive sentences could properly be imposed for attempted second-degree burglary and attempted petit larceny, since it is apparent from facts of case, including use of panel truck, that defendant intended to invade two distinct societal interests. *Id.*

Statutory provision for two-year mandatory minimum sentence for burglary do not operate to prevent prosecution and sentencing for lesser misdemeanors of attempted burglary in second degree, destroying private property, and petit larceny, for which offenses the defendant was actually sentenced for one-half year more than two-year felony minimum. *J. L. King v. United States* (D.C. App. 1970, 271 A. 2d 556).

Action of trial court, taken while appeal was pending, in purportedly granting motion to correct sentence by making one-year sentence for petit larceny and six-month sentence for destroying property run concurrently rather than consecutively was beyond the court's power at that time and order purporting to reduce sentence would be vacated without prejudice to reentry if subsequently deemed appropriate. *Id.*



In this case the court held that since the District of Columbia Code expressly limits maximum prison sentence for attempted burglary to one year and crimes of attempted second-degree burglary and malicious destruction of property are offenses against same societal interest and since there was nothing to show that offenses were animated by different criminal intents, defendant's convictions for attempted second-degree burglary and for malicious destruction of property with respective consecutive sentences of one year and six months are not appropriate case for cumulative punishment and case would be remanded for resentencing. *M. A. Johnson, Jr. v. United States* (D.C. App. 1970, 265 A. 2d 780).

Under the facts of this case where defendant's true crime was burglary in the second degree, a felony carrying a mandatory minimum sentence of two years, and prosecution reduced felony to the three separate misdemeanors of attempted burglary in second degree, destroying private property, and petit larceny, trial judge did not abuse discretion in imposing two consecutive one-year sentences and one concurrent one-year sentence following defendant's conviction on all three separate misdemeanors. *R. M. Weeks v. United States* (D.C. App. 1969, 252 A. 2d 907).

#### Supersedeance

Insofar as § 22-3112 may have applied to movable property, it has been superseded by this section. *Nation v. District of Columbia* (1910, 34 App. D.C. 453, 26 L.R.A., N.S., 996).

#### § 22-404. Malicious burning of fences, woods, crops.

Whoever shall maliciously burn or set fire to any fences, woods, stacks of hay, grain, or straw, or growing crops, the property, in whole or in part, of another, shall be imprisoned for not more than thirty days or be fined not more than five hundred dollars. or both. (Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 822.)

### Chapter 5.—ASSAULT — MAYHEM — THREAT OF BODILY HARM

#### Sec.

- 22-501. Assault with intent to kill, rob, rape, or poison.
- 22-502. Assault with intent to commit mayhem or with dangerous weapon.
- 22-503. Assault with intent to commit any other offense.
- 22-504. Assault or threatened assault in a menacing manner.
- 22-505. Assault on member of police force or fire department.
- 22-506. Mayhem or maliciously disfiguring.
- 22-507. Threats to do bodily harm.
- 22-508. Penalty for assaulting, beating, or fighting on account of money won by gaming.

#### § 22-501. Assault with intent to kill, rob, rape, or poison.

Every person convicted of any assault with intent to kill or to commit rape, or to commit robbery, or mingling poison with food, drink, or medicine with intent to kill, or wilfully poisoning any well, spring, or cistern of water, shall be sentenced to imprisonment for not less than two years or more than fifteen years. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 803; Dec. 27, 1967, Pub. L. 90-226, § 601, title VI, 81 Stat. 736.)

#### AMENDMENT

1967—Section 601, Act Dec. 27, 1967, Pub. L. 90-226, amended section by inserting after "for not" the words "less than two years or".

#### SENTENCE FOR OFFENSES COMMITTED PRIOR TO DEC. 27, 1967

Section 1101, Act Dec. 27, 1967, Pub. L. 90-226, provided: Whoever, prior to the date of enactment of this Act [Pub. L. 90-226] commits any act or engages in any conduct which constitutes an offense under provision of law amended by this Act, [Amendments of sections, 4-140, 15-714, 15-716, 22-501, 22-703, 22-1513, 22-1801, 22-2001, 22-2901, 22-3105, 22-3201, 22-3202, 23-610, 23-901, 23-903,

24-301 and enactments of sections 4-140a, 4-150a and 22-1122, and amendments of 18 U.S.C. 4122, 5024 and 5025] shall be sentenced in accordance with the law in effect on the date he commits such acts or engages in such conduct.

#### SEPARABILITY OF PROVISIONS

Section 1102, Act Dec. 27, 1967, Pub. L. 90-226, provided:

If any provision of or any amendment made by this Act [Pub. L. 90-226; for provisions and amendments made by this Act, see enumeration in note above under heading, "Sentence for offenses committed prior to Dec. 27, 1967."] or the application thereof to any person or circumstance is held invalid, the other provisions of or other amendments made by this Act and the application of such provisions and amendments to other persons or circumstances shall not be affected thereby.

#### CROSS REFERENCES

Gaming losses, assaults because of, see § 22-508.

Minimum sentence when previously convicted of a crime of violence, see § 24-203.

Possession of firearm, additional penalty, see § 22-3201.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11-502, 24-203.

#### NOTES TO DECISIONS

##### Admissibility of prior convictions

Permitting introduction of theft conviction and attempted larceny by trick conviction as to defendant who had been convicted on some 7 prior occasions and permitting introduction of evidence of narcotics conviction as to defendant who acknowledged some 17 earlier convictions was not error in prosecution in which both defendants elected not to testify. *C. W. Payne and H. Blue v. United States* (1968, 392 F. 2d 820, 129 U.S. App. D.C. 215).

##### Assistance of counsel

Where defendant charged with assault of an indecent character on young lady in theatre was arrested at 12:15 a.m., on May 27, his counsel was retained for him at 10:20 that morning, counsel had no opportunity to consult with defendant, investigate charge, or otherwise prepare for trial and case was called for trial at 10:30, defendant was deprived of his right to effective assistance of counsel. *Creed v. United States* (D.C. Mun. App. 1959, 156 A. 2d 676).

##### Construction

Section 22-2801 dispensing with element of "forcibly" in cases involving rape of child under 16 years of age would be read to apply in prosecution for assault with intent to rape where the victim although 27 years of age had mind of child of about 7 years old. *United States v. A. S. Medley* (1971, 452 F. 2d 1325, 146 U.S. App. D.C. 396).

##### Corroboration

In prosecution for assault with intent to rape, corroboration of accused's intent to achieve carnal knowledge with force and against the consent of the victim may be established by circumstantial evidence when victim is incompetent to testify. *United States v. A. S. Medley* (1971, 452 F. 2d 1325, 146 U.S. App. D.C. 396).

In prosecution for assault with intent to commit rape, complainant's dress with torn shoulder strap offered enough independent corroboration of complainant's account to avoid requirement that verdict be directed for defendant. *United States v. M. J. Bryant* (1969, 420 F. 2d 1327, 137 U.S. App. D.C. 124).

Without corroboration of testimony of eleven-year-old prosecutrix as to defendant's alleged attempts to kiss prosecutrix, his exposure of himself and his attempts to remove her clothing, corpus delicti of assault with intent to commit carnal knowledge was not established. *A. Allison v. United States* (1969, 409 F. 2d 445, 133 U.S. App. D.C. 159).

##### Elements of assault

Assault with intent to rape is established by use of and intent to use some physical force for the purpose of achieving sexual gratification, but requires an intent to persist in such force even in the face of and for purpose of overcoming victim's resistance. *United States v. E. L. Huff* (1971, 442 F. 2d 885, 143 U.S. App. D.C. 163).



The essential elements of an assault with intent to commit rape, each of which government must prove beyond reasonable doubt, are: (1) that defendant made an assault upon complainant; (2) that he did so with specific intent to have intercourse with the complainant; and (3) that he intended to achieve penetration of complainant's sexual organ against her will and by using such force or threat of force as might be necessary to overcome resistance or make further resistance useless. *United States v. M. J. Bryant* (1969, 420 F. 2d 1327, 137 U.S. App. D.C. 124).

Absent an element of intended force, an assault with intent to have sexual intercourse is not an assault with intent to commit rape. *Id.*

The material elements of an assault with intent to commit rape are an assault, an intent to have carnal knowledge of a female, and a purpose to carry into effect this intent with force and against consent of the female unless intended victim is child under age of 16, in which case intent to use force need not be alleged or proved. *A. Allison v. United States* (1969, 409 F. 2d 445, 133 U.S. App. D.C. 159).

#### Evidence—Admissibility

Spectrograms or voiceprints identifying one of the defendants as maker of telephone call to which police officer was responding when shot is admissible in evidence. *United States v. A. Raymond et ano.* (1972, 337 F. Supp. 641).

Case in which it is sought to introduce voiceprints presents a situation wherein due to scientific nature of evidence proffered expert testimony is necessarily admissible. *Id.*

Where defendant took stand and admitted his presence at scene of crime, but he denied participation, and prosecutor then cross-examined him as to certain admissions he purportedly had made to police officer at receiving home for juveniles, and defendant denied making any admissions, and government on rebuttal called police officer who testified as to alleged admissions, defense objections to those parts of officer's testimony involving indispensable elements of crime charged should have been sustained. *R. R. Brown v. United States* (1964, 338 F. 2d 543, 119 U.S. App. D.C. 203).

In prosecution for assault on a girl three years and eight months of age, the mother's testimony repeating the child's story to mother more than three hours after the alleged occurrence was hearsay and was not within doctrine of spontaneous statements. *Brown v. United States* (1946, 152 F. 2d 138, 80 U.S. App. D.C. 270).

In prosecution for assault on a girl three years and eight months of age, testimony of police officers regarding what the child had said a day or two after the alleged assault and an officer's belief as to what defendant had done was inadmissible. *Id.*

#### —Sufficiency

Evidence in this case, including evidence of defendant's in-trial identification and testimonial references to pre-trial forerunners, sustained conviction for robbery and assault with dangerous weapon. *United States v. T. McNair* (1970, 433 F. 2d 1132, 140 U.S. App. D.C. 26).

Testimony that defendant carried a gun while walking over to victim, that he fired at victim and hit her while she was in front of her residence, and that he left without rendering any aid justified denial of motions for acquittal on charge of assault with intent to kill made at end of government's case and after all of the evidence; and this testimony together with testimony that defendant stated almost simultaneously with firing of the gun that he would kill victim was sufficient for jury to find beyond reasonable doubt that defendant was guilty of assault with intent to kill. *United States v. W. Bridges* (1970, 432 F. 2d 692, 139 U.S. App. D.C. 259).

In a prosecution for assault with intent to commit carnal knowledge, the evidence sufficiently corroborated complainant's testimony that such offense had been committed. *United States v. T. Terry* (1970, 422 F. 2d 704, 137 U.S. App. D.C. 267).

In a prosecution for assault with intent to commit carnal knowledge, the evidence sufficiently corroborated identification testimony of complainant. *Id.*

Testimony of complainant, in combination with other evidence, was sufficient to warrant submission of assault

with intent to commit rape case to jury. *United States v. M. J. Bryant* (1969, 420 F. 2d 1327, 137 U.S. App. D.C. 124).

In this case the court held that the identification testimony of victim and chief prosecution witness was sufficient to sustain conviction of assault with intent to kill and convictions of assault with a deadly weapon. *R. M. Allen and W. D. Caldwell v. United States* (1969, 420 F. 2d 223, 136 U.S. App. D.C. 381).

In this case, the evidence was sufficient to support juvenile court's finding that juvenile participated as an aider and abettor in assault with intent to commit robbery on a school teacher. *In the matter of Reeder* (D.C. App. 1970, 264 A. 2d 893).

Evidence was sufficient to permit convictions under indictment charging robbery and assault with intent to commit robbery. *J. Rogers and H. Waldon v. United States* (1963, 318 F. 2d 223, 115 U.S. App. D.C. 252).

Evidence was sufficient to show requisite intent in prosecution for assault with intent to commit robbery. *R. Oden v. United States* (1961, 295 F. 2d 547, 111 U.S. App. D.C. 201).

In prosecution for assault with intent to commit robbery, evidence on issue of defendant's sanity at time of commission of crime was sufficient to support conviction. *Jordan v. United States* (1955, 217 F. 2d 670, 95 U.S. App. D.C. 27).

The evidence must show beyond reasonable doubt an assault, an intent to have carnal knowledge of a female, and a purpose to carry out the intent with force and against the will of the female, to make out a case of "assault with intent to commit rape". *Robinson v. United States* (1943, 136 F. 2d 283, 78 U.S. App. D.C. 63).

In prosecution for assault with intent to commit rape, evidence was sufficient for jury. *Id.*

To make out a case of "assault with intent to commit rape," the evidence must show beyond a reasonable doubt an assault, and an intent to have carnal knowledge of the female and a purpose to carry into effect the intent with force and against the consent of the female. *Hammond v. United States* (1942, 127 F. 2d 752, 75 U.S. App. D.C. 397).

Evidence that defendant went to the home of his mother-in-law, with whom his wife and baby were living, went to the bedroom of his 17-year-old sister-in-law, pulled off the covers and touched her private parts with his hand, that she awakened and screamed, and that defendant ran from the house was insufficient to sustain conviction for "assault with intent to commit rape." *Id.*

#### Former jeopardy protection

A jury which was specifically prohibited from considering a charge of taking indecent liberties with minor child if defendant were to be found guilty of assault with intent to commit carnal knowledge, and defendant was found guilty of the latter charge, its verdict of not guilty of the former charge was a nullity and did not clothe defendant with former jeopardy protection or preclude reviewing court from directing entry of judgment of guilty on indecent liberties charge upon finding that evidence was insufficient to sustain conviction for assault with intent to commit carnal knowledge. *A. Allison v. United States* (1969, 409 F. 2d 445, 133 U.S. App. D.C. 159).

#### Harmless error

In prosecution for assault with intent to kill while armed and carrying dangerous weapon, in view of overwhelming direct evidence timely placing the defendant at scene of crime and equivocal and unsupported nature of his own testimony concerning his whereabouts at time of offense, any emphasis by the court or his counsel on his more general defenses and any other claimed error were harmless beyond reasonable doubt. *United States v. W. D. Craven* (1972, 458 F. 2d 802, 147 U.S. App. D.C. 383).

#### Identification

In a prosecution under this section for assault with intent to commit carnal knowledge, trial court did not err in ruling that two impermissible identifications of defendant by complainant did not preclude complainant from making independent in-court identification based upon her observation of attacker at time of assault, since complainant was in close proximity to attacker for about 15 minutes on public street in broad daylight and in



well-lighted room and since complainant gave police consistent description of attacker and had not wavered in her identification at any stage of proceeding. *United States v. T. Terry* (1970, 422 F. 2d 704, 137 U.S. App. D.C. 267).

#### Identity of victim

It was not necessary to allege identity of person sought to be robbed where defendant was charged with assault to commit robbery, and such information, if desired by defendant, should have been sought by motion for a bill of particulars. *S. E. Young v. United States* (1961, 288 F. 2d 398, 109 U.S. App. D.C. 414).

#### Impartial jury

Presence on the jury, in prosecution of defendant for murder of his wife and assault of another man in connection with a love triangle situation, of a juror who, some 6 months before defendant's trial, apparently had had an affair with a woman who had been killed by her husband had such a strong tendency to deny defendant his constitutional right to a trial by 12 impartial jurors as to require new trial. *J. R. Jackson v. United States* (1968, 395 F. 2d 615, 129 U.S. App. D.C. 392).

#### Indictment

In an indictment for assault with intent to kill "it is not required that in the indictment it should be alleged and set forth with what means or instrument the killing was attempted to be perpetrated." *Davis v. United States* (1900, 16 App. D. C. 442). Otherwise, if attempt was by poisoning or drowning. *Coratola v. United States* (24 App. D. C. 229).

#### Insanity

A general verdict of not guilty by reason of insanity carried with it a finding that, except for the question as to his sanity, defendant was guilty as charged. *Rucker v. United States* (C.A.D.C. 1960, 280 F. 2d 623).

In prosecution for assault with intent to kill and possession of a rifle with intent to use it unlawfully against another, where the court found the defendant not guilty by reason of insanity and it did not appear that defendant actually understood and acquiesced that the question of his guilt was being tried in that it did not appear that he understood and acquiesced in what was being accomplished without witnesses or evidence and he protested promptly a few days after the verdict, the defendant was entitled to a new trial. *Id.*

Post-conviction change in standards with regard to defense of insanity did not entitle person tried and convicted under previous standard to reversal. *Jordan v. United States* (1955, 217 F. 2d 670, 95 U. S. App. D. C. 27).

#### Instructions

Where the defendant is not entitled to call witness to the stand because of intention of witness to claim privilege against self-incrimination, the defendant is entitled to request an instruction that the jury should draw no inference from the absence of the witness because he is not available to either side, this being appropriate as calculated to reduce danger that jury would, in fact, draw an inference from absence of witness who would corroborate the defendant's testimony. *D. J. Bowles v. United States* (1970, 439 F. 2d 536, 142 U.S. App. D.C. 26; cert. denied 91 S.Ct. 1240, 401 U.S. 995).

In prosecution for assault with intent to commit rape, where independent corroboration evidence was minimal rather than strong, plain error in failing to instruct jury on its responsibility to determine whether there was corroborative evidence, which it credited, of all elements of the offense was prejudicial, and required reversal. *United States v. M. J. Bryant* (1969, 420 F. 2d 1327, 137 U.S. App. D.C. 124).

Where conviction for assault with intent to commit rape must be reversed for failure to instruct on need for corroboration of testimony of victim on elements of offense, trial court correctly instructed jury on elements of assault, and evidence was sufficient to sustain conviction for assault, it was in interest of justice to avoid automatic requirement of new trial because of erroneous charge, and case would be remanded to district court with instructions either to grant new trial, or if prosecutor consented and court considered it in interest of justice, to enter judgment of assault. *Id.*

The phrase "specific intent to have sexual intercourse" in instruction on essential elements of assault with intent to commit rape was sufficiently meaningful to jury to avoid condemnation as plain error; the term without the word "specific" was clear enough, and addition of "specific" connoted a requirement of definiteness of intention which was the essence of the matter. *Id.*

Defendant was convicted of an assault on a female under age of 16 with intent to commit carnal knowledge and with taking immoral, improper and indecent liberties with a female under age of 16, in violation of Miller Act, and the court should have given requested instruction that jury should consider count based on Miller Act only if they acquitted on the other count and, although failure to so instruct did not impair verdict under Miller Act, conviction for other offense must be set aside. *H. C. Dozier v. United States* (1967, 382 F. 2d 482, 127 U.S. App. D.C. 206).

Failure of court to instruct on simple assault as less offense under count charging taking immoral, improper, and indecent liberties with female under age of 16 furnished no basis for reversal, as jury was instructed on simple assault as less offense under count charging assault on female under age of 16 with intent to commit carnal knowledge. *Id.*

Instruction on lesser included offense of simple assault was adequate in prosecution for assault with intent to commit robbery. *R. Prather, D. Green and J. Green v. United States* (1964, 338 F. 2d 551, 119 U.S. App. D.C. 211).

Considering instructions as a whole together with very strong evidence of guilt of defendant of housebreaking, assault with dangerous weapon, assault of police officer with dangerous weapon, and assault with intent to kill, and considering the fact that defendant was satisfied with instructions as given, errors in instructions did not affect substantial rights or otherwise require reversal. *G. E. Nixon v. United States* (1962, 309 F. 2d 316, 114 U.S. App. D.C. 21).

Where defendant was charged with offense of assault upon female child with intent to commit carnal knowledge, trial court properly instructed jury that if it found defendant not guilty on count as charged, jury should then consider lesser included offense of taking improper and indecent liberties with a child. *Younger Jr. v. United States* (1959, 263 F. 2d 735, 105 U.S. App. D.C. 51).

Crimes of a revolting nature, especially where victim is a young child, arouse a strong feeling of disgust and hostility toward an accused, requiring court to exercise utmost care in giving its instructions to the end that justice may not miscarry. *Brown v. United States* (D.C. Mun. App. 1945, 40 A. 2d 832).

#### Intent to rape

Physical facts may tend to establish essential corroboration of corpus delicti in prosecution for assault with intent to rape but in such a case there must be evidence, subject to such corroboration, that the accused sought to achieve carnal knowledge with force and against consent of the victim. *United States v. A. S. Medley* (1971, 452 F. 2d 1325, 146 U.S. App. D.C. 396).

There is no intent to commit rape on the part of a defendant who intends to use the kind of "force" that is enough in his mind to test existence or persistence of complainant's true intentions, but not enough to achieve sexual intercourse if she "really" rejects him. There is no intent to commit rape. *United States v. M. J. Bryant* (1969, 420 F. 2d 1327, 137 U.S. App. D.C. 124).

A defendant who handles a lady vigorously and with some force (against her will) is guilty of an indecent assault; but he does not have an intent to commit rape if his actions are taken in hope or expectation of thereby awakening desire, and with further intention of desisting if his approach does not arouse desire or lead to acquiescence, but rather encounters continued resistance. *Id.*

Where a defendant is charged with assault with intent to commit rape, intent may be inferred from his conduct. *H. E. Higgins v. United States* (1968, 401 F. 2d 396, 130 U.S. App. D.C. 331).

To make out a case of "assault with intent to commit rape", the evidence must show beyond a reasonable doubt (1) an assault, (2) an intent to have carnal knowledge of



female, and (3) a purpose to carry into effect such intent with force and against consent of the female. *W. A. Baber v. United States* (1963, 324 F. 2d 390, 116 U.S. App. D.C. 358).

In prosecution for assault with intent to rape, defendant was entitled to directed verdict because of lack of evidence of purpose to carry into effect the intent to commit rape with force and against consent of victim. *Id.*

An assault with intent to commit carnal knowledge on a child is certainly the taking of indecent liberties with a child, but with intent of going beyond the liberties referred to in statute, and intent to commit carnal knowledge is to take indecent liberties plus an intent much more vicious, violent or aggravated. *Younger Jr. v. United States* (1959, 263 F. 2d 735, 105 U.S. App. D.C. 51).

Assault on a female under the age of 16 years, with intent to carnally know her, is punishable under this section as an assault with intent to rape. *Sanselo v. United States* (1916, 44 App. D. C. 508).

#### Judge's comments

Since defendant referred to the merits, on allocution, as a reason for clemency, judge's comment that prosecution witness testified he had seen defendant at scene of assault and comment, after defendant related that he had presented three witnesses, and that judge had a feeling some witnesses had been threatened, were at most a reference to the judge's view of credibility as an explanation of refusal to accord clemency and did not establish that the judge was referring to possibility of threats as additional offense heightening sentence. *R. M. Allen and W. D. Caldwell v. United States* (1969, 420 F. 2d 223, 136 U.S. App. D.C. 381).

#### Jury trial—Waiver

In this case the court held that, on the record of appeal from conviction for assault with intent to kill and assault with dangerous weapon, the waiver of a jury trial was not shown to be involuntary. However, the passive nature of role played by trial court in inquiry as to defendant's understanding was subject to criticism on appeal. *United States v. S. L. Straite* (1970, 425 F. 2d 594, 138 U.S. App. D.C. 163).

#### Lesser included offense

The crime of assault is a lesser included offense under assault with intent to commit rape. *United States v. M. J. Bryant* (1969, 420 F. 2d 1327, 137 U.S. App. D.C. 124).

The crime of taking indecent liberties is a lesser included offense of assault with intent to commit carnal knowledge. *A. Allison v. United States* (1969, 409 F. 2d 445, 133 U.S. App. D.C. 159).

#### Motion for judgment of acquittal

To withstand a motion for judgment of acquittal of charge of assault with intent to have carnal knowledge, evidence need not exclude every reasonable hypothesis other than intent to have intercourse. *A. Allison v. United States* (1969, 409 F. 2d 445, 133 U.S. App. D.C. 159).

#### Plea of guilty

District judge did not abuse his discretion in refusing to permit withdrawal of guilty plea to count as to which defendant at hearing on motion to withdraw plea admitted his guilt since he had entered plea intelligently and voluntarily, with assistance of retained counsel, and candidly admitted all essential facts of crime in open court. *C. D. Everett v. United States* (1964, 336 F. 2d 979, 119 U.S. App. D.C. 60).

#### Presumptions

In prosecution for assault with intent to commit rape a legal presumption exists that defendant was innocent until proved guilty beyond a reasonable doubt. *Hammond v. United States* (1942, 127 F. 2d 752, 75 U.S. App. D.C. 397).

#### Question for jury

Whether defendant, who armed himself with a pistol following discovery of theft of tape deck from his automobile, who attempted to retrieve deck when companion discovered deck in service station and who shot and seriously wounded service station attendant following argument, had acted in self-defense was for jury. *United States v. D. W. McCrae* (1972, 459 F. 2d 1140, 148 U.S. App. D.C. 116).

Jury was justified in finding that assault with intent to commit robbery and robbery were not product of alleged mental disease of defendant, where psychiatrist testified that defendant was suffering from low grade mental illness predisposing to psychosis particularly when defendant was under influence of large amounts of alcohol, and evidence indicated that defendant was completely sober at time of alleged offenses. *T. Hawkins v. United States* (1962, 310 F. 2d 849, 114 U.S. App. D.C. 44).

#### Review

Issues as to whether trial court erred in permitting prosecutor to impeach defendant with cross-examination respecting prior conviction of assault and in permitting prosecutor to impeach defense witness with cross-examination respecting her chastity would not be noticed for the first time on appeal from conviction for assault with intent to commit robbery. *C. E. Green v. United States* (1968, 397 F. 2d 643, 130 U.S. App. D.C. 82).

The rule in criminal as in civil cases is that a basis for an assignment of error must be laid in the trial court, but the court will sometimes in the exercise of a sound discretion notice error in a criminal case where the question was not properly raised at the trial. *Miller v. United States* (1927, 19 F. 2d 702, 57 App. D.C. 228).

#### Reviewing court's authority

Where evidence does not sustain conviction of assault with intent to commit carnal knowledge but was sufficient to establish all elements of taking indecent liberties with minor child, reviewing court in remanding with directions to enter judgment of guilty of taking indecent liberties would accord permission to trial judge to grant new trial if he should deem it to be in the best interest of justice. *A. Allison v. United States* (1969, 409 F. 2d 445, 133 U.S. App. D.C. 159).

#### Search and seizure

Where police had acted lawfully when they arrested the defendant in apartment of another and police had adequate grounds to fear that the defendant was armed and dangerous, police acted lawfully when they searched the defendant in the stairwell outside of the apartment and seized weapon from his person. *D. J. Bowles v. United States* (1970, 439 F. 2d 536, 142 U.S. App. D.C. 26; cert. denied 91 S. Ct. 1240, 401 U.S. 995).

#### Sentence

Facts of this case, in which defendant convicted of assault with intent to kill and two counts of assault with dangerous weapon received general sentence of 5 to 15 years, which was maximum permitted for assault with intent to kill, but more than maximum limits in respect to other two counts of indictment, presented especially appealing case for careful and precise sentencing, and, though conviction is affirmed, sentence will be vacated and case remanded for resentencing. *United States v. S. L. Straite* (1970, 425 F. 2d 594, 138 U.S. App. D.C. 163).

It was improper to impose consecutive sentences for assault with a dangerous weapon and assault with intent to kill, where there was but one transaction. *Ingram v. United States* (1965, 353 F. 2d 872, 122 U.S. App. D.C. 334).

Doubt whether consecutive sentences should be imposed is to be resolved not only in favor of lenity, but in favor of rational and reasonable probabilities of legislative intent where such intent is left unclear. *Id.*

Defendant's motion, filed before expiration of minimum time of indeterminate sentence imposed by District Court on his conviction of rape, to correct later indeterminate sentence on his subsequent unrelated conviction of assault with intent to rape, will not be dismissed by Court of Appeals as premature, thereby relegating defendant to refiling identical motion in District Court, in view of statute and criminal procedure rule authorizing motion attacking sentence and correction of illegal sentence at any time. *Hollaway v. United States* (1951, 191 F. 2d 504, 89 U.S. App. D.C. 332).

#### Speedy trial

Where according to government 323 days of total delay in bringing defendant to trial were attributable to government mental hospital, 56 days to courts, 55 to defendant and 23 days for diverse reasons to government while the reason for 99 days of delay was unclear, and according to defendant 499 days of delay were attributable to govern-



ment and 60 days to defendant, and in three instances case had to be continued for lack of any report from hospital relating to defendant's mental competence and in each instance motion was made for dismissal but ruling was postponed, conviction was reversed on appeal for denial of speedy trial. *United States v. L. L. Dunn* (1972, 459 F. 2d 1115, 148 U.S. App. D.C. 91).

#### Submission or resistance

An assault may be committed with a child irrespective of whether there is submission or resistance thereto. *Beausoliel v. United States* (1940, 107 F. 2d 292, 71 App. D.C. 111).

### § 22-502. Assault with intent to commit mayhem or with dangerous weapon.

Every person convicted of an assault with intent to commit mayhem, or of an assault with a dangerous weapon, shall be sentenced to imprisonment for not more than ten years. (Mar. 3, 1901, 31 Stat. 1321. ch. 854, § 804.)

#### CROSS REFERENCE

Possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

#### NOTES TO DECISIONS

##### Abuse of discretion

Where names of alleged alibi witnesses were known on day of trial and alibi testimony of witnesses, in light of complainant's positive identification of his assailant, would not have produced defendant's acquittal, refusal of defendant's motion for new trial on basis of newly discovered evidence consisting of alibi witnesses was not an abuse of discretion. *J. Williams v. United States* (1972, 295 A. 2d 503).

The decision of the trial court, rendered after hearing on admissibility, that 1959 conviction of one defendant for housebreaking and larceny and 1962 conviction of another defendant for attempted housebreaking could be brought out on cross-examination in robbery prosecution unless either defendant could satisfy court that since conviction he had led legally blameless life, was not an abuse of discretion. *United States v. J. L. Bailey et ano.* (1970, 426 F. 2d 1236, 138 U.S. App. D.C. 242).

In a case where a juvenile had killed his father, and several witnesses had testified to juvenile's fear of his father, exclusion of testimony of juvenile's probation officer, that the juvenile had come to the officer several days before the shooting in order to seek his advice concerning the violent outbreaks of the father and that the officer had told the juvenile to contact police whenever such outbreaks occurred, was not an abuse of discretion and was not prejudicial since proffered evidence was cumulative and more remote than the evidence already admitted which dealt with juvenile's state of mind on the day in question. *In the Matter of M. Bumphus, Jr.* (D.C. App. 1969, 254 A. 2d 400).

Trial court did not abuse its discretion when it concluded that alleged molesting of defendant's son one month prior to charged assault was too attenuated to warrant reception in evidence, in prosecution for assault with a dangerous weapon. *T. M. Harley v. United States* (1967, 377 F. 2d 172, 126 U.S. App. D.C. 287).

Denial of prisoner's motion to withdraw his plea of guilty to charge of assault with a dangerous weapon on ground that he was not informed at time he entered his plea, that he could subsequently be prosecuted for murder if his victim died within year and a day of the shooting or that his plea could be used against him in such a prosecution, did not amount to an abuse of discretion. *Davenport v. United States* (1965, 353 F. 2d 882, 122 U.S. App. D.C. 344).

##### Allen charge

The Court of Appeals, in the exercise of its supervisory power, declared that in the future, in both criminal and civil cases, the American Bar Association standard, eliminating element of "Allen" charge advising that the minority jurors owe deference to the majority, would be adopted as guideline which charges on duty of jurors to consult open-mindedly with disposition to hearken to fellow-jurors and to agree when no violation of conscience is involved must abide, and that American Bar Association

approved instruction would be adopted as the vehicle for informing juries of their responsibilities in event of disagreement, when a trial court decides to do so. *United States v. A. C. Thomas* (1971, 449 F. 2d 1177, 146 U.S. App. D.C. 101).

Submission of "Allen" charge, with certain statements added thereto, in prosecution for robbery and assault, is not reversible error since the defendants did not object to the charge as given, either initially or as part of the supplementary instructions, and court's formulation did not in either instance constitute plain error. *United States v. J. Wilson* (1971, 449 F. 2d 1005, 145 U.S. App. D.C. 343).

##### Appeal and error

Though prosecutor had both good faith and reasonable basis for supposing shotgun would be admitted in evidence, display of shotgun and two pistols from start of prosecution of defendant on one count of assault with a dangerous weapon and three counts of assaulting a member of police force with a dangerous weapon was improper; however, since the pistols were admitted in evidence and shotgun was more cumulative than prejudicially different and proof of guilt was overwhelming, the incident was not prejudicial to point of reversible error. *United States v. R. D. Lewis* (1970, 435 F. 2d 417, 140 U.S. App. D.C. 345).

##### Argument of counsel

In prosecution for assault with a dangerous weapon, district attorney's argument to jury that "front the testimony of the doctor, the wound was a serious one and if it had been an inch lower the defendant might be here for murder" was permissible on question whether the weapon, a razor blade, was a dangerous one and whether it was likely to produce death or great bodily harm. *Josey v. United States* (1943, 135 F. 2d 809, 77 U.S. App. D.C. 321).

##### Arrest

Where it is only 20 minutes after fatal shooting that police presented themselves at door of apartment occupied by female present at shooting, another person present at scene identified female as having left scene with suspect and, even though female protested entry, there was no evidence that police entry into apartment was forcible, search for and arrest of defendant in apartment was legal. *United States v. C. R. Honesty* (1971, 459 F. 2d 1279, 148 U.S. App. D.C. 255).

##### Assistance of counsel

Where record indicated that the trial court was aware of defendant's long term dissatisfaction with his retained counsel, that defendant had sought to discharge counsel, that defendant had asked chief judge of District Court for counsel from legal aid agency and that defendant was a pauper seeking court-appointed counsel, but record did not reflect specifically what action was taken by District Court, case would be remanded to District Court to determine what action, if any, was taken by District Court on motion to discharge counsel of record and request for appointed counsel and whether defendant was prejudiced thereby. *United States v. T. R. Thomas* (1971, 450 F. 2d 1355, 146 U.S. App. D.C. 308).

##### Bifurcated trial

Refusal of trial court to grant bifurcated trial, sought on ground that defendant would defend on ground of want of criminal responsibility, was not reversible error where defense assured trial court that there was no defense on merits, and evidence to prove that defendant was one who robbed filling station was very strong. *United States v. R. A. Grimes* (1969, 421 F. 2d 1119, 137 U.S. App. D.C. 184).

##### Consecutive sentences

Provision in sentence for assault that it was "consecutive" to any sentence now being served does not invalidate sentence even though defendant, at time of sentence, was not serving any state or federal court sentence, but the "consecutive" language in the sentence is mere surplusage and of no effect. *United States v. B. I. Nichols* (1971, 440 F. 2d 222, 142 U.S. App. D.C. 194).

Sentencing of defendant, who was adjudged guilty on five counts of assaulting five individuals with a dangerous weapon and on one count of robbery from the person, to consecutive terms of imprisonment for robbery



and assault is not error since assaults on four individuals, excluding assault charge relating to robbery victim, are separate offenses from robbery and defendant had prior felony conviction. *G. Sutton, Jr. v. United States* (1970, 434 F. 2d 462, 140 U.S. App. D.C. 188; cert. denied 91 S. Ct. 1676, 402 U.S. 988).

If additional punishment is to be meted out in armed robbery prosecution for use of a dangerous weapon, consecutive sentences for robbery and assault with dangerous weapon may be an inappropriate means to accomplish that result and more impregnable sentence may result if the offense is charged and sentenced under statute providing that robbery as crime of violence may be punished more severely when committed with a dangerous weapon and statute authorizing indeterminate sentence up to life for crimes of violence when committed with a dangerous weapon. *Id.*

It is proper to increase punishment where there have been convictions under the conventional robbery statute and under statute prohibiting assaults with a dangerous weapon by imposing consecutive sentences. *United States v. J. L. Suggs and C. Blair* (1967, 269 F. Supp. 732).

Defendant, who allegedly committed crime of assault with a dangerous weapon in parking lot of store or near door to store, and who allegedly committed a robbery in office of store could be given consecutive sentences upon being convicted for both crimes. *Id.*

#### Constitutional rights

Stops as well as arrests must satisfy the Fourth Amendment requirement of reasonable cause commensurate with extent of official intrusion, and if defendant challenges evidence as fruit of illegal seizure the government must come forward with specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. *T. R. Young v. United States* (1970, 435 F. 2d 405, 140 U.S. App. D.C. 333).

#### Construction

Statute providing that every person convicted of an assault with a dangerous weapon shall be sentenced to imprisonment for not more than ten years should not be construed to require that the weapon be used with a conscious purpose to inflict injury. *Parker v. United States* (1966, 359 F. 2d 1009, 123 U.S. App. D.C. 343).

#### Dangerous weapon

Throwing of sulphuric acid in person's face constitutes assault with dangerous weapon, within statute. *M. B. Bishop v. United States* (1965, 349 F. 2d 220, 121 U.S. App. D.C. 243).

Lye is a "dangerous weapon" within meaning of this section. *Tatum v. United States* (1940, 110 F. 2d 555, 71 App. D.C. 393).

#### Defenses

Since a specific intent to inflict serious injury with a weapon is not necessary under statute relating to assault with a dangerous weapon, drunkenness is no defense to such a charge. *Parker v. United States* (1966, 359 F. 2d 1009, 123 U.S. App. D.C. 343).

#### Double jeopardy

Policies of double jeopardy clause do not preclude the defendant, summarily punished for contempt of court arising out of the throwing of a water pitcher at prosecutor during trial for robbery, from being later prosecuted for assault with a dangerous weapon and assault on a federal officer in performance of his official duties as a result of the same act. *United States v. R. Rollerson* (1971, 449 F. 2d 1000, 145 U.S. App. D.C. 338).

In this case the court held that the record established that defendant, whose counsel never thought of nor discussed with him the possibility of a plea of double jeopardy in connection with prosecution for assault after defendant had been sentenced for contempt for having thrown ice-filled water pitcher at prosecuting attorney, did not deliberately abandon known right or privilege. *United States v. R. Rollerson* (1970, 308 F. Supp. 1014).

Fact that defendant had been sentenced for contempt for having thrown ice-filled bucket at prosecuting attorney did not preclude subsequent prosecution on counts charging assault with a deadly weapon and as-

sault on Assistant United States Attorney engaged in performance of his duties. *Id.*

Defendant who during his trial for robbery threw water pitcher filled with ice at assistant United States attorney and who was sentenced to one year for contempt and who was thereafter convicted and sentenced for assault could not assert double jeopardy on his motion to vacate, set aside or correct assault sentence, where every fact necessary to formulation of double jeopardy claim was known prior to trial for criminal assault. *R. Rollerson v. United States* (1968, 405 F. 2d 1078, 132 U.S. App. D.C. 10; remanded 394 U.S. 575, 89 S. Ct. 1300, see also 308 F. Supp. 1014).

#### Due process

Exhibition, in presence of defense counsel, of photograph of formal counseled lineup to two eyewitnesses to robbery on day of robbery trial, 14 months after the robbery, did not constitute violation of due process. *United States v. W. S. King* (1972, 461 F. 2d 152, 149 U.S. App. D.C. 61).

#### Evidence

Government is not guilty of any impropriety in failing to produce photographs of defendants, made on day of arrest, before they were demanded by defense counsel. *United States v. P. J. Trantham, Jr.* (1971, 448 F. 2d 1036, 145 U.S. App. D.C. 113).

To determine whether defendant was aggressor and whether he could establish claim of self-defense to charges of assault with a dangerous weapon and murder, jury was required to consider all of circumstances leading up to fatal affray at victim's home, and it was not error to admit evidence that defendant had shortly before entered house of a former girl friend and attacked her and homicide victim. *W. T. Harris v. United States* (1966, 364 F. 2d 701, 124 U.S. App. D.C. 308).

Evidence of oral statements, one of which was of injurious character as to defendant's claim of self-defense with respect to charge of assault with dangerous weapon, was admissible, where statements had been made within a few minutes after defendant's arrest and promptly in response to routine inquiries as to what had happened. *J. F. Ramey v. United States* (1964, 336 F. 2d 743, 118 U.S. App. D.C. 355).

Evidence was sufficient to present question for jury as to whether defendant was guilty of assault with a dangerous weapon. *R. Dean v. United States* (1962, 314 F. 2d 250, 114 U.S. App. D.C. 245).

In prosecution for assault with a dangerous weapon, permitting district attorney to cross-examine defendant as to why defendant didn't run into house to avoid trouble if she believed complaining witness was going to do defendant some harm was proper, since the cross-examination was calculated to search for nature of defendant's belief and was proper to determine whether defendant went further than she was justified in doing. *Josey v. United States* (1943, 135 F. 2d 809, 77 U.S. App. D.C. 321).

#### — Admissibility

Admission of officer's testimony of identification of defendant, at time and place close to offense, by victim who was tendered for cross-examination was not error. *United States v. J. E. Ruth* (1972, 461 F. 2d 1213, 149 U.S. App. D.C. 127).

Where officer had testified on direct as to victim's identifying defendant shortly after crime occurred, permitting officer to give same testimony on rebuttal after victim had recanted identification testimony was not prejudicial. *Id.*

Spectrograms or voiceprints identifying one of the defendants as maker of telephone call to which police officer was responding when shot is admissible in evidence. *United States v. A. Raymond et ano.* (1972, 337 F. Supp. 641).

Case in which it is sought to introduce voiceprints presents a situation wherein due to scientific nature of evidence proffered expert testimony is necessarily admissible. *Id.*

Where, following arrest of apartment dweller as an accessory after the fact to fatal shooting, dweller had been informed of her right to counsel and right to remain silent, the search of her purse prior to taking her downstairs to squad car was clearly within scope of protective search and, gun found in purse, was properly admitted in



trial of defendant convicted of second-degree murder, assault with a dangerous weapon, and carrying a dangerous weapon; fact that officers subsequently determined it to be wiser to release apartment dweller because of potential explosive situation in neighborhood and to issue a summons neither vitiated initial arrest nor invalidated search incident thereto. *United States v. C. R. Honesty* (1971, 459 F. 2d 1279, 148 U.S. App. D.C. 255).

Evidence of the circumstances surrounding prior robbery investigation, involving defendant and the complainant in present prosecution for assault with a dangerous weapon and for carrying a pistol without a license, is admissible since such evidence is clearly relevant to the identification question that the defendant raised by his defense of mistaken identity; moreover, since no evidence was introduced connecting defendant in any way with the earlier crime, the possibility of any prejudice to defendant in the instant case is remote. *United States v. N. R. Mizell* (1971, 452 F. 2d 1328, 146 U.S. App. D.C. 399).

Where testimony, in prosecution for assault with a dangerous weapon and carrying a concealed weapon, by complaining witness concerning alleged rape by the defendant was highly probative of defendant's intent and motive in pointing gun at her and in explaining circumstances surrounding defendant's use of the gun for purposes of frightening her into submission, and where jury was given immediate cautionary instruction concerning limited purpose of the testimony, and similar instruction was contained in final charge, admission of that testimony was not an abuse of discretion. *R. D. Wooten v. United States* (D.C. App. 1971, 285 A. 2d 308).

In prosecution for armed robbery of bus passengers and assault with dangerous weapon, even if the defendant's statement, "I didn't mean to do it" made after he was arrested and brought back to the scene and confronted by outraged passengers was somehow attributable to hostile confrontation of passengers, it was not of character to justify finding that it undermined fairness of trial, considering evidence as whole. *United States v. I. Porcha* (1971, 450 F. 2d 697, 146 U.S. App. D.C. 236).

Evidence that, inter alia, the defendant and two other men entered store together, that they conversed together until other customers left the store, that defendant did not lie on the floor when one of the codefendants, with a gun, announced a "stick-up" and said "To the floor," and that defendant moved from near the door to near the cash register after a codefendant ordered store employee to open it is sufficient to support defendant's conviction for armed robbery and assault with a dangerous weapon, and conflicting testimony of defendant and his codefendants whereby they all sought to establish that defendant and one of his codefendants were innocent bystanders did not destroy the permissible inference of defendant's guilt. *United States v. W. D. Lumpkin* (1971, 448 F. 2d 1085, 145 U.S. App. D.C. 162).

Evidence, including permissible inference jury was permitted to draw from fact that the defendant was found within an hour of larceny in exclusive possession of recently stolen truck, supported convictions of kidnapping of truck helper, armed robbery, and assault with a dangerous weapon. *United States v. L. B. Wolford* (1971, 444 F. 2d 876, 144 U.S. App. D.C. 1).

Evidence that the defendant was seen entering getaway car, carrying a gun, some ten minutes before robbery, accompanied by one of confessed active perpetrators, that someone drove getaway car, and that the defendant was seen with two of active robbers one day later is sufficient to take to jury aiding and abetting case against defendant for entering bank with intent to commit robbery therein, bank robbery, armed robbery, and assault with a dangerous weapon. *United States v. T. Parker* (1971, 442 F. 2d 779, 143 U.S. App. D.C. 57).

In determining whether evidence is sufficient to sustain conviction, the rule is not that inference, no matter how reasonable, is to be rejected if it in turn depends upon another reasonable inference; rather, the question is merely whether total evidence, including reasonable inferences, if put together is sufficient to warrant jury to conclude that defendant is guilty beyond reasonable doubt. *United States v. T. D. Harris* (1970, 435 F. 2d 74, 140 U.S. App. D.C. 270; cert. denied 91 S. Ct. 1675, 402 U.S. 986).

In a criminal case, standard, stated in terms of probability from individual juror's point of view, for determining whether evidence is sufficient to sustain conviction, is whether it is so probable that the defendant is guilty that it would be unreasonable to believe otherwise. *Id.*

Evidence, in prosecution arising out of armed robbery of a grocery supermarket, was sufficient to present question for jury as to guilt of the defendant, even though two employee witnesses of the supermarket, who actually saw handits depart, could not identify the defendant as either one of the armed robbers who came into the store or as driver of the automobile in which the getaway was accomplished. *United States v. C. Johnson* (1970, 432 F. 2d 626, 139 U.S. App. D.C. 193; cert. denied 91 S. Ct. 257, 400 U.S. 949).

In this case there was adequate evidence to support convictions of assault and carrying a dangerous weapon. *United States v. L. White* (1970, 429 F. 2d 711, 139 U.S. App. D.C. 32).

That the weapon allegedly used by defendant in holding up complaining witness was not recovered and put in evidence at trial did not raise a reasonable doubt as a matter of law as to defendant's guilt of assault with dangerous weapon. *United States v. J. Curtis* (1970, 427 F. 2d 630, 138 U.S. App. D.C. 360).

From the visual evidence presented in this case, and particularly a demonstration in which the prosecutor assisted by standing on a courtroom table to simulate defendant's position on a ledge above assault victim, it was possible with great accuracy to determine trajectory of bullet and hence to furnish a basis from which court and jury could conclude beyond a reasonable doubt that defendant fired bullet that hit victim, that defendant had a dangerous weapon in his possession at time victim was shot and that defendant fired shot from a pistol; thus, the court held that the evidence, though visual, was sufficient to sustain defendant's conviction of assault with a dangerous weapon. *H. Skinner v. United States* (1970, 425 F. 2d 552, 138 U.S. App. D.C. 121).

In this case the court held that the identification testimony of victim and chief prosecution witness was sufficient to sustain conviction of assault with intent to kill and convictions of assault with a deadly weapon. *R. M. Allen and W. D. Caldwell v. United States* (1969, 420 F. 2d 223, 136 U.S. App. D.C. 381).

In this case in light of the evidence on issue of whether offense was product of mental illness, conviction for robbery of property belonging to United States, assault with a dangerous weapon and carrying dangerous weapon would be affirmed. *T. H. Adams v. United States* (1969, 413 F. 2d 411, 134 U.S. App. D.C. 137).

Testimony of circumstances surrounding defendant's arrest by officers pursuant to a warrant for his arrest, not for the robberies and murder for which he was being tried, but for armed assault on police officer, offered as indicating consciousness of guilt or resistance to arrest, was admissible in context in which case was tried. *C. Gregory v. United States* (1966, 369 F. 2d 185, 125 U.S. App. D.C. 140).

#### — Sufficiency

Proper standard for determining whether evidence is sufficient to allow jury to decide case is whether a reasonable mind might fairly have reasonable doubt or might fairly not have one. *United States v. P. E. Coombs* (1972, 464 F. 2d 842, 150 U.S. App. D.C. 333).

Evidence including testimony of policeman and victims that there was a gun and that a voiced threat was made to shoot one victim was sufficient to justify jury in findings that gun was dangerous and that the offense of assault with intent to rob was committed while armed with a dangerous weapon as alleged in indictment. *United States v. J. Prater* (1972, 462 F. 2d 292, 149 U.S. App. D.C. 188).

Evidence on issue of joint criminal venture and possession of purse and shotgun found in speeding automobile, occupied by defendants as driver and passenger, a short time after a purse had been forcibly taken from a pedestrian by two men, one of whom was armed with pistol, was sufficient to support conviction of armed robbery, assault with a dangerous weapon and possession of un-



registered firearm, notwithstanding that at least one of four or five original occupants of vehicle had fled and that identification of defendants was "inconclusive" at best. *United States v. J. E. McCall* (1972, 460 F. 2d 952, 148 U.S. App. D.C. 444).

Evidence in prosecution for assault with dangerous weapon and carrying a dangerous weapon after conviction of felony did not warrant grant of motion for acquittal on theory of self defense. *United States v. R. B. James* (1971, 452 F. 2d 1375, 147 U.S. App. D.C. 43).

Where defendant picked up fully loaded and operable gun from front car seat and pointed gun at first police officer, second officer informed first officer that defendant had a gun pointed in his direction and first officer grabbed the defendant, pulled him from automobile, and caused him to drop the gun, first officer had well-grounded apprehension of personal injury that was accompanied by apparent attempt to commit violent personal injury which was only prevented by the acts of the officer himself and offense of "assault with a dangerous weapon" was made out. *Id.*

Evidence supported finding that defendant accused of manslaughter and assault with deadly weapon had not acted in self-defense. *L. A. Rowe v. United States* (1966, 370 F. 2d 240, 125 U.S. App. D.C. 218).

#### Harmless error

In view of clear evidence that the defendant aided and abetted his confederate who was armed with a gun, any error concerned with alleged prolixity of indictment that charged both armed robbery and robbery, or any other claim of defect in presentation of two theories of robbery to jury, is harmless. *United States v. I. Porcha* (1971, 450 F. 2d 697, 146 U.S. App. D.C. 236).

#### Identification

While lineup was not conducted under most ideal circumstances it was not so impermissibly suggestive to misidentification as to preclude identification testimony by eyewitnesses who had ample opportunity to view defendant during armed robbery. *United States v. G. H. Neverson* (1972, 463 F. 2d 1224, 150 U.S. App. D.C. 133).

Where circumstances of photographic identification of defendant by one of the eyewitnesses was fully explored at pretrial hearing and there was no suggestion that police had acted wilfully, recklessly or in bad faith in not producing the photographs which made up group from which witness selected defendant's picture at a time before the importance of recording photographs used in group was emphasized by any court, failure of police to produce photographs at trial, in which Government did not rely on photographic identification and made no reference to it, was not prejudicial to defendant who asserted that failure to produce pictures circumscribed his right to explore fairness of identification process. *United States v. H. R. Thomas, Jr.* (1972, 463 F. 2d 314, 149 U.S. App. D.C. 368; cert. denied 93 S. Ct. 198, 409 U.S. 870).

Although absence of photographs used in making up group of pictures shown to eyewitness who picked defendant's picture was a factor to be considered in weighing evidence concerning identification of defendant by eyewitness, the absence of photographs did not create any presumption of impropriety in identification process. *Id.*

Case must be considered on its own facts, and convictions based on eyewitness identification at trial following pretrial identification by photograph will be set aside on that ground only if photographic identification procedure was so impermissibly suggestive as to give rise to very substantial likelihood of irreparable misidentification. *United States v. W. S. King* (1972, 461 F. 2d 152, 149 U.S. App. D.C. 61).

Where witnesses to robbery had ample opportunity to observe defendant at time of robbery, prosecutor offered pretrial photographic identification procedure for protection of defendant, the viewing by the two witnesses of photographs of formal counseled, corporeal lineup was in presence of defense counsel and the procedure was conducted fairly, the photographic identification procedure was not so impermissibly suggestive as to give rise to very substantial likelihood of irreparable misidentification. *Id.*

Fact that employee of robbed liquor store was unable to identify defendant as robber did not establish that in-court identification by part-owner of liquor store did not

have source independent of photographic and lineup identifications where employee and part-owner observed robbers from different angles and under different stresses. *United States v. L. T. Lee* (1972, 459 F. 2d 1365, 148 U.S. App. D.C. 341).

Where victims of robbery reported that one robber had short hair and the other had "an African haircut," photographic identification from nine photographs of five men with bush haircuts and four with shorter hair was not impermissibly suggestive. *Id.*

Where police had probable cause for arrest of defendant following armed robbery, procedure in taking defendant to scene of crime less than 15 minutes after robbery for identification did not give rise to undue suggestability, and evidence of identification of defendant at scene was admissible in subsequent prosecution. *United States v. J. Moore* (1972, 459 F. 2d 1360, 148 U.S. App. D.C. 336).

Identification of the defendants who were charged with armed robbery and assault with a deadly weapon, by victim, after defendants were picked up near scene of the crime and brought back to a squad car did not violate the defendants' due process rights on theory identification was tainted by suggestive circumstances surrounding it, since the victim had given officer a detailed description of the robbers, had participated in the search for them and in fact had pointed out defendants to the arresting officer. *United States v. J. Wilson* (1971, 449 F. 2d 1005, 145 U.S. App. D.C. 343).

Where the validity of lineup is challenged by defendant on ground of asserted absence of counsel, burden is on the government, at least in the case of routine lineups, to establish that counsel was present. *United States v. J. C. Garner and T. C. Parker* (1970, 439 F. 2d 525, 142 U.S. App. D.C. 15; cert. denied 91 S. Ct. 1531, 402 U.S. 930).

Deficiency of lineup identification arising from absence of counsel is not cured by conducting second lineup, with counsel present, shortly after the initial lineup. *Id.*

Record, including sketch of robber made by witness, a commercial artist, supported finding that there was an independent source for courtroom identification by such witness, not withstanding deficiency as to intervening mally appointed to represent defendant. *Id.*

Since, in addition to two eyewitnesses who identified defendant at lineup, there was a third eyewitness who saw defendant before robbery and during robbery over period of two minutes from distance as close as two feet and who identified defendant at trial, admission at trial of evidence of two lineup identifications of defendant could not have been prejudicial. *United States v. R. Queen* (1970, 435 F. 2d 66, 140 U.S. App. D.C. 262).

Presence of attorney from legal aid agency on behalf of each suspect, including the defendant, placed in lineup, satisfied constitutional requirement of counsel at lineup even though the "substitute counsel" had not been formally appointed to represent defendant. *Id.*

#### Impeachment

Had defendant taken stand in prosecution for armed robbery, assault with dangerous weapon, and carrying dangerous weapon without license, evidence of prior conviction for impersonating owner of federal check would have been admissible for impeachment purposes. *United States v. J. Moore* (1972, 459 F. 2d 1360, 148 U.S. App. D.C. 336).

Cross-examination of defendant during which the prosecution was permitted to develop that for some time prior to date of offense defendant had been absent from his military post without leave was improper, and the prejudice was magnified by the erroneous admission of government's rebuttal evidence as to defendant's absence from military post. *United States v. W. A. Shumate et ano.* (1970, 429 F. 2d 777, 139 U.S. App. D.C. 98).

#### In-court identification

Although victim of robbery and assault picked defendant out of group sitting in General Sessions courtroom at time when defendant was not accompanied by counsel, since such identification followed three photographic identifications based upon face-to-face encounter taking place only a few hours before first photographic identification, the General Sessions identification did not taint the later in-court identification by victim and the in-court identification was not improper. *United States v. J. E. York* (1970, 321 F. Supp. 539).



The Government has the burden of presenting clear and convincing evidence that in-court identification of defendant by victim of robbery and assault is based on other than an illegally obtained pretrial identification; but there is no presumption of invalidity. *Id.*

#### Indictment

Where respective penalties for mayhem and assault with a dangerous weapon were identical, contention that defendant who poured acid on girl should have been indicted for mayhem rather than assault with dangerous weapon was frivolous. *M. B. Bishop v. United States* (1965, 349 F. 2d 220, 121 U.S. App. D.C. 243).

#### Informants

Where record of prosecution arising out of armed robbery showed that the informant contacted police, some three weeks after crime, and told them of source and whereabouts of shotgun involved and of alleged conspiracy to murder government's principal witness, but record was otherwise silent as to participation by the informant in offense itself, disclosure of identity of the informant on pain of dismissal should not have been required. *United States v. J. T. Skeens* (1971, 449 F. 2d 1066, 145 U.S. App. D.C. 404).

#### Injury suffered

Threat or danger of physical suffering or injury in the ordinary sense is not necessary; the injury suffered by the innocent victim may be the fear, shame, humiliation, and mental anguish caused by the assault, neither is it necessary that such a victim should be aware of the nature of the act or of the danger. *Beausoliel v. United States* (1940, 107 F. 2d 292, 71 App. D.C. 111).

#### Insanity defense

Where record unequivocally established that, after three years of representing defendant, defense counsel concurred with conclusions reached by psychiatrist and judge that defendant was a malingeringer and expressed opinion that it was tactically unwise to raise an insanity defense unless he felt he had a chance, defendant was not entitled to reversal of conviction of armed robbery assault with a deadly weapon and carrying a pistol without a license on ground of judicial interference with his defense counsel's attempt to pursue insanity issue. *United States v. F. L. Simms* (1972, 463 F. 2d 1273, 150 U.S. App. D.C. 182).

Trial judge's decision not to interpose an insanity defense sua sponte was not an abuse of discretion constituting reversible error, especially in view of finding that defendant was malingering. *Id.*

A decision of the trial court to sua sponte interpose an insanity defense, especially when taken against the wishes of the accused, necessitates the utmost care in judgment and requires consideration of many factors. *United States v. P. Bradley* (1972, 463 F. 2d 808, 149 U.S. App. D.C. 405).

Trial court did not abuse its discretion in failing to further pursue insanity issue, allegedly with a view to raising insanity defense, sua sponte, where defendant indicated that he did not want to raise such defense, defense counsel expressed their views that defendant was competent to stand trial and trial judge received commitment report disclaiming any opinion on productivity and diagnosing defendant's illness as "Nonpsychotic Organic Brain Syndrome With Epilepsy (Alcoholic Factors)" and trial judge had a lengthy opportunity to observe defendant in court. *Id.*

Finding by the trial court that commission of robbery and assault with dangerous weapon was not causally connected with defendant's alleged mental illness and narcotic addiction was supported by substantial testimony. *United States v. E. F. Carter* (1970, 436 F. 2d 200, 141 U.S. App. D.C. 46).

#### Instructions

Where prosecution goes beyond offering identical hearsay testimony elicited by defense, court should give immediate limiting instruction. *United States v. M. Thompson, Jr.* (1972, 465 F. 2d 583, 150 U.S. App. D.C. 403).

Where defendant eliciting hearsay testimony from prosecution witness for purpose of impeachment and did not request any limiting instruction, failure of trial court to sua sponte give limiting instruction following Government's examination of witness during which same hearsay

testimony was offered in light favorable to Government was not reversible error. *Id.*

Where jury is properly instructed on standards for reasonable doubt, an additional instruction on circumstantial evidence, requiring that such evidence must be such as to exclude every reasonable hypothesis other than that of guilt, is confusing and incorrect. *United States v. P. E. Coombs* (1972, 464 F. 2d 842, 150 U.S. App. D.C. 333).

Court's "mistake in identity" instruction which included statement that jury should consider not only testimony of victim who recanted prior identification testimony but also other elements including testimony of police officer as to victim's having identified defendant and defendant's grand jury testimony was not erroneous. *United States v. J. E. Ruth* (1972, 461 F. 2d 1213, 149 U.S. App. D.C. 127).

Instruction on defendant as witness, including statement that jury might consider defendant's vital interest in outcome, was not improper. *United States v. J. Jones* (1972, 459 F. 2d 1225, 148 U.S. App. D.C. 201).

Although, in prosecution for assault with a dangerous weapon and for carrying a pistol without a license, prosecution evidence was introduced to the effect that the defendant assaulted the complainant in retaliation for her telling the police she believed he had been involved in a robbery, the trial judge is not required to, sua sponte, give a limiting instruction concerning the evidence connecting defendant with the robbery, particularly since the evidence in question concerned not so much acts that had been engaged in by defendant, but rather the activities of the complainant, and since that evidence is relevant on the issues of identity and motive. *United States v. N. R. Mizell* (1971, 452 F. 2d 1328, 146 U.S. App. D.C. 399).

Since, in prosecution for robbery and assault with a dangerous weapon, there was no evidence that gun used in commission of crime was loaded, giving of instruction that a loaded pistol is a dangerous weapon is error and probably prejudicial. *United States v. H. L. Wyatt* (1971, 442 F. 2d 858, 143 U.S. App. D.C. 136).

Viewing the trial court's charge in its entirety clearly showed that instruction on specific intent was not omitted in prosecution for armed robbery, assault with a dangerous weapon, and carrying a dangerous weapon. *United States v. S. F. Gaither* (1971, 440 F. 2d 262, 142 U.S. App. D.C. 234).

Instruction that the Government has no affirmative duty to make a paraffin test of gun seized from defendant charged with assault with a dangerous weapon and with carrying a concealed weapon to determine if he had ever used it is not "plain error" warranting review in absence of objection. *R. D. Wooten v. United States* (D.C. App. 1971, 285 A. 2d 308).

Refusal, in prosecution for assault with a dangerous weapon, to instruct on lesser included offense of simple assault was proper since there was neither evidence nor any theory advanced by the defense as to an unloaded gun being used, defense evidence throughout was that no gun existed and live cartridge found in one defendant's pocket made gun a dangerous weapon, even if there had been no cartridge in chamber, and gun police officers related had been in possession of both defendants could not be found on search following chase. *United States v. J. D. Daniels* (1970, 437 F. 2d 656, 141 U.S. App. D.C. 223).

Submission to the jury of a further "Allen" type instruction, after jury reported a deadlock, to the effect that absolute certainty could not be expected, and that jurors should give deference to opinions of each other, would not be considered a ground for reversal on theory of plain error since defense counsel did not object to the charge. *United States v. C. Johnson* (1970, 432 F. 2d 626, 139 U.S. App. D.C. 193; cert. denied 91 S. Ct. 257, 400 U.S. 949).

In prosecution for assault with a dangerous weapon court did not err in failing to instruct jury on lesser offense of simple assault where there was no foundation in evidence for giving of such an instruction. *Parker v. United States* (1966, 359 F. 2d 1009, 123 U.S. App. D.C. 343).

Court's summarizing certain testimony by stating during charge to jury "the court understands" and "as the court recalls" was not erroneous in light of entire charge, in which jury was instructed at the outset that it was exclusive judge of the facts. *Id.*



Instruction in prosecution for assault with dangerous weapon that case was a serious case from government's standpoint because serious felony had been committed did not have effect of negating defendant's plea of self-defense, where court gave full charge on self-defense. *J. O. Scurry v. United States* (1965, 347 F. 2d 468, 120 U.S. App. D.C. 374).

In prosecution for robbery and assault, court's statement in instruction to jury, that "one of the persons charged here" had succeeded in getting pocketbook of one complaining witness went beyond permissible comment on evidence, where identification was issue for jury. *D. Battle and M. F. Davis v. United States* (1965, 345 F. 2d 438, 120 U.S. App. D.C. 221).

A defendant accused of assault with a dangerous weapon is entitled to instruction on simple assault as a lesser included offense if a foundation for it is found in the evidence. *G. D. Greenfield v. United States* (1964, 341 F. 2d 411, 119 U.S. App. D.C. 278).

Defendant accused of assault with dangerous weapon was entitled to instruction on lesser included offense of simple assault, where jury question was raised as to whether soda pop bottle used by defendant was a dangerous weapon and jury was instructed that if it should find that assault was with a bottle and that bottle was a dangerous weapon this would come within statutory definition of assault with dangerous weapon. *Id.*

In prosecution for assault with dangerous weapon, trial court's instruction on self-defense should not assume that the assault was by use of dangerous weapon. *Id.*

Errors, if any, in instructions in prosecution for assault with dangerous weapon, on burden of proof to negate claim of defendant that discharge of the pistol was accidental, and with respect to credibility of chief witness for the prosecution, were not, under the circumstances, prejudicial. *R. Dean v. United States* (1962, 314 F. 2d 250, 114 U.S. App. D.C. 245).

In trial for assault with dangerous weapon, District Court is not required by criminal procedure rule to instruct jury that they may find defendant guilty of lesser offense of simple assault and should not so instruct them, in absence of evidence justifying conviction of simple assault. *MacIlrath v. United States* (1951, 188 F. 2d 1009, 88 U.S. App. D.C. 270).

In prosecution for assaults on three persons with deadly weapon, evidence that defendant shot one of such persons with a pistol and then clubbed the others on their heads therewith, causing serious injuries, established assaults with dangerous weapon and did not justify instruction on simple assault. *Id.*

In prosecution for assault with a dangerous weapon, requested instruction that if defendant had reasonable grounds to believe that complaining witness was about to inflict violence on her and was coming at her with a knife in a menacing manner, defendant was justified in defending herself and didn't have to retreat was fatally defective and was properly refused. *Josey v. United States* (1943, 135 F. 2d 809, 77 U.S. App. D.C. 321).

#### Intent to commit other crime

There is no statutory requirement for either robbery or assault with a dangerous weapon, that there be a specific intent to commit the other. *United States v. J. L. Suggs and C. Blair* (1967, 269 F. Supp. 732).

#### Interrogation by court

Although there were many instances when the defendant's answers were less than direct and it was appropriate for the court to lend assistance to avoid confusion on part of jurors, under circumstances, court's extensive examination of defendant and his alibi witness, that included questions that opened new areas of inquiry or gave an undue eminence to matters otherwise irrelevant to offenses with which defendant was charged, constituted error, and when considered together with an incorrect instruction, required reversal of defendant's conviction. *United States v. H. L. Wyatt* (1971, 442 F. 2d 858, 143 U.S. App. D.C. 136).

#### Joinder

Since the offenses of robbery, assault with dangerous weapon, assault on member of police force, unauthorized use of vehicle, and carrying dangerous weapon were based

on two or more connected acts constituting part of common scheme and plan, the defendants were alleged to have participated in same series of acts constituting offenses, and each of defendants aided and abetted offenses charged against other defendants, it was proper for grand jury to join defendants and offenses in the indictment. *United States v. C. Wilson, Jr. et ano.* (1970, 434 F. 2d 494, 140 U.S. App. D.C. 220).

#### Judge's comments

Since defendant referred to the merits, on allocution, as a reason for clemency, judge's comment that prosecution witness testified he had seen defendant at scene of assault and comment, after defendant related that he had presented three witnesses, and that judge had a feeling some witnesses had been threatened, were at most a reference to the judge's view of credibility as an explanation of refusal to accord clemency and did not establish that the judge was referring to possibility of threats as additional offense heightening sentence. *R. M. Allen and W. D. Caldwell v. United States* (1969, 420 F. 2d 223, 136 U.S. App. D.C. 381).

#### Judgment inconsistent with verdict

Where the jury, under proper instructions, found defendant guilty of armed robbery and rendered no verdict on count charging robbery and since the judgment was to effect that defendant was convicted of armed robbery, robbery, and assault with dangerous weapon, judgment is inconsistent with verdict and remand for correction of such judgment is required. *United States v. T. D. Harris* (1970, 435 F. 2d 74, 140 U.S. App. D.C. 270; cert. denied 91 S. Ct. 1675, 402 U.S. 986).

#### Jurisdiction

Where Superior Court judge dismissed juvenile's petition for habeas corpus without prejudice to its being filed in the United States District Court for the District of Columbia, the respondent was federal officer, petitioner was charged with federal offense as well as with violations of District of Columbia law and petitioner was challenging the conditions of his confinement, federal court had jurisdiction to consider the petition. *J. Bland v. C. M. Rodgers* (1971, 332 F. Supp. 989).

#### Jury trial—Waiver

In this case the court held that, on the record of appeal from conviction for assault with intent to kill and assault with dangerous weapon, the waiver of a jury trial was not shown to be involuntary. However, the passive nature of role played by trial court in inquiry as to defendant's understanding was subject to criticism on appeal. *United States v. S. L. Straite* (1970, 425 F. 2d 594, 138 U.S. App. D.C. 163).

#### Legislative intent

Acquittal by defendant of assault with a dangerous weapon, did not require his acquittal on companion charge of carrying a pistol which he used to defend himself on ground that such acquittal demonstrated conclusively that defendant was carrying pistol for a lawful purpose notwithstanding defendant was exposed to a serious current threat by victim, that he did not have time to get a license and that he made a serious attempt to secure police protection, in light of the history of antiweapon legislation evidencing the clearest intent to drastically tighten ban on carrying dangerous weapons. *Cooke v. United States* (1960, 275 F. 2d 887, 107 U.S. App. D.C. 223).

#### One-man showup

Where an intruder broke into the apartment of two women, and shortly thereafter was arrested as a suspect, and about 30 minutes after the attack the women were asked to come down to the street in front of their apartment and view defendant who was the sole occupant of patrol wagon, use of "one-man showup" did not deny defendant due process of law. *G. W. Bates v. United States* (1968, 405 F. 2d 1104, 132 U.S. App. D.C. 36).

#### Photographic identification

Record established that the victim's photographic identification of defendant as robber and assailant was not conducted under circumstances so impermissibly suggestive as to give rise to a very substantial likelihood of ir-



reparable misidentification. *United States v. J. E. York* (1970, 321 F. Supp. 539).

There is no presumption that photographic identification of defendant by the victim of robbery and assault is invalid. *Id.*

In a prosecution for robbery and assault with a dangerous weapon, where robbery victim on morning after robbery was shown 15 photographs depicting males of various ages, including one photograph of defendant that was not highlighted so as to prompt its selection and victim identified defendant's photograph, which was sixth photograph shown to him, as that of robber and remained firm in such identification after examining remaining photographs, such identification did not deny due process and did not vitiate subsequent in-court identification. *United States v. E. L. Hamilton* (1969, 420 F. 2d 1292, 137 U.S. App. D.C. 89).

#### Prejudicial error

In this case, assuming that failure of the trial judge to inform defendant's counsel of larceny charge before he summed up constituted error, where defendant was indicted for robbery and assault with a deadly weapon, however, that failure lacked the prejudice necessary to constitute reversible error where, inter alia, defendant's admission in open court established his intention and his attempt to trick complainants, so that damage was done when defendant took the stand and it was not likely that a variation in summation would have changed the verdict. *W. Walker, Jr. v. United States* (1969, 418 F. 2d 1116, 135 U.S. App. D.C. 280).

#### Presentence investigation

Under facts including showing that the defendant, convicted of robbery and assault with a dangerous weapon, had stated that "a probationary report would be more detrimental to me than anything else" and that "a probationary hearing wouldn't do anything for me", the trial court did not abuse its discretion in granting defendant's explicit request to be sentenced without an investigation. *United States v. M. J. Spadoni* (1970, 435 F. 2d 448, 140 U.S. App. D.C. 376).

#### Presentence reports

Denial that arrest, referred to presentence report and allegedly relied on by trial judge in determining length of sentence, took place should be made in first instance to trial court; and where defendant had made no objection when trial judge made remark indicating that alleged inaccuracy was crucial to determination of defendant's sentence and record before reviewing court was therefore devoid of any denial of prior arrest, conviction would be affirmed, without prejudice to defendant's proceeding by means of motion for reduction in sentence. *United States v. F. D. Sheppard, Jr.* (1972, 462 F. 2d 279, 149 U.S. App. D.C. 175; cert. denied 93 S. Ct. 335, 409 U.S. 985).

Discretion of trial judge to furnish to the defendant or his counsel presentence investigation report is to be exercised in individual cases and trial judge is not to adopt a uniform policy of nondisclosure in all cases irrespective of circumstances. *United States v. R. Queen* (1970, 435 F. 2d 66, 140 U.S. App. D.C. 262).

Where defendant's record of prior convictions was disclosed to the defendant and his counsel during trial so that they had opportunity to confirm or deny such record and to explain circumstances, failure of trial judge to furnish defendant or counsel with presentence investigation report did not deny due process to defendant. *Id.*

#### Pretrial mental examination

Decision of trial judge to proceed with trial on the merits without ordering a commitment of defendant for competency observation was not abuse of discretion in absence of any objection or motion from defense counsel and in view of simultaneous expression of willingness to try, through bifurcation, any insanity defense that might subsequently appear appropriate. *United States v. P. Bradley* (1972, 463 F. 2d 808, 149 U.S. App. D.C. 405).

#### Probable cause

Since automobile stopped by police officers 45 minutes after offense was reliably identified as one used by suspect to leave scene of offense and search of defendant operator and his companion failed to produce any weapon, police

had ample grounds for concluding that weapon used in assault was likely secreted in automobile, authorizing a warrantless search of automobile at scene of arrest, inasmuch as the only way in which a warrant could have been obtained would have been by temporarily seizing automobile and immobilizing it. *United States v. D. Free* (1970, 437 F. 2d 631, 141 U.S. App. D.C. 198).

#### Entry without warrant

Police officers, who knew that armed robbers had fled in a maroon automobile bearing license plates registered to another vehicle, that the defendant, whose employer was robbery victim, and who bore same last name as man to whom plates were registered, owned a maroon automobile, that vehicle answering description of getaway vehicle, with engine and exhaust still warm, and bearing no license plates was parked near defendant's address, and that part of money taken consisted of coins, and who, after knocking at door of defendant's apartment and identifying themselves, overheard movement of furniture and observed that person answering door filled description of one of robbers and that there were stacks of coins on dining room table, had probable cause to arrest occupants. *United States v. T. D. Harris* (1970, 435 F. 2d 74, 140 U.S. App. D.C. 270; cert. denied 91 S. Ct. 1675, 402 U.S. 986).

#### Prosecution

In a robbery case, the Government has the right to charge, as separate assaults, assaults against bystanders who are not robbed. *G. Sutton, Jr. v. United States* (1970, 434 F. 2d 462, 140 U.S. App. D.C. 188; cert. denied 91 S. Ct. 1676, 402 U.S. 988).

The Government may decline to charge armed robbery under § 22-3202 authorizing an indeterminate sentence up to life for crimes of violence when committed with a dangerous weapon, and may instead rely on prior formulation of robbery and assault with a dangerous weapon. *Id.*

#### Publicity

In view of fact that newspaper clippings were accurate accounts of developments during trial and were not sensational in tone, and in view of scrupulous concern on part of trial court for elimination of extrajudicial influences from jury's deliberations, defendant was not denied a fair trial because of alleged extensive and adverse newspaper publicity surrounding his case. *United States v. W. L. Parman* (1971, 461 F. 2d 1203, 149 U.S. App. D.C. 117).

#### Question for jury

In prosecution for robbery and assault with dangerous weapon, whether the defendant was one of holdup men in robbery of shoe store was question for jury. *United States v. J. E. York* (1969, 426 F. 2d 1191, 138 U.S. App. D.C. 197).

Jury could convict defendant as aider and abettor in assault though the only person expressly identified in testimony as having committed actual assault was acquitted, where there was testimony authorizing conclusion that assault was committed by someone even if not by the particular person identified by policeman. *Cross v. United States* (1965, 354 F. 2d 512, 122 U.S. App. D.C. 380).

#### Release on personal recognizance

Appellant, who was convicted of robbery and assault with a deadly weapon, and whose appeal presented a substantial claim that he was wrongfully identified, was ordered released on personal recognizance on certain enumerated conditions which were so structured as to allow for a maximum amount of supervision over appellant while still allowing for his freedom from incarceration. *W. Banks v. United States* (1969, 414 F. 2d 1150, 134 U.S. App. D.C. 254).

#### Remand

Conviction of juvenile of first-degree felony-murder armed robbery, assault with dangerous weapon, assault upon police officer with dangerous weapon and carrying dangerous weapon would be remanded to District Court to consider possibility of sentencing under the Youth Corrections Act. *United States v. W. Howard* (1971, 449 F. 2d 1086, 146 U.S. App. D.C. 10).

Since counsel for defendant, convicted of robbery and assault with a dangerous weapon, was not appointed until



almost one year after offense, counsel was appointed slightly more than one month before trial, although counsel's failure to appear on date case was first set was allegedly due to misunderstanding case was not removed from ready calendar, and it was alleged that counsel had inadequate time in which to obtain specified physical evidence and interview specified witnesses, reviewing court remanded case to trial court for determination whether new trial should be granted on ground of ineffective assistance of counsel. *United States v. W. D. Weaver* (1970, 422 F. 2d 711, 137 U.S. App. D.C. 274).

Where defense counsel had informed trial court that circumstances indicated appropriateness of insanity defense but defendant had forbidden him to raise it, and trial court did not consider such representations in erroneous belief that it did not have discretion to inject insanity issue over defendant's objections, reviewing court remanded case for reconsideration of such representations in exercise of discretion, rather than reversing for new trial. *Cross v. United States* (1965, 354 F. 2d 512, 122 U.S. App. D.C. 380).

#### Reversible error

Admission of hearsay declaration by apartment lessee to detective to effect that four men who were friends of his entered his apartment and three of them were carrying guns was not reversible error, since it was not developed by defendant's counsel that his client was not present during conversation between detective and lessee, no objection to admission of statement was made by defense at the time nor was any objection or motion made as to such testimony in subsequent conference and hearings out of presence of jury, and from context of subsequent discussions it appeared that the propriety of the testimony was recognized. *United States v. G. L. Harris* (1970, 437 F. 2d 686, 141 U.S. App. D.C. 253).

Trial court's comment concerning two defendants who entered pleas of guilty during trial of defendant for robbery allegedly involving four men was not plain error that could be considered in absence of objection, where, since jury knew of involvement of defendants who pleaded guilty at the start, court was required to make some explanation concerning their sudden absence from trial and it did so by telling jury that cases of those defendants had been disposed of and jury was not to speculate on what that disposition was. *Id.*

#### Review

An assignment of error in failing to instruct jury on simple assault in prosecution for assaults with dangerous weapon comes too late on appeal from district court's judgment, in absence of request during trial for such instruction. *Mac Ilrath v. United States* (1951, 188 F. 2d 1009, 88 U.S. App. D.C. 270).

#### Right to counsel

Defendant's constitutional right to counsel was not violated when after his arrest but in absence of counsel police showed eyewitnesses a group of photographs and an eyewitness, who had had a good opportunity for observation of defendant did pick defendant's photograph, where judge found that there was an independent source for the identification in court and there was no evidence of unfairness in exhibition of photographs. *United States v. H. R. Thomas, Jr.* (1972, 463 F. 2d 314, 149 U.S. App. D.C. 368; cert. denied 93 S. Ct. 198, 409 U.S. 870).

#### Search and seizure

Where two police officers had been provided information by a reliable informant, indicating possible illegal narcotics activity and, after observing the defendant and another emerge from building as predicted, officers had right to stop the occupants of the taxicab long enough to ask to talk to them and to investigate, seizure of the pistol, that the defendant held in plain view of the officers, was proper and, once the defendant was lawfully under arrest, the seizure of the cartridges, in reasonable search of the vehicle incident to such arrest, was clearly appropriate. *United States v. R. B. James* (1971, 452 F. 2d 1375, 147 U.S. App. D.C. 43).

#### Sentences

Defendant, who was convicted of assault with a dangerous weapon, was properly denied treatment under Narcotic Addict Rehabilitation Act since he was convicted

of crime of violence. *United States v. M. E. Fitzgerald* (1972, 466 F. 2d 377, 151 U.S. App. D.C. 206).

Where bank robbery had been consummated, defendant could not be properly given a concurrent sentence for entering a bank with intent to commit robbery. *United States v. J. M. Hopkins* (1972, 464 F. 2d 816, 150 U.S. App. D.C. 307).

Where robbery constituted a unitary transaction, defendant could not properly be convicted and sentenced on two robbery counts. *Id.*

Where, though bank employees and a customer were put in fear at point of a pistol, joint conduct of robbers constituted a single continuous transaction, defendant could not properly be convicted and sentenced on four counts of assault with a dangerous weapon. *Id.*

Defendant's sentence was not to depend upon his refusal to express remorse. *Id.*

Sentence on conviction of carrying a pistol without a license and assault with a dangerous weapon could be cumulated, notwithstanding that both counts arose out of single transaction, since the evidence militated against conclusion that defendant carried pistol with particular purpose in mind of using it to inflict injury but rather portrayed a sudden flare-up and precipitous resort to the pistol during verbal affray. *United States v. H. Lucas, Jr.* (1971, 441 F. 2d 1056, 142 U.S. App. D.C. 366).

Since 19-year-old defendant found guilty of 3 counts of robbery and 3 counts of assault with dangerous weapon moved for presentence observation at youth center and after observation was sentenced to 4 to 12 years for robbery and 3 to 9 years for assault with sentence to run concurrently and thereafter defendant filed motion for reconsideration and requested that he be sentenced under Youth Corrections Act but was transferred to penitentiary despite recommendation for confinement in youth institution, and court thereafter denied motion, sentence will be vacated and case remanded to district court for resentencing under Youth Corrections Act. *United States v. T. P. Waters* (1970, 437 F. 2d 722, 141 U.S. App. D.C. 289).

Where defendant had been committed to hospital for mental observation before trial and had been reported competent to stand trial and during trial judge heard testimony of several witnesses as to the defendant's mental condition and some six weeks elapsed between finding of guilt and imposition of sentence during which probation office conducted investigation and submitted report which was before trial judge when sentence was imposed, sentence is not improper on theory that trial judge should have referred case to legal psychiatric service for the presentence evaluation. *United States v. E. F. Carter* (1970, 436 F. 2d 200, 141 U.S. App. D.C. 46).

Facts of this case, in which defendant convicted of assault with intent to kill and two counts of assault with dangerous weapon received general sentence of 5 to 15 years, which was maximum permitted for assault with intent to kill, but more than maximum limits in respect to other two counts of indictment, presented especially appealing case for careful and precise sentencing, and, though conviction is affirmed, sentence will be vacated and case remanded for resentencing. *United States v. S. L. Straite* (1970, 425 F. 2d 594, 138 U.S. App. D.C. 163).

Consecutive penitentiary sentences on four counts, and concurrent sentence on fifth count do not violate the Indeterminate Sentence law. *United States ex rel. Bracey v. Hill* (C.C.A. 3, 1935, 77 F. 2d 970).

As maximum sentence imposed on each count was ten years and as none exceeded the maximum of ten years fixed by the statute, and as the minimum sentence on each count was two years and none exceeded one-fifth of the maximum of ten years fixed by the statute, the sentences are, therefore, in accord with the Indeterminate Sentence and Parole Act. *Bracey v. Zerbst* (C.C.A. 10, 1938, 93 F. 2d 8).

#### Severance

Refusal to grant a severance for trial purposes as to defendant tried for several crimes including first-degree murder arising out of two separate robberies was prejudicial to defendant because there was not only the danger that evidence with respect to two robberies would cumulate in jurors' minds and tend to prove defendant guilty of each, but also because the evidence as to one of the robberies was so weak that its primary usefulness was to



support government's case as to robbery which resulted in the murder. *C. Gregory v. United States* (1966, 369 F. 2d 185, 125 U.S. App. D.C. 140).

#### Specific intent

Fact that statute relating to assault with a dangerous weapon is grouped with other crimes which all require particular intent does not mean that assault with a dangerous weapon, unlike simple assault, should be viewed as requiring a similar intent where the statute was silent as to any requirement of intent, although in all other offenses to which reference was made the requirement was explicit. *Parker v. United States* (1966, 359 F. 2d 1009, 123 U.S. App. D.C. 343).

#### Sufficiency of record on appeal

Record showed a preponderance of competent evidence to sustain conviction of juvenile of manslaughter and assault with a deadly weapon, and decision of juvenile court that juvenile was within its jurisdiction and should be committed to custody of Department of Public Welfare for indeterminate period was proper. *In the Matter of M. Bumphus, Jr.* (D.C. App. 1969, 254 A. 2d 400).

#### Witnesses

Trial court properly rejected attempt by two witnesses who were unfamiliar with the defendant's reputation as to character traits in issue in robbery and assault case to testify as to his character. *United States v. W. A. Hinkle* (1971, 448 F. 2d 1157, 145 U.S. App. D.C. 234).

### § 22-503. Assault with intent to commit any other offense.

Whoever assaults another with intent to commit any other offense which may be punished by imprisonment in the penitentiary shall be imprisoned not more than five years. (Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 805.)

#### CROSS REFERENCE

Possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

#### NOTES TO DECISIONS

##### Burden of proof

In prosecution for unlawfully assaulting a 15-year-old girl, burden was on the government to prove not only the touching, but that such touching was unlawful, or, in other words that the touching was not accidental or innocent. *Davenport v. United States* (D.C. Mun. App. 1948, 60 A. 2d 226).

##### Evidence

In prosecution for assault of an indecent nature on a ten-year-old boy, evidence of what occurred between boy and defendant in defendant's apartment on date preceding and day after date charged in the information was admissible as an exception to general rule. *Posey v. United States* (D.C. Mun. App. 1945, 41 A. 2d 300).

In prosecution for assault of an indecent nature on a ten-year-old boy, where record showed that what transpired between defendant and the boy on three consecutive days in defendant's apartment was so closely connected as to constitute composite parts of a single picture, evidence of what occurred on day preceding and day after the date charged in the information was relevant even though it revealed separate offenses on those days. *Id.*

##### Force

Application of force, or threat of application thereof, in an assault may be made indirectly as well as directly. *Beausoliel v. United States* (1940, 107 F. 2d 292, 71 App. D.C. 111).

##### Indictment

"It is not necessary to the charge of a joint assault by several persons that they be specifically charged as acting 'together and with each other.'" *Polen v. United States* (1913, 41 App. D.C. 4).

##### Instructions

In prosecution for assaulting a 15-year-old girl, defendant was entitled to an instruction that, if jury had any reasonable doubt about any material point or question in the case, they must resolve such doubt in favor of defendant, and an instruction that, if jury had any

reasonable doubt finally after considering evidence both for and against defendant as to defendant's guilt, jury must bring verdict of not guilty, was error. *Davenport v. United States* (D.C. Mun. App. 1948, 60 A. 2d 226).

#### Sentences

When sentences imposed were ten years and eight years, respectively, on the first two indictments, and five years on the assault charge, the sentences to run consecutively in the order named, but since the first sentence of ten years had not expired, the application for habeas corpus was premature, as validity of other two sentences was not properly raised. *Johnson v. Aderhold* (C.C.A. 5 1934, 73 F. 2d 102).

#### Witnesses

With children of tender years, it is proper for a trial judge to conduct a preliminary voir dire on issue of testimonial maturity; questioning at such hearing should be handled in a way that is meaningful and not by inquiry that borders on the casual and uses leading questions. *United States v. D. W. Schoefield* (1972, 465 F. 2d 560, 150 U.S. App. D.C. 380; cert. denied 93 S. Ct. 210, 409 U.S. 881).

Where 12-year-old complainant was student in sixth grade and transcript revealed intelligent comprehension in terms of answering questions, there was no basis for claim that trial judge, who was not requested to conduct preliminary voir dire as to testimonial maturity, was clearly erroneous either in proceedings without a preliminary voir dire or in accepting testimony of complainant and her 13-year-old brother. *Id.*

### § 22-504. Assault or threatened assault in a menacing manner.

Whoever unlawfully assaults, or threatens another in a menacing manner, shall be fined not more than five hundred dollars or be imprisoned not more than twelve months, or both. (Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 806.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23-581.

#### NOTES TO DECISIONS

##### Aid and abet

Evidence supported conviction of appealing defendants of assault and of attempted petit larceny, since court could conclude that defendants were associated with principal offender in the venture and made a conscious effort to help it succeed. *H. L. Williams and D. G. Reeves v. United States* (D.C. App. 1963, 190 A. 2d 269).

Evidence supported conviction of defendant, who at no time struck or pushed assault victim during altercation between victim, defendant and two others, and who could not be said by victim to have joined the other two in searching victim's pockets, for assault either on theory that concert of action by defendant and the other two threatened or menaced the victim or that defendant aided and abetted the other two. *J. T. Rogers and B. F. Herring v. United States* (D.C. Mun. App. 1961, 174 A. 2d 356).

Aiding and abetting assault renders one guilty of crime even if he does not actively participate. *Id.*

##### Appeal and error

Where judge hearing case without jury had opportunity visually to inspect knife, that was included in record, and it appeared that blade exceeded requisite length by fraction of inch, denying defense the opportunity to demonstrate in court by measuring instrument that blade was not beyond requisite length was not error even if cutting edge of blade measured less than requisite length. *S. McIntyre v. United States* (D.C. App. 1971, 283 A. 2d 814).

Where government witness, who was in witness room throughout the trial, was there to testify that the defendant had made threatening statements against victim prior to assault, testimony the government asserted in its opening statement would be forthcoming, proper procedure would have been for the government to have called witness to testify in its case in chief rather than as a rebuttal witness; however, procedure does not re-



quire reversal since the prosecutor did not act by design but rather inadvertently and any prejudice was rectified by court's allowing defendants to recall any witness they wished in surrebuttal. *E. A. Marksman v. United States* (D.C. App. 1971, 275 A. 2d 241).

While testimony as to one defendant interfering with arrest of other defendant and being charged with disorderly conduct may have had no relevance to the alleged assault for which defendant was charged, error in its admission was harmless. *B. Davis et ano. v. United States* (D.C. App. 1971, 272 A. 2d 106).

Court of Appeals, on appeal from conviction for disorderly conduct and simple assault, was reluctant to determine whether police department form containing information as to time, place and date of offense, name of complainant, names and addresses of witnesses, and description of details of offense was producible under Jencks Act but would give trial court opportunity in first instance to decide issue of producibility under established guidelines. *C. Duncan, Jr. v. United States and District of Columbia* (1967, 379 F. 2d 148, 126 U.S. App. D.C. 371).

If trial court, in determining issue of producibility of police report form under Jencks Act, found that statement should have been made available, error in failing to require production of statement would not be harmless and would require new trial on charges of disorderly conduct and simple assault. *Id.*

#### Applicability of Jencks rule

Jencks rule of evidence applies in District of Columbia Court of General Sessions whether case is prosecuted by District of Columbia or by United States. *C. Duncan, Jr. v. United States and District of Columbia* (1967, 379 F. 2d 148, 126 U.S. App. D.C. 371).

#### Arresting officer's liability

If the officer has reason to believe that the person he is about to arrest is a desperate character and acts accordingly, the officer is not to be convicted of assault because it subsequently develops that he was mistaken. *Barrett v. United States* (1933, 64 F. 2d 148, 62 App. D.C. 25).

#### Assistance of counsel

The court held that, record on appeal from a conviction for petit larceny and assault did not establish denial of effective assistance of counsel. *J. Bell, Jr., v. United States* (D.C. App. 1970, 260 A. 2d 690).

In this case the record did not show that defendant's trial counsel who declined to cross-examine either complainant or arresting officer ineffectively assisted defendant who himself testified and denied assault. *J. J. Scott v. United States* (D.C. App. 1969, 259 A. 2d 353; leave to appeal denied 427 F. 2d 609, 138 U.S. App. D.C. 339).

The record did not sustain the claim of ineffective assistance of counsel who was a defense attorney with many years of experience and who presented all substantial defenses, made appropriate motions and objections, attempted to suppress the evidence on the charge of unlawful possession of a pistol after conviction of a felony, and was able to obtain acquittal on a charge of threats to do bodily harm and directed verdict in defendant's favor on a charge of assault by threatening in a menacing manner. *I. Gressette v. United States* (D.C. App. 1969, 256 A. 2d 418).

Fact that new counsel was appointed not more than 60 minutes before trial did not amount to ineffective assistance of counsel of defendant charged with simple assault, unlawful entry and petit larceny where no continuance was requested and defendant announced he was ready for trial, factual situation was not so complex as to necessitate any extensive investigation and there were no witnesses for the defense who could have been called, new counsel was experienced and diligent and made no claim that he was hampered by appointment shortly before trial. *S. A. Tuttle v. United States* (D.C. App. 1968, 238 A. 2d 590).

#### Cause for arrest

Where a police officer had a conversation with the victim of an assault and petit larceny and proceeded in patrol car in search of the assailants, and the stolen articles were in plain view of officer in defendant's hand and at his feet in the gutter, an arrest was authorized

when the officer saw the stolen articles. *R. L. Thompkins v. United States* (D.C. App. 1969, 251 A. 2d 636).

Where in making an initial stop of the defendant, the officer was engaged in routine on-the-street investigation in nearby area of a crime minutes after it occurred in an early hour of the morning in his effort to find perpetrator while the trail was still warm, and under these circumstances the initial stop of defendant was neither an arrest nor an arbitrary detention, but arrest occurred after officer saw the articles which fit description of stolen property, which gave sufficient cause to arrest, and seizure was not invalid. *Id.*

#### Collateral attack on judgment

Bringing of motion for trial court to exercise its inherent power to vacate a sentence and to resentence defendant, thereby restoring him to status of one upon whom sentence has just been passed and who is allowed ten days thereafter in which to note his appeals is the correct procedure for the initiation of a collateral attack upon a judgment or sentence. *G. A. Hines v. United States* (D.C. App. 1968, 237 A. 2d 827).

#### Common law

The assault contemplated by this section providing that whoever unlawfully assaults or threatens another in a menacing manner shall be fined or imprisoned is common law assault. *Guarro v. United States* (1956, 237 F. 2d 578, 99 U.S. App. D.C. 97).

"Assault" at common law is an attempt with force or violence to do a corporal injury to another; and may consist of any act tending to such corporal injury, accompanied with such circumstances as denote at time an intention, coupled with present ability, of using actual violence against person. *Id.*

#### Consecutive sentences for two separate offenses

The distinctions that assault and petit larceny are separate and distinct offenses requiring different elements of proof, and that one is a crime of general intent against the person, and the other a crime of specific intent against property, are no longer conclusive in determining the legality of consecutive sentences for two crimes committed in a single course of conduct. *G. Mahoney v. United States* (D.C. App. 1968, 243 A. 2d 684).

The compelling reasons which call for the application of the rule of lenity are absent in this case, and there is no substantial doubt Congress would have intended, in the discretion of the court, that consecutive punishment be imposed for historically separate offenses, against different societal interests, for which it has provided separate deterrents. *Id.*

#### Consent

Unless there is consent, a sexual touching is sufficiently offensive to constitute an assault. *Guarro v. United States* (1956, 237 F. 2d 578, 99 U. S. App. D. C. 97).

Even assuming that defendant might both deny offense of indecent assault on member of morals squad of police department and rely on apparent consent, evidence did not require finding as a matter of law that there had been apparent consent on part of police officer. *Day v. United States* (D.C. Mun. App. 1959, 148 A. 2d 463).

A case of assault by a man touching another man's genital organ with invitation to homosexual act can be made out only by proof that complaining witness did not consent. *McDermott v. United States* (D. C. Mun. App. 1953, 98 A. 2d 287).

A police officer, by his own insidious conduct in patiently and cleverly encouraging and setting stage for furtive homosexual gesture by another man, charged with assault, placed himself in position of consenting to touching of his genital organ by such man, with invitation to homosexual act, and should not be heard to say, as prosecuting witness, that he was assaulted by accused. *Id.*

#### Continuance

The granting or refusal of a continuance is largely left to discretion of the trial judge, and his decision will not be disturbed without a clear showing of abuse in the exercise of that discretion. *W. E. Smith v. United States* (D.C. App. 1967, 235 A. 2d 574).



Counsel, right to

Though due process does not absolutely require appointment of counsel in all cases where person is deprived of his liberty because of unsound mind, where person charged with criminal offense of assault was subjected to lunacy inquisition prior to trial, due process required that defendant be represented by counsel in spite of ostensible waiver of that right or privilege. *Evans v. United States* (D. C. Mun. App. 1951, 83 A. 2d 876).

Where appellant was asked if he wished counsel and each time he stated he did not and was advised of the seriousness of the charge against him but steadfastly retained his position that counsel was not desired, he was not deprived of his constitutional right, since in the exercise of a free and intelligent choice and with the considered approval of the court, a defendant may competently and intelligently waive the right to counsel. *Humphries v. United States* (D.C. Mun. App. 1949, 68 A. 2d 803).

#### Cross-examination

Although goal of counsel of defendants charged with assault was to show victim's real background by examining him concerning his employment history and experience, ordering discontinuance of such line of questioning after a recitation that victim had worked at last employment for 8 months, before that for 6 months at another employment and still earlier at a third employment was justified to avoid needless preoccupation with collateral matters. *J. T. Rogers and B. F. Herring v. United States* (D.C. Mun. App. 1961, 174 A. 2d 356).

While cross-examination is basic right, it is subject to reasonable regulation by court in interest of orderly and expeditious trial. *Id.*

Cross-examination is an absolute right. *J. Bandoni v. United States* (D.C. Mun. App. 1961, 171 A. 2d 748).

In prosecution for assault, cross-examination of the prosecutrix respecting her past experiences, emotional history and background to shed light on her testimonial reliability was not unduly curtailed. *Id.*

#### Defense of property

In a prosecution for assault on neighbor who went upon defendant's parking lot to retrieve a pet cat which had escaped from the neighbor's house and had hidden in an air shaft in defendant's building, a charge that, if defendant acted in honest belief under the circumstances that there would be injury to his property by virtue of what took place and he used no more force than was necessary to prevent injury to his property, then he would have right to do what he did was erroneous but was beneficial to complaining defendant. *R. R. Shehyn v. United States* (D.C. App. 1969, 256 A. 2d 404).

#### Defenses

Fact that police officer specifically denied being hurt, embarrassed or humiliated by alleged touching of his private parts did not negative assault. *Guarro v. United States* (1956, 237 F. 2d 578, 99 U.S. App. D.C. 97).

Even though defendant, who was charged with making threats in a menacing manner and with unlawfully possessing an automatic pistol, had been discharged from hospital as having recovered from a mental disorder less than two months before date of alleged crimes, usual presumption of defendant's sanity, under District of Columbia law, existed at the time of trial. *Williams v. United States* (D. C. Mun. App. 1954, 104 A. 2d 828).

Where 13-year-old boy committed an indecent act upon a girl 4 years and 8 months old, act clearly constituted an assault, since child's acquiescence or submission was immaterial. *In re Lewis* (D. C. Mun. App. 1952, 88 A. 2d 582).

#### Delay in prosecution

In this case the lapse of time which could be attributed to the government did not justify dismissal of assault informations, though defendant did take the stand to testify that he could not remember the circumstances of his arrest, since his lack of memory was not due to the passage of time but to the fact that he had been drinking prior to the alleged assault, and any delay charged the government could thus have no prejudicial effect on defendant's defense, and there were no other circumstances to support a finding of the trial court of

vexatious, oppressive, chicanerous or harassing conduct on the government's part. *United States v. E. L. Jefferson* (D.C. App. 1969, 257 A. 2d 225).

#### Double jeopardy

Judgments were required to be vacated and nolle prosequis entered in cases which had been pending before Court of General Sessions where government's action in entering the nolle prosequis could not be characterized as an abuse of its power, and to allow government to file new informations at a subsequent date would not violate double jeopardy clause of Fifth Amendment. *United States v. B. H. Foster* (D.C. App. 1967, 226 A. 2d 164).

#### Elements of assault

Violence in its ordinary meaning is not a necessary element of assault, and attempt to do unlawfully to another any bodily injury however small constitutes an "assault". *C. Harris v. United States* (D.C. App. 1964, 201 A. 2d 532).

Evidence that defendant jostled victim and fumbled with victim's trouser cuffs, and that there was impact at area of victim's hip pocket constituted sufficient evidence to send to jury on question of assault in case involving defendant who had allegedly taken wallet from victim's hip pocket. *Id.*

#### Elements of offense

Proof of threats in a menacing manner by words alone does not suffice, under statute proscribing assault or threatened assault in a menacing manner. *In the Matter of D. W. J., Jr.* (D.C. App. 1972, 293 A. 2d 268).

#### Evidence—Admissibility

Exclusion of testimony as to victim's prior specific acts of violence, communicated to but not personally observed, by defendant who was accused of assault and claimed self-defense, was error. *J. M. King v. United States* (D.C. Mun. App. 1962, 177 A. 2d 912).

In prosecution for assault or homicide accused may show prior acts of violence by alleged victim to support claim of self-defense. *Id.*

Time alone is not controlling in determining the spontaneity of an exclamation, and of equal importance is whether the declaration was influenced by external circumstances of physical shock or stress of nervous excitement. *J. Bandoni v. United States* (D.C. Mun. App. 1961, 171 A. 2d 748).

Admitting testimony of witness as to her conversation with the assaulted complainant though more than an hour occurred between the assault and the report to the witness was not error as violating the hearsay rule. *Id.*

In assault prosecution of defendant, evidence of an offense of sexual nature was admissible and a proper basis for conviction. *Guarro v. United States* (D. C. Mun. App. 1955, 116 A. 2d 408).

In assault prosecution of defendant who allegedly approached prosecution witness and placed his hand on witness' privates and squeezed them, the sexual nature of the alleged assault rendered admissible testimony by prosecution witness, who was an officer assigned to morals division of police department, that defendant had, after his arrest, admitted to officer the prior commission of acts of sodomy. *Dyson v. United States* (D.C. Mun. App. 1953, 97 A. 2d 135).

In prosecution for assault, where government witness admitted on cross-examination that she had waited two weeks after the incident before reporting it to police, testimony on redirect examination that she had not intended to report the incident but later saw defendant commit a similar assault upon another woman and then reported her experience to the police was competent to rebut the issue of delay raised by defendant. *Stitely v. United States* (D.C. Mun. App. 1948, 61 A. 2d 491).

#### — Arresting officer, testimony of

Great caution should be applied in considering testimony of arresting officer in cases where alleged assault is nonviolent sexual touching which by its nature left no traces and to which there were no other witnesses. *Guarro v. United States* (1956, 237 F. 2d 578, 99 U. S. App. D. C. 97).

#### — Burden or proof

In prosecution for assault of a homosexual nature upon a child, child's accusation against defendant must be treated with great caution and government's proof must



be of the most convincing kind. *Konvalinka v. United States* (D.C. Mun. App. 1960, 162 A. 2d 778).

In assault prosecution, it was incumbent upon Government to show that the act of the defendant was not accidental and that he had necessary criminal intent. *Dyson v. United States* (D. C. Mun. App. 1953, 97 A. 2d 135).

#### — Corroboration

Testimony of complaining witness in prosecution for assault was sufficiently corroborated. *D. Konvalinka v. United States* (1961, 287 F. 2d 346, 109 U.S. App. D.C. 307; aff'g 162 A. 2d 778).

Testimony of complaining witness in prosecution for assault need not be corroborated. *Ingram v. United States* (D.C. Mun. App. 1955, 110 A. 2d 693).

Where testimony of certain witnesses would have been merely cumulative if they had been produced, defendants were not entitled to an adverse witness charge. *Id.*

#### — Sufficiency

Evidence did not sustain holding that juvenile, who told 13-year-old complainant that juvenile and another would kill him or get someone else to "jump him" if he did not go through broken window and remove certain items from ground-floor apartment and who later received money which the complainant obtained after being made to sell the items, threatened complainant in a menacing manner within meaning of statute proscribing assault or threatened assault in a menacing manner. *In the Matter of D. W. J., Jr.* (D.C. App. 1972, 293 A. 2d 268).

Evidence, including eyewitness testimony by two police officers that the defendant bumped into complaining witness and stealthily removed wallet from her handbag, that he quickly passed wallet to an accomplice, who hurried from scene, and that victim of crime reacted in an emotional manner on discovering her loss, is sufficient to support convictions of petit larceny and of assault. *M. A. Riley v. United States* (D.C. App. 1972, 291 A. 2d 190).

Evidence sustained conviction of assault, public intoxication and disorderly conduct in violation of District of Columbia Code. *W. M. Dempsey v. United States and District of Columbia* (D.C. App. 1969, 251 A. 2d 650).

Before use of assault statute to cover conduct that appears to fall within bounds of misdemeanor statutes can be countenanced court must be certain that elements of assault had been established. *Guarro v. United States* (1956, 237 F. 2d 578, 99 U.S. App. D.C. 97).

Evidence in support of claimed nonviolent sexual touching was not sufficient to support conviction under general assault statute. *Id.*

Evidence sustained conviction for assault. *Hensley v. United States* (D.C. Mun. App. 1959, 155 A. 2d 77).

Evidence did not sustain conviction for indecent assault upon a police officer. *Thomas v. United States* (D. C. Mun. App. 1957, 129 A. 2d 852).

Evidence sustained conviction for assault. *Goodman v. United States of America* (D. C. Mun. App. 1955, 118 A. 2d 517).

#### Evidence of assault

Evidence that heavy bag of coins was taken from victim's hand supported a finding of an interference with person of another sufficient to constitute an assault. *G. Mahoney v. United States* (D.C. App. 1968, 243 A. 2d 684).

#### Fair and impartial trial

Record failed to establish that the tension which developed between court and counsel during course of trial was of such magnitude as to deny the defendant a fair and impartial trial. *B. Davis et ano. v. United States* (D.C. App. 1971, 272 A. 2d 106).

#### Force

Application of force, or threat of application thereof, in an assault may be made indirectly as well as directly. *Beausoliel v. United States* (1940, 107 F. 2d 292, 71 App. D.C. 111).

#### Homosexual overture

A prosecution for assault may be sustained under this section for homosexual overture. *Alleyne Anderson v. United States* (D.C. Mun. App. 1955, 117 A. 2d 456).

Assault conviction, predicated upon homosexual overture, was sustained. *Id.*

#### Identification

Where no suggestion was made to robbery and assault victim that defendant was believed to be one of the two robbers, but only that victim was asked to view two men because they seemed to fit descriptions victim had furnished the police and identification confrontation occurred within an hour to an hour and a half of robbery, the identification confrontation at victim's home shortly after robbery did not violate the defendant's right to due process. *United States v. F. Perry* (1971, 449 F. 2d 1026, 145 U.S. App. D.C. 364).

Question of identification was one of fact for jury in prosecution for assault and for carrying a deadly weapon. *J. J. Durham v. United States* (D.C. App. 1968, 237 A. 2d 830).

#### Inconsistent verdict

In this case, the court held that since there was evidence that defendant not only struck officer with nightstick but also hit him and engaged in general scuffling, finding by jury that defendant was not guilty of charge involving possession of nightstick did not preclude conviction on charge of simple assault. *C. T. Matthews v. United States* (D.C. App. 1970, 267 A. 2d 826; cert. denied 92 S. Ct. 221, 404 U.S. 884).

#### Indictment

Where defendant was charged with committing "indecent assault" upon girl 4 years and 8 months old and laws in jurisdiction made an unlawful assault a misdemeanor and did not use term "indecent assault", addition of word "indecent" to charge could be treated as surplusage and neither added to nor detracted from the charge. *In re Lewis* (D. C. Mun. App. 1952, 88 A. 2d 582).

#### Injury suffered

Threat or danger of physical suffering in the ordinary sense is not necessary; the injury suffered by the innocent victim may be the fear, shame, humiliation, and mental anguish caused by the assault. *Beausoliel v. United States* (1940, 107 F. 2d 292, 71 App. D.C. 111).

#### Instructions

Where assault victim was cross-examined as to whether he had informed treating physician that he had been hit in face by a cane or stick, victim's testimony that he remembered telling doctor he had been stomped and kicked on but that he didn't remember telling doctor that he was beaten in face with a stick is not clearly inconsistent with medical history, which defense counsel introduced through testimony of treating physician, that victim was also hit by cane, or stick, of some sort in the face, and that might have been what victim told physician; thus, the refusal to give requested instruction on use of prior inconsistent statements for purpose of impeachment was not prejudicial. *E. A. Marksman v. United States* (D.C. App. 1971, 275 A. 2d 241).

Defendant in robbery prosecution was entitled to instruction on assault, where he testified that there had been justifiable assault. *J. R. Broughman v. United States* (1966, 361 F. 2d 71, 124 U.S. App. D.C. 54).

Testimony of assault victim that defendant and two other men were "after" him authorized instruction to jury on theory of aiding and abetting even if defendant's actions did not assume proportions of assault. *J. T. Rogers and B. F. Herring v. United States* (D.C. Mun. App. 1961, 174 A. 2d 356).

Failure to instruct jury as to effect of five-hour delay in reporting alleged assault to the police was not error where no such instruction was requested. *J. Bandoni v. United States* (D.C. Mun. App. 1961, 171 A. 2d 748).

In prosecution for an assault committed upon a woman in a street car, where woman involved explained her delay in complaining to police by stating that she had not intended to complain until she saw defendant commit the same act upon another woman two weeks later, defendant was entitled, upon a timely request, to have jury instructed that testimony in explanation of delay was to be considered only in respect to delay in making complaint and not as evidence that offense charged was committed but where he failed to do so, no complaint could



be made. *Stitley v. United States* (D. C. Mun. App. 1948, 61 A. 2d 491).

#### Issue of fact

Whether a defendant, who was charged with assault, public intoxication and disorderly conduct in violation of District of Columbia Code, had mental disease which should have excused him from criminal responsibility was issue of ultimate fact for the trier thereof. *W. M. Dempsey v. United States and District of Columbia* (D.C. App. 1969, 251 A. 2d 650).

#### Motion of acquittal

In assault prosecution, defendant, by offering evidence subsequent to denial of motion of acquittal, waived his rights regarding that motion. *Ernesto Guarro v. United States* (D. C. Mun. App. 1955, 116 A. 2d 408).

#### Official conduct

Where plainclothes police officer was member of inorals squad, conduct of officer just before alleged sexual assault was of crucial significance bearing on criminal responsibility of assailant. *Guarro v. United States* (1966, 237 F. 2d 578, 99 U. S. App. D. C. 97).

#### Prior grand jury action

Where complaint was filed charging defendant with felony, but grand jury returned ignoramus bill and felony complaint was dismissed, federal rule providing that prosecution shall terminate upon filing of dismissal by prosecutor did not preclude trial on information charging misdemeanor. *United States v. D. A. Kennedy* (D.C. App. 1966, 220 A. 2d 322).

#### Probation report

Where record clearly showed that court had inquired into defendant's record prior to imposing sentence following conviction for assault and learned that defendant had committed offense while on probation from previous conviction, trial court, which felt that it had all information that was needed for sentencing, did not abuse discretion in failing to order either a preliminary screening or probation report prior to imposing sentence. *W. A. Thomas, W. B. Preston and E. C. Singleton v. United States* (D.C. App. 1967, 229 A. 2d 155).

#### Reversible error

In prosecution for simple assault where defendant, a policeman, testified concerning incidents of his patrol, and where government cross-examined and brought on rebuttal evidence of other assaults under the theory of impeachment, and where upon appeal that theory was abandoned and that of identification substituted and both theories were of tenuous application upon the facts, thus affording the trial court no opportunity to rule upon admissibility under the new theory nor to give proper limiting instruction under it, there was reversible error. *Martin v. United States* (1942, 127 F. 2d 865, 75 U.S. App. D.C. 399).

In simple assault prosecution, arresting officer's testimony, in response to question whether defendant had denied the assault, that denial took place in presence of defendant's parol officer constituted reversible error, and, when officer volunteered such information, court should have cautioned him and instructed jury to disregard the information or should have granted defendant's motion for mistrial. *Yeldell v. United States* (D.C. Mun. App. 1959, 153 A. 2d 637).

Where in a prosecution for assault, defendant's counsel was deprived of the opportunity of examining defendant again on redirect examination and of the opportunity to call additional defense witnesses who had been sworn at the beginning of the trial, it constitutes reversible error, notwithstanding the absence of objection and exception taken at the trial court. *Varrella v. United States* (D. C. Mun. App. 1949, 64 A. 2d 310).

#### Review

Defendant prosecuted for assault was not entitled to a continuance and trial before a new jury panel because members thereof were prejudiced in that on the day before defendant's trial his wife was convicted by a jury for carrying a dangerous weapon and the defendant's and wife's jury were selected from the same array, where the defendant's contention had no support in the record.

*J. Bandoni v. United States* (D.C. Mun. App. 1961, 171 A. 2d 748).

Defendant convicted of indecent assault had a right of appeal notwithstanding that imposition of sentence was suspended and that defendant was required to give his personal recognizance or bond not to repeat the offense. *Thomas v. United States* (D. C. Mun. App. 1957, 129 A. 2d 852).

Defendant who was convicted of indecent assault and whose sentence was suspended with requirement that defendant give his personal recognizance or bond not to repeat the offense could appeal as a matter of right rather than by application for appeal, notwithstanding statute providing that where penalty imposed is less than \$50 review shall be by application. *Id.*

Party seeking review of alleged erroneous instructions cannot raise objection for the first time on appeal. *James Hale v. United States* (D. C. Mun. App. 1955, 114 A. 2d 74).

In prosecution wherein defendant was convicted of assault, there was no plain error in court's instructions to the jury which would enable defendant to raise error on appeal for the first time. *Id.*

#### Sentence—Consecutive

Consecutive sentences were properly imposed on defendant convicted of simple assault and possession of prohibited weapon, notwithstanding that both offenses arose out of his attack on his wife, where government had to prove that defendant attempted to inflict bodily injury and did not have to prove possession of weapon in order to sustain assault charge, and the weapon charge, on the other hand, required proof of possession of weapon but did not require evidence of attempt to harm. *E. Cooke v. United States* (D.C. App. 1965, 213 A. 2d 508).

#### Timely notice of appeal

Failure to file timely notice of appeal deprived the District of Columbia Court of Appeals of jurisdiction over a direct appeal. *G. A. Hines v. United States* (D.C. App. 1968, 237 A. 2d 827).

#### Weight of evidence

Weight to be given testimony of witnesses who related that the conduct of the defendant at time of alleged assault, public intoxication and disorderly conduct, in violation of District of Columbia Code, and shortly thereafter was bizarre and the weight to be given testimony of government witness who related that the defendant was intoxicated at the time of the alleged offenses and that assault was triggered by refusal to serve him beer was for the trier of fact. *W. M. Dempsey v. United States and District of Columbia* (D.C. App. 1969, 251 A. 2d 650).

### § 22-505. Assault on member of police force or fire department.

(a) Whoever without justifiable and excusable cause, assaults, resists, opposes, impedes, intimidates, or interferes with any officer or member of any police force operating in the District of Columbia, or any officer or member of any fire department operating in the District of Columbia; or any officer or employee of any penal or correctional institution of the District of Columbia, or any officer or employee of the government of the District of Columbia charged with the supervision of juveniles being confined pursuant to law in any facility of the District of Columbia, whether such institution or facility is located within the District of Columbia or elsewhere, while engaged in or on account of the performance of his official duties, shall be fined not more than \$5,000 or imprisoned not more than five years or both. It is neither justifiable nor excusable cause for a person to use force to resist an arrest when such arrest is made by an individual he has reason to believe is a law enforcement officer, whether or not such arrest is lawful.

(b) Whoever in the commission of any such acts uses a deadly or dangerous weapon shall be impris-



oned not more than ten years. (R.S., D.C., § 432; June 29, 1953, 67 Stat. 95, ch. 159, § 205; Oct. 20, 1965, 79 Stat. 1011, Pub. L. 89-277, § 1; July 29, 1970, Pub. L. 91-358, § 206, title II, 84 Stat. 601; Aug. 11, 1971, Pub. L. 92-92, 85 Stat. 316.)

#### AMENDMENTS

1971—Act Aug. 11, 1971, Pub. L. 92-92, amended subsec. (a) by inserting after "District of Columbia," where such phrase first appears, the following: "or any officer or member of any fire department operating in the District of Columbia,".

1970—Section 206 of Act July 29, 1970, Public Law 91-358 amended subsection (a) by adding the following sentence at the end thereof: "It is neither justifiable nor excusable cause for a person to use force to resist an arrest when such arrest is made by an individual he has reason to believe is a law enforcement officer, whether or not such arrest is lawful."

1965—Act Oct. 20, 1965, amended subsection (a) by inserting the matter relating to officers and members of penal and correctional institutions and officers or employees in charge of juveniles.

1953—Act June 29, 1953, increased the penalty for violation of the section from a fine of \$500 or imprisonment for 2 years to a fine of \$5,000 or imprisonment for 5 years or both, and a maximum of 10 years imprisonment if a dangerous weapon is used.

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CROSS REFERENCES

Minimum sentence of one year, see § 24-203.

Possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23-524, 24-203.

#### NOTES TO DECISIONS

##### Appeal after service of sentence

Defendant, who had served sentence, was entitled to have conviction for assault reversed and case remanded, where alleged assault was committed on witness who testified against defendant at preliminary hearing at which defendant had not been accorded right to counsel, and no preliminary hearing was granted on assault charge. *O. Dancy, Jr. v. United States* (1966, 361 F. 2d 75, 124 U.S. App. D.C. 58).

That defendant had served his sentence did not render case moot in view of effect of felony conviction on civil rights and punishment upon subsequent conviction. *Id.*

##### Appeal and error

Though prosecutor had both good faith and reasonable basis for supposing shotgun would be admitted in evidence, display of shotgun and two pistols from start of prosecution of defendant on one count of assault with a dangerous weapon and three counts of assaulting a member of police force with a dangerous weapon was improper; however, since the pistols were admitted in evidence and shotgun was more cumulative than prejudicially different and proof of guilt was overwhelming, the incident was not prejudicial to point of reversible error. *United States v. R. D. Lewis* (1970, 435 F. 2d 417, 140 U.S. App. D.C. 345).

##### Arrest

Ultimate guilt of defendant of offense of assault of a police officer would be irrelevant to question of a valid arrest, where existence of probable cause to arrest for assault on the police officer was clear. *J. Terrell v. United States* (D.C. App. 1972, 294 A. 2d 860; cert. denied 93 S. Ct. 1398, 410 U.S. 938).

##### Assistance of counsel

In prosecution for assault with a deadly weapon upon a member of the police department, under the circumstances, failure of defendant's counsel in the trial court to pursue his attempt to impeach a government witness did not constitute ineffective assistance of counsel, nor, under the circumstances, did trial court err in permitting introduction of evidence on the doctrine of flight or in

giving an erroneous instruction thereon. *Tolliver v. United States* (1959, 273 F. 2d 523, 106 U.S. App. D.C. 398).

##### Consecutive sentences

In considering the permissibility of consecutive sentences, courts look to the intent of Congress; fact that there are two crimes in sense that each contains a separate element is not controlling. *United States v. R. D. Lewis* (1970, 435 F. 2d 417, 140 U.S. App. D.C. 345).

Where defendant announced he was coming out of apartment and started down stairs and fired gun in direction of two officers as they were standing in first floor hallway and then ran back inside apartment, imposition of consecutive sentences on two counts charging assaults on the two officers with a dangerous weapon knowing them to be members of police department is invalid. *Id.*

Where defendant fired at two officers and was charged in connection therewith in two counts on which he was convicted and ran back inside apartment and subsequently a bullet fired from second floor window went through a third officer's police hat and hit brick wall behind him, shot from stairs at officers in hallway and shot from apartment at officers in street were distinct successive criminal episodes and consecutive punishment is permissible for count charging assault on third officer with dangerous weapon, knowing him to be member of police department. *Id.*

##### Defendant's absence during trial

Federal Rules of Criminal Procedure providing that the defendant shall be present at every stage of trial, including return of verdict, but that his voluntary absence after trial has been commenced in his presence shall not prevent continuing trial to and including return of verdict, is designed primarily to insure defendant's presence, not to permit trial to proceed in his absence. *W. R. Wade v. United States* (1971, 441 F. 2d 1046, 142 U.S. App. D.C. 356).

Since there was no showing of willful intention on part of the defendant to interfere with ordinary processes of court or of desire not to be present at times when he knew he should have been in court, trial judge was not authorized to proceed without him. *Id.*

##### Double jeopardy

Defendant's acquittal of driving with a suspended permit and running a stop sign does not establish that there was no probable cause for arrest for driving automobile without permit, and prosecution for assault on police officer at time of arrest does not place defendant twice in jeopardy for the same offense. *United States v. L. O. Spencer* (1971, 448 F. 2d 1093, 145 U.S. App. D.C. 170).

There was no double jeopardy when a defendant, after having been convicted of disorderly conduct, was prosecuted for assaulting a police officer, notwithstanding fact that both incidents occurred in relatively short span of time and at same place. *H. Harris v. United States* (1968, 402 F. 2d 205, 131 U.S. App. D.C. 64).

##### Escape as justified by improper conviction

Attempt to escape and assault on a prison guard was indefensible, and arguments that appellant was not guilty of attempted escape or assault on correctional officer because he had been improperly convicted of attempted burglary and wrongfully confined at workhouse instead of youth correction center were without merit. *United States v. J. H. Haley* (1969, 417 F. 2d 625).

##### Evidence

Evidence in this case established that assault on police officer at time of allegedly unlawful arrest was part of such excessive resistance to the arrest as would warrant conviction of assaulting a police officer. *United States v. L. O. Spencer* (1971, 448 F. 2d 1093, 145 U.S. App. D.C. 170).

Evidence sustained conviction for assault upon police officer. *H. E. Lee v. United States* (1965, 344 F. 2d 566, 120 U.S. App. D.C. 181).

Evidence sustained conviction for assaulting and interfering with an officer of the metropolitan police department engaged in performance of his official duties. *I. R. Lawson v. United States* (1962, 301 F. 2d 520, 112 U.S. App. D.C. 196).



## — Admissibility

Spectrograms or voiceprints identifying one of the defendants as maker of telephone call to which police officer was responding when shot is admissible in evidence. *United States v. A. Raymond et ano.* (1972, 337 F. Supp. 641).

Case in which it is sought to introduce voiceprints presents a situation wherein due to scientific nature of evidence proffered expert testimony is necessarily admissible. *Id.*

Refusal to admit into evidence a docket entry indicating that victim of shooting had been convicted of assault on a police officer was not improper on basis that the entry had relevance as showing victim's propensity for violence and aggressive behavior thus bolstering defendant's claim of self-defense, where the docket entry disclosed only that victim had been convicted under this section making criminal nonviolent obstruction of police officer in performance of his duty as well as assault and physical interference; and the proffer was inadequate to apprise the court of the relevance of the evidence. *A. Jones v. United States of America* (1967, 385 F. 2d 296, 128 U.S. App. D.C. 36).

## Impeachment

In the case, the court held that a prior conviction of attempted housebreaking was properly used for impeachment of defendant charged with unauthorized use of vehicle and assault on police officer. *United States v. C. E. White* (1970, 427 F. 2d 634, 138 U.S. App. D.C. 364).

## Inconsistent verdict

That defendant was convicted for assault upon only one of three police officers involved in fracas, with acquittal of assault upon the other two, presented no basis for faulting the conviction on theory of inconsistent verdict. *United States v. L. O. Spencer* (1971, 448 F. 2d 1093, 145 U.S. App. D.C. 170).

## Instructions

Considering instructions as a whole together with very strong evidence of guilt of defendant of housebreaking, assault with dangerous weapon, assault of police officer with dangerous weapon, and assault with intent to kill, and considering fact that defendant was satisfied with instructions as given, errors in instructions did not affect substantial rights or otherwise require reversal. *G. E. Nixon v. United States* (1962, 309 F. 2d 316, 114 U.S. App. D.C. 21).

In prosecution for assaulting police officer, requested instruction as to defendant's right to resist unlawful arrest and use such force as was at his command and necessary to prevent such arrest was properly refused as being too broad and inapplicable to issues of case. *Abrams v. United States* (1956, 237 F. 2d 42, 99 U.S. App. D.C. 46, certiorari denied 77 S. Ct. 575, 352 U.S. 1018, 1 L. Ed. 2d 554).

## Joinder

Since the offenses of robbery, assault with dangerous weapon, assault on member of police force, unauthorized use of vehicle, and carrying dangerous weapon were based on two or more connected acts constituting part of common scheme and plan, the defendants were alleged to have participated in same series of acts constituting offenses, and each of defendants aided and abetted offenses charged against other defendants, it was proper for grand jury to join defendants and offenses in the indictment. *United States v. C. Wilson, Jr. et ano.* (1970, 434 F. 2d 494, 140 U.S. App. D.C. 220).

## Jurisdiction

United States District Court for Eastern District of Virginia had jurisdiction of an assault charge resulting from assault upon a correctional officer at District of Columbia Workhouse at Occoquan, Virginia. *United States v. J. H. Haley* (1969, 417 F. 2d 625).

## Prior grand jury action

Where complaint was filed charging defendant with felony, but grand jury returned ignoramus bill and felony complaint was dismissed, federal rule providing that prosecution shall terminate upon filing of dismissal by prosecutor did not preclude trial on information charging misdemeanor. *United States v. D. A. Kennedy* (D.C. App. 1966, 220 A. 2d 322).

## Remand

Conviction of juvenile of first-degree felony-murder armed robbery, assault with dangerous weapon, assault upon police officer with dangerous weapon and carrying dangerous weapon would be remanded to District Court to consider possibility of sentencing under the Youth Corrections Act. *United States v. W. Howard* (1971, 449 F. 2d 1086, 146 U.S. App. D.C. 10).

## Resisting arrest

Police officers, who, during course of immediate investigation of an alleged robbery, were informed by victim that defendant passerby was perpetrator of the crime, had probable cause to arrest defendant, and thus defendant, who, as result of efforts to resist arrest, was convicted of simple assault, is not entitled to relief on theory that he had right to use force to resist illegal arrest. *L. U. Brown v. United States* (D.C. App. 1971, 274 A. 2d 683).

## Sentence

In this case, the court held that the fact that had defendant, convicted before United States District Court for Eastern District of Virginia of assaulting a guard at District of Columbia Reformatory at Lorton, Virginia, been sentenced under District of Columbia law rather than under general federal law he might have received benefit of more liberal treatment after sentencing did not constitute denial of equal protection or due process since there is no essential difference between sentencing alternatives. *United States v. T. Horton* (1970, 423 F. 2d 474).

In view of defendant's age and lack of prior criminal record, and especially apparent feeling of jury that punishment should be tempered with mercy, district court might wish to reconsider sentence imposed for assault upon police officer. *H. E. Lee v. United States* (1965, 344 F. 2d 566, 120 U.S. App. D.C. 181).

## § 22-506. Mayhem or maliciously disfiguring.

Every person convicted of mayhem or of maliciously disfiguring another shall be imprisoned for not more than ten years. (Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 807.)

## CROSS REFERENCE

Possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

## NOTES TO DECISIONS

## Construction

What originated as narrow common-law offense of mayhem is generally today statutory offense of larger dimensions, and transition has been accompanied, if not induced, by a shift in emphasis from military and combative effects of injury to preservation of human body in normal functioning. *United States v. E. Cook* (1972, 462 F. 2d 301, 149 U.S. App. D.C. 197).

## Disfigure

To "disfigure" is to make less complete, perfect, or beautiful in appearance or character, and disfigurement, in law as in common acceptance, may well be something less than total and irreversible deterioration of bodily organ. *United States v. E. Cook* (1972, 462 F. 2d 301, 149 U.S. App. D.C. 197).

Cosmetic effects of scarring may be sufficiently severe to bring case within ambit of statute making it an offense to commit mayhem or to maliciously disfigure another. *Id.*

## Elements of offense

Statute making it offense to commit mayhem or maliciously disfigure another requires permanence of injury or disfigurement in some appreciable form. *United States v. E. Cook* (1972, 462 F. 2d 301, 149 U.S. App. D.C. 197).

## Evidence—Sufficiency

Evidence in prosecution on charge of maliciously disfiguring another was sufficient to sustain conviction of defendant who threw lye at victim who sustained partial loss of vision and scars. *United States v. E. Cook* (1972, 462 F. 2d 301, 149 U.S. App. D.C. 197).

## Intent

So long as an act of mayhem is done maliciously and willfully, a specific intent is not necessary to constitute the crime, since the common-law definition, which is



applicable, does not include a specific intention. *Brown v. United States* (1949, 171 F. 2d 832, 84 U.S. App. D.C. 222).

If an assault be so malicious and willful as to result in the loss of an eye, leg, or arm, it is immaterial to the gravity of the offense of mayhem that the assailant had no specific intention of depriving his victim of the eye, leg, or arm. *Id.*

Indictment and proof were not insufficient in prosecution for mayhem because a specific intent to maim and disfigure the complainant was neither alleged nor proved, since specific intent was not necessary to constitute mayhem. *Id.*

#### § 22-507. Threats to do bodily harm.

Whoever is convicted in the District of threats to do bodily harm shall be fined not more than \$500 or imprisoned not more than six months, or both, and, in addition thereto or in lieu thereof, may be required to give bond to keep the peace for a period not exceeding one year. (July 16, 1912, 37 Stat. 193, ch. 235, § 2; June 29, 1953, 67 Stat. 98, ch. 159, § 212; Dec. 23, 1963, 77 Stat. 618, Pub. L. 88-241, § 11(b).)

#### AMENDMENTS

1963—Act Dec. 23, 1963, eliminated from above cited § 2 of the 1912 act provisions relating to concurrent jurisdiction of municipal court and district court of threats to do bodily harm, which jurisdictional provision had been classified to § 11-755d of Part II of this Code, prior to the enactment of revised Part II by the same 1963 act. The eliminated provisions were covered by revised §§ 11-521 (a) (2) and 11-963 (a) (1). Title 11 was completely revised by Act July 29, 1970, Pub. L. 91-358, and the jurisdictional provision is now contained in § 11-923. The only changes made by the 1963 amendment, as far as the provisions of said § 2 of the 1912 act, as amended, classified to this section are concerned, were in matters of style.

1953—Act June 29, 1953, substituted provisions for imprisonment not exceeding six months or fine not exceeding \$500 or both and requirement of a bond to keep the peace for one year for former requirement of a peace bond not to exceed six months or, in default of bond, for imprisonment not exceeding six months.

#### EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 23, 1963, was made effective on Jan. 1, 1964.

#### NOTES TO DECISIONS

##### Assistance of counsel

The record did not sustain the claim of ineffective assistance of counsel who was a defense attorney with many years of experience and who presented all substantial defenses, made appropriate motions and objections, attempted to suppress the evidence on the charge of unlawful possession of a pistol after conviction of a felony, and was able to obtain acquittal on a charge of threats to do bodily harm and directed verdict in defendant's favor on a charge of assault by threatening in a menacing manner. *I. Gressette v. United States* (D.C. App. 1969, 256 A. 2d 418).

##### Collateral attack on judgment

Bringing of motion for trial court to exercise its inherent power to vacate a sentence and to resentence defendant, thereby restoring him to status of one upon whom sentence has just been passed and who is allowed ten days thereafter in which to note his appeals is the correct procedure for the initiation of a collateral attack upon a judgment or sentence. *G. A. Hines v. United States* (D.C. App. 1968, 237 A. 2d 827).

##### Construction

In view of phrasing of statute proscribing threats to do bodily harm, a single threat directed to more than one person constitutes but a single unit of prosecution. *L. Smith v. United States* (D.C. App. 1972, 295 A. 2d 60).

Defendant who was convicted of one count of petit larceny and two counts of threats to do bodily harm, but who, with respect to the latter offenses, merely uttered one threat on one occasion to two people could be found

guilty of only one of the counts of threats to do bodily harm. *Id.*

To sustain a conviction for a threat to do bodily harm, it is necessary only that the threats impart expectation of bodily harm thereby inducing fear and apprehension in person threatened. *G. Postell v. United States* (D.C. App. 1971, 282 A. 2d 551).

Threat on a condition that victim believes will never occur cannot be actionable under this section prohibiting threats to do bodily harm; however, mere fact that infliction of harm is threatened upon condition does not preclude it from being a "threat" within this section. *Id.*

Fact that the defendant's threats to inflict bodily harm upon police officers were conditioned upon officers' continuing to arrest his "girls" did not preclude conviction of threatening to do bodily harm in violation of this section. *Id.*

##### Evidence—Admissibility

The trial court properly refused to allow defendant to testify to events occurring after date of the offense, since defendant made no proffer of excluded testimony other than that he wished "to cast disparity on the elements of the offense," and testimony concerning wife's conduct at a later time would not shed light on whether or not offense was committed and testimony concerning defendant's conduct after offense would have been merely self-serving. *P. F. Wilson v. United States* (D.C. App. 1970, 261 A. 2d 513).

Admission of testimony that defendant charged with threatening to do bodily harm to complainant had made prior threats to do bodily harm and to shoot her was admissible to show state of mind of defendant and complainant. *C. B. McDonald v. United States* (D.C. Mun. App. 1962, 183 A. 2d 396).

Generally, evidence of offense wholly independent of crime charged is inadmissible, but such evidence is admissible where acts are so blended or connected with the one on trial that proof of one incidentally involves the other, they explain the circumstances of offense charged, or they tend to logically prove any element of the offense. *Id.*

Evidence of conduct prior to commission of alleged crime is admissible if so related or connected with crime as to establish common scheme of purpose, the pursuance of a single object, or defendant's guilty knowledge, intent, or motive. *Id.*

##### Prejudicial error

In prosecution for threats to inflict bodily harm upon police officers if they continued to arrest defendant's "girls", officer's testimony that defendant was a "pimp" was not prejudicial since the descriptive words used by defendant in his threats made his relationship with girls patently clear and officer's characterization of relationship was not in conflict with defendant's own description. *G. Postell v. United States* (D.C. App. 1971, 282 A. 2d 551).

##### Prosecution

Prosecution of juvenile, who told 13-year-old complainant that juvenile and another would kill him or get someone else to "jump him" if he did not go through broken window and remove certain items from ground-floor apartment, should be had, under statute proscribing threats to do bodily harm, for a threat by words conveying a menace or fear of bodily harm. *In the Matter of D. W. J., Jr.* (D.C. App. 1972, 293 A. 2d 268).

##### Timely notice of appeal

Failure to file timely notice of appeal deprived the District of Columbia Court of Appeals of jurisdiction over a direct appeal. *G. A. Hines v. United States* (D.C. App. 1968, 237 A. 2d 827).

#### § 22-508. Penalty for assaulting, beating, or fighting on account of money won by gaming.

[Transferred from former section 16-705]

In case any person or persons whatsoever, shall assault and beat, or shall challenge or provoke to fight any other person or persons whatsoever, upon account of any money won by gaming, playing or betting at any of the games aforesaid, such person or persons assaulting and beating, or challenging or



provoking to fight such other person or persons upon the account aforesaid, being thereof convicted upon an indictment or information to be exhibited against him or them for that purpose, shall suffer imprisonment during the term of two years. (9 Ann. ch. 14, § 8, 1710; Kilty's Rept., p. 248; Alex. Brit. Stat., p. 692; Comp. Stat. D.C., p. 245, § 17.)

#### CODIFICATION

This section sets forth a British statute continued in force by virtue of act Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 1.

#### CROSS REFERENCE

Assaults and disorderly conduct generally, see §§ 22-501 to 22-507, 22-1101 to 22-1120.

### Chapter 6.—BIGAMY

Sec.

22-601. Definition and penalty.

#### § 22-601. Definition and penalty.

Whoever, having a husband or wife living, marries another shall be deemed guilty of bigamy, and on conviction thereof shall suffer imprisonment for not less than two nor more than seven years: *Provided*, That this section shall not apply to any person whose husband or wife has been continually absent for five successive years next before such marriage without being known to such person to be living within that time, or whose marriage to said living husband or wife shall have been dissolved by a valid decree of a competent court, or shall have been pronounced void by a valid decree of a competent court on the ground of the nullity of the marriage contract. (Mar. 3, 1901, 31 Stat. 1331, ch. 854, § 870.)

#### NOTES TO DECISIONS

##### Conclusions of defendant

There must be some honest and effective effort made to ascertain truth before it can be claimed that conclusion of defendant, charged with bigamy, that first wife had obtained divorce had been reached in good faith. *Alexander v. United States* (1943, 136 F. 2d 783, 78 U.S. App. D.C. 34).

##### Evidence

Testimony of police officer in bigamy prosecution concerning admissions made to him by defendant was admissible although defendant was not advised that anything he said might be used against him and that he need not make a statement. *Matz v. United States* (1947, 158 F. 2d 190, 81 U.S. App. D.C. 326).

In prosecution for bigamy, court did not err in compelling the second wife to testify where the certificate of the prior marriage was in evidence, together with testimony as to defendant's admissions directed toward that certificate, and other testimony that defendant and first wife had lived together as husband and wife. *Id.*

##### Instructions

Where defendant, charged with bigamy, testified that he received letter stating that first wife had obtained divorce, but defendant made no effort to ascertain true facts, refusing instruction that defendant must be acquitted if he believed at time of second marriage that his first wife had procured a divorce and giving instruction that if jury believed beyond reasonable doubt that at time of second marriage first wife was living and that marriage had not been dissolved by valid decree jury should find defendant guilty was not prejudicial error. *Alexander v. United States* (1943, 136 F. 2d 783, 78 U.S. App. D.C. 34).

##### Plea of guilty

The fact that defendant entered a plea of guilty to charge of bigamy without advice of counsel and that not until some time later in the day was counsel, at his request, appointed for him, was not fatal under circumstances. *Alexander v. United States* (1943, 136 F. 2d 783, 78 U.S. App. D.C. 34).

### Chapter 7.—BRIBERY—OBSTRUCTING JUSTICE

Sec.

22-701. Definition and penalty.

22-702. Offering or receiving money, property, or valuable consideration to procure office or promotion from District of Columbia Commissioners.

22-703. Obstructing justice.

22-704. Corrupt influence—Officials.

#### § 22-701. Definition and penalty.

Whoever promises, offers, or gives, or causes or procures to be promised, offered, or given, any money or other thing of value, or makes or tenders any contract, undertaking, obligation, credit, or security for the payment of money, or for the delivery or conveyance of anything of value, to any executive, judicial, or other officer, or to any person acting in any official function, or to any juror or witness, with intent to influence the decision, action, verdict, or evidence of any such person on any question, matter, cause, or proceeding or with intent to influence him to commit or aid in committing, or to collude in or allow any fraud, or make any opportunity for the commission of any fraud, shall be fined not more than five hundred dollars, or be imprisoned not more than three years, or both. (Mar. 3, 1901, 31 Stat. 1330, ch. 854, § 861.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23-546.

#### NOTES TO DECISIONS

##### Accessory before the fact

In prosecution of doctor and his wife for attempted bribery of witness in abortion case against the doctor, where there was sufficient evidence to justify the jury's conclusion that doctor was an accessory before the fact to the attempt at bribery by his wife, he was properly found guilty as a principal. *Ladrey v. United States* (1946, 155 F. 2d 417, 81 U.S. App. D.C. 127, certiorari denied 67 S. Ct. 68, 329 U.S. 723, 91 L. Ed. 627).

##### Admissibility of evidence

In prosecution for attempted bribery of witness in abortion case, admission of evidence tending to show that witness was a material witness in the abortion case, consisting of her testimony that she was the person upon whom the operation had been performed, and statement showing the nature of the operation was proper. *Ladrey v. United States* (1946, 155 F. 2d 417, 81 U.S. App. D.C. 127, certiorari denied 67 S. Ct. 68, 329 U.S. 723, 91 L. Ed. 627).

In prosecution of doctor and his wife for attempted bribery of witness in abortion case against the doctor, where facts, other than the statements and acts of wife, were shown from which it could be concluded that a conspiracy between doctor and his wife in fact existed, the evidence of witness and police sergeant concerning the declarations of wife, including the offer of the bribe, was admissible against the doctor, though the declarations were made out of the doctor's presence. *Id.*

##### Counsel, right to

Under Constitution's prohibition against unreasonable searches, and its guaranties of due process of law and effective representation by counsel, government agent's intrusion upon conferences between accused and his counsel invalidated conviction under federal "obstruction of justice" statute and District of Columbia bribery statute. *Caldwell v. United States* (1953, 205 F. 2d 879, 92 U.S. App. D.C. 355).

##### Indictment

Although the act of asking, accepting, or receiving, in violation of § 117 of the Criminal Code (18 U.S.C. § 202) may each constitute a separate offense, it is not duplicitous to charge them all in a single count. *Egan v. United States* (1923, 287 F. 958, 52 App. D.C. 384).



In prosecution of doctor and his wife for attempted bribery of witness in abortion case against the doctor, evidence that doctor took his wife to a point near the scene of her attempt at bribery, that after her arrest he was found with his automobile parked at a nearby corner, that he made a statement so incredible as to be prima facie false, as well as conflicting statements, together with fact that doctor had a strong motive to eliminate the witness, tended to show a secret combination or conspiracy between doctor and his wife, notwithstanding that indictment did not specifically charge that they had conspired. *Ladrey v. United States* (1946, 155 F. 2d 417, 81 U.S. App. D.C. 127, certiorari denied 67 S. Ct. 68, 329 U.S. 723, 91 L. Ed. 627).

#### Jail guard

Affirmance of conviction of bribery of jail guard to falsify records to establish alibi. *Siegal v. United States* (1933, 61 F. 2d 923, 61 App. D.C. 282, certiorari denied 53 S. Ct. 386, 288 U.S. 602, 77 L. Ed. 978).

Defendant was a person acting in an official function, exercising by delegation a part of the official authority possessed by the superintendent of the jail and if he had corruptly accepted the money, he would have been guilty of accepting a bribe to influence his official conduct. *Id.*

#### Official act

"There can be no bribery of any official to do a particular act, unless the law requires or imposes upon him the duty of acting." *Thomson v. United States* (1911, 37 App. D.C. 461). See, also, *Benson v. United States* (1906, 27 App. D.C. 331).

### § 22-702. Offering or receiving money, property, or valuable consideration to procure office or promotion from District of Columbia Commissioners.

Every person who directly or indirectly takes, receives, or agrees to receive any money, property, or other valuable consideration whatever from any person for giving, procuring, or aiding to give or procure any office, place, or promotion in office from the Commissioners of the District of Columbia, or from any officer under him, and every person who, directly or indirectly, offers to give, or gives any money, property, or other valuable consideration whatever for the procuring or aiding to procure any such office, place, or promotion in office shall be deemed guilty of a misdemeanor, and on conviction thereof in the Superior Court of the District of Columbia shall be punished by a fine not exceeding one thousand dollars or imprisonment in the jail for not more than twelve months, or both, in the discretion of the court. (July 1, 1902, 32 Stat. 591, ch. 1352; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### CODIFICATION

For technical reasons, the codifiers have not changed the wording of this section to reflect the abolition of the Board of Commissioners of the District of Columbia by section 503 of Reorg. Plan No. 3 of 1967, and the establishment by sections 201 and 301 of the Plan of a single Commissioner and nine-member Council form of government. See, also, the case of *United States v. T. W. Bishton*, cited in the Notes to Decisions hereunder.

#### AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

"Municipal court" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act of July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court." Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23-546.

#### NOTES TO DECISIONS

##### Construction

Since under reorganization of government of District of Columbia, a single commissioner was assigned executive functions while council was assigned quasi-legislative functions and, under former law, both functions had been exercised by three-member board of commissioners, 1 U.S.C. 1 providing that, in determining meaning of act, words imparting plural include singular is not applicable to permit prosecution under section 22-702 prohibiting receiving money for procuring any office or promotion from the commissioners of District of Columbia. *United States v. T. W. Bishton* (D.C. App. 1970, 264 A. 2d 139).

Since there was not a single commissioner of District of Columbia as provided by government reorganization when section 22-702 was drafted prohibiting receiving money for procuring any office or promotion from commissioners of District of Columbia, defendant cannot be prosecuted under section 22-702 which had not been amended to conform to change to single commissioner by the reorganization. *Id.*

##### Speedy trial

Where flaw in bribery indictment under D.C. Code § 22-702 was highly technical, Government's decision to prosecute under such Code rather than under Federal statute, and its decision to appeal dismissal of the original indictment rather than immediately seek a Federal indictment did not, in relation to denial of claim of speedy trial, reflect arbitrary, negligent or purposefully oppressive behavior on the part of the Government. *United States v. T. W. Bishton* (1972, 463 F. 2d 887, 150 U.S. App. D.C. 51).

### § 22-703. Obstructing justice.

(a) Whoever corruptly, by threats or force, endeavors to influence, intimidate, or impede any juror, witness, or officer in any court in the District in the discharge of his duties, or, by threats or force, in any other way obstructs or impedes or endeavors to obstruct or impede the due administration of justice therein, or whoever willfully endeavors by means of bribery, misrepresentation, intimidation, or force or threats of force, to obstruct, delay, or prevent the communication to an investigator of the District of Columbia government by any person of information relating to a violation of any criminal statute in effect in the District of Columbia, or injures any person or his property on account of the giving by such person or by any other person of such information to any such investigator in the course of the conduct of any criminal investigation, shall be fined not more than \$1,000 or be imprisoned not more than three years, or both.

(b) As used in this section, the term "criminal investigation" means an investigation relating to a violation of any criminal statute in effect in the District of Columbia, and the term "investigator" means an individual duly authorized by the Commissioner or his designated agent to conduct or engage in such an investigation. (Mar. 3, 1901, 31 Stat. 1330, ch. 854, § 862; Dec. 27, 1967, Pub. L. 90-226, § 401, title IV, 81 Stat. 736.)



## AMENDMENT

1967—Section 401, Act Dec. 27, 1967, Pub. L. 90-226, amended section generally. For provisions of section prior to this amendment, see 1967 edition of the code.

## SENTENCE FOR OFFENSES COMMITTED PRIOR TO DEC. 27, 1967, AND SEPARABILITY OF PROVISIONS

See §§ 1101 and 1102 of Act Dec. 27, 1967, Pub. L. 90-226, set out as notes to § 22-501.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23-546.

## § 22-704. Corrupt influence—Officials.

Whosoever corruptly, directly or indirectly, gives any money, or other bribe, present, reward, promise, contract, obligation, or security for the payment of any money, present, reward, or thing of value to any ministerial, administrative, executive, or judicial officer of the District of Columbia or any employee or other person acting in any capacity for the District of Columbia, or any agency thereof, either before or after he is qualified, with intent to influence his action on any matter which is then pending, or may by law come or be brought before him in his official capacity, or to cause him to execute any of the powers in him vested, or to perform any duties of him required, with partiality or favor, or otherwise than is required by law, or in consideration that such officer being authorized in the line of his duty to contract for any advertising or for the furnishing of any labor or material, shall directly or indirectly arrange to receive or shall receive, or shall withhold from the parties so contracted with, any portion of the contract price, whether that price be fixed by law or by agreement, or in consideration that such officer has nominated or appointed any person to any office or exercised any power in him vested, or performed any duty of him required, with partiality or favor, or otherwise contrary to law; and whosoever, being such an officer, shall receive any such money, bribe, present, or reward, promise, contract, obligation, or security, with intent or for the purpose or consideration aforesaid shall be deemed guilty of bribery and upon conviction thereof shall be punished by imprisonment for a term not less than six months nor more than five years.

Whosoever corrupts or attempts, directly or indirectly, to corrupt any special master, auditor, juror arbitrator, umpire, or referee, by giving, offering, or promising any gift or gratuity whatever, with intent to bias the opinion, or influence the decision of such officer, in relation to any matter pending in the court, or before an inquest, or for the decision of which such arbitrator, umpire, or referee has been chosen or appointed, and every official who receives, or offers or agrees to receive, a bribe in any of the cases above mentioned shall be guilty of bribery and upon conviction thereof shall be punished as hereinbefore provided. (Feb. 26, 1936, 49 Stat. 1143, ch. 87.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23-546.

## NOTES TO DECISIONS

## Confessions

Where no criminal charge was pending against policeman at time he made confession which ultimately resulted in indictment charging bribery, at time of confession he had not been arrested, and purpose of investigation was principally to obtain his resignation rather than to lead to a criminal charge, confession was not in-

admissible on ground that it was made when defendant was without counsel or advice of counsel. *Hutcherson v. United States* (1965, 351 F. 2d 748, 122 U.S. App. D.C. 51).

On the whole record, including policeman's age, experience and position, issue of voluntariness of his confession which ultimately led to indictment for bribery which confession was made after superior read statutes regarding forfeiture of office or employment by District of Columbia employee who refuses to testify to matters relating to his office or employment was a factual one which, had it been decided in proper manner, would not necessarily have resulted in exclusion of the confession as evidence. *Id.*

Where trial court, in admitting confession against claim of involuntariness, was influenced by inquiry into its truth, and trial judge failed to instruct jury on their responsibility in the matter, conviction would be set aside and case remanded to district court for new trial, preceded by a determination of issue of voluntariness in a manner which met the standards laid down by the Supreme Court. *Id.*

That substantial evidence other than confession improperly admitted supports guilty verdict does not suffice to remedy the error in admitting such confession. *Id.*

## Arrest

Under circumstances including showing that policeman had been escorted to headquarters by another officer for purpose of questioning regarding alleged conduct which subsequently led to indictment charging bribery, that when investigation was concluded and confession placed in writing and signed policeman resigned from force and left building without being arrested, and that he was not indicted until about a month after investigatory session, conduct of policeman's superiors in pursuing inquiries fell short of an "arrest". *Hutcherson v. United States* (1965, 351 F. 2d 748, 122 U.S. App. D.C. 51).

## Evidence

In prosecution for conspiracy to bribe police officer and also for bribery itself to influence officer in enforcement of gambling laws, even if recordings of conversations between police officer who was subject of bribery, and defendants, were intercepted and recorded, and were introduced in evidence in violation of Federal Communications Act section, such question would not be reached in instant prosecution as instant use made of recordings was for refreshing recollection of police officer before giving his own testimony of the recorded conversations. *Monroe v. United States* (1956, 234 F. 2d 49, 98 U.S. App. D. C. 228, certiorari denied 77 S. Ct. 94, 352 U.S. 873, 1 L. Ed. 2d 76, rehearing denied 77 S. Ct. 219, 352 U.S. 937, 1 L. Ed. 2d 170, rehearing denied 78 S. Ct. 114, 355 U.S. 875, 2 L. Ed. 2d 79).

In prosecution for conspiracy to bribe police officer and also for bribery itself to influence officer in enforcement of gambling laws, recordings of conversations between police officer and defendants were admissible in evidence, where police officer testified as to operation of recording device, his method of operating such device, accuracy of the recordings, and identities of persons speaking. *Id.*

In prosecution for conspiracy to bribe police officer and also for bribery itself, to influence officer in enforcement of gambling laws, contention that recordings of conversations between police officer, who was subject of the conspiracy and bribery, and defendants were illegally intercepted and used in preparation of Government's trial was without merit where police officer himself made the recordings and transmitted the same information legally to other police officers to be utilized in preparation for trial of defendants. *Id.*

## — Sufficiency

Evidence was sufficient to show a mutual knowledge of a common criminal enterprise. *L. Wallace et al. v. United States* (1969, 412 F. 2d 1097, 134 U.S. App. D.C. 50; cert. denied 91 S. Ct. 1613, 402 U.S. 950).

## Indictment

Where defendants made motion before trial attacking indictment charging them with conspiracy to bribe police officer and also for bribery itself on ground of alleged misjoinder of substantive charges, such motion went to validity of indictment and not to question of advisability of separate trials. *Monroe et al. v. United States*



(1956, 234 F. 2d 49, 98 U. S. App. D. C. 228, certiorari denied 77 S. Ct. 94, 352 U. S. 873, 1 L. Ed. 2d 76, rehearing denied 77 S. Ct. 219, 352 U.S. 937, 1 L. Ed. 2d 170, rehearing denied 78 S. Ct. 114, 355 U. S. 875, 2 L. Ed. 2d 79).

Where offenses of conspiracy to bribe and bribery charged in indictment were of the same or similar character, and defendants charged with such crimes were alleged to have participated in same conspiracy, joinder of offenses and defendants in the indictment was permissible under Federal Criminal Procedure Rule. *Id.*

#### Joint trial of separate charges

In prosecution for conspiracy to bribe police officer and also for bribery to influence officer in enforcement of gambling laws, defendants, who were convicted on only part of the substantive counts, and who were not involved in the conspiracy, were not prejudiced by trial of the conspiracy charge and bribery charges together, in view of the different number of convictions entered against the different defendants indicating that the jury was selective and was returning verdicts only upon basis of evidence relevant to each count and each defendant and also where court charged in considerable detail as to the separate substantive counts. *Monroe v. United States* (1956, 234 F. 2d 49, 98 U. S. App. D. C. 228, certiorari denied 77 S. Ct. 94, 352 U. S. 873, 1 L. Ed. 2d 76, rehearing denied 77 S. Ct. 219, 352 U. S. 937, 1 L. Ed. 2d 170, rehearing denied 78 S. Ct. 114, 355 U. S. 875, 2 L. Ed. 2d 79).

#### Pre-trial inspection

Under Federal Criminal Procedure Rule providing for pre-trial inspection of books, papers, documents or other objects designated in a subpoena, trial court was well within its discretion in declining to order inspection of original recordings of conversations between police officer and defendants, who were charged with conspiracy to bribe and bribery of police officer, where original recordings were too fragile to be used for discovery playing and where an affidavit was filed in which the accuracy of reproduction from the originals were certified and truth of affidavit was not brought into question. *Monroe v. United States* (1956, 234 F. 2d 49, 98 U. S. App. D. C. 228, certiorari denied 77 S. Ct. 94, 352 U. S. 873, 1 L. Ed. 2d 76, rehearing denied 77 S. Ct. 219, 352 U. S. 937, 1 L. Ed. 2d 170, rehearing denied 78 S. Ct. 114, 355 U. S. 875, 2 L. Ed. 2d 79).

#### Recorded evidence—Admissibility

Defendant who was charged with conspiracy to violate bribery statute was not in a position to challenge manner in which recordings, which contained admissions by codefendants through use of informer, were obtained. *L. Wallace et al. v. United States* (1969, 412 F. 2d 1097, 134 U.S. App. D.C. 50; cert. denied 91 S. Ct. 1613, 402 U.S. 950).

#### Reversible error

In prosecution for conspiracy to bribe police officer and also for bribery itself to influence officer in enforcement of gambling laws, refusal of trial court to grant defendants' request to make stenographic transcripts of recordings between police officers and defendants or to be furnished copies of transcripts by Government was not reversible error, where defendants were given opportunity to hear recordings and where parts of recordings admitted in evidence were played out of presence of jury with defendant's counsel present. *Monroe v. United States* (1956, 234 F. 2d 49, 98 U.S. App. D.C. 228, certiorari denied 77 S. Ct. 94, 352 U.S. 873, 1 L. Ed. 2d 76, rehearing denied 77 S. Ct. 219, 352 U.S. 937, 1 L. Ed. 2d 170, rehearing denied 78 S. Ct. 114, 355 U.S. 875, 2 L. Ed. 2d 79).

#### Sentence

Where defendant was convicted on count of conspiracy to bribe police officer, and also was convicted on intimately related bribery counts, and sentence under conspiracy count was for longer time than his concurrent sentence for bribery, conspiracy and bribery charges would be affirmed if no reversible error impaired conspiracy conviction. *Monroe v. United States* (1956, 234 F. 2d 49, 98 U. S. App. D. C. 228, certiorari denied 77 S. Ct. 94, 352 U. S. 873, 1 L. Ed. 2d 76, rehearing denied 77 S.

Ct. 219, 352 U. S. 937, 1 L. Ed. 2d 170, rehearing denied 78 S. Ct. 114, 355 U. S. 875, 2 L. Ed. 2d 79).

#### Separate trial

If defendants, who were charged with conspiracy to bribe police officer and also for bribery to influence officer in enforcement of gambling laws, wished to be tried separately on those charges, request for separate trial on such charges should have been made in the trial court by motion under Federal Criminal Procedure Rule providing for such relief. *Monroe v. United States* (1956, 234 F. 2d 49, 98 U. S. App. D. C. 228, certiorari denied 77 S. Ct. 94, 352 U. S. 873, 1 L. Ed. 2d 76, rehearing denied 77 S. Ct. 219, 352 U.S. 937, 1 L. Ed. 2d 170, rehearing denied 78 S. Ct. 114, 355 U. S. 875, 2 L. Ed. 2d 79).

Under Federal Criminal Procedure Rule providing for severance of offenses or defendants in event of prejudice as result of such joinder, defendants, who were only ones convicted in prosecution for conspiracy with other defendants, if they had requested separation of the substantive counts from the conspiracy count, would not have been prejudiced by refusal of trial court to grant motion, where evidence of their participation in conspiracy was complete and included other defendants on trial for substantive counts. *Id.*

#### Variance

If alleged variance existed between count of indictment which charged one conspiracy of all the defendants to bribe police officer, and evidence which allegedly showed several conspiracies, such variance was not reversible error in regard to convictions of two of the defendants on the conspiracy count, where conspiracy of the two convicted embraced the other defendants in the plan, thus preventing surprise, and also in view of fact that the defendants would not be prejudiced by the variance in defending on ground of present conviction in event of attempted second prosecution for same offense, as resort could be had by defendants to record of evidence or even to parole evidence if necessary. *Monroe v. United States* (1956, 234 F. 2d 49, 98 U. S. App. D. C. 228, certiorari denied 77 S. Ct. 94, 352 U. S. 873, 1 L. Ed. 2d 76, rehearing denied 77 S. Ct. 219, 352 U. S. 937, 1 L. Ed. 2d 170, rehearing denied 78 S. Ct. 114, 355 U. S. 875, 2 L. Ed. 2d 79).

## Chapter 8.—CRUELTY TO ANIMALS

### Sec.

- 22-801. Definition and penalty.
- 22-802. Other cruelties to animals.
- 22-803. Transportation of animals by railroad companies—Rest—Water—Feeding by railroad company—Cost—Penalty.
- 22-804. Arrests without warrant authorized—Notice to owner.
- 22-805. Issuance of search warrants.
- 22-806. Prosecution of offenders—Disposition of fines.
- 22-807. Impounded animals to be supplied with food and water.
- 22-808. Relief of impounded animals.
- 22-809. Keeping or using place for purpose of fighting or baiting of fowls or animals—Arrest without warrant.
- 22-810. Penalty for engaging in cockfighting—Animal fighting.
- 22-811. Neglect of sick or disabled animals.
- 22-812. Abandonment of maimed or diseased animal—Destruction of diseased animals—Disposition of animal or vehicle on arrest of driver—Scientific experiments.
- 22-813. Definitions.
- 22-814. Docking tails of horses.

### § 22-801. Definition and penalty.

Whoever overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates, or cruelly kills, or causes or procures to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, cruelly beaten, mutilated, or cruelly killed any animal, and whoever, having the charge or custody of any



animal, either as owner or otherwise, inflicts unnecessary cruelty upon the same, or unnecessarily fails to provide the same with proper food, drink, shelter, or protection from the weather, shall for every such offense be punished by imprisonment in jail not exceeding one year, or by fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment. (Leg. Assem., Aug. 23, 1871, p. 135, ch. 106, § 1.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-802, 22-806, 22-807, 22-809, 22-811 to 22-813.

#### NOTES TO DECISIONS

##### Evidence—Sufficiency

In this case the court held the evidence was insufficient to sustain conviction for failing to provide full grown German shepherd dog, which was tied by three-foot chain on open concrete back porch of defendant's home during temperatures ranging from 23 degrees to 27 degrees Fahrenheit, with proper shelter or protection from weather, in absence of testimony by someone experienced in care of dog of this type, not necessarily a veterinarian, that shelter or protection from weather supplied this dog on this occasion would tend to cause dog to suffer. *A. F. Jordan, Jr. v. United States* (D.C. App. 1970, 269 A. 2d 848).

##### Expert testimony

In a prosecution under this section for failing to provide dog with proper shelter or protection from weather, stipulation that the physician who observed the dog was a qualified physician did not have effect of qualifying the physician as expert on care and handling of dogs. *A. F. Jordan, Jr. v. United States* (D.C. App. 1970, 269 A. 2d 848).

##### Findings

A defendant can be convicted of unnecessarily failing to provide a dog with proper food, drink, shelter, or protection from weather without a finding that he inflicted unnecessary cruelty upon the dog. *A. F. Jordan, Jr. v. United States* (D.C. App. 1970, 269 A. 2d 848).

#### § 22-802. Other cruelties to animals.

Every owner, possessor, or person having the charge or custody of any animal, who cruelly drives or works the same when unfit for labor, or cruelly abandons the same, or who carries the same, or causes the same to be carried, in or upon any vehicle, or otherwise, in an unnecessarily cruel or inhuman manner, or knowingly and wilfully authorizes or permits the same to be subjected to unnecessary torture, suffering, or cruelty of any kind, shall be punished for every such offense in the manner provided in section 22-801. (Leg. Assem., Aug. 23, 1871, p. 135, ch. 106, § 2.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-806, 22-812, 22-813.

#### § 22-803. Transportation of animals by railroad companies—Rest—Water—Feeding by railroad company—Cost—Penalty.

No railroad company, in the carrying or transportation of animals, shall permit the same to be confined in cars for a longer period than twenty-four hours, without unloading the same, for rest, water, and feeding, for a period of at least five consecutive hours, unless prevented from so unloading by storm or other accidental causes. In estimating such confinement the time during which such animals have been confined without such rest on connecting roads from which they are received shall be included; it

being the intent of this section to prohibit their continuous confinement beyond the period of twenty-four hours, except upon contingencies hereinbefore stated. Animals so unloaded shall be properly fed, watered, and sheltered during such rest by the owner or person having the custody thereof, or in case of his default in so doing, then by the railroad company transporting the same, at the expense of said owner or persons in custody thereof. And said company shall, in such case, have a lien upon such animals for food, care, and custody furnished, and shall not be liable for any detention of such animals authorized by this section. Any company, owner, or custodian of such animals who fails to comply with the provisions of this section shall, for each and every such offense, be liable for and forfeit and pay a penalty of not less than one or more than five hundred dollars: *Provided, however*, That when animals shall be carried in cars in which they can and do have proper food, water, space, and opportunity for rest, the foregoing provisions in regard to their being unloaded shall not apply. (Leg. Assem., Aug. 23, 1871, p. 135, ch. 106, § 3.)

#### CODIFICATION

This section is probably superseded in part by 45 U.S.C. §§ 71—74.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-806, 22-812, 22-813.

#### § 22-804. Arrests without warrant authorized—Notice to owner.

Any person found violating the laws in relation to cruelty to animals may be arrested and held without a warrant, in the manner provided by section 32-205 and the person making an arrest, with or without a warrant, shall use reasonable diligence to give notice thereof to the owner of animals found in the charge or custody of the person arrested, and shall properly care and provide for such animals until the owner thereof shall take charge of the same: *Provided*, The owner shall take charge of the same within twenty days from the date of said notice. And the person making such arrest shall have a lien on said animals for the expense of such care and provisions. (Leg. Assem., Aug. 23, 1871, p. 136, ch. 106, § 4.)

#### CODIFICATION

Section 32-205 is section 5 of the "Charter of the Association for the Prevention of Cruelty to Animals, granted by an Act of Congress, approved June 21, 1870 (16 Stat. 158, ch. 135)." The quoted words are contained in the original text of this section.

#### CROSS REFERENCE

Arrests without warrant, generally, see § 23-581.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-806, 22-812, 22-813.

#### § 22-805. Issuance of search warrants.

When complaint is made by any member of the Washington Humane Society on oath or affirmation, to any magistrate authorized to issue warrants in criminal cases, that the complainant believes, and has reasonable cause to believe, that the laws in relation to cruelty to animals have been or are being violated in any particular building or place, such magistrate, if satisfied that there is reasonable cause



for such belief, shall issue a search warrant, authorizing any marshal, deputy marshal, police officer, or any member of the Washington Humane Society to search such building or place. (Leg. Assem., Aug. 23, 1871, p. 136, ch. 106, § 5; Feb. 13, 1885, 23 Stat. 302, ch. 58, § 1; Mar. 3, 1901, 31 Stat. 1195, ch. 854, § 41.)

#### AMENDMENT

1901—Act Mar. 3, 1901, abolished the office of constable, and required all process issued by a justice of the peace to be served by the United States marshal for the District of Columbia, or, if he is disqualified, by the coroner.

#### CROSS REFERENCE

Search warrants, generally, see §§ 23-521 to 23-525.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-806, 22-812, 22-813.

### § 22-806. Prosecution of offenders—Disposition of fines.

It shall be the duty of all marshals, deputy marshals, police officers, or any member of the Washington Humane Society, to prosecute all violations of the provisions of sections 22-801 to 22-809 and sections 22-811, 22-813, and 22-814, which shall come to their notice or knowledge, and fines and forfeitures collected upon or resulting from the complaint or information of any member of the Washington Humane Society under sections 22-801 to 22-809 and sections 22-811, 22-813, and 22-814 shall inure and be paid over to said association, in aid of the benevolent objects for which it was incorporated. (Leg. Assem., Aug. 23, 1871, p. 137, ch. 106, § 6; Feb. 13, 1885, 23 Stat. 302, ch. 58, § 1; Mar. 3, 1901, 31 Stat. 1195, ch. 854, § 41.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-812, 22-813.

### § 22-807. Impounded animals to be supplied with food and water.

Any person who shall impound, or cause to be impounded in any pound, any creature, shall supply the same, during such confinement, with a sufficient quantity of good and wholesome food and water; and in default thereof shall, upon conviction, be punished for every such offense in the same manner provided in section 22-801. (Leg. Assem., Aug. 23, 1871, p. 137, ch. 106, § 7.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-806, 22-812, 22-813.

### § 22-808. Relief of impounded animals.

In case any creature shall be at any time impounded as aforesaid, and shall continue to be without necessary food and water for more than twelve successive hours, it shall be lawful for any officer of the Washington Humane Society, from time to time, and as often as it shall be necessary, to enter into and upon any pound in which such creature shall be so confined, and supply it with necessary food and water so long as it shall remain so confined; such person shall not be liable to any action for such entry, and the reasonable cost for such food and water may be collected of the owner of such creature, and the said creature shall not be exempt from levy and sale upon execution issued upon a judgment thereof. (Leg. Assem., Aug. 23, 1871, p.

137, ch. 106, § 8; Feb. 13, 1885, 23 Stat. 302, ch. 58, § 1.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-806, 22-812, 22-813.

### § 22-809. Keeping or using place for purpose of fighting or baiting of fowls or animals—Arrest without warrant.

Any person or persons who shall keep or use, or in any way be connected with or interested in the management of, or shall receive money for the admission of any person to any place kept or used for the purpose of fighting or baiting of fowls or animals, may be arrested without a warrant, as provided in section 32-205, and for every such offense be punished in the same manner provided in section 22-801. (Leg. Assem., Aug. 23, 1871, p. 137, ch. 106, § 9.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-806, 22-812, 22-813.

### § 22-810. Penalty for engaging in cockfighting—Animal fighting.

Any person who sets on foot, instigates, promotes, carries on, or does any act, as assistant, umpire, or principal, or attends or in any way engages in the furtherance of any fight between cocks, fowls, or other birds, or dogs, bulls, bears, or other animals, premeditated by any persons owning or having custody of such birds or animals, is guilty of a misdemeanor, punishable by a fine of not more than two hundred and fifty dollars or by imprisonment in jail not more than one year, or both. (June 25, 1892, 27 Stat. 61, ch. 135, § 6.)

### § 22-811. Neglect of sick or disabled animals.

If any maimed, sick, infirm, or disabled animal shall fail to receive proper food or shelter from said owner or person in charge of the same for more than five consecutive hours, such person shall, for every such offense, be punished in the same manner provided in section 22-801. (Leg. Assem., Aug. 23, 1871, p. 138, ch. 106, § 10; June 25, 1892, 27 Stat. 60, ch. 135, § 4.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-806, 22-812, 22-813.

### § 22-812. Abandonment of maimed or diseased animal—Destruction of diseased animals—Disposition of animal or vehicle on arrest of driver—Scientific experiments.

A person being the owner or possessor or having charge or custody of a maimed, diseased, disabled, or infirm animal who abandons such animal, or leaves it to lie in the street or road, or public place, more than three hours after he receives notice that it is left disabled, is guilty of a misdemeanor punishable by a fine of not less than ten dollars nor more than two hundred and fifty dollars, or by imprisonment in jail not more than one year, or both. Any agent or officer of the Washington Humane Society may lawfully destroy, or cause to be destroyed, any animal found abandoned and not properly cared for, appearing, in the judgment of two reputable citizens called by him to view the



same in his presence, to be glandered, injured, or diseased past recovery for any useful purpose. When any person arrested is, at the time of such arrest, in charge of any animal, or of any vehicle drawn by any animal, or containing any animal, any agent of said society may take charge of such animal and such vehicle and its contents and deposit the same in a place of safe custody or deliver the same into the possession of the police authorities, who shall assume the custody thereof; and all necessary expenses incurred in taking charge of such property shall be a lien thereon.

Nothing contained in sections 22-801 to 22-809, inclusive, and sections 22-811, 22-1109 shall be construed to prohibit or interfere with any properly conducted scientific experiments or investigations, which experiments shall be performed only under the authority of the faculty of some regularly incorporated medical college, university, or scientific society. (Leg. Assem., Aug. 23, 1871, p. 138, ch. 106, § 11; June 25, 1892, 27 Stat. 60, ch. 135, § 4.)

#### § 22-813. Definitions.

In sections 22-801 to 22-809, inclusive, and section 22-811, the word "animals" or "animal" shall be held to include all living and sentient creatures (human beings excepted), and the words "owner," "persons," and "whoever" shall be held to include corporations and incorporated companies as well as individuals. (Leg. Assem., Aug. 23, 1871, p. 138, ch. 106, § 12; June 25, 1892, 27 Stat. 60, ch. 135, § 3.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22-806.

#### § 22-814. Docking tails of horses.

Whoever cuts the solid part of the tail of any horse in the operation known as docking, and whoever shall cause the same to be done or assist in doing such cutting (unless the same is proved to be of benefit to the horse), shall, upon conviction thereof, be punished by imprisonment in the Washington Asylum and Jail not exceeding one year or fine of not less than one hundred nor more than two hundred and fifty dollars. (June 25, 1892, 27 Stat. 61, ch. 135, § 5; Mar. 2, 1911, 36 Stat. 1003, ch. 192.)

#### CONSOLIDATION OF JAIL AND WASHINGTON ASYLUM

"Washington Asylum and Jail" was substituted for "jail" to conform to act Mar. 2, 1911, which combined the jail of the District of Columbia and the Washington Asylum. See section 24-407.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22-806.

### Chapter 9.—DOMESTIC RELATIONS

Sec.

22-901. Cruelty to children.

22-902. Refusal or neglect of guardian to provide for child under 14 years of age.

22-903 to 22-906. Repealed.

#### § 22-901. Cruelty to children.

Any person who shall torture, cruelly beat, abuse, or otherwise wilfully maltreat any child under the age of eighteen years; or any person, having the custody and possession of a child under the age of fourteen years, who shall expose, or aid and abet in exposing, such child in any highway, street, field, house, outhouse, or other place, with intent to aban-

don it; or any person, having in his custody or control a child under the age of fourteen years, who shall in any way dispose of it with a view to its being employed as an acrobat, or a gymnast, or a contortionist, or a circus rider, or a rope-walker, or in any exhibition of like dangerous character, or as a beggar, or mendicant, or pauper, or street singer, or street musician; or any person who shall take, receive, hire, employ, use, exhibit, or have in custody any child of the age last named for any of the purposes last enumerated, shall be deemed guilty of a misdemeanor, and, when convicted thereof, shall be subject to punishment by a fine of not more than two hundred and fifty dollars, or by imprisonment for a term not exceeding two years, or both. (Feb. 13, 1885, 23 Stat. 303, ch. 58, § 3; Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 814.)

#### NOTES TO DECISIONS

##### In general

This section making it a crime to torture, cruelly beat, abuse, or otherwise wilfully maltreat a child calls for something worse than good intentions coupled with bad judgment. *Mullen v. United States* (1959, 263 F. 2d 275, 105 U.S. App. D.C. 25).

##### Acrobatics

This section is limited to dangerous acrobatics, and, to support conviction thereunder, government must prove acts of recklessness which endanger life or limb. *R. Nesbitt v. United States* (D.C. App. 1964, 205 A. 2d 505).

Defendant who arranged performances in tumbling, body-supporting and pyramids and included two children under 14 years of age was not guilty of attempting to use children under 14 years of age in acrobatics, in absence of evidence that there were any acts of recklessness which might endanger life or limb. *Id.*

##### Child as agency for commission of crime

One may be guilty of a crime where the prohibited act is committed through the agency of mechanical or chemical means, as by instruments, poison or powder, or by an animal, a child, or other innocent agent acting under the direction and compulsion of the accused. *Beausoliel v. United States* (1940, 107 F. 2d 292, 71 App. D.C. 111).

##### Common law

Offense prescribed while not expressed in terms of assault, comes within the common-law concept of that offense. *Beausoliel v. United States* (1940, 107 F. 2d 292, 71 App. D.C. 111).

##### Instructions

Even though, in prosecution for cruelty to children, "willfulness" was mentioned in indictment and in statute as read to jury, and was generally defined, failure to include instruction on "willfulness" in its evil mind connotation as an essential element of the offense was plain error. *United States v. E. Thomas* (1972, 459 F. 2d 1172, 148 U.S. App. D.C. 148).

Failure in prosecution charging act of cruelty to child as having occurred "on or about October 11, 1968" to instruct that all elements comprising cruelty offense must have occurred on October 11, 1968, as distinguished from those occurring on previous occasions was plain error. *Id.*

Failure to instruct that jury was required to find beyond a reasonable doubt that defendant was under a legal duty to supply food and necessities to infant before they could find her guilty of manslaughter in failing to provide such items was plain error. *M. L. Jones v. United States* (1962, 308 F. 2d 307, 113 U.S. App. D.C. 352).

Finding of legal duty was critical element of crime of involuntary manslaughter based on breach of legal obligation to provide food and necessities to an infant, with such failure resulting in his death. *Id.*

In prosecution of mother, who left her children chained in her home while she was absent, under this section making it a crime to torture, cruelly beat, abuse, or otherwise wilfully maltreat a child, instruction that jury should decide whether mother was acting reasonably under the circumstances or whether her action was



unreasonable and dangerous was reversibly erroneous because of omission of requirement of an evil state of mind. *Mullen v. United States* (1959, 263 F. 2d 275, 105 U.S. App. D.C. 25).

#### Merger of offenses

Charge of cruelty to child did not merge into manslaughter conviction, in that count charging cruelty had societal purposes as well as essential elements differing from those in count which charged second-degree murder and under which defendant was convicted of manslaughter. *United States v. E. Thomas* (1972, 459 F. 2d 1172, 148 U.S. App. D.C. 148).

#### Privileged communication

Admission of defendant to Lutheran minister that she had chained her children after he had urged her to confess her sins, was a "privileged communication" and testimony thereof by minister was inadmissible in prosecution under this section making it a crime to torture, cruelly beat, abuse, or otherwise willfully maltreat a child. *Mullen v. United States* (1959, 263 F. 2d 275, 105 U.S. App. D.C. 25).

### § 22-902. Refusal or neglect of guardian to provide for child under 14 years of age.

Any person within the District of Columbia, of sufficient financial ability, who shall refuse or neglect to provide for any child under the age of fourteen years, of which he or she shall be the parent or guardian, such food, clothing, and shelter as will prevent the suffering and secure the safety of such child, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to punishment by a fine of not more than one hundred dollars, or by imprisonment in the workhouse of the District of Columbia for not more than three months, or both such fine and imprisonment. (Mar. 3, 1901, 31 Stat. 1095, ch. 847, § 4.)

#### CROSS REFERENCE

Intrafamily offenses, see §§ 16-1001 et seq.

### §§ 22-903 to 22-906. Repealed. July 29, 1970, Pub. L. 91-358, § 165(a)(b), title I, 84 Stat. 586.

Sections 22-903 to 22-905, being sections 1 to 3 of Act of Mar. 23, 1906, 34 Stat. 86 and 87, ch. 1131, dealt with punishment for wilful failure to support wife or child, evidence required to prove marriage and parenthood and the payment by the superintendent of the workhouse of money to the wife earned by prisoner.

Section 22-906, being a part of the Act of May 18, 1910, 36 Stat. 403, ch. 248, dealt with deposit of moneys collected by the clerk of juvenile court, pursuant to sections 22-903 to 22-905.

#### EFFECTIVE DATE OF REPEAL

See note preceding section 11-101.

#### CROSS REFERENCE

For provisions relating to support, see chapters 9 and 23 of title 16 and chapter 3 of title 30.

### NOTES TO DECISIONS UNDER PRIOR § 22-903

#### Abuse of discretion

No abuse of discretion appeared in denial of motion to withdraw guilty plea to nonsupport charge against defendant who, though he had previously pleaded guilty to similar charge, contended that he did not recognize significance of charge and that failure to support was due to financial inability. *W. Campbell Jr. v. United States* (D.C. Mun. App. 1961, 168 A. 2d 532).

#### Constitutionality

The provisions for punishment under the act not being severable, the act is unconstitutional. *United States v. Moreland* (1922, 42 S. Ct. 368, 258 U.S. 433, 66 L. Ed. 700, 24 A.L.R. 992).

#### — Counsel, right to

Where petitioner was convicted in the juvenile court upon a plea of guilty of refusing to provide for the support of his minor child, and at the time of his arraign-

ment he was not told that he was waiving his right to counsel and was not represented by counsel and was not advised of his "right to counsel," he did not under these circumstances "waive" his right to counsel; therefore his constitutional rights to the assistance of counsel were violated with consequent loss of jurisdiction in the juvenile court to convict and sentence him, and he was entitled to discharge on writ of habeas corpus. *Evans v. Rives* (1942, 126 F. 2d 633, 75 U.S. App. D.C. 242).

#### — Double jeopardy

Prisoner sentenced on defective information charging nonsupport was placed in jeopardy and subsequent filing of new information, based on alleged nonsupport during same period, and sentence thereunder was barred. *Burke v. United States* (D. C. Mun. App. 1954, 103 A. 2d 348).

#### Domicile

Under this statute a husband domiciled in another state is not chargeable under this act with refusal to support child. *United States ex rel. Smith v. Mathues* (D.C. Pa. 1923, 284 F. 368).

In proceeding against person indicted under this statute, and who is found in another district, technical objections to indictment are for the court where the indictment is lodged. *In re Parker* (D.C. Cal. 1924, 299 F. 1006, affirmed 3 F. 2d 903, certiorari denied 45 S. Ct. 513, 268 U.S. 694, 69 L. Ed. 1161).

Person indicted under this statute may be removed from another district, since a violation of the act is in fact a crime against the United States. *Parker v. United States* (C.C.A. 9, 1925, 3 F. 2d 903, certiorari denied 45 S. Ct. 513, 268 U.S. 694, 69 L. Ed. 1161).

Where husband was not in the District of Columbia at time he allegedly failed to support his children, as charged in indictment, he did not violate this section, and court would deny petition for husband's removal to the District. *United States v. Johnson* (D.C. Or. 1946, 63 F. Supp. 615).

A resident of the District of Columbia who had not failed to provide support for wife while within the District, and who left the District for Oregon where he was employed for about two years until he first failed to furnish support, did not violate this section. *Id.*

#### Information

Information charging husband with nonsupport of wife and minor children but omitting word "wilfully" was fatally defective. *Burke v. United States* (D. C. Mun. App. 1954, 103 A. 2d 347).

Information charging defendant with nonsupport of wife and minor children but omitting word "wilfully" was defective, but not void, and hence could not have served as basis for application for writ of habeas corpus. *Id.*

Information charging that parent had neglected to provide for support and maintenance of child was fatally defective to charge statutory crime of wilful neglect of children because it failed to charge that neglect was wilful. *Seidenberg v. United States* (D. C. Mun. App. 1953, 97 A. 2d 463).

#### Jurisdiction

Since the jurisdiction conferred upon the juvenile court for the District of Columbia relates only to cases involving children arising under § 11-902 et seq. [now § 16-2316] the juvenile court exceeded its jurisdiction in attempting to hold defendant for nonsupport of his wife only; the welfare of no children being involved. *Ex parte Wilson* (D.C.D.C. 1940, 79 F. Supp. 816).

In cases involving nonsupport of wife and minor children, the jurisdiction of the Juvenile Court of the District of Columbia is concurrent with that of the District Court. *Burke v. United States* (D. C. Mun. App. 1954, 103 A. 2d 347).

#### Nonresident

Where indictment did not describe the accused as a "person in the District of Columbia," and evidence showed he was not a resident of District of Columbia, denial of a motion for warrant of removal to District of Columbia was proper. *United States ex rel. Smith v. Mathues* (D.C. Pa. 1923, 284 F. 368).

#### Presentation or indictment

Fact that prisoner receives maximum sentence under this statute, without having been presented or indicted



by grand jury, does not of itself render said sentences void. *United States v. Moreland* (1922, 42 S. Ct. 368, 258 U. S. 433, 66 L. Ed. 700, 24 A. L. R. 992).

#### Sentence

The test of infamy is not the sentence imposed but rather that which may be imposed under the statute. *United States v. Moreland* (1922, 42 S. Ct. 368, 258 U. S. 433, 66 L. Ed. 700, 24 A. L. R. 992).

Court has no jurisdiction to impose a sentence involving hard labor where there has been no indictment or presentment by a grand jury. *Moreland v. United States* (1922, 276 F. 640, 51 App. D. C. 118, affirmed 42 S. Ct. 368, 258 U. S. 433, 66 L. Ed. 700, 24 A. L. R. 992).

#### Separate offenses

This section making it misdemeanor for husband to wilfully neglect or refuse to provide for destitute wife or for any person to desert and wilfully neglect to support minor children under sixteen years of age, by use of disjunctive "or" makes two crimes, one by husband against his wife and the other by any person against his or her minor child, and one may be convicted for both nonsupport of wife and minor children thereunder as separate crimes. *Burke v. United States* (1956, 239 F. 2d 50, 99 U.S. App. D.C. 230).

#### Support payments

Where defendant, found guilty of failing to support his minor child, had agreed with his separated wife to submit their contentions as to amount to be paid for child support to the Juvenile Court for determination, order, made upon the basis of evidence of defendant's salary and expenses, that he pay \$10 a week out of a \$192 net monthly income for child support, did not appear unreasonable and was not an abuse of discretion. *Mack v. United States* (D. C. Mun. App. 1953, 93 A. 2d 567).

#### Witness

Wife is competent witness in proceedings for removal under R.S. § 1014. *Parker v. United States* (C.C.A. 9, 1925, 3 F. 2d 903, certiorari denied 45 S. Ct. 513, 268 U. S. 694, 69 L. Ed. 1161).

### NOTES TO DECISIONS UNDER PRIOR § 22-904

#### Witness

State rule as to competency of witnesses does not apply in view of this section. *In re Parker* (D.C. Cal. 1924, 299 F. 1006, affirmed 3 F. 2d 903, certiorari denied 45 S. Ct. 513, 268 U. S. 694, 69 L. Ed. 1161).

### Chapter 10.—FORNICATION

#### Sec.

- 22-1001. Repealed.
- 22-1002. Fornication.

§ 22-1001. Repealed. June 25, 1948, 62 Stat. 864, ch. 645, § 21, eff. Sept. 1, 1948.

Section, act Mar. 3, 1887, 24 Stat. 636, ch. 397, § 5, was made applicable to the District of Columbia by act Mar. 4, 1909, 35 Stat. 1149, ch. 321, § 318, and was repealed by the revision of U. S. Code, title 18.

§ 22-1002. Fornication.

If any unmarried man or woman commits fornication in the District, each shall be fined not more than \$300 or imprisoned not more than six months, or both. (June 29, 1953, 67 Stat. 99, ch. 159, § 214.)

#### CROSS REFERENCE

Definition of District, see note under § 1-319.

### NOTES TO DECISIONS

#### Jurisdiction

The offense here denounced does not fall within the category of those offenses defined as within the admiralty and maritime jurisdiction of the United States, and a single act committed between an unmarried man and an unmarried woman, aboard a ship en route to a foreign country, does not bring such act within the punishment of the courts of the United States. *Ex parte Isojoki* (D.C. Cal. 1915, 222 F. 151).

#### Nature of offense

Government employee's alleged taking of a hotel room with a prostitute did not constitute "criminal conduct" which would support dismissal of the government employee where the conduct charged was not a crime under applicable laws even though employee had admitted his act to police and had forfeited collateral following a purported arrest therefor. *A. Pelicone v. L. H. Hodges, Secretary etc.* (1963, 320 F. 2d 754, 116 U.S. App. D.C. 32).

### Chapter 11.—DISORDERLY CONDUCT

#### Sec.

- 22-1101. Affrays.
- 22-1102. Duelling—Challenges.
- 22-1103. Assault for refusal to accept challenge.
- 22-1104. Leaving the District to give or receive challenge
- 22-1105, 22-1106. Repealed.
- 22-1107. Unlawful assembly—Profane and indecent language.
- 22-1108. Playing games in streets.
- 22-1109. Throwing stones or other missiles forbidden.
- 22-1110. Urging dogs to fight—Create disorder.
- 22-1111. Penalty for allowing fierce and dangerous dogs to go at large.
- 22-1112. Lewd, indecent, or obscene acts.
- 22-1113. Kindling bonfires.
- 22-1114. Disturbing religious congregation.
- 22-1115. Interference with foreign diplomatic and consular offices, officers, and property.
- 22-1116. Penalties for interference with foreign diplomatic and consular offices, officers, and property.
- 22-1117. Flying fire balloons or parachutes forbidden.
- 22-1118. Driving or riding on footways in public grounds
- 22-1119. False alarm of fire—Prosecution.
- 22-1120. Sale of tobacco to minors under 16 years of age.
- 22-1121. Disorderly conduct—Generally.
- 22-1122. Rioting or inciting to riot—Penalties.

§ 22-1101. Affrays.

Whoever is convicted of an affray in the District shall be fined not more than \$500 or imprisoned not more than one year, or both. (July 16, 1912, 37 Stat. 192., ch. 235, § 1; Dec. 23, 1963, 77 Stat. 617, Pub. L. 88-241, § 11(a).)

#### CODIFICATION

The provisions of § 1 of act July 16, 1912, cited to text of this section, insofar as they relate to the keeping of a bawdy or disorderly house, are classified to § 22-2722.

#### AMENDMENT

1963—Act Dec. 23, 1963, eliminated from above cited § 1 of the 1912 act provisions relating to concurrent jurisdiction of municipal court and district court of offenses of affrays and the keeping of bawdy and disorderly houses, which jurisdictional provisions had been classified to § 11-755c of Part II of this Code, prior to the enactment by the same 1963 act of revised Part II. The eliminated provisions were covered by §§ 11-521(a) (2) and 11-963(a) (1). Title 11 was completely revised by Act July 29, 1970, Pub. L. 91-358, and the jurisdictional provision is now contained in § 11-923. The only changes made by the 1963 amendment, as far as the provisions of said § 1 of the 1912 Act, as amended, classified to this section are concerned, were in matters of style.

#### EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 23, 1963, was made effective on Jan. 1, 1964.

#### CROSS REFERENCE

Assaults because of gaming losses, see § 22-508.

§ 22-1102. Duelling—Challenges.

If any person shall in the District challenge another to fight a duel, or send or deliver any written or verbal message purporting or intended to be such challenge, or shall accept any such challenge or message, or shall knowingly carry or deliver an ac-



ceptance of such challenge or message to fight a duel in or out of the District, he shall be punished by imprisonment for a term not exceeding ten years. (Mar. 3, 1901, 31 Stat. 1328, ch. 854, § 852.)

#### § 22-1103. Assault for refusal to accept challenge.

If any person shall assault, beat, or wound, or cause to be assaulted, beaten, or wounded, any person in the District for refusing to accept such challenge, or cause him to be published or posted as a coward, or use other opprobrious language in such publication tending to degrade and disgrace him for so declining or refusing such challenge, he shall be punished by imprisonment for a term not exceeding three years. (Mar. 3, 1901, 31 Stat. 1328, ch. 854, § 853.)

#### § 22-1104. Leaving the District to give or receive challenge.

If any person, for the purpose of evading the provisions aforesaid, shall leave the District, by previous arrangement or concert within the same, with intent to give or receive any such challenge without the District, and shall give or receive the same accordingly, the person or persons so offending shall be punished in the same manner as if said challenge had been given and received within the District. (Mar. 3, 1901, 31 Stat. 1328, ch. 854, § 854.)

#### §§ 22-1105, 22-1106. Repealed. June 25, 1948, 62 Stat. 862, ch. 645, § 21, eff. Sept. 1, 1948.

Section 22-1105, act Mar. 4, 1909, 35 Stat. 1150, ch. 321, § 320, prohibited prize fights and animal (including bull) fights in the territories of the United States and the District of Columbia.

Section 22-1106, acts Mar. 4, 1909, 35 Stat. 1150, ch. 321, § 321; Feb. 8, 1929, 45 Stat. 1156, ch. 163, defined pugilistic encounter.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Applicability

Former sections 22-1105 and 22-1106 were applicable to the District of Columbia. *Dane v. United States* (1927, 18 F. 2d 811, 57 App. D. C. 161, certiorari denied 48 S. Ct. 35, 275 U. S. 538, 72 L. Ed. 413).

##### Indictment

Indictment charging promoter of fight between other with "engaging" in fight was not insufficient. *Dane v. United States* (1927, 18 F. 2d 811, 57 App. D. C. 161, certiorari denied 48 S. Ct. 35, 275 U. S. 538, 72 L. Ed. 413).

Acquittal of fighters was not inconsistent with conviction of promoter. *Id.*

#### § 22-1107. Unlawful assembly—Profane and indecent language.

It shall not be lawful for any person or persons within the District of Columbia to congregate and assemble in any street, avenue, alley, road, or highway, or in or around any public building or inclosure, or any park or reservation, or at the entrance of any private building or inclosure, and engage in loud and boisterous talking or other disorderly conduct, or to insult or make rude or obscene gestures or comments or observations on persons passing by, or in their hearing, or to crowd, obstruct, or incommode, the free use of any such street, avenue, alley, road, highway, or any of the foot pavements thereof, or the free entrance into any public or private building or inclosure; it shall not be lawful for any person or persons to curse, swear, or make use of any profane language or indecent or obscene words, or engage

in any disorderly conduct in any street, avenue, alley, road, highway, public park or inclosure, public building, church, or assembly room, or in any other public place, or in any place wherefrom the same may be heard in any street, avenue, alley, road, highway, public park or inclosure, or other building, or in any premises other than those where the offense was committed, under a penalty of not more than \$250 or imprisonment for not more than ninety days, or both for each and every such offense. (July 29, 1892, 27 Stat. 323, ch. 320, § 6; July 8, 1898, 30 Stat. 723, ch. 638; June 29, 1953, 67 Stat. 97, ch. 159, § 210.)

#### AMENDMENTS

1953—Act June 29, 1953, substituted "\$250 or imprisonment for not more than ninety days, or both" for "twenty-five dollars."

1898—Act July 8, 1898, amended section generally. Prior to the amendment the section read: "It shall not be lawful for any person or persons within the District of Columbia to congregate and assemble at the corners of any of the streets or avenues, or in any street, avenue, or alley, road, or highway, or on the foot pavements or flag footways of any street or avenue, or at the entrance or on the steps, cellar doors, porches, or porticos of any public or private building or office, or at the entrance of any public or private building or office, or at the entrance, or in, on, or around any of the inclosures of the Capitol, Executive Mansion, public squares, District buildings, Judiciary Square, or at the entrance of any church, schoolhouse, theater, or any assembly room, or in or around the same, or any other public or private inclosure within the said District, and be engaged in loud or boisterous talking, or to insult or make rude or obscene comments or remarks or observations on persons passing by the same, or in their hearing, or to so crowd, obstruct, or incommode the said foot pavement or flag footway, or the entrance into or out of any such church, public or private dwelling, city hall, Executive Mansion, Capitol, or such public inclosure, square or alley, highway or road, as to prevent the free and uninterrupted passage thereof, under a penalty of not more than twenty-five dollars for each and every such offense."

#### CROSS REFERENCES

Disorderly conduct in public buildings and grounds, see § 22-3111.

Prosecutions, see § 22-109.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23-101.

#### NOTES TO DECISIONS

##### Generally

Generally, disorderly conduct embraces those actions or words which tend to corrupt public morals or outrage sense of public decency and is not limited to those acts which tend to breach peace or cause actual disturbance. *Duncan v. United States* (D.C. App. 1966, 219 A. 2d 110).

Even if disorderly conduct statute required as an element or proof circumstances which may tend to incite breach of peace, obscene words spoken by defendant in fairly loud voice, about five feet away from police officer, were meant for his ears even if not spoken directly to him and as such they were insulting, degrading, abusive and fighting words and an invitation to trouble and breach of peace. *Id.*

##### Abuse of discretion

Finding that defendant had, as charged in the information, engaged in loud and boisterous talking and other disorderly conduct was an independent basis of defendant's conviction, distinct from his alleged use of profane, indecent and obscene words, and court did not abuse its discretion in denying defendant's application for allowance of an appeal. *Stone v. District of Columbia* (1966, 359 F. 2d 275, 123 U.S. App. D.C. 291).

##### Advisory opinions on appeal

Where Court of General Sessions of the District of Columbia granted motion to dismiss disorderly conduct charge on several grounds but subsequently vacated dis-



missal with respect to jurisdictional ground only and question of prosecutorial authority was certified to Court of Appeals, any action Court of Appeals might take on certified question could not alter dismissal of charges and hence certificate was dismissed. *District of Columbia v. M. S. Barry et al.* (1967, 387 F. 2d 860, 128 U.S. App. D.C. 295).

#### Appeal and error

Court of Appeals, on appeal from conviction for disorderly conduct and simple assault, was reluctant to determine whether police department form containing information as to time, place and date of offense, name of complainant, names and addresses of witnesses, and description of details of offense was produceable under Jencks Act but would give trial court opportunity in first instance to decide issue of produceability under established guidelines. *C. Duncan, Jr. v. United States and District of Columbia* (1967, 379 F. 2d 148, 126 U.S. App. D.C. 371).

If trial court, in determining issue of produceability of police report form under Jencks Act, found that statement should have been made available, error in failing to require production of statement would not be harmless and would require new trial on charges of disorderly conduct and simple assault. *Id.*

Record on appeal from conviction for carrying concealed pistol without license failed to establish plain error warranting reversal, notwithstanding failure to raise issue below, on ground that defendant's arrest for disorderly conduct was sham employed by police as gamble for detecting larger crime. *H. Johnson v. United States* (1966, 370 F. 2d 489, 125 U.S. App. D.C. 243).

#### Applicability of Jencks rule

Jencks rule of evidence applies in District of Columbia Court of General Sessions whether case is prosecuted by District of Columbia or by United States. *C. Duncan, Jr. v. United States and District of Columbia* (1967, 379 F. 2d 148, 126 U.S. App. D.C. 371).

#### Arrest

Where defendant, charged with disorderly conduct and simple assault, subsequent to order of police officer to clear street corner walked away reluctantly and when about five feet from officer spoke obscene words in fairly loud voice, defendant's arrest was legal. *Duncan v. United States* (D.C. App. 1966, 219 A. 2d 110).

#### — Validity

Arrest of defendant for use toward officer of abusive, insulting, obscene language in protest against direction that he and a group of others on sidewalk move on was valid. *G. A. Williams v. District of Columbia* (D.C. App. 1967, 227 A. 2d 60; rev'd, remanded and dismissed 419 F. 2d 638, 136 U.S. App. D.C. 56).

#### Congregating and assembling

Defendant could not have been convicted of engaging in loud and boisterous talking and other disorderly conduct since requisite element of congregating and assembling was neither charged nor proved. *W. R. Franklin v. District of Columbia* (D.C. App. 1968, 248 A. 2d 677).

Defendant could not have been convicted of fighting in street since proof was that incident occurred inside police station. *Id.*

The "Congregate and assemble" provision of this section requires presence of three or more persons acting in concert for an unlawful purpose. *A. Kinoy v. District of Columbia* (1968, 400 F. 2d 761, 130 U.S. App. D.C. 290).

Under this section making it illegal for person or persons to congregate and assemble and to engage in loud and boisterous talking or disorderly conduct, a "congregation" requires at least three persons. *Id.*

Under this section there can be no "unlawful assembly" where only two persons at the most are assembled. *Id.*

At common law the mere act of assembling was not unlawful, unless it was for an unlawful purpose. Neither is a peaceful assembly unlawful under this section. It does not condemn the mere act of assembling on the street, but prohibits assembling and congregating, coupled with the doing of the forbidden acts. In other words, at common law the assembly must be for an unlawful purpose, and when three or more persons so assembled the offense was

complete without the commission of any additional overt criminal act; but here it requires both the assembly and the commission of one of the acts forbidden by the statute to constitute unlawful assembly. Both the assembling and the overt act are essential to make the offense. *G. S. Hunter et al. v. District of Columbia* (1918, 47 App. D.C. 406).

#### Construction

This section prohibiting use of profane or obscene language in public would be valid if interpreted to require that language be spoken in circumstances which threaten a breach of the peace. *G. A. Williams v. District of Columbia* (1969, 419 F. 2d 638, 136 U.S. App. D.C. 56; rev'g 227 A. 2d 60).

Words "other disorderly conduct" within statute had to be read with preceding words "loud and boisterous talking" and was intended to mean other like disorderly actions while assembled in Capitol grounds, such as screaming, loud singing, clapping and similar noisy outbursts of sound, and merely "going limp", without active physical resistance and absent loud and boisterous vocal disturbance, could not be reasonably equated with "other disorderly conduct" within statute. *G. E. Jalbert et al. v. District of Columbia* (D.C. App. 1966, 221 A. 2d 94).

#### Corporation Counsel's authority to prosecute

Under statute restricting corporation counsel's authority to cases in which punishment is fine only or imprisonment not to exceed one year, corporation counsel lacked authority to initiate prosecution for disorderly conduct which was punishable by fine of not more than \$250 or imprisonment of not more than 90 days, or both. *District of Columbia v. Mark Grimes* (1968, 404 F. 2d 1337, 131 U.S. App. D.C. 360).

#### Double jeopardy

There was no double jeopardy when a defendant, after having been convicted of disorderly conduct, was prosecuted for assaulting a police officer, notwithstanding fact that both incidents occurred in relatively short span of time and at same place. *H. Harris v. United States* (1968, 402 F. 2d 205, 131 U.S. App. D.C. 64).

#### Elements of offense

The opinion in a prior case suggested that it was not necessary to a conviction for disorderly conduct that the words used have tended to provoke a breach of the peace, but even assuming that such requirements existed, it was satisfied by showing that defendant had stated to police officers "You m---r f---s keep out of this" since words uttered were indecent, obscene and patently offensive "fighting words" whose very use not only inflicted injury but tended to provoke an immediate breach of peace. *W. R. Franklin v. District of Columbia* (D.C. App. 1968, 248 A. 2d 677).

Consequential or probable breach of the peace is not an element of offense under statute making it unlawful to curse, swear, or use profane language or indecent or obscene words in any public way. *G. A. Williams v. District of Columbia* (D.C. App. 1967, 227 A. 2d 60; rev'd, remanded and dismissed 419 F. 2d 638, 136 U.S. App. D.C. 56).

Dismissal of charge under general disorderly conduct statute removed need for finding that breach of the peace was threatened by offensive language of defendant, who was also charged with use of profane language or indecent or obscene words on public sidewalk. *Id.*

Defendant's conduct and not crowd's reaction to it must be starting point for determining whether defendant's message was of such nature as to come within ambit of free speech guarantee of First Amendment, and audience reaction and immediacy of disorder become significant elements of proof of disorderly conduct only after speaker passes bounds of argument or persuasion and undertakes incitement to riot. *C. R. Allen v. District of Columbia* (D.C. App. 1963, 187 A. 2d 888).

Defendant's activities in counterpicketing another organization by carrying a sign demanding more police brutality for "Reds" and dragging what purported to be flag of a foreign government on ground in front of crowd, which gave no open displays of anger or threats of violence, was within protection of First Amendment and did not constitute disorderly conduct. *Id.*



**Evidence**

Evidence sustained defendant's conviction for disorderly conduct and simple assault. *Duncan v. United States* (D.C. App. 1966, 219 A. 2d 110).

Admission, in prosecution for using profane, indecent and obscene language, disorderly conduct, and making rude and obscene gestures, of witnesses' conclusions that language was profane, obscene and indecent was reversible error, even though proof of actions may have been sufficient to sustain conviction. *C. P. Heilman, Jr. v. District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 141).

Evidence that taxicab driver made certain suggestions to female passenger and repeated the suggestions both en route and on reaching their destination justified finding that such remarks were "indecent" and "obscene" within this section. *Morris v. District of Columbia* (D.C. Mun. App. 1943, 31 A. 2d 652).

**— Admissibility**

Where evidence had been admitted that a telephone line identifier had been connected to defendant's telephone, testimony of a security officer of telephone company that the records of the company showed that the number from which harassing calls to complainant originated was private listing registered to the defendant was merely cumulative and its admission, if error, was harmless, on a charge of disorderly conduct consisting of making harassing telephone calls to the home of complainant. *J. Coleman v. District of Columbia* (D.C. App. 1969, 250 A. 2d 555).

**— Sufficiency**

Evidence sustained conviction of assault, public intoxication and disorderly conduct in violation of District of Columbia Code. *W. M. Dempsey v. United States and District of Columbia* (D.C. App. 1969, 251 A. 2d 650).

Evidence supported conviction of defendant for using profane language, indecent and obscene words, on public sidewalk. *G. A. Williams v. District of Columbia* (D.C. App. 1967, 227 A. 2d 60; rev'd, remanded and dismissed 419 F. 2d 638, 136 U.S. App. D.C. 56).

**— Suppression**

Record in support of order granting pre-trial motion to suppress pistol seized from beneath seat of defendant's automobile near scene of his arrest for disorderly conduct was insufficient since there were no findings upon which Court of Appeals could base judgment as to whether pistol was product of search and seizure incident to lawful arrest, whether, if so, seizure was so far beyond the area within defendant's immediate control as to be constitutionally impermissible, and whether, if pistol was not product of search and seizure in Fourth Amendment sense (officer testified that he reached under seat in search of seat adjustment lever with intent of driving automobile to precinct station) the intrusion into automobile was reasonable and warranted under the circumstances. *United States v. H. R. Jones* (D.C. App. 1971, 275 A. 2d 541).

In this case, the court held that the trial judge did not err in denying motion to suppress heroin properly seized from defendant, one judge being of the opinion that the defendant was properly "seized" in rapidly moving on-street investigation and discarding of narcotics was not product of illegal police action, and second judge being of the opinion that the officer had probable cause to arrest defendant for disorderly conduct and seizure of heroin was therefore lawful. *W. Von Sleichter v. United States* (D.C. App. 1970, 267 A. 2d 336).

**Impeachment**

Prosecution was not entitled to attempt to impeach testimony of defendant indicted for second-degree murder by referring to thirteen prior convictions of petty offenses of vagrancy, disorderly conduct and soliciting prostitution, inasmuch as, although such offenses were District of Columbia Code offenses, as distinguished from municipal ordinances, none of them was triable by jury. *Y. Pinkney v. United States* (1966, 363 F. 2d 696, 124 U.S. App. D.C. 209).

**Information—Sufficiency**

Information that stated in effect that the defendant, under circumstances likely to cause breach of peace, did congregate and assemble with others in designated pub-

lic place and crowd, obstruct and incommode free use of street, in violation of this section pertaining to unlawful assembly, and that did not set forth any particulars as to acts by which offense was committed failed to allege essential facts constituting an offense. *B. A. Horowitz v. District of Columbia* (D.C. App. 1972, 291 A. 2d 202).

The information in this case charging that defendant used profane language and indecent and obscene words was defective for failure to allege that such conduct threatened breach of peace. *G. A. Williams v. District of Columbia* (1969, 419 F. 2d 638, 136 U.S. App. D.C. 56, rev'g 227 A. 2d 60).

In a case where the information charged a violation of a statute forbidding persons to congregate and assemble on public street and crowd, obstruct, or incommode the free use of the street failed to charge that the act was done under circumstances threatening a breach of peace, it did not charge an offense and conviction on it could not stand. *J. P. Adams v. United States* (D.C. App. 1969, 256 A. 2d 563).

Information charging defendant during peace demonstration with disorderly conduct in that she did with intent to provoke breach of peace congregate with others on public street and on grounds of United States Capitol, and did refuse to move, which failed to specify which of several potentially applicable statutes was basis of prosecution, was insufficient. *D. Feeley v. District of Columbia* (1967, 387 F. 2d 216, 128 U.S. App. D.C. 258).

Defendants, who were arrested after refusing to move out of corridor in House wing of Capitol building when ordered to do so by Capitol police, were entitled to know with certainty offense with which they were charged and possible penalty threatened and were entitled to definite reference to the law which they had allegedly violated, and thus where, notwithstanding request of defense, no one had given citation of statute under which prosecution was being had, other than statement of prosecutor that two sections were involved, convictions under section carrying lighter sentence, as requested by prosecutor, were required to be set aside. *D. Smith et al. v. District of Columbia* (1967, 387 F. 2d 233, 128 U.S. App. D.C. 275).

An information charging defendants with congregating and assembling on a certain avenue, and then and there crowding, obstructing, and incommoding the free use of the sidewalk thereof, contrary to and in violation of this section, is insufficient, though drawn in the language of the statute, because it fails to set out the facts constituting the offense with sufficient clearness to apprise defendants of the charge they are to meet, or to inform the court of their sufficiency to sustain a conviction. *G. S. Hunter et al. v. District of Columbia* (1918, 47 App. D.C. 406).

**Issues of fact**

The accuracy of telephone company's procedure in registering harassing telephone calls made to complainant's home was for the trial court, on a charge of disorderly conduct consisting of making harassing telephone calls. *J. Coleman v. District of Columbia* (D.C. App. 1969, 250 A. 2d 555).

Whether a defendant, who was charged with assault, public intoxication and disorderly conduct in violation of District of Columbia Code, had mental disease which should have excused him from criminal responsibility was issue of ultimate fact for the trier thereof. *W. M. Dempsey v. United States and District of Columbia* (D.C. App. 1969, 251 A. 2d 650).

Whether defendant's arrest for disorderly conduct was sham, employed by police as gamble for detecting larger crime, was one for inference to be drawn by fact-finder based upon credibility and demeanor. *H. Johnson v. United States* (1966, 370 F. 2d 489, 125 U.S. App. D.C. 243).

**Jurisdiction**

Jurisdiction of the Court of General Sessions extended to prosecution under unlawful assembly statute, setting penalty of not more than \$250 or imprisonment for not more than 90 days, or both, notwithstanding contention that criminal jurisdiction of that Court did not extend to case where maximum penalty may be both fine and imprisonment. *L. Lang v. United States* (1971, 443 F. 2d 720, 143 U.S. App. D.C. 305).



**Lawful arrest**

Arrest of defendant, who was observed by officers running across street from church doorway at midnight, and who, when stopped, used obscene language toward officers, on charges of disorderly conduct was lawful, and thus incriminating statement made by defendant and pistol found near scene of arrest were not inadmissible on the grounds asserted. *H. Johnson v. United States* (1966, 370 F. 2d 489, 125 U.S. App. D.C. 243).

**Matters considered**

In determining whether defendant's remarks were within prohibition of this section, the trial judge was entitled to consider all surrounding circumstances, time of occurrence and manner in which it occurred, repetition of the remarks, as well as lack of previous acquaintance. *Morris v. District of Columbia* (D.C. Mun. App. 1943, 31 A. 2d 652).

**Obstructing arrest**

Evidence that a group of demonstrators of which defendant was part approached to within two or three feet of another group, that was being arrested, but did not intermingle physically with the arrested group would not support conviction for obstructing arrest, under disorderly conduct provision of unlawful assembly statute. *L. Lang v. United States* (1971, 443 F. 2d 720, 143 U.S. App. D.C. 305).

**Obstructing free use**

Evidence that half of 50-foot-wide divided stairway leading to the Capitol was already closed to the public by the police in connection with arrest of another group at the time when a group of demonstrators of which the defendant was part assembled at the bottom thereof, and that the other half of such stairway was clear, did not support conviction, under unlawful assembly statute, for obstructing free use of public building. *L. Lang v. United States* (1971, 443 F. 2d 720, 143 U.S. App. D.C. 305).

Conviction under information charging obstruction of free use of public building could not be sustained on theory that the defendant was really engaged in obstructing arrest, where defendant was not charged with the latter offense. *Id.*

**Presence of other persons**

Under this section making it unlawful for any person to use indecent or obscene language in any public place, the presence of others than offender and person addressed is not necessary to complete the offense. *Morris v. District of Columbia* (D.C. Mun. App. 1943, 31 A. 2d 652).

**Preservation of community moral standards**

The prohibition of and, if required, prosecution for use of obscene and profane language in public may be upheld upon interest of state in preserving community moral standards. *G. A. Williams v. District of Columbia* (D.C. App. 1967, 227 A. 2d 60; rev'd, remanded and dismissed 419 F. 2d 638, 136 U.S. App. D.C. 56).

**Probable cause for arrest**

Existence of disorderly conduct statute was factor properly to be considered by arresting police officer in determining whether probable cause existed to arrest defendant for conduct in officer's presence and defined in that statute as crime. *H. Johnson v. United States* (1966, 370 F. 2d 489, 125 U.S. App. D.C. 243).

**Public place**

A public vehicle, such as a taxicab, plying its business on a public street, is a "public place" within this section making it unlawful for any person to use indecent or obscene words in any public place. *Morris v. District of Columbia* (D.C. Mun. App. 1943, 31 A. 2d 652).

**Unlawful assembly, defined**

An attorney representing a client who had been subpoenaed to appear before the House Un-American Activities Committee could not be convicted of a violation of this section for conduct which led to his forceful removal from committee room by order of subcommittee chairman acting alone in violation of committee rules, where attorney could not have been properly charged with assembling and congregating, an essential element of offense, and an attorney representing a client could not come within the definition of unlawful assembly. *A. Kinoy v. District of Columbia* (1968, 400 F. 2d 761, 130 U.S. App. D.C. 290).

**Weight of evidence**

Weight to be given testimony of witnesses who related that the conduct of the defendant at time of alleged assault, public intoxication and disorderly conduct, in violation of District of Columbia Code, and shortly thereafter was bizarre and the weight to be given testimony of government witness who related that the defendant was intoxicated at the time of alleged offenses and that assault was triggered by refusal to serve him beer was for the trier of fact. *W. M. Dempsey v. United States and District of Columbia* (D.C. App. 1969, 251 A. 2d 650).

**§ 22-1108. Playing games in streets.**

It shall not be lawful for any person or persons to play the game of football, or any other game with a ball, in any of the streets, avenues, or alleys in the city of Washington; nor shall it be lawful for any person or persons to play the game of bandy, shindy, or any other game by which a ball, stone, or other substance is struck or propelled by any stick, cane, or other substance in any street, avenue, or alley in the city of Washington, under a penalty of not more than five dollars for each and every such offense. (July 29, 1892, 27 Stat. 325, ch. 320, § 17; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

**AMENDMENT**

1895—Act Feb. 11, 1895, substituted "city of Washington" for "cities of Washington and Georgetown" in two instances.

**CROSS REFERENCE**

Prosecutions, see § 22-109.

**NOTES TO DECISIONS****Civil liability of parent**

In absence of evidence that either of two minor boys had previously played with a football on sidewalk in violation of this section or that their conduct had been such that their parents, with closer supervision, would have been aware that boys were engaging in conduct which was unlawful or which might inflict injury upon others, parents of boys were not chargeable with liability for injuries sustained by pedestrian with whom one of the boys collided while attempting to catch football. *Bateman v. Crim* (D. C. Mun. App. 1943, 34 A. 2d 257).

**§ 22-1109. Throwing stones or other missiles forbidden.**

It shall not be lawful for any person or persons within the District of Columbia to throw any stone or other missile in any street, avenue, alley, road, or highway, or open space, or public square, or inclosure, or to throw any stone or other missile from any place into any street, avenue, road, or highway, alley, open space, public square, or inclosure, under a penalty of not more than five dollars for every such offense. (July 29, 1892, 27 Stat. 322, ch. 320, § 3.)

**CROSS REFERENCES**

Prosecutions, see § 22-109.

Scientific experiments, section inapplicable to, see § 22-812.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 22-812.

**§ 22-1110. Urging dogs to fight—Create disorder.**

It shall not be lawful for any person or persons to entice, induce, urge, or cause any dogs to engage in a fight in any street, alley, road, or highway, open space, or public square in the District of Columbia, or to urge, entice, or cause such dogs to continue or prolong such fight, under a penalty of not more than five dollars for each and every offense; and any person or persons who shall induce or cause



any animal of the dog kind to run after, bark at, frighten, or bite any person, horse, or horses, cows, cattle of any kind, or other animals lawfully passing along or standing in or on any street, avenue, road, or highway, or alley in the District of Columbia, shall forfeit and pay for such offense a sum not exceeding five dollars. (July 29, 1892, 27 Stat. 324, ch. 320, § 10.)

## CROSS REFERENCE

Prosecutions, see § 22-109.

### § 22-1111. Penalty for allowing fierce and dangerous dogs to go at large.

If any owner or possessor of a fierce or dangerous dog shall permit the same to go at large, knowing said dog to be fierce or dangerous, to the danger or annoyance of the inhabitants, he shall upon conviction thereof, be punished by a fine not exceeding twenty dollars; and if such animal shall attack or bite any person, the owner or possessor thereof shall, on conviction, be punished by a fine not exceeding fifty dollars, and in addition to such punishment the court shall adjudge and order that such animal be forthwith delivered to the poundmaster, and said poundmaster is hereby authorized and directed to kill such animal so delivered to him.

If any owner or possessor of a female dog shall permit her to go at large in the District of Columbia while in heat he shall, upon conviction thereof, be punished by a fine not exceeding twenty dollars. (June 19, 1878, 20 Stat. 174, ch. 323, § 9; June 30, 1902, 32 Stat. 547, ch. 1332.)

## AMENDMENT

1902—Act June 30, 1902, amended section generally. Prior to the amendment the section read as follows: "If any owner or possessor of a fierce or dangerous dog permit the same to go at large in the District of Columbia, to the danger or annoyance of the inhabitants, he shall forfeit and pay, for the first offense, ten dollars; for the second, a sum not exceeding twenty dollars; and upon a third conviction for the same offense, the commissioners shall immediately cause the dog, upon account of which the condition takes place, to be slain and buried."

## NOTES TO DECISIONS

## Knowledge of owner

Amendment of 1902 did not modify judicial interpretation of earlier act that owner was not liable for conduct of dog unless he had or was charged with knowledge of its vicious propensities. *Bardwell v. Petty* (1923, 286 F. 772, 52 App. D. C. 310).

### § 22-1112. Lewd, indecent, or obscene acts.

(a) It shall not be lawful for any person or persons to make any obscene or indecent exposure of his or her person, or to make any lewd, obscene, or indecent sexual proposal, or to commit any other lewd, obscene, or indecent act in the District of Columbia, under penalty of not more than \$300 fine, or imprisonment of not more than ninety days, or both, for each and every such offense.

(b) Any person or persons who shall commit an offense described in subsection (a), knowing he or she or they are in the presence of a child under the age of sixteen years, shall be punished by imprisonment of not more than one year, or fined in an amount not to exceed \$1,000, or both, for each and every such offense. (July 29, 1892, 27 Stat. 324, ch. 320, § 9; July 8, 1898, 30 Stat. 724, ch. 638; Sept. 26, 1942, 56 Stat. 760, ch. 565; June 9, 1948, 62 Stat.

346, ch. 428, title I, § 101; June 29, 1953, 67 Stat. 92, ch. 159, § 202(a) (1).)

## AMENDMENTS

1953—Subsec. (a) amended by act June 29, 1953, to eliminate "or their persons in any street, avenue, alley, road or highway, open space, public square, or other public place or inclosure, in the District of Columbia, or to make any such obscene or indecent exposure of person in any dwelling or other building or other place wherefrom the same may be seen in any street, avenue, alley, road or highway, open space, public square, or public or private building or inclosure" following "exposure of his or her person", to insert "or to make any lewd, obscene, or indecent sexual proposal, or to commit any other lewd, obscene, or indecent act in the District of Columbia", and to increase the fine from \$250 to \$300.

Subsec. (b) amended by act June 29, 1953, to increase the punishment by imprisonment for six months to one year and the fine from \$500 to \$1,000 and to provide for punishment by both fine and imprisonment.

1948—Act June 9, 1948, designated existing provisions as subsec. (a) and added subsec. (b).

1942—Act Sept. 26, 1942, added the penalty of imprisonment for not more than ninety days.

1898—Act July 8, 1898, inserted references to "or other public place" and "or public or private building."

## CROSS REFERENCES

For other provisions dealing with obscene matters see sec. 22-2001.

Prosecutions, see § 22-109.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-109, 23-101.

## SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 49, section 1472, U.S. Code.

## NOTES TO DECISIONS

## Abuse of discretion

Denial of defendant's motion to vacate a judgment of conviction on a plea of guilty on the ground that manifest injustice occurred because court appointed same counsel to represent both defendants was not an abuse of discretion under the record. *M. E. Lord Jr. v. District of Columbia* (D.C. App. 1967, 235 A. 2d 322.)

## Acts committed in privacy

Ordinary acts involving exposure as result of carelessness or thoughtlessness, particularly when such acts take place within privacy of one's home, do not in themselves establish offense of indecent exposure. *G. B. Selph v. District of Columbia* (D.C. App. 1963, 188 A. 2d 344).

Evidence was insufficient to sustain conviction for indecent exposure. *Id.*

Nudity is not per se "obscene", and it is not illegal for a man to be completely unclothed in his room; it becomes so only if he intentionally exposes himself to other persons. *C. A. Hearn v. District of Columbia* (D.C. Mun. App. 1962, 178 A. 2d 434).

Under this section making it unlawful for any person to make any lewd, obscene or indecent sexual proposal, or to commit any other lewd, obscene or indecent act in the District of Columbia, an open or public act in common-law sense is no longer required, but this section is not designed or intended to apply to an act committed in privacy or presence of a single, consenting person. *Rittenour v. District of Columbia* (D.C. Mun. App. 1960, 163 A. 2d 558).

## Admission by defendant

Admission by defendant that he was present in washroom when officer entered eliminated necessity for corroboration of presence of officer and defendant at the time and place of alleged lewd, obscene, and indecent act in the washroom, in case wherein there was testimony of only one witness to the act, namely, the officer. *L. D. Reed v. District of Columbia* (D.C. App. 1967, 226 A. 2d 581).

## Assumption by reviewing court

In view of citation to court of general sessions of decision laying down rule that testimony of a single witness to verbal invitation to sodomy should be received and considered with great caution, in case wherein there was



testimony of only one witness to the charged lewd, obscene, and indecent act, reviewing court was required to assume that Court of General Sessions was fully aware of the rules announced in that decision and that the testimony of the witness had been received and considered with great caution. *L. D. Reed v. District of Columbia* (D.C. App. 1967, 226 A. 2d 581).

#### Burden of proof

The evidence adduced at habeas corpus proceeding did not support the trial court's finding that petitioner, who had originally been committed under the District of Columbia Sexual Psychopath Act, was likely to inflict injury, loss, pain or other evil on others by his sexual misconduct if he were released. *M. I. Millard v. D. W. Harris, Acting Sup't, etc.* (1968, 406 F. 2d 964, 132 U.S. App. D.C. 146; rev'g 373 F. 2d 468).

Habeas corpus petitioner who had been committed under the District of Columbia Sexual Psychopath Act had the burden to show that his past behavior, examined under the illumination provided by psychiatric evaluation of those actions, did not justify conclusion that he fell within statutory definition of one who was likely to inflict injury on others. *Id.*

Whether habeas corpus petitioner who was committed under the District of Columbia Sexual Psychopath Act should be released on habeas corpus would be determined on likelihood that he would, if released, be dangerous to others because of sexual misconduct. *Id.*

Petitioner who was confined in hospital pursuant to proceeding under District of Columbia Sexual Psychopath Act had the burden to show by a preponderance of the evidence that his continued confinement as sexual psychopath was not justified. *Id.*

#### Character evidence

Trial court, which expressly commented on evidence of good character of defendant convicted of committing lewd, obscene, and indecent act in department store restroom, had given due consideration to the character evidence. *L. D. Reed v. District of Columbia* (D.C. App. 1967, 226 A. 2d 581).

#### Conditions justifying commitment

Predictions of dangerousness which would justify commitment under the District of Columbia Sexual Psychopath Act requires determination of type of conduct of which individual may engage; likelihood or probability that he will indulge in that conduct; and effect that such conduct if engaged in will have on others. *M. I. Millard v. D. W. Harris, Acting Sup't, etc.* (1968, 406 F. 2d 964, 132 U.S. App. D.C. 146; rev'g 373 F. 2d 468).

In determining what acts may be considered in applying District of Columbia Sexual Psychopath Act, court must add "sexual" in common meaning of that term. *Id.*

#### Corroboration

In cases wherein testimony of only one witness to verbal invitation to sodomy is introduced, the trial court should require corroboration of the circumstances surrounding the parties at the time, such as presence at the alleged time and place and similar provable circumstances. *L. D. Reed v. District of Columbia* (D.C. App. 1967, 226 A. 2d 581).

In cases wherein testimony of only one witness to verbal invitation to sodomy is introduced, evidence of good character is particularly applicable. *Id.*

Testimony of a single witness to a verbal invitation to sodomy should be received and considered with great caution. *Id.*

Corroboration of arresting officer's testimony was not required to establish corpus delicti and to sustain conviction for indecent exposure. *Nassif v. District of Columbia* (D.C. App. 1966, 219 A. 2d 495).

#### Due Process

Since a proceeding under District of Columbia Sexual Psychopath Act is closely related to behavior of person rather than to his mental condition considered apart from his behavior, constitutional guarantees implicit in due process of law must come into play. *M. I. Millard v. D. W. Harris, Acting Sup't, etc.* (1968, 406 F. 2d 964, 132 U.S. App. D.C. 146; rev'g 373 F. 2d 468).

#### Elements of assault

Before use of assault statute to cover conduct that appears to fall within bounds of misdemeanor statutes can be countenanced court must be certain that elements of assault had been established. *Guarro v. United States* (1956, 237 F. 2d 578, 99 U. S. App. D. C. 97).

#### Entrapment

Evidence did not support contention made for first time on appeal from conviction for committing lewd, obscene, and indecent act that defendant had been entrapped. *L. D. Reed v. District of Columbia* (D.C. App. 1967, 226 A. 2d 581).

Where police officer made phone call to defendant and went to defendant's house in order to investigate a suspected homosexual and in order to confirm the suspicion led suspect to believe officer would not resist homosexual advances and then arrested him, defendant was entrapped. *Rittenour v. District of Columbia* (D.C. Mun. App. 1960, 163 A. 2d 558).

#### Evidence

Failure of the trial court in habeas corpus proceeding to distinguish between petitioner's sexual and nonsexual misconduct as a reason for his commitment under District of Columbia Sexual Psychopath Act and trial court's failure to evaluate the likelihood, as opposed to mere possibility, that petitioner would engage in sexual misconduct if released constituted reversible error. *M. I. Millard v. D. W. Harris, Acting Sup't, etc.* (1968, 406 F. 2d 964, 132 U.S. App. D.C. 146; rev'g 373 F. 2d 468).

Evidence in habeas corpus proceeding established that if released, the petitioner, who had been committed under District of Columbia Sexual Psychopath Act, would be unlikely to engage in sexual misconduct other than exhibitionism. *Id.*

Evidence at habeas corpus proceeding established that likelihood of serious injury to a child who might see the petitioner expose himself in public was too remote to justify commitment under District of Columbia Sexual Psychopath Act. *Id.*

Evidence at habeas corpus proceeding established that future sexual misconduct of petitioner, if any, was not sufficiently likely to cause kind of harm required by District of Columbia Sexual Psychopath Act to justify further commitment. *Id.*

Evidence supported conviction for indecent exposure. *Nassif v. District of Columbia* (D.C. App. 1966, 219 A. 2d 495).

Evidence sufficiently demonstrated "course of repeated misconduct in sexual matters" within statutory definition of sexual psychopath on part of defendant accused of indecent exposure. *C. H. Lomax v. District of Columbia* (D.C. App. 1965, 211 A. 2d 772).

Evidence was sufficient to sustain conviction for indecent exposure. *E. Haynes v. District of Columbia* (D.C. App. 1964, 204 A. 2d 574).

Evidence was sufficient to sustain conviction for indecent exposure and making an indecent sexual proposal. *E. Haynes v. District of Columbia* (D.C. App. 1964, 202 A. 2d 919).

Evidence of government which presented two women complainants, who testified they saw defendant exposing himself, positively identifying him as maintenance man in their apartment development, was sufficient to sustain finding of his guilt of obscene and indecent exposure notwithstanding his production of five alibi witnesses. *R. Campbell v. District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 557).

Evidence was insufficient to sustain convictions for committing a lewd, obscene, or indecent act. *Caul and Coggins v. District of Columbia* (D.C. Mun. App. 1960, 164 A. 2d 350).

Evidence sustained conviction of committing a lewd, obscene, or indecent act. *McGhee v. District of Columbia* (D.C. Mun. App. 1957, 137 A. 2d 721).

#### — Corroboration

Testimony of complaining witness' companion that defendant stopped his automobile near them, her identification of defendant, and her description of automobile which had same license number as that of defendant, amply satisfied requirements of corroboration of testi-



mony of complaining witness. *E. Haynes v. District of Columbia* (D.C. App. 1964, 204 A. 2d 574).

There must be corroboration in sex offenses, especially where offense is purely verbal and proof disappears as soon as words are spoken, but government is not required to produce witness who actually heard words spoken and corroboration may consist of circumstantial evidence supporting prosecutrix story. *A. Goodsaid v. District of Columbia* (D.C. App. 1963, 187 A. 2d 486).

Reluctance of woman, who contended that taxicab driver made indecent sexual proposals to her, to make complaint, driver's offer to apologize for what he might have said, his failure to make immediate denial of charges, and fact that, after period of over two weeks, he recognized complainant as former passenger, recalled engaging in conversation with her, and remembered his remark to her as she left taxicab sufficiently corroborated complainant's story. *Id.*

Testimony of police officers who had observed commission of indecent act constituted valid corroboration of alleged act. *L. R. Herland v. District of Columbia* (D.C. Mun. App. 1962, 182 A. 2d 362).

Testimony of complaining witness in prosecution for committing a lewd, obscene or indecent act, which was corroborated by her companion except for the actual identification of defendant, was sufficiently corroborated to secure conviction. *McGhee v. District of Columbia* (D. C. Mun. App. 1957, 137 A. 2d 721).

Evidence showed sufficient corroboration of the circumstances to sustain conviction for making an indecent sexual proposal. *Howard v. District of Columbia* (D. C. Mun. App. 1957, 132 A. 2d 150).

#### —Testimony of arresting officer

Great caution should be applied in considering testimony of arresting officer in cases where alleged assault is nonviolent sexual touching which by its nature left no traces and to which there were no other witnesses. *Guarro v. United States* (1956, 237 F. 2d 578, 99 U. S. App. D. C. 97).

#### Homosexuality

Homosexuality is not a crime. *Rittenour v. District of Columbia* (D.C. Mun. App. 1960, 163 A. 2d 558).

#### Impeachment

Prosecution was not entitled to attempt to impeach testimony of defendant indicted for second-degree murder by referring to thirteen prior convictions of petty offenses of vagrancy, disorderly conduct and soliciting prostitution, inasmuch as, although such offenses were District of Columbia Code offenses, as distinguished from municipal ordinances, none of them was triable by jury. *Y. Pinkney v. United States* (1966, 363 F. 2d 696, 124 U.S. App. D.C. 209).

#### Intent

Before conviction for indecent exposure can be upheld, it must be shown that exposure was intentional, not accidental. *G. B. Selph v. District of Columbia* (D.C. App. 1963, 188 A. 2d 344).

Evidence disclosed that defendant, who appeared without clothes in early morning hours at second floor window of his hot and oppressive room at rear of hotel overlooking seemingly uninhabited alley area and who was observed by several police officers and room clerk, did not deliberately and intentionally expose himself, so that he was not guilty of obscene or indecent exposure. *C. A. Hearn v. District of Columbia* (D.C. Mun. App. 1962, 178 A. 2d 434).

An exposure becomes indecent when it occurs at such a time and place where reasonable man knows or should know his act will be open to observation of others; the required criminal intent is usually established by some action by which defendant draws attention to his exposed condition or by display in place so public that it must be presumed it was intended to be seen by others. *Id.*

A criminal intent must be shown in prosecution for indecent exposure before conviction can be upheld, and though exposure must be intentional and not accidental, the intent required is only a general one and need not be directed toward any specific person or persons. *Peyton v. District of Columbia* (D.C. Mun. App. 1953, 100 A. 2d 36).

An exposure becomes indecent when defendant exposes

himself at such a time and place where as a reasonable man he knows or should know his act will be open to observation by others. *Id.*

#### Nonproduction of possible witness

That an unidentified man left washroom immediately prior to arrest of defendant for committing lewd, indecent, and obscene act there and that arresting officer did not detain the man or obtain his name and address did not give rise to presumption that the unidentified man's testimony would not have supported officer's testimony, in absence of solid foundation indicating that unidentified man had witnessed the acts and conduct of defendant. *L. D. Reed v. District of Columbia* (D.C. App. 1967, 226 A. 2d 581).

#### "Not insane" construed

The words "not insane" as used in District of Columbia Sexual Psychopath Act means "not mentally ill." *M. I. Millard v. D. W. Harris, Acting Sup't, etc.* (1968, 406 F. 2d 964, 132 U.S. App. D.C. 146; rev'g 373 F. 2d 468).

When words "not insane" in District of Columbia Sexual Psychopath law is read to mean "not mentally ill" the sole justification for commitment under the act is the patient's dangerousness. *Id.*

#### Public place

Unlocked wash room in hotel in which indecent act occurred was a public place, and fact that other participant willingly engaged did not relieve defendant from guilt in committing such act in public. *L. R. Herland v. District of Columbia* (D.C. Mun. App. 1962, 182 A. 2d 362).

#### Resentencing

Where prosecution was under one subsection of statute, the wording of which was followed by the information, but upon conviction sentence was imposed under another subsection of statute which provided for stiffer penalties, and evidence sustained conviction, case would be remanded with instructions to vacate existing sentence and to resentence defendant in accordance with subsection of statute under which he was prosecuted. *Howard v. District of Columbia* (D. C. Mun. App. 1957 132 A. 2d 150).

#### Res judicata

The acquittal of defendant of charge of committing an indecent act precluded the government, as a matter of law, from relying on the evidence relating to this alleged indecent act to support its charge of an alleged indecent exposure on the same night. *C. A. Hearn v. District of Columbia* (D.C. Mun. App. 1962, 178 A. 2d 434).

#### § 22-1113. Kindling bonfires.

It shall not be lawful for any person or persons within the limits of the District of Columbia to kindle or set on fire, or be present, aiding, consenting, or causing it to be done, in any street, avenue, road, or highway, alley, open ground, or lot, any box, barrel, straw, shavings, or other combustible, between the setting and rising of the sun; and, any person offending against the provisions of this section shall on conviction thereof, forfeit and pay a sum not exceeding ten dollars for each and every offense. (July 29, 1892, 27 Stat. 325, ch. 320, § 14.)

#### CROSS REFERENCE

Prosecutions, see § 22-109.

#### § 22-1114. Disturbing religious congregation.

It shall not be lawful for any person or persons to molest or disturb any congregation engaged in any religious exercise or proceedings in any church or place of worship in the District of Columbia; and it shall be lawful for any of the authorities of said churches to arrest or cause to be arrested any person or persons so offending, and take him, her, or them to the nearest police station, to be there held for trial; and any person or persons violating the provi-



sions of this section shall forfeit and pay a fine of not more than one hundred dollars for every such offense. (July 29, 1892, 27 Stat. 324, ch. 320, § 11.)

#### CROSS REFERENCE

Prosecutions, see § 22-109.

#### NOTES TO DECISIONS

##### Constitutionality

This section is not unconstitutionally vague for failure to specify kinds of conduct prohibited at a religious service or to set out standards as to type of conduct that would amount to an illegal disturbance. *P. J. Riley v. District of Columbia* (D.C. App. 1971, 283 A. 2d 819; cert. denied 92 S. Ct. 1499, 405 U.S. 1066).

This section does not impinge upon First Amendment freedoms. *Id.*

##### Construction

This section is a guarantee of free exercise of religion to all persons. *P. J. Riley v. District of Columbia* (D.C. App. 1971, 283 A. 2d 819; cert. denied 92 S. Ct. 1499, 405 U.S. 1066).

A legitimate governmental interest in protecting freedom of worship as well as maintenance of peace and good order in the community underlies this section prohibiting disturbances of religious meetings. *Id.*

##### Elements of offense

Not every interruption of a religious service would constitute a violation of this section. *P. J. Riley v. District of Columbia* (D.C. App. 1971, 283 A. 2d 819; cert. denied 92 S. Ct. 1499, 405 U.S. 1066).

To justify imposition of criminal sanctions for disturbing a religious meeting a person must have intentionally committed an act or acts that are found to have substantially disrupted the service; a conviction cannot be had for conduct that is orderly and within known customs and usages governing religious exercise or proceedings in the church; on the other hand, violence of conduct is not a prerequisite for conviction of disturbing a religious meeting. *Id.*

A trivial incident, even if explicitly forbidden, could not be basis of a conviction under this section. *Id.*

Defendants' convictions of disturbing a religious congregation did not result from an impermissible intrusion into a dispute among members of a church congregation over a purely religious matter. *Id.*

##### Evidence—Sufficiency

Finding, in prosecution under this section, that there was a substantial disturbance of a religious meeting had support in evidence sufficient to preclude a holding that it was erroneous as a matter of law. *P. J. Riley v. District of Columbia* (D.C. App. 1971, 283 A. 2d 819; cert. denied 92 S. Ct. 1499, 405 U.S. 1066).

##### Forfeiture of collateral

Forfeitures of collateral security could not be vacated on application made more than 30 days after forfeiture, despite claim that defendants had misunderstood or were misinformed as to date set for trial or were under impression that cases were further continued, where there was no testimony by defendants to this effect and counsel were fully aware of situation. *District of Columbia v. H. Evans et al.* (D.C. App. 1967, 225 A. 2d 309).

#### § 22-1115. Interference with foreign diplomatic and consular offices, officers, and property.

It shall be unlawful to display any flag, banner, placard, or device designed or adapted to intimidate, coerce, or bring into public odium any foreign government, party, or organization, or any officer or officers thereof, or to bring into public disrepute political, social, or economic acts, views, or purposes of any foreign government, party, or organization, or to intimidate, coerce, harass, or bring into public disrepute any officer or officers or diplomatic or consular representatives of any foreign government, or to interfere with the free and safe pursuit of the duties of any diplomatic or consular representatives

of any foreign government, within five hundred feet of any building or premises within the District of Columbia used or occupied by any foreign government or its representative or representatives as an embassy, legation, consulate, or for other official purposes, except by, and in accordance with, a permit issued by the superintendent of police of the said District; or to congregate within five hundred feet of any such building or premises, and refuse to disperse after having been ordered so to do by the police authorities of the said District (Feb. 15, 1938 52 Stat. 30, ch. 29, § 1.)

#### TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under section 4-103.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22-1116.

#### NOTES TO DECISIONS

##### Constitutionality

District of Columbia statute precluding street demonstrations within 500 feet of foreign embassy, but specifically excluding therefrom picketing in a construction dispute, does not violate the free speech or equal protection provisions of Constitution and is enacted pursuant to constitutional power granted to Congress to define and punish offenses against laws of nations. *Jewish Defense League, Inc., et al. v. W. Washington et al.* (1972, 347 F. Supp. 1300).

Since this section prohibiting protest demonstration nearer to embassy than 500 feet when protest is directed against foreign government operating embassy had once been held constitutional, and since failure to grant temporary restraining order against enforcement of the section would preclude plaintiffs from protesting in front of embassy but not 500 feet away and that such order would have effect of striking down statute as unconstitutional, the court will not grant such order. *Jews for Urban Justice, et al. v. J. W. Wilson* (1970, 311 F. Supp. 1158).

The contention that this section making it unlawful to bring into public disrepute any officer of any foreign government within 500 feet of any building used or occupied by foreign government or its representatives for official purposes is unconstitutional is without merit. *S. Zaimi v. United States* (D.C. App. 1970, 261 A. 2d 233).

Congress, in executing power to define and punish offenses against foreign nations, was authorized to prohibit the display, within 500 feet of an embassy, legation, or consulate in District of Columbia, of any flag, banner, placard, or device designed to bring any foreign government into public odium, or to harass any diplomatic or consular representatives. *Frend v. United States* (1939, 100 F. 2d 691, 69 App. D. C. 281, certiorari denied 59 S. Ct. 488, 306 U.S. 640, 83 L. Ed. 1040).

The power of Congress to define and punish offenses against law of nations and to exercise police power of a state in District of Columbia authorized it, in seeking to protect foreign embassies from disturbances, to determine how and to whom it would distribute authority to make detailed regulations, and to delegate that power to superintendent of police of District. *Id.*

This section did not violate due process clause of Constitution. *Id.*

This section did not constitute an invalid delegation of authority to superintendent of police to grant permit without establishment of any standard or guide to govern granting of permit. *Id.*

This section did not violate constitutional provision relating to free speech and free assemblage since no restriction was placed upon speech or assembly except to extent that they might constitute offensive public demonstrations immediately adjacent to buildings used for official purposes by foreign government. *Id.*

##### Evidence—Sufficiency

Appellants contention that the evidence was insufficient to make out prima facie case of bringing into public disrepute any officer of any foreign government, merely because there was no warning to desist before arrest, and



because there was no showing that statements were untrue or made with actual malice or that there was threat of breach of peace is not valid, since section under which defendant was convicted does not include those elements. *S. Zaimi v. United States* (D.C. App. 1970, 261 A. 2d 233).

Defendant, who shouted that Shah of Iran had come to Washington to purchase bombs to suppress people of Iran, brought Shah into public disrepute as proscribed by this section. *Id.*

#### Injunctions

Parties seeking preliminary injunction against enforcement of District of Columbia statute prohibiting demonstrations within 500 feet of foreign embassy failed to show necessary irreparable injury if their actions calling attention to plight of Soviet Jews must take place more than 500 feet from the Soviet embassy. *Jewish Defense League, Inc., et al. v. W. Washington et al.* (1972, 347 F. Supp. 1300).

#### Offenses

Where defendants were part of a congregation of people who paraded in streets in front of Austrian or German embassy with banners or placards pursuant to plan to bring German government into contempt, defendants, under provisions of local law making it an offense to aid and abet in violation of the law, were guilty of violation of this section, regardless of whether each of defendants was then displaying one of placards. *Frend v. United States* (1939, 100 F. 2d 691, 69 App. D. C. 281, certiorari denied 59 S. Ct. 488, 306 U. S. 640, 83 L. Ed. 1040).

#### § 22-1116. Penalties for interference with foreign diplomatic and consular offices, officers, and property.

The Superior Court of the District of Columbia shall have jurisdiction of offenses committed in violation of section 22-1115, and any person convicted of violating any of the provisions of said section shall be punished by a fine not exceeding \$100 or by imprisonment not exceeding sixty days, or both: *Provided, however*, That nothing contained in said section shall be construed to prohibit picketing, as a result of bona fide labor disputes regarding the alteration, repair, or construction of either buildings or premises occupied, for business purposes, wholly or in part, by representatives of foreign governments. (Feb. 15, 1938, 52 Stat. 30, ch. 29, § 2; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

"Municipal court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the police court and the municipal court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

#### NOTES TO DECISIONS

##### Constitutionality

District of Columbia statute precluding street demonstrations within 500 feet of foreign embassy, but specifically excluding therefrom picketing in a construction dispute, does not violate the free speech or equal protection provisions of Constitution and is enacted pursuant to constitutional power granted to Congress to define and pun-

ish offenses against laws of nations. *Jewish Defense League, Inc., et al. v. W. Washington et al.* (1972, 347 F. Supp. 1300).

#### § 22-1117. Flying fire balloons or parachutes forbidden.

It shall not be lawful for any person or persons to set up or fly any fire balloon or parachute in or upon or over any street, avenue, alley, open space, public enclosure, or square within the limits of the city of Washington, under a penalty of not more than ten dollars for each and every such offense. (July 29, 1892, 27 Stat. 322, ch. 320, § 4; Feb. 11, 1895, 28 Stat. 650, ch. 79; July 29, 1970, Pub. L. 91-358, § 802, title VIII, 84 Stat. 667.)

#### AMENDMENTS

1970—Section 802 of Act July 29, 1970, Public Law 91-358 amended section by striking out "set up or fly any kite, or".

1895—Act Feb. 11, 1895, substituted "city of Washington" for "cities of Washington and Georgetown."

#### EFFECTIVE DATE OF 1970 AMENDMENT

Section 901(b) (2) of Pub. L. 91-358, provided in part: "Title VIII [amending secs. 1-820 and 22-1117] shall take effect on the date of the enactment of this Act [July 29, 1970]."

#### CROSS REFERENCE

Prosecutions, see § 22-109.

#### § 22-1118. Driving or riding on footways in public grounds.

If any person shall drive or lead any horse, mule, or other animal, or any cart, wagon, or other carriage whatever on any of the paved or graveled footways in and on any of the public grounds belonging to the United States within the District of Columbia, or shall ride thereon, except at the intersection of streets, alleys, and avenues, each and every such offender shall forfeit and pay for each offense a sum not less than one nor more than five dollars (July 29, 1892, 27 Stat. 325, ch. 320, § 16.)

#### CROSS REFERENCE

Prosecutions, see § 22-109.

#### § 22-1119. False alarm of fire—Prosecution.

It shall be unlawful for any person or persons to wilfully or knowingly give a false alarm of fire within the District of Columbia, and any person or persons violating the provisions of this section shall upon conviction, be deemed guilty of a misdemeanor and be punished by a fine not exceeding one hundred dollars or by imprisonment for not more than six months, or by both such fine and imprisonment. Prosecutions for violation of the provisions of this section shall be on information filed in the Superior Court of the District of Columbia by the corporation counsel of the District of Columbia or by any of his assistants. (June 8, 1906, 34 Stat. 220, ch. 3055, §§ 1, 2; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.



## EFFECTIVE DATE

Section 3 of Act June 8, 1906, provided: "That this Act (enacting this section) shall be in effect from and after its passage."

## CHANGE OF NAME

"Municipal court" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the police court and the municipal court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

## § 22-1120. Sale of tobacco to minors under 16 years of age.

No person shall sell, give, or furnish any cigar, cigarette, or tobacco in any of its forms to any minor under sixteen years of age; and for each and every violation of this section the offender shall, on conviction, be fined not less than two dollars nor more than ten dollars or be imprisoned for not less than five days nor more than twenty days. (Feb. 7, 1891, 26 Stat. 736, ch. 117.)

## NOTES TO DECISIONS

## Reversal

Where a majority of the court did not agree on a specific ground for reversing judgment, conviction of storekeeper for selling cigarettes to minor under 16 years of age was reversed. *Campbell v. District of Columbia* (D.C. Mun. App. 1943, 32 A. 2d 394).

## § 22-1121. Disorderly conduct—Generally.

Whoever, with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby—

(1) acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others;

(2) congregates with others on a public street and refuses to move on when ordered by the police;

(3) shouts or makes a noise either outside or inside a building during the nighttime to the annoyance or disturbance of any considerable number of persons;

(4) interferes with any person in any place by jostling against such person or unnecessarily crowding him or by placing a hand in the proximity of such person's pocketbook, or handbag; or

(5) causes a disturbance in any streetcar, railroad car, omnibus, or other public conveyance, by running through it, climbing through windows or upon the seats, or otherwise annoying passengers or employees,

shall be fined not more than \$250 or imprisoned not more than ninety days, or both. (June 29, 1953, 67 Stat. 98, ch. 159, § 211a.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22-109.

## NOTES TO DECISIONS

## Breach of peace

Proof of breach of peace is not required for conviction of disorderly conduct. *M. L. Stovall v. United States and District of Columbia* (D.C. App. 1964, 202 A. 2d 390).

## Bus passengers

Washington Metropolitan Area Transit Regulation Compact does not have authority to promulgate order regulating conduct of bus passengers. *District of Columbia v. A. T. Jones et al.* (D.C. App. 1972, 287 A. 2d 816).

## Constitutionality

This section, providing for punishment for any person who, with intent to provoke breach of peace, or under

circumstances such that breach of peace might be occasioned thereby, acts in such manner as to annoy, disturb, interfere with, obstruct or be offensive to others, is not constitutionally impermissible prohibition of activity protected by First Amendment. *W. L. Rodgers v. United States and District of Columbia* (D.C. App. 1972, 290 A. 2d 395).

As constitutional attack on the face of this section was not made in the trial court, the Court of Appeals is free to refuse review on that issue; however, even were defendant permitted to be heard on the point, Court would be bound by decision holding the portion of the section in question to be constitutional. *S. T. Foster v. United States and District of Columbia* (D.C. App. 1972, 290 A. 2d 176).

Statute providing punishment for whoever with intent to provoke breach of peace, or under circumstances such that breach of peace may be occasioned thereby, congregates with others on public street and refuses to move on when ordered by police is not unconstitutionally vague. *G. E. Jalbert, et al. v. District of Columbia* (D.C. App. 1966, 221 A. 2d 94).

Disorderly conduct statute as applied to defendants who exceeded the authorization of their parade permit, disregarded cautions of police and willfully violated Capitol Grounds statute by blocking a public walkway and refusing to move on when validly ordered to do so by the police is not unconstitutional. *D. Feeley, A. Uhrie, B. Dunlap v. District of Columbia* (D.C. App. 1966, 220 A. 2d 325).

## Construction

Intent of Congress in enacting statute could best be determined by looking to act of Congress which such statute was enacted to supplement. *W. L. Rodgers v. United States and District of Columbia* (D.C. App. 1972, 290 A. 2d 395).

The qualifying language of the general disorderly conduct statute—"under circumstances such that a breach of the peace may be occasioned thereby"—need not be read into statute making it unlawful to curse, swear, or make use of profane language or indecent or obscene words in any public way. *G. A. Williams v. District of Columbia* (D.C. App. 1967, 227 A. 2d 60; rev'd, remanded and dismissed 419 F. 2d 638, 136 U.S. App. D.C. 56).

Enactments like statute prohibiting cursing, swearing, or using profane language or indecent or obscene words in public ways must contain qualifying language, and the qualifications must be applied within the framework of the clear and present danger test; otherwise they violate First Amendment. *Id.*

Disorderly conduct statute is violated when there is noisy, riotous, or inflammatory behavior provoking breach of peace, but there can be violation of such statute without such extreme conduct. *Scott, Ewald, Carpenter and Young v. District of Columbia* (D.C. Mun. App. 1962, 184 A. 2d 849).

Defendant in ordering followers into hostile audience to stop heckling of speech and assault of one spectator as direct result of defendant's command to his followers, authorized conviction of disorderly conduct. *G. L. Rockwell v. District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 549).

This section penalizing acts intended to provoke or likely to occasion breach of peace is penal and must be strictly construed. *Carey v. District of Columbia* (D.C. Mun. App. 1954, 102 A. 2d 314).

Peeping in window of occupied, lighted apartment at 1:30 in the morning constituted "disorderly conduct" within breach of peace statute penalizing action tending to "disturb" or be "offensive" to others. *Id.*

## Due process

Actions of United States attorney in entering nolle prosequi of informations charging the more serious offense of unlawful entry and, thereafter, filing new informations regarding the less serious offense of disorderly conduct were not a violation of due process. *Smith v. District of Columbia* (D.C. App. 1966, 219 A. 2d 842).

Disorderly conduct statute does not violate due process clause of Fifth Amendment although it does not require proof of breach of peace element; such statute does no more than give police the right within reasonable limitations to keep public sidewalks free of unnecessary ob-



structions and prevent groups from congregating in way that breach of peace might result. *Scott, Ewald, Carpenter and Young v. District of Columbia* (D.C. Mun. App. 1962, 184 A. 2d 849).

Government, which was prosecuting defendants who had stationed themselves just west of northwest gate of White House and wore arm bands reading "Bomb Tests Kill People" for disorderly conduct, was not required to prove actual or impending breach of peace. *Id.*

#### Elements of offense

Neither an actual breach of the peace nor intent to provoke breach of peace is an essential element in proof of disorderly conduct; it is sufficient that the alleged conduct be under circumstances such that breach of the peace might be occasioned thereby. *W. L. Rodgers v. United States and District of Columbia* (D.C. App. 1972, 290 A. 2d 395).

While one of the elements of offense of disorderly conduct under statute is that the conduct must occur with intent to provoke a breach of the peace or occur under circumstances such that a breach of the peace may be occasioned thereby, it is not necessary in every case for the information to follow the precise language of the statute. *District of Columbia v. T. Jordan* (D.C. App. 1967, 232 A. 2d 298).

Defendant's conduct and not crowd's reaction to it must be starting point for determining whether defendant's message was of such nature as to come within ambit of free speech guarantee of First Amendment, and audience reaction and immediacy of disorder become significant elements of proof of disorderly conduct only after speaker passes bounds of argument or persuasion and undertakes incitement to riot. *C. R. Allen v. District of Columbia* (D.C. App. 1963, 187 A. 2d 888).

Defendant's activities in counterpicketing another organization by carrying a sign demanding more police brutality for "Reds" and dragging what purported to be flag of a foreign government on ground in front of crowd, which gave no open displays of anger or threats of violence, was within protection of First Amendment and did not constitute disorderly conduct. *Id.*

#### Enforcement

Police are not obliged to stand by and await occurrence of act of violence before stepping in to control situation and maintain peace and order. *W. L. Rodgers v. United States and District of Columbia* (D.C. App. 1972, 290 A. 2d 395).

#### Evidence

Evidence was sufficient to support defendants' convictions of disorderly conduct. *Smith v. District of Columbia* (D.C. App. 1966, 219 A. 2d 842).

Testimony of police officer that accused had hit, shoved and kicked his wife on a public street showed a series of assaults and justified conviction of disorderly conduct. *M. L. Stovall v. United States and District of Columbia* (D.C. App. 1964, 202 A. 2d 390).

Admission, in prosecution for using profane, indecent and obscene language, disorderly conduct, and making rude and obscene gestures, of witnesses' conclusions that language was profane, obscene and indecent was reversible error, even though proof of actions may have been sufficient to sustain conviction. *C. P. Heilman, Jr. v. District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 141).

#### — Sufficiency

Where the defendant's actions, in course of his efforts to gain entry into auditorium without ticket, appeared to bring him within scope of statute providing penalty for incitement to riot, evidence supported finding of guilt of disorderly conduct. *W. L. Rodgers v. United States and District of Columbia* (D.C. App. 1972, 290 A. 2d 395).

Evidence was sufficient to sustain conviction of disorderly conduct. *K. M. Sams v. District of Columbia* (D.C. App. 1968, 244 A. 2d 479).

#### Fines

Although other persons arrested at same time as defendants and charged with same offense, upon their election to forfeit posted collateral of \$10.00, were required to pay only that amount, defendants, who were given fines of \$50 each or 10 days in jail, could not

complain, where they elected to stand trial and, after conviction, trial judge, as he has a right to do, imposed fines larger than amount posted for collateral. *Smith v. District of Columbia* (D.C. App. 1966, 219 A. 2d 842).

#### Impeachment

Prosecution was not entitled to attempt to impeach testimony of defendant indicted for second-degree murder by referring to thirteen prior convictions of petty offenses of vagrancy, disorderly conduct and soliciting prostitution, inasmuch as, although such offenses were District of Columbia Code offenses, as distinguished from municipal ordinances, none of them was triable by jury. *Y. Pinkney v. United States* (1966, 363 F. 2d 696, 124 U.S. App. D.C. 209).

#### Indictment

Allegation of information charging that defendant was then and there a peeping Tom sufficiently charged that defendant's conduct was under circumstances such that a breach of the peace might be occasioned thereby, and information was not defective on grounds that it did not charge that defendant acted with an intent to provoke a breach of the peace or under circumstances such that a breach of the peace might be occasioned thereby. *District of Columbia v. T. Jordan* (D.C. App. 1967, 232 A. 2d 298).

Informations which charged that defendants "in a public place did engage in loud and boisterous talking and other disorderly conduct, to wit: under circumstances such that a breach of the peace may be occasioned thereby, acted in such manner as to annoy, disturb, and interfere with and obstruct and be offensive to others" disclosed only one substantive offense and were not fatally defective because of duplicity. *Smith v. District of Columbia* (D.C. App. 1966, 219 A. 2d 842).

An information alleging that defendant "did then and there engage in disorderly conduct, to wit: was then and there a peeping Tom" was sufficient. *Carey v. District of Columbia* (D.C. Mun. App. 1954, 102 A. 2d 314).

#### Information—Amendment

Amendment of information charging that defendant did interfere with person by jostling against such person and by placing hand in proximity of such person's pocket book and handbag by addition of statutory language of intent to provoke breach of peace or under circumstances that breach of peace may be occasioned thereby was not prejudicial to defendant's defense and was properly allowed. *K. M. Sams v. District of Columbia* (D.C. App. 1968, 244 A. 2d 479).

#### — Sufficiency

Informations charging defendants with jostling which failed to set forth names of the alleged victims was not a fatal omission. *K. M. Sams et al. v. District of Columbia* (D.C. App. 1969, 249 A. 2d 230).

Informations which charged defendants with jostling and failed to allege that jostling was with intent to provoke a breach of peace or under circumstances such that a breach of the peace may be occasioned thereby did not require reversal where no objection to informations on this ground was made, and no showing of prejudice to either defendant was made. *Id.*

Information charging defendant arrested during peace demonstration with disorderly conduct in that she did with intent to provoke breach of peace congregate with others on public street and on grounds of United States Capitol, and did refuse to move, which failed to specify which of several potentially applicable statutes was basis of prosecution, was insufficient. *D. Feeley v. District of Columbia* (1967, 387 F. 2d 216, 128 U.S. App. D.C. 258).

Defendants, who were arrested after refusing to move out of corridor in House wing of Capitol building when ordered to do so by Capitol police, were entitled to know with certainty offense with which they were charged and possible penalty threatened and were entitled to definite reference to the law which they had allegedly violated, and thus where, notwithstanding request of defense, no one had given citation of statute under which prosecution was being had, other than statement of prosecutor that two sections were involved, convictions under section carrying lighter sentence, as requested by prosecutor, were required to be set aside. *D. Smith et al. v. District of Columbia* (1967, 387 F. 2d 233, 128 U.S. App. D.C. 275).



**Intent**

Under statute, one lacking intent to be disorderly may nevertheless be guilty if conduct is such that breach of peace may be occasioned thereby. *G. L. Rockwell v. District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 549).

**Prosecuting attorney**

Prosecuting attorney has power to enter a nolle prosequi in a criminal charge at any time after filing of an information and before trial without approval of trial judge or consent of accused. *Smith v. District of Columbia* (D.C. App. 1966, 219 A. 2d 842).

**Prosecution by Corporation Counsel**

District of Columbia Court of General Sessions has concurrent jurisdiction over all misdemeanors, and Corporation Counsel is proper official to conduct prosecution of offenses under statute providing that whoever with intent to provoke breach of peace, or under circumstances such that breach of peace may be occasioned thereby, congregates with others on public street and refuses to move on when ordered by police shall be fined not more than \$250 or imprisoned not more than 90 days, or both. *G. E. Jalbert, et al. v. District of Columbia* (D.C. App. 1966, 221 A. 2d 94).

Office of Corporation Counsel did not lack jurisdiction to prosecute for violations of disorderly conduct statute on ground that prosecution of offenses punishable by fine and imprisonment must be conducted by the United States Attorney, since the statute relating to prosecutions by United States Attorney specifically excepts prosecutions under disorderly conduct statute from operation of such rule. *D. Feeley, A. Uhrle, B. Dunlap v. District of Columbia* (D.C. App. 1966, 220 A. 2d 325).

The disorderly conduct statute and statute providing that all prosecutions for a violation of disorderly conduct statute shall be conducted in name of and for benefit of District of Columbia and in same manner as provided by law for prosecution of offenses against laws and ordinances of the District must be read together. *Id.*

Informations charging disorderly conduct were properly prosecuted by the Corporation Counsel on behalf of the District of Columbia even though the informations charged an offense punishable by a fine or by imprisonment, or both. *Smith v. District of Columbia* (D.C. App. 1966, 219 A. 2d 842).

**Sentence**

Since prosecutions were brought under general disorderly conduct sections rather than the Capitol Grounds statute, defendants should have been sentenced under statute providing that any person guilty of disorderly conduct in or about public buildings and public grounds shall upon conviction thereof be fined not more than \$50 so that sentences of 91 days in jail were improper notwithstanding that government might have had a choice as to which statute it would proceed under. *D. Feeley, A. Uhrle, B. Dunlap v. District of Columbia* (D.C. App. 1966, 220 A. 2d 325).

**Sufficiency of evidence**

Evidence including showing that a group of 250 demonstrators exceeded authorization of their parade permit, disregarded cautions of police, willfully violated Capitol Grounds statute, blocked a public walkway, refused to move on when validly ordered to do so by police, and engaged in loud and boisterous conduct sustained conviction of violating disorderly conduct statute. *D. Feeley, A. Uhrle, B. Dunlap v. District of Columbia* (D.C. App. 1966, 220 A. 2d 325).

**Violation of civil liberties**

Disorderly conduct statute does not impinge upon exercise of free speech, free assembly, and right to petition the government for redress of grievances; the statute does no more than give police the right within reasonable limitations to keep public sidewalks free of unnecessary obstructions and prevent groups from congregating in way that breach of peace may result. *D. Feeley, A. Uhrle, B. Dunlap v. District of Columbia* (D.C. App. 1966, 220 A. 2d 325).

**§ 22-1122. Rioting or inciting to riot—Penalties.**

(a) A riot in the District of Columbia is a public disturbance involving an assemblage of five or more

persons which by tumultuous and violent conduct or the threat thereof creates grave danger of damage or injury to property or persons.

(b) Whoever willfully engages in a riot in the District of Columbia shall be punished by imprisonment for not more than one year or a fine of not more than \$1,000, or both.

(c) Whoever willfully incites or urges other persons to engage in a riot shall be punished by imprisonment for not more than one year or a fine of not more than \$1,000, or both.

(d) If in the course and as a result of a riot a person suffers serious bodily harm or there is property damage in excess of \$5,000, every person who willfully incited or urged others to engage in the riot shall be punished by imprisonment for not more than ten years or a fine of not more than \$10,000, or both. (Dec. 27, 1967, Pub. L. 90-226, § 901, title IX, 81 Stat. 742.)

**CODIFICATION**

It appears that section 601 of title VI of Pub. L. 91-358, would have repealed title IX (classified as § 22-1122) of Pub. L. 90-226. Apparently it was the intent to repeal title X of Pub. L. 90-226. To correct this error, Congress enacted section 2(b) of Pub. L. 91-530. The applicable sections read as follows:

**PUBLIC LAW 91-358, JULY 29, 1970****TITLE VI—ABOLITION OF COMMISSION ON REVISION OF THE CRIMINAL LAWS OF THE DISTRICT OF COLUMBIA****ABOLITION OF COMMISSION**

SEC. 601. Title IX of the Act entitled "An Act relating to crime and criminal procedure in the District of Columbia", approved December 27, 1967 (Public Law 90-226), is repealed.

**PUBLIC LAW 91-530, DEC. 7, 1970****Sec. 2(a) \* \* \***

(b) (1) Section 601 of the Act of July 29, 1970 (84 Stat. 667), is amended by striking out "IX" and inserting in lieu thereof "X".

(2) It is the intent of Congress that the amendment made by paragraph (1) of this subsection shall (A) revive title IX of the Act of December 27, 1967 (81 Stat. 742), as of the date of enactment of this Act, and (B) repeal title X of such Act of December 27, 1967 (81 Stat. 742), as of the date of enactment of this Act.

**SENTENCE FOR OFFENSES COMMITTED PRIOR TO DEC. 27, 1967, AND SEPARABILITY OF PROVISIONS**

See §§ 1101 and 1102 of Act Dec. 27, 1967, Pub. L. 90-226, set out as notes to § 22-501.

**CROSS REFERENCES**

Disqualification from holding any position in the District of Columbia Government, for five years, after conviction of inciting a riot or civil disorder, see 5 U.S.C. § 7313.

Other provisions relating to civil disorders, penalties and definitions, see 18 U.S.C. §§ 231-233.

Other provisions relating to riots, see 18 U.S.C. §§ 2101-2.

**NOTES TO DECISIONS****Constitutionality**

This section is not unconstitutional as being unduly vague in its employment of words such as "public disturbance," "tumultuous and violent conduct," and "grave danger of damage or injury." *United States v. C. Mathews* (1969, 419 F. 2d 1177, 136 U.S. App. D.C. 196).

The word "engages" as used in statute prohibiting willfully engaging in a riot was not so vague as to make statute unconstitutional. *United States v. J. Jeffries et al.* (1968, 45 F.R.D. 110).

Where indictments uniformly accused the defendants in other counts with burglary and often larceny as well, which took place at same time and same place, riot statute that was basically concerned with conduct rather



than free expression did not unconstitutionally intrude on defendants' First Amendment rights. *Id.*

A riot statute may limit speech under certain circumstances. *Id.*

#### Construction

The court concluded that any person who, on encountering a riot, openly seizes goods he knows to have been looted or accessible to him only by virtue of disturbance will be deemed to have aided, encouraged and furthered the riot and, by so doing, to have engaged in it within meaning of this section. *United States v. C. Mathews* (1969, 419 F. 2d 1177, 136 U.S. App. D.C. 196).

The public disturbance with which this section deals is undoubtedly compounded of unlawful conduct variously deriving from purposeful destructiveness and foolish greed, and the fact that latter does not offer as ugly a face does not mean that the two do not interact upon each other and make a common, albeit perhaps unequal, contribution to the evil against which the statute is aimed. *Id.*

#### Evidence

The defendants need not have been acting in concert in order to be convicted of engaging in a riot and proof as to conduct of each defendant was proof as to other two. *United States v. J. Jeffries et al.* (1968, 45 F.R.D. 119).

Since evidence of a riot includes proof of assemblage, proof of acts of other two defendants would be admissible with respect to acts of any one defendant. *Id.*

#### Indictment

A failure to allege an unlawful entry in count charging second-degree burglary amounted to no more than harmless error. *United States v. J. Jeffries et al.* (1968, 45 F.R.D. 110).

Since no indictment for a violation of riot statute had been returned charging engaging in riot alone but rather always that count was coupled with counts charging burglary and grand or petty larceny, the grand jury considered engaging in a riot in violation of statute in conjunction with separate but immediately related criminal conduct and there was no loose, unguided approach to indictments returned by grand jury under riot statute that would deprive defendants of their constitutional rights. *Id.*

#### Instructions

The court's refusal to give defendant's requested instruction that jury must acquit him of riot if they believed his testimony that he was not within store being burglarized in riot district was not error, inasmuch as one who knowingly participates in looting phase of a riot can, without constitutional transgression, be comprehended by Congress within those identified by this section as engaging in the proscribed "violent and tumultuous conduct." *United States v. C. Mathews* (1969, 419 F. 2d 1177, 136 U.S. App. D.C. 196).

#### Joint trial

By participating in a mob-like action, defendants had made themselves liable to a joint trial on count charging engaging in a riot. *United States v. J. Jeffries et al.* (1968, 45 F.R.D. 119).

#### Partial acquittal

Although the defendant was acquitted on charge of burglarizing a liquor store in a riot district did not of itself establish that jury accepted defendant's testimony that he did not enter store, thereby making it erroneous for trial court to interpret anti-riot statute as permitting jury to find defendant guilty of engaging in a riot, since, absent an instruction to the effect that jury should acquit defendant of riot count if it accepted his testimony as true, it was impossible to make any assumption as to precisely how jury viewed facts. *United States v. C. Mathews* (1969, 419 F. 2d 1177, 136 U.S. App. D.C. 196).

## Chapter 12.—EMBEZZLEMENT

#### Sec.

- 22-1201. Embezzlement of property of District of Columbia.
- 22-1202. Embezzlement by agent, attorney, clerk, servant, or agent of a corporation.
- 22-1203. Embezzlement of note not delivered.

#### Sec.

- 22-1204. Receiving embezzled property.
- 22-1205. Embezzlement by carriers and innkeepers.
- 22-1206. Embezzlement by warehouseman, factor, storage, forwarding, or commission merchant.
- 22-1207. Punishment for violations of sections 22-1202 to 22-1206.
- 22-1208. Conversion by commission merchant, consignee, person selling goods on commission, and auctioneers.
- 22-1209. Embezzlement by mortgagor of personal property in possession.
- 22-1210. Embezzlement by executors and other fiduciaries.
- 22-1211. Taking property without right.

### § 22-1201. Embezzlement of property of District of Columbia.

Whoever, being charged with the collection, receipt, safe-keeping, transfer, or disbursement of public money or other property or effects belonging or payable to the District of Columbia or in the custody of the same, fraudulently converts to his own use, or to the use of any other person, body corporate, or association whatever, or uses, by way of investment, in any kind of security, stock, loan, property, or in any other manner or form loans, with or without interest, to any company, corporation, association, or individual, excepting by depositing in bank to said party's own credit, in the usual course of business, any public money, funds, property, bonds, securities, assets, or effects received, controlled, or held by him for safe-keeping or for any other purpose, shall forfeit all right, by way of commissions or compensation, to any part of the said money or other property and shall be deemed guilty of embezzlement of the whole of the money or other property thus converted, used, invested, loaned, deposited, or paid out, and shall be imprisoned for not more than twenty years and fined in a sum not exceeding double the value of the money or property embezzled. (Mar. 3. 1901, 31 Stat. 1325, ch. 854, § 833.)

#### CROSS REFERENCES

Allegation and proof of intent to defraud, see § 23-322.  
Joinder of offenses, see § 23-311.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22-1204.

#### NOTES TO DECISIONS

#### Impeachment

In this case, the court held that, inasmuch as the defendant's prior convictions of unauthorized use of vehicle and petit larceny were introduced in evidence on his own direct examination in effort to support contention that he was framed with respect to grand larceny charge by one of government's witnesses, he could not successfully complain of alleged error in permitting him to be impeached by prior convictions, notwithstanding decisions stating that the offense of taking property without right does not bear on credibility. *United States v. G. W. Lucas* (1970, 426 F. 2d 663, 138 U.S. App. D.C. 186).

### § 22-1202. Embezzlement by agent, attorney, clerk, servant, or agent of a corporation.

If any agent, attorney, clerk, or servant of a private person or copartnership, or any officer, attorney, agent, clerk, or servant of any association or incorporated company, shall wrongfully convert to his own use, or fraudulently take, make way with, or secrete, with intent to convert to his own use, anything of value which shall come into his possession or under his care by virtue of his employment



or office, whether the thing so converted be the property of his master or employer or that of any other person, copartnership, association, or corporation, he shall be deemed guilty of embezzlement, and shall be punished by a fine not exceeding one thousand dollars, or by imprisonment for not more than ten years, or both. (Mar. 3, 1901, 31 Stat. 1325, ch. 854, § 834.)

#### CROSS REFERENCES

Building or homestead association, misappropriation of assets as larceny, see § 26-404.

Larceny of property held for use and benefit of another, see § 22-2203.

Life insurance agent failing to account for premiums, guilt of embezzlement, see § 35-429.

Penalty for violating section when value is less than \$100, see § 22-1207.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-1203 to 22-1205, 22-1207.

#### NOTES TO DECISIONS

##### Agency

An agent who converts funds delivered to him on the false representation that they are needed in the principal's business is guilty of embezzlement. *Woodward v. United States* (1912, 38 App. D. C. 323).

"It is immaterial whether he receives possession of the property from a third person or from his master; for in either case the property is under his care, and if he converts it he is guilty of embezzlement." *Henry v. United States* (1921, 273 F. 330, 50 App. D.C. 366, certiorari denied 42 S. Ct. 51, 257 U.S. 640, 66 L. Ed. 411).

Preexisting agency was not necessary. "If the agency came into existence contemporaneously with the delivery of the certificates, that would be enough." *Id.*

##### Attorney

Assignment of claim to an attorney for the purpose of collection, and to cover his fee for collection does not create the relation of debtor and creditor, so as to defeat a charge of embezzlement. *Patterson v. United States* (1912, 39 App. D.C. 84, certiorari denied 33 S. Ct. 114, 226 U.S. 609, 57 L. Ed. 380).

##### Broker

Broker who converts stock certificates delivered to him for sale is guilty of embezzlement. *Henry v. United States* (1921, 273 F. 330, 50 App. D.C. 366, certiorari denied 42 S. Ct. 51, 257 U.S. 640, 66 L. Ed. 411).

##### Classes of acts

This section "describes two classes of acts, either one of which constitutes embezzlement: The first being the wrongful conversion to his own use, by the accused, of property which has come into his possession by virtue of his employment, and the second being the fraudulent taking, making way with, or secreting with intent to convert, such property to his own use." *Gassenheimer v. United States* (1906, 26 App. D. C. 432).

Offense of embezzlement is single, which the statute says may be committed by either of two methods or ways, count which charges that the embezzlement was committed by means of both methods is not bad for duplicity and proof of either means in the commission of the offense will sustain a conviction. *O'Brien v. United States* (1906, 27 App. D.C. 263).

##### Definition

"Generally speaking, it (embezzlement) may be defined as the fraudulent conversion of another's property by one to whom it has been intrusted, with the intent of depriving the owner thereof." *Ambrose v. United States* (1916, 45 App. D.C. 112).

##### Demand as necessary

In embezzlement prosecution, the test as to necessity for demand is not whether the funds were acquired voluntarily, but rather, whether there is either a fixed time for accounting, at which time accused defaulted, or some other convincing proof to uphold the charge of wrongful

conversion. *Dobbins v. United States* (1946, 157 F. 2d 257, 81 U.S. App. D.C. 218, certiorari denied 67 S. Ct. 99, 329 U.S. 734, 91 L. Ed. 634).

Where funds are voluntarily turned over to accused, a demand and refusal to pay over may be strong evidence going to make out crime of embezzlement, but such a showing is not fundamentally necessary where there is other convincing proof to support conviction for embezzlement. *Id.*

##### Directed verdict

Where indictment sufficiently charged embezzlement and opening statement on behalf of Government set out in considerable detail nature of evidence on which prosecution would rely, prosecutor's failure to state that Government would prove a "wrongful conversion" or "fraudulent taking" did not entitle defendant to a directed verdict at close of Government's opening statement. *Dobbins v. United States* (1946, 157 F. 2d 257, 81 U.S. App. D.C. 218, certiorari denied 67 S. Ct. 99, 329 U.S. 734, 91 L. Ed. 634).

##### Election of offenses

Where indictment charged embezzlement, false pretense, and larceny after trust, any confusion which might have existed as a result of the prosecution being allowed to put in its case before making an election was dispelled by election at end of Government's case and by instructions to jury. *Dobbins v. United States* (1946, 157 F. 2d 257, 81 U.S. App. D.C. 218, certiorari denied 67 S. Ct. 99, 329 U.S. 734, 91 L. Ed. 634).

Where indictment charged embezzlement, false pretense, and larceny after trust, defendant's motion that Government be required to elect to place its case on one of the three crimes charged before putting in evidence was addressed to discretion of trial court and its denial of motion was not an abuse of discretion. *Id.*

##### Evidence—Admissibility

Defendant's reputation for honesty and integrity is admissible. *Masters v. United States* (1914, 42 App. D.C. 350, Ann. Cas. 1916A, 1243).

It is competent for the government to prove the financial condition of the guardian at or immediately prior to an alleged offense, but evidence of other similar offenses is inadmissible unless there is some connection between the acts shown and one which accused is charged. *Ambrose v. United States* (1916, 45 App. D. C. 112).

The fact that defendant hypothecated stock and received \$4,000 therefor is not proof that the stock was worth more than \$35. *Henry v. United States* (1920, 263 F. 459, 49 App. D.C. 207).

Actual value of stock may be proved by the testimony of persons familiar with the affairs of the company, its assets, and the dividend-earning capacity of the stock, and by individual sales of stock at or near the date when the conversion occurred and actual value thus established furnishes a proper basis upon which the jury may make a finding. *Id.*

"Evidence of an intent at the time of the conversion to restore the embezzled money is not admissible. *Henry v. United States* (1921, 273 F. 330, 50 App. D.C. 366, certiorari denied 42 S. Ct. 51, 257 U.S. 640, 66 L. Ed. 411).

In prosecution for embezzlement, evidence that unpaid bills were found in defendant's possession 38 days after alleged commission of offense was admissible, and its weight regarding defendant's financial condition at time of the offense was for jury. *Lee v. United States* (D. C. Mun. App. 1945, 40 A. 2d 250).

##### —Parole evidence

In embezzlement prosecution against building contractor who received a \$3,500 down payment from prosecuting witness who desired to have a house built on a vacant lot which the prosecuting witness did not own, parole evidence was admissible to show that, despite terms of written contract reciting that contractor was to construct the house for prosecuting witness and that prosecuting witness had made an advance payment of \$3,500, the contractor had orally agreed to purchase the lot for prosecuting witness and that pursuant to such agreement the prosecuting witness had made a \$3,500 down payment on lot and that prosecuting witness mistakenly believed that the written contract embodied the purchase of the lot as well as the construction of the house and that the \$3,500 was delivered to contractor as agent



to purchase lot for prosecuting witness and that contractor knew that prosecuting witness entertained such mistaken belief. *Gibson v. United States* (1959, 268 F. 2d 586, 106 U.S. App. D.C. 10).

#### — Sufficiency

Evidence was sufficient to sustain conviction for embezzlement. *Dobbins v. United States* (1946, 157 F. 2d 257, 81 U. S. App. D. C. 218, certiorari denied 67 S. Ct. 99, 329 U.S. 734, 91 L. Ed. 634).

Evidence was sufficient to sustain conviction of secretary-treasurer of firemen's relief association for embezzlement of death benefits due fireman's widow. *United States v. Daigle* (D.C.D.C. 1957, 149 F. Supp. 409, affirmed 248 F. 2d 608, 101 U. S. App. D. C. 286, certiorari denied 78 S. Ct. 344, 355 U. S. 913, 2 L. Ed. 2d 274).

#### False pretenses

Indictment charging that accused had procured a check from woman to invest money with him upon false representation that he had contract with third party, and when such relationship was that of borrower and lender and not principal and agent it sufficiently charged the crime of obtaining value by false pretenses and not embezzlement. *Davis v. United States* (1911, 37 App. D. C. 126).

#### Financial condition

In embezzlement prosecution, the prosecution may show defendant's straitened financial condition only at or immediately prior to the commission of the offense. *Lee v. United States* (D.C. Mun. App. 1945, 40 A. 2d 250).

Admission of testimony regarding defendant's financial condition reasonably related to dates charged in embezzlement indictment was not error. *Dobbins v. United States* (1946, 157 F. 2d 257, 81 U.S. App. D.C. 218, certiorari denied 67 S. Ct. 99, 329 U.S. 734, 91 L. Ed. 634).

Evidence by defendant of his financial standing is incompetent. *Masters v. United States* (1914, App. D.C. 350, Ann. Cas. 1916A, 1243).

#### Forgery

An employee, who, without authority, indorses his employer's name on a check payable to the latter's order, and cashes it, is guilty of forgery and not embezzlement. *Dowling v. United States* (1913, 41 App. D.C. 11).

When defendant acted as bookkeeper, salesman, and collector and was authorized to indorse the name of the company on the checks, he was guilty of forgery and not embezzlement when he indorsed his own name and appropriated the money. *Yeager v. United States* (1929, 32 F. 2d 402, 59 App. D.C. 11).

#### Indictment

It is not necessary to allege the "particular way or means by which the conversion was effected." *Gassenheimer v. United States* (1906, 26 App. D.C. 432).

A general verdict of guilty on an indictment charging embezzlement and false pretenses will be set aside as inconsistent. *Davis v. United States* (1911, 37 App. D.C. 126).

In an indictment for wrongful conversion it is not necessary to allege an intent to defraud. *Patterson v. United States* (1912, 39 App. D.C. 84, certiorari denied 33 S. Ct. 114, 226 U.S. 609, 57 L. Ed. 380).

"The stealing or conversion of property belonging to different persons at the same time and place constitutes but a single offense and should be prosecuted as such." *Henry v. United States* (1920, 263 F. 459, 49 App. D.C. 207).

Under this section which describes two classes of acts, either one of which constitutes embezzlement, an indictment charging the commission of both of such acts is not bad for duplicity, and a conviction is warranted upon proof of the commission of either of the acts. *Turner v. United States* (1927, 16 F. 2d 535, 57 App. D.C. 39).

#### Instruction

Where, in prosecution for embezzlement, grand larceny, forgery, and uttering in connection with payment of death benefits to firemen's widows by defendant as officer of firemen's relief association, there was no question as to what specific sum of money was involved, defendant had sufficient information to make his defense, and there was not chance of double jeopardy, and, therefore, any variance in proof of ownership under instruction that, although money was alleged to be association's, it

would not be fatal to conviction if money was found to be payee's, was not prejudicial. *United States v. Daigle* (D.C.D.C. 1957, 149 F. Supp. 409, affirmed 248 F. 2d 608, 101 U.S. App. D.C. 286, certiorari denied 78 S. Ct. 344, 355 U.S. 913, 2 L. Ed. 2d 274).

#### Intent

Hotel cashier clerk's conversion of \$649 of employer's \$1,000 placed in clerk's custody was not accompanied by criminal intent essential to embezzlement by employee wrongfully converting employer's funds to employee's use, where clerk had carelessly left hotel with the \$649 at end of his tour of duty, instead of leaving it there, and thereafter clerk lost or somebody stole the money. *C. E. Anzoategui v. United States* (1964, 335 F. 2d 1000, 118 U.S. App. D.C. 337).

To wrongfully convert money is an act in its nature evil, and the statement of the act itself imports the evil intent. *O'Brien v. United States* (1906, 27 App. D.C. 263).

An agent converting funds of his principal delivered to him in the District of Columbia cannot be convicted of embezzlement if he formed the intent to convert outside of the District. *Woodward v. United States* (1912, 38 App. D.C. 323).

"The principle is that where a statute prohibits an act under certain circumstances, and a person commits the act not under a mistake of fact, a criminal intention is conclusively presumed." *Patterson v. United States* (1912, 39 App. D.C. 84, certiorari denied 33 S. Ct. 114, 226 U.S. 609, 57 L. Ed. 380).

"Before there can be a conversion of the property of another there must be an intent on the part of the doer of the act to convert the property to his own use without the consent of the owner. But a wrongful conversion implies a conversion by the doer of the act without color of right, and with the evil intent of converting the property to his own use. The intent to wrongfully convert the property of another implies more than the intent to merely convert. It implies a mind at fault, an evil mind, capable of intentionally committing the offense here defined by the statute." *Fulton v. United States* (1916, 45 App. D.C. 27). See, also, *Masters v. United States* (1914, 42 App. D.C. 350, Ann. Cas. 1916A, 1243).

#### Larceny

Principal difference between larceny and embezzlement lines in the manner in which possession of the property is acquired; in larceny there is a trespass, accompanied by an intent to steal while in embezzlement there is a fraudulent conversion of property the possession of which was lawfully acquired; in either case, except under special statutes, evil intent must be shown. *Ambrose v. United States* (1916, 45 App. D.C. 112).

To sustain a conviction of grand larceny "it must be alleged and proved that the value of the property embezzled is over \$35.00." *Henry v. United States* (1920, 263 F. 459, 49 App. D.C. 207).

Bookkeeper of hotel is mere employee and when he absconded with envelopes it constituted larceny and not embezzlement. *Chanock v. United States* (1920, 267 F. 612, 50 App. D.C. 54, 11 A.L.R. 799).

#### Production of statements and reports

Reports, which were made by agent of Federal Bureau of Investigation on basis of notes of interviews with another witness, who had also testified for prosecution, and which were prepared from 10 days to a month and a half after interviews and were summaries and not verbatim notes of interviews, were not statements required to be produced under statute concerning production of statements and reports of witnesses, and refusal of court to order their production for use of defense in a prosecution for alleged mishandling of funds of Federal Credit Union at Naval Air Station was not error. *Borges v. United States* (1959, 270 F. 2d 332, 106 U.S. App. D.C. 139).

#### Promissory note

A promissory note may be the subject of embezzlement. *Reeves v. United States* (1927, 15 F. 2d 734, 56 App. D.C. 376).

#### Railroad conductor

A railroad conductor who collects and subsequently sells tickets is guilty of embezzlement. *Gassenheimer v. United States* (1906, 26 App. D.C. 432).



**Repayment**

Where there has been wrongful conversion, repayment will not serve to clear defendant of charge of embezzlement. *Dobbins v. United States* (1946, 157 F. 2d 257, 81 U.S. App. D.C. 218, certiorari denied 67 S. Ct. 99, 329 U.S. 734, 91 L. Ed. 634).

**Review**

Where defendant was convicted under two counts of two consolidated indictments charging embezzlement and two counts charging obtaining money by false pretenses and sentences on false pretenses counts were each less than sentences imposed on embezzlement counts and were concurrent therewith and the convictions on the embezzlement counts were sustained, defendant's contentions regarding the convictions on the false pretenses counts would not be examined by Court of Appeals. *Gibson v. United States* (1959, 268 F. 2d 586, 106 U.S. App. D.C. 10).

**"Under his care"**

Phrase "Under his care" will cover property merely in his custody, and therefore, under such a statute, it is immaterial whether he receives possession of the property from a third person or from his master; for in either case the property is under his care, and if he converts it he is guilty of embezzlement. *Henry v. United States* (1921, 273 F. 330, 50 App. D.C. 366, certiorari denied 42 S. Ct. 51, 257 U.S. 640, 66 L. Ed. 411).

**Verdict**

Where court instructed jury that if it should find defendant guilty of embezzlement as to either transaction, it would have to return a verdict of not guilty as to the companion larceny count, but jury found defendant guilty of both embezzlement and larceny as to the same transaction, District Court had right to direct verdict of acquittal on larceny count, and defendant was not prejudiced by any alleged "choice of verdicts" since penalty for embezzlement was less than that for larceny. *United States v. Daigle* (D.C.D.C. 1957, 149 F. Supp. 409, affirmed 248 F. 2d 608, 101 U.S. App. D.C. 286, certiorari denied 78 S. Ct. 344, 355 U.S. 913, 2 L. Ed. 2d 274).

**Wrongful conversion**

Prosecution must demonstrate beyond reasonable doubt that there was a wrongful conversion by defendant to establish crime of embezzlement, and a mere conversion will not suffice. *Dobbins v. United States* (1946, 157 F. 2d 257, 81 U.S. App. D.C. 218, certiorari denied 67 S. Ct. 99, 329 U.S. 734, 91 L. Ed. 634).

**§ 22-1203. Embezzlement of note not delivered.**

Every embezzlement of any evidence of debt negotiable by delivery only, actually executed by the master or employer of any such clerk, attorney, agent, officer, or servant, but not delivered or issued as a valid instrument, shall be deemed an offense within the meaning of section 22-1202. (Mar. 3, 1901, 31 Stat. 1325, ch. 854, § 835.)

**CROSS REFERENCE**

Penalty for violating section when value is less than \$100, see § 22-1207.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 22-1204, 22-1207.

**NOTES TO DECISIONS****In general**

There was no error in overruling the motion in arrest of judgment which contended that the indictment did not allege that the railroad tickets therein described or any one of them was embezzled in any manner described in this section. *Gassenheimer v. United States* (1906, 26 App. D.C. 432).

**§ 22-1204. Receiving embezzled property.**

Every person who shall buy or in any way receive anything of value, knowing the same to have been embezzled, taken, or secreted contrary to the provisions of sections 22-1201 to 22-1203, shall be pun-

ished in the same manner and to the same extent as prescribed in said sections, respectively. (Mar. 3, 1901, 31 Stat. 1325, ch. 854, § 836.)

**CROSS REFERENCES**

Allegation and proof of intent to defraud, see § 23-322.

Joinder of offenses, see § 23-311.

Penalty for violating section when value is less than \$100, see § 22-1207.

Receiving stolen goods, see §§ 22-2205, 22-2207.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 22-1207.

**NOTES TO DECISIONS****Property embezzled**

Quaere. Whether this section embraces "the receipt of property that may have been embezzled in another jurisdiction, as embezzlement is defined in our Code, or is limited to that which may have been embezzled in the District of Columbia." *Gassenheimer v. United States* (1906, 26 App. D.C. 432).

**Sufficiency of proof**

"To convict the defendant, it was necessary to prove first, that the property had been embezzled by Barnes in the District of Columbia \* \* \* and second that the defendant had bought, or in any way received, it from Barnes, 'knowing the same to have been embezzled, etc.,' as provided in section 836" (this section) *Gassenheimer v. United States* (1906, 26 App. D.C. 432).

**§ 22-1205. Embezzlement by carriers and innkeepers.**

Any person intrusted with anything of value, to be carried for hire, or being an innkeeper and intrusted by his guest with anything of value for safe-keeping, who fraudulently converts the same to his own use, shall be deemed guilty of embezzlement and punished as provided in section 22-1202. (Mar. 3, 1901, 31 Stat. 1325, ch. 854, § 837.)

**CROSS REFERENCE**

Penalty for violating section when value is less than \$100, see § 22-1207.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 22-1207.

**NOTES TO DECISIONS****Innkeeper**

Bookkeeper and clerk in hotel is not an "innkeeper" as defined in this section. *Chanock v. United States* (1920, 267 F. 612, 50 App. D.C. 54, 11 A.L.R. 799).

**Innkeeper and guest**

One who is merely a customer at a bar, restaurant, barbershop, or newsstand operated by hotel does not thereby establish relationship of "innkeeper and guest". *Wallace v. Shoreham Hotel Corp.* (D. C. Mun. App. 1946, 49 A. 2d 81).

**§ 22-1206. Embezzlement by warehouseman, factor, storage, forwarding, or commission merchant.**

Any warehouseman, factor, storage, forwarding, or commission merchant, or his clerk, agent, or employee, who, with intent to defraud the owner thereof, sells, disposes of, or applies or converts to his own use any property intrusted or consigned to him, or the proceeds or profits of any sale of such property shall be deemed guilty of embezzlement, and shall suffer imprisonment for not more than ten years. (Mar. 3, 1901, 31 Stat. 1325, ch. 854, § 838.)

**CROSS REFERENCES**

Auctioneer, embezzlement by, see § 22-1208.

Penalty for violating section when value is less than \$100, see § 22-1207.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 22-1207.



## NOTES TO DECISIONS

**Factor or commission merchant**

One who receives and takes possession of produce as the agent of the owner to sell for them is a factor or commission merchant within the meaning of this section, and this is so, although defendant had no store and was engaged in the brokerage business. *Green v. United States* (1905, 25 App. D.C. 549).

**§ 22-1207. Punishment for violations of sections 22-1202 to 22-1206.**

Whoever shall be guilty of any offense defined in sections 22-1202 to 22-1206, shall, where the thing, evidence of debt, property, proceeds, or profits be of the value of less than \$100, be punished by imprisonment for not more than one year or a fine of not more than \$200 or both. (Mar. 3, 1901, ch. 854, § 851a, as added Mar. 3, 1913, 37 Stat. 727, ch. 107, and amended Aug. 12, 1937, 50 Stat. 629, ch. 599; June 29, 1953, 67 Stat. 99, ch. 159, § 215(f).)

## AMENDMENTS

1953—Act June 29, 1953, increased the valuation of the subject matter of embezzlement from \$50 to \$100.

1937—Act Aug. 12, 1937, increased the valuation of the subject matter of embezzlement by substituting "value of less than \$50" for "value of not more than thirty-five dollars," and decreased the fine by substituting "\$200" for "five hundred dollars,".

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22-1409.

**§ 22-1208. Conversion by commission merchant, consignee, person selling goods on commission, and auctioneers.**

If any factor, commission merchant, consignee, or any person selling goods on commission, or the agent clerk, or servant of such person, shall convert to his own use in the District of Columbia any provisions, fruits, flour, meat, butter, cheese, or any other goods, merchandise, or property, or the proceeds of the same, and shall fail to pay over the avails or proceeds less his proper charges, within five days after receiving the money or its equivalent from the purchaser or purchasers of said goods or produce, and after demand made therefor by the person entitled to receive the same, or his or her duly-authorized agent, he shall be deemed guilty of a misdemeanor, and upon information and conviction in the Superior Court of the District of Columbia shall be fined not more than one thousand dollars or be imprisoned not exceeding six months, or both, in the discretion of the court. The provisions of this section shall be applicable to all licensed auctioneers, their agents and employees. (Mar. 21, 1892, 27 Stat. 10, ch. 19; July 1, 1902, 32 Stat. 623, ch. 1352, § 7, par. 8; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

## AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

1902—Act July 1, 1902, provided that section should be applicable to licensed auctioneers, their agents and employees.

## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

## CHANGE OF NAME

"Municipal court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the police court and the municipal court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

## CROSS REFERENCES

Allegation and proof of intent to defraud, see § 23-322.  
Joinder of offenses, see § 23-311 et seq.

**§ 22-1209. Embezzlement by mortgagor of personal property in possession.**

(a) A person or any legal successor in interest of such person, having executed a security agreement creating a security interest in personal property securing a monetary obligation owed to a secured party and having under the security agreement:

(1) both the right of sale or other disposition of the property and the duty to account to the secured party for the proceeds of the disposition, sells or otherwise disposes of the property but willfully and wrongfully fails to account to the secured party for proceeds of disposition; or

(2) no right of sale or other disposition of the property, willfully and wrongfully secretes, withholds, sells, or disposes of the property, or converts it to his own use, or, without the consent of the secured party, removes it out of the District, or maliciously injures or destroys it, in violation of the security agreement—

if the lesser of the value of the proceeds not so accounted for or of the property so secreted, withheld, sold, disposed of, converted, removed, or injured or destroyed, or, in either case, of the unpaid balance of the monetary obligation so secured, is more than \$100, shall be fined not more than \$5,000 or imprisoned not more than five years, or both; or, if the lesser of any of the values as herein described is \$100 or less, shall be fined not more than \$1,000 or imprisoned not more than one year or both.

(b) In a case in which a debtor in possession of personal property subject to a security interest, who would be guilty of an offense under this section, is a corporation or a partnership, an officer, director, partner, or agent of the debtor who aids or abets in the commission of the offense shall be punished as provided by subsection (a) of this section.

(c) As used in this section, "security agreement", "security interest", and "secured party" have the same meanings as those given to the terms by sections 28:9-105(h), 28:1-201(38), and 28:9-105(i), respectively, of the District of Columbia Code. (Mar. 3, 1901, 31 Stat. 1326, ch. 854, § 839; Dec. 30, 1963, 77 Stat. 769, Pub. L. 88-243, § 3.)

## AMENDMENT

1963—Act Dec. 30, 1963, subdivided section into subsections, and amended section generally to conform the provisions with the Uniform Commercial Code, Subtitle I of Title 28. Prior to such amendment, section read as follows: "Any mortgagor of personal property in possession of the same, who, with intent to defraud the owner of the claim secured by the mortgage, removes any of the mortgage property out of the District, or secretes or sells the same, or converts the same to his own use shall be deemed guilty of embezzlement, and shall be punished by



a fine not exceeding one thousand dollars, or by imprisonment for not more than five years, or both."

#### EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 30, 1963, was made effective on Jan. 1, 1965. See note preceding Article I of subtitle I of title 28.

### § 22-1210. Embezzlement by executors and other fiduciaries.

Any executor, administrator, guardian, trustee, receiver, collector, or other officer into whose possession money, securities, or other property of the property or estate of any other person may come by virtue of his office or employment, who shall fraudulently convert or appropriate the same to his own use, shall forfeit all right or claim to any commissions, costs, and charges thereon, and shall be deemed guilty of embezzlement of the entire amount or value of the money or other property so coming into his possession and converted or appropriated to his own use, and shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding ten years, or both (Mar. 3. 1901. 31 Stat. 1326, ch. 854, § 841.)

#### NOTES TO DECISIONS

##### Commingling

More commingling of trust funds with personal funds "affords no sufficient basis for a presumption of evil intent." *Ambrose v. United States* (1916, 45 App. D.C. 112).

##### Evidence

In proving intent "it is competent for the government to prove the financial condition of the accused at or immediately prior to the alleged offense." *Ambrose v. United States* (1916, 45 App. D.C. 112).

Evidence of similar offenses is admissible to show a course of conduct or a general scheme, but there must be some possible connection between the acts shown and the one on account of which the defendant is being tried. *Id.*

##### Indictment

Indictment is sufficient which charges with precision and certainty that the defendant was appointed a receiver by order of court; that by virtue of said appointment he came into possession of a certain sum of money, alleged to be the property of the association and that on a certain date, he unlawfully and fraudulently converted and appropriated the same to his own use, and did then and there embezzle the same. *Fields v. United States* (1906, 27 App. D.C. 433, certiorari denied 27 S. Ct. 543, 205 U.S. 292, 51 L. Ed. 807).

##### Intent to defraud

"Intent to defraud is an essential element of the crime denounced by section 841 (this section)." *Ambrose v. United States* (1916, 45 App. D.C. 112).

##### Receivers

This section "comprehends property that may have passed into the defendant's possession as receiver before the time that it went into effect when embezzled thereafter." *Fields v. United States* (1906, 27 App. D.C. 433, certiorari denied 27 S. Ct. 543, 205 U.S. 292, 51 L. Ed. 807).

##### Sentence

A sentence under this section containing the words "at labor" will be modified by striking out such words as surplusage. *Fields v. United States* (1906, 27 App. D.C. 433, certiorari denied 27 S. Ct. 543, 205 U.S. 292, 51 L. Ed. 807).

### § 22-1211. Taking property without right.

The taking and carrying away of the property of another in the District of Columbia without right to do so shall be a misdemeanor, punishable by a fine not to exceed one hundred dollars, or imprisonment for a term not to exceed six months, or both. (July

8, 1893, 30 Stat. 724, ch. 638; Apr. 21, 1906, 34 Stat. 127, ch. 1647.)

#### AMENDMENT

1906—Act Apr. 21, 1906, increased the limit for imposition of fines from forty to one hundred dollars and provided for punishment by imprisonment or both fine and imprisonment.

#### NOTES TO DECISIONS

##### Amendments

In prosecution for taking property without right, amendment of petition, at prosecution's request, to conform to proof that taking occurred at 11:30 p. m., instead of 11:30 a. m., as originally charged, was not error. *In re Davis* (D. C. Mun. App. 1951, 83 A. 2d 590).

##### Construction

Statute relating to taking and carrying away of another's property without right to do so describes a misdemeanor and can be violated without specific intent, and provides a deterrent to self-help by a winning gambler without rejecting principle that specific intent turns on actor's state of mind, not upon an objective fact. *J. W. Richardson v. United States* (1968, 403 F. 2d 574, 131 U.S. App. D.C. 168).

##### Counsel, conduct of

In prosecution from taking property without right, denial of defendant's motion for mistrial on ground of prejudice to him by government counsel's request in jury's presence for short recess because articles taken were in complaining witness' automobile outside court-house and defendant's counsel had refused to waive their physical presence in court room, was not error. *In re Davis* (D. C. Mun. App. 1951, 83 A. 2d 590).

##### Evidence

While juvenile courts are not bound by technical rules of evidence, police officer's testimony, on trial of minor for taking property without right, that defendant told witness that articles taken were on porch of defendant's home, and that witness then dispatched thereto another officer, who returned with articles, was insufficient, aside from defendant's confession, to establish his guilt. *In re Davis* (D. C. Mun. App. 1951, 83 A. 2d 590).

##### Lesser included offense rule

Lesser included offense rule was properly applied when court instructed jury that the offense of larceny from interstate commerce, for which offense appellant was charged, included the lesser offense of taking property without right, an offense for which appellant was not charged, and, since sentence for taking property without right ran concurrently with sentence for unlawful entry, court need not consider claim of error predicated on the instruction. *W. E. Humphrey v. United States* (D.C. App. 1967, 236 A. 2d 438).

##### Thief

The word "thief" as used in the vagrancy statute (§ 22-3302) does not cover a person who has been guilty only of unauthorized borrowing under this section. *E. R. Harris v. District of Columbia* (1958, 251 F. 2d 913, 102 U.S. App. D.C. 202; rev'g 132 A. 2d 152).

## Chapter 13.—FALSE PRETENSES—FALSE PERSONATION

### Sec.

- 22-1301. False pretenses.
- 22-1302. Recordation of deed, contract, or conveyance with intent to extort money.
- 22-1303. False personation before court, officers, notaries.
- 22-1304. Falsely impersonating public officer or minister.
- 22-1305. False personation of inspector of departments of District of Columbia.
- 22-1306. False personation of police officer.
- 22-1307. Wearing or using insignia of certain organizations.
- 22-1308. False certificate of acknowledgment.

### § 22-1301. False pretenses.

(a) Whoever, by any false pretense, with intent to defraud, obtains from any person any service or anything of value, or procures the execution and



delivery of any instrument of writing or conveyance of real or personal property, or the signature of any person, as maker, indorser, or guarantor, to or upon any bond, bill, receipt, promissory note, draft, or check, or any other evidence of indebtedness, and whoever fraudulently sells, barter, or disposes of any bond, bill, receipt, promissory note, draft, or check, or other evidence of indebtedness, for value, knowing the same to be worthless, or knowing the signature of the maker, indorser, or guarantor thereof to have been obtained by any false pretense, shall, if the value of the property or the sum or value of the money, property, or service so obtained, procured, sold, bartered, or disposed of is \$100 or upward, be imprisoned not less than one year nor more than three years; or, if less than that sum, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

(b) (1) Whoever obtains, at a hotel, motel, or other establishment which provides lodging to transient guests—

(A) lodging, food, or any other item of value, with intent to defraud the proprietor or manager of such establishment, or

(B) credit by the use of false pretenses, shall, if the unpaid amount of such lodging, food, or other item of value is \$100 or more, be guilty of a felony and fined not more than \$3,000 or imprisoned for not less than one year nor more than three years, or both; or if such unpaid amount is less than \$100, be guilty of a misdemeanor and fined not more than \$1,000 or imprisoned not more than one year, or both.

(2) Proof that a person—

(A) obtained lodging, food, any other item of value, or credit, at a hotel, motel, or other establishment which provides lodging to transient guests and failed to pay in full upon demand any amount then due for such credit or item of value, or

(B) departed or removed his baggage from a hotel, motel, or other establishment which provides lodging to transient guests without the express consent of the proprietor or manager of such establishment and without first paying in full any amount due for food, lodging, any other item of value, or credit, shall be prima facie evidence that the acts specified in clause (A) of paragraph (1) were committed with fraudulent intent.

(c) Whoever, in the District of Columbia, registers at a hotel, motel, or other establishment which provides lodging to transient guests, under any name or address other than his actual name or address, with intent to defraud the proprietor or manager of such establishment, shall be guilty of a misdemeanor and fined not more than \$500 or imprisoned not more than six months, or both. (Mar 3, 1901, 31 Stat. 1326, ch. 854, § 842; June 30, 1902, 32 Stat. 535, ch. 1329; Aug. 12, 1937, 50 Stat. 628, ch. 599; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 29, 1953, 67 Stat. 99, ch. 159, § 215(e); July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; Oct. 22, 1970, Pub. L. 91-497, § 1, 84 Stat. 1093.)

#### AMENDMENTS

1970—Section 1 of Act Oct. 22, 1970, Pub. L. 91-497, amended section—

(1) by inserting "(a)" immediately before "Whoever";

(2) by inserting "any service or" immediately before "anything of value";

(3) by striking out "value of the money or property" and inserting in lieu thereof "value of the money, property, or service";

(4) by striking out "\$200" and inserting in lieu thereof "\$1,000";

(5) by striking out the second sentence and inserting in lieu thereof new subsecs. (b) and (c) to read as above set out. For provisions of section before this amendment, see 1967 edition of the Code.

1953—Act June 29, 1953, increased the valuation from \$50 to \$100.

1937—Act Aug. 12, 1937, increased the valuation from \$35 to \$50.

1902—Act June 30, 1902, increased the penalty from six months to one year when the value of the subject matter obtained by false pretenses was less than thirty-five dollars.

#### CHANGE OF NAME

"Municipal court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the police court and the municipal court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

#### CROSS REFERENCES

Allegation and proof of intent to defraud, see § 23-322. Forgery and frauds, see § 22-1401 et seq.

Hotel- and lodging-house keepers, general provisions concerning rights and liabilities, see §§ 34-106 to 34-108. Joinder of offenses, see § 23-311 et seq.

Larceny, see § 22-2201.

#### NOTES TO DECISIONS

##### In general

"The elements of the offense are a false pretense or false representation by the defendant or some one acting for and instigated by him, knowledge by the defendant as to the falsity, reliance on the pretense or representation by the person defrauded, intent to defraud, and an actual defrauding." *Robinson v. United States* (1914, 42 App. D. C. 186).

##### Abuse of discretion

Examination of record failed to disclose any abuse of discretion with respect to limitations placed on cross-examination of prosecution witnesses by defense counsel who claimed that he was prevented from testing the explanation given by the witnesses of general lending procedures by eliciting from them procedure followed with respect to the 17 transactions listed in indictment charging false pretenses and forgery since nothing in record showed that defense was intimidated from further inquiry into the specific loan transactions. *United States v. R. M. Stamp* (1971, 458 F. 2d 759, 147 U.S. App. D.C. 340; cert. denied 92 S. Ct. 2424, 406 U.S. 975, 93 S. Ct. 104, 409 U.S. 842).

##### Admissible testimony

Testimony of police officer in prosecution for false pretenses was admissible where noncoercive questioning of defendant was carried on in course of a routine police investigation prior to arrest, or the establishment of probable cause for an arrest, and police had not moved from investigation into possible existence of a crime to purposeful investigation of defendant. *Pennewell v. United States* (1965, 353 F. 2d 870, 122 U.S. App. D.C. 332).

##### Admission of fingerprint card

Admission of defendant's police fingerprint card was not reversible error as being equivalent to admitting evidence of previous arrests or convictions where in stating his objection counsel did not make clear basis of objection or ask that jury be told that card related to defendant's arrest in instant case and where transactions in-



volved in case occurred late in 1962 and early 1963 and jury was told that card was dated April 1963. *Cupo v. United States* (1966, 359 F. 2d 990, 123 U.S. App. D.C. 324).

#### Amendment

This section was intended to repeal those provisions of existing acts requiring the imposition of a definite, as distinguished from an indeterminate, sentence, and possibility also to effect pro tanto repeal of the minimum penalty provisions of such existing acts as themselves stipulate a minimum penalty in excess of one-fifth of a stipulated maximum penalty. *Anderson v. Rives* (1936, 85 F. 2d 673, 66 App. D.C. 174).

#### Anything of value

A promissory note is a thing of value within the meaning of the statute; it is not necessary that false pretense should be the sole inducement for parting with the property; it is sufficient "if it had a preponderating influence sufficient to turn the scale, although other considerations operated upon the mind of the party." *Partridge v. United States* (1913, 39 App. D. C. 571, Ann. Cas. 1917D, 622).

This section made the obtaining of anything of value by means of false pretenses a crime. *Biddle v. United States* (1908, 156 F. 759, 84 C.C.A. 415).

#### Appeal and error

Since neither at trial nor on appeal did the defendant indicate kind of evidence he would offer to establish illegality of arrest, alleged constitutional error in admission of evidence seized pursuant to purportedly invalid arrest would not be considered on appeal; defendant is relegated to relief by way of collateral attack on motion to vacate judgment of conviction on sentence. *United States v. W. F. Moore* (1970, 435 F. 2d 113, 140 U.S. App. D.C. 309; cert. denied 91 S. Ct. 1376, 402 U.S. 906).

Constitutional error in the admission of evidence may be raised at any time, including collaterally. *Id.*

#### Burden of proof

Part of the Government's burden in establishing elements of the offense of false pretenses is proving that facts represented were untrue. *I. L. White v. United States* (D.C. App. 1971, 284 A. 2d 464).

#### Chattel mortgage

In determining whether, under District of Columbia law, defendants had committed an offense by violating code provision that whoever by any false pretense, with intent to defraud, obtains from any person anything of value is guilty, fact, if true, that chattel mortgage to two television sets, which were purchased after defendant made misrepresentation as to indebtedness on automobile given as security for the purchase, would have to be construed as conditional sales contract, which would preclude defendant from having received title to them, was irrelevant. *Nelson v. United States* (1956, 227 F. 2d 21, 97 U.S. App. D.C. 6, 53 A.L.R. 2d 1206, certiorari denied 76 S. Ct. 700, 351 U.S. 910, 100 L. Ed. 1445).

#### Comment on failure to call witness

No legitimate basis existed for government's comment on defendant's failure to call missing witness where, in prosecution involving false pretenses, it could not reasonably be supposed or inferred that missing witness would have supported defendant's account, even if true, since defendant's contention was that the fraud was committed by missing witness rather than by himself. *Pennewell v. United States* (1965, 353 F. 2d 870, 122 U.S. App. D.C. 332).

#### Continuance

In prosecution for obtaining money by false pretenses through cashing of checks which issuer had no reason to suppose would be honored, where at time of entry of plea of not guilty New York attorney filed affidavit that he would represent defendant, but on date of trial local counsel for defendant requested a continuance for reasonable time on ground New York attorney was engaged in another trial, it could not be said that under circumstances trial judge had abused his discretion in refusing continuance and requiring local attorney to go to trial on short notice. *Gilmore v. United States* (1959, 273 F. 2d 79, 106 U.S. App. D.C. 344).

#### Crime against United States

False pretense is a crime against the United States, and persons conspiring to commit it may be punished under U.S.R.S. § 5440 (18 U.S.C. § 371). *Geist v. United States* (1906, 26 App. D.C. 594).

#### Direct evidence

Direct evidence by a victim is not necessary to prove the elements of obtaining and reliance as required by this section. *D. T. Hymes v. United States* (D.C. App. 1970, 260 A. 2d 679).

In this case the introduction into evidence of seven purchase receipts for gasoline sales would support inference that gasoline was provided with reliance on validity of the credit card and authorized use thereof and the judgment of conviction was affirmed. *Id.*

#### Double jeopardy

The offense of obtaining motor vehicle by means of false pretenses in violation of District of Columbia Code and offense of transporting motor vehicle in interstate commerce knowing it to have been stolen in violation of Criminal Code of United States involve different elements and require different proof and are separate and distinct offenses even though same vehicle is subject of both acts, and prosecution and punishment of defendant for both offenses does not constitute double jeopardy. *United States v. J. W. Oates* (1963, 314 F. 2d 593, U.S. App. 4th Ct.).

#### Election of offenses

Where indictment charged embezzlement, false pretense, and larceny after trust, any confusion which might have existed as a result of the prosecution being allowed to put in its case before making an election was dispelled by election at end of Government's case and by instructions to jury. *Dobbins v. United States* (1946, 157 F. 2d 257, 81 U.S. App. D.C. 218, certiorari denied 67 S. Ct. 90 329 U.S. 734, 91 L. Ed. 634).

Where indictment charged embezzlement, false pretense, and larceny after trust, defendant's motion that Government be required to elect to place its case on one of the three crimes charged before putting in evidence was addressed to discretion of trial court and its denial of motion was not an abuse of discretion. *Id.*

#### Elements of crime

The elements of the crime of false pretenses are a false representation, knowledge of its falsity, an intent to defraud, reliance on the misrepresentation by the defrauded party, and the obtaining of something of value. *J. R. Marganella v. United States* (D.C. App. 1970, 268 A. 2d 803).

Elements of false pretenses are false representation, knowledge of falsity, intent to defraud, reliance by defrauded party, and obtaining something of value. *R. A. Willgoos v. United States* (D.C. App. 1967, 228 A. 2d 635).

Five elements of crime of false pretenses are: false representation, knowledge of falsity, intent to defraud, reliance by the defrauded party, and obtaining something of value. *S. J. Ciullo v. United States* (1963, 325 F. 2d 227, 117 U.S. App. D.C. 31).

Under false pretenses statute, it must be shown that alleged fraud would not have been accomplished but for misrepresentations made. *Id.*

#### Embezzlement

"Verdict under embezzlement counts negatives one essential fact in the crime of procuring money by false pretenses, namely, the divesting of the title originally." *Davis v. United States* (1911, 37 App. D. C. 126).

#### Evidence

Where specific terms of check (with which defendant purchased some \$79 worth of groceries at local supermarket while knowing he had no current account in bank upon which check was drawn) were not material in prosecution for obtaining property under false pretenses, since false representation alleged was that the defendant had an account at the bank and such representation was obviously implied and not part of the instrument itself, best evidence rule was not applicable, and oral testimony concerning check lost by government prior to trial was properly considered in arriving at verdict. *L. J. Henson v. United States* (D.C. App. 1972, 287 A. 2d 106).



Evidence did not sustain conviction of obtaining hotel lodging under false pretenses, notwithstanding defendant's failure to pay within one week after checking out, in view of showing of defendant's efforts to pay. *R. A. Willgoos v. United States* (D.C. App. 1967, 228 A. 2d 635).

Evidence, which showed that defendants knowingly obtained from complaining witness a check for \$150 drawn against insufficient funds, that defendants falsely represented that check had been cashed with warning that witness would be prosecuted if check was not honored and store manager had later said police would be notified if check were not immediately covered, and that witness therefore cashed certain bonds and turned \$150 over to defendants, showed that the representations related to past events and supported convictions of false pretenses. *C. I. Williamson v. United States* (D.C. App. 1966, 224 A. 2d 309).

Evidence was sufficient to sustain conviction on charge of false pretenses in connection with a stock and worthless check transaction. *H. N. Kelly, Jr. v. United States* (1961, 297 F. 2d 437, 111 U.S. App. D.C. 360).

In prosecution of one who presented a bad check as good and got hotel to cash it, for obtaining money by false pretenses, court properly admitted in evidence some 13 other bad checks which defendant had represented as good, and for which he got cash at about the same time, for purpose of showing fraudulent intent. *Green v. United States* (1951, 188 F. 2d 48, 88 U.S. App. D.C. 249, certiorari denied 71 S. Ct. 1008, 341 U.S. 955, 95 L. Ed. 1376, rehearing denied 72 S. Ct. 24, 342 U.S. 842, 96 L. Ed. 636).

In prosecution for attempting by false pretenses to obtain money from an insurance company on a fraudulent claim for stolen furs evidence of defendant's guilt was sufficient for the jury. *Cooper and Williams v. United States* (D. C. Mun. App. 1956, 123 A. 2d 918).

Where the question is one of guilty knowledge, or fraudulent intent "it has always been deemed allowable, as well in criminal as in civil cases, to introduce evidence of other acts and doings of the party, of a kindred character, in order to illustrate or establish his intent or motive in the particular act directly in judgment." *Partridge v. United States* (1913, 39 App. D.C. 571, Ann. Cas. 1917D, 622).

In prosecution for false pretenses involving sales to two complaining witnesses by means of fraudulent representation of warehouse receipts and for embezzlement involving conversion by defendant of money which one complaining witness turned over to defendant in connection with such sales, error in permitting introduction of testimony of another witness that about two years before acts charged defendant had sold witness similar warehouse receipts and had made to her similar representations was not cured by instruction directing jury to disregard such testimony. *Boyer v. United States* (1943, 132 F. 2d 12, 76 U.S. App. D.C. 397).

#### —Sufficiency

In the absence of explanation and authentication by bank making notation on a dishonored check "Refer to Maker", testimony that check had been dishonored by bank and returned to store to which it was tendered in payment for certain goods is insufficient to support conviction for false pretenses. *I. L. White v. United States* (D.C. App. 1971, 284 A. 2d 464).

Evidence in this case is insufficient to sustain conviction for false pretenses arising out of tendering of a check to a store in payment for certain goods, followed by bank's dishonor of the check with the notation thereon "Refer to Maker". *Id.*

The evidence sustained conviction for attempted false pretenses involving misuse of a credit card. *J. R. Marganella v. United States* (D.C. App. 1970, 268 A. 2d 803).

In prosecution for attempted false pretenses involving misuse of credit card in connection with motel registration, the necessity of producing motel desk clerk was obviated by introduction of motel's records. *Id.*

#### Expectation of belief

No one can be permitted to say, in regard to his own statements upon a material fact, that he did not expect to be believed, and, if such statements are knowingly false and wilfully made, fact that they are material is proof of an attempted fraud, since materiality, in eye of law, consists in their tendency to influence conduct of party who has interest in them and to whom they are

addressed. *Nelson v. United States* (1956, 227 F. 2d 21, 97 U.S. App. D.C. 6, 53 A.L.R. 2d 1206, certiorari denied 76 S. Ct. 700, 351 U.S. 910, 100 L. Ed. 1445).

#### Fact represented falsely

In order to constitute the crime of obtaining money under false pretenses, the alleged false representation must be of some past or existing fact. *Biddle v. United States* (1908, 156 F. 759, 84 C.C.A. 415).

#### Inconsistent offenses

Under District of Columbia law, grand larceny and false pretenses are not inconsistent offenses. *P. A. Skantze v. United States* (1961, 288 F. 2d 416, 110 U.S. App. D.C. 14).

#### In-court identification

In-court identification by supermarket employees of defendant as the individual who purchased some \$79 worth of groceries by drawing check subsequently dishonored was not inherently incredible because their testimony was not consistent regarding the number of times each had observed defendant prior to date of alleged obtaining of property under false pretenses. *L. J. Henson v. United States* (D.C. App. 1972, 287 A. 2d 106).

#### Indictment

Abusive words conveying the meaning that plaintiff had, by trick or artifice, obtained entrance into a theater, do not charge the indictable offense of false pretenses. *Friedlander v. Rapley* (1912, 38 App. D.C. 208).

An indictment charging defendant in one count with forgery and in second count with uttering same forged letter was not demurrable on ground that it was "repugnant". *United States v. Briggs* (D.C.D.C. 1944, 54 F. Supp. 731).

#### Instructions

Since reasonable doubt instruction did not call jury's attention to their particular prior experiences, although there was a general reference to certainty such as "you would not hesitate to act upon the more weighty and important matters relating to yourself", focus on jurors' personal lives was not sufficiently misleading to constitute plain error; however, far better would have been instruction in terms of what would cause an ordinary and prudent person to hesitate and pause. *United States v. W. F. Moore* (1970, 435 F. 2d 113, 140 U.S. App. D.C. 309; cert. denied 91 S. Ct. 1376, 402 U.S. 906).

There was no plain error requiring reversal of convictions of false pretenses and grand larceny on theory that court failed in its instructions to define specific intent when both crimes required such a finding since the defendant failed to except to charge given and such charge was adequate, although instruction set forth in criminal jury instructions would have eliminated specific intent from case if given. *Id.*

Instruction that it may be inferred that one intends natural and probable consequences of his act but that jury was not required to so infer does not constitute plain error requiring reversal of conviction of false pretenses and grand larceny since no exception was taken to charge notwithstanding that charge should have contained crucial words "knowingly done or knowingly omitted." *Id.*

Charge that intoxication could negate specific intent essential to a finding of guilt, when such intent is required, is necessary in a proper case even without a request where sufficient evidence of intoxication is adduced. *Id.*

Instruction that intoxication could negate specific intent essential to finding of guilt of false pretenses and grand larceny was properly refused since the only evidence of intoxication related to evening before the offense. *Id.*

Instruction, to which counsel did not object, that proof beyond reasonable doubt was such proof as would result in abiding conviction of defendant's guilt on jury's part, such conviction as jury would be willing to act upon in more weighty and important matters relating to their own affairs, was not prejudicially erroneous. *Cupo v. United States* (1966, 359 F. 2d 990, 123 U.S. App. D.C. 324).

In prosecution for obtaining goods by false pretenses, instruction, which enumerated elements of the crime which were to be proven beyond a reasonable doubt, was, under District of Columbia law, correct and adequate for jury's guidance and in prosecution for obtaining goods by



false pretenses, court was not bound to adopt defendant's theory of the case. *Nelson v. United States* (1956, 227 F. 2d 21, 97 U.S. App. D.C. 6, 53 A.L.R. 2d 1206, certiorari denied 76 S. Ct. 700, 351 U.S. 910, 100 L. Ed. 1445).

In prosecution for obtaining money from complaining witness by falsely representing to him that certain repairs had been made and certain parts replaced in his automobile, instruction that jury could find that defendants had guilty knowledge if they found that they made false representations as to repairs recklessly and not caring whether the representations were true or false, was improper, in view of fact subjective knowledge is necessary for criminal responsibility for a false representation, rather than a mere reckless disregard of the facts. *Avant and Hughlett v. United States* (D.C. Mun. App. 1959, 154 A. 2d 354).

#### Instructions to counsel

In prosecution for false pretenses, trial court did not err when, prior to opening statement of Assistant United States Attorney, and at his request, trial court instructed counsel of defendant to refrain from mentioning that facts of transaction involved in false pretenses trial had previously been presented to grand jury as a charge of forgery and that the grand jury had ignored the charge. *Brommer v. United States* (D.C. Mun. App. 1960, 157 A. 2d 292).

#### Intent

Wrongful acts, which are knowingly or intentionally committed, cannot be justified or excused on ground of innocent intent, since color of act determines complexion of intent. *Nelson v. United States* (1956, 227 F. 2d 21, 97 U.S. App. D.C. 6, 53 A.L.R. 2d 1206, certiorari denied 76 S. Ct. 700, 351 U.S. 910, 100 L. Ed. 1445).

Jury may impute an intent to defraud, where the evidence shows that one has obtained something of value from another by means of false representations, knowingly made with intent to induce the action taken by the other, by introducing evidence tending to show that he believed the other was receiving something of substantial value. *Robinson v. United States* (1914, 42 App. D.C. 186).

When indictment plainly describes numerous false representations of present and past facts, and it charges that their falsity was known to defendant, that they were made with the intention of defrauding and that one believed them and acted upon them by paying money, is adequately charged a public offense. *Randle v. United States* (1940, 113 F. 2d 945, 72 App. D.C. 368, certiorari denied 61 S. Ct. 64, 311 U.S. 683, 85 L. Ed. 440).

#### Jurisdiction

On appeal from conviction for obtaining money by false pretenses, Court of Appeals was not required to consider defendant's criticism of warrant on which he was arrested, since jurisdiction in a criminal case is not impaired by fact that defendant was brought before court in an unlawful manner. *Green v. United States* (1951, 188 F. 2d 48, 88 U.S. App. D.C. 249, certiorari denied, 71 S. Ct. 1008, 341 U.S. 955, 95 L. Ed. 1376, rehearing denied 72 S. Ct. 24, 342 U.S. 842, 96 L. Ed. 636).

#### Knowledge of falsity

Finding of knowledge of falsity may be based on reasonable inferences from concrete facts in evidence, including conduct of parties to transaction, their utterances, the position occupied by accused, and all circumstances surrounding the transaction. *R. A. Willgoos v. United States* (D.C. App. 1967, 228 A. 2d 635).

#### Larceny

Where one gives up possession of chattel to another who converts it to his own use, wrongdoer commits a trespass, and taking is by "larceny", but where one, though induced by fraud or trick, actually intends that title shall pass to wrongdoer, crime is that of "false pretenses". *Great American Indemnity Co. v. Yoder* (D.C. Mun. App. 1957, 131 A. 2d 401).

Where insured entered into agreement to sell insured automobile to third person for certain sum, and insured accepted a check, and third person departed with possession and title to automobile, and thereafter insured discovered that check was fraudulent, taking of automobile by third person was by "false pretenses" and not by

"theft" within meaning of policy insuring against "theft" of automobile. *Id.*

#### Limitations

Statute of limitations did not run during absence from the District of Columbia of defendant charged with obtaining money by false pretenses in the District of Columbia even if he did not leave the District of Columbia to avoid prosecution. *Green v. United States* (1951, 188 F. 2d 48, 88 U.S. App. D.C. 249, certiorari denied 71 S. Ct. 1008, 341 U.S. 955, 95 L. Ed. 1376, rehearing denied 72 S. Ct. 24, 342 U.S. 842, 96 L. Ed. 636).

#### Mere opinion or expectation

"False pretense or representation \* \* \* must relate to some subsisting fact, past or present. A statement as to the future by way of opinion or expectation as to what can be accomplished does not constitute false pretense." *Engle v. United States* (1919, 48 App. D.C. 466).

#### Prejudicial error

Failure of court to clearly charge jury that false pretenses and conspiracy statutes provided more severe penalty when value of property involved exceeded \$100 was not prejudicial error where all defendants were charged with getting or conspiring to get property worth more than \$100 and were sentenced on that basis, where government's proof of value was adequate and not contested and where there was no real issue as to value and no request for more specific instruction. *Cupo v. United States* (1966, 359 F. 2d 990, 123 U.S. App. D.C. 324).

#### Present or past facts

That false representations of present or past facts become effective only by being coupled with a false promise does not take a case out of the operation of the statute. *Randle v. United States* (1940, 113 F. 2d 945, 72 App. D.C. 368, certiorari denied 61 S. Ct. 64, 311 U.S. 683, 85 L. Ed. 440).

In indictment for obtaining money by false pretenses, the misrepresentations must relate to present or past facts, as distinguished from something to take place in the future. *Id.*

A false pretense, under this section, must relate to a past event or existing fact, and any representation with regard to a future transaction is excluded. *Chaplin v. United States* (1946, 157 F. 2d 697, 81 U.S. App. D.C. 80, 168 A.L.R. 828).

A liquor dealer who borrowed money on representations that he would use it to purchase liquor tax stamps, and that he would repay the money, but who used only a small portion to purchase stamps and failed to return the money so advanced, was not guilty under this section of obtaining money by "false pretenses", since the representations did not relate to a present or past existing fact. *Id.*

#### Presumption

No presumption arises from failure of defendant to call a witness if the witness is equally available to the government and is in legal sense a stranger to the accused. *Pennewell v. United States* (1965, 353 F. 2d 870, 122 U.S. App. D.C. 332).

#### Previous convictions

In prosecution for obtaining money by false pretenses, where government brought out on cross-examination that defendant had been previously convicted of bad check charges and of embezzlement, and defendant was permitted to explain all bad check convictions, refusal to permit defendant to explain the conviction of embezzlement, although technically wrong, did not justify a reversal. *United States v. Boyer* (1945, 150 F. 2d 595, 80 U.S. App. D.C. 202, 166 A.L.R. 209).

#### Proceeds of check

Embassy employee who, with intent to steal, represented to superiors that money was needed for embassy's cash account and thus procured their signatures to checks, the proceeds of which he kept for himself, falsifying entries in cash journal to cloak transaction, was guilty of false pretenses and grand larceny, under District of Columbia law. *P. A. Skantze v. United States* (1961, 288 F. 2d 416, 110 U.S. App. D.C. 14).

#### Questions for jury

"It is for the jury to determine whether each of those elements has been established by the evidence, and the court is not authorized to invade the province of the jury



by telling them that if certain facts are proved the intent to defraud is made out." *Robinson v. United States* (1914, 42 App. D.C. 186).

#### Reimbursement

Although hotels cashing checks for defendant who had insufficient funds did not suffer eventual loss because they were reimbursed by issuer of credit card presented by defendant, defendant was still guilty of crime of obtaining money by false pretenses in cashing checks which issuer had no reason to suppose would be honored, since offense was not purged by subsequent restoration or repayment. *Gilmore v. United States* (1959, 273 F. 2d 79, 106 U.S. App. D.C. 344).

#### Reliance on pretense

In prosecution for obtaining money by false pretenses in cashing checks which issuer had no reason to suppose would be honored, where defendant claimed that hotels cashing checks for defendant were induced to part with their money not on belief that checks were good but in reliance on fact that issuer of credit card would make good whatever loss hotel might suffer, evidence sustained jury's finding that hotels cashed checks in belief that checks were good. *Gilmore v. United States* (1959, 273 F. 2d 79, 106 U.S. App. D.C. 344).

In order to sustain a conviction for obtaining money by false pretenses in cashing checks which issuer had no reason to suppose would be honored, law merely demands that the belief that checks were good be a contributing influence sufficient to turn the scale, or that the alleged fraud would not have been accomplished except for misrepresentations made. *Id.*

Statement by defendant that prosecuting witness should not rely on representations but should satisfy himself by observation and inquiry, is not sufficient to relieve of criminal liability for false representation theretofore made unless it appears that prosecuting witness accepted withdrawal of representations and assumed to act entirely on his own judgment. *Partridge v. United States* (1913, 39 App. D.C. 571, Ann. Cas. 1917D, 622).

#### Representation

False representation must be made to the person defrauded. *Foster v. Goldsoll* (1919, 48 App. D.C. 505, certiorari denied 39 S. Ct. 495, 250 U.S. 647, 63 L. Ed. 1188).

#### Review

Conviction of obtaining money by false pretenses affirmed. *Moffatt v. United States* (1931, 46 F. 2d 616, 60 App. D.C. 35). See, also, *Howe v. United States* (1932, 56 F. 2d 305, 61 App. D.C. 8).

#### Schemes to defraud

In prosecution for obtaining money under false pretenses, when evidence plainly shows a planned fraud, there was no error in the use of the phrase "schemes to defraud." *Randle v. United States* (1940, 113 F. 2d 945, 72 App. D.C. 368, certiorari denied 61 S. Ct. 64, 311 U.S. 683, 85 L. Ed. 440).

While the word scheme does not itself occur in the statute, the language of the statute is broad enough to cover a scheme to defraud. *Id.*

#### Search and seizure

Examination of record in prosecution for conspiracy, obtaining property by false pretenses and forgery showed that information obtained by Internal Revenue agents, who were conducting valid civil tax audits of the principals prior to those persons being advised of the rights of criminal suspects was obtained properly with respect to the defendants who were persons well versed in finance, taxation and the law. *United States v. R. M. Stamp* (1971, 458 F. 2d 759, 147 U.S. App. D.C. 340; cert. denied 92 S. Ct. 2424, 406 U.S. 975, 93 S. Ct. 104, 409 U.S. 842).

#### Severance

Court's failure to order severance was not abuse of discretion as to defendants who did not raise joinder issue in that defendants were not seriously prejudiced. *Cupo v. United States* (1966, 359 F. 2d 990, 123 U.S. App. D.C. 324).

Judge's refusal to sever on ground that co-defendants' counsel had been convicted of felony, or to inquire, per defendant's request, whether jury was familiar with any

facts that might be derogatory to counsel, was not abuse of discretion. *Id.*

#### Speedy trial

Where defendant was tried and convicted about 16 months subsequent to indictment and in the interim he was detained in Maryland House of Correction in Maryland until released a month prior to trial, delay in trial did not violate defendant's rights to a speedy trial, notwithstanding the United States Attorney had not sought a writ of habeas corpus ad prosequendum nor applied to Governor of Maryland for such a writ where extent of delay under all the circumstances was not so great as to amount to a denial of constitutional right. *Stevenson v. United States* (1960, 278 F. 2d 278, 107 U.S. App. D.C. 398).

#### Transfer of cause

The rule of criminal procedure authorizing case to be transferred to district in which defendant was arrested to receive plea of guilty to the charge could be applied to a violation of District of Columbia Code. *United States v. Batton* (D.C.D.C. 1958, 160 F. Supp. 172).

#### Unauthorized use of credit card

The unauthorized use of a credit card could be a violation of this section provided all elements of false pretenses are proven. *D. T. Hymes v. United States* (D.C. App. 1970, 260 A. 2d 679).

#### Waiver of trial by jury

In this prosecution for false pretenses where defendant had a right to trial by jury, but neither defendant nor his counsel objected to proceeding to trial without jury, and there was discussion in open court at prior hearing in case concerning a jury trial for defendant and official court entry on information stated "Jury Trial Demand Withdrawn," absence from transcript of any express waiver of defendant's right to jury trial was cured. *C. Banks v. United States* (D.C. App. 1970, 262 A. 2d 110).

The court held that, in criminal prosecution, where trial is had without jury, trial court is responsible for seeing to it by inquiry of defendant himself that he understands and knowingly and voluntarily waives his right to trial by jury and trial judge must also assure that such waiver is contained in the record as it occurred rather than merely as a rubber stamp entry on back of information. *Id.*

#### Worthless check

It is no defense in fraudulent check cases that defendant subsequently reimbursed the prosecuting witness, nor that defendant at time of transaction intended to repay the money. *Clagett v. United States* (1923, 289 F. 532, 53 App. D.C. 134).

It is a violation of the statute and no defense for the defendant to obtain money from the prosecuting witness upon the faith of the worthless check, whether the check was to serve as security for a concurrent loan or was to be presented to the bank for payment in ordinary course. *Id.*

#### § 22-1302. Recordation of deed, contract, or conveyance with intent to extort money.

Whoever having no title or color of title to the land affected shall maliciously cause to be recorded in the office of the recorder of deeds of the District of Columbia any deed, contract, or other instrument purporting to convey or to relate to any land in said District with intent to extort money or anything of value from any person owning such land, or having any interest therein, shall be fined not less than five hundred dollars or imprisoned not more than two years, or both. (June 30, 1902, 32 Stat. 535, ch. 1329, § 845a.)

#### § 22-1303. False personation before court, officers, notaries.

Whoever falsely personates another person before any court of record or judge thereof, or clerk of court, or any officer in the District authorized to administer oaths or take the acknowledgment of deeds or other



instruments or to grant marriage licenses, with intent to defraud, shall be imprisoned for not less than one year nor more than five years. (Mar. 3, 1901, 31 Stat. 1330, ch. 854, § 859; Feb. 17, 1909, 35 Stat. 623, ch. 134.)

#### CODIFICATION

Reference to municipal court of the District of Columbia following clerk of court was omitted from the Code as the phrase "court of record" included such court in view of act Mar. 3, 1921, ch. 125, § 2, 41 Stat. 1310 (formerly set out as § 11-702), and act Apr. 1, 1942, ch. 207, § 1, 56 Stat. 190 (formerly set out as § 11-752). The successor Superior Court of the District of Columbia is a court of record, see § 11-901.

#### CHANGE OF NAME

Act Feb. 17, 1909, changed the court known as "justice of the peace" to "the municipal court of the District of Columbia". Act Apr. 1, 1942, consolidated the Police Court and the Municipal Court into "The Municipal Court for the District of Columbia". Acts Oct. 23, 1962, and July 8, 1963, redesignated the Municipal Court for the District of Columbia as the "District of Columbia Court of General Sessions". Act July 29, 1970, consolidated the District of Columbia Court of General Sessions, the Juvenile Court of the District of Columbia, and the District of Columbia Tax Court in the "Superior Court of the District of Columbia".

#### NOTES TO DECISIONS

Requiring defendant to be sworn as witness

By requiring defendant, prior to trial judge's ruling on extent to which trial judge would permit defendant to be impeached by his past record, to take witness stand and be sworn as a witness before jury, trial judge pre-empted defendant's discretion regarding his decision whether to testify in his own behalf and, therefore, committed prejudicial error. *J. H. Jones v. United States* (D.C. App. 1968, 243 A.2d 674).

#### § 22-1304. Falsely impersonating public officer or minister.

Whoever falsely represents himself to be a judge of the Superior Court of the District of Columbia, notary public, police officer, or other public officer, or a minister qualified to celebrate marriage, and attempts to perform the duty or exercise the authority pertaining to any such office or character, or having been duly appointed to any of such offices shall knowingly attempt to act as any such officers after his appointment or commission has expired or he has been dismissed from such office, shall suffer imprisonment in the penitentiary for not less than one year nor more than three years. (Mar. 3, 1901, 31 Stat. 1330, ch. 854, § 860; Feb. 17, 1909, 35 Stat. 623, ch. 134; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

Act Feb. 17, 1909, changed "justice of the peace" to "judge of the municipal court."

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

#### NOTES TO DECISIONS

##### Burden of proof

In prosecution for falsely impersonating a police officer of the United States, burden is upon government to prove crime charged beyond a reasonable doubt though where defendant is charged with falsely pretending to be an officer and fails to produce evidence showing he was such officer, presumption arises that evidence if produced would have been unfavorable to defendant. *Taylor v. United States* (1948, 167 F.2d 752, 83 U.S. App. D.C. 215).

##### Evidence

In prosecution for falsely impersonating a police officer of the United States, while it must in some manner appear that accused is not a federal officer, proposition is fairly inferable from character of proof much less direct and formal than might be required to affirmatively establish official capacity, and any facts which to average mind would fairly tend to indicate that accused was not a federal officer would be sufficient to warrant the jury in reaching such conclusion. *Taylor v. United States* (1948, 167 F.2d 752, 83 U.S. App. D.C. 215).

Evidence that accused was not a federal officer was sufficient to sustain conviction for false impersonation of a police officer of the United States notwithstanding government failed to offer direct proof that defendant was not such officer by reference to official police rolls. *Id.*

##### Instructions

In prosecution for falsely representing self to be a police officer, refusal of requested instruction on the factual defense theory, raised by defendant's testimony, that he merely stated truthfully that he was an attorney and "officer of the court," was reversible error. *Levine v. United States* (1958, 261 F.2d 747, 104 U.S. App. D.C. 281).

##### Intent

False personation is in the nature of positive aggressions or invasions, such as constitute common-law offenses, and hence proof of criminal intent is required and refusal of requested instruction requiring criminal or felonious intent was reversible error. *Levine v. United States* (1958, 261 F.2d 747, 104 U.S. App. D.C. 281).

##### Protection of citizenry

This section penalizing false representation of a person as police officer of District of Columbia is a protection of the citizenry against exercise of excess jurisdiction by an impostor as well as impersonation in the genuine jurisdiction which might have been exercised by a legitimate officer. *Taylor v. United States* (1948, 167 F.2d 752, 83 U.S. App. D.C. 215).

##### Reliance on representation

Reliance is not an element of statutory offense of false personation, and prosecution need not establish that parties to whom the alleged false representation was made relied upon it. *Levine v. United States* (1958, 261 F.2d 747, 104 U.S. App. D.C. 281).

##### Reversal on grounds of inadequate defense

Conviction for impersonating an officer was reversed and new trial ordered in view of defense's failure to call defendant to stand to rebut government's evidence that badge displayed by defendant who contended that he had exhibited a special police officer badge was not of the type officially issued to special police officers, failure to subpoena an allegedly material witness, presence of hearsay testimony and closeness of case. *E. E. Dyer v. United States* (1967, 379 F.2d 89, 126 U.S. App. D.C. 312).

##### Review

Record on appeal from conviction for defendant's falsely representing himself as a notary public and attempting to exercise authority of a notary public disclosed no error affecting substantial rights. *Fentress v. United States* (1956, 228 F.2d 646, 97 U.S. App. D.C. 132).

##### Variance

In prosecution for falsely pretending to be a member of District of Columbia Metropolitan Police, fact that scene of impersonation was in park subject to jurisdiction of United States Park Police did not establish a fatal variance under sections 4-120, 4-201, granting Metropolitan Police and Park Police concurrent jurisdiction over United



States Parks within District of Columbia. *Taylor v. United States* (1948, 167 F. 2d 752, 83 U.S. App. D.C. 215).

**§ 22-1305. False personation of inspector of departments of District of Columbia.**

It shall be unlawful for any person in the District of Columbia to falsely represent himself or herself as being an inspector of the health department of said District, or an inspector of any department of the District government; and any person so offending shall be deemed guilty of a misdemeanor, and on conviction in the Superior Court of the District of Columbia shall be punished by a fine of not less than ten dollars nor more than fifty dollars for the first offense, and for each subsequent offense by a fine of not less than fifty dollars nor more than one hundred dollars, or imprisonment in the jail of the District not exceeding six months, or both, in the discretion of the court. (Mar. 2, 1897, 29 Stat. 619, ch. 364; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

**AMENDMENT**

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia"

**EFFECTIVE DATE OF 1970 AMENDMENT**

See note preceding section 11-101.

**CHANGE OF NAME**

"Municipal court" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the police court and the municipal court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

**§ 22-1306. False personation of police officer.**

It shall be a misdemeanor, punishable by imprisonment in the District jail or penitentiary not exceeding two years, or by a fine not exceeding five hundred dollars, for any person, not a member of the police force, to falsely represent himself as being such member, with a fraudulent design. (R. S., D. C., § 433.)

**NOTES TO DECISIONS**

**Instructions**

In prosecution for impersonating police officer, trial court's reading of this section defining crime as part of instructions to jury sufficiently charged elements of the crime. *Wheeler v. United States* (1951, 190 F. 2d 663, 89 U.S. App. D. C. 143).

In prosecution on count charging impersonation of officer and count charging grand larceny, error, if any, in charge instructing that jury could convict on second count even if they acquitted on first was harmless in view of fact that jury found defendant guilty of both offenses. *Id.*

**§ 22-1307. Wearing or using insignia of certain organizations.**

Whoever, in the District of Columbia, not being a member of the Military Order of the Loyal Legion of the United States, or the Grand Army of the Republic, of the Sons of Veterans, of the Woman's Relief Corps, of the Union Veteran's Union, of the Union Veteran Legion, of the United Spanish War Veterans, of the National Society of the Daughters of the American Revolution, and not entitled under the rules of the order to wear the same, wilfully wears

or uses the insignia, distinctive ribbon, or badge of membership, rosette, or button thereof, or who uses or wears the same to obtain aid or assistance thereby, shall be punished by a fine of not more than twenty dollars or by imprisonment for not more than thirty days, or by both such fine and imprisonment. (Mar. 15, 1906, 34 Stat. 62, ch. 949.)

**CROSS REFERENCES**

Grand Army of the Republic, see 36 U.S.C. §§ 71-77.

National Society of the Daughters of the American Revolution, see 36 U.S.C. §§ 18-18b.

United Spanish War Veterans, see 36 U.S.C. §§ 56-56h.

**§ 22-1308. False certificate of acknowledgment.**

Any officer authorized to take the proof or acknowledgment of an instrument which, by law, may be recorded, who wilfully certifies falsely that the instrument was acknowledged by any party thereto, or who wilfully certifies falsely as to any other material matter in such acknowledgment, shall be imprisoned for not less than one year nor more than ten years. (Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 845.)

**Chapter 14.—FORGERY—FRAUDS**

**Sec.**

22-1401. Forgery.

22-1402. Forging or imitating brands or packaging of goods.

22-1403. Repealed.

22-1404. Secreting or converting property, documents, or assets of decedent's estate.

22-1405. Taking away or concealing writings.

22-1406. Repealed.

22-1407. Fraud by operation of coin-controlled mechanism by use of slugs.

22-1408. Manufacture, sale, offer for sale, possession of slugs or device to operate coin-controlled mechanism.

22-1409. "Person" defined.

22-1410. Making, drawing, or uttering check, draft, or order with intent to defraud—Proof of intent—"Credit" defined.

22-1411. Fraudulent advertising.

22-1412. Prosecution under section 22-1411.

22-1413. Penalty under section 22-1411.

22-1414. Fraudulently tampering with jury box or contents—Collusion in drawing jurors.

**§ 22-1401. Forgery.**

Whoever, with intent to defraud or injure another, falsely makes or alters any writing of a public or private nature, which might operate to the prejudice of another, or passes, utters, or publishes, or attempts to pass, utter, or publish as true and genuine, any paper so falsely made or altered, knowing the same to be false or forged, with the intent to defraud or prejudice the right of another, shall be imprisoned for not less than one year nor more than ten years. (Mar. 3, 1901, 31 Stat. 1326, ch. 854, § 843.)

**CROSS REFERENCES**

Allegation and proof of intent to defraud, see § 23-322. False pretenses and false personations, see § 22-1301 et seq.

Larceny, see § 22-2201 et seq.

**NOTES TO DECISIONS**

**Abuse of discretion**

Examination of record failed to disclose any abuse of discretion with respect to limitations placed on cross-examination of prosecution witnesses by defense counsel who claimed that he was prevented from testing the explanation given by the witnesses of general lending procedures by eliciting from them procedure followed with respect to the 17 transactions listed in indictment charg-



ing false pretenses and forgery since nothing in record showed that defense was intimidated from further inquiry into the specific loan transactions. *United States v. R. M. Stamp* (1971, 458 F. 2d 759, 147 U.S. App. D.C. 340; cert. denied 92 S. Ct. 2424, 406 U.S. 975, 93 S. Ct. 104, 409 U.S. 842).

#### Agent

The use by an agent of the signature of his principal for an unauthorized purpose constitutes forgery. *Yeager v. United States* (1929, 32 F. 2d 402, 59 App. D.C. 11).

#### Alteration

Question for the jury is not merely whether defendant honestly believed he had authority to alter notes, but whether he had reasonable grounds for so believing. *Towles v. United States* (1902, 19 App. D.C. 471).

#### Appeal and error

In prosecution for forging and uttering department store charge slips, although the trial court charged that falsity was an element of the offense, it erred in refusing to advise jury that proof of lack of authority to sign for another was required to establish falsity; in view of overwhelming evidence, however, the error was harmless. *United States v. J. H. Gilbert* (1970, 433 F. 2d 1172, 140 U.S. App. D.C. 66).

#### Burden of proof

The Government has the burden of proving all elements of offense of forging and uttering department store charge slips, and there is no obligation on defendant to offer proof of authority to sign name of another. *United States v. J. H. Gilbert* (1970, 433 F. 2d 1172, 140 U.S. App. D.C. 66).

In forgery prosecution, testimony of two psychiatrists and a lay witness to effect that defendant was, in their opinion, suffering from mental illness when he committed the crimes charged satisfied requirement that defendant produce some evidence, and shifted burden of proving sanity to government. *United States v. Amburgey* (D.C.D.C. 1960, 189 F. Supp. 687).

#### Common law

Forgery, at common law, is the false making or materially altering with intent to defraud, of any writing which, if genuine, might apparently be of legal efficacy or the foundation of a legal liability. *Milton v. United States* (1940, 110 F. 2d 556, 71 App. D.C. 394). See, also, *United States v. Briggs* (D.C.D.C. 1944, 54 F. Supp. 731).

At common law, forgery and uttering were different substantive crimes. *Reid v. Aderhold* (C.C.A. Ga. 1933, 65 F. 2d 110, certiorari denied 54 S. Ct. 104, 290 U.S. 676, 78 L. Ed. 584).

#### Defenses

Post-conviction change in standards with regard to defense of insanity did not entitle defendant, tried and convicted under previous standard, to reversal, because court did not charge jury on issue of insanity in accordance with post-conviction change. *Stogner v. United States* (1956, 229 F. 2d 513, 97 U. S. App. D. C. 172).

#### Elements of offense

Forgery by false making has been committed where the accused, with intent to defraud, proffers a blank note to a customer and then induces the customer, who is reasonably justified in believing the representation, to sign it on the false representation that the paper is something other than a note, and the accused then fills in blanks and negotiates note. *Lieberman v. United States* (1958, 253 F. 2d 46, 102 U. S. App. D. C. 310).

Where contractor deceived customers into signing blank promissory notes and deeds of trust and later filled in instruments and passed them, he was guilty of forgery. *Id.*

To constitute "forgery" under this section, there must be a false making or other alteration of some instrument in writing, there must be fraudulent intent, and instrument must be apparently capable of effecting a fraud. *United States v. Briggs* (D.C.D.C. 1944, 54 F. Supp. 731).

#### Embezzlement

Where one employed as bookkeeper, salesman, and collector of an electric company, with authority to indorse checks in the name of the company and deposit them in the bank, cashed the checks instead and appropriated the

money to his own use, the offense of which he was guilty was forgery, and conviction for embezzlement must be reversed. *Yeager v. United States* (1929, 32 F. 2d 402, 59 App. D.C. 11).

#### Evidence

Testimony and manner in which it was given, with defendant's acquiescence, in forgery prosecution, supported inference that signatures had not been authorized by person whose signatures they purported to be. *W. E. Hough v. United States* (1968, 397 F. 2d 708, 130 U.S. App. D.C. 147).

Any error in forgery prosecution in permitting store manager to testify to policy store had adopted in effort to catch people who had been stealing money orders and checks was harmless in light of all evidence. *Id.*

Reception, in forgery prosecution, of exhibit consisting of card completed voluntarily by defendant while in custody on which he had listed prior arrests, received to permit comparison of handwriting with that on checks, was prejudicially erroneous and required new trial notwithstanding that it was not clear that jury saw card and that there was other evidence of his guilt. *R. E. Leigh v. United States* (1962, 308 F. 2d 345, 113 U.S. App. D.C. 390).

#### — Sufficiency

Evidence, in prosecution for uttering forged check was sufficient for jury to draw inference that the defendant had knowledge that the checks in question were forged. *United States v. G. J. Abston* (1971, 448 F. 2d 1189, 145 U.S. App. D.C. 266).

#### Guilty plea, withdrawal of

Evidence on motion to vacate sentence and withdraw guilty plea did not support defendant's contentions that his guilty plea had been coerced and that his appointed counsel had been incompetent. *R. K. McDonnell v. United States* (D.C.D.C. 1964, 234 F. Supp. 1017).

#### Habeas corpus

Habeas corpus for release of one convicted of forgery denied. *Reid v. Aderhold* (C.C.A. Ga., 1933, 65 F. 2d 110, certiorari denied 54 S. Ct. 104, 290 U.S. 676, 78 L. Ed. 584).

#### Indictment

"It matters not that at common law the charge of falsely making an instrument was held to include the offense of falsely altering it, since they are disjunctively named in the statute as distinct ways in which the crime of forging may be committed. Forgery is a statutory, not a common-law crime in this District, and the offense must be charged as defined in the statute, irrespective of common-law rules of pleading." *Frisby v. United States* (1912, 38 App. D.C. 22, 37 L.R.A., N.S., 96).

"The offense thus denounced is complete even though the instrument never is uttered. When it is uttered, another and distinct offense is committed, and a second uttering, of course, constitutes still another offense. In *Frisby v. United States* (1912, 38 App. D.C. 22, 37 L.R.A., N.S., 96) the question was not directly involved and the *Burton* case (202 U.S. 344, 50 L. Ed. 1057, 26 Sup. Ct. 688) was not brought to our attention." *Read v. United States* (1924, 299 F. 918, 55 App. D.C. 43, certiorari denied 45 S. Ct. 352, 267 U.S. 596, 69 L. Ed. 805).

"The statute defines two distinct criminal acts, either of which constitutes the crime of forgery. The making of a false instrument with intent to defraud is forgery. The uttering of a forged instrument with intent to defraud is forgery. But where the instrument is both forged and uttered by the same person, \* \* \* there is only the single crime of forgery committed." *Frisby v. United States* (1912, 38 App. D.C. 22, 37 L.R.A., N.S., 96). See, also, *Frisby v. United States* (1910, 35 App. D.C. 513). Both acts may be charged in the indictment, or the pleader may elect to charge but one. *Simon v. United States* (1911, 37 App. D.C. 280).

Indictment for uttering need not set forth the particular acts claimed to constitute such uttering. *Fuller v. United States* (1923, 288 F. 442, 53 App. D.C. 88).

Indictment charging defendant with possession and knowingly uttering and publishing a forged security, states a single offense. *Price v. United States* (1923, 289 F. 562, 53 App. D.C. 164).

Indictment need not allege the persons or corporations intended to be defrauded, but requires nothing more than



a general intent to defraud. *Read v. United States* (1924, 299 F. 918, 55 App. D.C. 43, certiorari denied 45 S. Ct. 352, 267 U.S. 596, 69 L. Ed. 805).

An indictment charging defendant with having forged name of another individual to a letter and procuring of money for such letter from still another party with intent to defraud was sufficient to charge crimes of forgery and uttering, as against contention that instrument was not capable of effecting a fraud. *United States v. Briggs* (D.C.D.C. 1944, 54 F. Supp. 731).

An indictment charging defendant in one count with forgery and in second count with uttering same forged letter was not demurrable on ground that it was "repugnant". *Id.*

Counts in indictment charging defendant with uttering forged documents in interference proceeding in United States Patent Office "with intent to defraud and injure" were not required to name persons whom defendant intended to defraud and injure. *Mas v. United States* (1945, 151 F. 2d 32, 80 U.S. App. D.C. 223, certiorari denied 66 S. Ct. 267, 326 U.S. 776, 90 L. Ed. 469).

#### Instructions

Whether lack of authority to sign name of another is considered separate element of offense of forgery and uttering department store charge slips or part of element of falsity, the jury must be advised that without proof of lack of authority, the prosecution may not succeed. *United States v. J. H. Gilbert* (1970, 433 F. 2d 1172, 140 U.S. App. D.C. 66).

#### Instrument

It is enough if the forged instrument be apparently sufficient to support a legal claim and thus to effect a fraud. *Milton v. United States* (1940, 110 F. 2d 556, 71 App. D.C. 394).

#### Intent

"There must be a false making or other alteration of some instrument in writing; there must be a fraudulent intent; and the instrument must be apparently capable of effecting a fraud \* \* \*. Intent in forgery will not be presumed from the mere making of a false instrument. It must be gathered from some affirmative act, or from the existence of circumstances from which criminal intent may be inferred." *Dowling v. United States* (1913, 41 App. D.C. 11). See, also, *Frisby v. United States* (1912, 38 App. D.C. 22, 37 L.R.A., N.S., 96).

It is not essential that "anyone shall be actually defrauded, or that the accused shall have the intent to defraud any particular person. All that is required in that respect is that there be an intent to defraud someone." *Easterday v. United States* (1923, 292 F. 664, 53 App. D.C. 387, certiorari denied 44 S. Ct. 181, 263 U.S. 719, 68 L. Ed. 523). See, also, *Read v. United States* (1924, 299 F. 918, 55 App. D.C. 43, certiorari denied 45 S. Ct. 352, 267 U.S. 596, 69 L. Ed. 805); *Milton v. United States* (1940, 110 F. 2d 556, 71 App. D.C. 394).

#### Interstate transportation

Uttering forged checks in the District of Columbia, followed by their rejection by Maryland drawee, brought home to the defendant the interstate transportation which occurred. *United States v. G. J. Abston* (1971, 448 F. 2d 1189, 145 U.S. App. D.C. 266).

#### Joinder

Joinder of burglary charges to charges of forgery and uttering by use of credit card stolen in a burglary is not prejudicial, since uttering of credit card stolen in the burglary would have been admissible in evidence in trial for burglary. *United States v. B. J. Leonard* (1971, 445 F. 2d 234, 144 U.S. App. D.C. 164).

#### Jury question

In prosecution for forging and uttering bank checks and transporting forged securities in interstate commerce, evidence on insanity defense presented a jury question. *United States v. D. M. Eichberg* (1971, 439 F. 2d 620, 142 U.S. App. D.C. 110).

#### Plea of guilty

Where the accused entered a plea of guilty at the time of arraignment without assistance of counsel, and before sentence was imposed court-appointed counsel indicated that there might be a question of the accused's mental

capacity because of a prior skull fracture, District Judge should have permitted a change of plea at time of sentencing. *W. L. Poole v. United States* (1957, 250 F. 2d 396, 102 U.S. App. D.C. 71).

#### Presentence investigation report

Since at no time throughout sentencing proceedings following forgery conviction did defendant or his counsel challenge either court's expressed initial "belief" or its ultimate finding on record in defendant's presence that he was "addict" within statute defining same for sentencing purposes, denial of subsequent motion in district court to obtain access to presentence investigation report and to Danbury report in order that any basis for considering defendant to be addict might be disclosed was not abuse of discretion. *United States v. K. R. Carroll* (1970, 436 F. 2d 272, 141 U.S. App. D.C. 118).

#### Reviewable matters

Appeal from conviction for forgery and uttering was not proper occasion for consideration of sentencing and credit question which had in no way been presented to district court. *C. E. McCoy v. United States* (1966, 370 F. 2d 224, 125 U.S. App. D.C. 202).

#### Search and seizure

Examination of record in prosecution for conspiracy, obtaining property by false pretenses and forgery showed that information obtained by Internal Revenue agents, who were conducting valid civil tax audits of the principals prior to those persons being advised of the rights of criminal suspects was obtained properly with respect to the defendants who were persons well versed in finance, taxation and the law. *United States v. R. M. Stamp* (1971, 458 F. 2d 759, 147 U.S. App. D.C. 340; cert. denied 92 S. Ct. 2424, 406 U.S. 975, 93 S. Ct. 104, 409 U.S. 842).

Where police officer, who saw defendant walking along street about 2:00 in the morning, and who thought defendant had narcotics, without a warrant stopped defendant, who admitted that he had not worked for over a year, and had maintained himself by gambling, and officer then informed defendant that he was arresting him for vagrancy and required him to disrobe, search, which led to discovery of stolen money orders, was an unreasonable and unlawful violation of defendant's rights as a citizen, rendering stolen money orders inadmissible in prosecution for forgery, housebreaking, grand larceny, and interstate transportation of falsely made securities. *White etc. v. United States* (1960, 271 F. 2d 829, 106 U.S. App. D.C. 246).

#### Sentence

Where the defendant was sentenced to concurrent terms of imprisonment of one to three years on each of two counts of uttering forged checks and five years on each count of interstate transportation of the checks, the trial court properly specified that defendant would be eligible for parole under the latter sentence from any time after the first year. *United States v. G. J. Abston* (1971, 448 F. 2d 1189, 145 U.S. App. D.C. 266).

#### Writings included

Statutes proscribing forgery of any writing and any writing of public or private nature which might operate to prejudice another included defendant's forging of name of attorney on praecipes by which defendant entered appearances in cases, and forging of a registration card. *Morgan v. United States* (1962, 309 F. 2d 234, 114 U.S. App. D.C. 13).

### § 22-1402. Forging or imitating brands or packaging of goods.

Whoever wilfully forges or counterfeits or makes use of any imitation calculated to deceive the public, though with colorable difference or deviation therefrom, of the private brand, wrapper, label, trademark, bottle, or package usually affixed or used by any person to or with the goods, wares, merchandise, preparation, or mixture of such person, with intent to pass off any work, goods, manufacture, compound, preparation, or mixture as the manufacture or production of such person which is not really such, shall



be fined not more than five hundred dollars or imprisoned not more than one year, or both. (Mar. 3, 1901, 31 Stat. 1333, ch. 854, § 879.)

#### CROSS REFERENCES

Registration of containers of milk and beverages composed principally of milk, penalty for violations, see §§ 48-210, 48-303.

Registration of labor union labels, penalty for violations, see § 48-403.

§ 22-1403. Repealed. Sept. 14, 1965, 79 Stat. 783, Pub. L. 89-183, § 8; eff. Jan. 1, 1966.

Section, act Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 830, as amended dealt with the stealing, destroying, mutilating, secreting or withholding of wills. Matter is now covered by sections 18-111 and 18-112.

§ 22-1404. Secreting or converting property, documents, or assets of decedent's estate.

Whosoever wilfully and fraudulently makes away with, secretes, or converts to his own use any property, documents, or assets of any kind or nature belonging to the estate of a deceased person shall be punished by a fine not exceeding \$2,000 or imprisonment for not more than two years, or both. (Mar. 3, 1901, ch. 854, § 830a, as added Apr. 19, 1920, 41 Stat. 567, ch. 153, § 1.)

§ 22-1405. Taking away or concealing writings.

Whoever, with intent to defraud or injure another person, shall take away or conceal any writing whereby the estate or right of such other person shall or may be defeated, injured, or altered shall suffer imprisonment for not more than seven years. (Mar. 3, 1901, 31 Stat. 1326, ch. 854, § 840.)

#### NOTES TO DECISIONS

##### Copies of former wills

The court held that it is the clear import of existing statutes, that copies of former wills, whether executed or unexecuted, must be made available to the court under threat of criminal penalty. *C. H. Doherty, Sr., et al. v. V. Fairall, et al.* (1969, 413 F. 2d 381, 134 U.S. App. D.C. 107).

##### Indictment

Averments of indictment were sufficient when they clearly set forth the defendant's relation to the building association; that certain books of record were required to be kept, and that six carefully described books of record were kept; and that the defendant, on a day named, "unlawfully, wilfully, and with an intent to defraud and injure the said association, and the said stockholders and members thereof, did take away and conceal said books hereinbefore in this indictment particularly described, said books then and there being the writing, records, and property of said association, stockholders, and members." *Miller v. United States* (1913, 41 App. D.C. 52, certiorari denied 34 S. Ct. 323, 231 U.S. 755, 58 L. Ed. 468).

##### Writing

The words "whereby the estate, etc.," do not modify the word "writing," but the section is to be read as though there were a comma after the latter word. *Miller v. United States* (1913, 41 App. D.C. 52, certiorari denied 34 S. Ct. 323, 231 U.S. 755, 58 L. Ed. 468).

§ 22-1406. Repealed. Dec. 30, 1963, 77 Stat. 774, Pub. L. 88-243, § 15(a)(1); eff. Jan. 1, 1965.

Section of act Apr. 28, 1904, 33 Stat. 554, ch. 1808, § 883a, as amended, dealt with sale or concealment of personal property by conditional vendee, with intent to defraud. See Uniform Commercial Code, title 28.

§ 22-1407. Fraud by operation of coin-controlled mechanism by use of slugs.

Any person who shall operate or cause to be operated, or who shall attempt to operate or attempt to

cause to be operated, in the District of Columbia any automatic merchandise vending machine, turnstile, coin-box telephone, or other legal receptacle, designed to receive or be operated by lawful coin of the United States of America or a token provided by the person entitled to the coin contents of such receptacle, in furtherance of or in connection with the sale, use, or enjoyment of property or service, by means of a slug or any false token, counterfeited, mutilated, sweated, or foreign coin, or by any means, method, trick, or device whatsoever not authorized by the person entitled to the coin contents of such merchandise vending machine, turnstile, coin-box telephone, or other legal receptacle; or any person who shall take, obtain, or receive from or in connection with any such merchandise vending machine, turnstile, coin-box telephone, or other legal receptacle described in this section any goods, wares, merchandise, gas, electric current, or other article of value, or the use or enjoyment of any transportation or any telephone or telegraph facilities or service, or of any musical instrument, phonograph, or other property, in the District of Columbia, without depositing in and surrendering to such merchandise vending machine, turnstile, coin-box telephone, or other legal receptacle described in this section lawful coin of the United States of America to the amount required therefor by the person entitled to the coin contents of any such merchandise vending machine, turnstile, coin-box telephone, or other legal receptacle, or tokens provided and to the amount required by the person entitled to the coin contents of such legal receptacle, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding \$500 or by imprisonment not to exceed six months, or by both fine and imprisonment in the discretion of the court. (Aug. 16, 1937, 50 Stat. 662, ch. 660, § 1.)

#### CROSS REFERENCES

Allegation and proof of intent to defraud, see § 23-322. Regulation of slot machines, see § 10-109.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22-1409.

§ 22-1408. Manufacture, sale, offer for sale, possession of slugs or device to operate coin-controlled mechanism.

Any person who, with intent to cheat or defraud the owner, lessee, licensee, or other person entitled to the coin contents of any automatic merchandise vending machine, turnstile, coin-box telephone, or other legal receptacle, designed to receive or be operated by lawful coin of the United States of America or a token provided by the person entitled to the coin contents of such legal receptacle, in furtherance of or in connection with the sale, use, or enjoyment of property or service, or any person who, knowing or having cause to believe that the same is intended for fraudulent or unlawful use on the part of the purchaser, donee, or user thereof, shall manufacture, sell, offer to sell, advertise for sale, give away, or possess, in the District of Columbia, any token, slug, false or counterfeit coin, or any device or substance whatsoever intended or calculated to be placed, deposited, or used in the operation of any such merchandise vending machine, turnstile, coin-box telephone, or other legal receptacle shall be guilty of



a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding \$500 or by imprisonment not to exceed six months, or by both fine and imprisonment in the discretion of the court. (Aug. 16, 1937, 50 Stat. 663, ch. 660, § 2.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22-1409.

#### § 22-1409. "Person" defined.

The word "person," where used in sections 22-1407 to 22-1409, shall be construed to include any individual, individuals, copartnerships, associations, groups, and corporations. (Aug. 16, 1937, 50 Stat. 663, ch. 660, § 3.)

#### § 22-1410. Making, drawing, or uttering check, draft, or order with intent to defraud—Proof of intent—"Credit" defined.

Any person within the District of Columbia who, with intent to defraud, shall make, draw, utter, or deliver any check, draft, order, or other instrument for the payment of money upon any bank or other depository, knowing at the time of such making, drawing, uttering, or delivering that the maker or drawer has not sufficient funds in or credit with such bank or other depository for the payment of such check, draft, order, or other instrument in full upon its presentation, shall, if the amount of such check, draft, order, or other instrument is \$100 or more, be guilty of a felony and fined not more than \$3,000 or imprisoned for not less than one year nor more than three years, or both; or if the amount of such check, draft, order, or other instrument is less than \$100, be guilty of a misdemeanor and fined not more than \$1,000 or imprisoned not more than one year, or both. As against the maker or drawer thereof the making, drawing, uttering, or delivering by such maker or drawer of a check, draft, order, or other instrument, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in its possession or control, shall be prima facie evidence of the intent to defraud and of knowledge of insufficient funds in or credit with such bank or other depository, provided such maker or drawer shall not have paid the holder thereof the amount due thereon, together with the amount of protest fees, if any, within five days after receiving notice in person, or writing, that such check, draft, order, or other instrument has not been paid. The word "credit," as used herein, shall be construed to mean arrangement or understanding, express or implied, with the bank or other depository for the payment of such check, draft, order, or other instrument. (July 1, 1922, 42 Stat. 820, ch. 273; Oct. 22, 1970, Pub. L. 91-497, § 3, 84 Stat. 1094.)

#### AMENDMENT

1970—Section 3 of Act Oct. 22, 1970, Pub. L. 91-497, amended section—

(1) by striking out "or order" in each place it appears and inserting in lieu thereof "order, or other instrument";

(2) by striking out "shall be guilty of a misdemeanor punishable by imprisonment for not more than one year or fined not more than \$1,000, or both." and inserting in lieu thereof "shall, if the amount of such check, draft, order, or other instrument is \$100 or more, be guilty of a felony and fined not more than \$3,000 or imprisoned for not less than one year nor more than three years, or both; or if the amount of such check, draft, order, or other instrument is less than \$100, be guilty of a misdemeanor

and fined not more than \$1,000 or imprisoned not more than one year, or both.";

(3) by inserting, in the second sentence, after "notice in person, or writing, that such" the following: "check,".

#### CROSS REFERENCE

Allegation and proof of intent to defraud, see § 23-322.

#### NOTES TO DECISIONS

##### Elements of crime

False representation, knowledge of falsity, and intent to defraud are sufficient to violate bad check statute when representation involves worthless check. *S. J. Ciullo v. United States* (1963, 325 F. 2d 227, 117 U.S. App. D.C. 31).

##### Evidence

In prosecutions for passing bad checks payable to United States Treasurer and delivered to agent for Federal War Assets Administration, proof of fact, not alleged in informations, that checks covered purchases of war surplus articles under veterans' preference, was unnecessary for conviction. *McGuinness v. United States* (D. C. Mun. App. 1951, 77 A. 2d 22).

##### Instructions

Refusal to charge, in prosecution for false pretenses, on lesser included offense of passing bad check was not error where defense testimony disclosed something had been obtained for value and that defrauded party had placed reliance on defendant's check. *S. J. Ciullo v. United States* (1963, 325 F. 2d 227, 117 U.S. App. D.C. 31).

##### Issuance for antecedent debt

Under "worthless" check statute, fact that checks were given in payment of antecedent debt did not destroy presumption of fraudulent intent, and evidence as to issuance of two checks which were dishonored for lack of sufficient funds established prima facie case authorizing submission of case to jury in absence of any evidence by defendant on the point. *Clarke v. United States* (D. C. Mun. App. 1958, 140 A. 2d 181).

Fact that a check is issued for a past-due obligation does not preclude a conviction under the "worthless" statute. *Id.*

##### Limitations

The Wartime Suspension of Limitations Act was inapplicable to charges of violating District of Columbia statute by passing bad checks payable to United States Treasurer and delivered to agent for Federal War Assets Administration, though giving of such checks may have resulted in offenses within all categories of extension statute, as none of such offenses was essential ingredient of violation of local statute, so that prosecutions begun over three years after commission of offenses were barred by general statute of limitations for non-capital offenses. *McGuinness v. United States* (D.C. Mun. App. 1951, 77 A. 2d 22).

##### Questions for jury

In prosecution for violation of this section making it a crime for any person, with intent to deceive, to deliver any check while knowing that there are insufficient funds to his credit with bank for payment of such check, question of whether or not defendant had an intent to defraud in issuance of check for past consideration, presented a question of fact for the jury. *Clarke v. United States* (1959, 263 F. 2d 269, 105 U.S. App. D.C. 19).

##### Recovery on bond

The word "trading" in clause excluding trading loss from coverage of brokers' bond meant buying and selling of securities on customer's account, and loss occurring when brokers' employee accepted order to purchase substantial amount of stock for customer who gave bad check was such a loss. *L. Sade et al. v. National Surety Corp.* (D.C.D.C. 1962, 203 F. Supp. 680).

#### § 22-1411. Fraudulent advertising.

It shall be unlawful in the District of Columbia for any person, firm, association, corporation, or advertising agency, either directly or indirectly, to display or exhibit to the public in any manner whatever, whether by handbill, placard, poster, picture, film, or



otherwise; or to insert or cause to be inserted in any newspaper, magazine, or other publication printed in the District of Columbia; or to issue, exhibit, or in any way distribute or disseminate to the public; or to deliver, exhibit, mail, or send to any person, firm, association, or corporation any false, untrue, or misleading statement, representation, or advertisement with intent to sell, barter, or exchange any goods, wares, or merchandise or anything of value or to deceive, mislead, or induce any person, firm, association, or corporation to purchase, discount, or in any way invest in or accept as collateral security any bonds, bill, share of stock, note, warehouse receipt, or any security; or with the purpose to deceive, mislead, or induce any person, firm, association, or corporation to purchase, make any loan upon or invest in any property of any kind; or use any of the aforesaid methods with the intent or purpose to deceive, mislead, or induce any other person, firm, or corporation for a valuable consideration to employ the services of any person, firm, association, or corporation so advertising such services. (May 29, 1916, 39 Stat. 165, ch. 130, § 1.)

## CROSS REFERENCE

Allegation and proof of intent to defraud, see § 23—322.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10—124a, 22—1412, 22—1413.

## NOTES TO DECISIONS

## Amendments

In prosecution upon two informations charging in effect that accused inserted advertising calculated to induce readers for a valuable consideration to employ the advertiser's service, "knowing the same to be false and containing certain false, untrue and misleading statements," action of trial court in permitting amendments whereby words "for a valuable consideration" were deleted and words "with intent to barter, sell, or exchange any goods, wares, or merchandise, or anything of value" were added, was not, so far as appeared from record, prejudicial, and was not abuse of discretion. *Robles v. United States* (D. C. Mun. App. 1955, 115 A. 2d 303).

## § 22-1412. Prosecution under section 22-1411.

Prosecution under section 22—1411 shall be in the Superior Court of the District of Columbia upon information filed by the United States Attorney for the District of Columbia, or one of his assistants. (May 29, 1916, 39 Stat. 165, ch. 130, § 2; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 25, 1948, 62 Stat. 909, ch. 646, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88—60, § 1; July 29, 1970, Pub. L. 91—358, title I, § 155(a), 84 Stat. 570.)

## AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91—358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11—101.

## CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States Attorney" for "United States District Attorney." See 28 U.S.C. § 501.

"Municipal court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the police court and the municipal court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act

Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87—873, § 1, which contained identical provisions.

## § 22-1413. Penalty under section 22-1411.

Any person, firm, or association violating any of the provisions of section 22—1411 shall upon conviction thereof, be punished by a fine of not more than \$500 or by imprisonment of not more than sixty days, or by both fine and imprisonment, in the discretion of the court. A corporation convicted of an offense under the provisions of section 22—1411 shall be fined not more than \$500, and its president or such other officials as may be responsible for the conduct and management thereof shall be imprisoned not more than sixty days, in the discretion of the court. (May 29, 1916, 39 Stat. 165, ch. 130, § 3.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10—124a.

## § 22-1414. Fraudulently tampering with jury box or contents—Collusion in drawing jurors.

If any person shall fraudulently tamper with any box or wheel used or intended by the jury commission for the names of prospective jurors, or of prospective condemnation jurors or commissioners, or shall fraudulently tamper with the contents of any such box or wheel, or with any jury list, or be guilty of any fraud or collusion with respect to the drawing of jurors or condemnation jurors or commissioners, or if any jury commissioner shall put in or leave out of any such box or wheel the name of any person at the request of such person, or at the request of any other person, or if any jury commissioner shall wilfully draw from any such box or wheel a greater number of names than is required by the court, any such person or jury commissioner so offending shall for each offense be punished by a fine of not more than \$500 or imprisonment in the District jail or workhouse for not more than one year, or both. (Mar. 3, 1901, 31 Stat. 1223, ch. 854, § 213; Apr. 19, 1920, 41 Stat. 560, ch. 153, § 213; Mar. 27, 1968, Pub. L. 90—274, § 103(f), 82 Stat. 63.)

## AMENDMENTS

1968—Section 103(f), act Mar. 27, 1968, Pub. L. 90—274, amended section by inserting "or wheel" after the word "box" each time it appears in the section.

## EFFECTIVE DATE OF 1968 AMENDMENT AND APPLICABILITY IN CERTAIN CASES

See section 104, Act Mar. 27, 1968, set out as a note to section 13—701.

## CROSS REFERENCE

Allegation and proof of intent to defraud, see § 23—322.

## Chapter 15.—GAMBLING

## Sec.

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## Sec.

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### § 22-1501. Lotteries—Promotion—Sale or possession of tickets.

If any person shall within the District keep, set up, or promote, or be concerned as owner, agent, or clerk, or in any other manner, in managing, carrying on, promoting, or advertising, directly or indirectly, any policy lottery, policy shop, or any lottery, or shall sell or transfer any chance, right, or interest, tangible or intangible, in any policy lottery, or any lottery or shall sell or transfer any ticket, certificate, bill, token, or other device, purporting or intended to guarantee or assure to any person or entitle him to a chance of drawing or obtaining a prize to be drawn in any lottery, or in a game or device commonly known as policy lottery or policy or shall, for himself or another person, sell or transfer, or have in his possession for the purpose of sale or transfer, a chance or ticket in or share of a ticket in any lottery or any such bill, certificate, token, or other device, he shall be fined upon conviction of each said offense not more than \$1,000 or be imprisoned not more than three years, or both. The possession of any copy or record of any such chance, right, or interest, or of any such ticket, certificate, bill, token, or other device shall be prima-facie evidence that the possessor of such copy or record did, at the time and place of such possession, keep, set up, or promote, or was at such time and place concerned as owner, agent, or clerk, or otherwise in managing, carrying on, promoting, or advertising a policy lottery, policy shop, or lottery. (Mar. 3, 1901, 31 Stat. 1330, ch. 854, § 863; June 30, 1902, 32 Stat. 535, ch. 1329; Apr. 5, 1938, 52 Stat. 198, ch. 72, § 1.)

#### AMENDMENTS

1938—Act Apr. 5, 1938, increased penalty from \$500 to \$1,000 and added the sentence respecting possession of tickets as prima facie evidence of certain conduct.

1902—Act June 30, 1902, increased the limitation on imprisonment from one to three years.

#### CROSS REFERENCES

Other criminal penalties for gambling, see § 16-1704. Search warrants, see § 23-521 et seq.

Transfer or suspension of liquor license pending prosecution, see §§ 25-117, 25-118.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-1502, 22-1505, 23-546.

#### NOTES TO DECISIONS

##### Admissibility of evidence—In general

In joint prosecutions for violations of lottery laws, admission of one defendant's accusatory statement against the other three defendants was not error in view of later instructions that jury should disregard such statement. *Davis v. United States* (1960, 274 F. 2d 585, 107 U.S. App. D.C. 76).

In prosecution for operation of lottery and for possession of numbers slips, slips used as evidence to prove possession charge could also be used to prove charge of operation of lottery. *Maynard v. United States* (1954, 215 F. 2d 336, 94 U. S. App. D. C. 347).

##### — Arrest, search and seizure

Evidence which was seized in room wherein defendant, charged with violations of gambling laws, was arrested was admissible where it was relevant and material, although defendant claimed that others apparently not associated with unlawful venture occupied house and that warrant authorizing search of entire house was too broad in description of premises. *J. Minowitz v. United States* (1962, 298 F. 2d 682, 112 U.S. App. D.C. 21).

Where defendant had been indicted for carrying on a lottery known as the numbers game, in violation of this section, evidence obtained by police officers through an illegal search and arrest is inadmissible and the conviction must be reversed. *McDonald v. United States* (1948, 69 S. Ct. 191, 335 U.S. 451, 93 L. Ed. 153).

Where, over period of two and a half months, officers had placed numbers bets on fifteen separate occasions at one location, and, on ten separate occasions, had observed a suspect depart from that location with bulging pockets and enter other premises, from which he subsequently departed "without the bulge," officers had reasonable grounds to believe that latter premises were being used in lottery operations, and that defendant, who at time such premises were searched, pursuant to a search warrant was the only male present and was leaving "hastily," was participating therein, justifying arrest of defendant without an arrest warrant and seizure and use of incriminating evidence found in course of search of defendant made in connection with such arrest. *Stephens v. United States* (1959, 271 F. 2d 832, 106 U.S. App. D.C. 249).

In prosecution of numerous defendants for violation of lottery laws and conspiracy to violate those laws, where evidence obtained at one of several places raided was inadmissible because it had been obtained as a result of illegal entry into premises, but mass of other evidence legally seized sustained convictions, error in admitting such illegally obtained evidence was not, except as to one defendant who was found guilty of possessing lottery slips seized at such address, prejudicial. *Woods et al. v. United States* (1956, 240 F. 2d 37, 99 U. S. App. D. C. 351, certiorari denied 77 S. Ct. 815, 353 U. S. 941, 1 L. Ed. 2d 760).

Whether lottery slips seized under search warrant were dead or alive they could be introduced in support of charge of operating a lottery. *Shaw v. United States* (1953, 209 F. 2d 298, 93 U. S. App. D. C., 90, certiorari denied 74 S. Ct. 430, 347 U. S. 905, 98 L. Ed. 1063).

Where suspected gambler appeared, without counsel, before Senate Crime Investigating Committee, under compulsion of subpoena, and committee, without advising him of his rights to counsel and against self-incrimination, threatened prosecution for contempt if he refused to answer, for perjury if he lied, and for gambling activities if he told truth, and, with warning that he was still under subpoena, directed him to lead policeman to his home and there turn over a book, and where policeman, upon entering the home and learning that the book was not available examined and took without process other papers and documents, such papers and documents were obtained by unreasonable search and seizure, and such evidence was inadmissible. *Nelson v. United States* (1954, 208 F. 2d 505, 93 U. S. App. D. C. 14).

Where Court of Appeals could not determine from record of more than 2,000 pages that jury would have convicted defendant had not evidence obtained through unreasonable search and seizure been adduced, conviction would be reversed and case remanded for new trial. *Id.*

In prosecution for operation of lottery known as numbers game, admission of numbers slips, numbers books, and other physical evidence seized at time of defendant's arrest, was proper, notwithstanding that it was not shown that numbers slips related to an existing lottery rather than to one already completed. *Harvey v. United States* (1952, 197 F. 2d 594, 91 U. S. App. D. C. 36).

In prosecution for operating numbers game and knowingly possessing numbers slips, found in defendant's automobile at time of his arrest without warrant, evidence of circumstances leading to arrest was sufficient to show probable cause therefor, so as to render search of automobile and seizure of slips reasonable and valid and authorize admission of slips in evidence against defend-



ant. *Mills v. United States* (1952, 196 F. 2d 600, 90 U. S. App. D. C. 365, certiorari denied 73 S. Ct. 27, 344 U. S. 826, 97 L. Ed. 643).

Where police officers legally obtained search warrant for certain premises which they believed was being used in numbers lottery and entered and found extensive evidence of numbers activities and arrested all persons present, they could legally search the persons arrested, and evidence thereby obtained was admissible in prosecution for carrying on and promoting a numbers game and for possession of numbers slips. *Wyche v. United States* (1952, 193 F. 2d 703, 90 U. S. App. D. C. 67, certiorari denied 72 S. Ct. 556, 342 U. S. 943, 96 L. Ed. 702, rehearing denied 72 S. Ct. 675, 343 U. S. 921, 96 L. Ed. 1334).

Where there is no claim in the case that the officers advised the suspect of the cause of their demand before they broke down the door, upon that ground alone, the breaking of the door was unlawful, presence of arresting officers was unlawful, the arrest was unlawful, the search unlawful and the evidence thus procured should have been suppressed, and a new trial on the indictment must be ordered. *Accarino v. United States* (1950, 179 F. 2d 456, 85 U.S. App. D.C. 395).

#### — Conspiracy

That alleged coconspirator had been seen talking to defendant on day before that on which such alleged coconspirator allegedly informed government agent that he had turned his numbers work over to defendant did not establish that conspiracy was in existence on that date; and in absence of evidence that conspiracy was then in existence, agent's testimony with regard to alleged conversation was inadmissible against defendant, in prosecution for conspiracy to commit lottery offenses. *Taylor v. United States* (1958, 260 F. 2d 737, 104 U.S. App. D.C. 219).

Erroneous admission of evidence that alleged coconspirator had told government agent that he had turned his numbers work over to defendant would require reversal of conviction under indictment count charging conspiracy to commit lottery offenses; and since it was probable that such evidence had also been considered by jury in connection with related count charging defendant with operation of a lottery, conviction on that count would also be reversed. *Id.*

In prosecution under this section a page from a notebook found on the person of the accused was properly admitted in evidence, over the objection of the accused that it was a memorandum of a bet on a horse race, although it may tend, incidentally, to prove another distinct offense. *Shettel v. United States* (1940, 113 F. 2d 34, 72 App. D.C. 250).

Intercepted interstate and local messages pertaining to gambling are not admissible when received by person not authorized by the sender. *United States v. Plisco* (D.C.D.C. 1938, 22 F. Supp. 242).

#### — Discrimination

Even if documents which the defendant, charged with violation of lottery laws, sought to introduce into evidence showed that others were engaging in activities which the defendant considered to be lotteries uncondemned by law, the offer was insufficient to show statutory discrimination in violation of statute and court properly refused to admit same. *J. S. Washington v. United States* (1968, 401 F. 2d 915, 130 U.S. App. D.C. 374).

#### Arrest, search and seizure

Whether there was probable cause for arrest of defendant for operating a lottery and whether subsequent search of his person was lawful were questions for trier of fact, in prosecution for violation of statute proscribing knowing possession of items used or to be used in lotteries and other forms of gambling, wherein defendant moved to suppress "cut cards" found in his possession. *R. P. Bailey v. United States* (D.C. App. 1966, 223 A. 2d 190).

Personal observations of suspicious conduct of defendant, charged with violations of gambling laws, during careful investigation, together with information received, gave probable cause for issuance of search warrant and warrant for arrest. *J. Minowitz v. United States* (1962, 298 F. 2d 682, 112 U.S. App. D.C. 21).

Where defendants although present at time when premises were searched pursuant to warrant, made no claim to property when inquiry was made in that respect by searching officers, and defendants disavowed any interest in premises, they were without right to have been served with a copy of search warrant, and could not claim that copy left on premises was defective. *Shaw v. United States* (1954, 209 F. 2d 298, 93 U. S. App. D. C. 90, certiorari denied 74 S. Ct. 430, 347 U. S. 905, 98 L. Ed. 1063).

Where officers, while standing in place open to public, saw through open door into back room and observed activities and paraphernalia which were familiar indicia of numbers lottery operation, they had "probable cause" and duty to make arrest, and arrest and seizure of paraphernalia were "legal arrest and seizure", though made without search or arrest warrant. *Fisher v. United States* (1953, 205 F. 2d 702, 92 U. S. App. D. C. 247, certiorari denied 74 S. Ct. 122, 346 U. S. 872, 98 L. Ed. 381).

Circumstances revealed in police officer's affidavit provided sufficient probable cause to sustain issuance to officer of warrant for search of premises where it was believed defendants were operating a numbers game by telephone. *Washington v. United States* (1953, 202 F. 2d 214, 92 U. S. App. D. C. 31, certiorari denied 73 S. Ct. 938, 245 U. S. 956, 97 L. Ed. 1377, rehearing denied 73 S. Ct. 1130, 345 U. S. 1003, 97 L. Ed. 1408).

The arrest without warrant of defendant accused of carrying on a lottery and possessing tickets and certificates designed for purpose of conducting a lottery was legal where the facts and circumstances within the arresting officers' knowledge and of which they had reasonably trustworthy information were sufficient to warrant man of reasonable caution in belief that defendant was taking numbers bets in corridor of building. *De Bruhl v. United States* (1952, 199 F. 2d 175, 91 U. S. App. D. C. 125, certiorari denied 73 S. Ct. 111, 344 U. S. 868, 97 L. Ed. 673).

In prosecution for violation of District of Columbia gambling statutes by engaging in the numbers business and for violation of federal statute requiring payment of tax as prerequisite to engaging in business of accepting wagers, evidence relating to police investigation extending over a ten week period disclosed probable cause for issuance of search warrant. *United States v. Long* (D.C.D.C. 1959, 169 F. Supp. 730).

Where police investigation extending over a 10-week period established probable cause for issuance of search warrant for gambling activities in violation of District of Columbia statutes, the fact that eleven day period elapsed between last police observation of premises and issuance of such warrant did not require suppression of evidence seized from the premises searched on any theory of lack of probable cause. *Id.*

Where District of Columbia Metropolitan Police received information linking telephone number to numbers game and the source stated that bets were placed by named person using designated code number and Metropolitan Police received additional information from Arlington County police that very heavy number bets were called into the telephone number and policeman made series of telephone calls to that number and identified himself as such person and gave such code number and received numbers information, there was probable cause for issuance of search warrant which led to seizure of numbers slips and other numbers paraphernalia. *United States v. Haje* (D.C.D.C. 1958, 159 F. Supp. 870).

Where police had rejected convenient present opportunity to make lawful arrest in public street, search of apartment, which defendant had entered before arrest was attempted, could not be supported as incidental to arrest. *United States v. Johnson* (D.C.D.C. 1953, 113 F. Supp. 359).

#### Conspiracy

In prosecution of defendants for violation of lottery laws and conspiracy to violate laws, crime of conspiracy was not so merged in or indistinguishable from the lottery statute as to prevent conviction of defendants on both charges. *Woods et al. v. United States* (1956, 240 F. 2d 37, 99 U. S. App. D. C. 351, certiorari denied 77 S. Ct. 815, 353 U. S. 941, 1 L. Ed. 2d 760).



The crime of conspiracy to violate lottery laws and lottery statute violations are not so closely connected as to render applicable a proposition that where a concert of action between two or more persons is logically necessary to a crime's completion, a charge of conspiracy will not lie against such persons. *Id.*

#### Constitutionality

The Gamblers' Occupational Tax Act, as applied to persons in District of Columbia, constitutes a valid exercise of the taxing power and is not a penalty under the guise of a tax, even though wagering is by federal law a crime in the District of Columbia. *Lewis v. United States* (1955, 75 S. Ct. 415, 348 U. S. 419, 99 L. Ed. 475, rehearing denied 75 S. Ct. 602, 349 U. S. 917, 99 L. Ed. 1250).

Gamblers' Occupational Tax Act is not unconstitutional as applied to person in District of Columbia on ground that it violates privilege against self-incrimination notwithstanding fact that wagering is by federal law a crime in the District of Columbia. *Id.*

#### Construction

Intention of statutes proscribing knowing possession of certain items used or to be used in lotteries and other forms of gambling was to ban not only knowing possession of lottery tickets and similar writings but also knowing possession of any records used or to be used in violating provisions of the law relating to lotteries and other forms of gambling. *R. P. Bailey v. United States* (D.C. App. 1966, 223 A. 2d 190).

Words "record, notation, and receipt" added to list of contraband in statute proscribing knowing possession of items used or to be used in lotteries and other forms of gambling were not intended merely to be synonymous with "numbers slips", and cut cards, which are listings of number combinations which "hit" more frequently than others and on which reduced odds are to be paid, were included in the contraband. *Id.*

Defendants in possession of "cut cards" which were listings of number combinations which "hit" more frequently than others and on which odds are somewhat reduced from normal, violated statute proscribing knowing possession of items used or to be used in lotteries and other forms of gambling. *Id.*

#### Counsel, conduct of

In prosecution for carrying on and promoting a numbers game and for possession of numbers slips, wherein defendants' former counsel of their own choice disclaimed any desire to enter a motion to suppress evidence and also gave specific reasons for disclaimer, contention of defendants' present counsel on appeal that trial court erred in refusing to suppress evidence would be rejected as asking Court of Appeals to substitute its judgment of proper trial tactics for that of the lawyer of the forum. *Wyche v. United States* (1952, 193 F. 2d 703, 90 U. S. App. D. C. 67, certiorari denied 72 S. Ct. 556, 342 U. S. 943, 96 L. Ed. 702, rehearing denied 72 S. Ct. 675, 343 U. S. 921, 96 L. Ed. 1334).

#### Discovery and inspection

Defendants are entitled to inspection before trial of documents and statements which are or may become evidence. *United States v. Bell* (D.C.D.C. 1955, 126 F. Supp. 612, motion denied 17 F.R.D. 13).

#### Distribution of prizes

One of the essential elements of a lottery is the awarding of a prize by chance, but the exact method adopted for the application of chance to the distribution of prizes is immaterial. *Forte v. United States* (1936, 83 F. 2d 612, 65 App. D.C. 355, 105 A.L.R. 300).

#### Double conviction for same offense

Even if defendant was twice convicted for same offense, any error was cured by concurrent sentences imposed. *Lewis v. United States* (1959, 263 F. 2d 265, 105 U.S. App. D.C. 15).

#### Gaming table

The statute penalizing anyone setting up in the District of Columbia any "gaming table", etc., or who permits any person to bet or play at or upon any such gaming table or device, etc., indicates a physical device of some sort and does not mean the mere taking of a

bet on a race. *Plummer v. United States* (1951, 189 F. 2d 19, 88 U. S. App. D. C. 244).

#### Harmless or prejudicial error

Where papers and documents obtained from one of several defendants in joint prosecution for violation of lottery laws, were obtained as result of unreasonable search and seizure, the use of evidence so obtained infected the cases of other defendants, and denial of motion to suppress such evidence, made by defendant from whom the papers and documents were illegally seized, was error prejudicial to other defendants as well. *Nelson v. United States* (1954, 208 F. 2d 505, 93 U. S. App. D. C. 14).

#### Indictment

Under this section making it unlawful to keep, set up, or promote a lottery, the charge may contemplate an act already complete when officer arrives, and possession of numbers slips, whether expired or not, may be relevant and material evidence that possessor has been conducting a lottery, and possessor need not be caught in the act, but may be caught with damaging evidence of a completed offense. *Harvy v. United States* (1952, 197 F. 2d 594, 91 U.S. App. D.C. 36).

Where an indictment under this section contains two counts, one for misdemeanor and one for felony, defendant's objection that the conviction on the misdemeanor count was invalid is immaterial in view of the fact that the sentences for each were to be served concurrently and the longer sentence was based on a valid count. *Coupe v. United States* (1940, 113 F. 2d 145, 72 App. D.C. 86, certiorari denied 60 S. Ct. 1105, 310 U.S. 651, 84 L. Ed. 1417).

#### Instructions

Provision of this section that possession of numbers slips shall be prima facie evidence that possessor was concerned in carrying on lottery, when quoted in instruction to jury, did not constitute instruction that it had become duty of lottery prosecution defendant, who had had possession of numbers slips, to establish his innocence to obtain acquittal. *Maynard v. United States* (1954, 215 F. 2d 336, 94 U. S. App. D. C. 347).

In prosecution for operating lottery and for possession of numbers slips, wherein jury had been fully instructed as to the government's burden of proof, trial judge's answer to jury's question, whether possession of slips constituted prima facie evidence of operation of lottery, given in words of this section providing that such possession did constitute prima facie evidence, without explaining meaning of prima facie evidence, was appropriate and understandable within framework of entire charge. *Id.*

In prosecution under six count indictment charging violation of laws against lotteries, instruction to effect that every circumstance relied upon by prosecution as part of circumstantial evidence tending to convict, must be established beyond reasonable doubt was properly refused in view of other instructions. *Shaw v. United States* (1954, 209 F. 2d 93 U. S. App. D. C. 90, certiorari denied 74 S. Ct. 430, 347 U. S. 905, 98 L. Ed. 1063).

The trial court instructions to the jury, "Do I believe from the evidence I have heard in this trial that the defendants have committed this crime? If you answer the question yes, you must find the defendants guilty. If your answer is no, then you must find them not guilty," is erroneous, as this statement is not the law, for the law is that if the jury believes beyond a reasonable doubt that the defendant has committed the alleged offense, it should find a verdict of guilty, but if there be a reasonable doubt in the minds of the jurors, they must acquit. *Billeci v. United States* (1950, 184 F. 2d 394, 87 U.S. App. D.C. 274, 24 A.L.R. 2d 881).

If the intonations and gestures of a trial judge, when instructing the jury, are erroneously detrimental to a defendant in a criminal case, it is the duty of counsel to report fully and accurately, at the time and on the record, although not in the hearing of the jury, what has transpired. *Id.*

When a federal judge comments upon evidence by expressing his opinion upon phases of it, he is treading close to the line which divides proper judicial action from the field which is exclusively the jury's; therefore, he must make it unequivocally clear to the jury that conclusions upon such matters are theirs, not his, to make, and he



must do so in such manner and in such time that the jury will not be left in doubt. *Id.*

#### License upon payment of tax

Provision of Gamblers' Occupational Tax Act requiring person engaged in business of wagering to pay a special tax of \$50 before engaging in such business does not give a person, upon payment of the fee, a license to engage in wagering in District of Columbia, where wagering is, by federal law, a crime as the federal government may tax what it also forbids. *Lewis v. United States* (1955, 75 S. Ct. 415, 348 U. S. 419, 99 L. Ed. 475, rehearing denied 75 S. Ct. 602, 349 U. S. 917, 99 L. Ed. 1250).

Fact that provision of Gamblers' Occupational Tax Act requiring person engaged in business of wagering to pay special tax of \$50 and exhibit stamp in his place of business might furnish probable cause for issuance of search warrant could not be urged as defense by person who was arrested for engaging in business of wagering without paying special tax. *Id.*

#### Motion to dismiss

Where count one charged in effect that the defendant, among others, violated this section relating to sale of lottery tickets, and counts two through seven charged that such defendant sold named persons a chance in a lottery on six different dates, defendant's motion for dismissal of counts two through seven would not be granted even though the defendant could not be found guilty of count one if the government proved that defendant violated this section by proving only the six sales that gave rise to counts two through seven; the determination of that matter must await the trial on the facts. *United States v. Long* (D.C.D.C. 1959, 169 F. Supp. 730).

#### Motion to suppress

In proceedings on defendant's motion to suppress and for return of property seized from his custody, possession and person under a warrant for the search of an apartment, evidence required finding that there had been a lack of probable cause to believe that grounds existed to support issuance of search warrant. *United States v. Johnson* (D.C.D.C. 1953, 113 F. Supp. 359).

#### Multiple violations

Six sales of lottery tickets on different dates to the same person are six violations of this section relating to gambling. *United States v. Long* (D.C.D.C. 1959, 169 F. Supp. 730).

#### New trial

In prosecution for violating lottery laws, District Court did not abuse discretion in denying motion for new trial on ground that defendant's trial counsel refused to permit her to testify and failed to introduce certain other testimony. *Ingram v. United States* (1954, 209 F. 2d 818, 93 U. S. App. D. C. 307).

#### Numbers game

"Numbers game" is lottery when the player merely guesses that the result of mathematical calculations, based upon the prices paid at a certain track, will be a certain number. *Forte v. United States* (1936, 83 F. 2d 612, 65 App. D.C. 355, 105 A.L.R. 300).

Conviction of violating and of conspiracy to violate the lottery law was sustained where evidence showed that defendants had been engaged in operation of the "numbers" game. *Smith v. United States* (1940, 112 F. 2d 217 72 App. D.C. 187, certiorari denied 61 S. Ct. 20, 311 U. S. 663, 85 L. Ed. 425).

#### Possession of tickets

Possession of number slips is prima facie evidence of possessor's involvement in an illegal lottery. *\$1,407.00 in United States Currency, et ano. v. District of Columbia* (D.C. App. 1968, 242 A. 2d 217).

The statutory presumption of promoting a lottery which arises from evidence of possession of lottery tickets may be properly invoked upon circumstantial evidence of possession of such tickets provided such circumstantial evidence is strong. *Davis v. United States* (1960, 274 F. 2d 585, 107 U. S. App. D. C. 76).

Proof of possession of numbers slips is not essential to conviction for operating lottery. *United States v. Lewis* (D.C.D.C. 1959, 171 F. Supp. 71, affirmed in part, reversed in part on other grounds 274 F. 2d 585, 107 U. S. App. D.C.

76, certiorari denied 80 S. Ct. 1241, 363 U. S. 806, 4 L. Ed. 2d 1149).

#### Prima facie evidence

The appellant's possession of numbers paraphernalia on premises was prima facie evidence of her participation in illegal lottery. *\$3,265.28 in United States Currency, et al. v. District of Columbia* (D.C. App. 1969, 249 A. 2d 516).

#### Questions for court

In prosecution under this section, the credibility of the testimony of officers as to evidence of guilt found in defendant's automobile, is for the judge and the trial court's finding in disputed evidence will be upheld. *Coupe v. United States* (1940, 113 F. 2d 145, 72 App. D.C. 86, certiorari denied 60 S. Ct. 1105, 310 U. S. 651, 84 L. Ed. 1417).

#### Questions for jury

Where defendant in prosecution for promotion of numbers game renewed, during trial, motion to suppress evidence obtained incident to arrest of defendant without a warrant, on ground that there was no probable cause for defendant's arrest, and court, instead of determining issue of probable cause, improperly submitted issue of probable cause to jury, admission of testimony of police officers that they were experienced in the investigation of the numbers game and that because of such experience, officers knew from conduct of defendant that he was participating in operation of a lottery, was reversible error, because testimony trenched on jury's duty to determine ultimate question whether defendant was guilty. *Simmons v. United States* (1953, 206 F. 2d 427, 92 U. S. App. D. C. 122).

#### Review

An order granting suppression of evidence seized from defendant's person at time of his arrest, entered before trial in criminal case, is not appealable as a "final decision", regardless of whether, in the particular case, effect of suppressing the evidence would be to force dismissal of indictment for lack of evidence. *Carroll v. United States* (1957, 77 S. Ct. 1332, 354 U. S. 394, 1 L. Ed. 2d 1442).

In prosecution for violation of District of Columbia gambling laws, it was unfortunate that, during course of trial, it was brought to attention of jury that a codefendant had pleaded guilty to felony count of indictment, which jointly charged all of defendants; but in view of overwhelming evidence of guilt, any prejudice which might have remained despite judge's admonition to jury could be said to be harmless, and district court would not be put in error for refusing to grant motion for mistrial. *Carter v. United States* (C.A.D.C. 1960, 281 F. 2d 640).

Conviction for operating lottery in violation of District of Columbia statutes was affirmed on appeal, notwithstanding defendant's contentions (1) that numbers slips and other gambling paraphernalia were seized under warrants which were not supported by showing of adequate probable cause and (2) that evidence was insufficient to sustain conviction. *Ellis v. United States* (1959, 270 F. 2d 448, 106 U. S. App. D.C. 145).

Where defendants, each of whom was convicted of substantive offense of operating lottery, and jointly of conspiracy to operate lottery, did not request trial court to compel election of counts on ground that substantive and conspiracy counts were duplicitous, in view of identity of proof under each count, and constituted double jeopardy, defendants did not save question for review on appeal and Court of Appeals would not consider merits of contention. *Aikens et al. v. United States* (1956, 232 F. 2d 66, 98 U. S. App. D. C. 66).

#### Revocation of operator's permit

Revocation of petitioner's operator's permit for operating motor vehicle in conducting lottery and while possessing numbers slips was an abuse of discretion, where there was no evidence of any threat or danger to the safety of persons or property through petitioner's use of an automobile. *H. R. Stoneburner v. G. A. England, Director etc.* (D.C. App. 1964, 202 A. 2d 652).

#### Search warrant

Failure of search warrant affidavit to set forth factual circumstances from which magistrate could appraise in-



formant's credibility and to state circumstances upon which informant based his conclusion was not fatal where, according to affidavits, information triggered investigation by officers who set out details and results of their investigation of gambling and lottery law violations. *United States v. S. A. Berry* (1972, 463 F. 2d 1278, 150 U.S. App. D.C. 187).

Search warrant affidavit reciting uncorroborated tip that that first person was picking up numbers and taking them to address of second person, a well-known gambler, together with investigative officers' observations of comings and goings and delivery of "small package," all in accordance with officers' knowledge as to operation of numbers game, was sufficient to support warrant for search, leading to lottery and gambling charges, where affidavit recited that participants had gambling law convictions and that premises had been established by police records to have recently housed gambling operation, although it would have been helpful had officers elaborated on modus operandi of numbers operation. *Id.*

#### Severance

In prosecution for operation of lottery and for possession of numbers slips, trial court's denial of defendants' motions for severance did not constitute abuse of discretion. *Maynard v. United States* (1954, 215 F. 2d 336, 94 U. S. App. D. C. 347).

#### Sufficiency of evidence

Evidence, including possession of lottery tickets, was sufficient to sustain conviction of one defendant for promoting a lottery but was insufficient to sustain conviction as to another defendant. *Davis v. United States* (1960, 274 F. 2d 585, 107 U.S. App. D.C. 76).

Evidence, as to all defendants but one, was sufficient to support convictions on all counts, in prosecution for operating and conspiracy to operate lottery, and for possession of lottery tickets, and maintenance of gambling premises. *Aikens et al. v. United States* (1956, 232 F. 2d 66, 98 U. S. App. D. C. 66).

Evidence that search of previously occupied apartment of defendant uncovered numbers slips and notebook, in absence of evidence of possession of lottery tickets by defendant, was insufficient to support conviction for possession of lottery tickets, operation of lottery, or for maintaining gambling premises. *Id.*

Evidence was insufficient to establish beyond a reasonable doubt that defendant set up or kept a gaming table for the purpose of gaming. *Plummer v. United States* (1951, 189 F. 2d 19, 88 U.S. App. D.C. 244).

Evidence justified submitting to jury prosecution for operating a lottery and possessing materials therefor. *Kenney v. United States* (1946, 157 F. 2d 442, 81 U.S. App. D.C. 259).

#### — Arrest, search and seizure

In joint prosecutions for violations of lottery laws, evidence sustained trial judge's finding that police gave sufficient notice of their purpose and authority before breaking in door of one defendant's premises in executing search warrant. *Davis v. United States* (1960, 274 F. 2d 585, 107 U.S. App. D.C. 76).

Evidence sustained conclusion of existence of sufficient cause to believe that the offense of conducting a "number game" had been committed and that defendant had participated therein to justify arrest and search without warrant. *Newyahr v. United States* (1950, 177 F. 2d 658, 85 U.S. App. D.C. 384, certiorari denied 70 S. Ct. 350, 338 U.S. 936, 94 L. Ed. 577).

In numbers game prosecution, wherein defendants moved to suppress evidence and for return of property, evidence established that police officers, who had submitted affidavits upon which warrants had issued, had had probable cause to believe, through personal contact, knowledge, observation and information, that the premises searched were being used for operation of a numbers lottery and that evidence of crime was there concealed. *United States v. Bell* (D.C.D.C. 1955, 126 F. Supp. 612, motion denied 17 F.R.D. 13).

#### — Prima facie evidence

Defendant's possession of used numbers slips, known in the game as "dead" slips, constituted prima facie evidence of carrying on of a lottery. *Clement v. United States* (1954, 208 F. 2d 46, 93 U. S. App. D. C. 154).

Even possession of "dead" or "hit" lottery tickets falls within language of this section raising presumption of violation of this section proscribing operation of lottery. *United States v. Lewis* (D.C.D.C. 1959, 171 F. Supp. 71, affirmed in part, reversed in part on other grounds 274 F. 2d 585, 107 U.S. App. D.C. 76, certiorari denied 80 S. Ct. 1241, 363 U.S. 806, 4 L. Ed. 2d 1149).

#### § 22-1502. Possession of lottery or policy tickets.

If any person shall, within the District of Columbia, knowingly have in his possession or under his control, any record, notation, receipt, ticket, certificate, bill, slip, token, paper, or writing, current or not current used or to be used in violating the provisions of section 22-1501, 22-1504, or 22-1508, he shall, upon conviction of each such offense, be fined not more than \$1,000 or be imprisoned for not more than one year, or both. For the purpose of this section, possession of any record, notation, receipt, ticket, certificate, bill, slip, token, paper, or writing shall be presumed to be knowing possession thereof. (Mar. 3, 1901, ch. 854, § 863a as added Apr. 5, 1938, 52 Stat. 198, ch. 72, § 2, and amended June 29, 1953, 67 Stat. 95, ch. 159 § 206(a).)

#### AMENDMENT

1953—Act June 29, 1953, amended section generally and among other changes so referred to violations under section 22-1501, 22-1504, or 22-1508, created a presumption that possession of prohibited records is knowing possession, and increased the maximum penalty for violation of the section from a \$500 fine or six months imprisonment or both to a \$1,000 fine or one year imprisonment, or both.

#### CROSS REFERENCE

Search warrants, see § 23-521 et seq.

#### NOTES TO DECISIONS

##### Admissibility of evidence—In general

Since the police officers had what they believed was credible information that defendant who fit description given officers had a gun in his pocket, since the defendant was reluctant to remove his hand from his pocket, and since there was obvious large bulge in pocket when he did remove his hand, officers were justified in conducting a limited protective search for weapons, and removal of currency and numbers slips by officer who claimed to have found gun was reasonable and fact numbers slips and money rather than gun were removed from pocket did not render those items inadmissible. *United States v. M. Dowling* (D.C. App. 1970, 271 A. 2d 406).

In joint prosecutions for violations of lottery laws, admission of one defendant's accusatory statement against the other three defendants was not error in view of later instructions that jury should disregard such statement. *Davis v. United States* (1960, 274 F. 2d 585, 107 U.S. App. D.C. 76).

In prosecution for operation of lottery and for possession of numbers slips, slips used as evidence to prove possession charge could also be used to prove charge of operation of lottery. *Maynard v. United States* (1954, 215 F. 2d 336, 94 U. S. App. D. C. 347).

##### — Arrest, search and seizure

Evidence which was seized in room wherein defendant, charged with violations of gambling laws, was arrested was admissible where it was relevant and material, although defendant claimed that others apparently not associated with unlawful venture occupied house and that warrant authorizing search of entire house was too broad in description of premises. *J. Minowitz v. United States* (1962, 298 F. 2d 682, 112 U.S. App. D.C. 21).

Where defendant had been indicted for carrying on a lottery known as the numbers game, in violation of the District Code, evidence obtained by police officers through an illegal search and arrest is inadmissible and the conviction must be reversed. *McDonald v. United States* (1948, 69 S. Ct. 191, 335 U.S. 451, 93 L. Ed. 153).



In prosecution of numerous defendants for violation of lottery laws and conspiracy to violate those laws, where evidence obtained at one of several places raided was inadmissible because it had been obtained as a result of illegal entry into premises, but mass of other evidence legally seized sustained convictions, error in admitting such illegally obtained evidence was not, except as to one defendant who was found guilty of possessing lottery slips seized at such address, *prejudicial*. *Woods et al. v. United States* (1956, 240 F. 2d 37, 99 U. S. App. D. C. 351, certiorari denied 77 S. Ct. 815, 353 U. S. 941, 1 L. Ed. 2d 760).

In prosecution for operating numbers game and knowingly possessing numbers slips, found in defendant's automobile at time of his arrest without warrant, evidence of circumstances leading to arrest was sufficient to show probable cause therefor, so as to render search of automobile and seizure of slips reasonable and valid and authorize admission of slips in evidence against defendant. *Mills v. United States* (1952, 196 F. 2d 600, 90 U. S. App. D. C. 365, certiorari denied 73 S. Ct. 27, 344 U. S. 826, 97 L. Ed. 643).

Where police officers legally obtained search warrant for certain premises which they believed was being used in numbers lottery and entered and found extensive evidence of numbers activities and arrested all persons present, they could legally search the persons arrested, and evidence thereby obtained was admissible in prosecution for carrying on and promoting a numbers game and for possession of numbers slips. *Wyche v. United States* (1952, 193 F. 2d 703, 90 U. S. App. D. C. 67, certiorari denied 72 S. Ct. 556, 342 U. S. 943, 96 L. Ed. 702, rehearing denied 72 S. Ct. 675, 343 U. S. 921, 96 L. Ed. 1334).

Where there is no claim in the case involved that the officers advised the suspect of the cause of their demand before they broke down the door, upon that ground alone, the breaking of the door was unlawful, the arrest was unlawful, the search unlawful and the evidence thus procured should have been suppressed and a new trial on the indictment must be ordered. *Accarino v. United States* (1950, 179 F. 2d 456, 85 U. S. App. D. C. 395).

#### — Conspiracy

That alleged coconspirator had been seen talking to defendant on day before that on which such alleged coconspirator allegedly informed government agent that he had turned his numbers work over to defendant did not establish that conspiracy was in existence on that date; and in absence of evidence that conspiracy was then in existence, agent's testimony with regard to alleged conversation was inadmissible against defendant, in prosecution for conspiracy to commit lottery offenses. *Taylor v. United States* (1958, 260 F. 2d 737, 104 U. S. App. D. C. 219).

Erroneous admission of evidence that alleged coconspirator had told government agent that he had turned his numbers work over to defendant would require reversal of conviction under indictment count charging conspiracy to commit lottery offenses; and since it was probable that such evidence had also been considered by jury in connection with related count charging defendant with operation of a lottery, conviction on that count would also be reversed. *Id.*

#### Arrest, search and seizure

Whether there was probable cause for arrest of defendant for operating a lottery and whether subsequent search of his person was lawful were questions for trier of fact, in prosecution for violation of statute proscribing knowing possession of items used or to be used in lotteries and other forms of gambling, wherein defendant moved to suppress "cut cards" found in his possession. *R. P. Bailey v. United States* (D.C. App. 1966, 223 A. 2d 190).

Table drawer from which secretaries and other employees would take paper clips or pencils and which was located in messenger room where defendant, a messenger charged with violating statute prohibiting possession of numbers slips, had been temporarily assigned on daily basis and where he spent only 20 to 25 minutes of each hour was in effect open for common use by other employees of agency, and search of drawer did not violate defendant's right of privacy under the Fourth Amendment. *H. H. Freeman v. United States* (D.C. App. 1964, 201 A. 2d 22).

Personal observations of suspicious conduct of defendant, charged with violations of gambling laws, during careful investigation, together with information received, gave probable cause for issuance of search warrant and warrant for arrest. *J. Minowitz v. United States* (1962, 298 F. 2d 682, 112 U. S. App. D. C. 21).

Action of officers who, with permission of owners, entered vacant row house adjoining that in which they suspected defendants were maintaining unlawful betting office, in inserting antenna spike under baseboard and into party wall and connecting ear phones so that they were then able to overhear defendants conduct their betting business by telephone, did not constitute such an unlawful "search and seizure" as is proscribed by the Fourth Amendment to the federal Constitution and such action did not constitute an interference with any communications system in violation of the Communications Act of 1934. *Silverman et al. v. United States* (1960, 275 F. 2d 173, 107 U. S. App. D. C. 144, certiorari granted 80 S. Ct. 1237, 363 U. S. 801, 4 L. Ed. 2d 1145).

Affidavits before Commissioner were sufficient to satisfy requisite of probable cause for issuance both of arrest warrants of persons who were subsequently convicted of illegal gambling on evidence showing that they maintained betting office and issuance of search warrants for search of premises which contained such office. *Id.*

Where, over period of two and a half months, officers had placed numbers bets on fifteen separate occasions at one location, and, on ten separate occasions, had observed a suspect depart from that location with bulging pockets and enter other premises, from which he subsequently departed "without the bulge," officers had reasonable grounds to believe that latter premises were being used in lottery operations, and that defendant, who at time such premises were searched pursuant to a search warrant was the only male present and was leaving "hastily," was participating therein, justifying arrest of defendant without an arrest warrant and seizure and use of incriminating evidence found in course of search of defendant made in connection with such arrest. *Stephens v. United States* (1959, 271 F. 2d 832, 106 U. S. App. D. C. 249).

Where officers, while standing in place open to public, saw through open door into back room and observed activities and paraphernalia which were familiar indicia of numbers lottery operation, they had "probable cause" and duty to make arrest, and arrest and seizure of paraphernalia were "legal arrest and seizure", though made without search or arrest warrant. *Fisher v. United States* (1953, 205 F. 2d 702, 92 U. S. App. D. C. 247, certiorari denied 74 S. Ct. 122, 346 U. S. 872, 98 L. Ed. 381).

Circumstances revealed in police officer's affidavit provided sufficient probable cause to sustain issuance to officer of warrant for search of premises where it was believed defendants were operating a numbers game by telephone. *Washington v. United States* (1953, 202 F. 2d 214, 92 U. S. App. D. C. 31, certiorari denied 73 S. Ct. 938, 245 U. S. 956, 97 L. Ed. 1377, rehearing denied 73 S. Ct. 1130, 345 U. S. 1003, 97 L. Ed. 1408).

The arrest without warrant of defendant accused of carrying on a lottery and possessing tickets and certificates designed for purpose of conducting a lottery was legal where the facts and circumstances within the arresting officers knowledge and of which they had reasonably trustworthy information were sufficient to warrant man of reasonable caution in belief that defendant was taking numbers bets in corridor of building. *De Bruhl v. United States* (1952, 199 F. 2d 175, 91 U. S. App. D. C. 125, certiorari denied 73 S. Ct. 111, 344 U. S. 868, 97 L. Ed. 673).

In prosecution for violation of District of Columbia gambling statutes by engaging in the numbers business and violation of federal statute requiring payment of tax as prerequisite to engaging in business of accepting wagers, evidence relating to police investigation extending over a 10-week period disclosed probable cause for issuance of search warrant. *United States v. Long* (D.C. D.C. 1959, 169 F. Supp. 730).

Where police investigation extended over a 10-week period established probable cause for issuance of search warrant for gambling activities in violation of District of Columbia statutes, the fact that 11-day period elapsed between last police observation of premises and issuance of such warrant did not require suppression of evidence



seized from the premises searched on any theory of lack of probable cause. *Id.*

Where District of Columbia Metropolitan Police received information linking telephone number to numbers game and the source stated that bets were placed by named person using designated code number and Metropolitan Police received additional information from Arlington County police that very heavy number bets were called into the telephone number and policeman made series of telephone calls to that number and identified himself as such person and gave such code number and received numbers information, there was probable cause for issuance of search warrant which led to seizure of numbers slips and other numbers paraphernalia. *United States v. Haje* (D.C.D.C. 1958, 159 F. Supp. 870).

Where police had rejected convenient present opportunity to make lawful arrest in public street, search of apartment, which defendant had entered before arrest was attempted, could not be supported as incidental to arrest. *United States v. Johnson* (D.C.D.C. 1953, 113 F. Supp. 359).

Arrest of defendant, a cafeteria employee, after manager voiced suspicions to officer that defendant was stealing food, was without probable cause, and incidental search that turned up lottery tickets and other paraphernalia for use in lottery was illegal. *Mathis v. United States* (D.C. Mun. App. 1957, 129 A. 2d 178).

#### Condemnation and forfeiture

Condemnation and forfeiture of moneys seized from defendant's person at time of his arrest was warranted by evidence, including evidence that defendant attempted to conceal the money from the arresting officers and that, although he claimed that moneys seized represented savings which he intended to use to purchase a business, he was admittedly unfamiliar with business which he claimed to be planning to purchase, the person from whom he expected to make the purchase and the terms of the purchase. \$1,407.00 in *United States Currency, et ano. v. District of Columbia* (D.C. App. 1968, 242 A. 2d 217).

#### Confrontation of informer

Defendant, accused of receiving stolen goods and of possession of lottery tickets, was not entitled to confront and cross-examine informer, upon whose information search warrant was in part based, where warrant was issued upon an ample showing of probable cause. *O. M. Madre v. United States* (D.C. Mun. App. 1961, 173 A. 2d 917).

#### Conscious possession

Where conscious possession of papers to be used in violating statute making it unlawful to "purchase, possess, own or acquire any chance, right, or interest \* \* \* in any policy lottery or any lottery \* \* \*" was clearly proved, accused was properly convicted under statute prohibiting any person from knowingly having in his possession any paper used or to be used in violating the statute. *Ferguson v. United States* (1956, 239 F. 2d 952, 99 U. S. App. D. C. 331, certiorari denied 77 S. Ct. 1287, 353 U. S. 985, 1 L. Ed. 2d 1144).

#### Conspiracy

In prosecution of defendants for violation of lottery laws and conspiracy to violate laws, crime of conspiracy was not so merged in or indistinguishable from the lottery statute as to prevent conviction of defendants on both charges. *Woods et al. v. United States* (1956, 240 F. 2d 37, 99 U. S. App. D. C. 351, certiorari denied 77 S. Ct. 815, 353 U. S. 941, 1 L. Ed. 2d 760).

The crime of conspiracy to violate lottery laws and lottery statute violations are not so closely connected as to render applicable a proposition that where a concert of action between two or more persons is logically necessary to a crime's completion, a charge of conspiracy will not lie against such persons. *Id.*

#### Constitutionality

This section making possession of numbers slips a crime is constitutional. *Ferguson v. United States* (D. C. Mun. App. 1956, 123 A. 2d 615).

#### Construction

Defendants in possession of "cut cards" which were listings of number combinations which "hit" more frequently than others and on which odds are somewhat reduced from normal, violated statute proscribing knowing possession of items used or to be used in lotteries and other forms of gambling. *R. P. Bailey v. United States* (D.C. App. 1966, 223 A. 2d 190).

Words "record, notation, and receipt" added to list of contraband in statute proscribing knowing possession of items used or to be used in lotteries and other forms of gambling were not intended merely to be synonymous with "numbers slips", and cut cards, which are listings of number combinations which "hit" more frequently than others and on which reduced odds are to be paid, were included in the contraband. *Id.*

Intention of statutes proscribing knowing possession of certain items used or to be used in lotteries and other forms of gambling was to ban not only knowing possession of lottery tickets and similar writings but also knowing possession of any records used or to be used in violating provisions of the law relating to lotteries and other forms of gambling. *Id.*

Conviction of having possession of numbers slips in violation of lottery laws was warranted as against contention that there was not any evidence to indicate that such slips were "live" slips, that is, were tickets in an existing lottery. *Ledbetter v. United States* (1954, 211 F. 2d 628, 93 U. S. App. D. C. 155, certiorari denied 74 S. Ct. 789, 347 U. S. 977, 98 L. Ed. 1116).

Defendant's possession of used numbers slips, known in the game as "dead" slips, constituted an offense under this section penalizing possession of slips "used, or to be used" for carrying on a lottery even though amendment adding the words "current or not current" had not yet been enacted. *Clement v. United States* (1954, 208 F. 2d 46, 93 U. S. App. D. C. 154).

#### Counsel, conduct of

In prosecution for carrying on and promoting a numbers game and for possession of numbers slips, wherein defendants' former counsel of their own choice disclaimed any desire to enter a motion to suppress evidence and also gave specific reasons for disclaimer, contention of defendants' present counsel on appeal that trial court erred in refusing to suppress evidence would be rejected as asking Court of Appeals to substitute its judgment of proper trial tactics for that of the lawyer of the forum. *Wyche v. United States* (1952, 193 F. 2d 703, 90 U. S. App. D. C. 67, certiorari denied 72 S. Ct. 556, 342 U. S. 943, 96 L. Ed. 702, rehearing denied 72 S. Ct. 675, 343 U. S. 921, 96 L. Ed. 1334).

#### Court's failure to rule on admissibility of evidence

In a case where there was considerable oral testimony from arresting officers that number slips were found in the front bedroom occupied by defendant, trial court's failure to rule on government's exhibits consisting of seized number slips and other documents in bedrooms and hallway of house occupied by defendant prior to beginning of defendant's case, although constituting error, was not prejudicial because of defendant's failure to bring the matter to court's attention and obtain a ruling. *L. Harris v. United States* (D.C. App. 1969, 254 A. 2d 726).

To prove defendant's possession of number slips it is not essential that the slips be received in evidence. *Id.*

#### Elements of lottery

Though consideration together with chance and prize is one of three elements necessary to constitute a lottery, it is unnecessary, in prosecution for possession of numbers slips, to prove that consideration has passed for them or that they have entered the play of the numbers game. *Ferguson v. United States* (D. C. Mun. App. 1956, 123 A. 2d 615).

#### Harmless or prejudicial error

In prosecution of defendant for possessing lottery slips which were seized by police after illegally entering premises at which they arrested defendant, admission of slips constituted prejudicial error. *Woods et al. v. United States* (1956, 240 F. 2d 37, 99 U. S. App. D. C. 351, certiorari denied 77 S. Ct. 815, 353 U. S. 941, 1 L. Ed. 2d 760).



**Instructions**

Provision of lottery statute that possession of numbers slips shall be prima facie evidence that possessor was concerned in carrying on lottery, when quoted in instruction to jury, did not constitute instruction that it had become duty of lottery prosecution defendant, who had had possession of numbers slips, to establish his innocence to obtain acquittal. *Maynard v. United States* (1954, 215 F. 2d 336, 94 U. S. App. D. C. 347).

In prosecution for operating lottery and for possession of numbers slips, wherein jury had been fully instructed as to the government's burden of proof, trial judge's answer to jury's question, whether possession of slips constituted prima facie evidence of operation of lottery, given in words of statute providing that such possession did, constitute prima facie evidence, without explaining meaning of prima facie evidence, was appropriate and understandable within framework of entire charge. *Id.*

**Motion to suppress**

Where numbers slips taken from defendant were admitted without objection on trial which commenced three days after his arrest, motion to suppress made for first time when trial resumed following a continuance was not timely, and denial of the motion was not error. *Harris v. United States* (D.C. Mun. App. 1943, 32 A. 2d 101, certiorari denied 69 S. Ct. 161, 335 U.S. 873, 93 L. Ed. 417).

**New trial**

In prosecution for violating lottery laws, District Court did not abuse discretion in denying motion for new trial on ground that defendant's trial counsel refused to permit her to testify and failed to introduce certain other testimony. *Ingram v. United States* (1954, 209 F. 2d 818, 93 U. S. App. D. C. 307).

**Review**

An order granting suppression of evidence seized from defendant's person at time of his arrest, entered before trial in criminal case, is not appealable as "final decision", regardless of whether, in the particular case, effect of suppressing the evidence would be to force dismissal of indictment for lack of evidence. *Carroll v. United States* (1957, 77 S. Ct. 1332, 354 U. S. 394, 1 L. Ed. 2d 1442).

Convictions of defendants who were jointly indicted on four counts charging violations of District of Columbia Code sections proscribing gambling and on a fifth count charging that they had engaged in business of accepting wagers without having paid special tax required by Internal Revenue Code and who were acquitted on charges in fourth and fifth counts, were not subject to reversal because of claimed inconsistencies of verdict. *Silverman et al. v. United States* (1960, 275 F. 2d 173, 107 U. S. App. D. C. 144, certiorari granted 80 S. Ct. 1237, 363 U. S. 801, 4 L. Ed. 2d 1145).

Rational consistency in a jury's verdict on each of several counts is not necessary. *Id.*

Conviction for operating lottery in violation of District of Columbia statutes was affirmed on appeal, notwithstanding defendant's contentions (1) that number slips and other gambling paraphernalia were seized under warrants which were not supported by showing of adequate probable cause and (2) that evidence was insufficient to sustain conviction. *Ellis v. United States*, (1959, 270 F. 2d 448, 106 U.S. App. D.C. 145).

Where defendants, each of whom was convicted of substantive offense of operating lottery, and jointly of conspiracy to operate lottery, did not request trial court to compel election of counts on ground that substantive and conspiracy counts were duplicative, in view of identity of proof under each count, and constituted double jeopardy, defendants did not save question for review on appeal, and Court of Appeals would not consider merits of contention. *Aikens et al. v. United States* (1956, 232 F. 2d 66, 98 U. S. App. D. C. 66).

Where there was conflicting evidence as to means by which defendant's notebook, upon which conviction for illegal possession of numbers slips was based, was acquired, Municipal Court of Appeals was not authorized to resolve questions under such circumstances and could not disturb finding of trial court adverse to defendant. *Moody v. United States* (D. C. Mun. App. 1960, 163 A. 2d 337).

Evidence sustained conviction for illegal possession of numbers slips. *Id.*

**Ruling of district court as binding on Court of General Sessions**

United States district court decision, in prosecution for narcotics violation, which suppressed certain evidence as products of illegal search and seizure was not binding on District of Columbia Court of General Sessions, where defendant was charged with possession of prohibited weapon and possession of numbers slips, and which had held previously to United States District Court ruling that certain evidence, which was seized under same circumstances as evidence in federal prosecution, was admissible. *B. R. Burrell v. United States* (D.C. App. 1969, 252 A. 2d 897).

**Search and seizure**

A defendant, who was lawfully arrested for operating automobile without valid permit, was taken to police station in his own automobile, and charged with driving without a valid permit, possession of prohibited weapon and possession of numbers slips, but did not protest or withhold his consent to use by police of his automobile to drive him to police station and was not coerced in any way, there was no seizure of defendant's automobile by police prior to arrival at police station. *B. R. Burrell v. United States* (D.C. App. 1969, 252 A. 2d 897).

**Search warrant**

Failure of search warrant affidavit to set forth factual circumstances from which magistrate could appraise informant's credibility and to state circumstances upon which informant based his conclusion was not fatal where, according to affidavits, information triggered investigation by officers who set out details and results of their investigation of gambling and lottery law violations. *United States v. S. A. Berry* (1972, 463 F. 2d 1278, 150 U.S. App. D.C. 187).

Search warrant affidavit reciting uncorroborated tip that first person was picking up numbers and taking them to address of second person, a well-known gambler, together with investigative officers' observations of comings and goings and delivery of "small package," all in accordance with officers' knowledge as to operation of numbers game, was sufficient to support warrant for search, leading to lottery and gambling charges, where affidavit recited that participants had gambling law convictions and that premises had been established by police records to have recently housed gambling operation, although it would have been helpful had officers elaborated on modus operandi of numbers operation. *Id.*

Information in affidavit for warrant to search defendant's room on lottery charge on information received from informant, stating that the informant had overheard sounds from defendant's room, that informant had previously given information leading to lottery convictions, and that police officer had himself overheard sounds from room and had watched defendant elsewhere and checked his record, sufficiently set forth factual basis for informant's belief, basis for judging informant's credibility, record of defendant's prior involvement in lottery, and personal observations by officer corroborative of informant. *C. Ray, Jr. v. United States* (D.C. App. 1972, 288 A. 2d 239).

**Severance**

In prosecution for operation of lottery and for possession of numbers slips, trial court's denial of defendants' motions for severance did not constitute abuse of discretion. *Maynard v. United States* (1954, 215 F. 2d 336, 94 U.S. App. D.C. 347).

**Sufficiency of evidence**

Evidence was sufficient to sustain conviction for possession of numbers slips. *B. R. Burrell v. United States* (D.C. App. 1969, 252 A. 2d 897).

Evidence sustained conviction of receiving stolen goods. *O. M. Madre v. United States* (D.C. Mun. App. 1961, 173 A. 2d 917).

In joint prosecutions for violations of lottery laws, evidence sustained trial judge's finding that police gave sufficient notice of their purpose and authority before breaking in door of one defendant's premises in executing search warrant. *Davis v. United States* (1960, 274 F. 2d 585, 107 U.S. App. D.C. 76).



Evidence, as to all defendants but one, was sufficient to support convictions on all counts, in prosecution for operating and conspiracy to operate lottery, and for possession of lottery tickets, and maintenance of gambling premises. *Aikens et al. v. United States* (1956, 232 F. 2d 66, 98 U. S. App. D. C. 66).

Evidence that search of previously occupied apartment of defendant uncovered numbers slips and notebook, in absence of evidence of possession of lottery tickets by defendant, was insufficient to support conviction for possession of lottery tickets, operation of lottery, or for maintaining gambling premises. *Id.*

Evidence justified submitting to jury prosecution for operating a lottery and possessing materials therefor. *Kenney v. United States* (1946, 157 F. 2d 442, 81 U.S. App. D.C. 259).

Evidence that defendant admitted ownership of billfold containing quantity of undated numbers slips was prima facie indicative that possession of such tickets was violative of statute forbidding possession of lottery slips and shifted burden of going forward with the evidence to defendant to prove that numbers slips were not lottery slips within meaning of statute. *Roseborough v. United States* (D. C. Mun. App. 1952, 86 A. 2d 920).

Evidence was insufficient to sustain conviction of defendant for knowingly having in his possession "numbers slips" in violation of this section. *Fletcher v. United States* (D.C. Mun. App. 1946, 49 A. 2d 88).

#### § 22-1503. Permitting sale of lottery tickets on premises.

If any person shall knowingly permit, on any premises under his control in the District, the sale of any chance or ticket in or share of a ticket in any lottery or policy lottery, or shall knowingly permit any lottery or policy lottery, or policy shop on such premises, he shall be fined not less than fifty dollars nor more than five hundred dollars, or be imprisoned not more than one year, or both. (Mar. 3, 1901, 31 Stat. 1330, ch. 854, § 864.)

##### CROSS REFERENCE

Search warrant, see § 23-521 et seq.

#### § 22-1504. Gaming—Setting up gaming table—Inducing play.

Whoever shall in the District set up or keep any gaming table, or any house, vessel, or place, on land or water, for the purpose of gaming, or gambling device commonly called A B C, faro bank, E O, roulette, equality, keno, thimbles, or little joker, or any kind of gaming table or gambling device adapted, devised, and designed for the purpose of playing any game of chance for money or property, or shall induce, entice, and permit any person to bet or play at or upon any such gaming table or gambling device, or on the side of or against the keeper thereof, shall be punished by imprisonment for a term of not more than five years. (Mar. 3, 1901, 31 Stat. 1331, ch. 854, § 865.)

##### CROSS REFERENCE

Search warrant, see § 23-521 et seq.

##### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-1502, 22-1505, 22-1507.

##### NOTES TO DECISIONS

###### In general

This section penalizing anyone setting up in the District of Columbia any "gaming table", etc., or who permits any person to bet or play at or upon any such gaming table or device, etc., indicates a physical device of some sort and does not mean the mere taking of a bet on a race. *Plummer v. United States* (1951, 189 F. 2d 19, 88 U. S. App. D. C. 244).

"Any games, devices, or contrivances set up or kept for the purpose of gaming, or any gambling device, so set up and kept, adapted, devised, and designed for the purpose of playing any game of chance for money or property, and to which the public may resort to bid or wager money, is a gaming table within the meaning of the statute. The definition of a gaming table under the statute does not involve the ordinary mechanical definition of a table, but depends for its statutory meaning upon the means or contrivances adopted for playing the game." *Miller v. United States* (1895, 6 App. D.C. 6). See, also, *Nelson v. United States* (1906, 28 App. D.C. 32); *Swan v. United States* (1924, 295 F. 921, 54 App. D.C. 100).

"Two offenses are created by section 865 (this section). One is the setting up or keeping of a gaming table or device; the other is the keeping of a house, vessel, or place for the purpose of gaming." *Wade v. United States* (1909, 33 App. D.C. 29, 20 L.R.A., N.S., 347, 17 Ann. Cas. 707).

###### Claw machine

"Claw machine" used for the purpose of obtaining articles, by mere chance, was a "gambling device." *Boosalis v. Crawford* (1938, 99 F. 2d 374, 69 App. D.C. 141).

###### Elements of offense

This section defining as a felony setting up of gaming table and keeping of any house or place for purpose of gaming reaches any operator who would permit any person to bet on side of or against the keeper of house, and persons who operated betting office where they received wagers and maintained records of wins and losses, were guilty of violating this section, notwithstanding fact that they conducted their operations by telephone and that they did not invite public to their offices. *Silverman v. United States* (1960, 275 F. 2d 173, 107 U.S. App. D.C., 144, certiorari granted 80 S. Ct. 1237, 363 U.S. 801, 4 L. Ed. 2d 1145).

The gravamen of offense of setting up and keeping a gaming place is furnishing the facilities for gaming activities and it is immaterial that betting actually took place or that money actually passed. *Sesso v. United States* (1943, 133 F. 2d 381, 77 U.S. App. D.C. 35).

###### Evidence

Evidence was insufficient to establish beyond a reasonable doubt that defendant set up or kept a gaming table for the purpose of gaming. *Plummer v. United States* (1951, 189 F. 2d 19, 88 U. S. App. D. C. 244).

In prosecution for setting up and keeping a gaming place, evidence necessary to show a gaming place need not be direct, and the intent with which the act was done may be gathered from all the circumstances shown in evidence. *Cesso v. United States* (1943, 133 F. 2d 381, 77 U.S. App. D.C. 35).

In prosecution for setting up and keeping a gaming place for purpose of betting on result of horse races, where prima facie evidence of corpus delicti was made out, damaging admissions made by defendant were admissible in evidence. *Id.*

In prosecution for setting up and keeping a gaming place for purpose of betting on result of horse races, evidence authorized inference that defendant was in control and possession of the premises when the offense occurred. *Id.*

Evidence sustained conviction of setting up and keeping a gaming place for purpose of betting upon result of horse races. *Id.*

In prosecution for setting up and keeping a gaming place for purpose of betting upon result of horse races, evidence sustained finding that a gaming place was illegally set up and maintained. *Id.*

In prosecution for keeping gambling tables, testimony of a defendant at a previous trial, together with a bank statement to which it related, were properly admitted, where the testimony had some tendency to establish such defendant's guilt. *Warde v. United States* (1947, 158 F. 2d 651, 81 U.S. App. D.C. 355).

Evidence of gambling on one occasion is sufficient to sustain conviction for keeping gambling tables. *Id.*

Intercepted interstate and local messages pertaining to gambling are not admissible when received by person not authorized by the sender. *United States v. Plisco* (D.C. D.C. 1938, 22 F. Supp. 242).



**Gambling device**

Where player of pinball amusement machine achieving certain minimum score would receive a "free play" or another "try" without an additional coin but nothing more, the machine was not a "gambling device" designed for purpose of playing game of chance for "property" within this section. *Washington Coin Mach. Ass'n v. Callahan* (1944, 142 F. 2d 97, 79 U.S. App. D.C. 41).

To "gamble" is to risk one's money or other property on an event, chance, or contingency in the hope of the realization of gain, and the test as to whether a particular machine combination constitutes a "gambling device" is whether it is adapted, devised, and designed for purpose of playing any game of chance for money or property. *Id.*

**Gaming table**

Section 865 of the code (this section) made it a crime to set up or keep any gaming table, or any house, vessel, or place, on land or water, for the purpose of gaming or gambling, under the penalty of imprisonment for a term of not more than five years. *Kelleher v. United States* (1930, 35 F. 2d 877, 59 App. D.C. 107).

**Indictment**

Indictments charging that appellants set up and kept a gambling table for the purpose of betting and wagering on the results of horse races, contrary to this section. Charge an offense against the laws of the United States. *Nuckols v. United States* (1938, 99 F. 2d 353, 69 App. D.C. 120, certiorari denied 59 S. Ct. 89, 305 U.S. 626; 83 L. Ed. 401).

Indictment in either case of maintaining table or place in which gaming was done need not allege proof of passing money; but if it is drawn in almost the language of the statute, and charges both the place and table defendants were conducting, that is sufficient. *Beard v. United States* (1936, 82 F. 2d 837, 65 App. D.C. 231, certiorari denied 56 S. Ct. 675, 298 U.S. 566, 80 L. Ed. 1382).

**Offense a felony**

This section, by prescribing a maximum penalty of five years' imprisonment, made the offense a felony and no warrant for arrest was necessary where defendant was apprehended in the act of violating the statute. *Zerega v. United States* (1929, 32 F. 2d 963, 59 App. D.C. 67).

**Place for gaming**

It is not necessary that one charged with the crime of maintaining a gambling place should have been in permanent possession of the place or a lessee or keeper, but that it is sufficient if he is in charge of the place at the time the offense occurs. *Donald v. United States* (1939, 102 F. 2d 618, 70 App. D.C. 14).

In prosecution for setting up and keeping a gaming place for purpose of betting upon result of horse races, it is not necessary that defendant should have been in permanent possession of the premises or that he should have been a lessee or even a keeper. *Sesso v. United States* (1943, 133 F. 2d 381, 77 U.S. App. D.C. 35).

In prosecution for setting up and keeping a gaming place for purpose of betting upon result of horse races, it was only incumbent upon the Government to show that defendant was in charge, possession or control of the place when the offense occurred. *Id.*

**Property**

The term "property" as used in this section includes goods, chattels, effects, evidences of rights in action, and all written instruments by which any pecuniary obligation, or money or right or title to property, real or personal, is created or transferred but none of such terms should be expanded to include a free amusement feature such as privilege of playing an additional free game if certain score is made. *Washington Coin Mach. Ass'n v. Callahan* (1944, 142 F. 2d 97, 79 U.S. App. D.C. 41).

**Purpose**

The purpose of Congress in enacting this section was to make criminal the use of all contrivances by which money or property is bet or wagered or risked on the chance of some material reward. *Washington Coin Mach. Ass'n v. Callahan* (1944, 142 F. 2d 97, 79 U.S. App. D.C. 41).

**Review**

Conviction on five counts of keeping gaming table and a place for gambling on horse races was affirmed. *Brown v. United States* (1929, 32 F. 2d 953, 59 App. D.C. 57).

When one was convicted for operating gaming table he could not afterwards dispute the verdict, for a question of fact or of law distinctly put in issue and directly determined by a court of competent jurisdiction cannot afterwards be disputed between the same parties. *Beard v. Sanford* (C.C.A. Ga. 1938, 99 F. 2d 750, certiorari denied 59 S. Ct. 644, 306 U.S. 655, 83 L. Ed. 1053).

When appellant was convicted on two counts, first, by setting up gaming table, and, second, keeping a place for gaming, but as he did not raise the question of double jeopardy on the trial or on the appeal from conviction, effect of his failure to do so was to waive the question for all time. *Id.*

**Searches and seizure**

Where defendant had been indicted for carrying on a lottery known as the numbers game in violation of the District Code, evidence obtained by police officers through an illegal search and arrest is inadmissible and the conviction must be reversed. *McDonald v. United States* (1948, 69 S. Ct. 191, 335 U.S. 451, 93 L. Ed. 153).

Where there is no claim in the case involved that the officers advised the suspect of the cause of their demand before they broke down the door, upon that ground alone, the breaking of the door was unlawful, presence of arresting officers was unlawful, the arrest was unlawful, the search unlawful and the evidence thus procured should have been suppressed. A new trial on the indictment must be ordered. *Accarino v. United States* (1950, 179 F. 2d 456, 85 U.S. App. D.C. 395).

**Separate trial**

Where four defendants were indicted for keeping a gaming table, and one was also charged with assault, a motion of the three to be tried separately from the fourth, who had been charged with assault, will not be granted since their guilt of the only crime of which they were accused was so clear that no defense was attempted and none would have been attempted if they had been tried separately and the court's refusal to try them separately was not prejudicial. *Scheve v. United States* (1950, 184 F. 2d 695, 87 U.S. App. D.C. 289).

**Verdict**

Convictions of defendants who were jointly indicted on four counts charging violations of District of Columbia Code sections proscribing gambling and on a fifth count charging that they had engaged in business of accepting wagers without having paid special tax required by Internal Revenue Code and who were acquitted on charges in fourth and fifth counts, were not subject to reversal because of claimed inconsistencies of verdict. *Silverman v. United States* (1960, 275 F. 2d 173, 107 U.S. App. D.C. 144, certiorari granted 80 S. Ct. 1237, 363 U.S. 801, 4 L. Ed. 2d 1145).

Rational consistency in a jury's verdict on each of several counts is not necessary. *Id.*

## § 22-1505. Gambling premises—Definition—Prohibition against maintaining—Forfeiture—Liens—Deposit of moneys in Treasury—Penalty—Subsequent offenses.

(a) Any house, building, vessel, shed, booth, shelter, vehicle, enclosure, room, lot, or other premises in the District of Columbia, used or to be used in violating the provisions of section 22-1501 or 22-1504, shall be deemed "gambling premises" for the purpose of this section.

(b) It shall be unlawful for any person in the District of Columbia knowingly, as owner, lessee, agent, employee, operator, occupant, or otherwise, to maintain or aid or permit the maintaining of any gambling premises.

(c) All moneys, vehicles, furnishings, fixtures, equipment, stock (including, without limitation, furnishings and fixtures adaptable to nongambling



uses, and equipment and stock for printing, recording, computing, transporting, safekeeping, or communication), or other things of value used or to be used—

(1) in carrying on or conducting any lottery, or the game or device commonly known as a policy lottery or policy, contrary to the provisions of section 22-1501;

(2) in setting up or keeping any gaming table, bank, or device contrary to the provisions of 22-1504; or

(3) in maintaining any gambling premises, shall be subject to seizure by any member of the Metropolitan Police force, or the United States Park Police, or the United States marshal, or any deputy marshal, for the District of Columbia, and any property seized regardless of its value shall be proceeded against in the Superior Court of the District of Columbia by libel action brought in the name of the District of Columbia by the Corporation Counsel or any of his assistants, and shall, unless good cause be shown to the contrary, be forfeited to the District of Columbia and shall be made available for the use of any agency of the government of the District of Columbia, or otherwise disposed of as the Commissioner of the District of Columbia may, by order or by regulation, provide: *Provided*, That if there be bona fide liens against the property so forfeited, then such property shall be disposed of by public auction. The proceeds of the sale of such property shall be available, first, for the payment of all expenses incident to such sale; and, second, for the payment of such liens; and the remainder shall be deposited in the Treasury of the United States to the credit of the District of Columbia. To the extent necessary, liens against said property so forfeited shall, on good cause shown by the lienor, be transferred from the property to the proceeds of the sale of the property.

(d) Whoever violates this section shall be imprisoned not more than one year or fined not more than \$1,000, or both, unless the violation occurs after he has been convicted of a violation of this section, in which case he may be imprisoned for not more than five years, or fined not more than \$2,000, or both. (Mar. 3, 1901, 31 Stat. 1331, ch. 854, § 866; June 29, 1953, 67 Stat. 95, ch. 159, § 206(b); Sept. 21, 1961, 75 Stat. 540, Pub. L. 87-259, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended subsec. (c) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

1961—Section 1 of act Sept. 21, 1961, amended subsection (c) so as to give the Municipal Court for the District of Columbia jurisdiction over libel actions involving such seized property regardless of its value and also providing that the action be brought in the name of the District of Columbia by the Corporation Counsel or any of his assistants.

1953—Act June 29, 1953, amended section generally. Prior to the amendment the section provided: "Whoever in the District knowingly permits any gaming table, bank, or device to be set up or used for the purpose of gaming in any house, building, vessel, shed, booth, shelter, lot, or other premises to him belonging or by him occupied,

or of which at the time he has possession or control, shall be punished by imprisonment in the jail for not more than one year or by a fine not exceeding five hundred dollars or both."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions. See section 11-101.

#### CONSTRUCTION OF ACT SEPT. 21, 1961, AND DELEGATION OF AUTHORITY

Section 2 of act Sept 21, 1961, provided that: "This Act [amending subsection (c)] shall not be considered as affecting the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), and the performance of any function vested by said plan in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners shall continue to be subject to delegation by said Board of Commissioners in accordance with section 3 of such plan. Any function vested by this Act in any agency established pursuant to such plan shall be deemed to be vested in said Board of Commissioners and shall be subject to delegation in accordance with said plan."

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CROSS REFERENCE

Search warrant, see § 23-521 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-1507, 23-546.

#### NOTES TO DECISIONS

##### In general

This section formerly provided that whoever knowingly permitted any gaming table, bank, or device to be set up or used for the purpose of gaming in any house, building, vessel, shed, booth, shelter, lot, or other premises belonging to or occupied by him, or under his possession or control, should be punished by imprisonment in the jail for not more than one year or by a fine not exceeding \$500, or both. *Kelleher v. United States* (1930, 35 F. 2d 877, 59 App. D.C. 107).

##### Arrest, search and seizure

Personal observations of suspicious conduct of defendant, charged with violations of gambling laws, during careful investigation, together with information received, gave probable cause for issuance of search warrant and warrant for arrest. *J. Minowitz v. United States* (1962, 298 F. 2d 682, 112 U.S. App. D.C. 21).

In joint prosecutions for violations of lottery laws, evidence sustained trial judge's finding that police gave sufficient notice of their purpose and authority before breaking in door of one defendant's premises in executing search warrant. *Davis v. United States* (1960, 274 F. 2d 585, 107 U.S. App. D.C. 76).

In prosecution for violation of District of Columbia gambling statutes by engaging in the numbers business and for violation of federal statute requiring payment of tax as prerequisite to engaging in business of accepting wagers, evidence relating to police investigation extending over a 10-week period disclosed probable cause for issuance of search warrant. *United States v. Long* (D.C.D.C. 1959, 169 F. Supp. 730).

Where police investigation extended over a ten week period established probable cause for issuance of search warrant for gambling activities in violation of District of Columbia statutes, the fact that 11-day period elapsed between last police observation of premises and issuance of such warrant did not require suppression of evidence seized from the premises searched on any theory of lack of probable cause. *Id.*



**Condemnation and forfeiture**

It is required of the Government in libel action, under statute, seeking forfeiture of seized automobile to show by a preponderance of the evidence that the automobile was "used or to be used" in unlawful gambling operation. *M. R. Vasile v. District of Columbia* (D.C. App. 1972, 296 A. 2d 443).

Condemnation and forfeiture of moneys seized from defendant's person at time of his arrest was warranted by evidence, including evidence that defendant attempted to conceal the money from the arresting officers and that, although he claimed that money seized represented savings which he intended to use to purchase a business, he was admittedly unfamiliar with business which he claimed to be planning to purchase, the person from whom he expected to make the purchase and the terms of the purchase. *\$1,407.00 in United States Currency, et ano. v. District of Columbia* (D.C. App. 1968, 242 A. 2d 217).

**Conspiracy**

In prosecution of defendants for violation of lottery laws and conspiracy to violate laws, crime of conspiracy was not so merged in or indistinguishable from the lottery statute as to prevent conviction of defendants on both charges. *Woods et al. v. United States* (1956, 240 F. 2d 37, 99 U.S. App. D.C. 351, certiorari denied 77 S. Ct. 815, 353 U.S. 941, 1 L. Ed. 2d 760).

The crime of conspiracy to violate lottery laws and lottery statute violations are not so closely connected as to render applicable a proposition that where a concert of action between two or more persons is logically necessary to a crime's completion, a charge of conspiracy will not lie against such persons. *Id.*

**Evidence—Admissibility**

Evidence which was seized in room wherein defendant, charged with violations of gambling laws, was arrested was admissible where it was relevant and material, although defendant claimed that others apparently not associated with unlawful venture occupied house and that warrant authorizing search of entire house was too broad in description of premises. *J. Minowitz v. United States* (1962, 298 F. 2d 682, 112 U.S. App. D.C. 21).

In joint prosecutions for violations of lottery laws, admission of one defendant's accusatory statement against the other three defendants was not error in view of later instructions that jury should disregard such statement. *Davis v. United States* (1960, 274 F. 2d 585, 107 U.S. App. D.C. 76).

In prosecution of numerous defendants for violation of lottery laws and conspiracy to violate those laws, where evidence obtained at one of several places raided was inadmissible because it had been obtained as a result of illegal entry into premises, but mass of other evidence legally seized sustained convictions, error in admitting such illegally obtained evidence was not, except as to one defendant who was found guilty of possessing lottery slips seized at such address, prejudicial. *Woods et al. v. United States* (1956, 240 F. 2d 37, 99 U.S. App. D.C. 351, certiorari denied 77 S. Ct. 815, 353 U.S. 941, 1 L. Ed. 2d 760).

**— Sufficiency**

Evidence consisting of defendant either exiting or entering buildings with rolled newspapers which were subsequently found, pursuant to search of automobile's front seat based on search warrant, to contain envelopes with numbers betting slips inside is insufficient to establish use of the automobile in a lottery or gambling operation for purpose of libel action, under statute, seeking forfeiture of the automobile. *M. R. Vasile v. District of Columbia* (D.C. App. 1972, 296 A. 2d 443).

Evidence supported judgment of forfeiture of automobile on ground that it was used, or to be used, in carrying on or conducting a lottery. *B. Thomas et ano. v. District of Columbia* (D.C. App. 1972, 293 A. 2d 882).

Evidence was sufficient to support forfeiture judgment in relation to money allegedly used in carrying on or conducting a lottery. *\$6,200.00 in United States Currency v. District of Columbia* (D.C. App. 1969, 250 A. 2d 551).

A showing by preponderance of the evidence that moneys found on defendant were in fact used or to be used in an unlawful gambling operation is sufficient to meet statutory test required for forfeiture of property.

*\$1,407.00 in United States Currency et ano. v. District of Columbia* (D.C. App. 1968, 242 A. 2d 217).

Evidence, as to all defendants but one, was sufficient to support convictions on all counts, in prosecution for operating and conspiracy to operate lottery, and for possession of lottery tickets, and maintenance of gambling premises. *Aikens et al. v. United States* (1956, 232 F. 2d 66, 98 U.S. App. D.C. 66).

Evidence that search of previously occupied apartment of defendant uncovered numbers slips and notebook, in absence of evidence of possession of lottery tickets by defendant, was insufficient to support conviction for possession of lottery tickets, operation of lottery, or for maintaining gambling premises. *Id.*

**Forfeiture**

A claw machine was a gambling device subject to forfeiture. *Boosalis v. Crawford* (1938, 99 F. 2d 374, 69 App. D.C. 141).

**— Alternative remedies**

Owners of property, held by District of Columbia as preliminary to libel proceedings for its forfeiture pursuant to this section authorizing forfeiture of property used in lottery or gaming activities, could apply for administrative relief, could sue officers who seize the property in trespass, or could assert their right as claimants in the libel when filed. *United States v. Bell* (D.C.D.C. 1954, 120 F. Supp. 670).

**— Time for proceedings**

Property held as preliminary to forfeiture proceeding, under this section authorizing forfeiture of property used in lottery or gaming activities, would be ordered returned unless libel for forfeiture were filed within five days, in view of fact that District of Columbia Municipality had notice of two motions for more than sixty days and of three motions for more than fifty days wherein property owner sought return of property. *United States v. Bell* (D.C.D.C. 1954, 120 F. Supp. 670).

**Habeas corpus**

Contentions determined adversely to petitioner on appeals to the United States Court of Appeals for the District of Columbia from conviction of an offense under this section in the Supreme Court of the District of Columbia, and to the United States Supreme Court, could not be successfully advanced on petition for habeas corpus. *Beard v. Sanford* (C.C.A. Ga. 1938, 99 F. 2d 750, certiorari denied 59 S. Ct. 644, 306 U.S. 655, 83 L. Ed. 1053).

**Jurisdiction**

Court, in criminal proceeding against owners of property, held by District of Columbia as preliminary to proceeding for its forfeiture, pursuant to this section authorizing forfeiture of property used in lottery or gaming activities, had jurisdiction to order return of the property. *United States v. Bell* (D.C.D.C. 1954, 120 F. Supp. 670).

**Motion for return of property**

Averment by United States Attorney, made in reply to motion in criminal proceeding for return of property seized, that property will not be used as evidence, is not sufficient to defeat the motion. *United States v. Bell* (D.C.D.C. 1954, 120 F. Supp. 670).

**Nature of libel action**

A libel action for forfeiture of property is a civil action. *M. R. Vasile v. District of Columbia* (D.C. App. 1972, 296 A. 2d 443).

Libel actions for forfeiture of monies used or to be used in carrying on lottery are civil in nature and government need only prove its case by preponderance of the evidence. *\$3,265.28 in United States Currency, et al. v. District of Columbia* (D.C. App. 1969, 249 A. 2d 516).

**Proof**

An indictment charging an offense under this section cannot be sustained by proof of a violation of section 865 (§ 22-1504). "In order to warrant a conviction under section 866 (this section) it is necessary that a defendant shall knowingly permit a gambling device to be set up or used for the purpose of gaming upon premises owned or occupied by him, or of which at the time of the commission of the offense he had possession or control." *Nelson v. United States* (1906, 28 App. D.C. 32).



**Public auction**

Even though sale at public auction, of motor vehicle seized because it was used for gambling purposes in violation of law, would result in insufficient funds to fully discharge lien, court was without power to direct transfer in specie as alternative to auction sale directed by statute. *General Motors Acceptance Corp. v. One 1962 Chevrolet Sedan, etc.* (D.C. App. 1963, 191 A. 2d 140).

**Review**

Convictions of defendants who were jointly indicted on four counts charging violations of District of Columbia Code sections proscribing gambling and on a fifth count charging that they had engaged in business of accepting wagers without having paid special tax required by Internal Revenue Code and who were acquitted on charges in fourth and fifth counts, were not subject to reversal because of claimed inconsistencies of verdict. *Silverman et al., v. United States* (1960, 275 F. 2d 173, 107 U.S. App. D.C. 144, certiorari granted 80 S. Ct. 1237, 363 U.S. 801, 4 L. Ed. 2d 1145).

Rational consistency in a jury's verdict on each of several counts is not necessary. *Id.*

Conviction for operating lottery in violation of District of Columbia statutes was affirmed on appeal, notwithstanding defendant's contentions (1) that number slips and other gambling paraphernalia were seized under warrants which were not supported by showing of adequate probable cause and (2) that evidence was insufficient to sustain conviction. *Ellis v. United States* (1959, 270 F. 2d 448, 106 U.S. App. D.C. 145).

Where defendants, each of whom was convicted of substantive offense of operating lottery, and jointly of conspiracy to operate lottery, did not request trial court to compel election of counts on ground that substantive and conspiracy counts were duplicious, in view of identity of proof under each count, and constituted double jeopardy, defendants did not save question for review on appeal, and Court of Appeals would not consider merits of contention. *Aikens et al. v. United States* (1956, 232 F. 2d 66, 98 U. S. App. D. C. 66).

**Search warrant**

Failure of search warrant affidavit to set forth factual circumstances from which magistrate could appraise informant's credibility and to state circumstances upon which informant based his conclusion was not fatal where, according to affidavits, information triggered investigation by officers who set out details and results of their investigation of gambling and lottery law violations. *United States v. S. A. Berry* (1972, 463 F. 2d 1278, 150 U.S. App. D.C. 187).

Search warrant affidavit reciting uncorroborated tip that first person was picking up numbers and taking them to address of second person, a well-known gambler, together with investigative officers' observations of comings and goings and delivery of "small package," all in accordance with officers' knowledge as to operation of numbers game, was sufficient to support warrant for search, leading to lottery and gambling charges, where affidavit recited that participants had gambling law convictions and that premises had been established by police records to have recently housed gambling operation, although it would have been helpful had officers elaborated on modus operandi of numbers operation. *Id.*

Information in affidavit for warrant to search defendant's room on lottery charge on information received from informant, stating that the informant had overheard sounds from defendant's room, that informant had previously given information leading to lottery convictions, and that police officer had himself overheard sounds from room and had watched defendant elsewhere and checked his record, sufficiently set forth factual basis for informant's belief, basis for judging informant's credibility, record of defendant's prior involvement in lottery, and personal observations by officer corroborative of informant. *C. Ray, Jr. v. United States* (D.C. App. 1972, 288 A. 2d 239).

**§ 22-1506. Three-card monte and confidence games.**

Whoever shall in the District deal, play, or practice, or be in any manner accessory to the dealing or practicing, of the confidence game or swindle known

as three-card monte, or of any such game, play, or practice, or any other confidence game, play, or practice, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding one thousand dollars and by imprisonment for not more than five years. (Mar. 3, 1901, 31 Stat. 1331, ch. 854. § 867.)

**CROSS REFERENCE**

Search warrant, see § 23-521 et seq.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 22-1507, 23-304.

**NOTES TO DECISIONS****Arrest, search and seizure**

In prosecution for practicing confidence game and swindle known as three-card monte, evidence as to what arresting officers saw transpiring indicated that they were justified in making arrest without warrant, and articles seized as incident to such arrest were admissible in evidence regardless whether crime charged was misdemeanor, as indicated by statute, or felony, because punishable by imprisonment for more than one year. *Coleman v. United States* (1954, 215 F. 2d 681, 94 U.S. App. D. C. 311).

**§ 22-1507. "Gaming table" defined.**

All games, devices, or contrivances at which money or any other thing shall be bet or wagered shall be deemed a gaming table within the meaning of sections 22-1504 to 22-1506; and the courts shall construe said sections liberally, so as to prevent the mischief intended to be guarded against. (Mar. 3, 1901, 31 Stat. 1331, ch. 854, § 868.)

**CROSS REFERENCE**

Search warrant, see § 23-521 et seq.

**NOTES TO DECISIONS****In general**

The statute penalizing anyone setting up in the District of Columbia any "gaming table" etc., or who permits any person to bet or play at or upon any such gaming table or device, etc., indicates a physical device of some sort and does not mean the mere taking of a bet on a race. *Plummer v. United States* (1951, 189 F. 2d 19, 88 U.S. App. D. C. 244).

**Evidence**

Evidence was insufficient to establish beyond a reasonable doubt that defendant set up or kept a gaming table for the purpose of gaming. *Plummer v. United States* (1951, 189 F. 2d 19, 88 U.S. App. D. C. 244).

**Indictment**

Indictment is sufficient which alleges a setting up of gaming table and keeping a gaming table for the purpose of betting on the results of horse races. *Swan v. United States* (1924, 295 F. 921, 54 App. D.C. 100).

**§ 22-1508. Gambling pools and bookmaking—Athletic contest defined.**

It shall be unlawful for any person, or association of persons, within the District of Columbia to purchase, possess, own, or acquire any chance, right, or interest, tangible or intangible, in any policy lottery or any lottery, or to make or place a bet or wager, accept a bet or wager, gamble or make books or pools on the result of any athletic contest. For the purpose of this section, the term "athletic contest" means any of the following, wherever held or to be held: a football, baseball, softball, basketball, hockey, or polo game, or a tennis, golf, or wrestling match, or a tennis or golf tournament, or a prize fight or boxing match, or a trotting or running race of horses, or a running race of dogs, or any other athletic or sporting event or contest. Any person



or association of persons violating this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both. (Mar. 3, 1901, 31 Stat. 1331, ch. 854, § 869; May 16, 1908, 35 Stat. 164, ch. 172, § 3; June 29, 1953, 67 Stat. 96, ch. 159, § 206c.)

#### AMENDMENTS

1953—Act June 29, 1953, amended section generally. Prior to the amendment the section read: "It shall be unlawful for any person or association of persons to bet, gamble, or make books or pools on the result of any trotting or running race of horses, or boat race, or race of any kind, or on any election, or any contest of any kind, or game of baseball. Any person or association of persons violating the provisions of this section shall be fined not exceeding five hundred dollars or be imprisoned not more than ninety days, or both."

1908—Act May 16, 1908, struck out after the word "persons" in the first sentence the following words "in city of Washington and Georgetown in District of Columbia within one mlie of boundaries of said District."

#### CROSS REFERENCE

Search warrant, see § 23-521 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22-1502.

#### NOTES TO DECISIONS

##### In general

This section made it unlawful for any person to bet, gamble, or make books or pools on the result of any trotting or running race of horses, or boat race, or race of any kind, and prescribed a punishment for violation of the provisions of the section of a fine not exceeding \$500 or imprisonment not exceeding 90 days, or both. *Kelleher v. United States* (1930, 35 F. 2d 877, 59 App. D.C. 107).

##### Accomplices

Persons engaging in wagering contests are not accomplices. *Paylor v. United States* (1914, 42 App. D.C. 428, L.R.A. 1915D, 682, certiorari denied 35 S. Ct. 209, 235 U.S. 704, 59 L. Ed. 434).

##### Defamatory words

When words are not libelous per se, as laying bets on horse races, it is for the jury to determine the defamatory meaning. *Baker v. Warner* (1914, 34 S. Ct. 175, 231 U.S. 588, 58 L. Ed. 384).

##### Evidence

Evidence which was seized in room wherein defendant, charged with violations of gambling laws, was arrested was admissible where it was relevant and material, although defendant claimed that others apparently not associated with unlawful venture occupied house and that warrant authorizing search of entire house was too broad in description of premises. *J. Minowitz v. United States* (1962, 298 F. 2d 682, 112 U.S. App. D.C. 21).

Where evidence justified conviction on counts under 1901 Code § 865 (§ 22-1504), counts under this section need not be considered. *Zerega v. United States* (1929, 32 F. 2d 963, 59 App. D.C. 67).

##### Geographical prohibition

This section only prohibited betting on horse races and bookmaking within one mile of the boundaries of the cities of Washington and Georgetown. *Baker v. Warner* (1914, 34 S. Ct. 175, 231 U.S. 588, 58 L. Ed. 384).

##### Search and seizure

Personal observations of suspicious conduct of defendant, charged with violations of gambling laws, during careful investigation, together with information received, gave probable cause for issuance of search warrant and warrant for arrest. *J. Minowitz v. United States* (1962, 298 F. 2d 682, 112 U.S. App. D.C. 21).

Where District of Columbia Metropolitan Police received information linking telephone number to numbers game and the source stated that bets were placed by named person using designated code number and Metropolitan Police received additional information from Arlington County police that very heavy number bets were called into the telephone number and police-

man made series of telephone calls to that number and identified himself as such person and gave such code number and received numbers information, there was probable cause for issuance of search warrant which led to seizure of numbers slips and other numbers paraphernalia. *United States v. Haje* (D.C.D.C. 1958, 159 F. Supp. 870).

##### Verdict

Convictions of defendants who were jointly indicted on four counts charging violations of District of Columbia Code sections proscribing gambling and on a fifth count charging that they had engaged in business of accepting wagers without having paid special tax required by Internal Revenue Code and who were acquitted on charges in fourth and fifth counts, were not subject to reversal because of claimed inconsistencies of verdict. *Silverman et al. v. United States* (1960, 275 F. 2d 173, 107 U.S. App. D.C. 144, certiorari granted 80 S. Ct. 1237, 363 U.S. 801, 4 L. Ed. 2d 1145).

Rational consistency in a jury's verdict on each of several counts is not necessary. *Id.*

#### § 22-1509. Bucketing, and bucket-shopping and bucket-shops—Definitions.

The following words and phrases used in sections 22-1509 to 22-1512 shall, unless a different meaning is plainly required by the context, have the following meanings:

"Person" shall mean an individual, partnership, corporation, or association, whether acting in his or their own right or as the officer, agent, servant, correspondent, or representative of another.

"Contract" shall mean any agreement, trade, or transaction.

"Securities" shall mean all evidences of debt or property and options for the purchase and sale thereof, shares in any corporation or association bonds, coupons, scrip, rights, choses in action, and other evidences of debt or property and options for the purchase or sale thereof.

"Commodities" shall mean anything movable that is bought and sold.

"Bucket-shop" shall mean any room, office, store, building, or other place where any contract prohibited by sections 22-1509 to 22-1512 is made or offered to be made.

"Keeper" shall mean any person owning, keeping, managing, operating, or promoting a bucket-shop, or assisting to keep, manage, operate, or promote a bucket-shop.

"Bucketing" or "bucket-shopping" shall mean:

(a) The making of or offering to make any contract respecting the purchase or sale, either upon credit or upon margin, of any securities or commodities wherein both parties thereto intend, or such keeper intends, that such contract shall be, or may be, terminated, closed, or settled according to or upon the basis of the public market quotations of prices made on any board of trade or exchange upon which said securities or commodities are dealt in and without a bona fide purchase or sale of the same; or (b) the making of or offering to make any contract respecting the purchase or sale, either upon credit or upon margin, of any securities or commodities, wherein both parties intend, or such keeper intends, that such contract shall be, or may be, deemed terminated, closed, or settled when such public market quotations of prices for the securities or commodities named in such contract shall reach a certain figure without a bona fide purchase or sale of the



same; or (c) the making of or offering to make any contract respecting the purchase or sale, either upon credit or upon margin, of any securities or commodities wherein both parties do not intend, or such keeper does not intend, the actual or bona fide receipt or delivery of such securities or commodities, but do intend, or such keeper does intend, a settlement of such contract based upon the differences in such public market quotations of prices at which said securities or commodities are or are asserted to be bought and sold. (Mar. 3, 1901, ch. 854, § 869a, as added Mar. 1, 1909, 35 Stat. 670, ch. 233.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-1510 to 22-1512.

#### NOTES TO DECISIONS

##### Any contract

The words "any contract defined in the preceding section," as used in section 869b (§ 22-1510) "were intended to refer, and did in fact refer, to bucketing and bucket-shopping contracts, or to 'agreements, trades, or transactions' relating thereto." *United States v. Cella* (1911, 37 App. D.C. 423, certiorari denied 32 S. Ct. 526, 223 U.S. 728, 56 L. Ed. 633).

##### Conspiracy

Conspiracy to violate the "bucket-shop" law of the District of Columbia (act of March 1, 1909, 35 Stat. 670, ch. 233 (§§ 22-1509 to 22-1512)) is an offense against the United States within the meaning of R.S. §§ 1014, 5440 (18 U.S.C. §§ 371, 3041). *United States v. Cella* (1911, 37 App. D.C. 423, certiorari denied 32 S. Ct. 526, 223 U.S. 728, 56 L. Ed. 633). See, also, *United States v. Campbell* (D.C. Pa., 1910, 179 F. 762).

Where indictment was for conspiracy to violate this section, the proceeding was removable under R.S. § 1014 (18 U.S.C. § 371). *United States ex rel. Vause v. McCarthy* (D.C. N.Y. 1918, 250 F. 800, affirmed 256 F. 651, 168 C.C.A. 45).

##### Constitutionality

The provision in this section that unless a different meaning is plainly required by the context, the word "contract" when used in sections 22-1509 to 22-1512, shall mean "any agreement, trade, or transaction," does not invalidate such sections as prohibiting all agreements, trades, and transactions, but refers only to the particular kinds of contracts elsewhere described in such sections, namely bucketing and bucket-shop contracts, or all agreements, trades, and transactions relating thereto. *United States v. Cella* (1911, 37 App. D.C. 423, certiorari denied 32 S. Ct. 526, 223 U.S. 728, 56 L. Ed. 633).

In the prosecution of keepers of a bucket shop for violating sections 22-1509 to 22-1512, relating to bucket shopping, such sections will not be declared invalid because of the possibility that under these sections innocent customers might be penalized, as the provisions defining a bucket shop, and prohibiting the keeper of it from making bucketing contracts, are entirely separable from, and not dependent upon, the provisions relating to the other party to such contract. *Id.*

##### Prosecutions

Prosecutions under this section should be in the name of the United States. *United States v. Cella* (1911, 37 App. D.C. 423, certiorari denied 32 S. Ct. 526, 223 U.S. 728, 56 L. Ed. 633).

#### § 22-1510. Penalty for bucketing or keeping bucket-shop.

Any person who makes or offers to make any contract defined in section 22-1509, or who is the keeper of any bucket-shop, shall, upon conviction thereof, be punished by a fine not exceeding one thousand dollars or by imprisonment for not more than one year. Any person who shall be convicted of a second offense shall be punished by imprisonment for not more than five years. The continuing of the keep-

ing of a bucket-shop by any person after the first conviction therefor shall be deemed a second offense under sections 22-1509 to 22-1512. If a domestic corporation shall be convicted of a second offense, the Superior Court of the District of Columbia shall have jurisdiction, upon an information in equity in the name of the United States attorney for the District of Columbia, on the relation of the Commissioner of the District of Columbia, to dissolve the corporation; and if a foreign corporation shall be convicted of a second offense, the Superior Court of the District of Columbia shall have jurisdiction, in the same manner, to restrain the corporation from doing business in the District of Columbia. (Mar. 3, 1901, ch. 854, § 869b, as added Mar. 1, 1909, 35 Stat. 671, ch. 233, and amended June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 909, 991, ch. 646, §§ 1, 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91-358, title I, § 155(c) (1) (E), 84 Stat. 570.)

#### AMENDMENT

1970—Section 155(c) (1) (E) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, § 32(b), eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1948, § 1, eff. Sept. 1, 1948, substituted "United States attorney" for "United States district attorney." See 28 U.S.C. § 501 (now 28 U.S.C. 541).

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-1509, 22-1511, 22-1512.

#### § 22-1511. Penalty for communicating, receiving, exhibiting, or displaying quotations of prices.

Any person who shall communicate, receive, exhibit, or display in any manner any statement of quotations of prices of any securities or commodities with an intent to make, or offer to make, or to aid in making, or offering to make any contract prohibited by sections 22-1509 to 22-1512, upon conviction thereof shall be subject to the penalties provided in section 22-1510. (Mar. 3, 1901, ch. 854, § 869c, as added Mar. 1, 1909, 35 Stat. 671, ch. 233.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-1509, 22-1510, 22-1512.

#### § 22-1512. Bucketing—Written statement to be furnished—Contents.

Every person shall furnish, upon demand, to any customer or principal for whom such person has executed any order for the actual purchase or sale of any securities or commodities, either for immediate or future delivery, a written statement, con-



taining the names of the persons from whom such property was bought or to whom it has been sold, as the fact may be, the time when, place where, and the price at which the same was either bought or sold; and if such person shall refuse or neglect to furnish such statement within twenty-four hours after such demand such refusal or neglect shall be prima facie evidence that such purchase or sale was bucketing or bucket-shopping within the terms of sections 22-1509 to 22-1512. (Mar. 3, 1901, ch. 854, § 869d, as added Mar. 1, 1909, 35 Stat. 671, ch. 233.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-1509 to 22-1511.

### § 22-1513. Corrupt influence in connection with athletic contests.

(a) It shall be unlawful to pay or give, or to agree to pay or give, or to promise or offer, any valuable thing to any individual—

(1) with intent to influence such individual to lose or cause to be lost, or to attempt to lose or cause to be lost, or to limit or attempt to limit his or his team's margin of victory or score in, any professional or amateur athletic contest in which such individual is or may be a contestant or participant; or

(2) with intent to influence such individual, in the case of any professional or amateur athletic contest in connection with which such individual (as a manager, coach, owner, second, jockey, trainer, handler, groom, or otherwise) has or will have any duty or responsibility with respect to a contestant, participant, or team who or which is engaging or may engage therein, to cause or attempt to cause (A) the loss of such athletic contest by such contestant, participant, or team; or (B) the margin of victory or score of such contestant, participant, or team to be limited; or

(3) with intent to influence such individual, in the case of any professional or amateur athletic contest in connection with which such individual is to be or may be a referee, judge, umpire, linesman, starter, timekeeper, or other similar official, to cause or attempt to cause (A) the loss of such athletic contest by any contestant, participant, or team who or which is engaging or may engage therein; or (B) the margin of victory or score of any such contest, participant, or team to be limited.

(b) It shall be unlawful for any individual to solicit or accept, or to agree to accept, any valuable thing or a promise or offer of any valuable thing—

(1) to influence such individual to lose or cause to be lost, or to attempt to lose or cause to be lost, or to limit or attempt to limit his or his team's margin of victory or score in, any professional or amateur athletic contest in which such individual is or may be a contestant or participant; or

(2) to influence such individual, in the case of any professional or amateur athletic contest in connection with which such individual (as a manager, coach, owner, second, jockey, trainer, handler, groom, or otherwise) has or will have any duty or responsibility with respect to a contestant, participant, or team who or which is engaging or may engage therein, to cause or attempt to cause

(A) the loss of such athletic contest by such contestant, participant, or team; or (B) the margin of victory or score of such contestant, participant, or team to be limited; or

(3) to influence such individual, in the case of any professional or amateur athletic contest in connection with which such individual is to be or may be a referee, judge, umpire, linesman, starter, timekeeper, or other similar official, to cause or attempt to cause (A) the loss of such athletic contest by any contestant, participant, or team who or which is engaging or may engage therein; or (B) the margin of victory or score of any such contestant, participant, or team to be limited.

(c) Whoever violates any provision of subsection (a) of this section shall be guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than five years and by a fine of not more than \$10,000.

(d) Whoever violates any provision of subsection (b) of this section shall, upon conviction thereof, be punished by imprisonment for not more than one year and by a fine of not more than \$5,000.

(e) As used in this section, the term "athletic contest" means any of the following, wherever held or to be held: A football, baseball, softball, basketball, hockey, or polo game, or a tennis or wrestling match, or a prize fight or boxing match, or a horse race or any other athletic or sporting event or contest.

(f) Nothing in this section shall be construed to prohibit the giving or offering of any bonus or extra compensation to any manager, coach, or professional player, or to any league, association, or conference for the purpose of encouraging such manager, coach, or player to a higher degree of skill, ability, or diligence in the performance of his duties. (Mar. 3, 1901, ch. 854, § 869e, as added July 11, 1947, 61 Stat. 313, ch. 230; and amended Dec. 27, 1967, Pub. L. 90-226, § 604, title VI, 81 Stat. 737.)

#### AMENDMENT

1967—Section 604, Act Dec. 27, 1967, Pub. L. 90-226, amended section by adding subsection (f).

#### SENTENCE FOR OFFENSES COMMITTED PRIOR TO DEC. 27, 1967, AND SEPARABILITY OF PROVISIONS

See §§ 1101 and 1102 of Act Dec. 27, 1967, Pub. L. 90-226, set out as notes to § 22-501.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23-546.

### § 22-1514. Immunity of witnesses—Record.

(a) Whenever, in the judgment of the United States attorney for the District of Columbia, the testimony of any witness, or the production of books, papers, or other records or documents, by any witness, in any case or proceeding involving a violation of this chapter before any grand jury or a court in the District of Columbia, is necessary in the public interest, such witness shall not be excused from testifying or from producing books, papers, and other records and documents on the grounds that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him, or subject him to penalty or forfeiture; but such witness shall not be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against



self-incrimination, to testify or produce evidence, documentary or otherwise; except that such witness so testifying shall not be exempt from prosecution and punishment for perjury or contempt committed in so testifying.

(b) The judgment of the United States attorney for the District of Columbia that any testimony, or the production of any books, papers, or other records or documents, is necessary in the public interest shall be confirmed in a written communication over the signature of the United States attorney for the District of Columbia, addressed to the grand jury or the court in the District of Columbia concerned, and shall be made a part of the record of the case or proceeding in which such testimony or evidence is given. (Mar. 3, 1901, ch. 854, § 869f, as added June 29, 1953, 67 Stat. 96, ch. 159, § 206(d).)

#### CROSS REFERENCE

For general immunity statute, see 18 U.S.C. 6001 to 6005. Section 259 of title II of Act Oct. 15, 1970, Pub. L. 91-452, 84 Stat. 931, provided: "In addition to the provisions of law specifically amended or specifically repealed by this title, any other provision of law inconsistent with the provisions of part V [§§ 6001 to 6005] of title 18, United States Code (added by title II of this Act), is to that extent amended or repealed."

#### NOTES TO DECISIONS

##### Civil contempt

Immunity granted by terms of Code encompassed immunity for offense for which witness had been convicted although judgment of conviction was nonfinal because timely appeal from judgment was pending, but that did not alter witness' obligation to testify before grand jury when directed to do so and failure to do so constituted civil contempt. *In re Flanagan* (1965, 350 F. 2d 746, 121 U.S. App. D.C. 368).

##### Constitutionality

District of Columbia immunity statute is not unconstitutional on basis of alleged uncertainty as immunity provided with reference to state as well as federal prosecutions. *In re Flanagan* (1965, 350 F. 2d 746, 121 U.S. App. D.C. 368).

##### Operation of statute

Immunity statute does not operate unless witness testifies or gives evidence over his claim of privilege against self-incrimination. *In re Flanagan* (1965, 350 F. 2d 746, 121 U.S. App. D.C. 368).

#### § 22-1515. Presence in illegal establishments.

(a) Whoever is found in the District in a gambling establishment or an establishment where intoxicating liquor is sold without a license or any narcotic drug is sold, administered, or dispensed without a license shall, if he knew that it was such an establishment and if he is unable to give a good account of his presence in the establishment, be imprisoned for not more than one year or fined not more than \$500, or both.

(b) Whoever is employed in a gambling establishment in the District or an establishment in the District where intoxicating liquor is sold without a license or where any narcotic drug is sold, administered, or dispensed without a license, knowing that it is such an establishment, shall be imprisoned for not more than one year or fined not more than \$500, or both. (June 29, 1953, 67 Stat. 97, ch. 159, § 208.)

#### CROSS REFERENCES

Alcoholic beverages, sale without a license, see § 25-109.  
Definition of District, see note under § 1-319.  
Drinking in unlicensed places, see § 25-128.  
Uniform Narcotic Drug Act, unlawful acts under, see § 33-402.

#### NOTES TO DECISIONS

##### Constitutionality

This section providing that whoever is found in establishment where any narcotic drug is sold, administered, or dispensed without a license shall, if he knew it was such an establishment and if he is unable to give a good account of his presence in the establishment, be imprisoned is unconstitutionally vague in that it makes criminal liability turn upon defendant's ability to give a good account of himself. *J. Holly v. United States* (1972, 464 F. 2d 796, 150 U.S. App. D.C. 287).

This section making it an offense to be present in illegal establishment is constitutional. *A. Geddie v. United States* (D.C. App. 1971, 284 A. 2d 668).

If defendant charged under this section with knowing presence in narcotics or other illegal establishment chooses not to testify to attempt to establish defense of "good account," this in no way lessens government's burden of proving knowing presence in illegal establishment and does not expose defendant to added criminal responsibility; and thus, section defining such offense does not violate privilege against self-incrimination. *United States v. M. C. McClough et al.* (D.C. App. 1970, 263 A. 2d 48).

Presence in illegal establishment, unlike standing or "loitering" on street corner, is not presumptively innocent behavior, and thus a defendant may constitutionally be called upon to explain such presence. *Id.*

##### Court of appeals decision

Court of Appeals for the District of Columbia Circuit would not defer to decisions of the District of Columbia Court of Appeals upholding criminal statute, where Court of Appeals for District of Columbia Circuit had jurisdiction to resolve appeals involving statute on their merits, position of the lower court on the constitutional question was clear, two appellants had been convicted under the statute and a third faced trial under it, and Court of Appeals of District of Columbia Circuit had previously made known its view that the constitutional claim had merit. *J. Holly v. United States* (1972, 464 F. 2d 796, 150 U.S. App. D.C. 287).

##### Elements of offense

In a prosecution for being present in an illegal establishment, it is not element of the offense that defendant was present in apartment with an intent to participate in illegal activity; intent necessary to convict is merely the intention to be present in the establishment while knowing of the illegal activity taking place. *F. Wells v. United States* (D.C. App. 1971, 281 A. 2d 226; cert. denied 92 S. Ct. 1271, 405 U.S. 995).

In such a prosecution, the government is not required to prove beyond reasonable doubt the absence of a "good account" defense; "good account" is a statutory affirmative defense and, as such, not an element of the offense to be proved by the prosecution. *Id.*

##### Evidence—Sufficiency

Evidence in prosecution for being present in illegal establishment is sufficient to prove beyond reasonable doubt the nonexistence of license to dispense narcotics even though Government offered no testimony as to nonexistence of license. *A. Geddie v. United States* (D.C. App. 1971, 284 A. 2d 668).

Evidence that usable quantity of heroin was found along with narcotics paraphernalia, some of which were still in plain view after police officers entered and others of which were found under couch, suggesting they may have been placed there hurriedly upon arrival of the police, was sufficient to allow jury to find that narcotics were being administered and that sufficient amount of paraphernalia was easily visible, thereby imparting knowledge of illegal activity to defendant charged with being present in an illegal establishment. *F. Wells v. United States* (D.C. App. 1971, 281 A. 2d 226; cert. denied 92 S. Ct. 1271, 405 U.S. 995).

Where as a matter of reasonable probability there was no possibility for misidentification and adulteration of certain narcotic evidence, missing link in government's chain of possession of the narcotics evidence does not warrant reversal of convictions of unlawful possession of narcotic drug, narcotic vagrancy and presence in illegal establishment. *B. Spade v. United States* (D.C. App. 1971, 277 A. 2d 654).



Evidence that, at time police officers entered apartment, the defendant was standing next to dresser on the top of which a sizeable quantity of narcotic paraphernalia was in plain view sustained conviction of being knowingly present in an establishment where narcotic drugs were sold, administered or dispensed without a license even in absence of testimony by police witnesses that they had seen drugs being sold, administered or dispensed or that the defendant had knowledge that the apartment was being used for such purposes. *W. C. Cook v. United States* (D.C. App. 1971, 272 A. 2d 444).

#### Good account

In context of this section defining as crime one's knowing presence in illegal narcotics, gambling or liquor establishment, if defendant is unable to give good account of his presence, culpable intent being necessary element of the offense, "good account" takes on narrow meaning of demonstrating that one's knowing presence in the illegal establishment was for lawful purpose and not as participant in the illegal activity taking place there. *United States v. M. C. McClough et al.* (D.C. App. 1970, 263 A. 2d 48).

If defendant cannot give good account of his presence in a prosecution under this section, failure to give "good account" is not element of the crime and does not create presumption of knowledge of illegality of premises, which must be proved by the government as separate element of the crime, or presumption of any other element of the crime; rather provision for giving good account merely establishes affirmative defense to otherwise completed and adequately described crime of knowingly being present in illegal establishment. *Id.*

Defendant is entitled to present to jury explanations of such presence in addition to those given to police. *Id.*

#### Inferences

Fact that the probable holder of any license to dispense drugs testified that no drugs were dispensed or used on premises with his permission together with other facts of case permitted the jury to infer that no license existed despite fact that Government offered no testimony as to nonexistence of license. *A. Geddie v. United States* (D.C. App. 1971, 284 A. 2d 668).

Paraphernalia in plain view supports inference of knowledge of illegal activity. *Id.*

#### Instructions

Where the record revealed that there were several of defendant's friends who were present in apartment containing narcotic apparatus at time of execution of search warrant, who had material information that could have elucidated events of day in question, and who were peculiarly available to defendant, giving of "missing witness" instruction in prosecution for being present in an illegal establishment was not error. *F. Wells v. United States* (D.C. App. 1971, 281 A. 2d 226; cert. denied 92 S. Ct. 1271, 405 U.S. 995).

Since this section proscribing being present in illegal establishment defines illegal establishment as one where any narcotic drug is sold, administered or dispensed without a license, trial court's instruction that defendants were charged with presence in an illegal establishment where narcotic drugs were kept or sold or administered or dispensed unlawfully introduced new and erroneous element and constituted reversible error. *B. Spade v. United States* (D.C. App. 1971, 277 A. 2d 54).

Where there was no overt correction which brought to jury's attention that the word "kept" was not included in this section as an element of presence in an illegal establishment, trial court's subsequent instruction on another portion of section in which there was correct recital of the elements of the offense did not cure the erroneous charge. *Id.*

#### Narcotics establishment

Illegal "narcotic establishment" is not merely place where addicts may be present, but is place where pushers, addicts and unaddicted neophytes can easily transact business, and thus effect of this section making it crime to knowingly be present in such establishment on status of being addicted to narcotics is merely incidental to section's major thrust against narcotics traffic, and elimination of such establishments was proper subject for

Congressional action. *United States v. M. C. McClough et al.* (D.C. App. 1970, 263 A. 2d 48).

#### Presumptions

The amount of narcotics paraphernalia easily visible in apartment plus fresh needle marks on codefendant's arm supported the presumption that narcotic drugs were being administered and that defendant was knowingly present in establishment where narcotic drugs were administered. *C. Jones v. United States* (D.C. App. 1970, 271 A. 2d 559).

#### Purpose

Purpose of Congress in enacting this section, making unlawful knowing presence in illegal narcotics, gambling, or liquor establishment, was to lead to eradication of such illegal establishments by making presence or employment therein crime. *United States v. M. C. McClough et al.* (D.C. App. 1970, 263 A. 2d 48).

#### Search and seizure

Defendant in prosecution for being present in illegal establishment, who had been arrested in basement in which narcotics paraphernalia was found and whose presence there was as a trespasser, did not have standing to challenge search and seizure of paraphernalia since possession of paraphernalia was not an element of offense charged, so as to estop government from denying its possessory interest. *F. L. Brooks v. United States* (D.C. App. 1970, 263 A. 2d 45).

## Chapter 16.—GAME AND FISH LAWS

#### Sec.

22-1601 to 22-1606. Repealed.

22-1607. Transferred.

22-1608 to 22-1627. Repealed.

22-1628. Council's authority with respect to wild animals, fishing licenses, and migratory birds—Exception—"Wild Animals" defined.

22-1629. Inspection of business or vocational establishments requiring a license or permit or any vehicle, boat, market box, market stall or cold storage plant, during business hours.

22-1630. Seizure of hunting and fishing equipment by police officer—Return of seized property upon acquittal—Forfeiture of seized property upon conviction and sale at public auction—Disposal of proceeds of sale—Disposal of property not sold at auction—Payment of valid liens after sale of seized property.

22-1631. Penalties—Prosecutions to be in name of District by Corporation Counsel or assistants.

22-1632. Delegation of functions by Secretary of Interior and Commissioner—Council authorized to make regulations subject to approval of Secretary of Interior where they involve areas under his jurisdiction—Definition of "Commissioner" and "Secretary of Interior" for purposes of chapter.

22-1633. Existing authority of Secretary of Interior not impaired to control and manage fish and wildlife on land and waters in District under his jurisdiction.

§ 22-1601 to 22-1606. Repealed. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8 (a), (e).

Section 22-1601, act Mar. 3, 1901, 31 Stat. 1335, ch. 854, § 896, dealt with the prohibition and control of net fishing in the Potomac River.

Section 22-1602, acts Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 897; June 30, 1902, 32 Stat. 536, ch. 1329, controlled the catching and killing of bass.

Section 22-1603, act Mar. 3, 1927, 44 Stat. 1379, ch. 343, §§ 1-4, defined person and prohibited the sale of bass.

Section 22-1604, acts Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 898; Feb. 26, 1944, 58 Stat. 105, ch. 67, regulated the sale and possession of shad or herring.

Section 22-1605, acts Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 899; Nov. 30, 1945, 59 Stat. 588, ch. 498, regulated the sale of small striped bass.

Section 22-1606, act Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 900, prohibited use of explosives and drugs in fishing.



Sections 22-1601 to 22-1606 are now covered by sections 22-1628, 22-1631(a).

#### EFFECTIVE DATE OF REPEAL

Repeal of sections effective on the 180th day following Aug. 23, 1958, see section 9 of act Aug. 23, 1958, set out as a note under section 22-1628.

#### § 22-1607. Transferred.

##### CODIFICATION

Section transferred to section 22-1703a.

#### § 22-1608 to 22-1627. Repealed. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8 (a)—(d).

Section 22-1608, acts Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 903; June 30, 1902, 32 Stat. 536, ch. 1329, dealt with confiscation of fishing equipment used in violation of law.

Sections 22-1609 to 22-1612, acts Mar. 3, 1899, 30 Stat. 1012, ch. 417, § 1; Mar. 3, 1901, 31 Stat. 1091, ch. 844, dealt with the sale and possession of woodcocks; squirrels and rabbits; wild chicks, wild geese and the like; and certain game birds, respectively.

Section 22-1613, act Mar. 3, 1899, 30 Stat. 1012, ch. 417, § 2, dealt with sale or possession of deer meat.

Sections 22-1614, 22-1615, acts Mar. 3, 1899, 30 Stat. 1012, ch. 417, § 3; Mar. 3, 1901, 31 Stat. 1092, ch. 844, dealt with wild birds and robbing or destroying; and trapping, netting, etc., of wild birds, possession of devices for such purpose, respectively.

Sections 22-1616 to 22-1620, act Mar. 3, 1899, 30 Stat. 1913, ch. 417, §§ 5—9, related to inspection of premises to detect violation of game laws; trespassing for purposes of hunting, shooting or having guns in possession on a Sunday; killing or capturing game beyond District jurisdiction; and compensation for persons securing convictions under game laws, respectively.

Sections 22-1621 to 22-1623, act June 30, 1906, 34 Stat. 808, ch. 3932, §§ 1—3, dealt with killing of game birds and permits therefor; hunting of squirrels, chipmunks and rabbits without a permit; and killing of English sparrow or wild animal suffering from disease or injury, respectively.

Section 22-1624, acts June 30, 1906, 34 Stat. 809, ch. 3932, § 5; July 14, 1932, 47 Stat. 660, ch. 478, § 1, dealt with hunting or disbursing of ducks, geese and waterfowl.

Sections 22-1625 to 22-1627, act Dec. 18, 1919, 41 Stat. 368, ch. 10, §§ 1—3, prohibited sale, possession or purchase of certain types of birds; provided for issuance of license for certain scientific purposes; and provided for sale of birds raised in captivity or for propagation, respectively.

Sections 22-1608 to 22-1627 are now covered by sections 22-1628 to 22-1633.

#### EFFECTIVE DATE OF REPEAL

Repeal of sections effective on the 180th day following Aug. 23, 1958, see section 9 of act Aug. 23, 1958, set out as a note under section 22-1628.

#### § 22-1628. Council's authority with respect to wild animals, fishing licenses, and migratory birds—Exception—"Wild Animals" defined.

The District of Columbia Council is authorized to restrict, prohibit, regulate, and control hunting and fishing and the taking, possession and sale of wild animals in the District: *Provided*, That nothing herein contained shall authorize the Council to impose any requirement for a fishing license or fee of any nature whatsoever: *Provided further*, That nothing herein contained shall authorize the Council to prohibit, restrict, regulate, or control the killing, capture, purchase, sale, or possession of migratory birds as defined in regulations issued pursuant to the Migratory Bird Treaty Act of July 3, 1918, as amended (16 U. S. C. 703—711) and taken for scientific, propagating, or other purposes under permits issued by the Secretary of the Interior: *And provided further*, That nothing herein contained shall authorize the Council to prohibit, restrict,

regulate or control the sale or possession of wild animals taken legally in any State, Territory or possession of the United States or in any foreign country, or produced on a game farm, except as may be necessary to protect the public health or safety. As used in this section the term "wild animals" includes, without limitation, mammals, birds, fish, and reptiles not ordinarily domesticated. (Aug. 23, 1958, 72 Stat. 814, Pub. L. 85-730, § 1.)

#### EFFECTIVE DATE

Section 9 of act Aug. 23, 1958, provided that: "This Act [enacting sections 22-1628 to 22-1633, amending section 22-1703a and repealing sections 22-1601 to 22-1606 and 22-1608 to 22-1627] shall take effect on the 180th day following the approval thereof [Aug. 23, 1958]."

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(204) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners under this section, relating to restricting, prohibiting, regulating, and controlling hunting and fishing and the taking, possession, and sale of wild animals, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

#### NOTES TO DECISIONS

##### Historical

Respective rights of Virginia and Maryland in waters of Potomac River. *Marine R. & Coal Co. v. United States* (1921, 42 S. Ct. 32, 257 U.S. 47, 66 L. Ed. 124). See, also, *Herald v. United States* (1923, 284 F. 927, 52 App. D.C. 147).

Compact of 1785 between Maryland and Virginia providing for the right of fishing in the Potomac River was never in force in the District of Columbia. *Evans v. United States* (1908, 31 App. D.C. 544).

#### § 22-1629. Inspection of business or vocational establishments requiring a license or permit or any vehicle, boat, market box, market stall or cold storage plant, during business hours.

Authorized officers and employees of the Government of the United States or of the government of the District of Columbia are, for the purpose of enforcing the provisions of this chapter and the regulations promulgated by the District of Columbia Council under the authority of this chapter, empowered, during business hours, to inspect any building or premises in or on which any business, trade, vocation or occupation requiring a license or permit is carried on, or any vehicle, boat, market box, market stall or cold-storage plant. No person shall refuse to permit any such inspection. (Aug. 23, 1958, 72 Stat. 814, Pub. L. 85-730, § 2.)

#### CODIFICATION

Reference to the District of Columbia Council was substituted for "Commissioners" on authority of § 402(204) of Reorg. Plan No. 3 of 1967 and § 22-1628 of this chapter, under which the regulations are promulgated by the Council.

#### § 22-1630. Seizure of hunting and fishing equipment by police officer—Return of seized property upon acquittal—Forfeiture of seized property upon conviction and sale at public auction—Disposal of proceeds of sale—Disposal of property not sold at auction—Payment of valid liens after sale of seized property.

(a) All rifles, shotguns, ammunition, bows, arrows, traps, seines, nets, boats, and other devices of every nature or description used by any person



within the District of Columbia when engaged in killing, ensnaring, trapping, or capturing any wild bird, wild mammal or fish contrary to this chapter or any regulation made pursuant to this chapter shall be seized by any police officer upon the arrest of such person on a charge of violating any provision of this chapter or any regulations made pursuant thereto, and be delivered to the Commissioner. If the person so arrested is acquitted, the property so seized shall be returned to the person in whose possession it was found. If the person so arrested is convicted, the property so seized shall, in the discretion of the court, be forfeited to the District of Columbia, and be sold at public auction, the proceeds from such sale to be deposited in the Treasury to the credit of the District of Columbia. If any item of such property is not purchased at such auction, it shall be disposed of in accordance with regulations prescribed by the District of Columbia Council.

(b) If any property seized under the authority of this section is subject to a lien which is established by intervention or otherwise to the satisfaction of the court as having been created without the lienor's having any notice that such property was to be used in connection with a violation of any provision of this chapter or any regulation made pursuant thereto, the court, upon the conviction of the accused, may order a sale of such property at public auction. The officer conducting such sale, after deducting proper fees and costs incident to the seizure, keeping, and sale of such property, shall pay all such liens according to their priorities, and such lien or liens shall be transferred from the property to the proceeds of the sale thereof. (Aug. 23, 1958, 72 Stat. 814, Pub. L. 85-730, § 3.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(205) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory function of the Board of Commissioners under subsection (a) as provided in the last sentence of the subsection, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, No. 3 of 1967, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### § 22-1631. Penalties—Prosecutions to be in name of District by Corporation Counsel or assistants.

(a) Any person convicted of violating any provision of this chapter, or any regulation made pursuant to this chapter, shall be fined not more than \$300 or imprisoned not more than 90 days, or both.

(b) Prosecutions for violations of this chapter, or the regulations made pursuant thereto, shall be conducted in the name of the District of Columbia by the Corporation Counsel or any of his assistants. (Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 4.)

#### § 22-1632. Delegation of functions by Secretary of Interior and Commissioner—Council authorized to make regulations subject to approval of Secretary of Interior where they involve areas under his jurisdiction—Definition of "Commissioner" and "Secretary of Interior" for purposes of chapter.

(a) The Secretary of the Interior and the Commissioner, respectively, are authorized to delegate

any of the functions to be performed by them under the authority of this chapter.

(b) The District of Columbia Council is authorized to make such regulations as may be necessary to carry out the purpose of this chapter: *Provided*, That any regulations issued pursuant to this chapter shall be subject to the approval of the Secretary of the Interior insofar as they involve any areas or waters of the District of Columbia under his administrative jurisdiction.

(c) As used in this chapter the word "Commissioner" means the Commissioner of the District of Columbia or his designated agent or agents, and the words "Secretary of the Interior" means the Secretary of the Interior or his designated agent or agents. (Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 5.)

#### CODIFICATION

In subsec. (b), reference to the District of Columbia Council was substituted for "Commissioners" on authority of § 402(204) of Reorg. Plan No. 3 of 1967 and § 22-1628 of this chapter, under which the regulations are promulgated by the Council.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 22-1633. Existing authority of Secretary of Interior not impaired to control and manage fish and wildlife on land and waters in District under his jurisdiction.

Nothing in this chapter or in any regulation promulgated by the District of Columbia Council under the authority of this chapter shall in any way impair the existing authority of the Secretary of the Interior to control and manage fish and wildlife on the land and waters in the District of Columbia under his administrative jurisdiction. (Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 6.)

#### CODIFICATION

Reference to the District of Columbia Council was substituted for "Commissioners" on authority of § 402(204) of Reorg. Plan No. 3 of 1967 and § 22-1628 of this chapter, under which the regulations are promulgated by the Council.

### Chapter 17.—HARBOR REGULATIONS

#### Sec.

22-1701. Harbor regulations—Authority vested in Council to make—Federal approval if affecting navigable waters—Parks and waterfront—Penalty.

22-1702. Throwing or depositing matter in Potomac River

22-1703. Deposits of deleterious matter in Rock Creek or Potomac River.

22-1703a. Penalties for violation of section 22-1703.

#### § 22-1701. Harbor regulations—Authority vested in Council to make—Federal approval if affecting navigable waters—Parks and waterfront—Penalty.

Every vessel coming to anchor in the Potomac River between the junction of the Washington and Georgetown Channels of said river and the extension of the south line of P Street southwest, in the city of Washington, shall anchor as near the flats in said river as possible, so that the channel of said river will not be obstructed; and if such vessel is to remain over twelve hours it shall be moored with both anchors, so as to give room for passing vessels and so as not to swing and obstruct said channel. Every vessel coming to anchor in any other portion of the



navigable waters in the District of Columbia shall also be so moored under the direction of the harbor master, or the pilot of the police boat acting in the harbor master's absence, as not to obstruct the channel, and be secured with an anchor at bow and stern as to keep the long axis of the vessel parallel with that of the channel and prevent it from swinging so as to obstruct the free passage of the channel by other vessels.

No vessel shall be permitted to anchor in the Washington Channel of the Potomac River between a point one thousand feet south of the south line of P Street and the north line of K Street south extended, each point to be designated by a white buoy; and all vessels coming to anchor above the north line of K Street south aforesaid shall come to anchor as near the flats as possible and so that the channel will not be obstructed; and all vessels coming to anchor shall be so moored by the use of both anchors as to prevent obstruction of the channel within four hundred feet of the nearest wharf, the said anchorage to continue only twenty-four hours unless otherwise ordered or directed by the harbor master.

The captain or owner of any sunken vessel or other structure in any dock or at the end of any wharf in the District of Columbia, shall raise and remove the same in five days. Any vessel at the end of wharves or in docks shall, when required by the harbor master, haul either way to accommodate vessels going in or coming out from such wharves or docks. They shall not occupy regular steamers' or sailing packets' berths without permission from the recognized occupants of such wharves and dock, and they are required to rig in all fore-and-aft spars, have boats hoisted up under the bow, and davits turned up, as the harbor master may direct. Vessels when not engaged in loading or discharging cargo shall give place to such vessels as are ready to receive or deliver freights; and if the captain or person in charge of any vessel refuse to move said vessel when notified by the occupant of the wharf at which she is lying, the harbor master shall order him to haul to some other berth or into the stream. The powers and authority herein conferred upon the harbor master may, in his absence or temporary disability, be exercised by the pilot of the harbor police boat. Any person refusing to obey the instructions of the harbor master, or, in case of his absence or temporary disability, the said pilot of the harbor police boat, or any person failing to comply with any of the provisions of this section, shall be punished by a fine not exceeding one hundred dollars or by imprisonment not exceeding six months, or both.

The District of Columbia Council is hereby vested with authority to make harbor regulations for the entire water-front of the city within the District of Columbia, to alter and amend the same from time to time as it may find necessary: *Provided*, That whenever these regulations affect navigable waters, channels, and anchorage areas or other interests of the United States, such regulations shall be subject to the approval of the Secretary of Army: *And provided further*, That whenever said regulations affect the water-front within the District of Columbia under the jurisdiction of the Direc-

tor of the National Park Service, or affect the interests and rights of the National Capital Planning Commission, such regulations shall be subject to prior approval of the respective agencies. (Mar. 3, 1901, 31 Stat. 1335, ch. 854, § 895; June 30, 1902, 32 Stat. 535, ch. 1329; Feb. 8, 1904, 33 Stat. 11, ch. 152, §§ 1, 2; June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1; June 15, 1934, 48 Stat. 963, ch. 536.

#### CODIFICATION

The first two sentences of the third paragraph reading "No vessel shall be permitted to lie in Seventeenth street canal, New Jersey avenue canal, James Creek canal, or at the entrance thereof, so as to obstruct the passage of any vessel going into or out of the same or moving from one place to another therein, unless such obstructing vessel is actually engaged in loading or unloading, and shall then, if deemed expedient by the harbor master, be removed to such place as shall be necessary to give room to passing vessels. Any captain or owner of or any one in charge of any barge, sand scow, or any vessel that may sink in said canals shall raise and remove the same in five days." were omitted from the Code as obsolete.

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, title II. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted U. S. Code, Title 10, Armed Forces, which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

#### AMENDMENTS

1934—Act June 15, 1934, added the fourth paragraph.

1904—Act June 30, 1902, § 1, added the second sentence of the first paragraph.

1902—Act June 30, 1902, § 1, divided original paragraph into the first three paragraphs of the section, substituting "between a point one thousand feet south of the south line of P Street and the north line of K Street south extended, each point to be designated by a white buoy; and all vessels coming to anchor above the north line of K Street south" for "between the extended lines of P or K Street south." in the second paragraph and "steamers' or sailing packets'" for "steamers or sailing packets'" in the third paragraph.

Act June 30, 1902, § 2, required the captain or owner of any sunken vessel or other structure in any dock or at the end of any wharf in the District of Columbia to raise and remove the same in five days.

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(206) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of making, altering, and amending harbor regulations under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

#### TRANSFER OF FUNCTIONS

With respect to functions of the Secretary of the Army referred to in the fourth paragraph of this section, see section 6(g) (1) of the Department of Transportation Act (Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 940; 49 U.S.C. 1651) which transferred to and vested in the Secretary of Transportation all functions, powers, and duties of the Secretary of the Army under specified provisions of law relating generally to water vessel anchorages.

"National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in view of act June 6, 1924, as added July 19, 1952, which transferred the functions, powers and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission. See section 1-1009.



All functions of all officers of the Department of the Interior and all functions of all agencies and employees of such Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 3, § 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, U.S. Code.

#### CROSS REFERENCES

Fish wharf and market, see § 10-135.

Jurisdiction and control of wharves, see §§ 9-101, 9-102.

Metropolitan police, duty to enforce harbor regulations, see § 4-106.

Rules and regulations, publication and effect, see §§ 4-177, 4-178.

### § 22-1702. Throwing or depositing matter in Potomac River.

(a) It shall be unlawful for any owner or occupant of any wharf or dock, any master or captain of any vessel, or any person or persons to cast, throw, drop, or deposit any stone, gravel, sand, ballast, dirt, oyster shells, or ashes in the water in any part of the Potomac River or its tributaries in the District of Columbia, or on the shores of said river below high-water mark, unless for the purpose of making a wharf, after permission has been obtained from the Commissioner of the District of Columbia for that purpose, which wharf shall be sufficiently inclosed and secured so as to prevent injury to navigation.

(b) It shall be unlawful for any owner or occupant of any wharf or dock, any captain or master of any vessel, or any other person or persons to cast, throw, deposit, or drop in any dock or in the waters of the Potomac River or its tributaries in the District of Columbia any dead fish, fish offal, dead animals of any kind, condemned oysters in the shell, watermelons, cantaloupes, vegetables, fruits, shavings, hay, straw, or filth of any kind whatsoever.

(c) Nothing in this section contained shall be construed to interfere with the work of improvement in or along the said river and harbor under the supervision of the United States Government.

(d) Any person or persons violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding six months, or both, in the discretion of the court. (Feb 3, 1913, 37 Stat. 656, ch. 25.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

### § 22-1703. Deposits of deleterious matter in Rock Creek or Potomac River.

No person shall allow any tar, oil, ammoniacal liquor, or other waste products of any gas works or works engaged in using such products, or any waste product whatever of any mechanical, chemical, manufacturing, or refining establishment to flow into or be deposited in Rock Creek or the Potomac River or any of its tributaries within the District of Columbia or into any pipe or conduit leading to the same. (Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 901.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22-1703a.

#### NOTES TO DECISIONS

##### Application

The prohibition of this section is "general and unqualified, and applies to all alike," and prevents the discharge of any such waste products. *Holden v. United States* (1904, 24 App. D.C. 318, certiorari denied 25 S. Ct. 796, 196 U.S. 639, 49 L. Ed. 631).

##### Liability

Although failure of employee of university, that contracted with independent contractor for erection of oil power plant, to turn off oil pumps that he had turned on or to turn on transfer valve resulted in oil spillage into river, such failure did not render university criminally liable under this section since the employee turned pumps on at direction of independent mechanical contractor and was not requested to turn pumps off or instructed as to consequences of leaving pumps on without turning on transfer valve. *United States v. Georgetown University* (1971, 331 F. Supp. 69).

##### Negligence

When construction company places tanks on banks of navigable stream within limits of the city and if substance from the tanks escapes into the river and interferes with public use, it is liable irrespective of the question of negligence. *Brennan Constr. Co. v. Cumberland* (1907, 29 App. D.C. 554, 15 L.R.A., N.S., 535, 10 Ann. Cas. 865).

### § 22-1703a. Penalties for violation of section 22-1703.

Any person who shall violate any provision of section 22-1703 shall for each such offense be fined not more than \$300 or imprisoned not more than ninety days, or both. (Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 902; Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 7.)

#### AMENDMENT

1958—Act Aug. 23, 1958, amended section to provide a penalty of a fine not to exceed \$300 or imprisonment not to exceed ninety days or both in place of a fine not less than ten nor more than one hundred dollars and in default of payment of fine imprisonment not to exceed six months and to eliminate provision for receipt of one-half of fine by officer or other person securing the conviction.

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by act Aug. 23, 1958, effective on the 180th day following Aug. 23, 1958, see section 9 of act Aug. 23, 1958, set out as a note under section 22-1628.

## Chapter 18.—BURGLARY

### Sec.

22-1801. Burglary—Penalties.

### § 22-1801. Burglary—Penalties.

(a) Whoever shall, either in the nighttime or in the daytime, break and enter, or enter without breaking, any dwelling, or room used as a sleeping apartment in any building, with intent to break and carry away any part thereof, or any fixture or other thing attached to or connected thereto or to commit any criminal offense, shall, if any person is in any part of such dwelling or sleeping apartment at the time of such breaking and entering, or entering without breaking, be guilty of burglary in the first degree. Burglary in the first degree shall be punished by imprisonment for not less than five years nor more than thirty years.

(b) Except as provided in subsection (a) of this section, whoever shall, either in the night or in the daytime, break and enter, or enter without breaking, any dwelling, bank, store, warehouse, shop, stable, or other building or any apartment or room, whether at the time occupied or not, or any steamboat, canal-boat, vessel, or other watercraft, or railroad car or



any yard where any lumber, coal, or other goods or chattels are deposited and kept for the purpose of trade, with intent to break and carry away any part thereof or any fixture or other thing attached to or connected with the same, or to commit any criminal offense, shall be guilty of burglary in the second degree. Burglary in the second degree shall be punished by imprisonment for not less than two years nor more than fifteen years. (Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 823; Dec. 27, 1967, Pub. L. 90-226, § 602, title VI, 81 Stat. 736.)

#### AMENDMENT

1967—Section 602, Act Dec. 27, 1967, Pub. L. 90-226, amended section generally. For provisions prior to this amendment, see 1967 edition of the code.

#### SENTENCE FOR OFFENSES COMMITTED PRIOR TO DEC. 27, 1967, AND SEPARABILITY OF PROVISIONS

See §§ 1101 and 1102 of Act Dec. 27, 1967, Pub. L. 90-226, set out as notes to § 22-501.

#### CROSS REFERENCE

Possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11-502, 23-546, 23-581.

#### NOTES TO DECISIONS

##### Historical

Ancient distinction that robbery offends person and burglary habitation has not been obliterated by Congress with respect to District of Columbia even where robbery inside dwelling follows closely on heels of housebreaking of that dwelling. *Irby v. United States* (D.C.D.C. 1965, 250 F. Supp. 983).

##### Adequate assistance of counsel

Since defense counsel, whom the defendant had previously requested be replaced for failure to act in defendant's best interest, was technically still defense lawyer during hearing on defendant's request for withdrawal of guilty pleas, and since such counsel made points against defendant and said nothing to support withdrawal of pleas, defendant had been denied adequate assistance of counsel. *United States v. W. I. Joslin* (1970, 434 F. 2d 526, 140 U.S. App. D.C. 252).

##### Appeal and error

Error, in not giving instruction on lesser offense of simple assault, in prosecution for rape, assault with intent to commit rape, unlawful entry, and second-degree burglary, does not require that conviction of second-degree burglary be set aside, in view of fact that the jury returned verdict on burglary charge rather than on lesser-included offense of unlawful entry. *United States v. E. L. Huff* (1971, 442 F. 2d 885, 143 U.S. App. D.C. 163).

There was no error in failure to provide the defendants with portion of Government witness' grand jury testimony, to extent that such testimony consisted of materials unrelated to the instant charges, matters unrelated to the present trial and then under investigation, and matters pertaining to individuals identified therein who were entitled to protection from adverse publicity. *R. Hamilton et al. v. United States* (1970, 433 F. 2d 526, 139 U.S. App. D.C. 368; cert. denied 91 S. Ct. 1612, 402 U.S. 944).

It was error not to provide the defendants, charged with conspiracy, with portion of Government's witness' grand jury testimony which involved burglary charged as an overt act of conspiracy, but such error was harmless where such testimony was entirely consistent with testimony given by such witness at trial. *Id.*

##### Argument of counsel

Where only identification witness in housebreaking and larceny case testified that he saw one of defendants in entrance or in vicinity of door of house and that two men were working or doing something in truck, but prosecuting attorney in opening statement told jury that witness had observed one of defendants come out of doorway and had observed them working in or loading something

into truck and on redirect prosecuting attorney in question to witness assumed such as a fact, new trial was required, notwithstanding instructions. *K. Jones and W. Campbell, Jr. v. United States* (1964, 338 F. 2d 553, 119 U.S. App. D.C. 213).

In prosecution for housebreaking, fact that prosecutor remarked to jury, in his summation, about defendant's failure to call certain witnesses, did not mean that trial court was required to instruct jury that it was not the duty of defendant to make any defense, and trial court did not err in refusing such a requested instruction. *Lawson v. United States* (1957, 248 F. 2d 654, 101 U.S. App. D. C. 332, certiorari denied 78 S. Ct. 552, 355 U.S. 963, 2 L. Ed. 2d 537).

##### Arrest and search

Examination of the trunk of defendant's automobile did not constitute an illegal search by the police where it occurred contemporaneously with and at place of defendant's arrest under circumstances indicating convincingly defendant's participation in burglary. *R. Wright, Jr. v. United States* (1968, 404 F. 2d 1256, 131 U.S. App. D.C. 279).

Police officers, who suspected defendant of having broken into and robbed drugstore, were entitled to ring defendant's doorbell and inquire concerning his whereabouts, and their observation, while awaiting admittance to defendant's house, of bottles and cigarettes, which apparently had been stolen from drugstore and which were lying in vicinity of porch, did not constitute a "search". *Ellison v. United States* (1953, 206 F. 2d 476, 93 U.S. App. D. C. 1).

##### — Arrest without warrant

Probable cause is not to be evaluated from remote vantage point of library but from viewpoint of prudent and cautious police officer on scene at time, and question to be answered is whether such an officer, in particular circumstances, conditioned by his observations and information and guided by whole of his police experience, reasonably could have believed that crime had been committed by person to be arrested. *S. Jackson, Jr. v. United States* (1962, 302 F. 2d 194, 112 U.S. App. D.C. 260).

Police are entitled to rely upon hearsay and upon various other factors which would not be admissible in evidence against accused at trial in determining whether there is probable cause for arrest. *Id.*

Total information available to officers, with respect to defendant charged with housebreaking and grand larceny, including separate accusations by two persons that he had been source of stolen gun, together with one of their recollections of rhinestone bracelet in defendant's closet, matching description of similar object on list of stolen property, reasonably warranted a belief that he had probably committed felonious acts in which gun and bracelet were originally stolen, and such, together with practical necessities of pursuit, justified his arrest without warrant. *Id.*

Officers, who were investigating drugstore robbery, who knew that defendant had committed similar robbery two years before, and who discovered, on defendant's premises, heap of bottles and cigarettes, which were of type stolen from drugstore, had probable cause to believe defendant was guilty of felony, and, therefore, were justified in arresting defendant without warrant. *Ellison v. United States* (1953, 206 F. 2d 476, 93 U.S. App. D.C. 1).

The entering of a building with intent to commit any offense is a felony, and where officer's information gave him probable cause to believe that defendant had entered building with intent to steal, and defendant's appearance fitted "lookout" description given officer, no warrant was needed and arrest of defendant was lawful; and fact that district attorney saw fit to reduce charge from housebreaking to petit larceny did not change circumstances of arrest or invalidate confession obtained while defendant being held under such arrest. *Scott v. United States* (D.C. Mun. App. 1959, 147 A. 2d 767).

##### — Corpus delicti

Corpus delicti under count charging homicide in perpetration of a housebreaking did not require independent proof that death occurred in perpetration of housebreaking. *United States v. J. A. Naples* (D.C.D.C. 1961, 192 F. Supp. 23; rev'd 307 F. 2d 618).



## — Corroboration of evidence

In prosecution for rape and housebreaking, testimony of complainant's mother relating to telephone call made by complainant immediately after alleged attack was properly received in evidence. *B. Smith v. United States*, (1962, 312 F. 2d 867, 114 U.S. App. D.C. 140).

## — Search without warrant

Where police officer, who saw defendant walking along street about 2:00 in the morning, and who thought defendant had narcotics, without a warrant stopped defendant, who admitted that he had not worked for over a year, and had maintained himself by gambling, and officer then informed defendant that he was arresting him for vagrancy and required him to disrobe, search, which led to discovery of stolen money orders, was an unreasonable and unlawful violation of defendant's rights as a citizen, rendering stolen money orders inadmissible in prosecution for forgery, housebreaking, grand larceny, and interstate transportation of falsely made securities. *White, etc. v. United States* (1959, 271 F. 2d 829, 106 U.S. App. D.C. 246).

Where defendant was arrested late at night without a warrant and booked on an open charge for investigation, statements of defendant while in jail that he had nothing to hide and that the officers could go and see for themselves did not establish an agreement that the officers could search the defendant's household without first procuring a warrant. *Judd v. United States* (1951, 190 F. 2d 649, 89 U.S. App. D. C. 64).

## Concurrent sentences

In case involving concurrent sentences for burglary II and grand larceny, since there is a question as to adequacy of proof of grand larceny that property taken had a value of \$100 or more, principle that appellate court may reverse a judgment as to one of sentences, if its validity is beset by substantial doubt, where there is neither injustice done defendant nor a need of government overriden, will be applied to reverse concurrent sentence for grand larceny, while remanding case to trial court for entry of concurrent sentence on petit larceny. *United States v. W. D. Henderson* (1970, 439 F. 2d 531, 142 U.S. App. D.C. 21).

There was no resulting prejudice to a defendant in a case where concurrent sentences were imposed for crimes of carnal knowledge and housebreaking, as a result of error, if any, in failing to make out a prima facie case of housebreaking. *P. E. A. Duckett v. United States* (1969, 410 F. 2d 1004, 133 U.S. App. D.C. 305).

## Construction

Federal statute [Pub. L. 90-226] for District of Columbia, defining crime of burglary in first degree and increasing minimum and maximum punishments therefor and increasing minimum punishment for robbery by amending prior laws on both crimes became effective at 3:05 p.m. when it was signed by the President, and not before. *United States v. R. L. Casson* (1970, 434 F. 2d 415, 140 U.S. App. D.C. 141).

Notation on federal bill as to time of its approval by the President, though such notation is not required by Constitution or statute, constitutes contemporaneous memorandum and is best evidence of fact that nature of case permits. *Id.*

Under statutory provision that United States statutes at large shall be "legal evidence of laws," it is held that bill was approved at time endorsed on official document and stated in Statutes at Large rather than at time alleged in hearsay affidavits based upon hearsay newspaper statements; such hearsay newspaper statements are not sufficient basis for overcoming best evidence of which case was susceptible and presumption of regularity. *Id.*

## Cross-examination

Where defendant had testified that he lived at certain address during month in which burglary occurred, that he had returned to that address on date of burglary after finishing work, that he had worked every day, presumably including day of arrest, and that he had never lived around corner from home of eyewitness to burglary, trial judge did not abuse discretion by permitting Government to cross-examine defendant concerning employer's identification card which referred to the address around the corner from eyewitness' home and records indicating

days he had worked during week of crime. *United States v. M. W. Rosebar* (1972, 463 F. 2d 1255, 150 U.S. App. D.C. 164).

## Defendant's absence during trial

Where record on appeal from convictions for housebreaking, arson, and malicious destruction of personal property failed to show that defendant's absence during trial, after trial had commenced in his presence, constituted deliberate failure to appear without reason that might bear on court's latitude to have continued trial, case would be remanded for development of such issue including circumstances in which defendant was taken into custody after trial. *M. Cureton v. United States* (1968, 396 F. 2d 671, 130 U.S. App. D.C. 22).

## Elements of offense

Offenses of murder, housebreaking, and larceny each requires elements of proof which are not common to other two and each offense is historically an independent crime. *United States v. G. D. Butler* (1972, 462 F. 2d 1195, 149 U.S. App. D.C. 300).

The crime of burglary is established by an unlawful entry accompanied by an intent to steal, though such intent may be conditioned on locating property that the offender desires to remove. *United States v. R. Sinclair* (1971, 444 F. 2d 888, 144 U.S. App. D.C. 13).

Entry into closed store constitutes burglary if entry coincides, in point of time, with intent to steal once therein, even though intended theft was not consummated. *United States v. R. F. Fox* (1970, 433 F. 2d 1235, 140 U.S. App. D.C. 129).

## Evidence—Admissibility

Although complaint was unable to positively identify razor and case as being his property, since he did identify razor and case introduced in evidence as being the same make and type as the one which had been stolen from him and there was testimony to effect that defendant was seen shortly after theft carrying a balled-up red sweater and a few minutes later police officer recovered razor and case and discarded red sweater near scene of the defendant's arrest and that the razor and case offered as evidence were the ones recovered at that time, razor and case as well as accompanying testimony were properly admitted as circumstantial evidence that defendant had committed burglary with which he was charged. *United States v. S. H. Thornton* (1972, 462 F. 2d 307, 149 U.S. App. D.C. 203).

Exhibits consisting of gloves, screwdriver and flashlight found on defendant when he was apprehended in basement entrance of burglary victim's house at about 4:00 in the morning were relevant to charge of second degree burglary. *W. A. Johnson v. United States* (D.C. App. 1972, 293 A. 2d 269).

Testimony by police officer concerning a conversation in which co-defendant stated that defendant was with him in a housebreaking was pure hearsay as to defendant and was not admissible against him and should not have been admitted at all when it was no essential part of co-defendant's own confession of guilt, and objection by defendant that testimony was not admissible was adequate, and its admission over objection was prejudicial. *D. Kramer v. United States* (1963, 317 F. 2d 114, 115 U.S. App. D.C. 50).

Where same evidence was used to connect defendant with crimes charged in counts two, three, and four as was employed in count one, and such evidence was ruled inadmissible on appeal from judgment of conviction on count one, new trial ordered by Court of Appeals for count one, should embrace all four counts. *United States v. J. A. Naples* (D.C.D.C. 1962, 205 F. Supp. 944).

In prosecution for housebreaking and larceny, United States District Court, under the circumstances, did not abuse its discretion in admitting evidence of defendant's participation in another alleged crime of similar character committed the same evening. *Adams v. United States* (1956, 239 F. 2d 451, 99 U.S. App. D. C. 288).

Housebreaking, robbery and burglary are merely aggravated forms of larceny and evidence competent in one case is competent, also, in others. *Edwards v. United States* (1944, 139 F. 2d 365, 78 U.S. App. D.C. 226, certiorari denied 64 S. Ct. 528, 821 U.S. 769, 88 L. Ed. 1064).

Where written confession of housebreaking and larceny was inadmissible because result of illegal detention and



lengthy questioning of accused, subsequent oral admissions of accused, while still in custody immediately following first confession, and while demonstrating how premises were entered, were likewise inadmissible. *Akowskey v. United States* (1947, 158 F. 2d 649, 81 U.S. App. D.C. 353).

#### — Sufficiency

Proper standard for determining whether evidence is sufficient to allow jury to decide case is whether a reasonable mind might fairly have reasonable doubt or might fairly not have one. *United States v. P. E. Coombs* (1972, 464 F. 2d 842, 150 U.S. App. D.C. 333).

Evidence, including eyewitness testimony, was sufficient to sustain conviction of second-degree burglary and grand larceny. *United States v. M. W. Rosebar* (1972, 463 F. 2d 1255, 150 U.S. App. D.C. 164).

Evidence was sufficient to support conviction for attempted burglary in the second degree of defendant who was found by police officers in building next to building which had been scene of prior attempted break-in and which had bricks contiguous to upstairs room on side of party wall having been removed and whose trousers had dust on them matching dust in broken wall which had additional bricks removed after the prior break-in. *M. Valentino v. United States* (D.C. App. 1972, 296 A. 2d 173).

Under circumstances that defendant and codefendants were observed in department store dressed in "stockroom jackets" of kind worn by store personnel, carrying shopping bags of kind commonly used by professional shoplifters and walking in areas of store where employees rather than customers would normally be, evidence concerning defendant's intent to commit crime at time of entry was sufficient to support conviction for second-degree burglary. *W. R. Franklin v. United States* (D.C. App. 1972, 293 A. 2d 278).

Evidence, including testimony that burglar did not leave victim's porch until victim's house was cordoned off by police and that defendant was concealing himself at about 4:00 in the morning in basement entrance of the house and was equipped with gloves, screwdriver and flashlight, was sufficient to establish that defendant was in fact the intruder and was sufficient to support second-degree burglary conviction. *W. A. Johnson v. United States* (D.C. App. 1972, 293 A. 2d 269).

Evidence was sufficient to warrant submission to jury in burglary prosecution of question of whether the defendant's entry onto the premises was with intent to commit crime. *United States v. W. Whitaker* (1971, 447 F. 2d 314, 144 U.S. App. D.C. 344).

Evidence was sufficient to warrant submission to jury in burglary prosecution of issue of the defendant's guilt of unlawful entry. *Id.*

Evidence which showed that the defendant was on second floor landing in stairwell of complainant's apartment building, that a window screen in complainant's apartment had been cut, that the apartment had been unlocked from the inside and that there were rayon fibers on tennis shoes of defendant that were similar to the rayon on complainant's bedroom rug was insufficient to permit burglary charge to go to the jury. *United States v. R. D. Preston* (1971, 331 F. Supp. 457).

Evidence that the defendant was standing in front of a broken window of store that was being burglarized by two other men, one of whom had a casual acquaintance with the defendant, while perhaps raising a possibility or even strong suspicion of participation in criminal activity, is not sufficient to find defendant guilty beyond a reasonable doubt of attempted burglary in the second degree and of attempted petit larceny. *W. T. Perry v. United States* (D.C. App. 1971, 276 A. 2d 719).

Evidence that the defendant and his companion were the only people in hall near apartment when witness alighted from elevator after hearing suspicious noises, that door to witness' apartment had large hole in it, and that defendant's companion dropped screwdriver while being followed is sufficient to support conclusion of guilt beyond reasonable doubt of attempted burglary II and destruction of property. *W. W. Hopkins v. United States* (D.C. App. 1971, 274 A. 2d 418).

Evidence, including evidence that, at time stores in neighborhood were being looted, the defendant was found by officer in store with broken window and that defendant dropped cartons of cigarettes, sustained burglary con-

viction. *United States v. R. F. Fox* (1970, 433 F. 2d 1235, 140 U.S. App. D.C. 129).

In absence of specific evidence as to the value of items taken, defendant's conviction for grand larceny would be reversed, but since trial judge gave lesser included offense charge as to petit larceny and there was sufficient evidence on which jury could find defendant guilty thereof, case would be remanded for resentencing. *United States v. E. E. Thweatt* (1970, 433 F. 2d 1226, 140 U.S. App. D.C. 120).

In this case the court held that the Government failed to sustain its burden of proving that the defendant was present in the house at time of entry, and that the evidence was insufficient to sustain conviction for first-degree burglary. *United States v. C. Hammonds* (1970, 425 F. 2d 597, 138 U.S. App. D.C. 166).

Evidence, including testimony identifying defendant as one of two men attempting to pry open window with crowbar, is sufficient to sustain convictions for attempted second-degree burglary, destroying property and attempted petit larceny. *H. Manning v. United States* (D.C. App. 1970, 270 A. 2d 504).

In this case the court found that testimony concerning defendant's offer to sell the goods, leading the prospective buyers to where they were stored, and remaining with the goods during an interval when others had departed was sufficient evidence to allow a jury to find that defendant was in possession of recently stolen property and to infer larceny and housebreaking. *D. E. Garriss, Jr. v. United States* (1969, 418 F. 2d 467, 135 U.S. App. D.C. 251).

In this case the evidence presented by the government in a prosecution for housebreaking and grand larceny was so compelling that, even if the police station confrontation between defendant and two prosecution witnesses was improper and in-court identification of defendant was not shown by clear and convincing evidence to have an independent source, error, if any, in the in-court identifications was harmless. *G. R. Taylor v. United States* (1969, 414 F. 2d 1142, 134 U.S. App. D.C. 246).

In this case the evidence in prosecution of defendant for attempted burglary permitted inference of an intent to commit a crime to be made by the jury who was found in warehouse amongst scattered papers, opened desk drawers and office machinery which had been moved into hall. *P. E. Hebble v. United States* (D.C. App. 1969, 257 A. 2d 483).

Evidence was sufficient in juvenile court proceeding to support finding that the minor was guilty of housebreaking and petty larceny. *In the Matter of N. M. Ellis* (D.C. App. 1969, 253 A. 2d 789; remanded 429 F. 2d 214, 139 U.S. App. D.C. 30).

Defendant's responsibility for housebreaking was established by being with those who broke store window coupled with his flight with stolen goods. *Id.*

Evidence that tenant of apartment heard what sounded like someone attempting to enter vacant apartment and that defendant and companion were seen leaving building and fled when pursued by officer was sufficient to sustain conviction of attempted housebreaking. *T. H. Adams v. United States* (D.C. App. 1968, 245 A. 2d 640).

Evidence of eyewitness, corroborated by physical details otherwise in evidence, supported verdicts finding defendants guilty of first-degree murder and housebreaking. *R. T. Brown, J. D. Irby and R. L. Jones v. United States* (1967, 375 F. 2d 310, 126 U.S. App. D.C. 134).

In prosecution for housebreaking with intent to commit an assault evidence was sufficient for jury. *W. A. Baber v. United States* (1963, 324 F. 2d 390, 116 U.S. App. D.C. 358).

Evidence was sufficient to sustain conviction for attempted housebreaking. *J. Hart v. United States* (D.C. App. 1963, 187 A. 2d 329).

Evidence sustained defendant's conviction of housebreaking and petit larceny. *United States v. J. A. Naples* (D.C.D.C. 1961, 192 F. Supp. 23; rev'd 307 F. 2d 618).

In prosecution for housebreaking and larceny, evidence regarding identification of defendant made a case for the jury. *Williams v. United States* (C.A. D.C. 1960, 282 F. 2d 867).

Evidence was sufficient to sustain convictions for housebreaking, larceny and destroying movable property. *Braddy v. United States of America* (1955, 225 F. 2d 551, 96 U.S. App. D.C. 251).



In prosecution for housebreaking and larceny, evidence was sufficient to establish corporate character of occupant of property entered and owner of property stolen. *Bord v. United States* (1943, 133 F. 2d 313, 76 U.S. App. D.C. 205, certiorari denied 63 S. Ct. 77, 78, 317 U.S. 671, 87 L. Ed. 539).

In prosecution for housebreaking and larceny, evidence was sufficient to sustain determination that defendant was one of men who entered building and committed larceny. *Id.*

Where jury could find beyond a reasonable doubt that both defendant and his companion entered a room with intent to steal and that either defendant or his companion stole watch, defendant's conviction of larceny of a watch and of entering a room with intent to commit larceny was authorized, notwithstanding that defendant's part in the crimes may have been only to stand guard. *Fretz v. United States* (1944, 140 F. 2d 468, 78 U.S. App. D.C. 290).

Where evidence showed that crimes of housebreaking and larceny were committed in store building by two men, defendant was found in unexplained association with another who later confessed participation in crimes and each was in possession of some of the stolen property, evidence was sufficient to justify conviction. *Edwards v. United States* (1944, 139 F. 2d 365, 78 U.S. App. D.C. 226, certiorari denied 64 S. Ct. 523, 321 U.S. 769, 88 L. Ed. 1064).

Evidence sustained a conviction for housebreaking. *Henderson v. United States* (1949, 172 F. 2d 289, 84 U.S. App. D.C. 295).

#### — Suppression

Ordinarily, one seeking to challenge legality of search or seizure must establish that he was victim of alleged invasion of privacy. *F. Hair & J. I. Burroughs v. United States* (1961, 289 F. 2d 894, 110 U.S. App. D.C. 153).

Evidence obtained under warrant issued on basis of observations derived by police officers from illegal entry is inadmissible. *Id.*

#### — Witnesses

Where prosecution's case rested largely upon testimony of a sole key eyewitness and there was ample ground for suspicion of inconsistencies in eyewitness' identification, trial judge abused his discretion in failing to order production of those parts of the witness' grand jury testimony relating to same subject testified to at trial. *W. E. De Binder v. United States* (1961, 292 F. 2d 737, 110 U.S. App. D.C. 244).

In prosecution for housebreaking and larceny, record supported Government's theory that, while witness had made conflicting statements regarding whether he would testify, prosecutor reasonably believed that he would testify, and therefore action of prosecutor in calling witness who identified certain tools, but then relied on his privilege and refused to connect himself or defendant with the crime, was not objectionable on ground that defendant was deprived of a fair trial, where court instructed the jury to disregard witness' testimony and the tools which he identified. *Bord v. United States* (1943, 133 F. 2d 313, 76 U.S. App. D.C. 205, certiorari denied 63 S. Ct. 77, 78, 317 U.S. 671, 87 L. Ed. 539).

#### Examination of witnesses

Trial court's refusal to order psychiatric examination of Government's principal witness was not prejudicial error since the defendants had not provided any substantial factual predicate for their request and since the results of previous psychiatric evaluation of the witness would be available to them. *R. Hamilton et al. v. United States* (1970, 433 F. 2d 526, 139 U.S. App. D.C. 368; cert. denied 91 S.Ct. 1612, 402 U.S. 944).

In prosecution for housebreaking and grand larceny, the court's questioning of defense witnesses on certain aspects of testimony which they had given in support of alibi claim in order to obtain much needed clarification of their testimony rather than challenges thereto did not amount of advocacy against alibi theory in presence of jury, and in any event was not prejudicial where it was not significantly different in nature from court's questioning of a vital government witness. *United States v. H. W. Barbour* (1969, 420 F. 2d 1319, 137 U.S. App. D.C. 116).

#### Ex post facto

Statute providing increased punishment for acts committed "prior to the date of enactment of this Act [Pub. L. 90-226]" is not on its face ex post facto. *United States v. R. L. Casson* (1970, 434 F. 2d 415, 140 U.S. App. D.C. 141).

If legislation must pass notice test to escape ex post facto condemnation, public is charged with knowledge of all published information concerning congressional bill which is available during entire legislative process. *Id.*

If notice is required to avoid ex post facto condemnation of application of statute increasing penalties for certain offenses, congressional record and documents published by Congress proving that bill and all its provisions were in public domain for over six months, received widest publicity and full disclosure by Congress, and distribution of more than 100,000 copies of bill in exact form in which it passed are more than adequate notice to public of contents of bill. *Id.*

Actual notice to a particular individual that legislation has passed or is about to be passed or approved is not prerequisite to application of act, as against ex post facto condemnation. *Id.*

That staff members of congressional committees accommodate public, on requests, by informing them of status of bills in various stages of legislative process is a matter of common knowledge of which reviewing court takes judicial notice in considering on ex post facto claim, how much notice was available to public in respect to legislation being considered by Congress. *Id.*

#### Identification

Where issue of whether an in-court identification was of independent origin was not raised at trial when situation arose and prosecutor proffered evidence which would have been revealed by a pretrial evidentiary hearing, claim of error because of failure to hold hearing to determine whether such identification was of independent origin was waived by defendant who did not move for suppression of testimony and, additionally, proffered testimony showed that identification was not improperly suggestive. *United States v. S. H. Thornton* (1972, 462 F. 2d 307, 149 U.S. App. D.C. 203).

Where 13 days after burglary victim had chance encounter with the defendant on street and spontaneously asserted fact of recognition to companion, companion immediately gave description to police, patrolling officer overheard broadcast description and quickly spotted and took into custody figure who appeared to fit description, officer, who did not know nature of offense, then took suspect to recognition scene, a short distance away, where officer asked victim if detainee were man about whom companion had telephoned police and officer's act in so doing rather than taking detainee to police station was to confirm whether he had detained proper person, admitting testimony of scout car identification by the victim, who was in close proximity to burglar for approximately one hour during course of offense, was not constitutional error. *United States v. L. E. Evans* (1971, 438 F. 2d 162, 141 U.S. App. D.C. 321; cert. denied 91 S. Ct. 2196, 402 U.S. 1010).

#### Impartial jury

Defendant is not entitled to mistrial in burglary prosecution on ground that, during night following the first day of the trial, one of the jurors became victim of burglary and communicated such fact to the remaining jurors, since the juror in question was replaced by an alternate and since the defendant did not demonstrate the existence of state of mind in some other juror strong enough to raise presumption of partiality, but on the contrary objected to voir dire of the remaining jurors. *United States v. E. L. Morgan* (1970, 443 F. 2d 718, 143 U.S. App. D.C. 303).

#### Impeachment

Where the defendant was on trial for second-degree burglary and petit larceny, it was error to grant permission for impeachment by both of defendant's two-year-old convictions for attempted housebreaking and for petit larceny, but since the prosecution used only the attempted house-breaking conviction, no prejudice appeared. *United States v. J. L. Issac* (1971, 449 F. 2d 1040, 145 U.S. App. D.C. 378).

Admission of robbery offense, committed some seven years before burglary prosecution, for impeachment pur-



poses as bearing on honesty and veracity of defendant as witness is not objectionable on theory that previous conviction is too remote and too prejudicial in relation to its probative value on defendant's credibility. *United States v. E. E. Simpson et ano.* (1970, 445 F. 2d 735, 144 U.S. App. D.C. 259).

Cross-examination of defendant during which the prosecution was permitted to develop that for some time prior to date of offense defendant had been absent from his military post without leave was improper, and the prejudice was magnified by the erroneous admission of government's rebuttal evidence as to defendant's absence from military post. *United States v. W. A. Shumate et ano.* (1970, 429 F. 2d 777, 139 U.S. App. D.C. 98).

In this case, the Court held that, inasmuch as the defendant's prior convictions of unauthorized use of vehicle and petit larceny were introduced in evidence on his own direct examination in effort to support contention that he was framed with respect to grand larceny charge by one of government's witnesses, he could not successfully complain of alleged error in permitting him to be impeached by prior convictions, notwithstanding decisions stating that the offense of taking property without right does not bear on credibility. *United States v. G. W. Lucas* (1970, 426 F. 2d 663, 138 U.S. App. D.C. 186).

In this case the court held that under the circumstances the defendant, who was convicted of housebreaking and grand larceny, was entitled to nonjury hearing to determine whether defendant would be allowed to take stand in front of jury without prosecution introducing evidence of defendant's prior convictions. *United States v. J. Coleman* (1969, 420 F. 2d 1313, 137 U.S. App. D.C. 110).

In prosecution for rape and housebreaking, wherein defendant admitted sex relations and testified that prosecutrix had consented, prosecutor was properly allowed to impeach defendant's credibility by reading affidavit, which defendant had made as indigent defendant to secure subpoena and in which defendant had stated that witness whom he sought to subpoena could establish alibi for him. *B. Smith v. United States* (1962, 312 F. 2d 867, 114 U.S. App. D.C. 140).

#### Inconsistent verdict

Where missing jewelry was never recovered, fact that the defendants charged with second-degree burglary and grand larceny arising out of apparent theft from jewelry store were convicted of burglary but found not guilty of grand larceny does not demonstrate inconsistency in jury verdict. *United States v. E. E. Simpson et ano.* (1970, 445 F. 2d 735, 144 U.S. App. D.C. 259).

Verdicts acquitting defendant of larceny while convicting him of burglary are not fatally inconsistent in prosecution in which officer testified that he found defendant in looted store holding cigarettes. *United States v. R. F. Fox* (1970, 433 F. 2d 1235, 140 U.S. App. D.C. 129).

The trial court could have found defendant, who was carrying goods stolen from an apartment building, which he later abandoned when he attempted to flee, guilty of both attempted burglary and petit larceny charges on inference of guilt raised by defendant's unexplained possession of recently stolen property or even on the basis of this inference the trier of the facts could have had a reasonable doubt that defendant had necessary criminal intent upon entering apartment building to be convicted of attempted burglary, and thus verdicts of acquittal on attempted burglary charge and guilty on petit larceny charge were not necessarily inconsistent or irreconcilable. *H. Barnes v. United States* (D.C. App. 1969, 254 A. 2d 724).

Evidence was sufficient to sustain petit larceny conviction. *Id.*

#### Independent crimes

Counts of housebreaking and robbery, to which petitioner pleaded guilty, charged independent crimes, since housebreaking count charged and made necessary proof of entry of dwelling with intent to steal property but proof of entry was not essential to robbery count, whereas robbery charge required proof of taking in particular manner of something of value from victim's person or immediate actual possession, facts that were not essential elements of housebreaking. *Irby v. United States* (D.C.D.C. 1965, 250 F. Supp. 983).

#### Indictment

Specific intent required for second-degree burglary must be charged with such particularity as to designate specific crime the grand jury had in mind when it charged that accused intended to commit some offense. *United States v. J. B. Seegers, Jr.* (1971, 445 F. 2d 232, 144 U.S. App. D.C. 162).

Indictment charging that the defendant entered building with intent to commit a criminal offense therein is insufficient to charge the offense of second-degree burglary for failure to allege the specific crime, and conviction of second-degree burglary thereunder must be vacated. *Id.*

Although conviction for second-degree burglary is vacated because of insufficiency of indictment, government can seek another grand jury indictment for such offense, but since indictment is sufficient to charge an unlawful entry and evidence is sufficient to support such a conviction, case is remanded for entry of judgment of conviction for unlawful entry if government does not object and trial court considers such action in the interests of justice; otherwise government can decide whether it wishes to submit defendant's case again to grand jury. *Id.*

Indictment charging that the defendant entered dwelling "with intent to commit a criminal offense therein" in violation of burglary statute is insufficient to charge first-degree burglary in that it does not identify offense defendant intended to commit upon entry; however, the indictment is sufficient to charge unlawful entry. *United States v. R. L. Thomas, Jr.* (1971, 444 F. 2d 919, 144 U.S. App. D.C. 44).

In indictment for burglary, ulterior crime need not be alleged as fully as would be necessary if ulterior crime were itself offense charged; it is ordinarily sufficient to allege the offense in general terms. *Id.*

A failure to allege an unlawful entry in count charging second-degree burglary amounted to no more than harmless error *United States v. J. Jeffries et al.* (1968, 45 F.R.D. 110).

Since no indictment for a violation of riot statute had been returned charging engaging in riot alone but rather always that count was coupled with counts charging burglary and grand or petty larceny, the grand jury considered engaging in a riot in violation of statute in conjunction with separate but immediately related criminal conduct and there was no loose, unguided approach to indictments returned by grand jury under riot statute that would deprive defendants of their constitutional rights. *Id.*

Count of indictment charging housebreaking by entry of room with intent to violate Federal Communications Act would, in view of the nature of the offenses and in view of unusual character of punishments specified by Congress for Communications Act violations, be dismissed. *United States v. J. J. Frank et al.* (D.C.D.C. 1964, 225 F. Supp. 573).

There is no variance where the indictment alleges that building entered was occupied by A and the proof shows occupancy by B, with the consent of A. *Cady v. United States* (1924, 293 F. 829, 54 App. D.C. 10).

The attempt to identify particular room in indictment charging larceny of watch and entering a room with intent to commit larceny was harmless surplusage. *Fretz v. United States* (1944, 140 F. 2d 468, 78 U.S. App. D.C. 290).

The purpose of the law in requiring the name of the person who occupied and used building entered to be stated in indictment is to negative the defendant's right to break and enter and to protect him from a second prosecution for the same offense. *Bord v. United States* (1943, 133 F. 2d 213, 76 U.S. App. D.C. 205, certiorari denied 63 S. Ct. 77, 78, 317 U.S. 671, 87 L. Ed 539).

#### Information—Amendment

Where amendment of information charging attempted second-degree burglary, destroying private property, and petit larceny to reflect that property in question belonged to corporation in care and custody of individual, as opposed to individual alone as charged in original information, conformed to testimony at trial and no prejudice was occasioned by the defense, permitting the amendment was not error. *J. L. King v. United States* (D.C. App. 1970, 271 A. 2d 556).



**Insanity defense**

Ruling against defendant, charged with second-degree burglary and grand larceny, on issue of insanity was fully supported by record which included diagnosis of psychiatrist who found social maladjustment and drug dependence without manifest psychiatric disorder. *United States v. S. H. Thornton* (1972, 462 F. 2d 307, 149 U.S. App. D.C. 203).

**Instructions**

Where jury is properly instructed on standards for reasonable doubt, an additional instruction on circumstantial evidence, requiring that such evidence must be such as to exclude every reasonable hypothesis other than that of guilt, is confusing and incorrect. *United States v. P. E. Coombs* (1972, 464 F. 2d 842, 150 U.S. App. D.C. 333).

In burglary prosecution, evidence that, during period of widespread disturbances and looting, the defendant was found hiding in a clothing store that had broken window and locked door did not warrant instruction on lesser offense of unlawful entry, *United States v. Sinclair* (1971, 444 F. 2d 888, 144 U.S. App. D.C. 13).

In this case, since the jury had convicted defendant of more serious crime of attempted burglary, any error in instruction on lesser included offense of unlawful entry was not demonstrated to be prejudicial. *P. E. Hebble v. United States* (D.C. App. 1969, 257 A. 2d 843).

Charge to jury fairly covered alibi defense of defendant, who was charged on counts of housebreaking and grand larceny, and also adequately indicated substance of defendant's position that he had no obligation to show that another was actually the transgressor. *R. Wright, Jr. v. United States* (1968, 404 F. 2d 1256, 131 U.S. App. D.C. 279).

Where defense counsel, in response to inquiry by federal District Court in prosecution for housebreaking, expressed satisfaction with instructions given, and defendant was convicted on strong evidence, defendant could not require Court of Appeals to exercise discretion available under provision of Federal Rule of Criminal Procedure that plain errors or defects affecting substantial rights may be noticed though they were not brought to attention of court. *H. Manning v. United States* (1966, 371 F. 2d 353, 125 U.S. App. D.C. 256).

Failure to charge on unlawful entry in prosecution for housebreaking, an offense which required finding of larcenous intent in addition to elements of unlawful entry, was harmless where jury found defendant guilty of larceny as well as of housebreaking. *C. W. Stewart v. United States* (1963, 324 F. 2d 443, 116 U.S. App. D.C. 411).

District court in housebreaking prosecution did not err in refusing instruction on lesser offenses, where request was not made until conclusion of charge and did not specify any particular offenses or show their inclusion within offense charged. *L. Britton v. United States* (1962, 301 F. 2d 531, 112 U.S. App. D.C. 207).

In prosecution for housebreaking and grand larceny, trial court committed no reversible error in charging that if defendant's possession of recently stolen property was not accounted for in that satisfactory, straightforward and truthful way that would stamp it as an honest accounting, then such possession would be a foundation for a presumption of guilt against the possessor, even though trial court could have chosen more exact language in its attempt to express limited character of presumption to which it was referring. *Wright v. United States* (1951, 189 F. 2d 699, 89 U.S. App. D.C. 70).

In prosecution for housebreaking and larceny, where after jury had been out several hours the court recalled jury and stated that a juror should ask himself whether his view is reasonable or unreasonable, that he should not be bullheaded, that he should not be stubborn, and that if he found himself in a small minority he should ask himself "would I be shocking my conscience or reason if I yielded", use of the words "bullheaded" and "stubborn" did not coerce the jury, in view of additional parts of the instruction. *Bord v. United States* (1943, 133 F. 2d 313, 76 U.S. App. D.C. 205, certiorari denied 63 S. Ct. 77, 78, 317 U.S. 671, 87 L. Ed. 539).

**Intent**

Crucial element of offense of second-degree burglary is the specific intent which impelled entry and not the

lawful or unlawful manner of entry. *United States v. J. Jeffries et al.* (1968, 45 F.R.D. 110).

Unlawful entry bears heavily on question of defendant's intent to commit second-degree burglary but it is not a prerequisite to the establishment of such an intent. *Id.*

While in some circumstances elements of unlawful entry are comprehended within those of housebreaking, latter requires also finding of larcenous intent. *C. W. Stewart v. United States* (1963, 324 F. 2d 443, 116 U.S. App. D.C. 411).

Unlawful entry with intent to commit an offense constitutes the crime, hence, the actual commission of the other offense is not necessary. *Lee v. United States* (1911, 37 App. D.C. 442).

Evidence, that lock on garage had been pulled, that defendants were in the garage that morning and when questioned by a witness at that time refused to make a response and drove away, was sufficient to sustain conviction of feloniously entering with intent to commit larceny. *Cady v. United States* (1924, 293 F. 829, 54 App. D.C. 10).

**Joinder**

Joinder of two burglary counts is proper, where burglaries were of same house in which defendant was employed, they were similar in their "inside job" characteristics, in each instance there was no evidence of forcible entry or ransacking, the house was not in disarray, though items were taken from various parts of the house, and the facts impelled the conclusion that the burglaries were perpetrated by someone who knew precisely where various items in the house were kept. *United States v. B. J. Leonard* (1971, 445 F. 2d 234, 144 U.S. App. D.C. 164).

Joinder of burglary charges to charges of forgery and uttering by use of credit card stolen in a burglary is not prejudicial, since uttering of credit card stolen in the burglary would have been admissible in evidence in trial for burglary. *Id.*

Counts of housebreaking and of larceny committed after the entry may be joined, and the court does not err in refusing to require the government to elect between them. *Lee v. United States* (1911, 37 App. D.C. 442).

**Judicial comment**

Comment by court, while co-defendant was on witness stand, that honest people are in bed at 3:00 in the morning was prejudicial and defendant, who was convicted of housebreaking, was entitled to a new trial. *R. Cunningham v. United States* (1962, 311 F. 2d 772, 114 U.S. App. D.C. 86).

**Lesser included offense**

Under evidence that the defendant battered down door of dwelling house in order to gain entry and, to prove burglary, prosecution had only to establish additional element of entry with intent to commit a crime therein, unlawful entry was lesser included offense of greater offense of burglary. *United States v. Whitaker* (1971, 447 F. 2d 314, 144 U.S. App. D.C. 344).

Considerations of justice warranted dispensing with mutuality as essential prerequisite to the defense's right to lesser included offense charge on unlawful entry in burglary prosecution. *Id.*

Since the defendant was entitled to an instruction on unlawful entry as a lesser included offense in burglary prosecution and trier of fact necessarily found every fact required for conviction of lesser included offense, the trial court would be entitled to set aside the verdict of first-degree burglary and enter judgment of conviction for unlawful entry. *Id.*

"Criminal offense", within burglary statute prohibiting entry with intent to commit any criminal offense, includes petit larceny. *United States v. R. F. Fox* (1970, 433 F. 2d 1235, 140 U.S. App. D.C. 129).

Except for the requirement of intent to commit crime, unlawful entry is substantially identical to and hence lesser included offense of burglary in second degree. *P. E. Hebble v. United States* (D.C. App. 1969, 257 A. 2d 483).

**One man showup**

Where an intruder broke into the apartment of two women, and shortly thereafter was arrested as a suspect, and about 30 minutes after the attack the women were asked to come down to the street in front of their apart-



ment and view defendant who was the sole occupant of patrol wagon, use of "one-man showup" did not deny defendant due process of law. *G. W. Bates v. United States* (1968, 405 F. 2d 1104, 132 U.S. App. D.C. 36).

#### Partial acquittal

Although the defendant was acquitted on a charge of burglarizing a liquor store in a riot district, did not of itself establish that jury accepted defendant's testimony that he did not enter store, thereby making it erroneous for trial court to interpret antiriot statute as permitting jury to find defendant guilty of engaging in a riot, since, absent an instruction to the effect that jury should acquit defendant of riot count if it accepted his testimony as true, it was impossible to make any assumption as to precisely how jury viewed facts. *United States v. C. Mathews* (1969, 419 F. 2d 1177, 136 U.S. App. D.C. 196).

#### Plea of guilty

If an effort is made to withdraw guilty plea before sentence, the defendant is entitled to an appropriate hearing before the application can be denied. *United States v. W. I. Joslin* (1970, 434 F. 2d 526, 140 U.S. App. D.C. 252).

Where subjects of defendant's mental state and his understanding of his action at the time of entry of guilty pleas were dealt with, in hearing on request for withdrawal of such pleas, in form of colloquy or argument rather than by following procedural channels for determination of disputed questions of fact, adequate inquiry has not been undertaken and remand for such purpose is required. *Id.*

Generally, the standard to be applied in determining request, prior to sentence, for leave to withdraw guilty plea is whether for any reason granting of privilege seems fair and just. *Id.*

If request, prior to sentencing, for leave to withdraw guilty plea is made because the defendant thinks he has defense, permission to withdraw should be rather freely granted. *Id.*

Where the accused entered a plea of guilty at the time of arraignment without assistance of counsel, and before sentence was imposed court-appointed counsel indicated that there might be a question of the accused's mental capacity because of a prior skull fracture, District judge should have permitted a change of plea at time of sentencing. *W. L. Poole v. United States* (1957, 250 F. 2d 396, 102 U.S. App. D.C. 71).

In prosecution for housebreaking, larceny and destruction of property, wherein one defendant was permitted to change his plea in open court and in presence of jury and was asked by trial judge whether he admitted committing offense and replied that he did admit being with "them," there was error which, in view of circumstantial and inconclusive nature of evidence, would require reversal of another defendant's conviction. *Gaynor v. United States* (1957, 247 F. 2d 583, 101 U.S. App. D.C. 177).

Where evidence in prosecution for housebreaking and grand larceny disclosed close association between defendant and codefendant in events leading to their arrests, receiving codefendant's plea of guilty in presence of jury, and calling attention to such plea during taking of evidence and while instructing jury, was prejudicial to defendant's right to be tried solely on evidence against him. *Payton v. United States* (1955, 222 F. 2d 794, 96 U.S. App. D.C. 1).

Upon defendant's motion to withdraw his plea of guilty and to vacate and set aside sentence imposed upon him, court would treat defendant's papers as motion pursuant to statute pertaining to remedies on motion attacking sentence with reference to sentence being served and as application for relief in nature of common-law writ of error coram nobis with reference to sentences not then being served. *United States v. Sheffield* (D.C.D.C. 1959, 179 F. Supp. 634, certiorari denied 80 S. Ct. 1633, 363 U.S. 853, 4 L. Ed. 2d 1735).

In proceeding treated as motion attacking sentence being served and as application for relief in nature of common-law writ of error coram nobis with regard to sentences not being served, evidence established that defendant was mentally competent at time of his plea of guilty and sentencing and that he had voluntarily and understandingly entered his plea. *Id.*

#### Postconviction relief

Defendant who had been convicted of housebreaking and robbery was not entitled to post-conviction relief from consecutive sentences on theory that offenses were committed by single series of chronologically related events, where offenses were independent. *Irby v. United States* (D.C.D.C. 1965, 250 F. Supp. 983).

#### Presentence report

When questions are raised in a criminal appeal concerning reasons for which a sentence was imposed, the presentence report may be made part of the record on appeal for inspection in camera by reviewing court. *United States v. M. Delaney* (1971, 442 F. 2d 120, 142 U.S. App. D.C. 372).

Whether defendant's counsel might inspect probation officer's report relied upon by trial court in sentencing the defendant is a matter for the sentencing court. *Id.*

#### Probable cause

In this case, since the police officers were investigating reported burglary, and defendants were seen carrying coffee table, and their distinctive clothing matched clothing of men seen in vicinity of burglary, and there was a furtive disposal of instrumentalities of burglary by one defendant, and other defendant attempted to get his gun out of pocket as officers approached, there was probable cause for arrest of defendants and for their search and search of their automobile. *United States v. R. Cunningham et ano.* (1970, 424 F. 2d 942, 138 U.S. App. D.C. 29).

The record in this case which discloses that one of two boys apprehended at the scene of housebreaking accompanied officers to apartment and identified the defendant as person who had entered store across street from apartment disclosed so small a probability that probable cause for arrest was lacking that unraised issue of probable cause would not be considered as plain error. *J. Washington v. United States* (1969, 414 F. 2d 1119, 134 U.S. App. D.C. 223).

#### Prosecutor's remarks to jury

Record disclosed uncontested facts so confirming the defendant's guilt of second-degree burglary and petit larceny consisting in theft of money from coin-operated laundry machines located in locked basement room of an apartment building that any impropriety in the prosecuting attorney's argument must be classed as harmless error. *United States v. R. K. Jones* (1970, 433 F. 2d 1107, 140 U.S. App. D.C. 1).

In this case, the court held that the statement of prosecuting attorney that if jury believed testimony of defendants, who were charged with burglary II and petit larceny, they must conclude that police officers were "out-and-out liars," was not so prejudicial as to require reversal. *United States v. I. L. Stevenson et ano.* (1970, 424 F. 2d 923, 138 U.S. App. D.C. 10).

The use by prosecuting attorney of phrase "lucky enough to catch somebody right in the act," and to "catch them red-handed" was not so prejudicial as to constitute plain error. *Id.*

#### Question for jury

Where key government witness, who was owner of apartment allegedly burglarized by defendant, did not see defendant's face, but did notice that his assailant wore a pair of very distinctive plaid pants, and defendant was subsequently seen and identified as having been in vicinity by two witnesses, both of whom indicated that he was wearing a distinctive pair of plaid pants similar to those described by first government witness, and defendant attempted to establish an alibi, although validity of alibi was seriously impeached by government, trial court did not abuse its discretion in leaving determination of guilt or innocence to jury. *United States v. P. E. Coombs* (1972, 464 F. 2d 842, 150 U.S. App. D.C. 333).

#### Record, availability of, on retrial

Entire record in prosecution of defendant for attempted forcible rape of, simple assault upon, and threats against 12-year-old girl would be available to show offenses of which defendant has been convicted, should he be charged again with the same crimes. *H. S. Bush v. United States* (D.C. App. 1966, 215 A. 2d 853).



## Review

Record in prosecution for housebreaking and larceny established that defendant received effective assistance of counsel, though defendant's counsel failed to seek to impeach complaining witness by use of police investigation report containing statements attributed to complaining witness. *Williams v. United States* (C.A. D.C. 1960, 282 F. 2d 867).

Where, in prosecution for housebreaking, no trial objection was made to certain evidence, Court of Appeals was not required to decide question of its admissibility, and in view of character of the evidence, would not do so in its discretion. *Lawson v. United States* (1957, 248 F. 2d 654, 101 U. S. App. D. C. 332, certiorari denied 78 S. Ct. 552, 355 U. S. 963, 2 L. Ed. 2d 537).

In prosecution for robbery and housebreaking where the Court of Appeals found no error affecting the substantial rights of the defendant, the judgment would be affirmed. *Baker Jr. v. United States* (1956, 234 F. 2d 685, 98 U. S. App. D. C. 250, certiorari denied 77 S. Ct. 136, 352 U. S. 901, 1 L. Ed. 2d 89, certiorari denied 78 S. Ct. 98, 355 U. S. 864, 2 L. Ed. 2d 70, rehearing denied 78 S. Ct. 152, 355 U. S. 886, 2 L. Ed. 2d 116, certiorari denied 79 S. Ct. 1145, 359 U. S. 1005, 3 L. Ed. 2d 1033, rehearing denied 80 S. Ct. 48, 361 U. S. 857, 4 L. Ed. 2d 97, certiorari denied 80 S. Ct. 1071, 362 U. S. 983, 4 L. Ed. 2d 1017, rehearing denied 80 S. Ct. 1603, 363 U. S. 832, 4 L. Ed. 2d 1526).

Where general sentence imposed upon accused, who was charged under two count indictment with housebreaking and larceny, was within the maximum sentence permitted for housebreaking, reviewing court could affirm the judgment without considering alleged errors concerning conviction for larceny. *Nelms v. United States* (1954, 215 F. 2d 678, 94 U. S. App. D. C. 267).

## — Remand

Where defendant, on ground he had not been adequately warned of his right to counsel and to remain silent, questioned the admissibility of inculpatory statements and insisted he was entitled to a hearing, but trial judge who tried case without a jury, without first affording defendant an opportunity to state his version of facts and circumstances surrounding arrest, received such statements into evidence without ruling on their admissibility, the Court of Appeals is unable to make judgment as to admissibility of such statements or as to their effect on final disposition of second-degree burglary prosecution, and thus case would be remanded for new trial. *J. A. Brown v. United States* (D.C. App. 1971, 282 A. 2d 571).

In a case in which guilty verdict was ambiguous for failure to state whether it referred to offense of housebreaking or to offense of unlawful entry, the court held that remand for new trial was appropriate remedy. *K. F. Glenn v. United States* (1969, 420 F. 2d 1323, 137 U.S. App. D.C. 120).

Where defendant was convicted under first count of unlawful entry and his conviction under second count of possession of implements of crime consisting of crowbars was under statute which is unconstitutional in its application to crowbars, case was remanded with directions either to modify judgment by setting aside verdict on second count and dismissing that count or in the alternative to vacate judgment entirely, set aside verdict on second count, dismiss that count and resentence defendant for unlawful entry, notwithstanding that general sentence was for period less than maximum for unlawful entry. *Willis C. Washington v. United States* (1956, 232 F. 2d 357, 98 U.S. App. D.C. 100).

## Right to counsel

Decision of Court of Appeals for the District of Columbia relating to defendant's right to counsel at photographic presentation to witnesses without a corporeal lineup was to be applied prospectively so that conviction after trial involving testimony relating to a photographic identification of defendant, without presence of counsel, prior to Court of Appeals' decision, was affirmed. *United States v. M. Gillum* (1972, 463 F. 2d 957, 150 U.S. App. D.C. 121).

Admission of testimony of robbery victims who, at time when defendant was not represented by counsel, identified defendant on his being brought into house by officers following his being restrained by men observing him fleeing from house, did not violate defendant's right to

counsel, as defendant neither said nor did anything at that time that his counsel could have stopped had he been present. *W. W. Kennedy v. United States* (1965, 353 F. 2d 462, 122 U.S. App. D.C. 291).

Where commissioner at preliminary hearing advised defendants, charged with housebreaking, of their rights as specified by rule, including right to retain counsel, and no evidence was received at hearing and used at trial and no prejudice was shown, on appeal from conviction, from their being unrepresented by counsel at time of preliminary hearing and allegedly being without adequate advice as to counsel at such time, conviction was affirmed. *N. E. Shelton and R. B. Pannell v. United States* (1965, 343 F. 2d 347, 120, U.S. App. D.C. 65).

## Search and seizure

Where two police officers observed defendant and companion running on downtown street at 4:30 a.m. in area where one officer had knowledge that there had been prior recent crimes, where officers questioned defendant and companion as to prior whereabouts and defendant replied with patent lie, where officers observed bulge in companion's pocket and companion told them it was change from gambling, and where officer alighted from his vehicle and saw "Phillips" screwdriver protruding from defendant's coat, and he considered screwdriver capable of being used as weapon, officer was justified in removing pointed screwdriver from defendant's pocket. *J. S. Stephenson v. United States* (D.C. App. 1972, 296 A. 2d 606; cert. denied 93 S. Ct. 1535, 411 U.S. —).

As an incident of arrest based on probable cause, police may seize items of evidence of the crime which are found on the arrestee. *M. Valentino v. United States* (D.C. App. 1972, 296 A. 2d 173).

Seizure of defendant's trousers was not objectionable as being analogous to court-condemned forcible stomach pumping, blood sampling and the like. *Id.*

## Sentences

Defendant found guilty of second-degree murder, housebreaking, and larceny could be sentenced on each conviction with sentences running consecutively. *United States v. G. D. Butler* (1972, 462 F. 2d 1195, 149 U.S. App. D.C. 300).

Legislative intent with regard to crimes of murder, housebreaking, and larceny was not so ambiguous as to require invocation of rule of lenity precluding imposition of consecutive sentences on defendant convicted of all three charges. *Id.*

Rule of lenity is to be applied, and concurrent sentences imposed for destruction of property and attempted second-degree burglary, since in this case both offenses involved single course of conduct, i.e., prying of window. *H. Manning v. United States* (D.C. App. 1970, 270 A. 2d 504).

Consecutive sentences could properly be imposed for attempted second-degree burglary and attempted petit larceny, since it is apparent from facts of case, including use of panel truck, that defendant intended to invade two distinct societal interests. *Id.*

Statutory provision for two-year mandatory minimum sentence for burglary do not operate to prevent prosecution and sentencing for lesser misdemeanors of attempted burglary in second degree, destroying private property, and petit larceny, for which offenses the defendant was actually sentenced for one-half year more than two-year felony minimum. *J. L. King v. United States* (D.C. App. 1970, 271 A. 2d 556).

Under the facts of this case where defendant's true crime was burglary in the second degree, a felony carrying a mandatory minimum sentence of two years, and prosecution reduced felony to the three separate misdemeanors of attempted burglary in second degree, destroying private property, and petit larceny, trial judge did not abuse discretion in imposing two consecutive one-year sentences and one concurrent one-year sentence following defendant's conviction on all three separate misdemeanors. *R. M. Weeks v. United States* (D.C. App. 1969, 252 A. 2d 907).

Under the Indeterminate Sentence Act the trial court could impose a term of imprisonment of 15 years, or less, as a maximum, i.e., not more than one-fifth of the 15 years. *Anderson v. Rives* (1936, 85 F. 2d 673, 66 App. D.C. 174).



## —Consecutive

In determining whether consecutive sentences could be validly imposed upon conviction of housebreaking and robbery, statutes are first examined to ascertain if they will bear interpretation as creating separate offenses, and if so court will inquire whether Congress also intended to pyramid penalties or only to establish different degrees or types of offense. *Irby v. United States* (D.C.D.C. 1965, 250 F. Supp. 983).

## Severance of counts

It was within trial court's discretion to grant government's motion for severance of counts in prosecution for grand larceny and housebreaking where government made at least a threshold showing of prejudice, in that, unexpectedly, the necessary witnesses as to two transactions could not be available at the same time, and where there was a lack of any specific prejudice claimed by defendant. *D. E. Garriss, Jr. v. United States* (1969, 418 F. 2d 467, 135, U.S. App. D.C. 251).

## Stop and frisk

In justifying particular intrusion, police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. *J. S. Stephenson v. United States* (D.C. App. 1972, 296 A. 2d 606; cert. denied 93 S. Ct. 1535, 411 U.S. 907).

Fourth Amendment does not require policeman who lacks precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow crime to occur or criminal to escape. *Id.*

Where two police officers observed defendant and companion running down street in downtown area at 4:30 a.m., where defendant and companion slowed to a walk when they spotted officers, where one officer had knowledge of prior recent crimes in that area, officers were justified in stopping defendant and companion to question them as to their prior whereabouts. *Id.*

## Verdict

Where defendant was charged with housebreaking and jury was instructed on elements of both housebreaking and on lesser included offense of unlawful entry and returned one word verdict of "guilty" without specifying to which offense this finding related, the verdict is ambiguous and conviction for housebreaking cannot be founded upon it. *K. F. Glenn v. United States* (1969, 420 F. 2d 1323, 137 U.S. App. D.C. 120).

## Voluntary confession

Evidence established that defendant's confession made at jail to police officer was voluntary. *United States v. J. A. Naples* (D.C.D.C. 1961, 192 F. Supp. 23).

## Waiver of lunacy hearing

In prosecution for housebreaking, trial court's acceptance of waiver of pretrial lunacy hearing from defendant who stated he needed hospitalization and whose testimony showed confusion was error notwithstanding certification from acting superintendent of mental hospital that defendant was mentally competent to stand trial. *Durham v. United States* (1954, 214 F. 2d 862, 94 U. S. App. D. C. 228, 45 A. L. R. 2d 1430).

## Chapter 19.—INCEST

## Sec.

22-1901. Definition and penalty.

## § 22-1901. Definition and penalty.

If any person in the District related to another person within and not including the fourth degree of consanguinity, computed according to the rules of the Roman or civil law, shall marry or cohabit with or have sexual intercourse with such other so-related person, knowing him or her to be within said degree of relationship, the person so offending shall be deemed guilty of incest, and, on conviction thereof, shall be punished by imprisonment for not more than twelve years. (Mar. 3, 1901, 31 Stat. 1332, ch. 854, § 875.)

## NOTES TO DECISIONS

## Habeas corpus

Where accused was found not guilty by reason of insanity and was committed to hospital and some two months thereafter accused petitioned for writ of habeas corpus without prepayment of costs and District Court denied such petition without a hearing and without stating reasons for denial, case would be remanded and District Court, if it rejected allegation of poverty, would be required to state basis for such rejection, and if leave to file without costs was permitted or if accused should pay necessary filing fees, hospital superintendent would be directed to report as to accused's condition, and upon the return the District Court should conduct hearing to determine whether accused had recovered sanity and would not be dangerous to himself or others in reasonable future. *Tate, Sr. v. United States* (1960, 275 F. 2d 894, 107 U.S. App. D.C. 230).

## Instructions

In prosecution for incest, refusal to give a prayer requested by defendant concerning reputation was not error where the subject had been adequately covered in an instruction given. *Hodge v. United States* (1942, 126 F. 2d 849, 75 U.S. App. D.C. 332).

## View of premises

In prosecution for incest, refusal to grant defendant's motion for view of premises was not an abuse of discretion. *Hodge v. United States* (1942, 126 F. 2d 849, 75 U.S. App. D.C. 332).

## Chapter 20.—OBSCENITY

## Sec.

22-2001. Certain obscene activities and conduct declared unlawful—Definitions—Penalties—Affirmative defenses—Exception.

## § 22-2001. Certain obscene activities and conduct declared unlawful—Definitions—Penalties—Affirmative defenses—Exception.

(a)(1) It shall be unlawful in the District of Columbia for a person knowingly—

(A) to sell, deliver, distribute, or provide, or offer or agree to sell, deliver, distribute, or provide any obscene, indecent, or filthy writing, picture, sound recording, or other article or representation;

(B) to present, direct, act in, or otherwise participate in the preparation or presentation of, any obscene, indecent, or filthy play, dance, motion picture, or other performance;

(C) to pose for, model for, print, record, compose, edit, write, publish, or otherwise participate in preparing for publication, exhibition, or sale, any obscene, indecent, or filthy writing, picture, sound recording, or other article or representation;

(D) to sell, deliver, distribute, or provide, or offer or agree to sell, deliver, distribute or provide any article, thing, or device which is intended for or represented as being for indecent or immoral use;

(E) to create, buy, procure, or possess any matter described in the preceding subparagraphs of this paragraph with intent to disseminate such matter in violation of this subsection;

(F) to advertise or otherwise promote the sale of any matter described in the preceding subparagraphs of this paragraph; or

(G) to advertise or otherwise promote the sale of material represented or held out by such person to be obscene.

(2)(A) For purposes of subparagraph (E) of paragraph (1) of this subsection, the creation, purchase, procurement, or possession of a mold, engraved



plate, or other embodiment of obscenity specially adapted for reproducing multiple copies or the possession of more than three copies, of obscene, indecent, or filthy material shall be prima facie evidence of an intent to disseminate such material in violation of this subsection.

(B) For purposes of paragraph (1) of this subsection, the term "knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of, the character and content of any article, thing, device, performance, or representation described in paragraph (1) of this subsection which is reasonably susceptible of examination.

(3) When any person is convicted of a violation of this subsection, the court in its judgment of conviction may, in addition to the penalty prescribed, order the confiscation and disposal of any materials described in paragraph (1), which were named in the charge against such person and which were found in the possession or under the control of such person at the time of his arrest.

(b) (1) It shall be unlawful in the District of Columbia for any person knowingly—

(A) to sell, deliver, distribute, or provide, or offer or agree to sell, deliver, distribute, or provide to a minor—

(i) any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body, which depicts nudity, sexual conduct, or sado-masochistic abuse and which taken as a whole is patently offensive because it affronts prevailing standards in the adult community as a whole with respect to what is suitable material for minors; or

(ii) any book, magazine, or other printed matter however reproduced or sound recording, which depicts nudity, sexual conduct, or sado-masochistic abuse or which contains explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sado-masochistic abuse and which taken as a whole is patently offensive because it affronts prevailing standards in the adult community as a whole with respect to what is suitable material for minors; or

(B) to exhibit to a minor, or to sell or provide to a minor an admission ticket to, or pass to, or to admit a minor to, premises whereon there is exhibited, a motion picture, show, or other presentation which, in whole or in part, depicts nudity, sexual conduct, or sado-masochistic abuse and which taken as a whole is patently offensive because it affronts prevailing standards in the adult community as a whole with respect to what is suitable material for minors.

(2) For purposes of paragraph (1) of this subsection:

(A) The term "minor" means any person under the age of seventeen years.

(B) The term "nudity" includes the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a full opaque covering of any portion thereof below the top

of the nipple, or the depiction of covered male genitals in a discernibly turgid state;

(C) The term "sexual conduct" includes acts of sodomy, masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person be a female, breast.

(D) The term "sexual excitement" includes the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(E) The term "sado-masochistic abuse" includes flagellation or torture by or upon a person clad in undergarments or a mask or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

(F) The term "knowingly" means having a general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry or both of—

(i) the character and content of any material described in paragraph (1) of this subsection which is reasonably susceptible of examination by the defendant; and

(ii) the age of the minor.

(c) It shall be an affirmative defense to a charge of violating subsection (a) or (b) of this section that the dissemination was to institutions or individuals having scientific, educational, or other special justification for possession of such material.

(d) Nothing in this section shall apply to a licensee under the Communications Act of 1934 (47 U.S.C. § 151 et seq.) while engaged in activities regulated pursuant to such Act.

(e) A person convicted of violating subsection (a) or (b) of this section shall for the first offense be fined not more than \$3,000 or imprisoned not more than one year, or both. A person convicted of a second or subsequent offense under subsection (a) or (b) of this section shall be fined not less than \$1,000 nor more than \$5,000 or imprisoned not less than six months or more than three years, or both. (Mar. 3, 1901, 31 Stat. 1332, ch. 854, § 872; Dec. 27, 1967, Pub. L. 90-226, § 606, title VI, 81 Stat. 738.)

#### AMENDMENT

1967—Section 606, Act Dec. 27, 1967, Pub. L. 90-226, amended section generally. For provisions of section prior to this amendment, see 1967 edition of the code.

#### SENTENCE FOR OFFENSES COMMITTED PRIOR TO DEC. 27, 1967, AND SEPARABILITY OF PROVISIONS

See §§ 1101 and 1102 of Act Dec. 27, 1967, Pub. L. 90-226, set out as notes to § 22-501.

#### CROSS REFERENCES

For provisions relating to obscene or harassing telephone calls, see 47 U.S.C. § 223.

For other provisions dealing with lewd, indecent or obscene acts, see secs. 22-1112, 22-3501.

#### NOTES TO DECISIONS

##### Arrest, search and seizure

Affidavit, which revealed that informer, who had learned that pornographic material was being sold, saw third party pass through entrance which might have led to two stores and possibly to apartments above, and that third party returned with pornographic material purchased for informer, affidavit was not sufficient to show probable cause for issuance of search warrant, and resulting search of one of the stores was illegal, and the evidence procured should have been suppressed in subsequent prosecution of store operator for possessing, with intent to sell, lewd and obscene photographs, films, and



literature. *Lerner and Lerner v. United States* (D.C. Mun. App. 1959, 151 A. 2d 184).

#### Arrest warrant

Ex parte hearing on application for arrest warrant, that is supported by affidavit describing in detail contents of purchased material, with or without review of that material by the court suffices, on finding of probable cause, to authorize issuance of arrest warrant. *United States v. J. A. Green et al.* (D.C. App. 1971, 284 A. 2d 879).

#### Bill of particulars

Refusal to grant bill of particulars was not abuse of discretion where informations referred with specificity to times and places of performances claimed to violate obscene exhibitions statute, and defendant revealed complete familiarity with acts charged. *S. Yankowitz v. United States* (D.C. Mun. App. 1962, 182 A. 2d 889).

#### Consolidation of charges

Defendant could be charged with three offenses of violating obscene exhibitions statute and was not entitled to proceed to trial on but one information, and the three separate informations were properly combined for trial, where there were three separate shows each involving elements essential to support violation of the statute. *S. Yankowitz v. United States* (D.C. Mun. App. 1962, 182 A. 2d 889).

#### Constitutionality

This section is not so unconstitutionally vague as to deprive a defendant of equal protection or due process. *United States v. T. Gower* (1970, 316 F. Supp. 1390).

No merit exists in defendant's contention that the statute, as construed and interpreted by the trial court, countervenes the first and fifth amendments. *Benjamin v. United States* (D. C. Mun. App. 1950, 74 A. 2d 64).

#### Construction

This section making it unlawful for a person knowingly to present, direct, act in, or otherwise participate in preparation or presentation of obscene, indecent, or filthy play, dance, motion picture or other performance requires no more than that appellants had sufficient knowledge of performance such that they should have suspected its impropriety and inspected or inquired as to its character and content. *R. Morris and B. C. Carroll, etc. v. United States* (D.C. App. 1969, 259 A. 2d 337).

Congress did not intend that the question of obscenity of the performance should depend upon the opinion or belief or the person who, with knowledge or notice of his acts, assumed the responsibility for putting on the performance. *Id.*

This section allows appellants to remain ignorant of illegality of performance only at their peril, once they know or have reason to know they might be violating statute. *Id.*

#### Duty of court

Where defendant introduces testimony that allegedly obscene films do not violate national community standards and Government introduces evidence that films do violate such standards, it is for trier of fact to weigh the conflicting evidence. *T. W. Parks v. United States* (D.C. App. 1972, 294 A. 2d 858).

#### Elements of offense

For a salesman to be convicted of knowingly selling an obscene film, the government need not prove that the salesman had actual knowledge of the contents of the particular film sold. *J. Kramer v. United States* (D.C. App. 1972, 293 A. 2d 272).

#### Evidence—Admissibility

Since this section required proof that defendants had knowledge of character and contents of material, which constituted sufficient proof of scienter trial judge properly excluded testimony that defendant had received advice of competent counsel that material could be legally sold. *V. W. Huffman and D. E. Pryba v. United States* (D.C. App. 1969, 259 A. 2d 342).

#### — Of community standards

Where there is ruling of obscenity per se, as in this case, defense is entitled to offer evidence of national community standards to prove that material or performance

is not obscene; such proof, if established, would be good defense. *R. Morris and B. C. Carroll, etc. v. United States* (D.C. App. 1969, 259 A. 2d 337).

In this case the exhibits which consisted of magazines containing photographs of nudes and, where certain of them had been declared nonobscene in per curiam opinions by United States Supreme Court were not admissible as proof of contemporary community standards, even if they were sold all over United States, where tendered exhibits were not comparable to material possessed and sold by defendants. *V. W. Huffman and D. E. Pryba v. United States* (D.C. App. 1969, 259 A. 2d 342).

#### — Sufficiency

Salesman's conviction of knowingly selling an obscene film was supported by sufficient evidence, regardless of whether the date the film was purchased was the first day of his employment, since it will not be presumed that even a new salesman is completely unfamiliar with goods he is hired to sell in an adult book and magazine store, and since the salesman, in effect, indicated he had actual knowledge of the nature of the particular merchandise when he recommended it to the police officer and told him it was the "better film." *J. Kramer v. United States* (D.C. App. 1972, 293 A. 2d 272).

In prosecution for selling obscene material, finding that codefendant was the owner or operator of the store where police officer purchased obscene film was supported by sufficient evidence, including fact that the application for a certificate of occupancy and the certificate itself were issued to the codefendant. *Id.*

In this case the evidence in prosecution for knowingly selling certain obscene, indecent and filthy articles was sufficient for jury to properly conclude that defendants were aware of content and character of materials. *V. W. Huffman and D. E. Pryba v. United States* (D.C. App. 1969, 259 A. 2d 342).

#### Government's burden of proof

Where rebutting evidence has been introduced by defendant as to obscenity of films, a ruling by court of obscenity per se does not relieve Government of its burden of going forward nor of its burden of proof beyond a reasonable doubt on all elements of the obscenity test. *T. W. Parks v. United States* (D.C. App. 1972, 294 A. 2d 858).

When obscenity per se is involved, prosecution is not required to offer any evidence, beyond material itself, that the material is pornographic or obscene or that it is below national community standards, but defense is privileged to offer evidence of national community standard to prove that material is not obscene. *F. C. Wilhoit v. United States* (D.C. App. 1971, 279 A. 2d 505; cert. denied 92 S. Ct. 538, 404 U.S. 994).

In obscenity case involving question of whether a local burlesque show was obscene, Government was required to offer competent evidence to prove relevant community standards prevailing in nation generally, and by failing to do so, Government failed to establish an essential element of the crime charged. *L. M. Hudson et al. v. United States* (D.C. App. 1967, 234 A. 2d 903).

#### Guilty knowledge

Guilty knowledge must be alleged and proved. *Moens v. United States* (1920, 267 F. 317, 50 App. D.C. 15).

#### Hard-core pornography

Book containing 47 photographs, some in color, depicting male and female genitalia as they are involved in deviant sexual practices, and 7 chapters of text consisting of series of narratives of debauchery running perhaps entire gamut of perversion was pornographic without modicum of redeeming social value. *F. C. Wilhoit v. United States* (D.C. App. 1971, 279 A. 2d 505; cert. denied 92 S. Ct. 538, 404 U.S. 994).

Photographs and films depicting nude males and females engaged in sexual intercourse, fellatio, cunnilingus, and masturbation constitute hard-core pornography and as such the government is not required to produce expert testimony about appeal to prurient interest and contemporary community standards, in prosecution for violation of this section making it crime to knowingly sell or possess with intent to sell obscene material. *United States v. T. Gower* (1970, 316 F. Supp. 1390).



**Instructions**

Error, if any, in instructing that president of corporation operating restaurant with stage show consisting of three female impersonators could be convicted of violation of obscene exhibitions statute if he knew or should have known nature and character of the "premises" was harmless where jury was explicitly charged that intent was essential element of the crime. *S. Yankowitz v. United States* (D.C. Mun. App. 1962, 182 A. 2d 889).

Statement in charge to jury that material charged in indictment was, in court's opinion, actually obscene in eyes of law did not require reversal of obscenity conviction, considering whole charge which left issue of obscenity for jury and stated that judge's comments on evidence were not binding on jury. *A. J. Heinecke v. United States* (1961, 294 F. 2d 727, 111 U.S. App. D.C. 98).

**Intent**

"If the indictment had charged knowledge of the character of the pictures in the possession of the accused, the criminal intent in exhibiting them would be implied from the guilty knowledge of their nature." *Moens v. United States* (1920, 267 F. 317, 50 App. D.C. 15).

**Management's burden**

In this case the court held that the trial judge could infer that defendant, who was manager of theater, knew or had reasonable opportunity to know character and content of performer's act, and had burden under this section, of ascertaining whether performer's performance might have been obscene, and neglect to do so was not adequate defense. *R. Morris and B. C. Carroll etc. v. United States* (D.C. App. 1969, 259 A. 2d 337).

**"Obscene" defined**

As used in statutory language, the word "obscene" is intended to have a meaning that varies from time to time as general notions of decency in attire and conduct of exhibitions for public entertainment tend to change. *L. M. Hudson et al. v. United States* (D.C. App. 1967, 234 A. 2d 903).

In the District of Columbia, community standards in obscenity cases shall be determined by a reference to contemporary community standards in the nation as a whole. *Id.*

**Obscene per se**

Film that was sexually morbid, grossly perverse and bizarre, and wholly without any artistic or scientific justification was properly found to be obscene per se. *J. J. Kaplan v. United States* (D.C. App. 1971, 277 A. 2d 477).

In this case the record established and the court held that reasonable men could only conclude that performer's acts simulated fellatio and intentional exposure of the vaginal area, and which was performed on stage and runway while lying on stage and repeating act to other side of stage while at same time yelling "Let's see it all" was obscene per se. *R. Morris and B. C. Carroll etc. v. United States* (D.C. App. 1969, 259 A. 2d 337).

**Proof**

Where court, sitting without jury, viewed films and declared them obscene per se and defendants introduced countervailing expert testimony that films did not appeal to prurient interest in sex, did not violate national community standards relating to representation of sexual matters and were not utterly without redeeming social value and Government did not introduce any countervailing evidence on these points, Government did not prove beyond reasonable doubt that films were obscene. *T. W. Parks v. United States* (D.C. App. 1972, 294 A. 2d 858).

**Public trial**

In prosecution for possessing obscene pictures with intent to exhibit them, defendant's right to a public trial was not denied because when the alleged obscene film was shown in court the public, except newspaper reporters, were excluded. *B. W. Lancaster v. United States* (1961, 293 F. 2d 519, 110 U.S. App. D.C. 331).

**Review**

In obscenity cases, reviewing court is required to make an independent judgment as to whether material brought into question is, as matter of law, obscene and beyond the perimeter of constitutional protection. *F. C. Wilhoit v.*

*United States* (D.C. App. 1971, 279 A. 2d 505; cert. denied 92 S. Ct. 538, 404 U.S. 994).

**Review of evidence de novo**

In this case the District of Columbia Court of Appeals reviewed the evidence de novo in a prosecution for knowingly presenting, directing and participating in presentation of obscene, indecent and filthy performance. *R. Morris and B. C. Carroll etc. v. United States* (D.C. App. 1969, 259 A. 2d 337).

**Scienter**

Defendant, who was working at downtown arcade on more than one occasion when obscene film was being displayed and who had ownership interest in the arcade, had requisite knowledge that the film being exhibited in particular machine was obscene. *J. J. Kaplan v. United States* (D.C. App. 1971, 277 A. 2d 477).

This section required proof that defendants had knowledge of character and content of the alleged obscene material, and that constituted sufficient proof of scienter; if defendants knew what they were doing, their personal belief that they were not violating the law was no defense. *V. W. Huffman and D. E. Pryba v. United States* (D.C. App. 1969, 259 A. 2d 342).

In this case the performer knew or should have known that her performance might violate this section since she was the performer, and had enough knowledge about the performance to properly hold her responsible for further inquiry or inspection into act's character and content, and that was all that was needed to satisfy requirement of scienter under this section. *R. Morris and B. C. Carroll etc. v. United States* (D.C. App. 1969, 259 A. 2d 337).

**Search and seizure**

Based on an ex parte hearing, the court may issue an order authorizing seizure of limited number of publications for use as evidence in criminal prosecution. *United States v. J. A. Green et al.* (D.C. App. 1971, 284 A. 2d 879).

In the absence of a prior adversary determination of obscenity, massive confiscatory seizures of alleged obscene publications or motion picture films run afoul of First Amendment by threatening abridgement of public's right to free circulation of nonobscene publications. *Id.*

Since the search warrant for film contained in peep-show machine located in downtown arcade was issued upon detailed affidavit, only one machine out of a number was seized and it contained a single 12-minute peep-show reel, and arcade owner was offered hearing on propriety of the seizure the day after the seizure, the defendant-arcade owner was not entitled to hearing prior to issuance of the warrant. *J. J. Kaplan v. United States* (D.C. App. 1971, 277 A. 2d 477).

Since undercover police officer asked defendant bookstore owner about purchasing films similar to ones he had already purchased and policeman accompanied bookstore owner to his automobile where defendant opened trunk and selected films from bag in trunk, there was no need for prior adversary hearing to determine obscenity before seizing films pursuant to a search warrant. *United States v. T. Gower* (1970, 316 F. Supp. 1390).

The fact that defendant bookstore owner kept photographs and films under the counter or in trunk of his automobile could properly be considered in determining whether there must be an adversary hearing prior to issuance of search warrant authorizing seizure of the alleged obscene materials. *Id.*

**Sentence**

Where defendant, who had been sentenced by Municipal Court for District of Columbia to one year and a fine of \$300, and in default of payment to be imprisoned for an additional year, for possessing and selling obscene literature and pictures, contended only that sentence imposed in default of payment of the fine was too severe, Municipal Court of Appeals could not reduce sentence in absence of showing of abuse of discretion on part of lower court. *Hankins v. United States* (D. C. Mun. App. 1956, 120 A. 2d 590).

Statutes providing that defendant upon whom fine has been imposed may, in default of payment, be committed for such term as court thinks proper not to exceed one year, gives broad discretion in imposing imprisonment in default of payment of fine. *Id.*



**Sufficiency of evidence**

Evidence sustained conviction of charge of giving or participating, on three separate occasions, in public exhibitions containing obscene, indecent, or lascivious language, postures, or suggestions, or otherwise offending public decency. *S. Yankowitz v. United States* (D.C. Mun. App. 1962, 182 A. 2d 889).

Evidence sustained conviction of female dancers for participating in obscene, indecent and lascivious performances. *Clarke et al. v. United States* (D.C. Mun. App. 1960, 160 A. 2d 97).

Without attempting to describe the pictures, court was of opinion that they were of such a nature as to sustain a finding of guilty by any recognized standard. *Benjamin v. United States* (D. C. Mun. App. 1950, 74 A. 2d 64).

**Witnesses, evidence**

Where prosecution's case rested largely upon testimony of a sole key eyewitness and there was ample ground for suspicion of inconsistencies in eyewitness' identification, trial judge abused his discretion in failing to order production of those parts of the witness' grand jury testimony relating to same subject testified to at trial. *W. E. De Binder v. United States* (1961, 292 F. 2d 737, 110 U.S. App. D.C. 244).

**Chapter 21.—KIDNAPING****Sec.**

22-2101. Definition and penalty—Conspiracy.

**§ 22-2101. Definition and penalty—Conspiracy.**

Whoever shall be guilty of, or of aiding or abetting in, seizing, confining, inveigling, enticing, decoying, kidnaping, abducting, concealing, or carrying away any individual by any means whatsoever, and holding or detaining, or with the intent to hold or detain, such individual for ransom or reward or otherwise, except, in the case of a minor, by a parent thereof, shall, upon conviction thereof, be punished by imprisonment for life or for such term as the court in its discretion may determine. This section shall be held to have been violated if either the seizing, confining, inveigling, enticing, decoying, kidnaping, abducting, concealing, carrying away, holding, or detaining occurs in the District of Columbia. If two or more individuals enter into any agreement or conspiracy to do any act or acts which would constitute a violation of the provisions of this section, and one or more of such individuals do any act to effect the object of such agreement or conspiracy, each such individual shall be deemed to have violated the provisions of this section. (Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 812; Feb. 18, 1933, 47 Stat. 858, ch. 103; Nov. 8, 1965, 79 Stat. 1307, Pub. L. 89-347, § 3.)

**AMENDMENTS**

1965—Section 3 of act Nov. 8, 1965, amended section by striking "for ransom or reward" and inserting in lieu "for ransom or reward or otherwise, except in the case of a minor, by a parent thereof."

1933—Act Feb. 18, 1933, amended the provisions to read as set forth in the text. Prior to the amendment the section read: "Whoever unlawfully and forcibly or fraudulently carries off or decoys out of the District any person, or arrests or imprisons any person with the intention of having such person carried out of the District, shall be imprisoned for not less than one nor more than seven years, or fined not exceeding one thousand dollars, or both: *Provided*, That whoever leads, carries, or entices away a child under the age of sixteen years, with the intent unlawfully to detain or conceal such child so lead, taken, or enticed away, shall be imprisoned for not more than twenty years or fined not exceeding one thousand dollars, or both."

**CROSS REFERENCES**

Lindberg kidnaping law, see 18 U.S.C. §§ 1201, 1202.  
Possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 11-502, 23-546.

**NOTES TO DECISIONS****Conduct of counsel**

In this case, the court held that the conduct of prosecution in preliminary hearing, wherein, after testimony of complaining witness had been taken, government moved to dismiss when defendant sought to test credibility of complainant by calling her mother, and magistrate granted motion, did not warrant dismissal of kidnaping indictment or, in the alternative, suppression of complainant's testimony. *United States v. D. Regisser* (1970, 309 F. Supp. 879).

**Elements of offense**

That defendant could have been convicted of kidnaping under this section is not relevant to consideration of whether he was guilty of violation of federal kidnapping statute as charged. *R. E. Matthews v. United States* (1971, 449 F. 2d 985, 145 U.S. App. D.C. 323).

**Evidence—Sufficiency**

Evidence, including permissible inference jury was permitted to draw from fact that the defendant was found within an hour of larceny in exclusive possession of recently stolen truck, supported convictions of kidnapping of truck helper, armed robbery, and assault with a dangerous weapon. *United States v. L. B. Wolford* (1971, 444 F. 2d 876, 144 U.S. App. D.C. 1).

**Merger of offenses**

Where helper on truck was detained and transported against his will to a different location, several miles away from the scene where truck was hijacked, and purpose of detention, to facilitate success of hijacking, was to secure benefit to hijackers, two separate and distinct crimes were committed, i.e., kidnapping and armed robbery of contents of truck, and the offenses did not merge. *United States v. L. B. Wolford* (1971, 444 F. 2d 876, 144 U.S. App. D.C. 1).

**Parent**

"In no case, in the absence of an express provision of statute, can a parent be guilty of kidnaping his or her own minor child, unless the forcible taking is from the custody established by the decree of a competent court." *Hard v. Splain* (1916, 45 App. D.C. 1).

**Chapter 22.—LARCENY—RECEIVING STOLEN GOODS****Sec.**

- 22-2201. Grand larceny.
- 22-2202. Petit larceny—Order of restitution.
- 22-2203. Larceny after trust.
- 22-2204. Unauthorized use of vehicles.
- 22-2204a. Theft from vehicles.
- 22-2205. Receiving stolen goods.
- 22-2206. Stealing property of District of Columbia.
- 22-2207. Receiving property stolen from the District of Columbia.
- 22-2208. Destroying stolen property.

**§ 22-2201. Grand larceny.**

Whoever shall feloniously take and carry away anything of value of the amount or value of \$100 or upward, including things savoring of the realty, shall suffer imprisonment for not less than one nor more than ten years. (Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 826; Aug. 12, 1937, 50 Stat. 628, ch. 599; June 29, 1953, 67 Stat. 99, ch. 159, § 215 (a).)

**AMENDMENTS**

1953—Act June 29, 1953, increased the value from \$50 to \$100.

1937—Act Aug. 12, 1937, increased the value from \$35 to \$50.



## CROSS REFERENCES

- Allegations and proof of fraudulent intent, see § 23-322.
- Burglary, see § 22-1801.
- Concealing or converting assets of estates, see § 22-1404.
- Embezzlement, see § 22-1201 et seq.
- False pretenses and false personations, see § 22-1301 et seq.
- Joinder of offenses, see § 23-311 et seq.
- Misappropriation of assets of building and homestead associations declared to be larceny, see § 26-404.
- Misappropriation of funds of certain corporations, or of funds entrusted to such corporations, made larceny, see § 26-320.
- Possession of firearms, additional penalty, see §§ 22-3201, 22-3202.
- Robbery, see § 22-2901.
- Stealing library books, see § 22-3106.
- Stealing written instruments, see § 22-1405.
- Taking or carrying away will, codicil, or other testamentary instrument, see §§ 18-111, 18-112.
- Taking property without right, see § 22-1211.
- United States public money, property or records, embezzlement and theft, see 18 U.S.C. § 641.
- Use of slugs in automatic vending machines, see §§ 22-1407 to 22-1409.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23-546, 23-581.

## NOTES TO DECISIONS

## Accomplice

In prosecution for the unauthorized use of a vehicle and larceny of other property in District of Columbia, evidence on issue of whether defendant had aided and abetted those who took the property and whether the planning and the taking were within the District sustained conviction, even though it was not shown that defendant was present at the taking or had used the automobile in the District. *Williams v. United States* (1954, 215 F. 2d 35, 94 U. S. App. D. C. 219).

## Appeal and error

Since neither at trial nor on appeal did the defendant indicate kind of evidence he would offer to establish illegality of arrest, alleged constitutional error in admission of evidence seized pursuant to purportedly invalid arrest would not be considered on appeal; defendant is relegated to relief by way of collateral attack on motion to vacate judgment of conviction on sentence. *United States v. W. F. Moore* (1970, 435 F. 2d 113, 140 U.S. App. D.C. 309; cert. denied 91 S. Ct. 1376, 402 U.S. 906).

Constitutional error in the admission of evidence may be raised at any time, including collaterally. *Id.*

There was no error in failure to provide the defendants with portion of Government witness' grand jury testimony, to extent that such testimony consisted of materials unrelated to the instant charges, matters unrelated to the present trial and then under investigation, and matters pertaining to individuals identified therein who were entitled to protection from adverse publicity. *R. Hamilton et al. v. United States* (1970, 433 F. 2d 526, 139 U.S. App. D.C. 368; cert. denied 91 S. Ct. 1612, 402 U.S. 944).

## Arrest

Where police officer, on foot patrol, saw a bag of trash thrown into a public street from left front window of automobile standing at curb with motor running, and where the automobile's occupant, after being approached by the officer and questioned about the bag, alighted from the automobile, picked up the bag and put it back inside the car, it could not be said that the incident was over and that it was unlawful for the officer to ask the occupant to produce his operator's permit and the registration card for the automobile, which inquiries resulted in discovery that the occupant's permit had been revoked and, later, that the automobile had been stolen. *United States v. R. Weston* (1972, 466 F. 2d 435, 151 U.S. App. D.C. 264).

## Arrest and search

Examination of the trunk of defendant's automobile did not constitute an illegal search by the police where it occurred contemporaneously with and at place of de-

fendant's arrest under circumstances indicating convincingly defendant's participation in burglary. *R. Wright, Jr. v. United States* (1968, 404 F. 2d 1256, 131 U.S. App. D.C. 279).

## Arrest without warrant

Probable cause is not to be evaluated from remote vantage point of library but from viewpoint of prudent and cautious police officer on scene at time, and question to be answered is whether such an officer, in particular circumstances conditioned by his observations and information and guided by whole of his police experience, reasonably could have believed that crime had been committed by person to be arrested. *S. Jackson, Jr. v. United States* (1962, 302 F. 2d 194, 112 U.S. App. D.C. 260).

Police are entitled to rely upon hearsay and upon various other factors which would not be admissible in evidence against accused at trial in determining whether there is probable cause for arrest. *Id.*

Total information available to officers, with respect to defendant charged with housebreaking and grand larceny, including separate accusations by two persons that he had been source of stolen gun, together with one of their recollections of rhinestone bracelet in defendant's closet, matching description of similar object on list of stolen property, reasonably warranted a belief that he had probably committed felonious acts in which gun and bracelet were originally stolen, and such, together with practical necessities of pursuit, justified his arrest without warrant. *Id.*

## Continuing trespass

When getaway automobile bearing defendants and goods they had stolen from District of Columbia bank crossed line between the District of Columbia and the State of Maryland, defendants committed new larceny for which they could be convicted in Maryland. *G. A. Hamilton et ano. v. State of Maryland* (Md. App. 1971, 277 A. 2d 460).

## Cross-examination

Where defendant had testified that he lived at certain address during month in which burglary occurred, that he had returned to that address on date of burglary after finishing work, that he had worked every day, presumably including day of arrest, and that he had never lived around corner from home of eyewitness to burglary, trial judge did not abuse discretion by permitting Government to cross-examine defendant concerning employer's identification card which referred to the address around the corner from eyewitness' home and records indicating days he had worked during week of crime. *United States v. M. W. Rosebar* (1972, 463 F. 2d 1255, 150 U.S. App. D.C. 164).

## Defense

In prosecution for grand larceny and for unauthorized use of a vehicle, wherein defense was interposed that defendant was repossessing automobile on request of man engaged in automobile business, testimony and argument of Government to effect that repossession of automobiles must be accomplished by a United States marshal and that repossession by an individual was illegal, which testimony and argument led jury to believe that defendant was engaged in an illegal enterprise in repossessing automobile, was prejudicial error, where jury was not instructed to disregard testimony or argument on this point, notwithstanding that jury was instructed that Government had to prove every element of crime, including intent, beyond reasonable doubt. *Evans v. United States* (1956, 232 F. 2d 379, 98 U. S. App. D. C. 122).

## — Intoxication

One who steals while intoxicated may nevertheless be convicted if he converts the property after complete return to consciousness. *Ryan v. United States* (1905, 26 App. D.C. 74, 6 Ann. Cas. 633).

## Elements of offense

Offenses of murder, housebreaking, and larceny each requires elements of proof which are not common to other two and each offense is historically an independent crime. *United States v. G. D. Butler* (1972, 462 F. 2d 1195, 149 U.S. App. D.C. 300).

One element of crime of "larceny" is that accused took the property and carried it away, not that he was at some



time in the vicinity of the property. *W. H. Hiet, Jr. v. United States* (1966, 365 F. 2d 504, 124 U.S. App. D.C. 313).

#### Embezzlement

To constitute larceny the property must be unlawfully taken from the possession of another, with the fraudulent intent to convert the same to his own use; he who takes without the consent of the owner commits a trespass; the offense of embezzlement consists in the wrongful conversion of the property which has been entrusted to the possession of another; he commits no trespass or wrong in acquiring the possession, but a breach of trust in converting the property to his own use *Rohde v. United States* (1910, 34 App. D.C. 249).

Treasurer of unincorporated association who converts funds coming into his possession as such treasurer is guilty of embezzlement and not larceny. *Id.*

Embezzlement is where any agent, attorney, clerk, or servant wrongfully converts to his own use anything of value which shall come into his possession or under his care by virtue of his employment, but his possession for a special limited purpose may not destroy legal possession of the owner, and therefore his subsequent conversion of the article would be larceny. *Talbert v. United States* (1914, 42 App. D.C. 1, certiorari denied 34 S. Ct. 997, 234 U.S. 762, 58 L. Ed. 1581).

Driver of transfer truck who converts property while hauling it from a freight depot is guilty of larceny and not embezzlement. *Weisberg v. United States* (1919, 258 F. 284, 49 App. D.C. 28). See, also, *Talbert v. United States* (1914, 42 App. D.C. 1, certiorari denied 34 S. Ct. 997, 234 U.S. 762, 58 L. Ed. 1581).

A bookkeeper and clerk in a hotel, to whom a guest delivers property for safe-keeping, and who subsequently abstracts them from the hotel safe, is guilty of larceny and not embezzlement. *Chanock v. United States* (1920, 267 F. 612, 50 App. D.C. 54, 11 A.L.R. 799).

#### Evidence—Admissibility

Exclusion of rabbi's testimony as to defendant's habit of being home on Orthodox Jewish Sabbath and as to when Sabbath commenced and what Orthodox ritual requires was not reversible error in prosecution wherein defendant relied on alibi that he was home on Sabbath and wherein there was other testimony as to his habits and as to period and requirements of Sabbath. *M. M. Levin v. United States* (1964, 338 F. 2d 265, 119 U.S. App. D.C. 156).

Evidence of general habits of person is not admissible to show his conduct on specific occasion. *Id.*

Stolen guns, which were obtained by officers from defendant's apartment and automobile as result of unlawful search and seizure in violation of the Fourth Amendment to the Constitution, were inadmissible in grand larceny prosecution. *Lee v. United States* (1956, 232 F. 2d 354, 98 U. S. App. D. C. 97).

The corporate character of the owner or occupant of property stolen or entered may be proved by "reputation"; that is, by evidence tending to show that the corporation was de facto organized and acting as such. *Bord v. United States* (1943, 133 F. 2d 313, 76 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 77, 78, 317 U. S. 671, 87 L. Ed. 539).

#### —Sufficiency

In prosecution for the grand larceny of an automobile and unauthorized use of the vehicle, there was legally sufficient evidence to support defendant's conviction on both counts, including the fact that, three weeks after the automobile's theft, it was found in the exclusive possession of defendant. *United States v. R. Weston* (1972, 466 F. 2d 435, 151 U.S. App. D.C. 264).

Exclusive and unsatisfactorily explained possession of property proven to have been recently stolen permits an inference that the possessor is the thief; and where the stolen property is a motor vehicle, that inference may serve to support convictions of grand larceny and unauthorized use. *Id.*

Evidence, including eyewitness testimony, was sufficient to sustain conviction of second-degree burglary and grand larceny. *United States v. M. W. Rosebar* (1972, 463 F. 2d 1255, 150 U.S. App. D.C. 164).

In prosecution for grand larceny, government had to introduce probative evidence of each and every element

of crime charged, including value of property which was taken and failure to offer such proof would be fatal to government's case. *United States v. E. E. Thweatt* (1970, 433 F. 2d 1226, 140 U.S. App. D.C. 120).

When there is a possibility of convicting the defendant of either grand or petit larceny, offenses which carry significantly different penalties and which are distinguished solely by value of property taken, it is essential that government introduce evidence of that value in order to give jury a firm basis upon which it can render a verdict. *Id.*

In absence of specific evidence as to the value of items taken, defendant's conviction for grand larceny would be reversed, but since the judge gave lesser included offense charge as to petit larceny and there was sufficient evidence on which jury could find defendant guilty thereof, case would be remanded for resentencing. *Id.*

Conviction of either grand larceny of automobile or unauthorized use of automobile entails evidence having enough probative power to convince the jury beyond reasonable doubt of every essential element, and also on identity of the accused as participant. *United States v. A. T. Johnson* (1970, 433 F. 2d 1160, 140 U.S. App. D.C. 54).

Evidence, in prosecution for grand larceny of automobile, unauthorized use of such automobile, and for grand larceny of engine from another automobile, warranted the finding that the character of possession of stolen property, united with other evidence in case, would authorize inference attributing guilt to defendant. *Id.*

In this case the court found that testimony concerning defendant's offer to sell the goods, leading the prospective buyers to where they were stored, and remaining with the goods during an interval when others had departed was sufficient evidence to allow a jury to find that defendant was in possession of recently stolen property and to infer larceny and housebreaking. *D. E. Garriss, Jr. v. United States* (1969, 418 F. 2d 467, 135 U.S. App. D.C. 251).

In this case the evidence presented by the government in a prosecution for housebreaking and grand larceny was so compelling that, even if the police station confrontation between defendant and two prosecution witnesses, was improper and in-court identification of defendant was not shown by clear and convincing evidence to have an independent source, error, if any, in the in-court identifications was harmless. *G. R. Taylor v. United States* (1969, 414 F. 2d 1142, 134 U.S. App. D.C. 246).

Evidence in larceny prosecution was insufficient to sustain conviction where only evidence against defendant was fingerprint taken from automobile window, which was identified as his, he was not placed in vicinity of automobile on evening in question or in immediate neighborhood at any other time, he was not shown to have been in possession of any of the stolen property at any time, none of the stolen property was ever recovered, and there was no testimony as to probable age of the fingerprint. *W. H. Hiet, Jr. v. United States* (1966, 365 F. 2d 504, 124 U.S. App. D.C. 313).

Evidence sustained larceny conviction of defendant who allegedly, by misrepresentation, obtained from union officer money which officer had embezzled from union. *M. M. Levin v. United States* (1964, 338 F. 2d 265, 119 U.S. App. D.C. 156).

Evidence sustained conviction for grand larceny. *E. L. Jackson v. United States* (1964, 331 F. 2d 816, 118 U.S. App. D.C. 70).

Television showroom manager was properly qualified as an expert as to value of television set which was stolen and manager's testimony was sufficient to prove value in excess of \$100 as required for conviction for grand larceny. *J. Owens v. United States* (1963, 318 F. 2d 204, 115 U.S. App. D.C. 233).

In prosecution for housebreaking and larceny, evidence regarding identification of defendant made a case for the jury. *Williams v. United States* (C.A. D.C. 1960, 282 F. 2d 867).

Evidence was sufficient to sustain conviction for housebreaking, larceny and destroying movable property. *Braddy v. United States of America* (1955, 225 F. 2d 551, 96 U. S. App. D. C. 251).

Evidence justified larceny conviction of an accused whose alleged confederate removed carton of spark plugs from store and placed carton in their automobile while accused was in store notwithstanding no property was



marked for or offered in evidence at trial. *Foster v. United States* (1954, 212 F. 2d 249, 94 U. S. App. D. C. 83, certiorari denied 75 S. Ct. 69, 348 U. S. 845, 99 L. Ed. 666).

In prosecution for housebreaking and larceny, evidence was sufficient to establish corporate character of occupant of property entered and owner of property stolen. *Bord v. United States* (1943, 133 F. 2d 313, 76 U.S. App. D.C. 205, certiorari denied 63 S. Ct. 77, 78, 317 U.S. 671, 87 L. Ed. 539).

In prosecution for housebreaking and larceny, evidence was sufficient to sustain determination that defendant was one of men who entered building and committed larceny. *Id.*

In prosecution for housebreaking and larceny, record supported Government's theory that, while witness had made conflicting statements regarding whether he would testify, prosecutor reasonably believed that he would testify, and therefore action of prosecutor in calling witness who identified certain tools, but then relied on his privilege and refused to connect himself or defendant with the crime, was not objectionable on ground that defendant was deprived of a fair trial, where court instructed the jury to disregard witness' testimony and the tools which he identified. *Id.*

Evidence that another person had stolen bag containing surgical instruments and placed bag on wheelbarrow used by such person and defendant in collecting junk and stated to defendant that bag had been found among garbage cans and that when contents of bag were discovered defendant made unsuccessful effort to return bag and instruments to owner, and later delivered bag and contents to policeman, was insufficient to convict defendant of grand larceny. *Williams v. United States* (1944, 140 F. 2d 351, 78 U.S. App. D.C. 322).

#### Examination of witnesses

Trial court's refusal to order psychiatric examination of Government's principal witness was not prejudicial error since the defendants have not provided any substantial factual predicate for their request and since the results of previous psychiatric evaluation of the witness would be available to them. *R. Hamilton et al. v. United States* (1970, 433 F. 2d 526, 139 U.S. App. D.C. 368; cert. denied 91 S. Ct. 1612, 402 U.S. 944).

In prosecution for housebreaking and grand larceny, the court's questioning of defense witnesses on certain aspects of testimony which they had given in support of alibi claim in order to obtain much needed clarification of their testimony rather than challenges thereto did not amount to advocacy against alibi theory in presence of jury, and in any event was not prejudicial where it was not significantly different in nature from court's questioning of a vital government witness. *United States v. H. W. Barbour* (1969, 420 F. 2d 1319, 137 U.S. App. D.C. 116).

#### Force and violence

Larceny consists in "a wrongful and fraudulent taking" and it does not exclude the idea of force and violence, or of fraud accompanied by force, nor does it imply that the taking must be secret. *Williams v. United States* (1894, 3 App. D.C. 335).

#### Fraud, larceny by

Where the victim was induced by artifice to part with possession of property but clearly did not intend to pass title, subsequent conversion by the swindlers completed the crime of larceny by trick. *Ballard v. United States* (1956, 237 F. 2d 582, 99 U. S. App. D. C. 101, certiorari denied 77 S. Ct. 574, 352 U. S. 1017, 1 L. Ed. 2d 554).

Under the statute making it a crime to feloniously take and carry away anything of the value of \$50 or upwards, one who obtains money from another upon representation that he will perform certain services therewith for the latter intending at the time to convert the money and actually converting it to his own use is guilty of larceny. *Graham v. United States* (1951, 187 F. 2d 87, 88 U. S. App. D. C. 129, certiorari denied 71 S. Ct. 741, 341 U. S. 920, 95 L. Ed. 1353).

#### Habeas corpus

Petitioner seeking habeas corpus or in the alternative an order vacating his conviction for larceny by trick failed to prove his allegations as to perjured testimony by a government witness and as to evidence deliberately sup-

pressed by trial prosecutor. *Levin v. Katzenbach* (D.C.D.C. 1966, 249 F. Supp. 225).

Where petitioners were arrested in Pennsylvania, charged with committing certain crimes in the District of Columbia, habeas corpus proceedings would be proper to raise jurisdictional questions respecting their removal to the District. *U.S. ex rel. Miller et al. v. Reing* (D.C. Pa. 1949, 81 F. Supp. 367).

#### Impeachment

In this case, the Court held that, inasmuch as the defendant's prior convictions of unauthorized use of vehicle and petit larceny were introduced in evidence on his own direct examination in effort to support contention that he was framed with respect to grand larceny charge by one of government's witnesses, he could not successfully complain of alleged error in permitting him to be impeached by prior convictions, notwithstanding decisions stating that the offense of taking property without right does not bear on credibility. *United States v. G. A. Lucas* (1970, 426 F. 2d 663, 138 U.S. App. D.C. 186).

In this case the court held that under the circumstances the defendant, who was convicted of housebreaking and grand larceny, was entitled to nonjury hearing to determine whether defendant would be allowed to take stand in front of jury without prosecution introducing evidence of defendant's prior convictions. *United States v. J. Coleman* (1969, 420 F. 2d 1313, 137 U.S. App. D.C. 110).

#### Included offense

Larceny is a necessarily included offense of robbery. *W. Walker, Jr. v. United States* (1969, 418 F. 2d 1116, 135 U.S. App. D.C. 280).

#### Inconsistent offenses

Under District of Columbia law, grand larceny and false pretenses are not inconsistent offenses. *P. A. Skantze v. United States* (1961, 288 F. 2d 416, 110 U.S. App. D.C. 14).

#### Inconsistent verdict

Where missing jewelry was never recovered, fact that the defendants charged with second-degree burglary and grand larceny arising out of apparent theft from jewelry store were convicted of burglary but found not guilty of grand larceny does not demonstrate inconsistency in jury verdict. *United States v. E. E. Simpson et ano.* (1970, 445 F. 2d 735, 144 U.S. App. D.C. 259).

Verdict whereby defendant was convicted of and codefendant was acquitted of grand larceny of automobile, unauthorized use of the automobile, and grand larceny of engine from another automobile, was not inconsistent since the jury rather than determining that codefendant lacked possession of stolen property, could have derived doubt as to whether codefendant collaborated in commission of charged offenses. *United States v. A. T. Johnson* (1970, 433 F. 2d 1160, 140 U.S. App. D.C. 54).

#### Indictment

It is sufficient in the indictment to describe the property by the generic name of the class to which it belongs. *Nordlinger v. United States* (1904, 24 App. D.C. 406, 70 L.R.A. 227).

#### Inferences

In prosecution under this section, wherein there was evidence that defendant possessed items recently taken from locked car, so that it was critical to defense for jury to realize that they were free to reject inference from fact of possession that defendant had stolen the property, trial court erred in preventing defendant's counsel in his closing argument from attempting to explain to jury meaning of word "inference" and to distinguish it from "presumption," but since defense subsequently made argument in form trial court found acceptable and court instructed jury fully and fairly on the point, defendant was not prejudiced. *United States v. C. Sawyer, Jr.* (1971, 443 F. 2d 712, 143 U.S. App. D.C. 297).

Since the evidence demonstrated that travel bag containing personal property of value in excess of \$100 was stolen when the owner's attention was only momentarily diverted therefrom and that defendant, three days thereafter was found in possession of certain items, of value of less than \$100, which had been in the stolen bag, and since the defendant did not explain possession but denied



possession, the jury is entitled to infer that defendant had stolen the bag, with all its contents, so as to be guilty of grand larceny. *United States v. P. M. Coggins* (1970, 433 F. 2d 1357, 140 U.S. App. D.C. 134).

Where evidence showed that crimes of housebreaking and larceny were committed in store building by two men, defendant was found in unexplained association with another who later confessed participation in crimes and each was in possession of some of the stolen property, evidence was sufficient to justify conviction. *Edwards v. United States* (1944, 139 F. 2d 365, 78 U.S. App. D.C. 226, certiorari denied 64 S. Ct. 523, 321 U.S. 769, 88 L. Ed 1064).

Where theater was entered and money and property stolen therefrom and on same night adjoining flower shop was entered and money stolen therefrom, it could reasonably be inferred that the man who stole from the theater also stole from the flower shop. *Bord v. United States* (1943, 133 F. 2d 313, 76 U.S. App. D.C. 205, certiorari denied 63 S. Ct. 77, 78, 317 U.S. 671, 87 L. Ed. 539).

#### Insanity defense

Ruling against defendant, charged with second-degree burglary and grand larceny, on issue of insanity was fully supported by record which included diagnosis of psychiatrist who found social maladjustment and drug dependence without manifest psychiatric disorder. *United States v. S. H. Thornton* (1972, 462 F. 2d 307, 149 U.S. App. D.C. 203).

#### Instructions

Since reasonable doubt instruction did not call jury's attention to their particular prior experiences, although there was a general reference to certainty such as "you would not hesitate to act upon in the more weighty and important matters relating to yourself", focus on jurors' personal lives was not sufficiently misleading to constitute plain error; however, far better would have been instruction in terms of what would cause an ordinary and prudent person to hesitate and pause. *United States v. W. F. Moore* (1970, 435 F. 2d 113, 140 U.S. App. D.C. 309; cert. denied 91 S. Ct. 1376, 402 U.S. 906).

There was no plain error requiring reversal of convictions of false pretenses and grand larceny on theory that court failed in its instructions to define specific intent when both crimes required such a finding since the defendant failed to except to charge given and such charge was adequate, although instruction set forth in criminal jury instructions would have eliminated specific intent from case if given. *Id.*

Instruction that it may be inferred that one intends natural and probable consequences of his act but that jury was not required to so infer does not constitute plain error requiring reversal of conviction of false pretenses and grand larceny since no exception was taken to charge, notwithstanding that charge should have contained crucial words "knowingly done or knowingly omitted." *Id.*

Charge that intoxication could negate specific intent essential to a finding of guilt, when such intent is required, is necessary in a proper case even without a request where sufficient evidence of intoxication is adduced. *Id.*

Instruction that intoxication could negate specific intent essential to finding of guilt of false pretenses and grand larceny was properly refused since the only evidence of intoxication related to evening before the offense. *Id.*

In a prosecution under this section in which it appeared that defendant was found in possession of certain contents of a recently stolen travel bag, instruction on rule that guilt of theft may be inferred from possession of recently stolen property, otherwise accurate, was not rendered insufficient by failure to explicitly inform the jury that theft of entire bag and its contents by defendant could be inferred only if it were proved beyond reasonable doubt that all were stolen at the same time, since it was absolutely clear that all the items were taken by a single act, while owner's attention was only momentarily diverted. *United States v. P. M. Coggins* (1970, 433 F. 2d 1357, 140 U.S. App. D.C. 134).

Fact that the jury was instructed, in prosecution for grand larceny of automobile and of automobile engine and for unauthorized use of motor vehicle, that if prerequisite to inference of guilt for possession of recently

stolen property exists beyond reasonable doubt it could be inferred that defendant was guilty of one or both of such offenses, but was not instructed that inference permissible was that defendant was person who committed such offense if government proved all of their essential elements beyond reasonable doubt, did not warrant reversal of conviction since, in other portions of charge, instruction was given on presumption of innocence and government's burden of proof beyond reasonable doubt. *United States v. A. T. Johnson* (1970, 433 F. 2d 1160, 140 U.S. App. D.C. 54).

Charge to jury fairly covered alibi defense of defendant, who was charged on counts of housebreaking and grand larceny, and also adequately indicated substance of defendant's position that he had no obligation to show that another was actually the transgressor. *R. Wright, Jr. v. United States* (1968, 404 F. 2d 1256, 131 U.S. App. D.C. 279).

In grand larceny prosecution, instruction on petit larceny was unnecessary where there was nothing in evidence to indicate value of less than \$100. *W. Chew v. United States* (1962, 298 F. 2d 334, 112 U.S. App. D.C. 6).

In prosecution for grand larceny, where judge instructed jury that the testimony of an accomplice should be received with care and scrutinized with caution, there was no error in refusing to charge that conviction could not rest on the uncorroborated testimony of an accomplice. *Ballard v. United States* (1956, 237 F. 2d 582, 99 U.S. App. D. C. 101, certiorari denied 77 S. Ct. 574, 352 U. S. 1017, 1 L. Ed. 2d 554).

In prosecution on count charging impersonation of officer and count charging grand larceny, error, if any, in charge instructing that jury could convict on second count even if they acquitted on first was harmless in view of fact that jury found defendant guilty of both offenses. *Wheeler v. United States* (1951, 190 F. 2d 663, 89 U.S. App. D. C. 143).

In prosecution for grand larceny, court's charge as a whole relating to larceny was an adequate statement of law applicable to the evidence and was fair to defendant. *Graham v. United States* (1951, 187 F. 2d 87, 88 U.S. App. D. C. 129, certiorari denied 71 S. Ct. 741, 341 U. S. 920, 95 L. Ed. 1353).

In prosecution for grand larceny, defendant's general request, made prior to rendition of charge, that court charge that if prosecuting witness gave defendant money intending that he may be able to pass title to it, there was no larceny, was an incorrect statement of law. *Id.*

In prosecution for housebreaking and larceny, where after jury had been out several hours the court recalled jury and stated that a juror should ask himself whether his view is reasonable or unreasonable, that he should not be bullheaded, that he should not be stubborn, and that if he found himself in a small minority he should ask himself "would I be shocking my conscience or reason if I yielded", use of the words "bullheaded" and "stubborn," did not coerce the jury, in view of additional parts of the instruction. *Bord v. United States* (1943, 133 F. 2d. 313, 76 U.S. App. D.C. 205, certiorari denied 63 S. Ct. 77, 78, 317 U.S. 671, 87 L. Ed. 539).

Where defendant was charged with entering and stealing from theater and with entering and stealing from adjoining flower shop on same night, instruction that, if jury found defendant guilty of entering and stealing from theater, they might but need not draw the inference that it was he who entered and stole from the flower shop, was proper. *Id.*

#### Intent

Unlawful taking is not sufficient, it must be coupled with the intent to steal. *Ryan v. United States* (1905, 26 App. D.C. 74, 6 Ann. Cas. 633).

Drunkenness no defense unless "so drunk as to be incapable of forming the intent to steal; that is to say, incapable of consciousness that he is committing a crime, incapable of discriminating between right and wrong." *Id.*

Where possession is secured by fraud, trick, or artifice the criminal intent must exist at the time the article is received. *Talbert v. United States* (1914, 42 App. D.C. 1, certiorari denied 34 S. Ct. 997, 234 U.S. 762, 58 L. Ed. 1581). See, also, *Woodward v. United States* (1912, 38 App. D.C. 323); *Miller v. United States* (1913, 41 App. D.C. 52, certiorari denied 34 S. Ct. 323, 231 U.S. 755, 58 L. Ed. 468).



Where possession of jewelry is secured by a salesman for the purpose of exhibiting the same to a prospective purchaser, and he subsequently converts it to his own use, the offense is larceny, and it is immaterial when the intent to convert was formed. *Talbert v. United States* (1914, 42 App. D.C. 1, certiorari denied 34 S. Ct. 997, 234 U.S. 762, 58 L. Ed. 1581).

#### Joinder

Counts of housebreaking and of larceny committed after the entry may be joined, and the court does not err in refusing to require the government to elect between them. *Lee v. United States* (1911, 37 App. D.C. 442).

#### Larceny by conversion

One who obtains money from another upon representation that he will perform certain service therewith for the latter, intending at the time to convert the money, and actually converting it, to his own use, is guilty of larceny. *P. A. Skantze v. United States* (1961, 288 F. 2d 416, 110 U.S. App. D.C. 14).

#### Liability of arresting officer

Arrest of one without warrant on strong suspicion of stealing a pocketbook containing \$30, precluded maintenance of action for false arrest, since the officers could not know the amount of money it contained. *Maghan v. Jerome* (1937, 88 F. 2d 1001, 67 App. D.C. 9).

#### Lineup

United States cannot be constitutionally required to furnish to the defendant prior to lineup descriptions of suspects as given by attending witnesses and names and addresses of all witnesses attending lineup; such disclosure is not an inherent element or right to assistance of counsel. *United States v. L. J. Eley* (D.C. App. 1972, 286 A. 2d 239).

#### Locus of conversion

The fact that one who, while intoxicated stole an automobile and converted the same beyond the District of Columbia does not prevent a prosecution here, when the original taking was in the District. *Ryan v. United States* (1905, 26 App. D.C. 74, 6 Ann. Cas. 633).

Indictment for larceny will not lie against one who steals property in another state and brings it into the District. *Brown v. United States* (1910, 35 App. D.C. 548, Ann. Cas. 1912A, 388). See, also, *Davis v. United States* (1901, 18 App. D.C. 468).

#### Ownership of stolen property

Under District of Columbia statute, gist of larceny is felonious taking and carrying away of anything of value, and ownership of property does not matter. *M. M. Levin v. United States* (1964, 338 F. 2d 265, 119 U.S. App. D.C. 156).

Defendant could be convicted of larceny by trick, even though money involved had been embezzled by victim. *Id.*

Under larceny indictment under District of Columbia statute, charging that defendant had taken union property which had been entrusted to victim, it was not necessary to show that money was received from union, but rather that money was that of union and that it had been entrusted to victim. *Id.*

#### Plea of guilty

Where the accused entered a plea of guilty at the time of arraignment without assistance of counsel, and before sentence was imposed court-appointed counsel indicated that there might be a question of the accused's mental capacity because of a prior skull fracture, District judge should have permitted a change of plea at time of sentencing. *W. L. Poole v. United States* (1957, 250 F. 2d 396, 102 U.S. App. D.C. 71).

In prosecution for housebreaking, larceny and destruction of property, wherein one defendant was permitted to change his plea in open court and in presence of jury and was asked by trial judge whether he admitted committing offense and replied that he did admit being with "them," there was error which, in view of circumstantial and inconclusive nature of evidence, would require reversal of another defendant's conviction. *Gaynor v. United States* (1957, 247 F. 2d 583, 101 U.S. App. D. C. 177).

Where evidence in prosecution for housebreaking and grand larceny disclosed close association between defendant and codefendant in events leading to their arrests, receiving codefendant's plea of guilty in presence of jury, and calling attention to such plea during taking of evidence and while instructing jury, was prejudicial to defendant's right to be tried solely on evidence against him. *Leroy Payton v. United States* (1955, 222 F. 2d 794, 96 U.S. App. D. C. 1).

#### Prejudicial error

In this case, assuming that failure of the trial judge to inform defendant's counsel of larceny charge before he summed up constituted error, where defendant was indicted for robbery and assault with a deadly weapon, however, that failure lacked the prejudice necessary to constitute reversible error where, inter alia, defendant's admission in open court established his intention and his attempt to trick complainants, so that damage was done when defendant took the stand it was not likely that a variation in summation would have changed the verdict. *W. Walker, Jr. v. United States* (1969, 418 F. 2d 1116, 135 U.S. App. D.C. 280).

#### Prior acquittal

On plea of prior acquittal, the test of the identity of offenses that has commonly been applied in such cases is whether the facts necessary to conviction under the second indictment would have been sufficient, if proved, to warrant a conviction under the first. *Nordlinger v. United States* (1904, 24 App. D.C. 406, 70 L.R.A. 227).

#### Probable cause

Police officers who saw parked automobile resting on its axles and three tires scattered nearby when they came upon scene at which two security officers from nearby apartment building had stopped the defendant, observed by security officers walking away from vicinity of vehicle carrying jumper cables and a jack plate, for questioning during which neighbor called out from window to say that defendant was one of the men who had been "messing" with stripped vehicle had probable cause to arrest for petty larceny notwithstanding arresting officers did not actually see the defendant remove or carry away tires from vehicle. *United States v. C. E. Bynum* (D.C. App. 1971, 283 A. 2d 649).

In this case, since the police officers were investigating reported burglary, and defendants were seen carrying coffee table, and their distinctive clothing matched clothing of men seen in vicinity of burglary, and there was a furtive disposal of instrumentalities of burglary by one defendant, and other defendant attempted to get his gun out of pocket as officers approached, there was probable cause for arrest of defendants and for their search and search of their automobile. *United States v. R. Cunningham et ano.* (1970, 424 F. 2d 942, 138 U.S. App. D.C. 29).

#### Proceeds of check

Embassy employee who, with intent to steal, represented to superiors that money was needed for embassy's cash account and thus procured their signatures to checks, the proceeds of which he kept for himself, falsifying entries in cash journal to cloak transaction, was guilty of false pretenses and grand larceny, under District of Columbia law. *P. A. Skantze v. United States* (1961, 288 F. 2d 416, 110 U.S. App. D.C. 14).

#### Proof

In larceny cases, the Government must prove each and every element of crime charged, including value of property taken. *J. T. Boone v. United States* (D.C. App. 1972, 296 A. 2d 449).

#### Questions for jury

Evidence, in prosecution for theft and unauthorized use of motor vehicle, that appellant and another defendant took truck with paint spray pump, both of which appellant knew were not owned by fellow defendant, and that they had traveled 175 miles on way to another state, and had arranged to sell or pledge the pump in exchange for gasoline, oil and whiskey, was sufficient, in absence of any explanation, to raise issue for jury on question of defendant's guilty knowledge and intent. *Gilbert v. United States* (1954, 215 F. 2d 334, 94 U.S. App. D. C. 321).



**Review**

Record on appeal from conviction for attempted grand larceny did not disclose material and prejudicial variance between indictment and conviction and proof, prejudicial error in precluding cross-examination concerning ownership of property, or application of erroneous concept of crime of attempted larceny by trick. *Pearce v. United States* (C.A. D.C. 1960, 286 F. 2d 532).

Record in prosecution for housebreaking and larceny established that defendant received effective assistance of counsel, though defendant's counsel failed to seek to impeach complaining witness by use of police investigation report containing statements attributed to complaining witness. *Williams v. United States* (C.A. D.C. 1960, 282 F. 2d 867).

In prosecution for robbery and housebreaking where the Court of Appeals found no error affecting the substantial rights of the defendant, the judgment would be affirmed. *Baker Jr. v. United States* (1956, 234 F. 2d 685, 98 U. S. App. D. C. 250, certiorari denied 77 S. Ct. 136, 352 U. S. 901, 1 L. Ed. 2d 89, certiorari denied 78 S. Ct. 98, 355 U. S. 864, 2 L. Ed. 2d 70, rehearing denied 78 S. Ct. 152, 355 U. S. 886, 2 L. Ed. 2d 116, certiorari denied 79 S. Ct. 1145, 359 U. S. 1005, 3 L. Ed. 2d 1033, rehearing denied 80 S. Ct. 48, 361 U. S. 857, 4 L. Ed. 2d 97, certiorari denied 80 S. Ct. 1071 362 U. S. 983, 4 L. Ed. 2d 1017, rehearing denied 80 S. Ct. 1603, 363 U. S. 832, 4 L. Ed. 2d 1526).

Where general sentence imposed upon accused, who was charged under two count indictment with housebreaking and larceny, was within the maximum sentence permitted for housebreaking, reviewing court could affirm the judgment without considering alleged errors concerning conviction for larceny. *Nelms v. United States* (1954, 215 F. 2d 678, 94 U. S. App. D. C. 267).

**Search and seizure**

Where police officer, after locating car stripped of its transmission and other parts, and while attempting to determine locale of stripping, observed tell-tale sweepings of nuts and bolts in front of a three-car garage and officer peered through an eight or nine-inch gap between garage doors with aid of flashlight and noticed a transmission shaft and noticed that speedometer cable had been clipped, and officer returned to stripped car and checked its speedometer cable that showed it, too, had been clipped, and officer, after returning to his precinct, decided it was better to return to garage and proceeded to do so, it was not an unreasonable seizure under Fourth Amendment for officer to step inside, identify transmission again, and have it moved out along with other stolen auto parts that were already in process of being spirited away. *United States v. H. Wright* (1971, 449 F. 2d 1355, 146 U.S. App. D.C. 126; cert denied 92 S. Ct. 986, 405 U.S. 947).

Probable cause for arrest existed when driver of automobile, who started to drive away without his lights on, was stopped by police and dome light showed articles in automobile which had just been reported stolen from another automobile in the area as driver got out to show officers his registration card, and such probable cause was sufficient to support search and seizure of reportedly stolen articles. *R. A. Campbell, Jr. v. United States* (1961, 289 F. 2d 775, 110 U.S. App. D.C. 109).

**Search without warrant**

Where police officer, who saw defendant walking along street about 2:00 in the morning, and who thought defendant had narcotics, without a warrant stopped defendant, who admitted that he had not worked for over a year, and had maintained himself by gambling, and officer then informed defendant that he was arresting him for vagrancy and required him to disrobe, search, which led to discovery of stolen money orders, was an unreasonable and unlawful violation of defendant's rights as a citizen, rendering stolen money orders inadmissible in prosecution for forgery, housebreaking, grand larceny, and interstate transportation of falsely made securities. *White, etc. v. United States* (1959, 271 F. 2d 829, 106 U.S. App. D.C. 246).

Where jewelry had been taken from scene of murder and officers were informed that a man was selling some jewelry on a street, they had right and duty to approach, confront and interrogate him though they had no war-

rant. *Lee v. United States* (1955, 221 F. 2d 29, 95 U. S. App. D. C. 156).

Where defendant was arrested late at night without a warrant and booked on an open charge for investigation, statements of defendant while in jail that he had nothing to hide and that the officers could go and see for themselves did not establish an agreement that the officers could search the defendant's household without first procuring a warrant. *Judd v. United States* (1951, 190 F. 2d 649, 89 U. S. App. D. C. 64).

**Seizure defined**

Where officers had right and duty to confront and interrogate suspect in investigation of murder, and suspect on alighting from automobile dropped handkerchief containing jewelry into street, action of officers in taking jewelry was not "seizure" in legal sense and same was competent evidence in larceny prosecution and trial court properly refused to suppress it as evidence. *Lee v. United States* (1955, 221 F. 2d 29, 95 U. S. App. D. C. 156).

**Sentence**

Defendant found guilty of second-degree murder, housebreaking, and larceny could be sentenced on each conviction with sentences running consecutively. *United States v. G. D. Butler* (1972, 462 F. 2d 1195, 149 U.S. App. D.C. 300).

Legislative intent with regard to crimes of murder, housebreaking, and larceny was not so ambiguous as to require invocation of rule of lenity precluding imposition of consecutive sentences on defendant convicted of all three charges. *Id.*

In case involving concurrent sentences for burglary II and grand larceny, since there is a question as to adequacy of proof of grand larceny that property taken had a value of \$100 or more, principle that appellate court may reverse a judgment as to one of sentences, if its validity is beset by substantial doubt, where there is neither injustice done defendant nor a need of government overridden, will be applied to reverse concurrent sentence for grand larceny, while remanding case to trial court for entry of concurrent sentence on petit larceny. *United States v. W. D. Henderson* (1970, 439 F. 2d 531, 142 U.S. App. D.C. 21).

The single taking of an automobile can constitute both offense of grand larceny of automobile and offense of unauthorized use of automobile, and can authorize separate though concurrent sentences under each. *United States v. A. T. Johnson* (1970, 433 F. 2d 1160, 140 U.S. App. D.C. 54).

In prosecution for grand larceny and unauthorized use of a vehicle, imposition of sentences on defendant of from two to five years on the unauthorized use count and from two to seven years on the grand larceny count, was proper even though the two offenses grew out of the same set of facts and circumstances and offense of unauthorized use was included in that of grand larceny, where sentences were imposed to run concurrently. *Evans v. United States* (1956, 232 F. 2d 379, 98 U. S. App. D. C. 122).

Where person having been sentenced for two to four years for grand larceny, served 25 months and was then resentenced to serve 15 months on grounds that the prior sentences were void because the Indeterminate Sentence Act did not apply to such actions, sentence did not run as of date of the original sentences. *De Benque v. United States* (1936, 85 F. 2d 202, 66 App. D.C. 36, 106 A.L.R. 839, certiorari denied 56 S. Ct. 960, 298 U.S. 681, 80 L. Ed. 1402, rehearing denied 57 S. Ct. 6, 299 U.S. 620, 81 L. Ed. 457).

**Severance of counts**

It was within trial court's discretion to grant government's motion for severance of counts in prosecution for grand larceny and housebreaking where government made at least a threshold showing of prejudice, in that, unexpectedly, the necessary witnesses as to two transactions could not be available at the same time, and where there was a lack of any specific prejudice claimed by defendant. *D. E. Garriss, Jr. v. United States* (1969, 418 F. 2d 467, 135 U.S. App. D.C. 251).

Joining in a single indictment nine counts charging the defendant with willfully attempting to evade pay-



ment of federal income taxes, larceny and interstate transportation of fraudulently obtained funds, assisting another to falsify his federal income tax return and conspiring to defraud government and defeat collection of taxes, if error, was harmless, under circumstances. *R. G. Baker v. United States* (1968, 401 F. 2d 958, 131 U.S. App. D.C. 7; cert. denied 91 S. Ct. 367, 400 U.S. 965).

#### Unexplained possession of stolen property

The unexplained exclusive possession of stolen property, shortly after the commission of larceny, does not raise presumption of law that defendant committed larceny, but it may satisfy jury and warrant verdict of guilty. *Wright v. United States* (1951, 189 F. 2d 699, 89 U. S. App. D. C. 70).

In prosecution for housebreaking and grand larceny, trial court committed no reversible error in charging that if defendant's possession of recently stolen property was not accounted for in that satisfactory, straightforward and truthful way that would stamp it as an honest accounting, then such possession would be a foundation for a presumption of guilt against the possessor, even though trial court could have chosen more exact language in its attempt to express limited character of presumption to which it was referring. *Id.*

"The unexplained exclusive possession of stolen property, shortly after the commission of a larceny, may satisfy the jury and warrant a verdict of guilty" of larceny. *Tractenberg v. United States* (1924, 293 F. 476, 53 App. D.C. 396).

Possession of recently stolen property, unexplained, is sufficient to support conviction for larceny. *Edwards v. United States* (1944, 139 F. 2d 365, 78 U.S. App. D.C. 226, certiorari denied 64 S. Ct. 523, 321 U.S. 769, 88 L. Ed. 1064).

#### Value—Evidence of

Testimony of owner of two sets of stolen golf clubs that one set had cost \$211, that other set had cost \$101 and that clubs could have been sold for at least \$50 and physical presence of equipment in trial court constituted insufficient evidence of value to support conviction of grand larceny. *J. T. Boone v. United States* (D.C. App. 1972, 296 A. 2d 449).

Where evidence of value of stolen items was insufficient to sustain conviction of grand larceny but was sufficient to prove petit larceny, conviction of grand larceny would be reversed and case would be remanded with instructions to enter verdict of guilty of petit larceny and to resentence accordingly. *Id.*

Evidence of value of articles involved in charge of grand larceny was inadequate to sustain finding of jury that they were of value of \$100 or upward. *A. K. Ransom v. United States* (1964, 337 F. 2d 550, 119 U.S. App. D.C. 154).

Conviction for grand larceny could not stand where value of articles involved was less than \$100. *Id.*

#### — Jury question

In a grand larceny case, jury cannot be allowed to speculate as to value of stolen property merely from appearance of property. *J. T. Boone v. United States* (D.C. App. 1972, 296 A. 2d 449).

#### Variance

Where indictment alleges ownership in A B R, and the proof shows A P R, the variance is not prejudicial. *Jones v. United States* (1923, 289 F. 536, 53 App. D.C. 138). See, also, *Williams v. United States* (1894, 3 App. D.C. 335).

#### — Directed verdict

Where court instructed jury that if it should find defendant guilty of embezzlement as to either transaction, it would have to return a verdict of not guilty as to the companion larceny count, but jury found defendant guilty of both embezzlement and larceny as to the same transaction, District Court had right to direct verdict of acquittal on larceny count, and defendant was not prejudiced by any alleged "choice of verdicts" since penalty for embezzlement was less than that for larceny. *United States v. Daigle* (D.C.D.C. 1957, 149 F. Supp. 409, affirmed 101 U.S. App. D.C. 286, 248 F. 2d 608, certiorari denied 78 S. Ct. 344, 355 U.S. 913, 2 L. Ed. 2d 274).

In grand larceny prosecution, court properly refused to direct verdict for the defendant. *Graham v. United States* (1951, 187 F. 2d 87, 88 U. S. App. D. C. 129, certiorari denied 71 S. Ct. 741, 341 U. S. 920, 95 L. Ed. 1253).

#### Withholding of evidence by government

Record in proceeding for habeas corpus or new trial alleging that evidence in government's possession was not disclosed at petitioner's trial on charge of grand larceny by trick established that government was not negligent in not disclosing evidence consisting of check drawn by bank to replenish its supply of \$1,000 bills and statement of bank officer relating to alleged exchange of \$1,000 bills for \$20 bills, but rather established that such information was not sufficiently probative or material to require disclosure to defense. *M. M. Levin v. N. deB. Katzenbach* (1966, 262 F. Supp. 951).

Record in proceeding for habeas corpus or new trial alleging that evidence in government's possession was not disclosed at petitioner's trial on charge of grand larceny by trick failed to establish that jury might have been led to entertain reasonable doubt as to petitioner's guilt had defense been able to show that bank officers did not remember changing \$1,000 bills, which were subject of alleged larceny, into smaller ones. *Id.*

#### § 22-2202. Petit larceny—Order of restitution.

Whoever shall feloniously take and carry away any property of value of less than \$100, including things savoring of the realty, shall be fined not more than \$200 or be imprisoned for not more than one year, or both. And in all convictions for larceny, either grand or petit, the trial justice may, in his sound discretion, order restitution to be made of the value of the money or property shown to have been stolen by the defendant and made way with or otherwise disposed of and not recovered. (Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 827; June 30, 1902, 32 Stat. 535, ch. 1329; Aug. 12, 1937, 50 Stat. 628, ch. 599; June 29, 1953, 67 Stat. 99, ch. 159, § 215(c).)

#### AMENDMENTS

1953—Act June 29, 1953, increased the value from \$50 to \$100.

1937—Act Aug. 12, 1937, increased the value from \$35 to \$50.

1902—Act June 30, 1902, added the second sentence.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23-581.

#### NOTES TO DECISIONS

##### Abandonment

Abandonment is an ultimate fact or conclusion based generally upon combination of act and intent. *M. Peyton, Jr. v. United States* (D.C. App. 1971, 275 A. 2d 229).

Abandonment must be made to appear affirmatively by the party relying thereon, and intention to abandon will not ordinarily be presumed, particularly if conduct of the owner can be explained consistently with continued claim. *Id.*

##### Abuse of discretion

Where defendant could not assure court that positions of aperture through which security officer watched defendant take slacks from rack to dressing room, of the pillar near dressing rooms and of fitting rooms had not changed in interval between arrest and trial of defendant for petit larceny, court did not abuse discretion in denying defendant's request for a jury viewing of scene. *N. E. Minor v. United States* (D.C. App. 1972, 294 A. 2d 171).

##### Applicability of Miranda rule

Principles of Miranda did not apply to statements made by defendant, when he was stopped and asked if automobile was his, and if the property taken from the automobile belonged to him, and asked the license number of the automobile, where appellant was detained only because officer felt his conduct required investigation and defendant was questioned briefly and his answers were uncoerced and voluntary. This does not constitute custodial interrogation. *T. A. Green v. United States* (D.C. App. 1967, 234 A. 2d 177).



**Arrest without warrant**

Probable cause is not to be evaluated from remote vantage point of library but from viewpoint of prudent and cautious police officer on scene at time, and question to be answered is whether such an officer, in particular circumstances, conditioned by his observations and information and guided by whole of his police experience, reasonably could have believed that crime had been committed by person to be arrested. *S. Jackson, Jr. v. United States* (1962, 302 F. 2d 194, 112 U.S. App. D.C. 260).

Police are entitled to rely upon hearsay and upon various other factors which would not be admissible in evidence against accused at trial in determining whether there is probable cause for arrest. *Id.*

Total information available to officers, with respect to defendant charged with housebreaking and grand larceny, including separate accusations by two persons that he had been source of stolen gun, together with one of their recollections of rhinestone bracelet in defendant's closet, matching description of similar object on list of stolen property, reasonably warranted a belief that he had probably committed felonious acts in which gun and bracelet were originally stolen, and such, together with practical necessities of pursuit, justified his arrest without warrant. *Id.*

Officers, who were investigating drugstore robbery, who knew that defendant had committed similar robbery two years before, and who discovered, on defendant's premises, heap of bottles and cigarettes, which were of type stolen from drugstore, had probable cause to believe defendant was guilty of felony, and, therefore, were justified in arresting defendant without warrant. *Ellison v. United States* (1953, 206 F. 2d 476, 93 U. S. App. D. C. 1).

Stealing of less than \$35 was a misdemeanor and an officer could not arrest for a misdemeanor without a warrant unless it was committed in his presence or within his view. *Maghan v. Jerome* (1937, 88 F. 2d 1001, 67 App. D.C. 9).

The entering of a building with intent to commit any offense is a felony, and where officer's information gave him probable cause to believe that defendant had entered building with intent to steal, and defendant's appearance fitted "lookout" description given officer, no warrant was needed and arrest of defendant was lawful; and fact that district attorney saw fit to reduce charge from housebreaking to petit larceny did not change circumstances of arrest or invalidate confession obtained while defendant was being held under such arrest. *Scott, Jr. v. United States* (D.C. Mun. App. 1959, 147 A. 2d 767).

**Attempted petit larceny**

Attempted petit larceny is not a lesser included offense under petit larceny statute. *United States v. R. Pearson* (D.C. App. 1964, 202 A. 2d 392).

**Burden of proof**

Prosecution's burden of proving that clothing found in possession of defendant in petit larceny prosecution belonged to someone else was an affirmative one, and it was not sufficient merely to prove that property did not belong to defendant. *Washington v. United States* (D.C. App. 1965, 213 A. 2d 819).

In prosecution for petit larceny, burden of proof to establish a taking and asportation by defendant is more onerous on the prosecution where the larceny alleged occurs in a self-service store. *Groomes v. United States* (D.C. Mun. App. 1959, 155 A. 2d 73).

**Cause for arrest**

Police officers, who observed defendant carrying a screwdriver and companion carrying a television set, who had not been expressly advised of commission of a particular crime and who then approached companion and defendant who dropped screwdriver and then denied ownership thereof, did not have probable cause to believe a crime had been committed and thus did not have probable cause to make arrest, and seizure of television set during that arrest was illegal and set could not have been properly admitted into evidence in prosecution for petit larceny, destruction of property, and attempted burglary II. *C. E. Campbell v. United States* (D.C. App. 1971, 273 A. 2d 252).

Where a police officer had a conversation with the victim of an assault and petit larceny and proceeded in

patrol car in search of the assailants, and the stolen articles were in plain view of officer in defendant's hand and at his feet in the gutter, an arrest was authorized when the officer saw the stolen articles. *R. L. Thompkins v. United States* (D.C. App. 1969, 251 A. 2d 636).

Where in making an initial stop of the defendant the officer was engaged in routine on-the-street investigation in nearby area of a crime minutes after it occurred in an early hour of the morning in his effort to find perpetrator while the trail was still warm, and under these circumstances the initial stop of defendant was neither an arrest nor an arbitrary detention, but arrest occurred after officer saw the articles which fit description of stolen property, which gave sufficient cause to arrest, and seizure was not invalid. *Id.*

**Consecutive sentences for two separate offenses**

The distinctions that assault and petit larceny are separate and distinct offenses requiring different elements of proof, and that one is a crime of general intent against the person, and the other a crime of specific intent against property, are no longer conclusive in determining the legality of consecutive sentences for two crimes committed in a single course of conduct. *G. Mahoney v. United States* (D.C. App. 1968, 243 A. 2d 684).

The compelling reasons which call for the application of the rule of lenity are absent in this case, and there is no substantial doubt Congress would have intended, in the discretion of the court, that consecutive punishment be imposed for historically separate offenses, against different societal interests, for which it has provided separate deterrents. *Id.*

**Continuance**

Where the trial court had said a doctor's certificate would be required before the case could be continued on account of appellant's illness, and appellant was produced in court, and the trial continued without further objection, the question of granting the continuance was in the judicial discretion of the trial court. *Campbell v. United States* (D. C. Mun. App. 1949, 65 A. 2d 191).

**Conversion**

One who is handed a bill or coin for the purpose of making change receives only custody of the money, and if he returns less than the correct change, with the felonious intent of converting the remainder to his own use, he is guilty of larceny. *Rice v. United States* (D.C. Mun. App. 1949, 64 A. 2d 567).

**Court's question of defense counsel**

Where the trial court asked defense counsel if he had ever asked defendant if he had taken television set in question, if the court was inquiring of defense counsel whether he ever asked his client if he was guilty, the question was highly improper as attempted invasion into privileged communications between counsel and client; and if the question was limited to whether counsel asked his client while on witness stand whether he took the set, question was also improper. *J. A. Samuel v. United States* (D.C. App. 1971, 272 A. 2d 105).

**Criminal intent**

The fact that defendant placed meat in shopping bag in self-service store did not provide valid reason for trial court in prosecution for petit larceny to infer a criminal intent or a possession clearly adverse to interests of store, where an attempt by defendant to conceal the meat was not proven. *S. A. Durphy v. United States* (D.C. App. 1967, 235 A. 2d 326).

**Due process**

Arresting officer's return of the defendant, charged with petit larceny, to scene of the crime not more than 15 minutes after the larceny to determine if someone could identify the defendant was not denial of due process since the officer had not been present when the offense was committed and he knew none of the circumstances surrounding the larceny. *J. A. Hill v. United States* (D.C. App. 1971, 280 A. 2d 925).

**Effective assistance of counsel**

Record in this case fails to sustain contention that defendant was denied effective representation of counsel. *M. Peyton, Jr. v. United States* (D.C. App. 1971, 275 A. 2d 229).



The court held that, record on appeal from conviction for petit larceny and assault did not establish denial of effective assistance of counsel *J. Bell, Jr. v. United States* (D.C. App. 1970, 260 A. 2d 690).

Fact that new counsel was appointed not more than 60 minutes before trial did not amount to ineffective assistance of counsel of defendant charged with simple assault, unlawful entry and petit larceny where no continuance was requested and defendant announced he was ready for trial, factual situation was not so complex as to necessitate any extensive investigation and there were no witnesses for the defense who could have been called, new counsel was experienced and diligent and made no claim that he was hampered by appointment shortly before trial. *S. A. Tuttle v. United States* (D.C. App. 1968, 238 A. 2d 590).

#### Establishment of corpus delicti

To establish the corpus delicti of the crime of larceny, the Government must prove that the property was lost by the owner as a result of a felonious taking; the "corpus delicti" consists of proof that the crime charged was committed by someone. *T. Williams and B. L. Short v. United States* (D.C. App. 1969, 254 A. 2d 722).

#### Evidence—Admissibility

Where arresting police officer while in pawn shop observed typewriter bearing sticker indicating that it belonged to Department of Public Health, officer had probable cause to arrest the defendant who brought in the typewriter and typewriter is admissible, and arresting officer's ignorance of actual practice of Department in disposing of surplus typewriters is irrelevant. *United States v. E. S. Wallace* (D.C. App. 1971, 283 A. 2d 32).

Screwdriver which was dropped by a defendant as police officer approached was abandoned property since the defendant subsequently denied ownership, and screwdriver was admissible in prosecution for petit larceny, destruction of property and attempted burglary. *C. E. Campbell v. United States* (D.C. App. 1971, 273 A. 2d 252).

Where items allegedly stolen from complaining witness were plainly visible from hallway through open door of defendant's apartment, and complaining witness gathered up articles claimed and handed them to arresting officer, who had remained in hallway, complaining witness acted as arm of police in reducing articles to possession, and inasmuch as officer did not have a search warrant, search and seizure were unlawful, evidence obtained by complaining witness was inadmissible in prosecution of defendant and, even though case was tried by court without jury, defendant was entitled to a new trial. *Moody v. United States* (D.C. Mun. App. 1960, 163 A. 2d 337).

Where detective arranged to meet defendant in poolroom and upon meeting him suggested that they go to precinct for their discussion and while at station house he asked defendant to see any money he had on his person and defendant voluntarily produced a dollar bill which was found to have serial number corresponding with serial number on a bill stolen the night before from a pharmacy, whereupon he was placed under arrest, one dollar bill was properly admitted in subsequent prosecution for petit larceny. *Jackson v. United States* (D.C. Mun. App. 1958, 146 A. 2d 577).

In prosecution for petit larceny involving theft of currency from a pharmacy formerly employing defendant, on whose person was found a one dollar bill containing a serial number corresponding with one of serial numbers of currency that had been stolen, two one dollar bills taken from poolroom cash register where defendant had just recently made change, having serial numbers corresponding with two bills of stolen currency, were admissible although bills were not directly connected with defendant and standing alone would be insufficient to support a conviction. *Id.*

In prosecution of maid for stealing currency from room in rooming house, admission of officer's testimony that from his investigation he learned that only maid and complaining witness had keys to room did not result in prejudice to maid, where true facts relating to keys were brought to light by other evidence. *Brock v. United States* (D.C. Mun. App. 1956, 122 A. 2d 763).

Where defendant was convicted of petit larceny upon evidence obtained during an unlawful search and seizure,

it must be reversed as the search of her desk was an invasion upon her privacy so as to constitute a violation of the Fourth Amendment. *Blok v. United States* (D.C. Mun. App. 1950, 70 A. 2d 55).

In prosecution for petit larceny, which if committed was complete before fight ensued, admission of testimony concerning fight and nature of prosecuting witness' wounds was prejudicial error. *Furr v. United States* (D.C. Mun. App. 1943, 32 A. 2d 111).

In prosecution for petit larceny, admission of evidence regarding subsequent fight and nature of wounds received by prosecuting witness was so plainly prejudicial that appellate court had right to notice and correct the error even if it had not been properly saved for review. *Id.*

#### — Inconsistent testimony

Even though corroborating witness' testimony to effect he was in security office when defendant was searched for missing slacks was at odds with testimony of principal prosecuting witness, in view of fact that security office had both inner and outer room, discrepancy was not serious. *N. E. Minor v. United States* (D.C. App. 1972, 294 A. 2d 171).

#### — Prior conviction

Allowing government to question defendant accused of petit larceny as to his former larceny convictions did not constitute an abuse of discretion in view of fact that trial judge fully instructed jury that they were to consider such evidence only in connection with their evaluation of credence to be given defendant's testimony and that prior convictions were in no way evidence of defendant's guilt of present charge. *F. Ginyard v. United States* (D.C. App. 1967, 232 A. 2d 590).

#### — Sufficiency

Evidence, including eyewitness testimony by two police officers that the defendant bumped into complaining witness and stealthily removed wallet from her handbag, that he quickly passed wallet to an accomplice, who hurried from scene, and that victim of crime reacted in an emotional manner on discovering her loss, is sufficient to support convictions of petit larceny and of assault. *M. A. Riley v. United States* (D.C. App. 1972, 291 A. 2d 190).

Evidence that the defendant was standing in front of a broken window of store that was being burglarized by two other men, one of whom had a casual acquaintance with the defendant, while perhaps raising a possibility or even strong suspicion of participation in criminal activity, is not sufficient to find defendant guilty beyond a reasonable doubt of attempted burglary in the second degree and of attempted petit larceny. *W. T. Perry v. United States* (D.C. App. 1971, 276 A. 2d 719).

Evidence that on two occasions in one day the defendant was in room where television set was located and that the following day the set was missing is insufficient to sustain conviction for petit larceny. *J. A. Samuel v. United States* (D.C. App. 1971, 272 A. 2d 105).

The lack of evidence that automobile was parked within the District of Columbia when the theft of license tags requires reversal of conviction for petit larceny for theft of license tags. *United States v. C. R. Howard* (1970, 433 F. 2d 505, 139 U.S. App. D.C. 347).

In this case, the court held that testimony as to ownership of damaged vending machine, purportedly based on witness' own knowledge, was not hearsay and was sufficient to prove ownership as alleged in information charging malicious injuring of property and attempted petit larceny. *L. Killens v. United States* (D.C. App. 1970, 263 A. 2d 44).

Evidence was not sufficient to sustain a conviction for aiding and abetting petit larceny on a showing that at time officer observed suspected criminal activity defendant was standing near the right side of automobile at a point somewhere between automobile, which contained wine and beer allegedly stolen from store, and the store. *T. Williams and B. L. Short v. United States* (D.C. App. 1969, 254 A. 2d 722).

Evidence did not sustain conviction of petit larceny of wine and beer in violation of District Code. *Id.*

Evidence was sufficient in juvenile court proceeding to support finding that the minor was guilty of house-breaking and petty larceny. *In the Matter of N. M. Ellis*



(D.C. App. 1969, 253 A. 2d 789; remanded 429 F. 2d 214, 139 U.S. App. D.C. 30).

Defendant's responsibility for housebreaking was established by being with those who broke store window coupled with his flight with stolen goods. *Id.*

Evidence was sufficient to sustain conviction for petit larceny. *L. L. Cooper v. United States* (D.C. App. 1969, 248 A. 2d 826).

Evidence was sufficient to sustain conviction of petit larceny allegedly committed by obtaining money from complaining witness by trick through procedure variously known as "flimflam," "faith and trust," or "confidence game," whereby defendant and another, ostensibly strangers to each other, persuaded victim to turn over to one of them a sum of money to demonstrated victim's trustworthiness as a prerequisite to obtaining easy money, even though defendant's partner was never apprehended. *J. J. Few v. United States* (D.C. App. 1968, 248 A. 2d 125).

Evidence that fingerprints of defendant appeared on glass surface, which had once been outside surface of drugstore entrance was insufficient to sustain conviction of attempted housebreaking, destroying property, and petit larceny. *A. W. Townsley v. United States* (D.C. App. 1967, 236 A. 2d 63).

Evidence was insufficient to sustain petit larceny conviction of defendant who placed meat in shopping bag in self-service store. *S. A. Durphy v. United States* (D.C. App. 1967, 235 A. 2d 326).

On the record the evidence was sufficient to sustain defendant's conviction of petit larceny in taking property from parked automobile. *T. A. Green v. United States* (D.C. App. 1967, 234 A. 2d 177).

Conviction of petit larceny for taking money by means of "film-flam" operation in which alleged accomplice persuaded victim to give him his money to be hidden in a handkerchief was not supported by evidence in absence of showing that any words were spoken by defendant implicating him in the crime, that any inducements were made to victim by defendant, that defendant put any money in the handkerchief, that defendant had anything to do with the hiding or that there was any criminal association or conspiracy between purported accomplice and defendant. *C. E. McMillan v. United States* (D.C. App. 1967, 230 A. 2d 715).

Cigarettes found in defendants' possession, with same "wholesale numbers" as cigarettes left in store, but not otherwise identified as having come from store, had little, if any, probative value. *S. C. Davis and C. L. Colbert v. United States* (D.C. App. 1967, 230 A. 2d 485).

Evidence of defendants' physical and chronological proximity to scene of housebreaking, and their leaving at a trot, was insufficient to sustain conviction for attempted housebreaking and petit larceny. *Id.*

Evidence was ample to establish the offenses of petit larceny beyond a reasonable doubt. *V. J. Bond, Jr. v. United States* (D.C. App. 1967, 230 A. 2d 485).

Evidence, including evidence as to exclusive control or possession of television in defendant, sustained conviction for unlawful entry and petit larceny. *J. L. Benbow v. United States* (D.C. App. 1967, 227 A. 2d 772).

Testimony of detective that in department store he saw defendant take pair of slacks from rack and conceal it under his jacket, that defendant went by escalator to floor below and there, noticing that he was being followed, attempted to pull garment from under his jacket and place it among articles of boys' clothing established a prima facie case and did not fail for want of proof of asportation or of criminal intent and fact that concealment was brief and that defendant had been apprehended before he left the store did not absolve him. *J. W. McRae v. United States* (D.C. App. 1966, 222 A. 2d 848).

Testimony that automobile owner found that battery was missing from his vehicle, that defendant accused of petit larceny had asked officers whether they would let him go if he told them where he got battery, and that officers had notified owner of the incident at 3:30 of morning in question was sufficient to establish that automobile owner owned battery and had not given defendant permission to take it. *G. W. White v. United States* (D.C. App. 1966, 222 A. 2d 843).

Offer of defendant charged with petit larceny to take police officers to automobile of friend for whom defendant

had claimed to be taking battery to service station after officers observed defendant carrying battery at 2:30 A.M. and had asked him whether battery was his and where he had gotten it was not reasonably construable as having been forced by power exerted by officer or by defendant's submission thereto, for purpose of determining whether testimony concerning offer was admissible. *Id.*

Evidence that clothing found in possession of defendant belonged to another was insufficient to sustain conviction on petit larceny charge. *Washington v. United States* (D.C. App. 1965, 213 A. 2d 819).

Evidence was sufficient to sustain conviction for housebreaking, larceny and destroying movable property. *Braddy v. United States* (1955, 225 F. 2d 551, 96 U. S. App. D.C. 251).

Where jury could find beyond a reasonable doubt that both defendant and his companion entered a room with intent to steal and that either defendant or his companion stole watch, defendant's conviction of larceny of a watch and of entering a room with intent to commit larceny was authorized, notwithstanding that defendant's part in the crimes may have been only to stand guard. *Fretz v. United States* (1944, 140 F. 2d 468, 78 U.S. App. D.C. 290).

In prosecution for petit larceny, elements of a taking and asportation by defendant are satisfied, where evidence shows that property was taken from owner and was concealed or put in a convenient place for removal, and fact that possession of defendant was brief or that defendant was detected before goods could be removed from the owner's premises is immaterial. *Groomes v. United States* (D.C. Mun. App. 1959, 155 A. 2d 73).

Where evidence in prosecution for petit larceny disclosed that defendant, while shopping in self-service market, was seen by clerk to remove two articles from shelf and put them in her purse, which was inside a cart containing some groceries, and that defendant then closed the purse, and clerk and manager of store followed defendant to checkout line, and when she saw them she walked toward back of store and gave them the articles from her purse, there was a sufficient showing by the prosecution of a taking and carrying away of the articles by the defendant. *Id.*

Evidence was sufficient to sustain a conviction for petit larceny. *Jackson v. United States* (D.C. Mun. App. 1958, 146 A. 2d 577).

Evidence was sufficient to sustain conviction of stealing currency from locked brief case of occupant of rooming house where defendant was working as maid. *Brock v. United States* (D.C. Mun. App. 1956, 122 A. 2d 763).

Where after defendant left the store, he was arrested for petit larceny by the store detective who was the prosecuting witness and whose testimony was accepted as true by the jury, as it obviously was, the guilt of appellant was established beyond a reasonable doubt. *Campbell v. United States* (D.C. Mun. App. 1949, 65 A. 2d 191).

Defendant's assignment of error that there was insufficient evidence to justify conviction, where the testimony of complaining witness was uncorroborated, is unsound since it has been repeatedly held that generally testimony of a single witness may legally suffice as evidence upon which a jury may found the verdict. *Rice v. United States* (D.C. Mun. App. 1949, 64 A. 2d 567).

#### — Suppression

Heroin found in the defendant's pocket during search incident to an arrest for grand larceny should not have been suppressed on theory that the search which brought heroin to light infringed Fourth Amendment rights. *United States v. C. E. Bynum* (D.C. App. 1971, 283 A. 2d 649).

Denial of a motion to suppress evidence relating to stolen property and to narcotics paraphernalia found on the defendants after the arrest for a pedestrian traffic violation was proper. *J. R. West et ano. v. United States* (D.C. App. 1969, 249 A. 2d 740).

#### Fair and impartial trial

Record failed to establish that the tension which developed between court and counsel during course of trial was of such magnitude as to deny the defendant a fair and impartial trial. *B. Davis et ano. v. United States* (D.C. App. 1971, 272 A. 2d 106).



**Fraud or trick**

"Larceny" exists where there is a taking, against owner's will or without his consent, of thing which is subject of the crime. *W. W. Reed v. United States* (D.C. App. 1968, 239 A. 2d 156).

Taking of property by person who obtains its possession by means of fraud or trickery with preconceived design to appropriate it to his own use constitutes "larceny". *Id.*

Defendant who, with a companion, invited prosecuting witness to join them on visit to a prostitute and, en route, induced prosecuting witness to demonstrate his trust in defendant and companion by turning over his money to them and permitting them to walk around the block, and who then failed to return, was guilty of petit larceny. *Id.*

Where defendant, after approaching complaining witness and another person on street suggested that defendant could take witness and other person to place where they could have good time, and witness was called upon to prove trust by giving his money to defendant who was to walk around block with money, and defendant after turning corner and being confronted by police detective ran away, offense of petit larceny by trick was completed when defendant deviated from agreed course around block. *H. L. Williams v. United States* (D.C. App. 1968, 240 A. 2d 131).

**Impeachment**

Where the defendant was on trial for second-degree burglary and petit larceny, it was error to grant permission for impeachment by both of defendant's two-year-old convictions for attempted housebreaking and for petit larceny, but since the prosecution used only the attempted housebreaking conviction, no prejudice appeared. *United States v. J. L. Issac* (1971, 449 F. 2d 1040, 145 U.S. App. D.C. 378).

Regardless of a claim of prejudice by reason of similarity between offenses of robbery and housebreaking, permitting impeachment of the defendant, charged with housebreaking but found guilty of petit larceny, by evidence as to one prior robbery conviction was not error. *A. Moss v. United States* (D.C. App. 1969, 250 A. 2d 567).

Permitting impeachment by prior petit larceny conviction relating to defendant's credibility was a proper exercise of judicial discretion in subsequent petit larceny prosecution. *A. E. Bullock v. United States* (D.C. App. 1968, 243 A. 2d 677).

**Inconsistent verdict**

The trial court could have found defendant, who was carrying goods stolen from an apartment building, which he later abandoned when he attempted to flee, guilty of both attempted burglary and petit larceny charges on inference of guilt raised by defendant's unexplained possession of recently stolen property or even on the basis of this inference the trier of the facts could have had a reasonable doubt that defendant had necessary criminal intent upon entering apartment building to be convicted of attempted burglary, and thus verdicts of acquittal on attempted burglary charge and guilty on petit larceny charge were not necessarily inconsistent or irreconcilable. *H. Barnes v. United States* (D.C. App. 1969, 254 A. 2d 724).

Evidence was sufficient to sustain petit larceny conviction. *Id.*

**Indictment**

The attempt to identify particular room in indictment charging larceny of watch and entering a room with intent to commit larceny was harmless surplusage. *Fretz v. United States* (1944, 140 F. 2d 468, U.S. App. D.C. 290).

**Information—Amendment**

Where amendment of information charging attempted second-degree burglary, destroying private property, and petit larceny to reflect that property in question belonged to corporation in care and custody of individual, as opposed to individual alone as charged in original information, conformed to testimony at trial and no prejudice was occasioned by the defense, permitting the amendment was not error. *J. L. King v. United States* (D.C. App. 1970, 271 A. 2d 556).

**Instructions**

Contention that trial court committed plain error in failing to adequately instruct the jury on the elements of petit larceny was vitiated by fact that defense counsel neither submitted written instructions nor objected to

the court's instructions to the jury; moreover, defendant's trial counsel twice expressed satisfaction with the instructions and, though such instructions were not a model of clarity, they were sufficient to inform the jury of the elements of the offense. *M. J. Smith v. United States* (D.C. App. 1972, 295 A. 2d 64; cert. denied 93 S. Ct. 1932, — U.S. —).

In petit larceny prosecution which resulted when police officers saw the defendant and another take carton of matches from sidewalk in front of drugstore, defendant's testimony that he believed the property had been abandoned did not call for abandoned property instruction in absence of evidence that the store intended to abandon the property. *M. Peyton, Jr. v. United States* (D.C. App. 1971, 275 A. 2d 229).

Trial court's failure to preface the "satisfactorily explained" clauses with the word "that" in instructions concerning inference of guilt arising from possession of recently stolen property, unless possession is satisfactorily explained, did not constitute a directed verdict for the government on the issue of satisfactory explanation and did not constitute plain error in prosecution for unauthorized use of automobile and interstate transportation of automobile. *United States v. C. R. Howard* (1970, 433 F. 2d 505, 139 U.S. App. D.C. 347).

Trial court's lack of explicitness, in defining "satisfactorily explained" within instructions on inference of guilt arising from recent possession of stolen property unless possession is satisfactorily explained, did not give rise to negative inference that issue of whether the explanation was satisfactory was out of the case in prosecution for unauthorized use and interstate transportation of automobile and did not constitute plain error. *Id.*

In the absence of a request for instruction on defense theory that defendant innocently borrowed stolen automobile from another and since the defendant had testified to that effect, trial court's failure to deliver sua sponte instruction on the defense theory was not plain error in prosecution for unauthorized use and interstate transportation of stolen automobile. *Id.*

Instructions given by trial judge in prosecution for petit larceny was comprehensive and clearly presented to jury the elements of asportation and intent. *F. Ginyard v. United States* (D.C. App. 1967, 232 A. 2d 590).

Trial judge did not violate the rule of singling out and declaring the effect of certain facts, without consideration of other modifying facts, where by instructing the jury, he outlined the issues, and said among other things that "it was a question of fact for the jury to determine whether the cash register receipts had been obtained by defendant before, at the time of, or after his appearance at the store from which defendant was convicted of petty larceny of an item from the store." *Campbell v. United States* (D.C. Mun. App. 1949, 65 A. 2d 191).

**Jury—Viewing scene**

Where defendant's testimony corroborated basic features of security officer's description of his observations and defendant admitted he had taken pair of pants to dressing room and told security officer that he left pants in dressing room and returned to room with security officer to verify story, there was no conflict in evidence to warrant jury viewing of scene. *N. E. Minor v. United States* (D.C. App. 1972, 294 A. 2d 171).

**Plea of guilty**

In this case the court held that the defendant, who had pleaded guilty to charge of petit larceny, was entitled to withdraw guilty plea since the trial court, prior to accepting plea, informed defendant only that he could receive up to 360 days in jail, but did not inform him of possibility of being sentenced under Federal Youth Corrections Act for a longer confinement, even though the Rule in effect at time guilty plea was made did not expressly require the court to determine if defendant was aware of consequences of his plea. *L. R. Curtis v. United States* (D.C. App. 1970, 268 A. 2d 603).

Failure to move to withdraw guilty plea to misdemeanor charge made while defendant was 20 years old would not foreclose him from making motion to withdraw plea on contention that it had not been knowingly and intelligently made as he had not understood that he could be sentenced under Youth Corrections Act for longer period than year sentence provided for misdemeanor



charge but court reviewing conviction would remand case to give him opportunity to move district court for leave to withdraw plea. *R. B. Carter v. United States* (1962, 306 F. 2d 283, 113 U.S. App. D.C. 123).

In prosecution for housebreaking, larceny and destruction of property, wherein one defendant was permitted to change his plea in open court and in presence of jury and was asked by trial judge whether he admitted committing offense and replied that he did admit being with "them," there was error which, in view of circumstantial and inconclusive nature of evidence, would require reversal of another defendant's conviction. *Gaynor v. United States* (1957, 247 F. 2d 583, 101 U.S. App. D.C. 177).

Upon defendant's motion to withdraw his plea of guilty and to vacate and set aside sentence imposed upon him, court would treat defendant's papers as motion pursuant to statute pertaining to remedies on motion attacking sentence with reference to sentence being served and as application for relief in nature of common-law writ of error coram nobis with reference to sentences not then being served. *United States v. Sheffield* (D.C.D.C. 1959, 179 F. Supp. 634, certiorari denied 80 S. Ct. 1633, 363 U.S. 853, 4 L. Ed. 2d 1735).

In proceeding treated as motion attacking sentence being served and as application for relief in nature of common-law writ of error coram nobis with regard to sentences not being served, evidence established that defendant was mentally competent at time of his plea of guilty and sentencing and that he had voluntarily and understandingly entered his plea. *Id.*

#### Prejudgment of guilt

Record would not substantiate contention that trial judge had prejudged question of defendant's guilt of petit larceny by trick. *H. L. Williams v. United States* (D.C. App. 1968, 240 A. 2d 131).

#### Prejudicial error

Where defendant could not assure court that witness who investigated scene of larceny and determined that security officer's asserted view of dressing rooms was obstructed by pillar had positively ascertained precise spot where security officer had watched defendant take slacks from rack to dressing room or that location of dressing rooms and position of aperture through which security officer watched defendant had not changed, overruling of request to place witness on stand was not prejudicial error. *N. E. Minor v. United States* (D.C. App. 1972, 294 A. 2d 171).

#### Presentence report

When questions are raised in a criminal appeal concerning reasons for which a sentence was imposed, the presentence report may be made part of the record on appeal for inspection in camera by reviewing court. *United States v. M. Delaney* (1971, 442 F. 2d 120, 142 U.S. App. D.C. 372).

Whether defendant's counsel might inspect probation officer's report relied upon by trial court in sentencing the defendant is a matter for the sentencing court. *Id.*

#### Probable cause

Where police officer, who was on routine patrol looking for burglary suspects or people breaking into automobiles, observed defendant and an unidentified companion walking on street and looking into parked automobiles, where his observation of the two continued for more than an hour until he and a fellow officer lost them in grounds of zoo, where the officers later observed them coming out of zoo with defendant carrying a brown paper bag that he had not had when he went into the zoo, and where defendant's companion ran when he saw the officers, the police had reasonable grounds to believe that the bag contained the proceeds of a crime, to stop defendant and to ask him to put down the bag, which then opened a bit and revealed what appeared to be a tape deck. *M. J. Smith v. United States* (D.C. App. 1972, 295 A. 2d 64; cert. denied 93 S. Ct. 1932, — U.S. —).

Police officers who were apprised of theft of a tape deck from automobile parked near area where they first observed the defendant and his companion, who noticed, through tear in bag which defendant was carrying, a bent mounting bracket attached to a tape deck and who

possessed information that defendant's companion matched description of culprit in the reported theft and saw that defendant was carrying in his back pocket a bent screwdriver used for breaking into automobiles had probable cause to arrest defendant, and thus tape deck and tapes were properly seized and were admissible, even though the reported theft turned out to be unrelated to seized tape deck and tapes that were stolen by defendant in different crime. *G. E. Jones v. United States* (D.C. App. 1972, 286 A. 2d 861).

Where police officers who had observed the defendant peering into automobiles later observed defendant holding some object under his coat and when defendant refused to remove his hands from his pockets search for weapons was made disclosing that defendant was concealing beneath his coat a tape player, the connecting wires of which had been broken, action of police in confronting defendant on street was reasonable and disclosure of the tape player gave officers probable cause for arrest even though no victim had reported a loss, and pistol seized two days later during execution of arrest warrant was not the fruit of an unlawful arrest. *L. A. Jenkins v. United States* (D.C. App. 1971, 284 A. 2d 460).

Police officers who saw parked automobile resting on its axles and three tires scattered nearby when they came upon scene at which two security officers from nearby apartment building had stopped the defendant, observed by security officers walking away from vicinity of vehicle carrying jumper cables and a jack plate, for questioning during which neighbor called out from window to say that defendant was one of the men who had been "messing" with stripped vehicle had probable cause to arrest for petit larceny notwithstanding arresting officers did not actually see the defendant remove or carry away tires from vehicle. *United States v. C. E. Bynum* (D.C. App. 1971, 283 A. 2d 649).

#### Probation

The Municipal Court of the District of Columbia may in its discretion order restitution or reparation as a condition of probation. *Basile v. United States* (D.C. Mun. App. 1944, 38 A. 2d 620).

#### Prosecution's statements

Record disclosed uncontested facts so confirming the defendant's guilt of second-degree burglary and petit larceny consisting in theft of money from coin-operated laundry machines located in locked basement room of an apartment building that any impropriety in the prosecuting attorney's argument must be classed as harmless error. *United States v. R. K. Jones* (1970, 433 F. 2d 1107, 140 U.S. App. D.C. 1).

In this case, the court held that the statement of prosecuting attorney that if jury believed testimony of defendants, who were charged with burglary II and petit larceny, they must conclude that police officers were "out-and-out liars," was not so prejudicial as to require reversal. *United States v. Stevenson et ano.* (1970, 424 F. 2d 923, 138 U.S. App. D.C. 10).

The use by prosecuting attorney of phrase "lucky enough to catch somebody right in the act," and to "catch them red-handed" was not so prejudicial as to constitute plain error. *Id.*

Prosecution's statement to jury that guilty verdict as to larceny would require guilty verdict as to assault was erroneous but was not plain error which affected substantial rights and, therefore, would not require reversal. *C. Harris v. United States* (D.C. App. 1964, 201 A. 532).

#### Return of articles

Where evidence in prosecution for petit larceny disclosed that defendant, while shopping in self-service market, was seen by clerk to remove two articles from shelf and put them in her purse, which was inside a cart containing some groceries, and that defendant then closed the purse, and clerk and manager of store followed defendant to checkout line, and that when she saw them she walked toward back of store and gave them the articles from her purse, fact that defendant changed her mind about taking the articles or returned the articles to escape prosecution did not purge the original taking. *Groomes v. United States* (D.C. Mun. App. 1959, 155 A. 2d 73).



## Review

The question of appellant's guilt or innocence turned solely on credibility of witnesses, and issue was to be determined by trier of fact and was not subject to review. *T. A. Green v. United States* (D.C. App. 1967, 234 A. 2d 177).

## Right to stenographic record

Where reviewing court was supplied with statement which presented in considerable detail events of the trial, the testimony, and ruling of the trial judge, and furnished counsel with complete picture of proceedings, defendants were not prejudiced by failure to have the case stenographically reported and were not entitled to have their convictions for petit larceny and larceny from interstate shipment set aside. *F. House and S. Brandon v. United States* (D.C. App. 1967, 234 A. 2d 805).

## Search and seizure

Probable cause for arrest existed when driver of automobile, who started to drive away without his lights on, was stopped by police and dome light showed articles in automobile which had just been reported stolen from another automobile in the area as driver got out to show officers his registration card, and such probable cause was sufficient to support search and seizure of reportedly stolen articles. *R. A. Campbell, Jr. v. United States* (1961, 289 F. 2d 775, 110 U.S. App. D.C. 109).

## Sentence

Statutory provision for two-year mandatory minimum sentence for burglary do not operate to prevent prosecution and sentencing for lesser misdemeanors of attempted burglary in second degree, destroying private property, and petit larceny, for which offenses the defendant was actually sentenced for one-half year more than two-year felony minimum. *J. L. King v. United States* (D.C. App. 1970, 271 A. 2d 556).

Action of trial court, taken while appeal was pending, in purportedly granting motion to correct sentence by making one-year sentence for petit larceny and six-month sentence for destroying property run concurrently rather than consecutively was beyond the court's power at that time and order purporting to reduce sentence would be vacated without prejudice to reentry if subsequently deemed appropriate. *Id.*

In this case the court held that a sentence of 360 days' imprisonment and fine of \$200, or in default of payment an additional 360 days, for crime of petit larceny is, when applied to an indigent defendant, illegal as denial of equal protection under the law. *D. L. Lucas v. United States* (D.C. App. 1970, 268 A. 2d 524).

It is an abuse of discretion to sentence an indigent defendant to 360 days' imprisonment and fine of \$200, or in default of payment an additional 360 days, for crime of petit larceny, since maximum punishment for crime of petit larceny was set by Congress at fine of not more than \$200 or imprisonment for not more than one year, or both. *Id.*

Under the facts of this case where defendant's true crime was burglary in the second degree, a felony carrying a mandatory minimum sentence of two years, and prosecution reduced felony to the three separate misdemeanors of attempted burglary in second degree, destroying private property, and petit larceny, trial judge did not abuse discretion in imposing two consecutive one-year sentences and one concurrent one-year sentence following defendant's conviction on all three separate misdemeanors. *R. M. Weeks v. United States* (D.C. App. 1969, 252 A. 2d 907).

Where trial court imposed concurrent sentences for petit larceny and for possession of dangerous drug, and conviction of latter offense was sustained, review of petit larceny conviction was unnecessary. *W. W. Reed v. United States* (D.C. App. 1965, 210 A. 2d 845).

Where defendant was convicted on all counts of a four count indictment charging him in one count with bribery, and in three counts with petit larceny, and sentences on the petit larceny counts ran concurrently with the sentence on the bribery count, and did not exceed it, validity of the bribery conviction supported the judgment. *Green v. United States* (1959, 267 F. 2d 619, 105 U.S. App. D.C. 342).

## Suppression of evidence

Where police officer observed defendant and another, both of whom he recognized as having prior convictions for larceny, carrying a console-type record player and followed them into a liquor store, saw that the record player was new and questioned them about the machine and defendant gave improbable and unbelievable answers, officer had probable cause to arrest defendant for petit larceny, and refusal of trial court to suppress the evidence seized at time of arrest was not erroneous. *Brooks v. United States* (D.C. Mun. App. 1960, 159 A. 2d 876).

## Validity of arrest

Whether a defendants' arrest on a charge of petit larceny was lawful depended upon arresting officer having probable cause to believe that they had in their possession "fruits of the crime". *S. Smith and W. Jeffries v. United States* (D.C. App. 1968, 247 A. 2d 293).

## Validity of verdict

When one juror, on poll of a jury, answered that her vote of guilty on petit larceny charge was conditional, the court should not have required juror to answer "guilty" or "not guilty" but should have returned the jury to jury room for further deliberation, and juror's subsequent response of "guilty" to court's directive did not remove uncertainty of her verdict. *P. E. Matthews v. United States* (D.C. App. 1969, 252 A. 2d 505).

## Value of property

In prosecution under petit larceny statute covering thefts of property of value of less than \$100, defendant was not prejudiced by proof that she stole more than \$100. *Brock v. United States* (D.C. Mun. App. 1956, 122 A. 2d 763).

## § 22-2203. Larceny after trust.

If any person entrusted with the possession of anything of value, including things savoring of the realty, for the purpose of applying the same for the use and benefit of the owner or person so delivering it, shall fraudulently convert the same to his own use he shall, where the value of the thing so converted is \$100 or more, be punished by imprisonment for not less than one nor more than ten years, or by a fine of not more than \$1,000, or both; and where the value of the thing so converted is less than \$100 he shall be punished by imprisonment for not more than one year or by a fine of not more than \$500 or both: *Provided*, That nothing contained in this section shall be construed to alter or repeal any section contained in this chapter. (Mar. 3, 1901, ch. 854, § 851b, as added Mar. 3, 1913, 37 Stat. 727, ch. 108, and amended Aug. 12, 1937, 50 Stat. 629, ch. 599; June 29, 1953, 67 Stat. 99, ch. 159, § 215(g).)

## AMENDMENTS

1953—Act June 29, 1953, increased the value from \$50 to \$100.

1937—Act Aug. 12, 1937, increased the value from \$35 to \$50.

## CROSS REFERENCES

Allegations and proof of fraudulent intent, see § 23-322.

Embezzlement, see § 22-1201 et seq.

Forgery and frauds, see § 22-1401 et seq.

Joinder of offenses, see § 23-311 et seq.

## NOTES TO DECISIONS

## Delivery of property

For purposes of statute providing punishment for one guilty of larceny after trust, delivery of property to defendant by owner's vendor, acting for owner, was tantamount to delivery by owner; but even if it were not, defendant would not be entitled to acquittal, since statute does not require delivery by owner. *United States v. A. Manolias* (D.C.D.C. 1961, 190 F. Supp. 234).



**Election of offenses**

Where indictment charged embezzlement, false pretense, and larceny after trust, any confusion which might have existed as a result of the prosecution being allowed to put in its case before making an election was dispelled by election at end of Government's case and by instructions to jury. *Dobbins v. United States* (1946, 157 F. 2d 257, 81 U.S. App. D.C. 218, certiorari denied 67 S. Ct. 99, 329 U.S. 734, 91 L. Ed. 634).

Where indictment charged embezzlement, false pretense, and larceny after trust, defendant's motion that Government be required to elect to place its case on one of the three crimes charged before putting in evidence was addressed to discretion of trial court and its denial of motion was not an abuse of discretion. *Id.*

**Elements of offense**

The fact that preconceived specific intent to deprive owner of possession is not an element of crime of larceny after trust does not preclude evidence which bears upon intent underlying the conversion. *United States v. J. R. Gay* (1969, 410 F. 2d 1036, 133 U.S. App. D.C. 337; rev'g and remanding 241 A. 2d 446).

"Larceny after trust" occurs when possession of property is entrusted to a person for purpose of applying property to owner's use and benefit. *W. W. Reed v. United States* (D.C. App. 1968, 239 A. 2d 156).

"Larceny after trust" is committed when person to whom property has been entrusted wrongfully converts it to his own use. *Id.*

Preconceived specific intent to deprive property owner of possession of property is not an element of offense of larceny after trust. *Id.*

For larceny after trust to exist, person to whom possession of property is entrusted must be given actual dominion and control over the property for purpose set forth by owner; a mere temporary custodian cannot commit larceny after trust. *Id.*

**Embezzlement**

Taking was an embezzlement and not larceny after trust, *Talbert v. United States* (1914, 42 App. D.C. 1, certiorari denied 34 S. Ct. 997, 234 U.S. 762, 58 L. Ed. 1581). See, also, *Henry v. United States* (1921, 273 F. 330, 50 App. D.C. 366, certiorari denied 42 S. Ct. 51, 257 U.S. 640, 66 L. Ed. 411).

**Evidence—Sufficiency**

Evidence supported jury finding that money received by defendant from religious order in connection with plan to acquire block of property for construction of house of studies for the order was not the proceeds of a loan, but was entrusted to the defendant for a specific purpose, and that defendant's conversion of the funds was larceny after trust. *United States v. V. J. Orsinger* (1970, 428 F. 2d 1105, 138 U.S. App. D.C. 403; cert. denied 91 S. Ct. 62, 400 U.S. 831).

Evidence, including evidence that complainant entrusted money to defendant as real estate broker for express purpose of having it applied as rental on apartment, that apartment was in fact not available, and that defendant kept money and refused to return it, was sufficient for jury in prosecution for larceny after trust. *J. R. Gay v. United States* (D.C. App. 1968, 241 A. 2d 446; rev'd and remanded 410 F. 2d 1036).

**Evidence of other offenses**

Testimony that defendant took deposit for apartment rental and thereafter neither made apartment available nor returned deposit on occasions other than that which was subject of prosecution for larceny after trust was not admissible within any exception to rule barring evidence of other offenses, and admission was reversible error. *J. R. Gay v. United States* (D.C. App. 1968, 241 A. 2d 446; rev'd and remanded 410 F. 2d 1036).

**Evidence of similar criminal acts**

The testimony of the witnesses fitted well within the established rule, in this jurisdiction as elsewhere, that a trial judge may allow evidence of similar criminal acts to prove intent if the prejudicial effect of admission is "outweighed by the probative value" of the evidence. *United States v. J. R. Gay* (1969, 410 F. 2d 1036, 133 U.S. App. D.C. 337; rev'g and remanding 241 A. 2d 446).

**Fraud or trick**

This section has no bearing on larceny by fraud or trick. *Talbert v. United States* (1914, 42 App. D.C. 1, certiorari denied 34 S. Ct. 997, 234 U.S. 762, 58 L. Ed. 1581).

**Fraudulent purpose**

The requisite fraudulent purpose may be conceived at various stages in a transaction, and one who takes property in good faith may be convicted if his illegal designs mature after the property is in his possession. However, the essential legislative proscription is of his having "fraudulently converted" the property. *United States v. J. R. Gay* (1969, 410 F. 2d 1036, 133 U.S. App. D.C. 337; rev'g and remanding 241 A. 2d 446).

**Independent contractor**

Independent contractor, who had been entrusted with property and who had complete dominion and control over it for purpose of installing it in connection with electrical work which he had contracted to do, was not a mere custodian of property and could be convicted of larceny after trust. *United States v. A. Manolias* (D.C.D.C. 1961, 190 F. Supp. 234).

**Severance of counts**

Joining in a single indictment nine counts charging the defendant with willfully attempting to evade payment of federal income taxes, larceny and interstate transportation of fraudulently obtained funds, assisting another to falsify his federal income tax return and conspiring to defraud government and defeat collection of taxes, if error, was harmless, under circumstances. *R. G. Baker v. United States* (1968, 401 F. 2d 958, 131 U.S. App. D.C. 7; cert. denied 91 S. Ct. 367, 400 U.S. 965).

**Speedy trial**

Fact that some five years elapsed between dates of offenses and date of indictment charging fraud by wire, mail fraud, interstate transportation of check taken by fraud and larceny after trust did not deprive the defendant of fair and speedy trial since the prosecution resulted from extended investigation into complicated affairs of defendant and his corporations and there was no suggestion of any purposeful or otherwise improper delay in conduct of investigation and there was no showing of prejudice caused by the delay. *United States v. V. J. Orsinger* (1970, 428 F. 2d 1105, 138 U.S. App. D.C. 403; cert. denied 91 S. Ct. 62, 400 U.S. 831).

**Statutory definition**

The statutory provision for larceny after trust defines a violator as one who is shown to have "fraudulently converted" property entrusted to him. *United States v. J. R. Gay* (1969, 410 F. 2d 1036, 133 U.S. App. D.C. 337; rev'g and remanding 241 A. 2d 446).

**Trust or debtor—Creditor relationship**

Whether a transaction creates trust relationship or that of debtor and creditor depends upon all facts and circumstances, including the intention of the parties. *United States v. V. J. Orsinger* (1970, 428 F. 2d 1105, 138 U.S. App. D.C. 403; cert. denied 91 S. Ct. 62, 400 U.S. 831).

The fact that interest is to be paid by person receiving money is evidence that debt is created as distinguished from trust obligation, but is not conclusive in prosecution for larceny after trust. *Id.*

**Use and benefit**

To establish offense of larceny after trust it must be proved that accused was entrusted with something of value, for the use and benefit of complainant, and that it was converted to accused's own use, with intent to deprive complainant of money or property. *J. R. Gay v. United States* (D.C. App. 1968, 241 A. 2d 446; rev'd and remanded 410 F. 2d 1036).

"Under the provisions of this section, the possession of property must be intrusted 'for the purpose of applying the same for the use and benefit' of the person so intrusting it; that is, the person to whom intrusted must be clothed with some actual dominion and control over the property for the purpose named. Otherwise, he is a mere temporary custodian, and, if he wrongfully appropriates the property he is guilty of larceny, and not of the crime denounced by this section." *Atkinson v. United States* (1923, 289 F. 935, 53 App. D.C. 277).



## § 22-2204. Unauthorized use of vehicles.

Any person who, without the consent of the owner, shall take, use, operate, or remove, or cause to be taken, used, operated, or removed from a garage, stable, or other building, or from any place or locality on a public or private highway, park, parkway, street, lot, field, inclosure, or space, an automobile or motor vehicle, and operate or drive or cause the same to be operated or driven for his own profit, use, or purpose shall be punished by a fine not exceeding one thousand dollars or imprisonment not exceeding five years, or both such fine and imprisonment. (Mar. 3, 1901, ch. 854, § 826b, as added Feb. 3, 1913, 37 Stat. 656, ch. 23, § 1.)

## CROSS REFERENCE

Possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23-581.

## NOTES TO DECISIONS

## Accomplice

In prosecution for the unauthorized use of a vehicle and larceny of other property in District of Columbia, evidence on issue of whether defendant had aided and abetted those who took the property and whether the planning and the taking were within the District sustained conviction, even though it was not shown that defendant was present at the taking or had used the automobile in the District. *Williams v. United States* (1954, 215 F. 2d 35, 94 U. S. App. D. C. 219).

## Aiding and abetting

In order to convict passenger as aider and abettor in unauthorized use of motor vehicle, government must establish that he had actual knowledge of criminal act being committed. *In the Matter of D. M. L.* (D.C. App. 1972, 293 A. 2d 277).

Evidence, including evidence that automobile was "hot wired" in a manner visible to anyone in rear seat, sustained delinquency adjudication of juvenile who was found in rear seat and charged as aider and abettor in unauthorized use of vehicle. *Id.*

One aiding and abetting unauthorized use of automobile stands in same shoes as principal offender. *Allen v. United States* (1958, 257 F. 2d 188, 103 U.S. App. D.C. 184).

## Arrest

Where police officer, on foot patrol, saw a bag of trash thrown into a public street from left front window of automobile standing at curb with motor running, and where the automobile's occupant, after being approached by the officer and questioned about the bag, alighted from the automobile, picked up the bag and put it back inside the car, it could not be said that the incident was over and that it was unlawful for the officer to ask the occupant to produce his operator's permit and the registration card for the automobile, which inquiries resulted in discovery that the occupant's permit had been revoked and, later, that the automobile had been stolen. *United States v. R. Weston* (1972, 466 F. 2d 435, 151 U.S. App. D.C. 264).

## Attempted unauthorized use of motor vehicle

Attempted unauthorized use of a motor vehicle is a crime under statutes prohibiting the taking, use, operation, or removal of a vehicle without owner's consent and calling for punishment of whoever shall attempt to commit any crime, which attempt is not otherwise punishable. *B. O. Greenwood III v. United States* (D.C. App. 1967, 225 A. 2d 878).

## Circumstantial evidence

The court held that in a prosecution for driving a motor vehicle without the consent of owner, owner's nonconsent, like other elements of the offense, can be shown by circumstantial evidence so long as it meets the standards of proof accepted in the criminal law. *L. M. Powell v. United States* (1969, 418 F. 2d 470, 135 U.S. App. D.C. 254).

In particular situations in a prosecution under this section making it an offense to drive motor vehicle without consent of owner, circumstances offered may be too impotent to attest nonconsent. *Id.*

Legal sufficiency of circumstantial evidence to support finding of nonconsent is necessarily a matter of degree to be gauged in terms of its potential impact on reasonable minds. *Id.*

## Collateral estoppel

Since the defendant who had been acquitted on charges of reckless driving, speeding, and driving motor vehicle after his permit had been suspended failed to present defense of collateral estoppel to the trial court hearing prosecution for unauthorized use of motor vehicle, the reviewing court would not consider claim. *R. Mahoney v. United States* (1969, 420 F. 2d 253, 137 U.S. App. D.C. 3).

## Defense

In prosecution for grand larceny and for unauthorized use of a vehicle, wherein defense was interposed that defendant was repossessing automobile on request of man engaged in automobile business, testimony and argument of Government to effect that repossession of automobile must be accomplished by a United States marshal and that repossession by an individual was illegal, which testimony and argument led jury to believe that defendant was engaged in an illegal enterprise in repossessing automobile, was prejudicial error, where jury was not instructed to disregard testimony or argument on this point, notwithstanding that jury was instructed that Government had to prove every element of crime, including intent, beyond reasonable doubt. *Evans v. United States* (1956, 232 F. 2d 379, 98 U.S. App. D.C. 122).

Voluntary drunkenness does not constitute a defense to a charge of unauthorized use of a vehicle and specific intent or knowledge is not an element of the offense since the statute involves only a "general criminal intent" which may be presumed from doing the prohibited act. *Proctor v. United States* (1950, 177 F. 2d 656, 85 U.S. App. D.C. 341).

## Dismissal with prejudice

Dismissal, with prejudice, of indictment charging defendant with unauthorized use of a vehicle constituted adjudication barring another prosecution for same offense. *J. H. White, Jr. v. United States* (1967, 377 F. 2d 948, 126 U.S. App. D.C. 309).

## Evidence

Since the trial judge in prior trial at time of granting mistrial as to various offenses relating to robbery directed verdict of acquittal on count charging unauthorized use of vehicle, admission of evidence in subsequent trial as to theft of car which was subject of count as to which defendants had been acquitted and as to defendants' use of that car in robbery was reversible error under doctrine of collateral estoppel. *A. Green et al. v. United States* (1970, 426 F. 2d 661, 138 U.S. App. D.C. 184).

When viewed in light of nature of experiment and other testimony in prosecution for unauthorized use of motor vehicle, exclusion of evidence as to experiment which allegedly undermined police eyewitness identification fell well within discretion of trial court. *J. R. Goodman v. United States* (1966, 363 F. 2d 965, 124 U.S. App. D.C. 135).

Testimony of police officer that he saw defendant driving third party's automobile, and testimony of third party who affirmed his ownership and stated that he had not given anyone permission to use it was sufficient to support conviction of unauthorized use of a motor vehicle. *G. E. Johnson v. United States* (1965, 347 F. 2d 803, 121 U.S. App. D.C. 19).

Evidence that fingerprint of defendant, who denied knowledge of the incident, was one of several found on outside of automobile that had been reported missing from dealer's service garage would not permit jury to find beyond a reasonable doubt that defendant was guilty of the unauthorized use of the motor vehicle. *E. R. Cephus v. United States* (1963, 324 F. 2d 893, 117 U.S. App. D.C. 15).

Evidence was sufficient to show ownership of automobile and corporate existence of owner and to sustain conviction of unauthorized use of automobile without consent of owner. *J. C. Dixon v. United States* (1961, 292 F. 2d 768, 110 U.S. App. D.C. 275).



Admission of evidence beyond scope of bill of particulars as to date when automobile was first known to be missing was not error, in prosecution for unauthorized use of automobile without consent of owner. *Id.*

Evidence was sufficient to sustain conviction for unauthorized use of an automobile. *Allen v. United States* (1958, 257 F. 2d 188, 103 U.S. App. D.C. 184).

In action for injuries sustained in an automobile accident, where owner testified that the driver did not have permission to use automobile, statements of driver about 10 or 15 minutes after the accident to an investigating officer that owner told driver that he could take the car, and statement of the driver to plaintiff that defendant would be angry with the driver because the defendant loaned the driver his car, were not admissible as excited utterances, since the driver had a motive for falsely representing his authority to have possession of the vehicle to avoid a criminal prosecution. *Sawyer et ano. v. Miseli* (D.C. Mun. App. 1959, 156 A. 2d 141).

#### — Sufficiency

In prosecution for the grand larceny of an automobile and unauthorized use of the vehicle, there was legally sufficient evidence to support defendant's conviction on both counts, including the fact that, three weeks after the automobile's theft, it was found in the exclusive possession of defendant. *United States v. R. Weston* (1972, 466 F. 2d 435, 151 U.S. App. D.C. 264).

Exclusive and unsatisfactorily explained possession of property proven to have been recently stolen permits an inference that the possessor is the thief; and where the stolen property is a motor vehicle, that inference may serve to support convictions of grand larceny and unauthorized use. *Id.*

Conviction of either grand larceny of automobile or unauthorized use of automobile entails evidence having enough probative power to convince the jury beyond reasonable doubt of every essential element, and also on identity of the accused as participant. *United States v. A. T. Johnson* (1970, 433 F. 2d 1160, 140 U.S. App. D.C. 54).

Evidence, in prosecution for grand larceny of automobile, unauthorized use of such automobile, and for grand larceny of engine from another automobile, warranted the finding that the character of possession of stolen property, united with other evidence in case, would authorize inference attributing guilt to defendant. *Id.*

Finding by Juvenile Court that juvenile was a passenger in stolen automobile was insufficient to establish violation of this section forbidding unauthorized use of motor vehicle. *In the matter of A. R. Davis* (D.C. App. 1970, 264 A. 2d 297).

In this case the evidence was sufficient to sustain conviction for driving a cab without the owner's consent. *L. M. Powell v. United States* (1969, 418 F. 2d 470, 135 U.S. App. D.C. 254).

The evidence in this case supported conviction of unauthorized use of automobile in violation of this section. *C. S. Kee and W. J. Johnson v. United States* (1969, 418 F. 2d 465, 135 U.S. App. D.C. 249).

More proof was necessary to support a conviction for transporting a stolen vehicle across state lines in violation of Dyer Act than for unauthorized use in violation of this section since Dyer Act charge is dependent on intent that requires a stealing. *Id.*

Evidence was sufficient in a prosecution for attempted and unauthorized use of vehicle to permit trier of fact to find that recovered automobile belonged to government witness and that defendant did not have permission to drive it. *H. E. Waterstaat v. United States* (D.C. App. 1969, 252 A. 2d 507).

Evidence established that defendant was guilty of unauthorized use of vehicle. *United States v. J. W. Carter* (1967, 275 F. Supp. 769).

The record contains sufficient evidence from which the jury could have found or inferred that the car left by owner in the parking garage and the one driven onto the parking lot by appellant were one and the same. *F. E. Wesley v. United States* (D.C. App. 1967, 233 A. 2d 514).

Evidence supported conviction for attempted unauthorized use of automobile. *N. Dickson v. United States* (D.C. App. 1967, 226 A. 2d 364).

Evidence supported conviction for attempted unauthorized use of motor vehicle. *B. O. Greenwood III v. United States* (D.C. App. 1967, 225 A. 2d 878).

#### Impeachment

In the case, the court held that a prior conviction of attempted housebreaking was properly used for impeachment of defendant charged with unauthorized use of vehicle and assault on police officer. *United States v. C. E. White* (1970, 427 F. 2d 634, 138 U.S. App. D.C. 364).

Defendant who was accused of unauthorized use of automobile could be impeached by a showing of prior larceny convictions. *United States v. W. T. Carr* (1969, 418 F. 2d 1184, 135 U.S. App. D.C. 348, cert. denied 90 S. Ct. 590).

#### Inconsistent verdict

Verdict whereby defendant was convicted of and co-defendant was acquitted of grand larceny of automobile, unauthorized use of the automobile, and grand larceny of engine from another automobile, was not inconsistent since the jury, rather than determining that codefendant lacked possession of stolen property, could have derived doubt as to whether codefendant collaborated in commission of charged offenses. *United States v. A. T. Johnson* (1970, 433 F. 2d 1160, 140 U.S. App. D.C. 54).

#### Inference of guilt

Inference of interstate transportation which may be drawn from unexplained possession of stolen automobile in second state springs from and depends upon prior inference from such possession that possessor had stolen automobile in first state, and this is true even in federal districts where theft itself is not federal offense and is not charged in indictment. *T. O. Travers v. United States* (1964, 335 F. 2d 698, 118 U.S. App. D.C. 276).

Where permitted inference of guilt of transporting stolen automobile from District of Columbia to Maryland depended on inference that defendant used automobile without authorization in District, defense request for instruction that if jury acquitted of unauthorized use in District it must acquit also of transporting interstate was erroneously denied, and error was prejudicial. *Id.*

#### Instructions

In trial on charge of unauthorized use of motor vehicle under this section, unobjected to instructions omitting standard instruction that each essential element of the offense must be proved beyond reasonable doubt, and omitting, with respect to element of use for some period of time for defendant's own benefit, phrase "beyond a reasonable doubt," recited with respect to other elements, did not constitute plain error affecting substantial rights of the defendant since the concept of reasonable doubt was explained and burden carried by government in such respect emphasized, and since, as indicated by the failure to object, it was unlikely that jury understood instructions as dispensing with proof beyond reasonable doubt as to the element in question. *United States v. L. L. Powell* (1971, 449 F. 2d 994, 145 U.S. App. D.C. 332).

Fact that the jury was instructed, in prosecution for grand larceny of automobile and of automobile engine and for unauthorized use of motor vehicle, that if prerequisite to inference of guilt for possession of recently stolen property exists beyond reasonable doubt it could be inferred that defendant was guilty of one or both of such offenses, but was not instructed that inference permissible was that defendant was person who committed such offense if government proved all of their essential elements beyond reasonable doubt, did not warrant reversal of conviction since, in other portions of charge, instruction was given on presumption of innocence and government's burden of proof beyond reasonable doubt. *United States v. A. T. Johnson* (1970, 433 F. 2d 1160, 140 U.S. App. D.C. 54).

Trial court's failure to preface the "satisfactory explained" clauses with the word "that" in instructions concerning inference of guilt arising from possession of recently stolen property, unless possession is satisfactorily explained, did not constitute a directed verdict for the government on the issue of satisfactory explanation and did not constitute plain error in prosecution for unauthorized use of automobile and interstate transportation of automobile. *United States v. C. R. Howard* (1970, 433 F. 2d 505, 139 U.S. App. D.C. 347).



Trial court's lack of explicitness, in defining "satisfactorily explained" within instructions on inference of guilt arising from recent possession of stolen property unless possession is satisfactorily explained, did not give rise to negative inference that issue of whether the explanation was satisfactory was out of the case in prosecution for unauthorized use and interstate transportation of automobile and did not constitute plain error. *Id.*

In the absence of a request for instruction on defense theory that defendant innocently borrowed stolen automobile from another and since the defendant had testified to that effect, trial court's failure to deliver sua sponte instruction on the defense theory was not plain error in prosecution for unauthorized use and interstate transportation of stolen automobile. *Id.*

Defendant's statement that he was passenger in automobile but had not driven it was exculpatory, and instruction that being a passenger constituted unauthorized use of vehicle had effect of converting such statement into an admission and adversely affecting fairness of trial in which defendant was charged with driving automobile and prosecutor represented such statement to be exculpatory; and giving of such instruction would require a reversal for supplementary hearing into propriety of introducing such statement as an admission. *J. R. Goodman v. United States* (1966, 363 F. 2d 965, 124 U.S. App. D.C. 135).

In prosecution for unauthorized use of automobile in District of Columbia and for transporting stolen automobile from District to Maryland, trial judge correctly permitted jury to infer guilt under both counts if it found defendant in possession of stolen automobile in Maryland and was not satisfied with explanation offered, and court correctly added that the longer the interval between the stealing and defendant's being found in possession, the weaker the inference. *T. O. Travers v. United States* (1964, 335 F. 2d 698, 118 U.S. App. D.C. 276).

#### Joinder

Since the offenses of robbery, assault with dangerous weapon, assault on member of police force, unauthorized use of vehicle, and carrying dangerous weapon were based on two or more connected acts constituting part of common scheme and plan, the defendants were alleged to have participated in same series of acts constituting offenses, and each of defendants aided and abetted offenses charged against other defendants, it was proper for grand jury to join defendants and offenses in the indictment. *United States v. C. Wilson, Jr. et al.* (1970, 434 F. 2d 494, 140 U.S. App. D.C. 220).

#### Jury question

In this case the evidence raised jury question as to defendant's guilt of unauthorized use of an automobile which owner testified was taken from parking garage without her permission. *United States v. W. T. Carr* (1969, 418 F. 2d 1184, 135 U.S. App. D.C. 348; cert. denied 90 S. Ct. 590).

#### Knowledge

Conviction under this section for unauthorized use of motor vehicle requires proof that accused had guilty knowledge of unauthorized use. *In the matter of A. R. Davis* (D.C. App. 1970, 264 A. 2d 297).

#### Lapse of time between theft and arrest

Lapse of five days between theft of automobile and arrest of defendant operating it did not insulate him from criminal liability for attempted unauthorized use of motor vehicle. *B. O. Greenwood III v. United States* (D.C. App. 1967, 225 A. 2d 878).

#### Limited affirmance

In this case where the evidence was sufficient to sustain a conviction of unauthorized use of automobile but the court had doubts as to its sufficiency to support convictions for robbery and for transporting stolen vehicle across state line in violation of Dyer Act, sentence of youthful offenders under Federal Youth Corrections Act would be affirmed in interest of justice limited to a conviction of unauthorized use of automobile. *C. S. Kee and W. J. Johnson v. United States* (1969, 418 F. 2d 465, 135 U.S. App. D.C. 249).

#### New trial

Where defendant was acquitted of unauthorized use of automobile in District of Columbia, reviewing court in setting aside conviction for transporting such automobile from District to Maryland could not remand for new trial on count for interstate transportation by means of inference, already rejected, that defendant used automobile without authorization in the District, but if government represented it had competent evidence of defendant's contact or connection with possession or use of automobile within District new trial could be conducted for interstate transportation. *T. O. Travers v. United States* (1964, 335 F. 2d 698, 118 U.S. App. D.C. 276).

#### Prima facie rule

In prosecution for unauthorized use of a motor vehicle and interstate transportation of a stolen motor vehicle, charge that exclusive and unexplained possession of recently stolen property is "sufficient to support" a verdict of guilty of larceny was inadequate in that it failed to make clear that, if jury found exclusive possession by defendant of recently stolen goods, jury could, but was not required to, find that defendant had stolen the goods. *D. C. McKnight v. United States* (1962, 309 F. 2d 660, 114 U.S. App. D.C. 40).

In prosecution for unlawfully taking, using, operating, and removing a certain automobile truck from a certain street without owner's consent, the jury were entitled to apply the prima facie rule applicable to unexplained possession of recently stolen property. *Epps v. United States* (1946, 157 F. 2d 11, 81 U.S. App. D.C. 244).

#### Proof of ownership

Any failure of prosecution to show who owned automobile involved in prosecution for attempted unauthorized use of motor vehicle did not preclude conviction where it was established that ownership was in some third party. *N. Dickson v. United States* (D.C. App. 1967, 226 A. 2d 364).

#### Province of jury

In deciding whether secretaries of the owner had given their consent, in a prosecution for driving a motor vehicle without consent of owner, jury could legitimately have acknowledged that employees ordinarily observe restrictions on their authority and are obedient to employer mandates as to how their tasks are to be performed. *L. M. Powell v. United States* (1969, 418 F. 2d 470, 135 U.S. App. D.C. 254).

#### Questions for jury

Evidence, in prosecution for theft, and unauthorized use of motor vehicle, that appellant and another defendant took truck with paint spray pump, both of which appellant knew were not owned by fellow defendant, and that they had traveled 175 miles on way to another state, and had arranged to sell or pledge the pump in exchange for gasoline, oil and whiskey, was sufficient, in absence of any explanation, to raise issue for jury on question of defendant's guilty knowledge and intent. *Gilbert v. United States* (1954, 215 F. 2d 334, 94 U.S. App. D.C. 321).

Evidence whether defendant who was found staggering with bleeding forehead from alley in vicinity of damaged automobile in which were found pieces of glass which appeared to fit perfectly the pieces in broken lens of spectacles found in defendant's pocket, was guilty of unauthorized use of motor vehicle, was for jury. *Patalas v. United States* (1951, 185 F. 2d 507, 87 U.S. App. D.C. 379).

In prosecution for unlawfully taking, using, operating, and removing a certain automobile truck without the consent of the owner, whether defendant was guilty was for jury. *Epps v. United States* (1946, 157 F. 2d 11, 81 U.S. App. D.C. 244).

#### Rented automobile

Evidence that defendant was afraid to return automobile to rental agency because he was unable to pay rent he owed and absence of evidence that defendant tried to disguise automobile, change license plates or in any other way appropriate it to his exclusive benefit and absence of evidence that rental agency notified defendant that it considered rental contract breached and that defendant would be charged with violation of criminal laws if he failed to return automobile did not establish viola-



tion of statute prohibiting unauthorized use of automobile. *United States v. H. B. McLaughlin, Sr.* (1967, 278 F. Supp. 320).

#### Review

Defendant could not be heard to complain on appeal of conviction for attempted unauthorized use of motor vehicle in view of proof of completion of offense of unauthorized use of the vehicle. *B. O. Greenwood III v. United States* (D.C. App. 1967, 225 A. 2d 878).

Court of Appeals was not required to decide whether conviction for unauthorized use of motor vehicle in violation of District of Columbia Code or for interstate transportation of stolen motor vehicle in violation of federal statute might be allowed to stand in face of six month lapse between theft of automobile in Richmond and defendant's arrest while driving it in District of Columbia, absent request at trial for limiting instructions or objections to charge as given. *C. C. Scott v. United States* (1966, 369 F. 2d 183, 125 U.S. App. D.C. 138).

No errors affecting substantial rights occurred in a prosecution for unauthorized use of a vehicle without the owner's consent. *R. L. Jenkins v. United States* (1963, 324 F. 2d 399, 116 U.S. App. D.C. 367).

#### Sentence

The single taking of an automobile can constitute both offense of grand larceny of automobile and offense of unauthorized use of automobile, and can authorize separate though concurrent sentences under each. *United States v. A. T. Johnson* (1970, 433 F. 2d 1160, 140 U.S. App. D.C. 54).

In prosecution for grand larceny and unauthorized use of a vehicle, imposition of sentences on defendant of from two to five years on the unauthorized use count and from two to seven years on the grand larceny count, was proper even though the two offenses grew out of the same set of facts and circumstances and offense of unauthorized use was included in that of grand larceny, where sentences were imposed to run concurrently. *Evans v. United States* (1956, 232 F. 2d 379, 98 U.S. App. D.C. 122).

#### Summation

In prosecution for unauthorized use of a motor vehicle, wherein defense counsel moved under Jencks Act for production of statements made by police officer prior to trial and defense counsel made no use of such statements, closing argument of prosecuting attorney that there was no effort to impeach the officer and that statements corroborated testimony of police officer was improper. *G. E. Johnson v. United States* (1965, 347 F. 2d 803, 121 U.S. App. D.C. 19).

#### Unauthorized use

Unauthorized use statute does not require that automobile be stolen in order to render its use unlawful. *United States v. H. B. McLaughlin, Sr.* (1967, 278 F. Supp. 320).

Under statute prohibiting unauthorized use of automobile, use of rented automobile in excess of express consent given in rental contract is not to be equated with use "without the consent of the owner." *Id.*

Operation of automobile about six months after it had been stolen, without explanation for possession and without explanation for possession and without permission of owner or owner's daughter, was "unauthorized" as contemplated by statute providing for punishment of any person who without consent of owner operates automobile on public highway for his own profit, use, or purpose. *C. C. Scott v. United States* (1966, 369 F. 2d 183, 125 U.S. App. D.C. 138).

#### Variance

Where indictment charged defendant with unlawfully taking, using, operating, and removing certain automobile truck from a certain street without owner's consent and proof showed that such truck was parked right on such street, there was no variance. *Epps v. United States* (1946, 157 F. 2d 11, 81 U.S. App. D.C. 244).

#### § 22-2204a. Theft from vehicles.

Whoever, after March 7, 1942, and in any period during which any restrictions on the sale or use of any of the articles hereinafter referred to are in

effect pursuant to any law of the United States, shall feloniously take and carry away any oil or gasoline, or any other lubricant or fuel; or any antifreeze mixture, compound, or solution; or any tire, tire casing, inner tube, or rim; or any wheel, tire chain, battery, or other part, equipment, or accessory, of the value of less than \$100, being then and there in, on, part of, or attached to any vehicle in the District of Columbia, shall suffer imprisonment for not more than three years: *Provided*, That nothing contained in this section shall be construed to affect the offense of grand larceny as defined by existing law. (Mar. 3, 1901, ch. 854, § 826c, as added Mar. 7, 1942, 56 Stat. 143, ch. 165, and amended June 29, 1953, 67 Stat. 99, ch. 159, § 215(b).)

#### AMENDMENT

1953—Act June 29, 1953, increased the value from \$50 to \$100.

#### § 22-2205. Receiving stolen goods.

Any person who shall, with intent to defraud, receive or buy anything of value which shall have been stolen or obtained by robbery, knowing or having cause to believe the same to be so stolen or so obtained by robbery, if the thing or things received or bought shall be of the value of \$100 or upward, shall be imprisoned for not less than one year nor more than ten years; or if the value of the thing or things so received or bought be less than \$100, shall be fined not more than \$500 or imprisoned not more than one year, or both. (Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 829; June 29, 1953, 67 Stat. 98, ch. 159, § 213.)

#### AMENDMENT

1953—Act June 29, 1953, inserted "with intent to defraud," following "Any person who shall", deleted "with intent to defraud the owner thereof" preceding "if the thing or things", substituted "knowing or having cause to believe" for "knowing", increased the value from \$35 to \$100 and providing for a fine of not more than \$500 for offense involving the lesser sum and decreased the limit on imprisonment for such offense from two to one year.

#### CROSS REFERENCES

Allegation and proof of fraudulent intent, see § 23-322.

Joinder of offenses, see § 23-311 et seq.

Receiving embezzled goods, see § 22-1204.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23-546, 23-581.

#### NOTES TO DECISIONS

##### Accomplice in larceny

One who advises, incites, or connives at the offense of larceny but is not present at the taking (although chargeable as a principal under 1901 code, § 908 [§ 22-105]), may be convicted of receiving stolen property when he subsequently purchases it from the thief. *Weisberg v. United States* (1919, 258 F. 284, 49 App. D.C. 28).

##### Appeal and error

Admission into evidence of two coats that were in paper bag defendant had handed to woman companion when police officers asked defendant to come over to police car was not "plain error" such as would provide ground for reversal in absence of motion to exclude the evidence in trial court. *J. L. Young v. United States* (D.C. App. 1971, 284 A. 2d 671).

##### Arrest

Where officers, who knew that furniture had been stolen and who had information linking accused to the crime, went to accused's second-hand furniture store and observed articles in show windows similar to those which



had been stolen, asked accused for records required to be kept by second-hand dealers, asked to be shown more of same type of furniture which accused denied having, and looked around premises without objection by accused and found five new chairs hidden beneath old furniture, arrest without warrant was legal. *McQuaid v. United States* (1952, 198 F. 2d 987, 91 U. S. App. D. C. 229, certiorari denied 73 S. Ct. 499, 344 U. S. 929, 97 L. Ed. 715).

#### — Without warrant

That officer saw defendant, whom officer had "known for a year," carrying portable television set in area where there had been prior burglaries, and that defendant explained, in answer to inquiry, that friend had asked him to take set to friend's girl friend and to sell set to her for \$20 did not constitute probable cause for warrantless arrest or for seizure of set since there was no violation of law in presence of officer and he had no knowledge then that the particular burglary, in which the set had been allegedly taken, had been committed. *D. Daughtery v. United States* (D.C. App. 1971, 272 A. 2d 675).

#### Effective assistance of counsel

Inasmuch as defense counsel might have concluded that evidence to support motion to suppress was lacking, counsel was not negligent in failing to raise wrongful seizure issue with respect to stolen property taken from the defendant prior to his arrest. *J. L. Young v. United States* (D.C. App. 1971, 284 A. 2d 671).

#### Evidence

Where evidence was merely impeaching and was not material to issues involved nor was it probable that in new trial appellant would be acquitted because of it, trial court did not abuse its discretion in denying motion for new trial based upon newly discovered evidence. *W. D. Heard v. United States* (D.C. App. 1968, 245 A. 2d 125).

#### — Admissibility

Where arresting police officer while in pawn shop observed typewriter bearing sticker indicating that it belonged to Department of Public Health, officer had probable cause to arrest the defendant who brought in the typewriter and typewriter is admissible, and arresting officer's ignorance of actual practice of Department in disposing of surplus typewriters is irrelevant. *United States v. E. S. Wallace* (D.C. App. 1971, 283 A. 2d 32).

Since the illegal search of defendant's automobile and seizure of allegedly stolen property therefrom was the basis for issuance of arrest warrant which in turn resulted in search of defendant's person and seizure of additional evidence, items removed from defendant at time of his arrest are "fruits of the poisonous tree" and inadmissible in prosecution under this section. *G. L. Pigford v. United States* (D.C. App. 1971, 273 A. 2d 837).

Since defendant dropped shopping bag containing stolen articles on street prior to his arrest, officers' recovery of bag was not a "seizure" in the Fourth Amendment sense but was merely a retrieval of abandoned property and, therefore, even if probable cause did not exist for subsequent arrest of the defendant, the shopping bag was admissible in prosecution for receiving stolen property. *M. Brown v. United States* (D.C. App. 1969, 261 A. 2d 834).

Evidence that defendant, charged with receiving stolen property, had on previous occasion knowingly received stolen property was admissible for limited purpose of showing intent and guilty knowledge. *W. J. Blackburn v. United States* (D.C. Mun. App. 1961, 171 A. 2d 254).

Admissibility of evidence of other offenses is not subject to the qualification that the goods must have been received by the accused from the same person. *Witters v. United States* (1939, 106 F. 2d 837, 70 App. D.C. 316, 125 A.L.R. 1031).

#### — Confrontation of informer

Defendant, accused of receiving stolen goods and of possession of lottery tickets, was not entitled to confront and cross-examine informer, upon whose information search warrant was in part based, where warrant was issued upon an ample showing of probable cause. *O. M. Madre v. United States* (D.C. Mun. App. 1961, 173 A. 2d 917).

#### — Corroboration

Uncorroborated testimony of shoplifters as to origin and ownership of goods, while normally of questionable reliability, is sufficient, if believed, to warrant conviction for receiving stolen goods. *M. A. Payne v. United States* (D.C. Mun. App. 1961, 171 A. 2d 509).

In prosecution for receiving stolen goods, testimony that defendant had goods in his possession shortly after theft thereof and retained such possession while attempting with others to sell them was sufficient corroborative evidence to support his admissions that he received goods and knew they had been stolen. *Inman v. United States* (1957, 243 F. 2d 256, 100 U. S. App. D. C. 150, certiorari denied 79 S. Ct. 132, 358 U. S. 888, 3 L. Ed. 2d 116).

#### — Guilty knowledge

Accused's knowledge of goods' true character may be inferred from great disparity between sale price and prevailing price for similar or identical goods. *M. A. Payne v. United States* (D.C. Mun. App. 1961, 171 A. 2d 509).

#### — Sufficiency

Evidence that defendant was in possession of recently stolen automobile was enough to take case to jury on issue of defendant's intent to defraud and knowledge that automobile had been stolen. *P. L. Smith v. United States* (D.C. App. 1972, 293 A. 2d 859).

Properly admitted hearsay statements of the defendant's brother that he stole a pistol from victim's home and sold it to defendant, testimony of third person to same effect, and testimony of robbery victim that she discovered her pistol missing after rug cleaning company's employees, one of which was later identified as defendant's brother, returned the rug to her house, constituted sufficient independent evidence to corroborate confession of defendant, who was convicted of receiving stolen property, that he purchased weapon taken from victim's home. *H. L. Harrison v. United States* (D.C. App. 1971, 281 A. 2d 222).

Evidence that defendant was in possession of recently stolen coat is sufficient to sustain conviction of receiving stolen property. *H. Blue v. United States* (D.C. App. 1970, 270 A. 2d 508).

Evidence sustained conviction of receiving stolen goods. *O. M. Madre v. United States* (D.C. Mun. App. 1961, 173 A. 2d 917).

In prosecution for knowingly receiving stolen goods, evidence relating to identity, ownership, and value of goods sustained conviction. *McQuaid v. United States* (1952, 198 F. 2d 987, 91 U. S. App. D. C. 229, certiorari denied 73 S. Ct. 499, 344 U. S. 929, 97 L. Ed. 715).

#### — Suppression

Addition of provision to rule for motion to suppress evidence obtained by unlawful search and seizure requiring that motion be made before trial unless opportunity therefore did not exist or the defendant was not aware of grounds for the motion is intended to place further restriction upon manner in which search and seizure issues can be raised. *J. L. Young v. United States* (D.C. App. 1971, 284 A. 2d 671).

#### — Unexplained possession

A person's unexplained possession of goods known by him to have been stolen is a forceful circumstance supporting his admissions of receipt of goods to such extent as to justify jury in concluding that admissions were true. *Inman v. United States* (1957, 243 F. 2d 256, 100 U. S. App. D. C. 150, certiorari denied 79 S. Ct. 132, 358 U. S. 888, 3 L. Ed. 2d 116).

#### Inferences

Where the defendant was shown to be in possession, without authority, of stolen property very soon after, and in immediate vicinity of, theft of such property, it is permissible for trier of facts to infer additional elements, including guilty knowledge and intent to deprive owner of possession, of offense of receiving stolen property. *C. Williams, Jr. v. United States* (D.C. App. 1971, 281 A. 2d 293).

#### Instructions

The court held that in prosecution for receiving stolen property, viewed as a whole, instructions which mentioned the requirement that defendant must have received goods with intent to defraud and which explained meaning of



intent were proper. *M. Brown v. United States* (D.C. App. 1969, 261 A. 2d 834).

Where instruction on possession in prosecution for receiving stolen goods was full and complete, and defense counsel indicated that he would accept court's ruling on the question, refusal to instruct that defendant must have had exclusive possession was not ground for reversal. *F. H. Scott v. United States* (D.C. App. 1967, 228 A. 2d 637).

In prosecution for knowingly receiving stolen property, instruction that it was not necessary to find that accused knew that property was stolen specifically from company named in indictment was not error where other instructions were given on theory that identification and ownership were essential elements of the crime and further instructions were not requested and there were no objections to instructions given. *McQuaid v. United States* (1952, 198 F. 2d 987, 91 U. S. App. D. C. 229, certiorari denied 73 S. Ct. 499, 344 U. S. 929, 97 L. Ed. 715).

In prosecution for receiving stolen goods of the value of \$35 or more, jury should have been instructed to find the value of the goods, and not merely that the goods were of some value, even though defense counsel did not request such instruction, and even though indictment charged that the stolen goods had a value of about \$1,115.01. *McQuaid v. United States* (1951, 193 F. 2d 696, 90 U. S. App. D. C. 59).

Failure of court to charge in prosecution for receiving stolen goods of the value of about \$1,115.01, that the jury should find the value of the stolen goods was not prejudicial error, where sentence imposed on defendant was not for the more serious offense of receiving stolen goods of the value of \$35 or more, but for receiving goods of a value of less than \$35 and where defendant wanted new trial, not resentence. *Id.*

Jury were properly instructed that defendant's knowledge that goods were stolen must be proved as a separate substantive fact. *Baer v. United States* (1924, 293 F. 843, 54 App. D.C. 24).

#### Larceny

In prosecution for receiving stolen goods, whether evidence supporting defendant's admissions of his receipt of goods and knowledge that they were stolen would have supported conviction of larceny is immaterial, as one technically guilty of larceny, but not present when it occurred, may be convicted of receiving stolen goods. *Inman v. United States* (1957, 243 F. 2d 256, 100 U. S. App. D.C. 150, certiorari denied 79 S. Ct. 132, 358 U.S. 888, 3 L. Ed. 2d 116).

"Under the prevailing modern rule the crime of receiving stolen goods is a substantive offense, separate and distinct from the larceny itself." *Weisberg v. United States* (1919, 258 F. 284, 49 App. D.C. 28).

#### Search and seizure

In determining whether police officers had probable cause for search, court must adopt reasonable approach taking into account the remoteness of judiciary from actual experience of police, and keep in mind constitutional command that judges must, in guarded fashion, determine from courthouse testimony the reasonableness of technical police decisions. *J. Bailey v. United States* (D.C. App. 1971, 279 A. 2d 508).

Since police had information that defendant had been seen in hotel room with stocking around her arm, administering an injection, and police arrested defendant and her companion, and an officer on observing immediately accessible area for his own protection saw purse at defendant's feet, it was not unreasonable to seize purse and search it for weapons, even if, in retrospect, it might appear that the police could have removed defendant and her companion from area of access to purse. *Id.*

Though police officer's expressed purpose in examining arrestee's purse was to look for weapon, it was reasonable for officer to look for narcotic drugs in her purse. *Id.*

Where police officer by reasonable search found that purse discovered at defendant's feet contained property of another woman, officer properly looked inside wallet contained in purse to ascertain ownership. *Id.*

Search of the defendant's automobile in police lot within one hour after his arrest on traffic warrants and while collateral for his release was being obtained is exploratory and illegal; thus, allegedly stolen articles found

in trunk of automobile were inadmissible in prosecution under this section. *G. L. Pigford v. United States* (D.C. App. 1971, 273 A. 2d 837).

Where officers had valid search warrant and while making search officers found pistol which was not listed in warrant, seizure of pistol which subsequently turned out to be stolen and which formed basis of prosecution for receiving stolen property was legal. *W. D. Heard v. United States* (D.C. App. 1968, 245 A. 2d 125).

#### § 22-2206. Stealing property of District of Columbia.

Whoever shall embezzle, steal, or purloin any money, property, or writing, the property of the District of Columbia, shall suffer imprisonment for not exceeding five years, or be fined not more than five thousand dollars, or both. (Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 831.)

#### CROSS REFERENCES

Allegation and proof of fraudulent intent, see § 23-322.

Joinder of offenses, see § 23-311 et seq.

#### NOTES TO DECISIONS

##### Construction

Use of words "embezzle, steal or purloin", in District of Columbia statute relating to property of the District, indicated that Congress intended to include in the penalized conduct every offense falling between common-law larceny and embezzlement, so that, at the very least, robbery, embezzlement and larceny of property belonging to the District of Columbia are outlawed by the statute. *W. D. Mitchell et al. v. United States* (1968, 394 F. 2d 767, 129 U.S. App. D.C. 292).

Knowledge of government ownership is a necessary element of offense condemned by statute relating to the embezzlement, stealing or purloining of any money, property or writing of the District of Columbia, since the statute which provides more severe penalties than other statutes relating to petit larceny and petit embezzlement, would be a greater deterrent only if potential wrongdoers were aware that property they were intending to steal belonged to the District. *Id.*

##### Evidence—Admissibility

Where arresting police officer while in pawn shop observed typewriter bearing sticker indicating that it belonged to Department of Public Health, officer had probable cause to arrest the defendant who brought in the typewriter and typewriter is admissible, and arresting officer's ignorance of actual practice of Department in disposing of surplus typewriters is irrelevant. *United States v. E. S. Wallace* (D.C. App. 1971, 283 A. 2d 32).

In prosecution for housebreaking and larceny, United States District Court, under the circumstances, did not abuse its discretion in admitting evidence of defendant's participation in another alleged crime of similar character committed the same evening. *Adams v. United States* (1956, 239 F. 2d 451, 99 U. S. App. D. C. 288).

##### Instructions

While facts in case resulting in conviction for stealing property belonging to District of Columbia may have justified a charge limited to elements of larceny, introduction of the words "steal" and "purloin" into the charge placed an obligation on trial judge to explain their meaning and relation to the larceny term. *W. D. Mitchell et al. v. United States* (1968, 394 F. 2d 767, 129 U.S. App. D.C. 292).

Trial judge would not be obligated to delineate the issues of each of the crimes covered by District of Columbia statute prohibiting the embezzlement, stealing or purloining of any property of the District, but he would be obliged to specify the elements of the crime or crimes most closely related to the factual situation. *Id.*

In prosecution for embezzlement, stealing and purloining of property of District of Columbia, while judge did speak of elements of property value and wrongful taking in his charge on robbery counts, it was inadequate to cover the shortcomings of the charge since the taking, constituting an element of robbery, was substantially different from a larceny taking, and trial judge did not refer jury to those portions of his earlier charge. *Id.*



Conviction of defendants under statute relating to the stealing, embezzling or purloining of any money, property, or writing of the District of Columbia, for stealing service revolver of officer, would be reversed where court's charge was inadequate to properly instruct jury upon all crucial elements of the offenses embraced within prosecution's evidence. *Id.*

#### § 22-2207. Receiving property stolen from the District of Columbia.

Whoever shall receive, conceal, or aid in concealing, or have in possession, with intent to convert to his own use, any money, property, or writing, the property of the District of Columbia, knowing the same to have been embezzled, stolen, or purloined from the District of Columbia by any other person, shall be punished by a fine not exceeding five thousand dollars or imprisonment not exceeding five years, or both. (Mar. 3, 1901, 31 Stat. 1325, ch. 854, § 832.)

#### CROSS REFERENCES

Allegation and proof of fraudulent intent, see § 23-322.

Joinder of offenses, see § 23-311 et seq.

#### NOTES TO DECISIONS

##### Evidence—Admissibility

Where arresting police officer while in pawn shop observed typewriter bearing sticker indicating that it belonged to Department of Public Health, officer had probable cause to arrest the defendant who brought in the typewriter and typewriter is admissible, and arresting officer's ignorance of actual practice of Department in disposing of surplus typewriters is irrelevant. *United States v. E. S. Wallace* (D.C. App. 1971, 283 A. 2d 32).

#### § 22-2208. Destroying stolen property.

Whoever shall maliciously destroy anything of value of the amount or value of \$100 or upward which shall have been stolen, knowing the same to have been stolen, shall suffer imprisonment for not less than one year nor more than three years. (Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 828; June 29, 1953, 67 Stat. 99, ch. 159, § 215(d).)

#### AMENDMENT

1953—Act June 29, 1953, increased the valuation from \$35 to \$100.

#### CROSS REFERENCES

Allegation and proof of fraudulent intent, see § 23-322.

Joinder of offenses, see § 23-311 et seq.

### Chapter 23.—LIBEL—BLACKMAIL—EXTORTION

#### Sec.

22-2301. Libel.

22-2302. Libel—Publication—Sufficiency.

22-2303. Libel—Justification.

22-2304. False charges of unchastity.

22-2305. Blackmail.

22-2306. Intent to commit extortion by communication of illegal threats and demands—Penalty.

22-2307. Threatening to kidnap or injure a person or damage his property—Penalty.

#### § 22-2301. Libel.

Whoever publishes a libel shall be punished by a fine not exceeding one thousand dollars or imprisonment for a term not exceeding five years, or both. (Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 815.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22-2302.

#### NOTES TO DECISIONS

##### Common law

Where this section provides the punishment for libel, defining publication and justification but not libel itself, common-law libel is thus meant. *Ormsby v. United States* (C.C.A. 6, 1921, 273 F. 977).

##### Privileged communication

A scurrilous letter, addressed to the District Commissioners, charging certain of their subordinate officers with malfeasance in office, copies of which were sent to such officials, is not privileged, especially when no foundation for the charge appears. *Raymond v. United States* (1905, 25 App. D.C. 555, certiorari denied 26 S. Ct. 755, 200 U.S. 619, 50 L. Ed. 623).

##### Punitive damages

The offender is subject to both the assessment of punitive damages and criminal punishment for the defamation without being in double jeopardy, and fact defendant has paid or is subject to fine is not to be taken in reduction of punitive damages. *Afro-American Publishing Co. v. Eli Jaffe, etc.* (1966, 366 F. 2d 649, 125 U.S. App. D.C. 70).

##### Sentence

One convicted under this section, and sentenced to 5 years' imprisonment at hard labor is not thereby subjected to "cruel or unusual punishment." *Raymond v. United States* (1905, 25 App. D.C. 555, certiorari denied 26 S. Ct. 755, 200 U.S. 619, 50 L. Ed. 623).

#### § 22-2302. Libel—Publication—Sufficiency.

To knowingly send or deliver any libelous communication to the party libeled is a sufficient publication to subject the person sending or delivering the same to punishment as provided in section 22-2301. (Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 816.)

#### NOTES TO DECISIONS

##### Indictment

Indictment is clearly inconsistent with an inference that the asserted libel was a privileged communication or an act done in the performance of a legal duty, because of the allegation in the indictment that the libelous words charged were not only false, scandalous, malicious, and defamatory, but were uttered with the unlawful and malicious intention to vilify, defame, scandalize, and disgrace the subject of the publication. *Ormsby v. United States* (C.C.A. 6, 1921, 273 F. 977).

#### § 22-2303. Libel—Justification.

Any publication of a libel shall be justified if it appear that the matter charged as libelous was true and was published with good motives and for justifiable ends. (Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 817.)

#### § 22-2304. False charges of unchastity.

Whoever wrongfully accuses any woman of unchastity shall be punished by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year, or both, and shall also be liable to a civil action for damages by the party injured. (Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 818.)

#### NOTES TO DECISIONS

##### Conspiracy

In action for damages under this section, an alleged conspiracy or combination is not one of the elements of the cause of action, as it is not created by the conspiracy, but by the wrongful acts done by the defendants to the injury of the plaintiff. *Ewald v. Lane* (1939, 104 F. 2d 222, 70 App. D.C. 89, certiorari denied 60 S. Ct. 81, 308 U.S. 568, 84 L. Ed. 477).

##### Crime against United States

One who "wrongfully accuses a woman of unchastity commits a crime against the United States. And \* \* \* an indictment for a conspiracy to commit



\* \* \* such an offense" charges an offense under said 18 U.S.C. § 371. *Fletcher v. United States* (1914, 42 App. D.C. 53, certiorari denied 35 S. Ct. 283, 235 U.S. 706, 59 L. Ed. 434).

#### Privileged communication

Statement by physician to unmarried woman in the presence of a third party (who is there at the latter's request) that she is pregnant is privileged, in the absence of malice. *Brice v. Curtis* (1912, 38 App. D.C. 304).

#### § 22-2305. Blackmail.

Whoever verbally or in writing accuses or threatens to accuse any person of a crime or of any conduct which, if true, would tend to disgrace such other person, or in any way subject him to the ridicule or contempt of society, or threatens to expose or publish any of his infirmities or failings, with intent to extort from such other person anything of value or any pecuniary advantage whatever, or to compel the person accused or threatened to do or to refrain from doing any act, and whoever with such intent publishes any such accusation against any other person shall be imprisoned for not more than five years or be fined not more than one thousand dollars, or both. (Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 819.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23-546.

#### NOTES TO DECISIONS

##### Affidavit, probable cause

When creditor, with intent to extort money, had accused debtor with conduct which, if true, would tend to subject him to the contempt of society, said debtor had probable cause for swearing out the affidavit under § 819 of the code (this section). *Slater v. Taylor* (1908, 31 App. D.C. 100, 18 L.R.A., N.S., 77).

##### Collection agency

No recovery can be had against a collection agency when they alleged that person's credit standing would be jeopardized if debt were not paid, as this does not violate the blackmail statute. *Clark v. Associated Retail Credit Men of Washington, D.C.* (1939, 105 F. 2d 62, 70 App. D.C. 183).

##### Intent

In blackmail prosecution, evidence sustained finding of intent to extort. *Connor v. United States* (1953, 200 F. 2d 750, 91 U. S. App. D. C. 417).

##### Review

Where no objection had been made during trial to admission of evidence, and proceedings with respect to pretrial motion, other than written motion and order denying it, were not part of record on appeal, reviewing court could not sustain defendant's contention that trial court had erred in denying his pretrial motion to suppress certain evidence. *Wade, Jr. v. United States* (1958, 259 F. 2d 950, 104 U.S. App. D.C. 135).

##### Sufficiency

Evidence was sufficient to present question for jury as to whether defendant, who allegedly threatened to tell complaining witness' wife that he had caused pregnancy of another woman, was guilty of blackmail. *U. Salley v. United States* (1962, 306 F. 2d 814, 113 U.S. App. D.C. 207).

#### § 22-2306. Intent to commit extortion by communication of illegal threats and demands—Penalty.

Whoever with intent to extort from any person, firm, association, or corporation, any money or other thing of value: (1) transmits within the District of Columbia any communication containing any demand or request for ransom or reward for the release of any kidnapped person, shall be fined not more than \$5,000 or imprisoned not more than twenty

years, or both; (2) transmits within the District of Columbia any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined not more than \$5,000 or imprisoned not more than twenty years, or both; or (3) transmits within the District of Columbia any communication containing any threat to injure the property or reputation of the recipient of the communication or of another or the reputation of a deceased person or any threat to accuse the recipient of the communication or any other person of a crime, shall be fined not more than \$5,000 or imprisoned not more than twenty years, or both. (June 19, 1968, Pub. L. 90-351, § 1501, title X, 82 Stat. 238.)

#### CODIFICATION

Section 1501 of the act of June 19, 1968, is a part of Pub. L. 90-351, designated by section 1 thereof as the "Omnibus Crime Control and Safe Streets Act of 1968." Section 1302 thereof was formerly classified to § 23-105 and is now covered by § 23-104, and section 1502 thereof is classified to section 22-2307 of this code. For classification of other provisions of Pub. L. 90-351, see distribution tables in the U.S. Code.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23-546.

#### § 22-2307. Threatening to kidnap or injure a person or damage his property—Penalty.

Whoever threatens within the District of Columbia to kidnap any person or to injure the person of another or physically damage the property of any person or of another person, in whole or in part, shall be fined not more than \$5,000 or imprisoned not more than twenty years, or both. (June 19, 1969, Pub. L. 90-351, § 1502, title X, 82 Stat. 238.)

#### CODIFICATION

Section 1502 of the act of June 19, 1968, is a part of Pub. L. 90-351, designated by section 1 thereof as the "Omnibus Crime Control and Safe Streets Act of 1968." Section 1302 thereof was formerly classified to § 23-105 and is now covered by § 23-104, and section 1501 thereof is classified to section 22-2306 of this code. For classification of other provisions of Pub. L. 90-351, see distribution tables in the U.S. Code.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23-546.

### Chapter 24.—MURDER—MANSLAUGHTER

#### Sec.

22-2401. Murder in the first degree—Purposeful killing—Killing while perpetrating certain crimes.

22-2402. Murder in first degree—Placing obstructions upon or displacement of railroad.

22-2403. Murder in second degree.

22-2404. Punishment for murder in first and second degrees.

22-2405. Punishment for manslaughter.

#### § 22-2401. Murder in the first degree—Purposeful killing—Killing while perpetrating certain crimes.

Whoever, being of sound memory and discretion, kills another purposely, either of deliberate and premeditated malice or by means of poison, or in perpetrating or attempting to perpetrate any offense punishable by imprisonment in the penitentiary, or without purpose so to do kills another in perpetrating or in attempting to perpetrate any arson, as defined in section 22-401 or 22-402, rape, mayhem, robbery, or kidnapping, or in perpetrating or attempting to perpetrate any housebreaking while armed with



or using a dangerous weapon, is guilty of murder in the first degree. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 798; June 12, 1940, 54 Stat. 347, ch. 339.)

#### AMENDMENT

1940—Act June 12, 1940, enlarged the crime of murder in the first degree by adding those provisions commencing "or without purpose so to do."

#### CROSS REFERENCE

Punishment for first and second degree murder, see § 22-2404.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11-502, 22-2403, 23-546.

#### NOTES TO DECISIONS

##### Abuse of discretion

Where the trial court examined witness, after prosecution claimed surprise, as to his reasons for changing his mind on issue of who had attacked victim and afforded defense counsel opportunity to cross-examine witness, and defense counsel made no objection to admission of witness' testimony on recall repudiating his previous testimony and asserting that the defendant had beaten victim and that police detective had not influenced him to pick defendant's picture out of photographs shown to him, allowing witness to be recalled instead of declaring mistrial upon assertion of surprise by prosecution is not an abuse of discretion. *In the Matter of D. S. A.* (D.C. App. 1971, 283 A. 2d 829).

##### Accomplice

Defendant who participated in robbery of cab driver that resulted in killing was guilty of murder in first degree even though defendant was accomplice of codefendant who did the actual shooting. *United States v. J. R. Carter* (1971, 445 F. 2d 669, 144 U.S. App. D.C. 193; cert. denied 92 S.Ct. 988, 405 U.S. 932).

##### Acquittal

Where government was unable to show any motive for killing of victim nor was there any showing of prior threats or quarrels which might supply inference of premeditation and deliberation in defendant's killing of victim by multiple stab wounds inflicted with knife defendant had been carrying with him that night, government's evidence was insufficient to warrant submission of an issue of premeditation and deliberation to jury and defendant's motion for acquittal of first-degree murder should have been granted at conclusion of prosecution's case. *B. Austin v. United States* (1967, 382 F. 2d 129, 127 U.S. App. D.C. 180).

##### Appeal and error

Since the surrounding facts and evidence in homicide prosecution did not present a case of substantial doubt as to possibility of misidentification, since there was untainted identification testimony, and since there was strong evidence independent of testimony of resemblance witnesses showing that defendant was the offender, the combination of strength in government's case and weakness of the "resemblance" testimony in contributing to convictions warranted a finding that introduction of resemblance testimony, assuming it would have been established as error following a hearing on pretrial confrontation, was only harmless error. *United States v. F. A. Brooks* (1971, 449 F. 2d 1077, 146 U.S. App. D.C. 1).

##### Appreciable time

Law requires only that some appreciable time elapse during which necessary premeditation can take place in order to convict of premeditated murder. *United States v. R. L. Mack* (1972, 466 F. 2d 333, 151 U.S. App. D.C. 162; cert. denied 93 S.Ct. 297, 409 U.S. 952).

Passage of time, standing alone, will not support an inference that deliberation took place, in prosecution for premeditated murder. *Id.*

No particular length of time is necessary for deliberation, and it is not the lapse of time which constitutes deliberation necessary to convict for first-degree murder but the reflection and turning over in mind of accused concerning his design and purpose to kill. *W. L. Parman v. United States* (1968, 399 F. 2d 559, 130 U.S. App. D.C. 188).

Evidence that deceased was assaulted, bound with rope, tied to a chair and then killed by strangulation from behind while still tightly bound was sufficient to support finding of premeditation. *Id.*

"Appreciable time" charge in homicide prosecution is a meaningful way to convey to jury the core meaning of premeditation and deliberation and for that reason should be given at least where specifically requested by defense. *B. Austin v. United States* (1967, 382 F. 2d 129, 127 U.S. App. D.C. 180).

Court's refusal in homicide prosecution to state that the time one must have for deliberation be "some appreciable period of time" rather than "some period of time" as originally proposed by judge was compounded by charge of court that the time to deliberate may be in the nature of hours, minutes or seconds. *Id.*

##### Arraignment

Defendant's convictions for robbery and felony-murder would not be deemed secured through information obtained in violation of rule requiring prompt arraignment, or in violation of due process and speedy trial amendments to the federal Constitution, where defendant was presented in court on day he surrendered, no confession by defendant was introduced against him, evidence established all basic elements of the crimes, and defendant took the stand and described his participation in the robbery and fatal shooting. *W. C. Coleman v. United States* (1961, 295 F. 2d 555, 111 U.S. App. D.C. 210).

Arraignment consists of three parts: (1) Calling the defendant by name and commanding him to hold up his hand, that his identification may be certain; (2) reading to him the indictment; (3) taking his plea. *Johnson v. United States* (1912, 38 App. D.C. 347, affirmed 32 S. Ct. 748, 225 U.S. 405, 56 L. Ed. 1142).

##### Assault

"A conviction for an assault and battery is no bar to a subsequent indictment for manslaughter, or murder, in case the person assaulted dies within a year and a day." *Hopkins v. United States* (1894, 4 App. D.C. 430).

Failure of deceased to secure proper medical attention after assault no defense to charge of homicide. *Id.*

##### Authority of jury

A jury may consider issue of second-degree murder on an indictment of first-degree felony-murder only if it finds some defect with proof as to felony-murder. *W. H. Fuller v. United States* (1968, 407 F. 2d 1199, 132 U.S. App. D.C. 264; cert. denied 89 S. Ct. 999).

##### Bifurcated trial

Holding a bifurcated trial was not improper on theory that since jury did not pass upon issue of insanity in first phase of trial they did not consider elements of "sound memory," "sound discretion," "deliberate malice," and "premeditated malice" where jury was instructed that government must prove beyond reasonable doubt that defendant acted with malice and after premeditation and alleged requirement of affirmative proof of "sound memory and discretion" was met in second phase of the trial. *United States v. L. W. Green* (1972, 463 F. 2d 1313, 150 U.S. App. D.C. 222).

Where defendant moved to dismiss jury after first part of bifurcated trial, he could not complain that finding on "sound memory and discretion" was made by the court in the second phase of the trial rather than in the first phase of the trial. *Id.*

Trial court did not abuse its discretion in murder prosecution by denying motion for bifurcated trial with two juries on issues of insanity and defense to the merits. *W. L. Parman v. United States* (1968, 399 F. 2d 559, 130 U.S. App. D.C. 188).

##### Common law

"The definition of murder in section 798 of the 1901 code (this section) is the common-law definition of the crime." *Hamilton v. United States* (1905, 26 App. D.C. 382). See, also, *Bishop v. United States* (1940, 107 F. 2d 297, 71 App. D.C. 132).

##### Conduct of prosecutor

In prosecution for murder, where prosecution did not abide by the court's ruling that it could not impeach its own witness and over repeated objections sought to convince jury that the witness had given a statement that



was inconsistent with his sworn testimony at trial and made references to a prior statement of the witness not in evidence and improper conduct was renewed in summation to the jury, improper conduct of the prosecutor required reversal where conduct of the prosecutor might have affected the verdict on the issue of self defense or the degree of homicide. *Belton v. United States* (1958, 259 F. 2d 811, 104 U.S. App. D.C. 81).

#### Confessions

Admission in evidence in robbery and murder trial of defendant's pretrial address to the court which included statement "I feel I am going in blind, you know, just going to start this trial, although personally I know I am guilty" constituted reversible error where he did not intend that the statement be considered as confession or as admission and was therefore not voluntary. *United States v. L. P. Robinson* (1972, 459 F. 2d 1164, 148 U.S. App. D.C. 140).

Defendant accused of homicide failed to sustain burden of proving that his prior statement was improperly admitted at trial on ground that it was made after committing magistrate had failed to comply with rule relating to defendant's right to know charge against him and to retain counsel. *E. E. Turberville, B. T. Williams and J. H. Simpson v. United States* (1962, 303 F. 2d 411, 112 U.S. App. D.C. 400, cert. denied 82 S. Ct. 1596).

In prosecution for murder in first degree committed in perpetration of offense of housebreaking while armed with a deadly weapon, evidence sustained admission in evidence of defendant's written confession, subject to final determination by jury, upon all evidence, as to its voluntary nature. *Tyler v. United States* (1952, 193 F. 2d 24, 90 U. S. App. D. C. 2, certiorari denied 72 S. Ct. 639, 343 U. S. 908, 96 L. Ed. 1326).

Where defendant had been duly committed to jail upon other charges and was being legally detained, and defendant was delivered to custody of policemen by jail officials for purpose of going to police headquarters to take a lie detector test, to which defendant had agreed to submit, though jailer exceeded his authority in surrendering defendant, fact that defendant was in temporary care of police at time of making written confession to murder charge did not render confession inadmissible at his trial. *Id.*

The drunken condition of accused when making a confession, unless such drunkenness goes to the extent of mania, does not affect the admissibility of such confession in evidence. *Bell v. United States* (1931, 47 F. 2d 438, 60 App. D.C. 76, 74 A.L.R. 1098).

While it is the general rule that a confession to be admissible must relate to the offense charged, it is equally true that it may include other offenses when there can be no separation of the relevant and irrelevant parts. *Robinson v. United States* (1933, 63 F. 2d 147, 61 App. D.C. 370, certiorari denied 53 S. Ct. 697, 289 U.S. 749, 77 L. Ed. 1494).

Where the evidence showed that one charged with murder in the first degree had made confession of his crime after being in custody but eleven hours, without fear or compulsion, the voluntariness of his confession was for the jury. *McAfee v. United States* (1940, 111 F. 2d 199, 72 App. D.C. 60, certiorari denied 60 S. Ct. 1094, 310 U.S. 643, 84 L. Ed. 1410).

In prosecution for murder, where neither of defendants made any attack upon the voluntariness of their confessions, either on direct examination or cross-examination, and not until on redirect examination did they intimate that confessions were obtained by threats of police to hold relatives of defendants until confessions were made, admitting confessions was not error. *Hawkins v. United States* (1947, 158 F. 2d 652, 81 U.S. App. D.C. 376, certiorari denied 67 S. Ct. 1347, 331 U.S. 830, 97 L. Ed. 1844, rehearing denied 67 S. Ct. 1728, 331 U.S. 869, 91 L. Ed. 1872).

Error, if any, in permitting defendant's written confession to be received in evidence on ground that it clearly appeared that statement had been obtained through force, coercion and intimidation was rendered harmless by fact that defendant took stand in his own behalf and of his own accord gave testimony which was in all essential respects similar to statements in confession. *Wheeler v. United States* (1948, 165 F. 2d 225, 82 U.S. App. D.C.

363, certiorari denied 68 S. Ct. 448, 333 U.S. 830, 92 L. Ed. 1115). See, also, *Wheeler v. Reid* (1949, 175 F. 2d 829, 84 U.S. App. D.C. 180).

#### Conviction of lesser offense

Under indictment charging first degree murder done during perpetration or attempted perpetration of rape, mayhem, robbery, kidnapping, or housebreaking while armed with or using a dangerous weapon, defendant may, if evidence warrants, be found guilty of the necessarily included offense of second degree murder. *Green v. United States* (1955, 218 F. 2d 856, 95 U. S. App. D. C. 45).

Where defendant is guilty of murder or nothing, it is not error to refuse to charge as to manslaughter. *Horton v. United States* (1899, 15 App. D.C. 310).

When, in homicide case, the only defense is insanity, but there is no evidence to reduce the crime from murder to manslaughter, it was not error for the trial court to state to the jury that the evidence will not justify a verdict of manslaughter. *Id.*

Where several strong men join in a criminal attack upon a defenseless man, knock him down, and, when he attempts to escape, pursue him and then with augmented numbers continue the assault, and one of the conspirators, while his confederates are beating their victim, plunges a knife into him, they should all be charged with manslaughter, even though they did not contemplate the use of the knife, for the conspirators must be presumed to know that great force and violence probably will result. *Patten v. United States* (1914, 42 App. D.C. 239).

To reduce homicide from murder to manslaughter, defendant must not only show that he acted under the influence of passion but "in addition that there was a sufficient cause of provocation for his passion." *Jackson v. United States* (1919, 48 App. D.C. 272).

Law presumes that defendant, while attempting to perpetuate a robbery, foresaw and intended whatever consequences might naturally result from such an encounter, and the law, not as a matter of fact, but as a conclusion of legal reasoning and experience, considers this state of mind to be implied malice, the homicide would not be manslaughter which is an unlawful killing without malice, but murder either in first or second degree. *Marcus v. United States* (1937, 86 F. 2d 854, 66 App. D.C. 298).

#### Corpus delicti

Corpus delicti under count charging homicide in perpetration of a housebreaking did not require independent proof that death occurred in perpetration of housebreaking. *United States v. J. A. Naples* (D.C.D.C. 1961, 192 F. Supp. 23; rev'd 307 F. 2d 618).

In prosecution for murder in first degree committed in perpetration of offense of housebreaking while armed with deadly weapon, without considering defendant's written confession, evidence was sufficient to prove corpus delicti. *Tyler v. United States* (1952, 193 F. 2d 24, 90 U. S. App. D. C. 2, certiorari denied 72 S. Ct. 639, 343 U. S. 908, 96 L. Ed. 1326).

#### Deliberation

Evidence that defendant first struck his victim because she had complained about his work, that he went to floor above, obtained a stick from a fireplace, returned downstairs and killed her, that in the killing he used the stick and also choked her, and that to insure her death he used a knife, was sufficient to permit jury to find deliberation. *Fisher v. United States* (1945, 149 F. 2d 28, 80 U.S. App. D.C. 96, affirmed 66 S. Ct. 1318, 328 U.S. 463, 90 L. Ed. 1382, 166 A.L.R. 1176, rehearing denied 67 S. Ct. 24, 329 U.S. 818, 91 L. Ed. 697).

#### Double jeopardy

Where jury was authorized at first trial to find defendant guilty of either first degree murder or second degree murder, and jury found defendant guilty of second degree murder, but on appeal that conviction was reversed and the case was remanded for a new trial, second trial of defendant for first degree murder placed him in jeopardy twice for same offense in violation of the constitutional prohibition against double jeopardy, and defendant had not waived that defense by making successful appeal of erroneous conviction of second degree murder. *Green v. United States* (1957, 78 S. Ct. 221, 355 U.S. 184, 2 L. Ed. 2d 199, 61 A. L. R. 2d 1119).

Where jury was authorized to find defendant guilty of either first degree murder or alternatively of second



degree murder and jury found him guilty of second degree murder, defendant, by appealing, did not prolong his original jeopardy, and when his conviction for second degree murder was reversed and case remanded he could not be tried again for first degree murder without placing him in new jeopardy. *Id.*

#### Elements of crime

The distinguishing characteristic of first degree murder is that it is a deliberate, premeditated, intentional killing, while killing in second degree murder may be intentional or unintentional, but it must, in either event, result from a willful and malicious act. *P. O. Hansborough v. United States* (1962, 308 F. 2d 645, 113 U.S. App. D.C. 392).

Premeditation and deliberation are necessary elements of first degree murder. *Mergner v. United States* (1945, 147 F. 2d 572, 79 U.S. App. D.C. 373, certiorari denied 65 S. Ct. 1085, 325 U.S. 850, 89 L. Ed. 1971).

Murder first degree is defined by statute as a purposeful killing done either with premeditated malice or in committing or attempting to commit a felony and the statute also characterizes as such a killing one in the perpetration or attempted perpetration of any one of the enumerated felonies although there was no purpose to kill. *Goodall v. United States* (1950, 180 F. 2d 397, 86 U.S. App. D.C. 148, 17 A.L.R. 2d 1070, certiorari denied 70 S. Ct. 1009, 339 U.S. 987, 94 L. Ed. 924).

Since the indictment did not charge defendant with purposely killing another, but only with killing him while attempting to rob him, it was necessarily found under the second segment of the statute providing that the intent to kill is not an ingredient of the crime and need not be alleged or proved. *Id.*

#### Evidence—Admissibility

Where two witnesses testified that defendant, in company of identified killer and a third person, entered apartment building where victim lived, the same three men were seen by three witnesses fleeing the scene just after a shot was fired and one witness testified that the three men were the same three he had seen inside building only moments earlier, there was enough evidence to link defendant with events occurring inside building so that testimony as to those events was admissible against him. *United States v. R. L. Mack* (1972, 466 F. 2d 333, 151 U.S. App. D.C. 162; cert. denied 93 S. Ct. 297, 409 U.S. 952).

Witness' testimony that one of three men outside murder victim's apartment said they would "upset" victim "good" was relevant on issue of premeditation, was not objectionable as hearsay and was admissible, even though defendant could not be identified as source of the declaration. *Id.*

Badly injured victim's statement to defendant, as officer was escorting defendant past her, "You had no call to do that to me, Bennie," was admissible as spontaneous, excited utterance. *United States v. B. E. Barnes* (1972, 464 F. 2d 828, 150 U.S. App. D.C. 319; cert. denied 93 S. Ct. 1514, 410 U.S. 988).

Incriminating statement by badly burned victim during hospital interview on day before she died, in course of which she said that she felt she was going to die, was admissible as dying declaration. *Id.*

Suspicion of codefendants charged with first-degree murder that some understanding existed that witness, who had also participated in alleged murder, might not be prosecuted or that he believed he would not be, was not sufficient to exclude his otherwise admissible testimony as to details of crime. *R. T. Brown, J. D. Irby and R. L. Jones v. United States* (1967, 375 F. 2d 310, 126 U.S. App. D.C. 134).

Testimony of circumstances surrounding defendant's arrest by officers pursuant to a warrant for his arrest, not for the robberies and murder for which he was being tried, but for armed assault on police officer, offered as indicating consciousness of guilt or resistance to arrest, was admissible in context in which case was tried. *C. Gregory v. United States* (1966, 369 F. 2d 185, 125 U.S. App. D.C. 140).

Inadmissible statement could not be used by Government even for limited purpose of "refreshing" defendant's recollection, and such use of statement was as damaging as if it had been admitted into evidence. *J. Inge v. United States* (1966, 356 F. 2d 345, 123 U.S. App. D.C. 6).

Testimony of eyewitness to crime of murder and robbery need not be suppressed because police had learned from defendants during period of illegal detention of the existence and identity of such eyewitness. *W. M. Smith, Jr., and R. Bowden v. United States* (1963, 324 F. 2d 879, 117 U.S. App. D.C. 1).

Evidence of one defendant's activities prior to alleged homicide was admissible in prosecution of three defendants for such homicide, in view of close proximity, in time, place and persons between such activities and subsequent homicide. *E. E. Turberville, B. T. Williams and J. H. Simpson v. United States* (1962, 303 F. 2d 411, 112 U.S. App. D.C. 400, cert. denied 82 S. Ct. 1596).

Where same evidence was used to connect defendant with crimes charged in counts two, three and four as was employed in count one, and such evidence was ruled inadmissible on appeal from judgment of conviction on count one, new trial ordered by Court of Appeals for count one, should embrace all four counts. *United States v. J. A. Naples* (D.C.D.C. 1962, 205 F. Supp. 944).

In prosecution of Puerto Rican defendant, whose companion shot and killed guard in front of dwelling of President of the United States, for first-degree murder, wherein defendant interposed defense that he and companion had no intent to kill anyone but merely wished to create an incident in order to bring to the attention of the American people conditions in Puerto Rico, defendant was properly allowed to testify as to his own intent. *Collazo v. United States* (1952, 196 F. 2d 573, 90 U.S. App. D.C. 241, certiorari denied 72 S. Ct. 1065, 343 U.S. 968, 96 L. Ed. 1364).

In prosecution for murder in first degree committed in perpetration of offense of housebreaking while armed with deadly weapon, ruling that statement of witness that he told defendant that lie detector indicated that defendant was lying, would not be admitted as evidence of any alleged lying of defendant, but merely as evidence bearing upon question whether defendant's confession was, in fact, voluntary, was correct. *Tyler v. United States* (1952, 193 F. 2d 24, 90 U.S. App. D.C. 2, certiorari denied 72 S. Ct. 639, 343 U.S. 908, 96 L. Ed. 1326).

To make one criminal act evidence of another, there must be a connection to show that he who committed the one must have done the other, and the admissibility of such evidence is a judicial question. *Burge v. United States* (1906, 26 App. D.C. 524).

Evidence received tending to show defendant and wife quarreled and fought, sufficiently established the corpus delicti to justify receiving testimony of defendant's statements. *Murray v. United States* (1923, 288 F. 1008, 53 App. D.C. 119, certiorari denied 43 S. Ct. 703, 262 U.S. 757, 67 L. Ed. 1218).

In prosecution for murder committed while attempting to perpetrate robbery, admitting evidence that defendant entered plea of not guilty at preliminary hearing before committing magistrate, and that when defendant was asked to plead he answered that he was guilty of robbing and shooting, but that it was not premeditated or that he had not committed premeditated murder, was not prejudicial error where the evidence added nothing prejudicial either to confession or to evidence given by defendant at trial. *Mumforde v. United States* (1942, 130 F. 2d 411, 76 U.S. App. D.C. 107, certiorari denied 63 S. Ct. 53, 317 U.S. 656, 87 L. Ed. 527).

In murder prosecution, evidence of uncommunicated complaint which victim of defendant had made about his work prior to the offense was properly excluded, where the complaint was not a threat, and there was no claim of self-defense. *Fisher v. United States* (1945, 149 F. 2d 28, 80 U.S. App. D.C. 96, affirmed 66 S. Ct. 1318, 328 U.S. 463, 90 L. Ed. 1382, 166 A.L.R. 1176, rehearing denied 67 S. Ct. 24, 329 U.S. 818, 91 L. Ed. 697).

In first degree murder prosecution, evidence that defendant deliberately pursued and shot deceased's sister immediately after defendant shot deceased was admissible as tending to show that defendant's shooting of deceased was not an accident in an attempt at self-defense against deceased's husband, but was done with deliberate intent to kill. *Copeland v. United States* (1946, 152 F. 2d 769, 80 U.S. App. D.C. 308, certiorari denied 66 S. Ct. 1010, 328 U.S. 841, 90 L. Ed. 1615).

In prosecution of three defendants jointly indicted on charge of murder in perpetration of robbery, where de-



fendants suggested possibility that victim died of heart attack, exhibiting victim's clothing to jury and showing bullet hole in back of victim's coat was not improper. *Hall v. United States* (1948, 168 F. 2d 161, 83 U.S. App. D.C. 166, 4 A.L.R. 2d 1193, certiorari denied 68 S. Ct. 1509, 334 U.S. 853, 92 L. Ed. 1775, rehearing denied 69 S. Ct. 9, 335 U.S. 839, 93 L. Ed. 391).

In murder prosecution, receiving evidence that revolver with which victim was shot had been stolen from house of certain person was not error on ground that it constituted evidence of offense other than that for which defendants were on trial, in absence of any evidence showing that any of the defendants had stolen the revolver or had received it knowing it to have been stolen. *Id.*

An examination of murder weapon by ballistics expert during trial was not part of the trial, and the fact that such examination was made in the absence of the defendant does not render inadmissible evidence concerning it. *Goodal v. United States* (1950, 180 F. 2d 397, 86 U.S. App. D.C. 148, 17 A.L.R. 2d 1070, certiorari denied 70 S. Ct. 1009, 339 U.S. 987, 94 L. Ed. 924).

#### — Burden of proof

Where defendant, accused of murder and robbery, introduced evidence that on date thereof he was suffering from mental disease or defect, it became duty of government to prove him sane beyond reasonable doubt at the time of commission of crimes charged. *H. S. Carey v. United States* (1961, 296 F. 2d 442, 111 U.S. App. D.C. 300).

#### — Sufficiency

Evidence sustained conviction of first-degree felony-murder, first-degree premeditated murder and armed robbery. *United States v. R. L. Mack* (1972, 466 F. 2d 333, 151 U.S. App. D.C. 162; cert. denied 93 S. Ct. 297, 409 U.S. 152).

While there was no evidence of motive in homicide prosecution, evidence that the defendant brought shotgun and knife to scene of the crime is sufficient to permit jury to infer that the killing was premeditated, where sawed-off shotgun that was carried in briefcase to scene of crime was not a weapon that had innocent uses, where there was no evidence that the defendant habitually carried it with him, and where in addition the single knife wound in decedent's throat was made at a place calculated to make death an unmistakable result. *United States v. F. A. Brooks* (1971, 449 F. 2d 1077, 146 U.S. App. D.C. 1).

Evidence, including testimony as to statements of the defendant and codefendant describing the events and circumstances at time of shooting of cab driver, sustained convictions of robbery and felony murder. *United States v. J. R. Carter* (1971, 445 F. 2d 669, 144 U.S. App. D.C. 193; cert. denied 92 S.Ct. 988, 405 U.S. 932).

In prosecution for first-degree murder under this section, eyewitness testimony describing shooting together with notes written by defendant prior to shooting indicating he contemplated murder and suicide were sufficient to establish elements of premeditation and deliberation. *United States v. A. Sutton* (1969, 426 F. 2d 1202, 138 U.S. App. D.C. 208).

Evidence, including testimony of girl friend of one defendant as to incriminating statements which both defendants made to her, sustained convictions for felony murder and for attempted robbery. *A. Calloway and T. L. S. McCowey v. United States* (1968, 399 F. 2d 1006, 130 U.S. App. D.C. 273).

Proof in homicide prosecution was legally sufficient to support a verdict predicated on thesis that shotgun was discharged killing victim while a robbery was then being attempted. *E. M. Harrison and O. G. White v. United States* (1967, 387 F. 2d 203, 128 U.S. App. D.C. 245).

Evidence was sufficient to sustain conviction of one defendant of felony murder. *Id.*

Accused who put on defense to first-degree murder case did not thereby waive earlier motion for acquittal or expose himself to death penalty which government was not entitled to pursue in view of fact that at close of prosecution's case defendant was entitled to acquittal of first-degree murder charge because evidence adduced by prosecution was not sufficient to permit a reasonable man to find that elements of first-degree murder existed beyond reasonable doubt. *B. Austin v. United States* (1967, 382 F. 2d 129, 127 U.S. App. D.C. 180).

Evidence of eyewitness, corroborated by physical details otherwise in evidence, supported verdicts finding defendants guilty of first-degree murder and housebreaking. *R. T. Brown, J. D. Irby and R. L. Jones v. United States* (1967, 375 F. 2d 310, 126 U.S. App. D.C. 134).

Evidence sustained conviction for second degree murder. *E. E. Turberville, B. T. Williams and J. H. Simpson v. United States* (1962, 303 F. 2d 411, 112 U.S. App. D.C. 400, cert. denied 82 S. Ct. 1596).

Evidence sustained conviction for robbery and felony-murder. *W. C. Coleman v. United States* (1961, 295 F. 2d 555, 111 U.S. App. D.C. 210).

In prosecution under District of Columbia murder-during-robbery statute, for death of policeman whom defendant shot and killed while policeman, who began pursuit some minutes after robbery, was pursuing defendant, evidence whether asportation was continuing was sufficient to sustain conviction. *Carter v. United States* (1955, 223 F. 2d 332, 96 U. S. App. D. C. 40, certiorari denied 76 S. Ct. 324, 350 U. S. 949, 100 L. Ed. 827).

In arson and murder prosecution, evidence was sufficient to establish that victim's death had been caused by the fire in house in which her body was found. *Green v. United States* (1955, 218 F. 2d 856, 95 U. S. App. D. C. 45).

In prosecution for murder in first degree committed in perpetration of offense of housebreaking while armed with a deadly weapon, without considering defendant's written confession, evidence was sufficient to justify submission of case to jury and to support verdict of guilty. *Tyler v. United States* (1952, 193 F. 2d 24, 90 U. S. App. D. C. 2, certiorari denied 72 S. Ct. 639, 343 U. S. 908, 96 L. Ed. 1326).

Evidence was sufficient to sustain conviction for murder in first degree. *Pritchett v. United States* (1951, 185 F. 2d 438, 87 U.S. App. D. C. 374, certiorari denied 71 S. Ct. 608, 341 U.S. 905, 95 L. Ed. 1344).

Evidence supported conviction of codefendant who participated in robbery but who did not do the shooting or killing of another in perpetrating a robbery. *Wheeler v. United States* (1948, 165 F. 2d 225, 82 U.S. App. D.C. 363, certiorari denied 68 S. Ct. 448, 333 U.S. 830, 92 L. Ed. 1115).

Evidence that defendant found deceased with a woman with whom defendant was friendly, that some discussion ensued, and that later all went outside, where an altercation occurred and defendant cut deceased with a knife resulting in death, was sufficient evidence of deliberation and premeditation to go to jury upon charge of first-degree murder. *Thomas v. United States* (1947, 158 F. 2d 97, 81 U.S. App. D.C. 314, certiorari denied 67 S. Ct. 1303, 331 U. S. 822, 91 L. Ed. 1838).

Under an indictment in the common-law form for murder in the first degree, the prosecution may prove facts to bring the case within any of the provisions of this section defining murder in the first degree. *Burton v. United States* (1945, 151 F. 2d 17, 80 U. S. App. D. C. 208, certiorari denied 66 S. Ct. 473, 326 U. S. 789, 90 L. Ed. 479).

Evidence of premeditation and deliberation was sufficient to sustain conviction for first degree murder. *Mergner v. United States* (1945, 147 F. 2d 572, 79 U.S. App. D.C. 373, certiorari denied 65 S. Ct. 1085, 325 U.S. 850, 89 L. Ed. 1971).

Evidence sustained conviction for murder committed while attempting to perpetrate robbery. *Mumforde v. United States* (1942, 130 F. 2d 411, 76 U.S. App. D.C. 107, certiorari denied 63 S Ct. 53, 317 U.S. 656, 87 L. Ed. 527).

#### First degree murder defined

First-degree murder requires premeditation and deliberation and covers calculated and planned killings while homicides that are unplanned or impulsive, even though they are intentional and with malice aforethought, are murder in the second degree. *B. Austin v. United States* (1967, 382 F. 2d 129, 127 U.S. App. D.C. 180).

Intentional murder is in the first degree if committed in cold blood and is murder in the second degree if committed on impulse or in the sudden heat of passion. *Id.*

#### Grounds for impeachment

Though the statute allows an exception to the general rule that one cannot impeach his own witness by use of previously made contradictory statements, to come within the exception, actual surprise must be found.



*Belton v. United States* (1958, 259 F. 2d 811, 104 U.S. App. D.C. 81).

#### Housebreaking

Killing of deceased by defendant as he was securing loot and preparing to leave premises into which he had broken was a homicide committed in perpetration of housebreaking. *United States v. J. A. Naples* (1961, 192 F. Supp. 23; rev'd 307 F. 2d 618).

Where this section defined murder in the first degree as purposely killing a human being either with deliberate or premeditated malice, or by poison, or in perpetrating or attempting to perpetrate any offense punishable by imprisonment in the penitentiary, and since housebreaking is so punishable, one who commits a homicide while engaged in that offense may be charged with first degree murder. *Monroe v. United States* (1926, 10 F. 2d 645, 56 App. D.C. 80).

#### Identification

One defendant was not prejudiced by testimony concerning his pretrial identification by witness to killing from group of eight police photographs, on theory that testimony allowed jury to speculate that defendant had been in trouble with police previously, where jury was given no indication that photographs used by police were "mug shots." *United States v. R. L. Mack* (1972, 466 F. 2d 333, 151 U.S. App. D.C. 162; cert. denied 93 S. Ct. 297, 409 U.S. 952).

Where defendants were represented at lineup by counsel, lineup itself met requirements of Sixth Amendment, photograph of that lineup was completely neutral and wholly exact reproduction, witness requested, at time she was leaving lineup, to see photograph of lineup, Government complied with her request seven months after lineup and two weeks immediately prior to trial and witness initiated discussion of lineup photograph from which she identified defendants as the two robbers, photograph of lineup was not subject to suppression because counsel for defendants were not present when witness viewed photograph. *United States v. R. Brown et al.* (1972, 461 F. 2d 134, 149 U.S. App. D.C. 43).

Where photograph depicted lineup which was fairly conducted, during which defendants were represented by counsel, witness and officer who conducted interview with witness were vigorously cross-examined regarding the interview at which witness identified defendants as robbers from the lineup photograph and there was nothing improper in manner in which photograph was presented to witness, defendants' right to due process was not violated by the witness' pretrial photographic identification. *Id.*

Witness' pretrial identification of defendants in photograph of lineup at which she had not made identification because of lighting conditions was not tainted by other showings of photographs of the defendants to the witness. *Id.*

Where witness to robbery and murder was in close proximity to the robbers and had ample opportunity to observe them at time of robbery and murder, witness had independent source from which she might attempt in-court identification of accused at trial, regardless of whether witness' identification of defendants from photograph of lineup was improper. *Id.*

#### Impartial jury

Presence on the jury, in prosecution of defendant for murder of his wife and assault of another man in connection with a love triangle situation, of a juror who, some 6 months before defendant's trial, apparently had had an affair with a woman who had been killed by her husband had such a strong tendency to deny defendant his constitutional right to a trial by 12 impartial jurors as to require new trial. *J. R. Jackson v. United States* (1968, 395 F. 2d 615, 129 U.S. App. D.C. 392).

#### Impeachment

It was error to rule, in homicide case, that defendant's statement could be used for impeachment purposes even if it had been improperly obtained. *J. Inge v. United States* (1966, 356 F. 2d 345, 123 U.S. App. D.C. 6).

#### Indictment

Defendant could be convicted of second degree murder under felony-murder indictment even though indictment

failed to allege "malice aforethought", where indictment contained the fully equivalent language that defendant "unlawfully and feloniously did murder" named person "by means of shooting him with a pistol". *L. Jackson v. United States* (1962, 313 F. 2d 572, 114 U.S. App. D.C. 181).

Second degree murder is an included offense under an indictment for felony-murder. *Id.*

An indictment charging a defendant with felony-murder, charged first degree murder, even though indictment omitted an allegation to the effect that accused was of sound memory and discretion. *W. C. Coleman v. United States* (1961, 295 F. 2d 555, 111 U.S. App. D.C. 210).

An indictment charging first degree murder was not defective, even though it did not contain the phrase "being of sound memory and discretion." *W. Jones v. United States* (1961, 296 F. 2d 398, 111 U.S. App. D.C. 276).

An allegation of sanity is not required in an indictment. *Id.*

Statute of 1 Hen. V, ch. 5 (1413) requiring indictment to set forth "estate, or degree, or mystery of defendant and the town or country, etc., of which he was conversant," is not in force in the District. *Lanckton v. United States* (1901, 18 App. D.C. 348).

An indictment charging the commission of murder in a house situated in the District is not defective because it does not particularly describe the location of the house. *Id.*

It is not necessary to charge in the indictment that accused was of sound mind and discretion. *Hill v. United States* (1903, 22 App. D.C. 395).

Indictment for murder is not defective for want of an express allegation of an intent to kill. *Hamilton v. United States* (1905, 26 App. D.C. 382). See, also, *Hill v. United States* (1903, 22 App. D.C. 395).

An indictment for murder which alleges that defendant did "choke, suffocate and strangle" of which the person died is sufficient even though there is no allegation that the choking was "mortal." *Hamilton v. United States* (1905, 26 App. D.C. 382).

Requirement of copy of indictment and list of jurors and witnesses is mandatory. *Aldridge v. United States* (1931, 47 F. 2d 407, 60 App. D.C. 45, reversed on other grounds 51 S.Ct. 470, 283 U.S. 308, 75 L. Ed. 1054, 73 A.L.R. 1203).

Where indictment informed defendant in the plainest sort of language that he was charged with killing while attempting robbery, i. e., accused of murder in the first degree, indictment must stand. *Goodall v. United States* (1950, 180 F. 2d 397, 86 U.S. App. D.C. 148, 17 A.L.R. 2d 1070, certiorari denied, 70 S. Ct. 1009, 339 U.S. 987, 94 L. Ed. 924).

#### Insanity defense

Expert testimony supported trial judge's determination that government met its burden of proving that defendant was not suffering from a mental disease or defect on dates of the offenses, or that if he were the offenses were not products of the illness. *United States v. L. W. Green* (1972, 463 F. 2d 1313, 150 U.S. App. D.C. 222).

#### Instructions

In prosecution for felony-murder, wherein jurors were instructed that, to return guilty verdict, they had to find that killing took place while defendant, or an aider or abettor, was perpetrating or attempting to perpetrate the offense of robbery and instruction was high-lighted by closing statements of one codefendant's trial counsel that jurors should acquit on felony-murder count if they found that robbery was an "after-thought," defendants were not prejudiced by trial court's refusal to charge specifically that, if intent to rob victim was formed after the shooting, there could be no conviction of felony-murder. *United States v. R. L. Mack* (1972, 466 F. 2d 333, 151 U.S. App. D.C. 162; cert. denied 93 S. Ct. 297, 409 U.S. 952).

Where nowhere in the instructions was there to be found one setting forth essential elements constituting crime of attempted robbery, the underlying felony upon which defendant's conviction of felony-murder was predicated, omission was plain error. *United States v. L. L. Williams* (1972, 463 F. 2d 958, 150 U.S. App. D.C. 122).

If the defendant presses no objection, judge may instruct jury to render verdicts on both first-degree felony murder count and second-degree murder count, assuming



judge concludes the instruction will not confuse jury; however, if defendant insists that charge of second-degree murder be submitted to jury solely as lesser offense included within first-degree murder charge, and if he makes a timely motion or objection, he is entitled to an instruction directing jury (a) to first consider issue of guilt as to first-degree murder; (b) in the event of acquittal, to consider guilt of second-degree murder as lesser included offense; and (c) in the event of verdict of guilty of first-degree murder, to enter no verdict concerning second-degree murder. *United States v. G. L. Butler* (1972, 455 F. 2d 1338, 147 U.S. App. D.C. 270).

Where the defendant is not entitled to call witness to the stand because of intention of witness to claim privilege against self-incrimination, the defendant is entitled to request an instruction that the jury should draw no inference from the absence of the witness because he is not available to either side, this being appropriate as calculated to reduce danger that jury would, in fact, draw an inference from absence of witness who would corroborate defendant's testimony. *D. J. Bowles v. United States* (1970, 439 F. 2d 536, 142 U.S. App. D.C. 26; cert. denied 91 S. Ct. 1240, 401 U.S. 995).

Since the trial judge's charge contained two erroneous instructions equating intent with malice as essential ingredient of murder and stating that law infers or presumes malice from use of deadly weapon in commission of homicide and both instructions were later reread to jury and jury returned verdict, not of first-degree murder, but of murder in second degree and the jury did not accept whole of government's evidence bearing on degree of defendant's culpability, instructional errors will be noticed by Court of Appeals despite defendant's failure to object at trial and require reversal of conviction of murder in second degree. *United States v. A. Wharton* (1970, 433 F. 2d 451, 139 U.S. App. D.C. 293).

Jury may be instructed on second-degree murder as lesser included offense though indictment is solely for felony-murder. *W. H. Fuller v. United States* (1968, 407 F. 2d 1199, 132 U.S. App. D.C. 264; cert. denied 89 S. Ct. 999).

Where an indictment charged in separate counts both first-degree felony-murder and first-degree premeditated murder and the trial judge charged with respect to both felony-murder and second-degree murder, in the absence of any request, motion or objection by the defendant, failure to further charge that jury, which returned verdicts of guilty both as to felony-murder and as to manslaughter as lesser included offense, should consider question of second-degree murder only if it determined that government had not met its burden as to some element of first-degree murder charged, was not plain error and was not reversible error. *Id.*

Charge to a jury that in absence of explanatory circumstances the law infers or presumes malice from use of deadly weapon was error. *K. Green v. United States* (1968, 405 F. 2d 1368, 132 U.S. App. D.C. 98; see also 424 F. 2d 912, 137 U.S. App. D.C. 424; cert. denied 91 S. Ct. 473, 400 U.S. 997).

In homicide prosecution, charge to jury which submitted first-degree murder, second-degree murder, and manslaughter and which contained statement that wrongful act intentionally done was done with malice was prejudicial error. *Id.*

Charge in homicide prosecution should focus primarily on defendant's actual thought processes in terms of meditation and conscious weighing of alternatives and the appreciable time element is subordinate, necessary for but not sufficient to establish deliberation. *B. Austin v. United States* (1967, 382 F. 2d 129, 127 U.S. App. D.C. 180).

Analysis of jury would be illuminated if it is first advised that a typical case of first-degree murder is the murder in cold blood while murder committed on impulse or in sudden passion is murder in the second degree, and then instructed that a homicide conceived in passion constitutes murder in the first degree only if jury is convinced beyond a reasonable doubt that there was an appreciable time after design was conceived and that in this interval there was further thought and a turning over in the mind and not mere persistence of an initial impulse of passion. *Id.*

Jury was erroneously instructed that excessive blows require manslaughter verdict even when struck in sudden

heat of passion; and such instructions constituted plain error, which reviewing court could redress even though such instructions had not been challenged at trial, where jury, if properly instructed, could have found that defendant was not guilty because any unnecessary blows had been delivered in heat of passion while he actually and reasonably believed he was fighting with deceased woman to save his life or to avert serious bodily injury. *J. Inge v. United States* (1966, 356 F. 2d 345, 123 U.S. App. D.C. 6).

Court erred in refusing to instruct that jury could not find defendant guilty of both first-degree and second-degree murder. *J. A. Naples v. United States* (1964, 344 F. 2d 508, 120 U.S. App. D.C. 123).

Single offense cannot be both first- and second-degree murder. *Id.*

Trial judge in instructing jury as to difference between first degree murder and second degree murder, should endeavor to make it absolutely clear to jury that intentional killing may be second degree murder if premeditation and deliberation do not exist. *D. Tucker v. United States* (1963, 318 F. 2d 221, 115 U.S. App. D.C. 250).

Giving of instruction that second degree murder differs from first degree murder in that it may be committed either without purpose or intent to kill, or without premeditation and deliberation was not prejudicial error, in view of instructions in their entirety, in view of fact that court was careful to distinguish two degrees of murder in important respect that premeditation and deliberation are essential elements of first degree murder, in view of absence of objection or request for additional instruction, and in view of evidence and sentence of life imprisonment. *Id.*

Any error in submitting lesser included offense of manslaughter in prosecution on charge of first degree murder was not prejudicial when a verdict of manslaughter was not returned. *P. O. Hansborough v. United States* (1962, 308 F. 2d 645, 113 U.S. App. D.C. 392).

Failing to instruct that jury might return a second degree murder verdict, was not error, in a felony-murder prosecution, where accused and his brother robbed a store proprietor, accused took some money and fled, and in immediate close and continuous pursuit, police officers followed accused up to instant of killing of one of the officers by accused. *W. C. Coleman v. United States* (1961, 295 F. 2d 555, 111 U.S. App. D.C. 210).

In prosecution under indictment charging murder and robbery of victim wherein principal defense was insanity, it was not error for trial court to decline to give requested instruction that evidence of diminished intellect would permit jury to return a verdict of a lesser degree of homicide than first degree murder. *Stewart v. United States* (1960, 275 F. 2d 617, 107 U.S. App. D.C. 159, rev'd on other grounds 81 S. Ct. 941, 366 U.S. 1, 6 L. Ed. 2d 84).

Where, in arson and murder prosecution, all testimony as to what occurred in burning house pointed to first degree murder only, giving of second degree murder instruction was error. *Green v. United States* (1955, 218 F. 2d 856, 95 U.S. App. D. C. 45).

In prosecution for first degree murder committed in robbing a grocery store, defended on ground of insanity, instruction attempting to distinguish between "mental disease" and "mental disorder", read in light of explanation offered by record, could have led jury to conclude defendant could be acquitted by reason of insanity only if defendant suffered from abnormality due to physical deterioration of or injury to brain, and was erroneous and prejudicial to defendant. *Stewart v. United States* (1954, 214 F. 2d 879, 94 U.S. App. D. C. 293).

Conviction for first degree murder committed in robbing a grocery store would be reversed by Court of Appeals for District of Columbia where given instruction prejudicial to defendant was fatally defective, regardless of whether errors in instruction were properly preserved. *Id.*

In prosecution for first degree murder committed in robbing a grocery store, defended on ground of insanity, instruction stating that a psychopath is not insane within meaning of law, and that a psychopath is person of low intelligence, although expert testimony was that a psychopath was usually of superior intelligence, was erroneous as court invasion of combined functions of



expert witness and jury by assertions treating factual issues as already settled by testimony or law. *Id.*

In prosecution of Puerto Rican defendant, whose companion shot and killed guard in front of dwelling of President of the United States, for first degree murder, wherein defendant interposed defense that he and companion, though armed with pistols, had no intent to kill anyone but merely wished to create an incident in order to bring to the attention of American people conditions in Puerto Rico, court properly charged jury that defendant's testimony as to conditions in Puerto Rico had nothing to do with the case, over objection of defendant that such conditions were relevant and material to issue of his intent and materially responsive to prosecutor's claim of motive. *Collazo v. United States* (1952, 196 F. 2d 573, 90 U. S. App. D. C. 241, certiorari denied 72 S. Ct. 1065, 343 U. S. 968, 96 L. Ed. 1364).

Charge to jury was proper which stated that the defendant might be found guilty of murder or manslaughter, or acquitted altogether if he killed deceased in the reasonable apprehension of danger to his own life, and it was not error for the trial court to exclude testimony to show vicious and dangerous character of deceased. *Travers v. United States* (1895, 6 App. D.C. 450).

Instructions, that insanity was induced by operation of strong drink upon a mind rendered unsound by an injury, or that he was incapable of forming a specific intent to kill so as to reduce the crime to manslaughter, are not sufficient when the evidence does not support such instructions and where the jury is informed by other instructions that they must find that he had sufficient mental capacity to distinguish right from wrong at time of act, beyond a reasonable doubt. *Snell v. United States* (1900, 16 App. D.C. 501).

A requested instruction of self-defense is defective which fails to state what the defendant was in imminent danger of. *Jackson v. United States* (1919, 48 App. D.C. 272).

Where instruction regarding second-degree murder and manslaughter was given at request of defendant's counsel, if the instruction was subject to criticism on ground that it was confusing because it opened up a matter not properly for jury's consideration, it was favorable to defendant, and he could not complain. *Mumforde v. United States* (1942, 130 F. 2d 411, 76 U.S. App. D.C. 107, certiorari denied 63 S. Ct. 53, 317 U.S. 656, 87 L. Ed. 527).

Where defendant testified that he entered store with definite purpose of committing robbery, but that a moment later he changed his mind and drew pistol from pocket hoping to quiet woman in charge, and thus to escape detection and arrest, but in excitement pistol was unintentionally discharged, instruction that, if defendant voluntarily abandoned his plan to rob before fatal shot was fired, defendant would not be guilty of murder in first degree, fully protected defendant's legal rights. *Id.*

The perpetration of a robbery, during which act a homicide is committed, legally takes the place of that premeditation to kill which is necessary for murder in the first degree, and it was not error to give such instruction merely because the indictment for murder tendered no such issue as robbery. *Burton v. United States* (1945, 151 F. 2d 17, 80 U.S. App. D.C. 208, certiorari denied 66 S. Ct. 473, 326 U.S. 789, 90 L. Ed. 479).

Instruction that defendant had a vital interest in outcome of case, and in testing truth and weighing force of defendant's testimony jury might do so in light of that interest as well as in light which might be shed by all other evidence in case, was not objectionable. *Fisher v. United States* (1945, 149 F. 2d 28, 80 U.S. App. D.C. 96, affirmed 66 S. Ct. 1318, 328 U.S. 463, 90 L. Ed. 1382, 166 A.L.R. 1176, rehearing denied 67 S. Ct. 24, 329 U.S. 818, 91 L. Ed. 697).

Instruction that in considering questions of intent, premeditation and deliberation, jury should consider entire personality of defendant, his mental, nervous, emotional and physical characteristics as developed by evidence was properly refused because it confused issue of insanity with question whether psychopathic characteristics of defendant prevented him from forming deliberate intent necessary to constitute first degree murder. *Id.*

Failure to volunteer an instruction on question whether defendants were exhausted by hours of questioning when

they confessed to murder charge was not error, where there was hardly sufficient evidence to warrant such an instruction and none was requested. *Hawkins v. United States* (1947, 158 F. 2d 652, 81 U.S. App. D.C. 376, certiorari denied, 67 S. Ct. 1347, 331 U.S. 830, 91 L. Ed. 1844, rehearing denied 67 S. Ct. 1728, 331 U.S. 869, 91 L. Ed. 1872).

In prosecution for murder resulting in conviction of second-degree murder, the court's charge covering premeditation, malice, and self-defense was not erroneous. *Thomas v. United States* (1947, 158 F. 2d 97, 81 U.S. App. D.C. 314, certiorari denied 67 S. Ct. 1303, 331 U.S. 832, 91 L. Ed. 1838).

Where robbery of fountain cash register at front of drug store by one of codefendants jointly indicted on charge of killing another in perpetrating robbery was a part of general holdup of store in perpetration of which other defendant killed proprietor while obtaining money in cash register in rear of store, defendant who did not do the shooting was not entitled to an instruction that two separate robberies had been committed, that such defendant could be convicted only of being accessory after the fact or that such defendant could be convicted only of offense of robbery. *Wheeler v. United States* (1948, 165 F. 2d 225, 82 U.S. App. D.C. 363, certiorari denied 68 S. Ct. 448, 333 U.S. 830, 92 L. Ed. 1115). See, also, *Wheeler v. Reid* (1949, 175 F. 2d 829, 84 U.S. App. D.C. 180).

Fact that there was evidence that one of the three defendants jointly indicted on charge of murder in perpetration of robbery threw away the gun and bullets after the murder did not require an instruction that jury could find such defendant guilty as accessory after the fact, where such defendant's testimony and other circumstances stamped him as an accessory before the fact and therefore guilty as a principal. *Hall v. United States* (1948, 168 F. 2d 161, 83 U.S. App. D.C. 166, 4 A.L.R. 2d 1193, certiorari denied 68 S. Ct. 1509, 334 U.S. 853, 92 L. Ed. 1775, rehearing denied 69 S. Ct. 9, 335 U.S. 839, 93 L. Ed. 391).

Court's comments concerning alibi as a defense were proper and not prejudicial where it was said that such defense should be given such weight and consideration to which it is entitled to under all facts and circumstances. *Goodall v. United States* (1950, 180 F. 2d 397, 86 U.S. App. D.C. 148, 17 A.L.R. 2d 1070, certiorari denied 70 S. Ct. 1009, 339 U.S. 987, 94 L. Ed. 924).

Appellant's claim that Court failed to charge that if jury believed him guilty of killing but if any reasonable doubt existed as to whether he committed murder first or murder second, it should be resolved in favor of the lesser crime, is without merit since such an instruction is necessary only when from the evidence as a whole the jury might reasonably find the dependent guilty in either degree and must decide which degree. *Id.*

#### Intent

Under District of Columbia statute, murder committed in course of robbing a grocery store is first degree murder although there is no premeditation or intent or desire to kill. *Stewart v. United States* (1954, 214 F. 2d 879, 94 U.S. App. D. C. 293).

Intent to kill must always be proved in first-degree murder prosecution under first clause of local statute in order to convict, but motive for the killing is not always a material element in defense. *Collazo v. United States* (1952, 196 F. 2d 573, 90 U. S. App. D. C. 241, certiorari denied 72 S. Ct. 1065, 343 U. S. 968, 96 L. Ed. 1364).

Defendant is guilty of murder if the deceased, in seeking to escape the violent assault of accused had a well-grounded belief that he would take her life or inflict serious injury, and so believing inadvertently fell into a canal and was drowned, and it is not necessary to show by the prosecution nor that the jury shall believe that the defendant had the malicious intent to do bodily harm. *Norman v. United States* (1902, 20 App D.C. 494).

"A deliberate intent to take life is declared to be an essential element of murder in the first degree, and this, of course, must be shown as a fact." *Sabens v. United States* (1913, 40 App. D.C. 440). See, also, *Jordan v. United States* (1937, 87 F. 2d 64, 66 App. D.C. 309, certiorari denied 58 S. Ct. 762, 303 U.S. 654, 82 L. Ed. 1114).

Under this section defining "murder in first degree" as the killing of another while armed with or using a dangerous weapon in the perpetration or attempted perpetration of a robbery, it is not necessary to show that the



killing was done purposely to raise the offense to first degree murder. *Mumfords v. United States* (1942, 130 F. 2d 411, 76 U.S. App. D.C. 107, certiorari denied 63 S. Ct. 53, 317 U.S. 656, 87 L. Ed. 527).

In prosecution for homicide, the recurrence of other acts of the sort tends to negative inadvertence, defensive purpose, or any form of innocent intent. *Copeland v. United States* (1946, 152 F. 2d 769, 80 U.S. App. D.C. 308, certiorari denied 66 S. Ct. 1010, 328 U.S. 841, 90 L. Ed. 1615).

#### Intoxication

"Voluntary intoxication is neither an excuse nor a palliation for crime." *Lanckton v. United States* (1901, 18 App. D.C. 348).

Although defendant forms a deliberate and premeditated intent to kill while sober, and then voluntarily becomes drunk, he cannot be convicted of murder in the first degree, if at the time of the commission of the offense he was too drunk to deliberate and premeditate. *Sabens v. United States* (1913, 40 App. D.C. 440).

A charge given by the court of its own motion was proper to the effect that voluntary intoxication was generally not a justification for crime and that it is only considered when evidence tends to show condition of mind which rendered him incapable of forming an intent. *Smith v. United States* (1921, 269 F. 860, 50 App. D.C. 208).

Under this section, evidence of intoxication may be shown for purpose of proving lack of capacity to deliberate or premeditate; and under conflicting evidence, the question is for the jury. *McAfee v. United States* (1940, 111 F. 2d 199, 72 App. D.C. 60, certiorari denied 60 S. Ct. 1094, 310 U.S. 643, 84 L. Ed. 1410).

#### Jury

Evidence in homicide prosecution on issue of defendant's defense of insanity was for jury. *E. E. Turberville, B. T. Williams and J. H. Simpson v. United States* (1962, 303 F. 2d 411, 112 U.S. App. D.C. 400, cert. denied 82 S. Ct. 1596).

Evidence, in felony-murder prosecution, presented jury question as to whether there was such an "arrest" of accused prior to killing of an officer, as to break essential link between the robbery and the killing, and such issue was properly submitted to jury under instructions explaining the issue and what constituted arrest. *W. C. Coleman v. United States* (1961, 295 F. 2d 555, 111 U.S. App. D.C. 210).

What is reasonable adequate provocation is generally for the jury. *Jackson v. United States* (1919, 48 App. D.C. 272).

"It is in the discretion of the court to permit the jury to separate in a homicide case, and his action in that respect will not be reviewed unless it appear affirmatively that prejudice resulted to the defendant." *McHenry v. United States* (1922, 276 F. 761, 51 App. D.C. 119, 34 A.L.R. 1109).

In prosecution of three defendants jointly indicted on charge of murder in perpetration of robbery, where two of three defendants testified that written statements given by them to officers were extorted by physical mistreatment, and officers denied having mistreated defendants, question as to whether written statements were voluntary and admissible was for jury. *Hall v. United States* (1948, 168 F. 2d 161, 83 U.S. App. D.C. 166, 4 A.L.R. 2d 1193, certiorari denied 68 S. Ct. 1509, 334 U.S. 853, 92 L. Ed. 1775, rehearing denied 69 S. Ct. 9, 335 U.S. 839, 93 L. Ed. 391).

#### Lesser included offense

Where an indictment charges felony-murder, a verdict of second-degree murder is appropriate if there is proof from which the jury might reasonably find that defendant did not commit one of the enumerated felonies but was guilty of an intentional killing on impulse, and on this state of proof a charge of second-degree murder as a lesser included offense may be requested by prosecution or defense. *W. H. Fuller v. United States* (1968, 407 F. 2d 1199, 132 U.S. App. D.C. 264; cert. denied 89 S. Ct. 999).

#### Malice

A wrongful act intentionally done is not therefore done with malice. *K. Green v. United States* (1968, 405 F. 2d 1368, 132 U.S. App. D.C. 98).

However sudden the killing may be, if the means used, or the manner of doing it, or other external circumstances

attending it, indicate a sedate and deliberate mind and formed design to kill, it will be upon express malice *Travers v. United States* (1895, 6 App. D. C. 450).

"Implied malice constitutes murder in the second degree." *Sabens v. United States* (1913, 40 App. D.C. 440).

A heavy palming, with sharp, protruding nails, is a deadly weapon, from the use of which malice must be presumed. *Patten v. United States* (1914, 42 App. D.C. 239). See, also, *Hopkins v. United States* (1894, 4 App. D.C. 430).

A homicide committed purposely and with deliberate and premeditated malice is murder in the first degree and "Malice aforethought" may be shown expressly, or may be "implied" from the commission of the act itself. *Bishop v. United States* (1940, 107 F. 2d 297, 71 App. D.C. 132).

#### Means of commission

"The proof of the means of commission of a homicide need not conform strictly to the averment of such means in the indictment. If the means of death proved agree in substance with that charged, it is sufficient." *Hamilton v. United States* (1905, 26 App. D.C. 382).

#### Mental capacity

The criteria for evaluation of mental condition of accused at time of commission of crime and as to his capacity to be tried are not the same. *Stewart v. United States* (1960, 275 F. 2d 617, 107 U.S. App. D.C. 159, rev'd on other grounds 81 S. Ct. 941, 366 U.S. 1, 6 L. Ed. 2d 84).

In prosecution under indictment charging defendant with first degree murder and robbery of his victim wherein principal defense was insanity of accused, who had been found competent to stand trial after appropriate proceeding and who took stand and exhibited bizarre symptoms and abnormal behavior which if truly reflecting his mental state would have made a trial legally impossible, accused by his demeanor put his mental condition as of time of trial in issue and testimony of government witnesses concerning defendant's mental condition at a time appreciably after commission of crime was properly admitted to rebut impression of madness. *Id.*

In prosecution for first degree murder committed in robbing a grocery store, defended on ground of insanity, it was jury's function to determine from all evidence, including expert testimony, whether defendant suffered from abnormal mental condition and whether nature and extent of condition from which defendant suffered relieved defendant of criminal responsibility under then prevailing standards. *Stewart v. United States* (1954, 214 F. 2d 879, 94 U.S. App. D. C. 293).

Mental dullness, weakness, or incapacity does not excuse from the consequences of crime, unless the evidence proves that defendant was at the time of the commission of the act so mentally impaired that he could not distinguish between right and wrong. *Travers v. United States* (1895, 6 App. D.C. 450).

Law does not recognize the doctrine of emotional insanity. *Taylor v. United States* (1895, 7 App. D.C. 27).

Refusal of the trial justice to admit in evidence an exemplification of the record of the Georgia State Sanitarium, showing the mental condition, treatment, and incarceration of certain relatives of the defendant, was proper. *Snell v. United States* (1900, 16 App. D.C. 501).

Where jury were fully informed that before they could find the accused guilty of the crime charged, insanity or unsoundness of mind being set up as a defense, they were required to find that the accused had sufficient capacity to distinguish between right and wrong, at the time of and with respect to the act which was the subject of inquiry, beyond a reasonable doubt. *Id.*

#### Motive

If fact of killing by an accused is in issue, prosecutor is permitted as part of his effort to prove that accused committed the act, to prove that accused had a motive for killing the deceased, and accused as part of his effort to prove that he did not commit the act, is permitted to prove that he had no motive for killing the deceased. *Collazo v. United States* (1952, 196 F. 2d 573, 90 U.S. App. D. C. 241, certiorari denied 72 S. Ct. 1065, 343 U.S. 968, 96 L. Ed. 1364).



If killing is intended by accused and none of the established legal excuses for the killing is pleaded, the motive of the killer is wholly immaterial. *Id.*

Government is not required to prove motive, but jury may consider absence of such proof as a circumstance in defendant's favor. *Lanckton v. United States* (1901, 18 App. D.C. 348).

Motive may be proved, because it "may be very important in determining whether or not the accused was actuated by deliberate, premeditated malice." *McHenry v. United States* (1922, 276 F. 761, 51 App. D.C. 119, 34 A.L.R. 1109). See, also, *Lomax v. United States* (1911, 37 App. D.C. 414); *McUin v. United States* (1900, 17 App. D.C. 323).

#### Multiple counts

If prosecutor files in two counts of first-degree murder, once a charge of premeditated murder is struck as unsupported by sufficient evidence and that count is reduced to second-degree murder, defendant is entitled, on motion, to have entire count struck and to have issue of guilt as to second-degree murder submitted only as lesser included offense and only in the event of reasonable doubt of guilt of greater offense. *W. H. Fuller v. United States* (1968, 407 F. 2d 1199, 132 U.S. App. 264; cert. denied 89 S. Ct. 999).

#### Prejudicial cross-examination

In murder prosecution wherein sole defense was insanity, and defendant's gibberish testimony was such as to raise issues as to whether defendant feigned such testimony and whether at time of the third trial his mental condition represented his condition at time of act charged, cross-examination disclosing defendant's failure to take stand at two previous trials which resulted in convictions was erroneous and was not harmless but was sufficiently prejudicial to warrant the granting of a mistrial even though defense made no request for cautionary instructions. *W. L. Stewart v. United States* (1961, 366 U.S. 1, 81 S. Ct. 941; reversing 275 F. 2d 617).

#### Prejudicial error

In prosecution of three defendants for homicide, request by counsel for one defendant that jury return lesser verdict than that charged in indictment was not prejudicial to another defendant who persistently denied any participation in offense, in view of subsequent instructions that evidence be considered separately as to each defendant and defendant's failure to object to such remarks. *E. E. Turberville, B. T. Williams and J. H. Simpson v. United States* (1962, 303 F. 2d 411, 112 U.S. App. D.C. 400, cert. denied 82 S. Ct. 1596).

In prosecution for murder, where a police officer testified that defendant had failed to make a report to the police because of his record and defendant's counsel brought out the fact that the record referred to was failure to settle hotel bills, the net effect was not prejudicial to defendant. *Burton v. United States* (1945, 151 F. 2d 17, 80 U.S. App. D.C. 208, certiorari denied 66 S. Ct. 473, 326 U.S. 789, 90 L. Ed. 479).

In murder prosecution, where a nurse who made a written statement to the police took the stand and her testimony was substantially the same as the written statement, any error in permitting statement to be introduced in evidence was not prejudicial. *Id.*

Accused in murder prosecution was required to plead and prove his own case and was responsible for the production in court of witnesses necessary to do so, and failure of the government to produce certain witnesses could not be regarded as prejudicial. *Thomas v. United States* (1947, 158 F. 2d 97, 81 U.S. App. D.C. 314, certiorari denied 67 S. Ct. 1303, 331 U.S. 822, 91 L. Ed. 1838).

#### Publicity

In view of fact that newspaper clippings were accurate accounts of developments during trial and were not sensational in tone, and in view of scrupulous concern on part of trial court for elimination of extrajudicial influences from jury's deliberations, defendant was not denied a fair trial because of alleged extensive and adverse newspaper publicity surrounding his case. *United States v. W. L. Parman* (1971, 461 F. 2d 1203, 149 U.S. App. D.C. 117).

#### Punishable by imprisonment in the penitentiary

"The words 'punishable by imprisonment in the penitentiary' do not mean an offense that can be punished only by such imprisonment, but include such as may be so punished. *United States v. Evans* (1906, 28 App. D.C. 264).

#### Purposely

Word "purposely" as used in statute dealing with first-degree murder, is synonymous with "intentionally", and does not refer to the purpose of, or the intention in, the killing. *Collazo v. United States* (1952, 196 F. 2d 573, 90 U.S. App. D.C. 241, certiorari denied 72 S. Ct. 1065, 343 U.S. 968, 96 L. Ed. 1364).

Quaere: Whether it is necessary to charge in indictment for first-degree murder that the killing was "purposely" done. As to this point the court did not decide but stated that, it is a safe rule, in criminal pleading, to follow the language of the statute, where there is any uncertainty in respect of its meaning. *United States v. Evans* (1906, 28 App. D.C. 269).

Proof of purpose in murder prosecution need not be direct: it may be inferred from the circumstances attending the killing. *Jordon v. United States* (1937, 87 F. 2d 64, 66 App. D.C. 309, certiorari denied 58 S. Ct. 762, 303 U.S. 654, 82 L. Ed. 1114).

Prosecution required to show purpose to kill in murder prosecution. *Id.*

#### Question for jury

In prosecution for felony-murder committed in apartment building, whether two defendants and another person seen by witnesses going into building shortly before the crime and running out just after had committed the crime was for jury. *United States v. R. L. Mack* (1972, 466 F. 2d 333, U.S. App. D.C. 162; cert. denied 93 S. Ct. 297, 409 U.S. 952).

What effect failure of two persons, who had been inside victim's apartment when, shortly before shooting, he ordered three men from his apartment, to identify one defendant as one of the three men should have on weight of government's case against that defendant was jury question. *Id.*

Whether defendants, who had left victim's apartment upon victim's demand, emphasized by his brandishing kitchen knife and who had lingered in hall outside apartment before reentering apartment and shooting victim, had killed with premeditation was jury question. *Id.*

Significance on issue of premeditation of victim's being beaten after he was shot was properly left for interpretation by jury and not the court. *Id.*

#### Questions withheld from jury

Under all the facts and circumstances, the question whether there had been only second degree murder because of the killer's intoxication should not have been submitted to the jury. *Goodall v. United States* (1950, 180 F. 2d 397, 86 U.S. App. D.C. 148, 17 A.L.R. 1070, certiorari denied 70 S. Ct. 1009, 339 U.S. 987, 94 L. Ed. 924).

#### Remand

Conviction of juvenile of first-degree felony-murder armed robbery, assault with dangerous weapon, assault upon police officer with dangerous weapon and carrying dangerous weapon would be remanded to District Court to consider possibility of sentencing under the Youth Corrections Act. *United States v. W. Howard* (1971, 449 F. 2d 1086, 146 U.S. App. D.C. 10).

#### Review

It is the duty of an appellate court to correct any error prejudicial to the defendant, even though not properly raised in the trial court. *Pattern v. United States* (1914, 42 App. D.C. 239). See, also, *Burge v. United States* (1906, 26 App. D.C. 524).

#### Right to counsel

Government's introduction at third murder trial of crucial testimony given by defendant at his first trial at which he did not have the constitutionally guaranteed right to assistance of counsel, impinged on defendant's constitutional rights requiring a reversal of his conviction for felony murder. *E. M. Harrison and O. G. White v. United States* (1967, 387 F. 2d 203, 128 U.S. App. D.C. 245).



**Robbery**

Fact that a robbery is being perpetrated by one who killed another, without purpose to do so and without deliberate or premeditated malice, supplies the element necessary to constitute the crime of first degree murder under this section, and under this section the crime of robbery is still in progress so long as the essential ingredient of asportation continues. *Carter v. United States* (1955, 223 F. 2d 332, 96 U. S. App. D. C. 40, certiorari denied 76 S. Ct. 324, 350 U. S. 949, 100 L. Ed. 827).

One who kills as he robs is charged by this section with having that degree of malice which is indispensable to murder in the first degree. *Wheeler v. United States* (1948, 165 F. 2d 225, 82 U.S. App. D.C. 363, certiorari denied 68 S. Ct. 448, 333 U.S. 830, 92 L. Ed. 1115). See, also, *Wheeler v. Reid* (1949, 175 F. 2d 829, 84 U.S. App. D.C. 180).

Evidence supported conviction of murder while perpetrating robbery. *Medley v. United States* (1946, 155 F. 2d 857, 81 U.S. App. D.C. 85, certiorari denied 66 S. Ct. 1377, 328 U.S. 873, 90 L. Ed. 1642, rehearing denied 67 S. Ct. 35, 329 U.S. 822, 91 L. Ed. 99).

Homicide committed while attempting robbery is first degree murder. *United States v. Evans* (1906, 28 App. D.C. 264).

**Search and seizure**

Where police had acted lawfully when they arrested the defendant in apartment of another and police had adequate grounds to fear that the defendant was armed and dangerous, police acted lawfully when they searched the defendant in the stairwell outside of the apartment and seized weapon from his person. *D. J. Bowles v. United States* (1970, 439 F. 2d 536, 142 U.S. App. D.C. 26; cert. denied 91 S. Ct. 1240, 401 U.S. 995).

**Self-defense**

It is reasonable to use deadly weapon in defense against attack with deadly weapon though, in general, defender must use weapon in reasonable manner, i.e., only to extent he reasonably thinks is required to save his own life or to avert serious bodily harm. *J. Inge v. United States* (1966, 356 F. 2d 345, 123 U.S. App. D.C. 6).

To justify application of the law of self-defense, the defendant must show clearly that he was attacked, and that he had good reason to believe that he was in imminent peril of his life or of great bodily harm. *Hopkins v. United States* (1894, 4 App. D.C. 430).

Accidental homicide and homicide in self-defense are wholly irreconcilable. *Fearson v. United States* (1897, 10 App. D.C. 536).

Court properly charged the jury that they should consider the words and acts of the deceased and any threats against the accused at the time of the killing. *Wallace v. United States* (1901, 18 App. D.C. 152).

Stabbing of a woman is not justifiable as self-defense in absence of anything to show that defendant suffered pain, or was apprehensive of bodily harm, so serious as to suggest the use of a deadly weapon. *Grant v. United States* (1906, 28 App. D.C. 169).

Before one can be permitted to take life under the apprehension that he is in danger of life or serious bodily harm from the violence of another, it must appear that he had a reasonable right to believe, from all the facts and circumstances presented to his mind, that he was in such danger. *Sacriani v. United States* (1912, 38 App. D.C. 371).

In homicidal cases, where the defense is self-defense, the majority of the courts hold "that it is proper to give incidents or specific acts of violence within the knowledge of the witness or coming under his observation." *Marshall v. United States* (1916, 45 App. D.C. 373).

A charge to the jury that it must appear that there was no reasonable occasion for the defendant to escape from the conflict was error, as the true test is whether circumstances presented to the mind of the defendant were such that would have produced upon the mind of any reasonable, prudent person, the reasonable belief that the deceased was about to kill him or do him serious bodily harm. *Id.*

A charge is sufficient which states that "if a man reasonably believes that he is in immediate danger of death or grievous bodily harm from his assailant, he may stand his ground, and if he kills him he has not exceeded the

bounds of lawful self-defense." *Price v. United States* (1922, 276 F. 628, 51 App. D.C. 106).

**Sentence**

There is no legal obstacle to either indicting, convicting, or imposing concurrent sentences for crimes of both felony-murder and premeditated murder, where crimes arise from single act. *United States v. R. L. Mack* (1972, 466 F. 2d 333, 151 U.S. App. D.C. 162; cert. denied 93 S. Ct. 297, 409 U.S. 952).

**Severance**

Refusal to grant a severance for trial purposes as to defendant tried for several crimes including first-degree murder arising out of two separate robberies was prejudicial to defendant because there was not only the danger that evidence with respect to two robberies would cumulate in jurors' minds and tend to prove defendant guilty of each, but also because the evidence as to one of the robberies was so weak that its primary usefulness was to support government's case as to robbery which resulted in the murder. *C. Gregory v. United States* (1966, 369 F. 2d 185, 125 U.S. App. D.C. 140).

Refusal of motion of one of two defendants jointly indicted on charge of killing another in perpetrating a robbery for a severance on ground that such defendant could not obtain a fair and impartial trial because codefendant had made admissions and confessions out of his presence and hearing was not an abuse of discretion, where codefendant's testimony from witness stand was substantially to same effect as his former extrajudicial statement implicating moving defendant. *Wheeler v. United States* (1948, 165 F. 2d 225, 82 U.S. App. D.C. 363, certiorari denied 68 S. Ct. 448, 333 U.S. 830, 92 L. Ed. 1115). See, also, *Wheeler v. Reid* (1949, 175 F. 2d 829, 84 U.S. App. D.C. 180).

Refusal to grant three defendants jointly indicted on charge of murder in perpetration of robbery separate trials was not an abuse of discretion, where trial court duly limited effect of evidence introduced which was competent against one defendant and incompetent as to others. *Hall v. United States* (1948, 168 F. 2d 161, 83 U.S. App. D.C. 166, 4 A.L.R. 2d 1193, certiorari denied 68 S. Ct. 1509, 334 U.S. 853, 92 L. Ed. 1775, rehearing denied 69 S. Ct. 9, 335 U.S. 839, 93 L. Ed. 391).

**Summation of evidence**

Fact that trial court, when summarizing the evidence, took longer to summarize evidence of the prosecution did not establish that it had placed undue emphasis on evidence of prosecution and had minimized evidence of defendant, where more time was taken to summarize evidence of prosecution because it was more voluminous than that of defendant, and it was not claimed by defendant that certain facts were "singled out" without consideration of other modifying facts. *Wheeler v. United States* (1948, 165 F. 2d 225, 82 U.S. App. D.C. 363, certiorari denied 68 S. Ct. 448, 333 U.S. 830, 92 L. Ed. 1115). See, also, *Wheeler v. Reid* (1949, 175 F. 2d 829, 84 U.S. App. D.C. 180).

**Time**

Some appreciable time must elapse in order that reflection and consideration amounting to the deliberation and premeditation required for first-degree murder may occur. *Bullock v. United States* (1941, 122 F. 2d 213, 74 App. D.C. 220, certiorari denied 63 S. Ct. 39, 317 U.S. 627, 87 L. Ed. 507).

**Trial proceedings**

An examination of murder weapon by ballistics expert during trial was not part of the trial and the fact that such examination was made in the absence of the defendant does not render inadmissible the evidence concerning it. *Goodall v. United States* (1950, 180 F. 2d 397, 86 U.S. App. D.C. 148, 17 A.L.R. 2d 1070, certiorari denied 70 S. Ct. 1009, 339 U.S. 987, 94 L. Ed. 924).

**Unlawful killing**

Unlawful killing in sudden heat of passion, whether produced by rage, resentment, anger, terror or fear is reduced from murder to manslaughter only if there was adequate provocation, such as might naturally induce a reasonable man in passion of the moment to lose some self-control and commit act on impulse and without



reflection. *B. Austin v. United States* (1967, 382 F. 2d 129, 127 U.S. App. D.C. 180).

#### Verdict

It was within prerogative of jury to acquit, on a felony-murder charge, a codefendant who was not present at scene of the killing, and to return a verdict of guilty of felony-murder as to defendant, even though both defendants were found guilty of the same robbery and even though jury could have returned a felony-murder verdict of guilty as to both defendants. *W. C. Coleman v. United States* (1961, 295 F. 2d 555, 111 U.S. App. D.C. 210).

In District of Columbia a jury may not qualify a verdict of murder in the first degree by adding thereto "without capital punishment." *Johnson v. United States* (1912, 38 App. D.C. 347, affirmed 32 S. Ct. 748, 225 U.S. 405, 56 L. Ed. 1142).

Where the evidence was sufficient for jury on charge of first-degree murder and jury was properly instructed, court's refusal to direct a verdict on first-degree murder charge could not be held to have erroneously influenced jury in reaching its verdict of second-degree murder. *Thomas v. United States* (1947, 158 F. 2d 97, 81 U.S. App. D.C. 314, certiorari denied 67 S. Ct. 1303, 331 U.S. 822, 91 L. Ed. 1838).

#### Victim's conduct contributing to death

One who, in striking another, inflicts a blow which may not be mortal in and of itself but thereby starts a chain of causation which leads to death, is guilty of homicide even if victim contributes to his own death or hastens it by failing to take proper treatment. *United States v. Hamilton* (D.C.D.C. 1960, 182 F. Supp. 548).

Where, after defendant had jumped on and kicked victim's face, tubes were inserted into victim's nasal passages and trachea to maintain his breathing process, but victim later pulled out the tubes and died of asphyxiation due to aspiration or inhalation of blood caused by the severe injuries to his face, defendant was guilty of homicide, not merely of assault with a dangerous weapon, even if victim consciously and deliberately pulled out tubes and would have lived if he had not. *Id.*

#### Voluntary confession

Evidence established that defendant's confession made at jail to police officer was voluntary. *United States v. J. A. Naples* (D.C.D.C. 1961, 192 F. Supp. 23; rev'd 307 F. 2d 618).

### § 22-2402. Murder in first degree—Placing obstructions upon or displacement of railroad.

Whoever maliciously places an obstruction upon a railroad or street railroad, or displaces or injures anything appertaining thereto, or does any other act with intent to endanger the passage of any locomotive or car, and thereby occasions the death of another, is guilty of murder in the first degree. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 799.)

#### CROSS REFERENCE

Punishment for first and second degree murder, see § 22-2404.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11-502, 22-2403.

#### NOTES TO DECISIONS

##### Instructions

Jury may be instructed on second-degree murder as lesser included offense though indictment is solely for felony-murder. *W. H. Fuller v. United States* (1968, 407 F. 2d 1199, 132 U.S. App. D.C. 264; cert. denied 89 S. Ct. 999).

Where an indictment charged in separate counts both first-degree felony-murder and first-degree premeditated murder and the trial judge charged with respect to both felony-murder and second-degree murder, in the absence of any request, motion or objection by the defendant, failure to further charge that jury, which returned verdicts of guilty both as to felony-murder and as to manslaughter as lesser included offense, should consider question of second-degree murder only if it determined that government

had not met its burden as to some element of first-degree murder charged, was not plain error and was not reversible error. *Id.*

#### Multiple counts

If prosecutor files in two counts of first-degree murder, once a charge of premeditated murder is struck as unsupported by sufficient evidence and that count is reduced to second-degree murder, defendant is entitled, on motion, to have entire count struck and to have issue of guilt as to second-degree murder submitted only as lesser included offense and only in the event of reasonable doubt of guilt of greater offense. *W. H. Fuller v. United States* (1968, 407 F. 2d 1199, 132 U.S. App. D.C. 264; cert. denied 89 S. Ct. 999).

### § 22-2403. Murder in second degree.

Whoever with malice aforethought, except as provided in sections 22-2401, 22-2402, kills another, is guilty of murder in the second degree. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 800; June 12, 1940, 54 Stat. 347, ch. 339.)

#### AMENDMENT

1940—Act June 12, 1940, re-enacted section without change.

#### CROSS REFERENCE

Punishment for first and second degree murder, see § 22-2404.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11-502, 23-546.

#### NOTES TO DECISIONS

##### Generally

With certain statutory exceptions, when there is unjustified intentional killing, not premeditated but with malice, the offense is murder in the second degree and the same is true when there is unintentional killing which results from a willful and malicious act other than those specified in the first degree murder statute. *P. O. Hansborough v. United States* (1962, 308 F. 2d 645, 113 U.S. App. D.C. 392).

Where it could not be determined from evidence whether defendant intended to kill or merely wound his victim and it could not be said from record with legal certainty that interval between fight and the killing which followed was or was not of sufficient duration to provide time for premeditation required for first degree murder, court properly submitted lesser included offense of second degree murder in prosecution under indictment on charge of first degree murder. *Id.*

"Murder in the second degree" is the unlawful killing of another, where there is not a premeditated design and plan to effect death, but where there is malice aforethought. *Fryer v. United States* (1953, 207 F. 2d 134, 93 U. S. App. D. C. 34, certiorari denied 74 S. Ct. 135, 346 U. S. 885, 98 L. Ed. 389, rehearing denied 74 S. Ct. 305, 346 U. S. 928, 98 L. Ed. 420).

#### Abuse of discretion

In a case where a juvenile had killed his father, and several witnesses had testified to juvenile's fear of his father, exclusion of testimony of juvenile's probation officer, that the juvenile had come to the officer several days before the shooting in order to seek his advice concerning the violent outbreaks of the father and that the officer had told juvenile to contact police whenever such outbreaks occurred, was not an abuse of discretion and was not prejudicial since proffered evidence was cumulative and more remote than the evidence already admitted which dealt with juvenile's state of mind on the day in question. *In the Matter of M. Bumphus, Jr.* (D.C. App. 1969, 254 A. 2d 400).

#### Accident

If defendant did not have purpose to kill or if pistol went off accidentally, he would be guilty of murder in the second degree. *Marcus v. United States* (1937, 86 F. 2d 854, 66 App. D.C. 298).

Instruction to jury was correct to the effect that if in perpetrating the crime the killing was not done purposely but by accident or otherwise, appellant was not guilty of murder in the first degree. *Jordon v. United States*



(1937, 87 F. 2d 64, 66 App. D.C. 309, certiorari denied 58 S. Ct. 762, 303 U.S. 654, 82 L. Ed. 1114).

#### Accidental and unintentional

Even an accidental or unintentional killing will constitute second-degree murder if accompanied by malice. *R. L. Logan v. United States* (1969, 411 F. 2d 679, 133 U.S. App. D.C. 365).

The defendant correctly asserted that the commission of an act, the natural and probable consequences of which are less than death or great bodily harm does not imply malice. *Id.*

#### Acquittal

Where government was unable to show any motive for killing of victim nor was there any showing of prior threats or quarrels which might supply inference of premeditation and deliberation in defendant's killing of victim by multiple stab wounds inflicted with knife defendant had been carrying with him that night, government's evidence was insufficient to warrant submission of an issue of premeditation and deliberation to jury and defendant's motion for acquittal of first-degree murder should have been granted at conclusion of prosecution's case. *B. Austin v. United States* (1967, 382 F. 2d 129, 127 U.S. App. D.C. 180).

#### Allen charge

Allen charge that did not make any reference to proportion of jurors for or against was not prejudicially coercive. *United States v. H. A. Smoot* (1972, 463, F. 2d 1221, 150 U.S. App. D.C. 130).

#### Alternative charge of first- and second-degree murder

Statute defining crimes of first- and second-degree murder do not impel requirement that they be charged in the alternative, as their substantive elements do not conflict. *W. H. Fuller v. United States* (1968, 407 F. 2d 1199, 132 U.S. App. D.C. 264; cert. denied 89 S. Ct. 999).

#### Appreciable time

"Appreciable time" charge in homicide prosecution is a meaningful way to convey to jury the core meaning of premeditation and deliberation and for that reason should be given at least where specifically requested by defense. *B. Austin v. United States* (1967, 382 F. 2d 129, 127 U.S. App. D.C. 180).

Court's refusal in homicide prosecution to state that the time one must have for deliberation be "some appreciable period of time" rather than "some period of time" as originally proposed by judge was compounded by charge of court that the time to deliberate may be in the nature of hours, minutes, or seconds. *Id.*

#### Arrest

Where it is only 20 minutes after fatal shooting that police presented themselves at door of apartment occupied by female present at shooting, another person present at scene identified female as having left scene with suspect and, even though female protested entry, there was no evidence that police entry into apartment was forcible, search for and arrest of defendant in apartment was legal. *United States v. C. R. Honesty* (1971, 459 F. 2d 1279, 148 U.S. App. D.C. 255).

#### Authority of jury

A jury may consider issue of second-degree murder on an indictment of first-degree felony-murder only if it finds some defect with proof as to felony-murder. *W. H. Fuller v. United States* (1968, 407 F. 2d 1199, 132 U.S. App. D.C. 264; cert. denied 89 S. Ct. 999).

#### Confrontation

Defendant was not denied his Sixth Amendment right of confrontation when confessions of two codefendants implicating defendant were admitted and such defendants repudiated their confessions at trial inasmuch as defendants' counsel did not avail himself of opportunity to cross-examine codefendants and bring out all details of alleged coerced confession and any details confirmatory of noninvolvement of defendant at time of offense. *J. Jackson v. United States* (1970, 439 F. 2d 529, 142 U.S. App. D.C. 19).

#### Construction

Purpose and effect of the "except" clause in the provision which states that whoever with malice afore-

thought, except as provided in sections defining first-degree murder, kills another is guilty of second-degree murder is that all homicides with malice are murder and punishable by maximum of life imprisonment set forth for murder in second-degree, except that those particularly heinous murders listed in first-degree section are punishable capitally. *W. H. Fuller v. United States* (1968, 407 F. 2d 1199, 132 U.S. App. D.C. 264; cert. denied 89 S. Ct. 999).

Second-degree murder statute does not define substantive offense of second-degree murder so as to exclude therefrom all crimes that also come within first-degree murder statutes. *Id.*

#### Conviction of lesser offense

Although the indictment charged murder in first degree, appellant could have been found guilty of second degree murder had the evidence warranted it, since a defendant may be found guilty of any offense necessarily included in the crime charged in the indictment. *Goodall v. United States* (1950, 180 F. 2d 397, 86 U.S. App. D.C. 148, 17 A.L.R. 2d 1070, certiorari denied 70 S. Ct. 1009, 339 U.S. 987, 94 L. Ed. 1389).

#### Cross-examination

Refusal of the trial court to make any advance ruling that under no circumstances would it permit photograph of the defendant found in his wallet, that depicted defendant holding a knife in a menacing manner, to be used in cross-examining defendant if he took the stand in his own defense, was not error since the court asked for some indication of the nature of the defendant's proposed testimony but none was supplied, in prosecution for murder arising out of stabbing death of fellow employees of defendant. *United States v. S. Cobb* (1971, 449 F. 2d 1145, 146 U.S. App. D.C. 69).

#### Cumulative punishment

Although defendant may be found guilty under the first-degree murder and second-degree murder statute does not mean that he is subject to cumulative punishment. *W. H. Fuller v. United States* (1968, 407 F. 2d 1199, 132 U.S. App. D.C. 264; cert. denied 89 S. Ct. 999).

#### Evidence—Admissibility

Where, following arrest of apartment dweller as an accessory after the fact to fatal shooting, dweller had been informed of her right to counsel and right to remain silent, the search of her purse prior to taking her downstairs to squad car was clearly within scope of protective search and, gun found in purse, was properly admitted in trial of defendant convicted of second-degree murder, assault with a dangerous weapon, and carrying a dangerous weapon; fact that officers subsequently determined it to be wiser to release apartment dweller because of potential explosive situation in neighborhood and to issue a summons neither vitiated initial arrest nor invalidated search incident thereto. *United States v. C. R. Honesty* (1971, 459 F. 2d 1279, 148 U.S. App. D.C. 255).

Where there was other evidence that there had been "bad blood" between the defendant and the deceased, his former common-law wife, continuing over a period of years, the trial court did not abuse its discretion in prosecution for second-degree murder by admitting evidence that defendant had threatened the decedent with a shotgun 12 years prior to the homicide. *United States v. D. Bobbitt* (1971, 450 F. 2d 685, 146 U.S. App. D.C. 224).

Admission, in prosecution under this section brought against defendant who allegedly pushed wife from porch thereby causing injuries resulting in her death, of testimony that defendant had struck wife with chair seven months prior to alleged homicide, without instruction that such evidence came in only on issue of malice, is plain error requiring reversal, though such instruction had not been requested, where there had been extensive colloquy at bench over admissibility of such evidence and no one disputed that it was admissible only to prove malice. *United States v. E. McClain* (1971, 440 F. 2d 241, 142 U.S. App. D.C. 213).

Testimony of circumstances surrounding defendant's arrest by officers pursuant to a warrant for his arrest, not for the robberies and murder for which he was being tried, but for armed assault on police officer, offered as indicating consciousness of guilt or resistance to arrest, was admissible in context in which case was tried. *C.*



*Gregory v. United States* (1966, 369 F. 2d 185, 125 U.S. App. D.C. 140).

To determine whether defendant was aggressor and whether he could establish claim of self-defense to charges of assault with a dangerous weapon and murder, jury was required to consider all of circumstances leading up to fatal affray at victim's home, and it was not error to admit evidence that defendant had shortly before entered house of a former girl friend and attacked her and homicide victim. *W. T. Harris v. United States* (1966, 364 F. 2d 701, 124 U.S. App. D.C. 308).

On plea of self-defense evidence of deceased's character and belligerency, though unknown to defendant, is admissible in corroboration of defendant's testimony that deceased was the aggressor. *Evans v. United States* (1960, 277 F. 2d 354, 107 U.S. App. D.C. 324).

In prosecution for homicide resulting in conviction of second degree murder where defendant claimed killing was necessary in order to repel sexual assault by deceased who was drunk at the time of killing, it was reversible error to refuse to admit testimony to the effect that deceased was aggressive when drunk. *Id.*

Error in exclusion of testimony is not harmless if the excluded testimony, while not sufficient to produce an acquittal, might have induced jury to convict of a lesser included offense. *Id.*

In prosecution of defendant for killing of his wife's paramour who had engaged in improper relations with defendant's wife, wherein defendant asserted that he was of unsound mind at time of commission of the homicide in that he had "blacked out" at time of shooting, and that his state of mind was due to destruction of sanctity of his home, questioning of defendant about his relations with another woman was not error even though it might incidentally indicate commission of other crimes, since the evidence was relevant and material to defendant's attitude towards his own wife and home. *Bell v. United States* (1954, 210 F. 2d 711, 93 U.S. App. D.C. 173, certiorari denied 74 S. Ct. 682, 347 U.S. 956, 98 L. Ed. 1101, certiorari denied 77 S. Ct. 684, 353 U.S. 924, 1 L. Ed. 2d 720, certiorari denied 78 S. Ct. 1002, 356 U.S. 963, 2 L. Ed. 2d 1070).

In murder prosecution, where preceding witnesses had testified that defendant stabbed deceased with a knife, testimony that immediately after the stabbing deceased exclaimed "I've been stuck" was admissible as part of the res gestae, although the witness so testifying did not also testify that the attack had taken place. *United States v. Edmonds* (D.C.D.C. 1946, 63 F. Supp. 968).

In prosecution for murder of husband, forged letter written by accused to a friend of husband and purporting to be a confession of murder by fictitious person was admissible, though letter was postmarked and delivered several months after crime was committed. *Harris v. United States* (1948, 169 F. 2d 887, 83 U.S. App. D.C. 348, certiorari denied 69 S. Ct. 161, 335 U.S. 873, 93 L. Ed. 417).

#### — Sufficiency

Evidence that the defendant was alone with his wife when fatal shot was fired, that he was somewhat inebriated at the time, that shells and bullet holes were found throughout the room, that lethal bullet had traveled in a downward trajectory and came to rest in mattress of bed on which wife was seated, and that it was unlikely that rifle could misfire in manner suggested by the defendant, i.e., in an upward trajectory, is sufficient to form a reasonable basis upon which to disbelieve defendant's defense and to infer that he shot his wife, thus satisfying causation and malice requirement for second-degree murder. *United States v. W. Lucas* (1971, 447 F. 2d 338, 144 U.S. App. D.C. 368).

There was ample evidence to support a conviction for second degree murder by willful and malicious actions. *R. L. Logan v. United States* (1969, 411 F. 2d 679, 133 U.S. App. D.C. 365).

Accused who put on defense to first-degree murder case did not thereby waive earlier motion for acquittal or expose himself to death penalty which government was not entitled to pursue in view of fact that at close of prosecution's case defendant was entitled to acquittal of first-degree murder charge because evidence adduced by prosecution was not sufficient to permit a reasonable man to find that elements of first-degree murder existed

beyond reasonable doubt. *B. Austin v. United States* (1967, 382 F. 2d 129, 127 U.S. App. D.C. 180).

In homicide prosecution, evidence raised question for jury as to whether defendant was not guilty by reason of insanity. *Rose v. United States* (C.A.D.C. 1960, 283 F. 2d 376).

Evidence that defendant approached deceased and others with a knife in his hand and wantonly stabbed deceased during an altercation, resulting in death, warranted conviction of murder in the second degree. *United States v. Edmonds* (D.C.D.C. 1946, 63 F. Supp. 968).

Evidence that defendant found deceased with a woman with whom defendant was friendly, that some discussion ensued, followed by an altercation during which defendant cut deceased with a knife resulting in death, justified a finding that defendant acted with the malice aforethought essential to crime of second degree murder. *Thomas v. United States* (1947, 158 F. 2d 97, 81 U.S. App. D.C. 314, certiorari denied 67 S. Ct. 1303, 331 U.S. 822, 91 L. Ed. 1838).

Evidence sustained conviction of second degree murder as against contention that fatal wound was inflicted in self-defense. *Parker v. United States* (1947, 158 F. 2d 185, 81 U.S. App. D.C. 282, certiorari denied 67 S. Ct. 861, 330 U.S. 829, 91 L. Ed. 1278).

#### Examination of witnesses

In murder prosecution, where defense counsel had elicited from defendant on direct examination the fact that he had been in jail continuously from time of his arrest, court properly permitted government counsel on cross-examination to inquire of defendant whether it was not a fact that the court had set bail at \$1,500 and that defendant therefore had an opportunity to obtain release while awaiting trial if he had been able to secure bond. *United States v. Edmonds* (D.C.D.C. 1946, 63 F. Supp. 968).

In murder prosecution, permitting government counsel on cross-examination to inquire of defendant whether it was not a fact that the court had set bail at \$1,500 and that defendant could have obtained his release while awaiting trial if he had been able to secure bond, after defendant's counsel had brought out the fact that defendant had been in jail continuously from time of his arrest, did not affect the course of the trial so as to be ground for new trial. *Id.*

Defendant was not prejudiced by trial court's propounding questions to him when he was testifying as a witness, where defendant by the interchange was enabled to make a logical answer explaining his conduct, entirely consistent with his theory of self-defense. *Griffin v. United States* (1948, 164 F. 2d 903, 83 U.S. App. D.C. 20, certiorari denied 68 S. Ct. 727, 333 U.S. 857, 92 L. Ed. 1137).

#### First degree murder defined

First-degree murder requires premeditation and deliberation and covers calculated and planned killings while homicides that are unplanned or impulsive, even though they are intentional and with malice aforethought, are murder in the second degree. *B. Austin v. United States* (1967, 382 F. 2d 129, 127 U.S. App. D.C. 180).

Intentional murder is in the first degree if committed in cold blood and is murder in the second degree if committed on impulse or in the sudden heat of passion. *Id.*

#### Impeachment

When other crime is introduced, not as substantive evidence, but solely for impeachment purposes, it is plain error to fail to limit the jury's use of the other crimes to impeachment. *United States v. D. Bobbitt* (1971, 450 F. 2d 685, 146 U.S. App. D.C. 224).

When evidence of other crime is introduced solely for impeachment purposes, the trial court has duty to see that the jury does not cross boundary between credibility and substance and the trial judge must not only act sua sponte, whether or not request is made, but should give appropriate instruction immediately before or after the impeachment evidence is submitted, to confine its effect before evidence moves onto other matters. *Id.*

Failure of judge to exercise his discretion in admitting or refusing to admit as impeaching evidence three prior assaults of appellant, will not be a basis for reversing conviction. *T. D. Lewis v. United States* (1967, 381 F. 2d 894, 127 U.S. App. D.C. 115).



**Inconsistent verdicts**

Convictions for both robbery and second degree murder could stand even if they were inconsistent where the conviction of robbery was consistent with the evidence and the conviction of second degree murder was also consistent with the evidence. *L. Jackson v. United States* (1962, 313 F. 2d 572, 114 U.S. App. D.C. 181).

**Indeterminate Sentence Act**

Indeterminate Sentence Act is inapplicable to second degree murder and the existing statute providing a penalty of imprisonment for life or for not less than 20 years remains in effect, and definite term of 20 years is a valid sentence. *Anderson v. Rives* (1936, 85 F. 2d 673, 66 App. D.C. 174).

**Indictment**

Indictment charging defendant with second-degree murder is not defective because it merely mentions "malice aforethought" without specifying recklessness, notwithstanding claim that it left defendant without notice that case would be tried on a theory of recklessness, since, given long-standing precedent in this jurisdiction that malice can be inferred from excessive recklessness, it could not be said that defendant was unfairly foreclosed from any awareness that the government would assert that theory of criminality. *United States v. W. Lucas* (1971, 447 F. 2d 338, 144 U.S. App. D.C. 368).

Defendant could be convicted of second degree murder under felony-murder indictment even though indictment failed to allege "malice aforethought", where indictment contained the fully equivalent language that defendant "unlawfully and feloniously did murder" named person "by means of shooting him with a pistol". *L. Jackson v. United States* (1962, 313 F. 2d 572, 114 U.S. App. D.C. 181).

Second degree murder is an included offense under an indictment for felony-murder. *Id.*

**Inferences**

No inference adverse to defendant could properly be drawn from failure of alibi witness to contact police or failure to give statement to police when he learned that defendant had been charged in homicide case, and it was improper for prosecutor to examine witness concerning his failure to contact police and make statement and to comment thereon in argument; however, improper questioning and comment was not so prejudicial as to require reversal. *United States v. J. J. Young* (1972, 463 F. 2d 934, 150 U.S. App. D.C. 98).

No inference can be drawn from fact that witness does not go to police when he learns police have made arrest of defendant for crime committed at time for which he can provide alibi testimony. *Id.*

**Instructions**

Judge has duty to give instruction if he concludes that case is clear for missing witness inference against party, e.g., party had physical ability to locate and produce witness, and there was such relationship in legal status or on facts as claimed by party as to make it natural to expect party to have called witness; in the in-between case, where each side has the physical capacity to locate and produce the witness, and it is debatable which side might more naturally have been expected to call the witness, there may be latitude for the judge to leave the matter to debate without an instruction. *United States v. J. J. Young* (1972, 463 F. 2d 934, 150 U.S. App. D.C. 98).

The basis for omitting the instruction as to absent witnesses, though ordinarily provided, would be the conclusion of the judge, first, that even in the absence of instruction the situation is sufficiently clear cut that counsel's argument can be fairly understood and appraised by the jury, without prejudicial impact; and second, that the preparation of a careful instruction to state the ground rules for appraising counsel's argument would be unnecessary and time-consuming; and, possibly, third, that such instruction might even be distracting, conceivably counterproductive, leading a jury, respectful of the court's concerns, to focus unduly on the nonevidence rather than the evidence in the case. *Id.*

Failure in second-degree murder prosecution to give limiting instruction concerning evidence, which pertained to prior assaults on victim-child by defendant, which was

relevant and material to issues of malice, intent and willfulness and which refuted defendant's contention that burning of child was accidental since defendant felt kindly toward him, was not plain error. *United States v. E. Thomas* (1972, 459 F. 2d 1172, 148 U.S. App. D.C. 148).

Testimony that defendant and a female had run from scene of fatal shooting after female had been released by decedent's brother, and that decedent's brother, who was armed with shotgun, had left scene, coupled with fact that when defendant was apprehended in female's apartment he was in process of shaving off his heavy beard, was sufficient to support an instruction on flight or concealment. *United States v. C. R. Honesty* (1971, 459 F. 2d 1279, 148 U.S. App. D.C. 255).

If the defendant presses no objection, judge may instruct jury to render verdicts on both first-degree felony murder count and second-degree murder count, assuming judge concludes the instruction will not confuse jury; however, if defendant insists that charge of second-degree murder be submitted to jury solely as lesser offense included within first-degree murder charge, and if he makes a timely motion or objection, he is entitled to an instruction directing jury (a) to first consider issue of guilt as to first-degree murder; (b) in the event of acquittal, to consider guilt of second-degree murder as lesser included offense; and (c) in the event of verdict of guilty of first-degree murder, to enter no verdict concerning second-degree murder. *United States v. G. L. Butler* (1972, 455 F. 2d 1338, 147 U.S. App. D.C. 270).

Defendant was not entitled to instruction in prosecution for second-degree murder to effect that jury could not consider threat that defendant made to decedent 12 years prior to homicide as evidence of the defendant's motive or absence of mistake unless it first determined that the defendant had done the shooting. *United States v. D. Bobbitt* (1971, 450 F. 2d 685, 146 U.S. App. D.C. 224).

When the defendant's prior act was introduced upon issue of motive and there was no contest as to the defendant's presence and opportunity to commit homicide, it was not plain error to fail to instruct on the materiality of the prior act on issue of whether the defendant committed the homicide. *Id.*

Even when prior crime has substantive significance, it may be relevant to particular issue that must be delimited in order to avoid prejudice and the jury should not be given an instruction that permits it to infer general predisposition to commit crime. *Id.*

When pertinent substantive issue is susceptible of delimitation, it is appropriate to instruct that the jury must not consider evidence of prior crimes other than for purpose offered in order to avoid improper transfer to determination of all the elements of offense charged. *Id.*

In absence of request, it was not plain error for trial judge in second-degree murder prosecution to fail to instruct jury that evidence of prior threat by defendant against deceased should not be given consideration on basis that it indicated defendant was generally culpable person. *Id.*

Where the trial court instructed in second-degree-murder prosecution that if person uses deadly weapon in killing another malice may be inferred from his use of such weapon in absence of explanatory or mitigating circumstances, the trial court was not required, sua sponte, to give a more detailed instruction as to possible explanatory or mitigating circumstances the jury might consider. *United States v. S. W. Hardin* (1970, 443 F. 2d 735, 143 U.S. App. D.C. 320).

"Mutual combat" was self-explanatory term and the trial court was not required to elaborate in its instruction that manslaughter occurs when homicide is committed at time of mutual combat or when it is committed in passion or hot blood caused by adequate provocation. *Id.*

Instruction that malice may also be defined as a condition of the mind that prompts a person to do a wrongful act willfully, that is, on purpose, to the injury of another, or to do intentionally a wrongful act toward another without justification or excuse does not warrant reversal of conviction of second-degree murder on the ground that instruction erroneously informed jury that an injurious wrongful act is done with malice if done only willfully, that is, on purpose. *R. J. Carter v. United States* (1970, 437 F. 2d 692, 141 U.S. App. D.C. 259; cert. denied 91 S. Ct. 1393, 402 U.S. 912).



Error in murder prosecution instruction stating that in determining whether act is done with malice aforethought the jury should bear in mind that every man is presumed to intend consequences of his act, without including elements of willfulness or want of justification, is not plain error in absence of other error in instructions. *J. O. Mitchell v. United States* (1970, 434 F. 2d 483, 140 U.S. App. D.C. 209).

Instruction that malice to support second degree murder conviction may be implied from wantonly reckless conduct is proper. *Id.*

Alleged error in murder prosecution instruction to effect that one engaged in unlawful conduct may not rely on defense of accidental death will not be reached on appeal since no objection was made at trial. *Id.*

Instruction that if the Government had proved beyond reasonable doubt that defendant had indeed committed acts disclosed by the evidence as a result of which the victim died but that the Government had failed to prove element of malice necessary to second-degree murder, jury may consider whether defendant was guilty of lesser included offense of manslaughter, did not improperly permit the jury to infer requisite malice if they accepted defendant's version that his assault was only of minor dimensions and not by itself sufficient to disclose intent to cause great or serious bodily harm. *R. L. Logan v. United States* (1969, 411 F. 2d 679, 133 U.S. App. D.C. 365).

Jury may be instructed on second-degree murder as lesser included offense though indictment is solely for felony-murder. *W. H. Fuller v. United States* (1968, 407 F. 2d 1199, 132 U.S. App. D.C. 264; cert. denied 89 S. Ct. 999).

Where an indictment charged in separate counts both first-degree felony-murder and first-degree premeditated murder and the trial judge charged with respect to both felony-murder and second-degree murder, in the absence of any request, motion or objection by the defendant, failure to further charge that jury, which returned verdicts of guilty both as to felony-murder and as to manslaughter as lesser included offense, should consider question of second-degree murder only if it determined that government had not met its burden as to some element of first-degree murder charged, was not plain error and was not reversible error. *Id.*

Charge to a jury that in absence of explanatory circumstances the law infers or presumes malice from use of deadly weapon was error. *K. Green v. United States* (1968, 405 F. 2d 1368, 132 U.S. App. D.C. 98; see also 424 F. 2d 912, 137 U.S. App. D.C. 424; cert. denied 91 S. Ct. 473, 400 U.S. 997).

In homicide prosecution, charge to jury which submitted first-degree murder, second-degree murder, and manslaughter and which contained statement that wrongful act intentionally done was done with malice was prejudicial error. *Id.*

Charge in homicide prosecution should focus primarily on defendant's actual thought processes in terms of meditation and conscious weighing of alternatives and the appreciable time element is subordinate, necessary for but not sufficient to establish deliberation. *B. Austin v. United States* (1967, 382 F. 2d 129, 127 U.S. App. D.C. 180).

Analysis of jury would be illuminated if it is first advised that a typical case of first-degree murder is the murder in cold blood while murder committed on impulse or in sudden passion is murder in the second degree, and then instructed that a homicide conceived in passion constitutes murder in the first degree only if jury is convinced beyond a reasonable doubt that there was an appreciable time after design was conceived and that in this interval there was further thought and a turning over in the mind and not mere persistence of an initial impulse of passion. *Id.*

Court erred in refusing to instruct that jury could not find defendant guilty of both first-degree and second-degree murder. *J. A. Naples v. United States* (1964, 344 F. 2d 508, 120 U.S. App. D.C. 123).

Single offense cannot be both first- and second-degree murder. *Id.*

Jury should be instructed that "mental disease" or "mental defect" includes any abnormal condition of the mind substantially affecting mental or emotional processes

and substantially impairing behavior controls. *E. McDonald v. United States* (1962, 312 F. 2d 847, 114 U.S. App. D.C. 120, see also, 284 F. 2d 232, 109 U.S. App. D.C. 98).

Jury may be instructed, if there is testimony on point, that mental capacity or lack of it to distinguish right from wrong and ability to refrain from doing wrong or unlawful act may be considered in determining whether there is relationship between mental disease and act charged. *Id.*

Defendant, who relies on defense of insanity, is entitled to instruction that if acquitted by reason of insanity he will be confined in mental hospital until it is determined that he is no longer dangerous to himself or others, unless it affirmatively appears that defendant does not wish such instruction. *Id.*

Charge, in prosecution for second-degree murder, considered as a whole, properly conveyed to jury correct rules on murder and manslaughter. *B. L. Falls v. United States* (1963, 321 F. 2d 762, 116 U.S. App. D.C. 149).

Trial judge in instructing jury as to difference between first degree murder and second degree murder, should endeavor to make it absolutely clear to jury that intentional killing may be second degree murder if premeditation and deliberation do not exist. *D. Tucker v. United States* (1963, 318 F. 2d 221, 115 U.S. App. D.C. 250).

Giving of instruction that second degree murder differs from first degree murder in that it may be committed either without purpose or intent to kill, or without premeditation and deliberation was not prejudicial error, in view of instructions in their entirety, in view of fact that court was careful to distinguish two degrees of murder in important respect that premeditation and deliberation are essential elements of first degree murder, in view of absence of objection or request for additional instruction, and in view of evidence and sentence of life imprisonment. *Id.*

In homicide prosecution, omission to define "malice aforethought" and omission to charge on involuntary manslaughter constituted plain error, and second-degree murder conviction would have to be reversed and case remanded for new trial even though trial counsel had not requested such charges. *McDonald v. United States* (C.A.D.C. 1960, 284 F. 2d 232).

In prosecution for first degree murder, instruction to jury that second degree murder is killing with malice aforethought, but without intent to kill, was erroneous as to such limitation. *Kitchen v. United States* (1953, 205 F. 2d 720, 92 U.S. App. D.C. 382).

In prosecution for murder, court properly instructed that, if defendant did flee from the scene, jury had right to consider that fact as a consciousness of guilt, if jury deemed it proper to do so. *United States v. Edmonds* (D.C.D.C. 1946, 63 F. Supp. 968).

In murder prosecution, where court called jury's attention to defendant's denial that he fled from the scene, and permitted jury to determine that question before they could consider flight as a consciousness of guilt, court did not err in refusing to elaborate by giving an additional charge to the effect that defendant claimed that he ran from the scene not for the purpose of avoiding arrest but because of fear of attack by decedent's companion. *Id.*

Appellant's claim that Court failed to charge that if jury believed him guilty of killing but if any reasonable doubt existed as to whether he committed murder first or murder second, it should be resolved in favor of the lesser crime, is without merit, since such an instruction is necessary only when from the evidence as a whole the jury might reasonably find guilty in either degree and must decide which degree. *Goodall v. United States* (1950, 180 F. 2d 397, 86 U.S. App. D.C. 148, 17 A.L.R. 2d 1070, certiorari denied 70 S. Ct. 1009, 339 U.S. 987, 94 L. Ed. 1389).

#### Intervening cause of death

Evidence sustained conviction of manslaughter notwithstanding defense of an intervening cause of death. *Ross v. United States* (1959, 267 F. 2d 618, 105 U.S. App. D.C. 341, certiorari denied 79 S. Ct. 1464, 360 U.S. 939, 3 L. Ed. 2d 1551).

#### Jury

Where jury foreman volunteered information to court that jury had reached some decision on the charge and lesser charge and that decision was between them, so



that it was apparent that jury had already determined that the facts presented question as to whether defendant was guilty of second-degree murder or manslaughter, statement by judge that he would ask jurors to come back on following day to see if they could reach a verdict on the lesser charge, even if they could not agree on the greater charge, was not coercive. *United States v. H. A. Smoot* (1972, 463 F. 2d 1221, 150 U.S. App. D.C. 130).

When jurors report that they are unable to agree, court is faced with alternative of discharging them or directing them to continue their deliberations; one of factors that judge may consider in arriving at that decision is possibility that jury may be able to come to agreement on any of charges submitted to them for determination and, to determine likelihood of agreement, it is necessary in most instances, and proper, for judge to interrogate jury. *Id.*

When jurors report they are unable to agree and court seeks to determine likelihood of agreement, court's interrogation of jury must be circumspect and under no circumstances should court ask for numerical division within jury or in any way influence any particular result; leading inquiry should be avoided and instead of inquiry "is there some possibility of agreement on the lesser charge" a preferable inquiry would be "without attempting to influence your deliberations in any way, I merely wish to inquire whether you have explored the possibility of agreement on the lesser charge" and it would be proper to instruct again on jury's duty to determine guilt or innocence as to any offense necessarily included in crime charged. *Id.*

#### Lesser included offense

Instructing on elements of lesser included offense of manslaughter where judge defined only voluntary and not involuntary manslaughter, it was not prejudicial to defendant as improperly precluding jury from rendering a verdict of involuntary manslaughter when defendant did not request involuntary manslaughter instruction, and elements of voluntary manslaughter were properly defined, and trial judge properly emphasized essential distinction between murder and manslaughter and presence or absence of malice. *R. L. Logan v. United States* (1969, 411 F. 2d 679, 133 U.S. App. D.C. 365).

Where an indictment charges felony-murder, a verdict of second-degree murder is appropriate if there is proof from which the jury might reasonably find that defendant did not commit one of the enumerated felonies but was guilty of an intentional killing on impulse, and on this state of proof a charge of second-degree murder as a lesser included offense may be requested by prosecution or defense. *W. H. Fuller v. United States* (1968, 407 F. 2d 1199, 132 U.S. App. D.C. 264; cert. denied 89 S. Ct. 999).

#### Malice

Evidence demonstrating that an act was done so recklessly or wantonly as to manifest a depravity of mind and disregard of human life satisfies malice requirement for second-degree murder. *United States v. W. Lucas* (1971, 447 F. 2d 338, 144 U.S. App. D.C. 368).

Evidence in prosecution under this section established a sufficient degree of recklessness to merit an instruction to jury regarding inference of malice. *Id.*

Malice necessary in second-degree murder can be inferred from excessive recklessness. *Id.*

Malice to support a second degree murder conviction may be implied from conduct which is so reckless or wanton as to manifest depravity of mind and disregard of human life. *J. O. Mitchell v. United States* (1970, 434 F. 2d 483, 140 U.S. App. D.C. 209).

Evidence, including evidence that bullet entered the victim's head on trajectory horizontal to floor and that the defendant intentionally fired gun at floor in room where several persons were present is sufficient, in second degree murder prosecution, to support finding of express or implied malice. *Id.*

A wrongful act intentionally done is not therefore done with malice. *K. Green v. United States* (1968, 405 F. 2d 1368, 132 U.S. App. D.C. 98).

"Malice" is a state of mind showing a heart fatally bent on mischief and unmindful of social duties and may also be defined as a condition of mind that prompts a person to do an injurious act wilfully to the injury of another; and malice may be implied or inferred from the act committed, or it may be expressed. *Fryer v. United States*

(1953, 207 F. 2d 134, 93 U.S. App. D.C. 34, certiorari denied 74 S. Ct. 135, 346 U.S. 885, 98 L. Ed. 389, rehearing denied 74 S. Ct. 305, 346 U.S. 928, 98 L. Ed. 420).

Where a homicide directly resulted from excessive speed of the driver of an automobile carrying contraband liquor after being told to stop by arresting officers, the illegal transportation was an offense punishable by imprisonment in the penitentiary, and constitutes the malice essential to murder in the second degree. *Lee v. United States* (1940, 112 F. 2d 46, 72 App. D.C. 147).

A defendant's voluntary intoxication does not of itself negative the malice required to constitute second-degree murder and thereby reduce second-degree murder to voluntary manslaughter. *Nestlerode v. United States* (1941, 122 F. 2d 56, 74 App. D.C. 276).

Presence or absence of malice aforethought constitutes difference between second-degree murder and manslaughter. *United States v. Hamilton* (D.C.D.C. 1960, 182 F. Supp. 548).

Where there is malice aforethought in regard to a homicide, crime is second-degree murder, but, if malice aforethought is lacking, crime is manslaughter. *Id.*

"Malice aforethought" or "malice" is a word of art and, in law of homicide, denotes a vicious and wicked state of mind and may be described as a heart fatally bent on mischief and unmindful of social duty. *Id.*

Where, as result of exchange of banter, subsequent argument, and then acrimonious quarrel, defendant knocked victim to the ground and, in fit of ungovernable rage, jumped on and kicked victim's face, thereby inflicting wounds which contributed to victim's death, there was no malice in the legal sense, and, therefore, crime was that of manslaughter. *Id.*

"Legal malice" does not necessarily mean a malicious or malevolent purpose or personal hatred or hostility toward deceased, but a state of mind which shows a heart unmindful of social duty and fatally bent on mischief, or which prompts a person to do an injurious act wilfully to the injury of another. *United States v. Edmonds* (D.C.D.C. 1946, 63 F. Supp. 968).

A killing under the influence of passion, induced by insufficient provocation, may be "murder in the second degree," and an accidental or unintentional killing constitutes murder in the second degree if it is accompanied by malice. *Id.*

#### Manslaughter

Where defendant struck a person who fell to the sidewalk and whose head hit the concrete and where several days later such person died as a result of the head injuries, the defendant was guilty of manslaughter. *Williams v. United States* (1959, 267 F. 2d 625, 105 U.S. App. D.C. 348).

#### Merger of offenses

Charge of cruelty to child did not merge into manslaughter conviction, in that count charging cruelty had societal purposes as well as essential elements differing from those in count which charged second-degree murder and under which defendant was convicted of manslaughter. *United States v. E. Thomas* (1972, 459 F. 2d 1172, 148 U.S. App. D.C. 148).

#### Multiple counts

If prosecutor files in two counts of first-degree murder, once a charge of premeditated murder is struck as unsupported by sufficient evidence and that count is reduced to second-degree murder, defendant is entitled, on motion, to have entire count struck and to have issue of guilt as to second-degree murder submitted only as lesser included offense and only in the event of reasonable doubt of guilt of greater offense. *W. H. Fuller v. United States* (1968, 407 F. 2d 1199, 132 U.S. App. D.C. 264; cert. denied 89 S. Ct. 999).

#### Plain error

Failure in second-degree murder prosecution to strike victim's mother's testimony that upon her becoming angry with defendant for beating victim "[defendant] strangled me and he slapped me and about that time I was pregnant with his child," or to declare a mistrial sua sponte because of such testimony was not plain error. *United States v. E. Thomas* (1972, 459 F. 2d 1172, 148 U.S. App. D.C. 148).



**Premeditation**

An intentional killing that is not premeditated and not connected with another crime is "murder in the second degree". *Kitchen v. United States* (1953, 205 F. 2d 720, 92 U.S. App. D. C. 382).

**Prosecutor's comments**

If prosecutor engages in prejudicial summation, it is not dispositive that defense counsel did not object, especially since objection cannot always procure realistic cure for damage; question is one of degree, and it counts against prosecutor that he made improper comment after having been admonished to abstain from line of questioning. *United States v. J. J. Young* (1972, 463 F. 2d 934, 150 U.S. App. D.C. 98).

Failure of prosecutor to follow prescribed procedure before commenting on absence of persons said to be in company of defendant and alibi witness on evening of shooting did not require reversal in view of failure to object, attempt of defense to make tactical use of prosecutor's reference, and lack of any motion supported by meaningful affidavit of defendant's inability to call or subpoena absent witnesses. *Id.*

**Questions withheld from jury**

Under all the facts and circumstances, the question whether there had been only second degree murder because of the killer's intoxication should not have been submitted to the jury. *Goodall v. United States* (1950, 180 F. 2d 397, 86 U.S. App. D.C. 148, 17 A.L.R. 2d 1070, certiorari denied 70 S. Ct. 1009, 339 U.S. 987, 94 L. Ed. 1389).

**Reckless conduct as manslaughter**

The court held that reckless conduct resulting in death may constitute manslaughter; the difference between that recklessness which displays depravity and such extreme and wanton disregard for human life as to constitute "malice" and that recklessness which amounts only to manslaughter lies in the quality of awareness of the risk. *United States v. W. M. Dixon* (1969 419 F. 2d 288, 135 U.S. App. D.C. 401).

**Reduction to manslaughter**

If the killing is committed in a sudden heat of passion, caused by adequate provocation, the crime may be reduced from murder to manslaughter, but a trivial or slight assault is not sufficient provocation for that purpose. *United States v. Edmonds* (D.C.D.C. 1946, 63 F. Supp. 968).

Jury was warranted in concluding that conduct of deceased in kicking defendant was not adequate provocation for the fatal stabbing of deceased, so as to reduce the killing to manslaughter. *Id.*

**Severance**

Refusal to grant a severance for trial purposes as to defendant tried for several crimes including first-degree murder arising out of two separate robberies was prejudicial to defendant because there was not only the danger that evidence with respect to two robberies would cumulate in jurors' minds and tend to prove defendant guilty of each, but also because the evidence as to one of the robberies was so weak that its primary usefulness was to support government's case as to robbery which resulted in the murder. *C. Gregory v. United States* (1966, 369 F. 2d 185, 125 U.S. App. D.C. 140).

**Speedy trial**

Since the delay fairly attributable to defendant was substantially less than one year and was, in the circumstances, not unreasonable, the delay of 30 months between surrender of defendant to police and his trial without any claim of bad faith by prosecution did not constitute a denial of constitutional right of speedy trial to defendant who made demands for pretrial mental examination and a judicial determination of competency and who at first agreed to enter a plea of guilty and then changed his mind. *United States v. B. Ransom* (1972, 465 F. 2d 672, 151 U.S. App. D.C. 87).

The fact that defendant who agrees to plead to a lesser offense is not awaiting trial does not mean that he can be put away in jail and forgotten; but neither can he be heard to complain of deprivation of constitutional rights when prosecution gives temporary priority to other business, where a not unreasonable delay ensues and credit is given for time spent in pretrial confinement. *Id.*

**Sufficiency of record on appeal**

Record showed a preponderance of competent evidence to sustain conviction of the juvenile of manslaughter and assault with a deadly weapon, and decision of juvenile court that juvenile was within its jurisdiction and should be committed to custody of Department of Public Welfare for indeterminate period was proper. *In the Matter of M. Bumphus, Jr.* (D.C. App. 1969, 254 A. 2d 400).

**Unlawful killing**

Unlawful killing in sudden heat of passion, whether produced by rage, resentment, anger, terror or fear is reduced from murder to manslaughter only if there was adequate provocation, such as might naturally induce a reasonable man in passion of the moment to lose some self-control and commit act on impulse and without reflection. *B. Austin v. United States* (1967, 382 F. 2d 129, 127 U.S. App. D.C. 180).

**Verdict**

Where concurrent sentences were imposed for second-degree murder and for carrying a pistol without a license, murder conviction was affirmed and there were difficult factual and legal problems with respect to the weapons conviction, public interest and the interest of administration of justice required that the conviction on weapons count be vacated. *United States v. D. Bobbitt* (1971, 450 F. 2d 685, 146 U.S. App. D.C. 224).

**Witnesses**

Where witness in prosecution for murder and possession of prohibited weapon was long time drug addict who had used drugs on day of trial and who had been hospitalized for drug addiction, trial court abused its discretion by refusing defendant's request that trial judge subpoena and examine locally available hospital records pertaining to witness' competency. *United States v. R. H. Crosby* (1972, 462 F. 2d 1201, 149 U.S. App. D.C. 306).

**— Missing**

If party has it peculiarly within his power to produce witnesses whose testimony would elucidate transaction, fact that he does not do it permits inference that testimony if produced would have been unfavorable. *United States v. J. J. Young* (1972, 463 F. 2d 934, 150 U.S. App. D.C. 98).

Comment by counsel and instruction by judge as to absent witnesses is prohibited unless witness was peculiarly within power of party to produce, and testimony would elucidate transaction. *Id.*

**§ 22-2404. Punishment for murder in first and second degrees.**

The punishment of murder in the first degree shall be death by electrocution unless the jury by unanimous vote recommends life imprisonment; or if the jury, having determined by unanimous vote the guilt of the defendant as charged, is unable to agree as to punishment it shall inform the court and the court shall thereupon have jurisdiction to impose and shall impose either a sentence of death by electrocution or life imprisonment.

Notwithstanding any other provision of law, a person convicted of first degree murder and upon whom a sentence of life imprisonment is imposed shall be eligible for parole only after the expiration of twenty years from the date he commences to serve his sentence.

Whoever is guilty of murder in the second degree shall be imprisoned for life or not less than twenty years.

Cases tried prior to March 22, 1962, and which are before the court for the purpose of sentence or re-sentence shall be governed by the provisions of law in effect prior to March 22, 1962: *Provided*, That the judge may, in his sole discretion, consider circumstances in mitigation and in aggravation and make a determination as to whether the case in his opinion



justifies a sentence of life imprisonment, in which event he shall sentence the defendant to life imprisonment. Such a sentence of life imprisonment shall be in accordance with the provisions of this Act.

In any case tried under this Act as amended where the penalty prescribed by law upon conviction of the defendant is death except in cases otherwise provided, the jury returning a verdict of guilty may by unanimous vote fix the punishment at life imprisonment; and thereupon the court shall sentence him accordingly; but if the jury shall not thus prescribe the punishment the court shall sentence the defendant to suffer death by electrocution unless the jury by its verdict indicates that it is unable to agree upon the punishment, in which case the court shall sentence the defendant to death or life imprisonment. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 801; Jan. 30, 1925, 43 Stat. 798, ch. 115, § 1; Mar. 22, 1962, 76 Stat. 46, Pub. L. 87-423, § 1.)

#### REFERENCES IN TEXT

Act referred to in this section is act of Mar. 22, 1962, and the basic act of Mar. 3, 1901, classified to various parts of this Code (see distribution tables). For other provisions of act Mar. 3, 1901, dealing with crimes which may be punishable by death or imprisonment for life, see sections 22-201, 22-2401 to 22-2403 and 22-2801.

#### AMENDMENT

Act Mar. 22, 1962, amended section to read as above set out. Prior to this amendment the section read as follows: "The punishment of murder in the first degree shall be death by electrocution. The punishment of murder in the second degree shall be imprisonment for life, or for not less than twenty years."

1925—Act Jan. 30, 1925, changed punishment of murder in first degree, from hanging to electrocution.

#### CROSS REFERENCES

For other provisions providing minimum sentences upon imposition of life sentence, see § 24-203.

Possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-502.

#### NOTES TO DECISIONS

##### Accident

If defendant did not have purpose to kill or if pistol went off accidentally, he would then be guilty of murder in the second degree and punishable by imprisonment for life, or for not less than 20 years. *Marcus v. United States* (1937, 86 F. 2d 854, 66 App. D.C. 298).

##### Alternative charge of first- and second-degree murder

Statute defining crimes of first- and second-degree murder do not impel requirement that they be charged in the alternative, as their substantive elements do not conflict. *W. H. Fuller v. United States* (1968, 407 F. 2d 1199, 407 U.S. App. D.C. 132; cert. denied 89 S. Ct. 999).

##### Appreciable time

No particular length of time is necessary for deliberation, and it is not the lapse of time which constitutes deliberation necessary to convict for first-degree murder but the reflection and turning over in mind of accused concerning his design and purpose to kill. *W. L. Parman v. United States* (1968, 399 F. 2d 559, 130 U.S. App. D.C. 188).

Evidence that deceased was assaulted, bound with rope, tied to a chair and then killed by strangulation from behind while still tightly bound was sufficient to support finding of premeditation. *Id.*

"Appreciable time" charge in homicide prosecution is a meaningful way to convey to jury the core meaning of premeditation and deliberation and for that reason should be given at least where specifically requested by defense. *B. Austin v. United States* (1967, 382 F. 2d 129, 127 U.S. App. D.C. 180).

Court's refusal in homicide prosecution to state that the time one must have for deliberation be "some appreciable period of time" rather than "some period of time" as originally proposed by judge was compounded by charge of court that the time to deliberate may be in the nature of hours, minutes or seconds. *Id.*

##### Bifurcated trial

Trial court did not abuse its discretion in murder prosecution by denying motion for bifurcated trial with two juries on issues of insanity and defense to the merits. *W. L. Parman v. United States* (1968, 399 F. 2d 559, 130 U.S. App. D.C. 188).

##### Constitutionality

Statute providing that punishment for first-degree murder should be death unless jury by unanimous vote recommends otherwise did not needlessly penalize assertion of constitutional right and was not unconstitutional. *A. Calloway and T. L. S. McCowey v. United States* (1968, 399 F. 2d 1006, 130 U.S. App. D.C. 273).

##### Construction

Provision in this section that person sentenced for first-degree murder shall not be eligible for parole until 20 years after he begins serving his sentence applies only to a person convicted of first-degree murder upon whom sentence of life imprisonment is imposed. *United States v. W. Howard* (1971, 449 F. 2d 1086, 146 U.S. App. D.C. 10).

Purpose and effect of the "except" clause in the provision which states that whoever with malice aforethought, except as provided in sections defining first-degree murder, kills another is guilty of second-degree murder is that all homicides with malice are murder and punishable by maximum of life imprisonment set forth for murder in second-degree except that those particularly heinous murders listed in first-degree section are punishable capitally. *W. H. Fuller v. United States* (1968, 407 F. 2d 1199, 407 U.S. App. D.C. 132; cert. denied 89 S. Ct. 999).

Second-degree murder statute does not define substantive offense of second-degree murder so as to exclude therefrom all crimes that also come within first-degree murder statutes. *Id.*

##### Cumulative punishment

Although defendant may be found guilty under the first-degree murder and second-degree murder statute does not mean that he is subject to cumulative punishment. *W. H. Fuller v. United States* (1968, 407 F. 2d 1199, 407 U.S. App. D.C. 132; cert. denied 89 S. Ct. 999).

##### Double jeopardy

Where jury was authorized at first trial to find defendant guilty of either first degree murder or second degree murder, and jury found defendant guilty of second degree murder, but on appeal that conviction was reversed and the case was remanded for a new trial, second trial of defendant for first degree murder placed him in jeopardy twice for same offense in violation of the constitutional prohibition against double jeopardy, and defendant had not waived that defense by making successful appeal of erroneous conviction of second degree murder. *Green v. United States* (1957, 78 S. Ct. 221, 355 U.S. 184, 2 L. Ed. 2d 199, 61 A.L.R. 2d 1119).

Where jury was authorized to find defendant guilty of either first degree murder or alternatively of second degree murder and jury found him guilty of second degree murder, defendant, by appealing, did not prolong his original jeopardy, and when his conviction for second degree murder was reversed and case remanded he could not be tried again for first degree murder without placing him in new jeopardy. *Id.*

##### Elements of offense

Offenses of murder, housebreaking, and larceny each requires elements of proof which are not common to other two and each offense is historically an independent crime. *United States v. G. D. Butler* (1972, 462 F. 2d 1195, 149 U.S. App. D.C. 300).

##### Evidence—Sufficiency

On this motion to vacate sentence for first-degree murder, the only evidence that petitioner consumed large quantities of alcohol prior to his arrest was his own testimony, and the evidence including testimony by police officers which indicated petitioner was not intoxicated, established beyond a reasonable doubt that petitioner



was not intoxicated when he made oral confessions to police. *H. F. Jarmans, Jr. v. United States* (1969, 303 F. Supp. 763).

On this motion to vacate sentence for first-degree murder, although expert testimony conflicted as to state of petitioner's mental health at time he made oral inculpatory statements, the evidence established beyond a reasonable doubt that petitioner was without mental illness and that his normal will to protect himself was not impaired when he made inculpatory statements. *Id.*

Proof in homicide prosecution was legally sufficient to support a verdict predicated on thesis that shotgun was discharged killing victim while a robbery was then being attempted. *E. M. Harrison and O. G. White v. United States* (1967, 387 F. 2d 303, 128 U.S. App. D.C. 245).

Evidence was sufficient to sustain conviction of one defendant of felony murder. *Id.*

#### Hearing on mental condition

Where, following denial of certiorari by United States Supreme Court, defendant had moved both for reduction of death sentence and for a mental examination to determine unsoundness of mind based upon unrefuted affidavit of defendant's sister, district court should have caused to be developed adequate information as to the defendant's present mental condition before giving consideration to the motion in mitigation. *W. Jones v. United States* (1963, 327 F. 2d 867, 117 U.S. App. D.C. 169).

Investigation conducted by court through three court-appointed psychiatrists who had merely talked to defendant through cell bars for a brief time when defendant refused to cooperate with them formed no adequate basis for establishing truth or falsity of allegation of post-conviction unsoundness of mind contained in unrefuted affidavit of defendant's sister and required remand for further proceedings. *Id.*

#### Indeterminate Sentence Act

Indeterminate Sentence Act is inapplicable to second degree murder and the existing penalty of imprisonment for life or for not less than 20 years remains in effect. *Anderson v. Rives* (1936, 85 F. 2d 673, 66 App. D.C. 174).

#### Jurisdiction

The District of Columbia is not within the "special maritime and territorial jurisdiction of the United States" within meaning of federal homicide statute, and murder prosecution and sentence predicated upon acts assertedly committed within District of Columbia is properly under district statute and not federal statute. *W. C. Coleman v. United States* (1964, 334 F. 2d 558, 118 U.S. App. D.C. 168).

Challenge made for first time to Court of Appeals that judge who pronounced original sentence in homicide case was only judge competent to hear and act upon motions to reduce sentence or to vacate sentence came too late. *Id.*

Judge who deemed himself competent to act upon post trial motions to reduce sentence and vacate sentence, after judge who had pronounced sentence retired and undertook no new assignments, was not disqualified from passing upon motions predicated upon proviso permitting life sentences in murder cases before court for sentence or resentence by fact that he was not judge who had originally presided. *Id.*

#### Jury questions

Question of guilt of murder and question of punishment were properly submitted together, defendant being permitted to introduce character testimony, possibly relevant to choice of sentences, before submission. *United States v. J. A. White* (D.C.D.C. 1963, 225 Supp. 514).

#### Prejudicial cross-examination

In murder prosecution wherein sole defense was insanity, and defendant's gibberish testimony was such as to raise issues as to whether defendant feigned such testimony and whether at time of the third trial his mental condition represented his condition at time of act charged, cross-examination disclosing defendant's failure to take stand at two previous trials which resulted in convictions was erroneous and was not harmless but was sufficiently prejudicial to warrant the granting of a mistrial even though defense made no request for cautionary instructions. *W. L. Stewart v. United States* (1961, 386 U.S. 1, 81 S. Ct. 941; reversing 275 F. 2d 617).

#### Prosecution for second-degree murder

Prosecution in District of Columbia for second-degree murder was properly conducted in name of the United States rather than in name of District of Columbia. *Morton v. Welch* (C.C.A. Va. 1947, 162 F. 2d 840, certiorari denied 68 S. Ct. 44, 332 U.S. 779, 92 L. Ed. 363, certiorari denied 68 S. Ct. 1498, 334 U.S. 848, 92 L. Ed. 1771).

#### Right to counsel

Government's introduction at third murder trial of crucial testimony given by defendant at his first trial at which he did not have the constitutionally guaranteed right to assistance of counsel, impinged on defendant's constitutional rights requiring a reversal of his conviction for felony murder. *E. M. Harrison and O. G. White v. United States* (1967, 387 F. 2d 203, 128 U.S. App. D.C. 245).

#### Sentences

Defendant found guilty of second-degree murder, housebreaking, and larceny could be sentenced on each conviction with sentences running consecutively. *United States v. G. D. Butler* (1972, 462 F. 2d 1195, 149 U.S. App. D.C. 300).

Legislative intent with regard to crimes of murder, housebreaking, and larceny was not so ambiguous as to require invocation of rule of lenity precluding imposition of consecutive sentences on defendant convicted of all three charges. *Id.*

Juvenile's conviction of first-degree murder does not preclude sentencing under Youth Corrections Act even though penalty for first-degree murder is death or life imprisonment. *United States v. W. Howard* (1971, 449 F. 2d 1086, 146 U.S. App. D.C. 10).

In deciding between life imprisonment or electrocution of defendant convicted of first-degree murder in killing of policeman while perpetrating robbery, fact that defendant had been unarmed at time he met policeman, that he had panicked, that homicide committed with policeman's gun had been sudden and unplanned, that defendant was mentally retarded man whose mind was further clouded by drink, and that defendant's post-conviction record indicated prospect of rehabilitation should not be excluded from consideration. *Coleman v. United States* (1965, 357 F. 2d 563, 123 U.S. App. D.C. 103).

Where case was remanded to District Court to conduct evidentiary hearing to aid in consideration of circumstances in mitigation and in aggravation pursuant to statute authorizing judge in his discretion to sentence to life imprisonment a defendant previously sentenced to death, death sentence should have been considered as lifted, no weight should have been given to fact that under law at time of conviction a sentence of death was mandatory and court erred in considering matter as though burden was upon defendant to convince court that sentence should be reduced. *Id.*

Where death sentence could not be sustained and sentencing process necessary to support validly imposed death sentence could not be reconstructed so as to conform with means established by Congress; the other possible sentence authorized by Congress, life imprisonment, must be put into effect. *Id.*

Statute abolishing mandatory death penalty in District of Columbia leaves for jury's determination the question of whether sentence shall be death or life imprisonment or, if jury cannot agree on punishment, question is for the judge. *Id.*

Under statutory proviso that in homicide cases tried prior to March 22, 1962, and before court for sentence or resentence, judge, in sole discretion, may consider circumstances in mitigation and aggravation and make determination of whether case justifies life sentence while facts of crime are not without bearing, purpose is directed to possible existence of circumstances in mitigation, not of the crime, per se, but of punishment. *W. C. Coleman v. United States* (1964, 334 F. 2d 558, 118 U.S. App. D.C. 168).

Under statutory proviso that in homicide cases tried prior to March 22, 1962, and before court for sentence or resentence, judge, in sole discretion, may consider circumstances in mitigation and aggravation and make determination of whether case justifies life sentence, judge was not circumscribed in inquiry he was intended to make. *Id.*



Under statutory proviso that in homicide cases tried prior to March 22, 1962, and before court for sentence or resentence, judge, in sole discretion, may consider circumstances in mitigation and aggravation and make determination of whether case justifies life sentence, Congress intended and due process considerations required appropriate hearing as to all factors bearing upon choice of sentences, and failure to accord hearing required reversal. *Id.*

#### Sentence under prior statute

Statute prospectively allowing for a sentence of life imprisonment for first degree murder on the unanimous recommendation of the jury, and authorizing the judge to decide between life imprisonment and electrocution if the jury should be unable to agree on a punishment did not impliedly vacate unexecuted death sentences imposed under prior mandatory death statute. *W. Jones v. United States* (1963, 327 F. 2d 867, 117 U.S. App. D.C. 169).

Where defendant had been convicted and given mandatory death sentence in 1959 under the then applicable statute and where, prior to execution thereof, court had become authorized by statute to exercise its discretion to consider circumstances in mitigation and to reduce to life imprisonment death sentences imposed under the prior mandatory statute, court had power to take into account whatever considerations it felt should be allowed weight in deciding the question of whether the accused should or should not be capitally punished. *Id.*

#### Setting aside of sentence by Appellate Court

Court of Appeals, sitting en banc, set aside death sentences, with directions that each defendant be resentenced to life imprisonment on verdicts of guilty of first-degree murder; four judges being of view that there was error in instruction as to penalty and that poll of jurors did not show unanimity as to punishment, and three judges being of view that guilt and punishment should have been tried in separate stages. *J. C. Frady and R. A. Gordon v. United States* (1965, 348 F. 2d 84, 121 U.S. App. D.C. 78).

#### Supersedece

Provisions of the Criminal Code as to murder and manslaughter do not supersede or repeal the Code of the District of Columbia. *Johnson v. United States* (1912, 32 S. Ct. 748, 225 U.S. 405, 56 L. Ed. 1142).

### § 22-2405. Punishment for manslaughter.

Whoever commits manslaughter shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding fifteen years, or by both such fine and imprisonment. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 802.)

#### CROSS REFERENCES

Negligent homicide, see §§ 40-606, 40-607.

Possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11-502, 40-609a.

#### NOTES TO DECISIONS

##### Allen charge

Allen charge that did not make any reference to proportion of jurors for or against was not prejudicially coercive. *United States v. H. A. Smoot* (1972, 463 F. 2d 1221, 150 U.S. App. D.C. 130).

##### Confession

Oral, post-preliminary hearing confession which was obtained from defendant while he was held in jail and before he had secured counsel and which reaffirmed day old confession which was inadmissible because it was procured in violation of rule requiring defendant to be taken before committing magistrate without unnecessary delay was inadmissible. *J. W. Killough v. United States* (1962, 315 F. 2d 241, 114 U.S. App. D.C. 305).

Even though admission of oral post-arraignment confession was reversible error because it was fruit of illegal prearraignment confession, Court of Appeals would not set defendant free but reverse and remand for new trial. *Id.*

Oral confession following closely after earlier confession which is inadmissible for violation of rule requiring defendant to be brought before committing magistrate without unnecessary delay gives rise to rebuttable presumption that second is "fruit" of the first. *Id.*

Confession secured from defendant during thirty-four-hour period between his arrest and his appearance before commissioner would be suppressed because of such delay. *United States v. J. W. Killough* (D.C.D.C. 1961, 193 F. Supp. 905).

Any confessions which result from illegal detention, no matter how voluntary or trustworthy, are excluded from evidence. *Id.*

A defendant's second confession, after appearance before a commissioner, following illegal detention, could not be excluded on theory it was product of a deliberate police attempt to subvert Rules of Criminal Procedure, where the confession was made to a police officer who did not approach defendant with purpose of securing a reaffirmation of invalid confessions defendant made prior to appearance before a committing magistrate. *Id.*

#### Definition of manslaughter

"Manslaughter" is the unlawful killing of a human being without malice aforethought. *United States v. Edmonds* (D.C.D.C. 1946, 63 F. Supp. 968). See, also, *Fryer v. United States* (1953, 207 F. 2d 134, 93 U.S. App. D.C. 34, certiorari denied 74 S. Ct. 135, 346 U.S. 885, 98 L. Ed. 389, rehearing denied 74 S. Ct. 305, 346 U.S. 928, 98 L. Ed. 420).

#### Evidence—Admissibility

In prosecution for murder of defendant's wife, testimony to effect that the defendant had threatened to kill his wife and "do five years standing on his head" by pleading insanity was not inadmissible as being non-probative and prejudicial, since the statements were relevant on issue of mens rea, and trial judge ruled that their probative value outweighed their prejudicial effect which he felt was dissipated by large volume of psychiatric testimony, especially where trial judge limited scope of government's inquiry as to them. *United States v. P. W. Marcey* (1971, 440 F. 2d 281, 142 U.S. App. D.C. 253).

In prosecution for murder of defendant's wife, wherein one of the conflicts in testimony was in relation to defendant's feelings toward and treatment of his wife, wherein on cross-examination defendant was shown five photographs purporting to depict wife's appearance after alleged assault some six months prior to the offense but defendant denied that her appearance was as bad as the photographs indicated, admission on rebuttal of photograph of wife taken after defendant had allegedly beaten her some six months prior to the offense was not an abuse of discretion since the photograph was relevant to intent as well as to defendant's credibility. *Id.*

#### — Sufficiency

In prosecution for killing of defendant's wife with a bottle, evidence including testimony as to blood on the defendant's hands and under his fingernails sustained conviction for manslaughter, notwithstanding considerable evidence favoring defendant's contention that his wife died as the result of an accident. *United States v. L. S. Lumpkins* (1971, 439 F. 2d 494, 141 U.S. App. D.C. 387).

The court held that in this case the inebriant atmosphere, the heated arguments and the bantering back and forth clearly established sufficient evidence for jury to be able to find defendant, who fired fatal shot in attempting to break up argument between two others, guilty of manslaughter. *United States v. W. M. Dixon* (1969, 419 F. 2d 288, 135 U.S. App. D.C. 401).

Evidence supported finding that defendant accused of manslaughter and assault with deadly weapon had not acted in self-defense. *L. A. Rowe v. United States* (1966, 370 F. 2d 240, 125 U.S. App. D.C. 218).

#### Indictment—Generally

Crime must be charged with reasonable particularity of time, place, and circumstances. *United States v. Geare* (1924, 293 F. 997, 54 App. D.C. 30).

#### — Sufficiency

Where manslaughter indictment against landlord, its vice president, and tenant, who operated rooming house, charged acts of negligence which were not violations of



common law duties jointly owed by defendants, and indictment was uncertain concerning statutory and regulatory requirements with which defendants allegedly failed to comply, the indictment was bad on demurrer. *United States v. Interstate Properties* (1946, 153 F. 2d 469, 80 U.S. App. D.C. 392).

If regulation is pleaded which requires notice from an official to person who owns or controls building that a specific condition must be remedied within a certain period of time, fact should be stated concerning the giving of such notice and allegations of manslaughter indictment that findings and directives were made known to defendants were insufficient, but nature of findings and directives and when and how they were made known to defendants should have been made to appear. *Id.*

Where manslaughter indictment charged landlord, its vice president, and tenant, who operated rooming house, with negligently failing to have a dumb-waiter shaft constructed of fire-resistive materials and negligently failing to provide a front fire escape, and that defendants were under duty to roomers to comply with all orders, rules, regulations, and ordinances relating to use, occupancy and safety of buildings, and particularly building code and elevator code of District of Columbia, and that regulations required dumb-waiter shaft to be of fire-resistive construction, the indictment did not sufficiently plead existence of applicable regulations requiring use of fire-resistive materials in dumb-waiter shafts and installation of front fire escape. *Id.*

#### Instructions

In murder prosecution, failure to instruct that the jury might, if so persuaded by evidence, find defendant guilty of assault with a dangerous weapon as a lesser offense included within murder charge was not error, where jury was instructed as to elements of first-degree murder, second-degree murder and manslaughter, and was authorized to convict of one or to acquit and there was no foundation in evidence for conviction of assault with a dangerous weapon. *United States v. P. W. Marcey* (1971 440 F. 2d 281, 142 U.S. App. D.C. 253).

Instruction as to consequences of an acquittal by reason of insanity was not insufficient on ground that jury should have been informed of possible length of resulting hospitalization, of fact that defendant need not have been psychotic to be committed, and that the defendant would have to carry burden of proving that he was not dangerous in order to secure his eventual release, where court gave instruction that set forth the legal standard for commitment, and a complete canvassing of release alternatives for jury's edification could have impermissibly led to conjecture as to what might actually occur in defendant's case. *Id.*

Refusal to instruct that a drug-induced stupor may negate specific intent was not error, since there was evidence that defendant took amphetamines, drank a quantity of liquor and had trouble driving to scene of the homicide, but there was no evidence that he was in a stupor at time of stabbing and, in any event, other instructions given on element of specific intent sufficed. *Id.*

Failure to instruct that mere probability of defendant's sanity would not be sufficient to authorize his conviction was not error, where judge gave several instructions on the subject and was not obliged to do more. *Id.*

Allen-type instruction was not inappropriate prior to jury's retirement to commence deliberations, and since the verdict was not forthcoming until four and one-half hours after rendition of the instructions, its timing could not in any event have affected defendant prejudicially. *Id.*

Denial of lesser included offense instruction is not reversible error in absence of a showing that the jury might rationally, at one and same time, acquit of greater charge and convict of lesser; this requirement of reversible error is stringent though trial court has broad discretion to entertain request for lesser offense instruction without insistence on strictest logic. *United States v. L. S. Lumpkins* (1971, 439 F. 2d 494, 141 U.S. App. D.C. 387).

Since the evidence in this case is insufficient to give rise to reasonable doubt that defendant intended to shoot one of the young men in group standing near corner, the trial court did not err in failing to instruct jury on involuntary manslaughter. *T. W. Simon v. United States* (1970, 424 F. 2d 796, 137 U.S. App. D.C. 308).

The question of whether a defendant is entitled to involuntary manslaughter instruction depends on existence of at least some evidence in the record fairly tending to bear on issue of that offense. *Id.*

Recklessness as to accuracy of defendant's aim in shooting toward group of men standing near corner is not type of recklessness that would justify an involuntary manslaughter instruction since defendant did intend to shoot one of the men. *Id.*

Evidence of reckless conduct unintentionally resulting in death may form the basis for an involuntary manslaughter instruction. *Id.*

Defendant may not complain on appeal of deficiencies in instructions given by trial judge in manslaughter prosecution where none of alleged shortcomings were brought to the attention of trial court by appropriate objection or request. *United States v. E. Carter* (1969, 420 F. 2d 150, 136 U.S. App. D.C. 308).

Charge, in prosecution for second degree murder, considered as a whole, properly conveyed to jury correct rules on murder and manslaughter. *B. L. Falls v. United States* (1963, 321 F. 2d 762, 116 U.S. App. D.C. 149).

#### Involuntary manslaughter

Conviction on charge of involuntary manslaughter affirmed upon evidence that defendant operated an automobile while drinking and in a criminally careless manner, and ran over and caused the death of a man whom he knew to be so intoxicated he could hardly stand. *Story v. United States* (1927, 16 F. 2d 342, 57 App. D.C. 3, 53 A.L.R. 246, certiorari denied 47 S. Ct. 576, 274 U.S. 739, 71 L. Ed. 1318).

#### Joinder of defendants

Where manslaughter indictment charged landlord, its vice president, and tenant, who operated rooming house, with violation of alleged joint duty to use reasonable care to maintain premises in a reasonably safe condition, that defendants negligently failed to have a dumb-waiter shaft constructed of fire-resistive materials, that they negligently failed to forbid use of shaft as a receptacle for waste, and that they negligently failed to provide a front fire escape, the acts of negligence charged were not violations of common-law duties jointly owed by the defendants, and there was a misjoinder of defendants under common law principles. *United States v. Interstate Properties* (1946, 153 F. 2d 469, 80 App. D.C. 392).

#### Jury

Where jury foreman volunteered information to court that jury had reached some decision on the charge and lesser charge and that decision was between them, so that it was apparent that jury had already determined that the facts presented question as to whether defendant was guilty of second-degree murder or manslaughter, statement by judge that he would ask jurors to come back on following day to see if they could reach a verdict on the lesser charge, even if they could not agree on the greater charge, was not coercive. *United States v. H. A. Smoot* (1972, 463 F. 2d 1221, 150 U.S. App. D.C. 130).

When jurors report that they are unable to agree, court is faced with alternative of discharging them or directing them to continue their deliberations; one of factors that judge may consider in arriving at that decision is possibility that jury may be able to come to agreement on any of charges submitted to them for determination and, to determine likelihood of agreement, it is necessary in most instances, and proper, for judge to interrogate jury. *Id.*

When jurors report they are unable to agree and court seeks to determine likelihood of agreement, court's interrogation of jury must be circumspect and under no circumstances should court ask for numerical division within jury or in any way influence any particular result; leading inquiry should be avoided and instead of inquiry "Is there some possibility of agreement on the lesser charge" a preferable inquiry would be "Without attempting to influence your deliberations in any way, I merely wish to inquire whether you have explored the possibility of agreement on the lesser charge" and it would be proper to instruct again on jury's duty to determine guilt or innocence as to any offense necessarily included in crime charged. *Id.*



Deliberations of the jury should be confined to the charge in the indictment, and if defendant was not charged generally with negligence but with specific acts of negligence, namely, unlawful speeding and reckless driving, and if the death was not caused by those acts or one of them, he was entitled to a verdict of not guilty *Sinclair v. United States* (1920, 265 F. 991, 49 App. D.C. 351).

#### Merger of offenses

Charge of cruelty to child did not merge into manslaughter conviction, in that count charging cruelty had societal purposes as well as essential elements differing from those in count which charged second-degree murder and under which defendant was convicted of manslaughter. *United States v. E. Thomas* (1972, 459 F. 2d 1172, 148 U.S. App. D.C. 148).

#### Reckless conduct as manslaughter

The court held that reckless conduct resulting in death may constitute manslaughter; the difference between that recklessness which displays depravity and such extreme and wanton disregard for human life as to constitute "malice" and that recklessness which amounts only to manslaughter lies in the quality of awareness of the risk. *United States v. W. M. Dixon* (1969, 419 F. 2d 288, 135 U.S. App. D.C. 401).

#### Resentencing

Where prisoner's sentence for aggravated assault and for manslaughter growing out of same act was vacated and case remanded for resentencing on manslaughter only, district court on remand might, in its discretion, impose any sentence within statutory maximum of 15 years, to be computed from date when prisoner was first sentenced for assault with a dangerous weapon. *Davenport v. United States* (1965, 353 F. 2d 882, 122 U.S. App. D.C. 344).

A defendant who successfully attacks an invalid sentence can be validly resentenced even though resentencing increases the punishment. *Id.*

#### Right to counsel

Police can interrogate a suspect before giving him an opportunity to secure counsel. *United States v. J. W. Killough* (D.C.D.C. 1961, 193 F. Supp. 905).

Action of an official in allowing a police officer to see defendant during adjournment of a preliminary hearing, but before he had seen counsel was not a violation of the commitment order, the Federal Rules of Criminal Procedure, and the constitutional bar against self-incrimination and guarantee of right to counsel, and did not render admissions made by defendant during such conversation inadmissible. *Id.*

The Rules of Criminal Procedure give an accused who has funds to hire counsel the right to do so, and right to have a preliminary hearing, should he desire one with counsel's assistance, postponed until he secures that assistance. *Id.*

Constitutional privilege against self-incrimination did not give illegally detained defendant an absolute right to see counsel before a valid confession could be given by him, or to have counsel present with him at time he made a confession. *Id.*

#### Sentence—Legality

Prisoner's sentence for aggravated assault and for manslaughter growing out of same act was illegal, not principally because it exposed him to imprisonment for a longer term than maximum provided, but because it in effect punished him twice consecutively for an act that Congress did not intend should receive double punishment, and such illegality infected the sentence in its entirety. *Davenport v. United States* (1965, 353 F. 2d 882, 122 U.S. App. D.C. 344).

Congress did not intend to authorize consecutive punishments for aggravated assault and manslaughter growing out of same act, so that prisoner's motion for correction of illegal sentence for those crimes should be granted. *Id.*

## Chapter 25.—PERJURY

### Sec.

### 22-2501 Perjury—Subornation of perjury

### § 22-2501. Perjury—Subornation of perjury.

Every person who, having taken an oath or affirmation before a competent tribunal, officer, or person, in any case in which the law authorized such oath or affirmation to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, wilfully and contrary to such oath or affirmation states or subscribes any material matter which he does not believe to be true, shall be guilty of perjury; and any person convicted of perjury or subornation of perjury shall be punished by imprisonment in the penitentiary for not less than two nor more than ten years. Any such false testimony, declaration, deposition, or certificate given in the District of Columbia, but intended to be used in a judicial proceeding elsewhere, shall also be perjury within the meaning of this section. (Mar. 3, 1901. 31 Stat. 1329, ch. 854. § 858.)

#### CROSS REFERENCES

Alcoholic Control Board, false testimony before, see § 25-126.

Building or homestead association, wilful false swearing in certificate, report, or public notice required of, see § 26-404.

Commission on Licensure to Practice the Healing Art, false swearing before as perjury, see § 2-128.

Form of indictment, see §§ 23-323, 23-324.

Fraternal benefit associations, false representations concerning, see § 35-913.

Insurance companies, false statements of officers concerning assets, see § 35-108.

Life insurance companies, false statements of, see § 35-408.

Liquor permits or licenses, false statements in application for, see § 25-115.

Professional bondsmen and their assistants, affidavits from, see § 23-1108.

Tax boards, false statements before, see § 47-606.

Tax schedule for personal property, false statement in return of, see § 47-1203.

Witnesses, false testimony generally, see § 14-101.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-1203.

#### NOTES TO DECISIONS

##### Administration of oaths

This section is broad enough to cover false testimony given under oath before any tribunal or any officer or person authorized to administer oaths. *United States v. Meyers* (D.C.D.C. 1948, 75 F. Supp. 486, affirmed 171 F. 2d 800, 84 U.S. App. D.C. 101, 11 A.L.R. 2d 1, certiorari denied 69 S. Ct. 602, 336 U.S. 912, 93 L. Ed. 1076).

A United States senator as chairman of a subcommittee was an "officer or person authorized to administer oaths" within meaning of this section. *Id.*

##### Admissibility of evidence

In prosecution for perjury, teletype message sent by F. B. I. in Washington to Texas agent containing accusations that defendant had been guilty of fornication in District of Columbia was improperly received because of charge of another criminal offense. *Pyle v. United States* (1946, 156 F. 2d 852, 81 U.S. App. D.C. 209).

In perjury prosecution based on testimony of defendant in rape prosecution denying that signature on statement introduced in evidence was his, where no signatures were obtained from defendant during the perjury trial, signatures which were part of record from rape case were admissible and were not objectionable as requiring defendant to give testimony. *Buckner v. United States* (1946, 154 F. 2d 317, 81 U.S. App. D.C. 38).

Submission of illegally obtained evidence to a previous Grand Jury, which did not indict defendant, would not necessarily raise an inference that the same or similar unlawful evidence was presented to a Grand Jury which



was impaneled two years later and returned an indictment charging defendant with perjury. *United States v. Weinberg* (D.C.D.C. 1953, 108 F. Supp. 567).

#### Attorneys oath

Falsely taking oath of admission pursuant to Municipal Court Civil Rule, which states what persons the bar of the Municipal Court should consist of and prescribes oath or affirmation to be taken by such person, violated statute proscribing perjury and subornation of perjury. *Morgan v. United States* (1962, 309 F. 2d 234, 114 U.S. App. D.C. 13).

#### Authorized by law

An oath to portion of application for duplicate certificate of title for a motor vehicle, requiring a statement of reason for the application, was not "authorized by law" within meaning of this section. *Shelton v. United States* (1948, 165 F. 2d 241, 83 U.S. App. D.C. 32).

Information called for by regulations under Traffic Act § 40-601 et seq., in an application for certificate of title is not required to be under oath so as to constitute a false statement perjury, though lien statement which Motor Vehicle Lien Law, § 40-701 et seq., requires that application contain, must be under oath. *Id.*

#### Belief as to falsity of testimony

To return a verdict of guilty on a charge of perjury, jury must be convinced beyond reasonable doubt not only that accused testified falsely but that he did not, at the time, believe his testimony to be true. *Young v. United States* (1954, 212 F. 2d 236, 94 U.S. App. D. C. 54, certiorari denied 74 S. Ct. 870, 347 U. S. 1015, 98 L. Ed. 1137).

Generally, a belief as to falsity of testimony may be inferred by jury in perjury prosecution from proof of falsity itself, although in some cases this may not be so, as, for instance, where testimony concerns a triviality or an occurrence of long before. *Id.*

#### Circumstantial evidence

Falsity of sworn statement and that the accused actually remembered the facts which he had formerly sworn to may be proved by circumstantial evidence and the only issue in such a case is whether it meets the test of proof beyond a reasonable doubt. *Behrle v. United States* (1939, 100 F. 2d 714, 69 App. D.C. 304).

#### Civil service

Under civil-service regulations, false statements as to whether one had previously been employed by the Government, and whether he resigned or was discharged, was perjury within section R.S. § 5392 (18 U.S.C. § 1621). *Johnson v. United States* (1905, 26 App. D.C. 128).

#### Conspiracy

Crime of conspiracy to commit perjury under § 37 United States Penal Code of March 4, 1909 (35 Stat. 1088, ch. 321, U. S. Comp. Stat. Supp. 1911, p. 1588), relating to offenses against United States, and D. C. 1901, § 858 (this section) (31 Stat. 1329, ch. 854), denouncing perjury offenses, is charged by indictment alleging pending divorce suit in Supreme Court of District of Columbia, but such indictment does not come within meaning of the Code of 1901, § 910 (§ 22-107) which provides for punishment of offenses not covered by District Code or any law inapplicable to District of Columbia by United States *Fletcher v. United States* (1914, 42 App. D.C. 53, certiorari denied 35 S. Ct. 283, 235 U.S. 706, 59 L. Ed. 434).

#### Constitutionality

In prosecution for perjury allegedly committed by witness before Senate Internal Security Subcommittee, count of indictment charging that witness lied in denying that he had ever been a sympathizer or promoter of Communism or Communist interests, was fatally defective because it restricted freedom of belief and expression in violation of the First Amendment to the Federal Constitution providing that Congress shall make no law abridging freedom of speech, or of the press. *United States v. Lattimore* (D.C.D.C. 1953, 112 F. Supp. 507, affirmed in part, reversed in part on other grounds 215 F. 2d 847, 94 U.S. App. D.C. 268).

In prosecution for perjury allegedly committed by witness before Senate Internal Security Subcommittee, count of indictment charging that witness was lying when he

stated that neither he nor anyone in his party made any pre-arrangements with the Communist Party in order to get into Yen-an, China was invalid for failure to meet requirements of the Sixth Amendment to the federal Constitution which protects an accused in right to be informed of the nature and cause of the accusation against him and Federal Rule of Criminal Procedure which requires that indictment shall be a plain, concise, and definite written statement of essential facts constituting offense charged. *Id.*

In prosecution for perjury allegedly committed by witness before Senate Internal Security Subcommittee, count of indictment charging that witness lied in denying that he had ever been a sympathizer or promoter of Communism or Communist interests, was fatally defective because in violation of the Sixth Amendment to the federal Constitution protecting accused in right to be informed of nature and cause of such accusation against him. *Id.*

#### Corroboration

Perjury cannot be proved by uncorroborated testimony of one witness, since falsity of one person's oath cannot be established by another person's oath alone. *Doto v. United States* (1955, 223 F. 2d 309, 96 U. S. App. D. C. 17, certiorari denied 76 S. Ct. 59, 350 U. S. 847, 100 L. Ed. 754).

In a perjury prosecution the rule is that the uncorroborated oath of one witness is not enough to establish, for purposes of conviction of perjury, the falsity of sworn testimony, and it is not the rule that no person may be convicted of perjury unless the falsity of the statement made under oath is established by the testimony of two independent witnesses or by one witness and the corroborating facts and circumstances. *Maragon v. United States* (1951, 187 F. 2d 79, 87 U.S. App. D. C. 349, certiorari denied 71 S. Ct. 804, 341 U. S. 932, 95 L. Ed. 1361).

#### Crime against United States

A crime against United States is committed by any person who violates either § 818 (§ 22-2304) or this section of the District Code. *Arnstein v. United States* (1924, 296 F. 946, 54 App. D.C. 199).

#### Defense

A defense to a charge of perjury may not be established by the device of lifting a statement of the accused out of its immediate context and thereby giving it a meaning wholly different from that which its context clearly shows. *Meyers v. United States* (1949, 171 F. 2d 800, 84 U.S. App. D.C. 101, 11 A.R.L. 2d 1, certiorari denied 69 S. Ct. 602, 336 U.S. 912, 93 L. Ed. 1076).

#### Evidence—Admissibility

Where government agents' monitoring of telephone conversations between the defendant and consenting third party was neither unconstitutional nor beyond the bounds of what had been thought legally tolerable, federal supervisory power should not have been exercised to suppress evidence so obtained. *United States v. C. A. Jones* (1970, 433 F. 2d 1176, 140 U.S. App. D.C. 70; cert. denied 91 S. Ct. 1613, 402 U.S. 950).

#### Federal Penal Code

Had Congress intended that the perjury statute in the Federal Penal Code should have effect in the District of Columbia, it would have said so in clear language *Carpenter v. United States* (1939, 100 F. 2d 716, 69 App. D.C. 306).

#### Habeas Corpus

If it be assumed, arguendo, that the Court erred in its trial of a perjury committed before Congress in holding that three Senators (admittedly present) of a Congressional subcommittee were qualified, at most it was a mere error of law not subject to attack by habeas corpus as habeas corpus does not lie to correct mere errors in law but proper remedy is by appeal. *Meyers v. United States* (1950, 181 F. 2d 802, 86 U.S. App. D.C. 320, certiorari denied 70 S. Ct. 1030, 339 U.S. 983, 94 L. Ed. 923).

#### Indictment

In prosecution for perjury allegedly committed by witness before Subcommittee of the Senate Judiciary Committee, count of indictment charging that witness lied in denying that he had ever been a sympathizer or promoter of Communism or Communist interests was void for



vagueness. *United States v. Lattimore* (1954, 215 F. 2d 847, 94 U.S. App. D. C. 268).

In prosecution for perjury allegedly committed by witness before Subcommittee of the Senate Judiciary Committee, count of indictment charging that witness lied when he testified that he did not "know" that certain contributor to magazine edited by witness was a Communist was not, because of the use of the word "know", invalid, on ground of vagueness. *Id.*

In prosecution for perjury allegedly committed by witness before Subcommittee of the Senate Judiciary Committee, count of indictment charging that witness lied when he testified that, apart from Russian contributions, he never published, while editor of magazine, an article by a person whom he knew to be a Communist was sufficiently certain and involved a valid and proper inquiry. D. C. *Id.*

In prosecution for perjury allegedly committed by witness before Subcommittee of the Senate Judiciary Committee, count of indictment charging that witness lied in denying that he knew that contributor to magazine, which was edited by witness, was a "Communist" was not invalid, on ground of vagueness, because of the use of the word "Communist." *Id.*

In prosecution for perjury allegedly committed by witness before Subcommittee of the Senate Judiciary Committee, count of indictment charging that witness testified falsely when he gave a negative answer to question whether it was necessary, before he went beyond line of demarcation between Nationalist China and Communist China, to have permission of Communist authorities and when he testified that neither he nor any one in his party made any prearrangement with the Communist Party in order to get into Communist China was invalid because of a fatal variance in its terms. *Id.*

Failure to set forth person before whom oath was taken together with his authority to administer same was not fatal to perjury indictment, especially in view of rule requiring merely that indictment be plain, concise, and definite written statement of essential facts constituting offense charged and providing that it need not contain any other matter not necessary to such statement. *United States v. Young* (D.C.D.C. 1953, 113 F. Supp. 20, affirmed 212 F. 2d 236, 94 U.S. App. D.C. 54, certiorari denied 74 S. Ct. 870, 347 U.S. 1015, 98 L. Ed. 1137).

#### Instructions

Instruction that "perjury" is simply the giving of false testimony under oath, testimony that a party does not believe to be true, and that if he testifies before a competent tribunal as to a fact which is false, and he does not believe it to be true, then that is "perjury", was sufficient, though court did not in terms define the word "wilfully". *Maragon v. United States* (1951, 187 F. 2d 79, 87 U.S. App. D.C. 349, certiorari denied 71 S. Ct. 804, 341 U.S. 932, 95 L. Ed. 1361).

In perjury prosecution, instructions charging jury on matter of corroboration were proper. *Buckner v. United States* (1946, 154 F. 2d 317, 81 U.S. App. D.C. 38).

#### Issue

Question is not whether appellant made the statement voluntarily or involuntarily or whether the statement made was true or false, for it was not the truth or falsity of what he said which was involved, but simply the fact of his having said it. *O'Brien v. United States* (1938, 99 F. 2d 368, 69 App. D.C. 135).

#### Marriage license

Under the statute defining perjury, generally, or by requirements of the statute which defines it in terms of false swearing by an applicant for a marriage license, the ultimate test of materiality in either case is whether such statements have a natural tendency to influence the clerk in his investigation of the facts, in the exercise of his official discretion, and in the administration of the law. *Robinson v. United States* (1940, 114 F. 2d 475, 72 App. D.C. 254).

#### Materiality of evidence

Where perjury prosecution was based upon alleged perjurious statement, which was made by defendant while testifying before the Senate Special Committee to Investigate Organized Crime in Interstate Commerce, that

defendant was a United States citizen, question as to defendant's citizenship was material to inquiry which committee was authorized to make. *Doto v. United States* (1955, 223 F. 2d 309, 96 U.S. App. D. C. 17, certiorari denied 76 S. Ct. 59, 350 U.S. 847, 100 L. Ed. 754).

In order to obtain a conviction for perjury of witness who allegedly testified falsely before a Subcommittee of the Senate Judiciary Committee, the government was required to prove that question, which witness allegedly answered untruthfully, was material to the investigation being carried on by the Subcommittee. *United States v. Lattimore* (1954, 215 F. 2d 847, 94 U.S. App. D. C. 268).

Perjury is committed when one states, contrary to his oath, any material matter which he does not believe to be true. *Pyle v. United States* (1946, 156 F. 2d 852, 81 U.S. App. D.C. 209).

Although perjury must relate to a matter which was material to the issue, the materiality need not be immediate, but it is sufficient if the false testimony gives weight to or detracts from testimony as to material facts in issue. *Id.*

Where defendant's testimony in prosecution of another for unlawful transportation of a girl for immoral purposes did not vary on issue of transportation from defendant's prior written statement, variations between statement and testimony on question of whether statement was given voluntarily, as to who paid rent on her apartment and other details, related to immaterial matters and furnished no basis for perjury charge. *Id.*

In a perjury case arising out of a congressional investigation, which concededly may be broad in its scope as far as determining necessity for corrective legislation is concerned, element of materiality must be present or charges fall. *United States v. Lattimore* (D.C.D.C. 1953, 112 F. Supp. 507, affirmed in part, reversed in part on other grounds, 215 F. 2d 847, 94 U.S. App. D.C. 268).

#### Nature of perjury

The word "wilfully" in a perjury statute means "knowingly" or "intentionally". *Maragon v. United States* (1951, 187 F. 2d 79, 87 U.S. App. D. C. 349, certiorari denied 71 S. Ct. 804, 341 U.S. 932, 95 L. Ed. 1361).

The criminal nature of perjury is not removed by the fact that the perjurer later in the proceedings states the truth. *Meyers v. United States* (1949, 171 F. 2d 800, 84 U.S. App. D.C. 101, 11 A.R.L. 2d 1, certiorari denied 69 S. Ct. 602, 336 U.S. 912, 93 L. Ed. 1076).

#### Number of offenses

One making two false statements, one violating this section and the other violating Motor Vehicle Lien Law, § 40-714, commits two offenses, though both statements are under one oath. *Shelton v. United States* (1948, 165 F. 2d 241, 83 U.S. App. D.C. 32).

#### Predication of indictment

A perjury indictment could not be grounded upon a knowingly false answer to a question placed by superintendent of insurance, in an application for a license to act as an insurance solicitor. *C. S. Nelson v. United States* (1961, 288 F. 2d 376, 109 U.S. App. D.C. 392).

#### Reversal

Where counts charging perjury were merged and it could not be determined upon which false statement in application for certificate of title the jury rested its general verdict, but verdict if upon statement as to liens would not support sentence, judgment of conviction was subject to reversal. *Shelton v. United States* (1948, 165 F. 2d 241, 82 U.S. App. D.C. 32).

#### Sentence

Where appellant was convicted on three counts, each of which charged him with suborning one of another's perjuries, and received only one sentence, the judgment must be affirmed where appellant was properly convicted on any one of the three counts against him. *Meyers v. United States* (1949, 171 F. 2d 800, 84 U.S. App. D.C. 101, 11 A.R.L. 2d 1, certiorari denied 69 S. Ct. 602, 336 U.S. 912, 93 L. Ed. 1076).

#### Sufficiency of evidence

Evidence was sufficient to sustain conviction for perjury. *Doto v. United States* (1955, 223 F. 2d 309, 96 U.S. App. D. C. 17, certiorari denied 76 S. Ct. 59, 350 U.S. 847, 100 L. Ed. 754).



Evidence sustained conviction of defendant for perjury for testifying under oath before Investigating Subcommittee of the Senate Committee on Expenditures in the Executive Departments that he had only one bank account. *Maragon v. United States* (1951, 187 F. 2d 79, 87 U.S. App. D.C. 349, certiorari denied 71 S. Ct. 804, 341 U.S. 932, 95 L. Ed. 1361).

Corroborative evidence was sufficient to sustain conviction for perjury. *Buckner v. United States* (1946, 154 F. 2d 317, 81 U.S. App. D.C. 38).

#### Sufficiency of indictment

Indictment charging defendant generally in statutory language, with three counts of perjury, would be deemed sufficient, especially where record indicated that defendant had not been misled or prejudiced in his defense, and had not moved for a bill of particulars. *C. S. Nelson v. United States* (1961, 288 F. 2d 376, 109 U.S. App. D.C. 392).

#### Tribunal

The word "tribunal", as used in this section, implies an officer or body having authority to adjudicate matters, *United States v. Meyers* (D.C.D.C. 1948, 75 F. Supp. 486, affirmed 171 F. 2d 800, 84 U.S. App. D.C. 101, 11 A.R.L. 2d 1, certiorari denied 69 S. Ct. 602, 336 U.S. 912, 93 L. Ed. 1076).

#### — Congress

Where appellant was convicted of perjury before a Congressional Committee, such conviction must be reversed where the committee did not constitute a quorum, as all of the elements of the crime charged shall be proved beyond a reasonable doubt and an element of the crime of perjury is the presence of a competent tribunal, and a tribunal that is not competent is no tribunal. *Christofel v. United States* (1949, 69 S. Ct. 1447, 338 U.S. 84, 93 L. Ed. 1826).

In prosecution for perjury allegedly committed by witness before Subcommittee of the Senate Judiciary Committee, count of indictment charging that witness lied in denying that he knew that contributor to magazine, which was edited by witness, was a Communist was not defective, as a matter of law, on ground that question was not material to study being made by Subcommittee with reference to subversive activities of Communist agents. *United States v. Lattimore* (1954, 215 F. 2d 847, 94 U.S. App. D.C. 268).

In passing on motion to dismiss indictment charging that witness perjured himself before Subcommittee of the Senate Judiciary Committee, it was proper to draw from Subcommittee's hearings explanatory material necessary to an understanding of the terms and parts of the indictment, but it was not permissible to refer to the hearings for facts which might become issues on the pleas and which might be subject to dispute. *Id.*

One may be indicted for perjury before Congress under this section. *Meyers v. United States* (1949, 171 F. 2d 800, 84 U.S. App. D.C. 101, 11 A.R.L. 2d 1, certiorari denied 69 S. Ct. 602, 336 U.S. 912, 93 L. Ed. 1076).

### Chapter 26.—PRISON BREACH—MISPRISIONS

#### Sec.

22-2601. Prison breach.

22-2602. Misprisions by officers or employees of jail

22-2603. Introducing contraband into penal institution.

#### § 22-2601. Prison breach.

Any person committed to a penal institution of the District of Columbia who escapes or attempts to escape therefrom, or from the custody of any officer thereof or any other officer or employee of the District of Columbia, or any person who procures, advises, connives at, aids, or assists in such escape, or conceals any such prisoner after such escape, shall be guilty of an offense and upon conviction thereof shall be punished by imprisonment for not more than five years, said sentence to begin, if the convicted person be an escaped prisoner, upon the expiration of the original sentence. (July 15, 1932, 47

Stat. 698, ch. 492, § 8; June 6, 1940, 54 Stat. 243, ch. 254, § 6(a); July 29, 1970, Pub L. 91-358, title I, § 157(b), 84 Stat. 574.)

#### AMENDMENTS

1970—Section 157(b) of Act July 29, 1970, Public Law 91-358 amended section by striking out "in any court of the United States."

1940—Act June 6, 1940, substituted "committed to" for "confined in" and added the words "or from the custody of any officer thereof or any other officer or employee of the District of Columbia."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### SAVINGS PROVISION

Section 6(b) of act June 6, 1940, provided that:

"This amendment of section 8 [this section] of said act approved July 15, 1932, shall not have the effect to release or extinguish any punishment, penalty, or liability incurred under such section, and such section as originally enacted shall be treated as still remaining in force for the purpose of sustaining any proper prosecution of the violation of such section committed prior to the passage of this amendatory act [June 6, 1940]."

#### CROSS REFERENCE

Possession of firearms, additional penalty, see §§ 22-3201, 22-3202.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24-203, 24-207.

#### NOTES TO DECISIONS

##### Attempts

Attempts at escape are forbidden to all inmates and if they consider their confinement improper, they are bound to take other means to test the question. *Aderhold v. Soileau* (C.C.A. 5, 1933, 67 F. 2d 259).

##### Proof

Question was whether defendant had passed in the saws, and it was not necessary for the government to show that there had been no sawing in the morning but only that appellant had given the saws to the prisoner. *Hale v. United States* (C.C.A. 6, 1934, 67 F. 2d 673).

##### Sentence

Person sentenced under this section is subject to authority of Attorney General, and can be confined in penitentiary outside of the District. *Beard v. Sanford* (C.C.A. 5, 1938, 99 F. 2d 750).

Escape sentence should be served after the termination of the original sentence. *Gambill v. Aderhold* (D.C. Ga. 1933, 4 F. Supp. 567).

#### § 22-2602. Misprisions by officers or employees of jail.

Any officer of the District jail, or any guard thereof, or any attaché or employee connected therewith, who shall demand, or directly or indirectly receive, any compensation, fee, reward, or gratuity for any information given in respect to any prisoner confined therein, or awaiting trial upon bail, or for any service, assistance, or influence rendered, given, or exerted, with any view, intent, or purpose of having such person thus charged or held for trial, or held on bail to await trial, taken, offered, or used, either as a volunteer or as a substitute, for any other in the military or naval service, or who shall corruptly receive, for any act done by virtue of his office or employment, any fee, compensation, reward, or gratuity, shall be deemed guilty of a misdemeanor, and shall on conviction be punished by a fine of not less than two hundred and fifty dollars, and not more than one thousand dollars, and by imprisonment in the District jail for a term not less than three months nor more than one year. (R. S., D. C., § 1180.)



### § 22-2603. Introducing contraband into penal institution.

Any person, not authorized by law, or by the Commissioner of the District of Columbia, or by the general superintendent of penal institutions of the District of Columbia, who introduces or attempts to introduce into or upon the grounds of any penal institution of the District of Columbia, whether located within the District of Columbia or elsewhere, any narcotic drug, weapon, or any other contraband article or thing, or any contraband letter or message intended to be received by an inmate thereof, shall be guilty of a felony, and, upon conviction thereof in the Superior Court of the District of Columbia or in any court of the United States, shall be punished by imprisonment for not more than ten years. (Dec. 15, 1941, 55 Stat. 800, ch. 572, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91-358, title I, § 155(c) (30), 84 Stat. 572.)

#### AMENDMENT

1970—Section 155(c) (30) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan..

## Chapter 27.—PROSTITUTION—PANDERING

### Sec.

- 22-2701. Prostitution—Inviting for purposes of, prohibited.
- 22-2702. Repealed.
- 22-2703. Suspension of sentence of guilty person—Conditions—Enforcement.
- 22-2704. Abducting, secreting, or enticing child from her home for purposes of prostitution—Harboring such child.
- 22-2705. Pandering—Inducing or compelling female to become prostitute or engage in prostitution—Penalty.
- 22-2706. Compelling female to live life of prostitution against her will—Penalty.
- 22-2707. Procurer—Punishment for receiving money or other valuable thing for arranging assignation or debauchery—Penalty.
- 22-2708. Punishment for causing wife to live in prostitution.
- 22-2709. Punishment for detaining inmate in disorderly house for debt there contracted.
- 22-2710. Procurer for house of prostitution—Penalty.
- 22-2711. Procurer for third persons—Penalty.
- 22-2712. Running house of prostitution—Penalty.
- 22-2713. Premises occupied for lewdness, assignation, or prostitution declared nuisance.
- 22-2714. Abatement of nuisance under section 22-2713 by injunction—Temporary injunction—Effect of injunction.
- 22-2715. Abatement of nuisance under section 22-2713—Trial—Dismissal of complaint—Prosecution to judgment—Costs.
- 22-2716. Trials for violating injunction granted under section 22-2714—Punishment.

### Sec.

- 22-2717. Order of abatement—Sale of property—Entry of closed premises punishable as contempt.
- 22-2718. Disposition of proceeds of sale.
- 22-2719. Bond for abatement—Order for delivery of premises—Effect of release.
- 22-2720. Tax for maintaining such nuisance.
- 22-2721. Repealed.
- 22-2722. Keeping bawdy or disorderly houses.

### § 22-2701. Prostitution—Inviting for purposes of, prohibited.

It shall not be lawful for any person to invite, entice, persuade, or to address for the purpose of inviting, enticing, or persuading, any person or persons sixteen years of age or over in the District of Columbia, for the purpose of prostitution, or any other immoral or lewd purpose, under a penalty of not more than \$250 or imprisonment for not more than ninety days, or both. (Aug. 15, 1935, 49 Stat. 651, ch. 546, § 1; June 9, 1948, 62 Stat. 346, ch. 428, title I, § 102; June 29, 1953, 67 Stat. 93, ch. 159, § 202(b).)

#### AMENDMENTS

1953—Act June 29, 1953, increased the maximum fine from \$100 to \$250 and made it unlawful to commit the offense anywhere in the District of Columbia by eliminating the words "in or upon any avenue, street, road, highway, open space, alley, public square, enclosure, public building or other public place, store, shop, or reservation or at any public gathering or assembly" preceding "in the District of Columbia" and the words "to accompany, go with, or follow him or her to his or her residence, or to any other house or building, enclosure, or other place" following such phrase and the sentence "And it shall not be lawful for any person to invite, entice, or persuade, or address for the purpose of inviting, enticing, or persuading any such person or persons from any door, window, porch, or portico of any house or building to enter any house, or go with, accompany, or follow him or her to any place whatever, for the purpose of prostitution, or any other immoral or lewd purpose, under the like penalties herein provided for the same conduct in the streets, avenues, roads, highways, or alleys, public squares, open spaces, enclosures, public buildings or other public places, stores, shops, or reservations or at any public gatherings or assemblies."

1948—Act June 9, 1948, limited the solicitation to persons sixteen years of age or over and inserted in the first sentence the words "public building or other public place, store, shop, or reservation or at any public gathering or assembly" preceding "in the District of Columbia" and in the second sentence the words "public buildings or other public places, stores, shops, or reservations or at any public gatherings or assemblies" following "enclosures."

#### CROSS REFERENCES

- Duties of Metropolitan police, see §§ 4-145, 4-146.
- Prosecutions, see § 22-109.
- Transfer or suspension of liquor license pending prosecution, see §§ 25-117, 25-118.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-2703, 22-3203.

#### NOTES TO DECISIONS

##### Constitutionality

This section declaring it a crime "to invite, entice, persuade \* \* \* any person \* \* \* for purpose of prostitution," is not unconstitutional as setting up no ascertainable standard of guilt or so vague, indefinite and general as to violate rights of one accused of such offense under Fifth Amendment, but is clear in language and purpose, free of ambiguity, and lays down definite and easily understandable standard of criminal liability. *Hawkins v. United States* (D. C. Mun. App. 1954, 105 A. 2d 250).

##### Construction

Statute prohibiting solicitation for the purpose of prostitution applies to solicitation for homosexual acts. *D. G. Harris v. United States* (D.C. App. 1972, 293 A. 2d 851).



**Counsel for indigent defendant**

When prosecution involves a matter of serious moral turpitude but there is no appeal as a matter of right to Municipal Court of Appeals because penalty imposed is less than \$50, indigent defendant is entitled to aid of counsel in preparing application for leave to appeal. *Wildblood v. United States* (1959, 273 F. 2d 73, 106 U.S. App. D.C. 338).

**Double jeopardy**

Judgments were required to be vacated and nolle prosequere entered in cases which had been pending before Court of General Sessions where government's action in entering the nolle prosequere could not be characterized as an abuse of its power, and to allow government to file new informations at a subsequent date would to violate double jeopardy clause of Fifth Amendment. *United States v. B. H. Foster* (D.C. App. 1967, 226 A. 2d 164).

**Entrapment**

In prosecution for soliciting for purposes of prostitution, even if defense of entrapment was available, record was devoid of proof of entrapment. *H. M. Wajer v. United States* (D.C. App. 1966, 222 A. 2d 68).

**Enforcement**

Enforcement of this section making it unlawful for any person to invite another to accompany him for lewd and immoral purpose must be with design to prevent offense, to prevent unwarranted irreparable destruction of reputations, and to prevent criminal offense of blackmail in connection with charge of verbal invitation, and it must not foster conditions or practices which make easy and encourage such offense. *Kelly v. United States* (1952, 194 F. 2d 150, 90 U.S. App. D.C. 125).

**Evidence—In general**

Evidence sustained convictions for soliciting for lewd and immoral purposes. *Willis and Thompson v. District of Columbia* (D.C. App. 1964, 198 A. 2d 751).

Defendants' testimony did not support claim of entrapment as a matter of law. *Id.*

Evidence sustained conviction of soliciting for purpose of prostitution. *R. Golden v. United States* (D.C. Mun. App. 1961, 167 A. 2d 796).

Testimony asserting sodomy must be subjected to most careful scrutiny, and such principle is applicable to invitation to sodomy. *Kelly v. United States* (1952, 194 F. 2d 150, 90 U.S. App. D.C. 125).

That defendant "asked him if he wanted a date" did not necessarily include prostitution. *Williams v. United States* (1940, 110 F. 2d 554, 71 App. D.C. 377).

It is not necessary to prove any particular language or conduct to establish that a defendant solicited prostitution. *Curran v. United States* (D.C. Mun. App. 1947, 52 A. 2d 121).

**— Admissibility**

In prosecution for soliciting prostitution, where officer's opinion or assumption as to what consideration the \$5 demanded by defendant would cover was elicited by defense counsel on cross-examination, defendant could not complain that such evidence was inadmissible. *Hall v. United States* (D.C. Mun. App. 1943, 34 A. 2d 631).

**— Arresting officer, testimony of**

Great caution should be applied in considering testimony of arresting officer in cases where alleged assault is nonviolent sexual touching which by its nature left no traces and to which there were no other witnesses. *Guarro v. United States* (1956, 237 F. 2d 578, 99 U.S. App. D.C. 97).

**— Character evidence**

In prosecution for statutory offense of unlawfully inviting another to accompany accused for lewd and immoral purpose, evidence of good character of accused is particularly applicable in that it is usually only defense, except word of accused, and should be considered by court. *Kelly v. United States* (1952, 194 F. 2d 150, 90 U.S. App. D.C. 125).

In prosecution for soliciting a person for immoral or lewd purposes an acquittal is not required to follow whenever evidence of good character of accused is presented. *Bicksler v. United States* (D. C. Mun. App. 1952, 90 A. 2d 233).

Character evidence alone is not determinative of guilt or innocence of an accused and at most it can be basis for inference by trier of facts that a person possessing good character would, in all probability and based on experience of human relations, not be guilty of crime charged. *King v. United States* (D. C. Mun. App. 1952, 90 A. 2d 229).

**— Corroboration**

In prosecution for soliciting for purposes of prostitution, arresting officer's testimony need not be corroborated. *H. M. Wajer v. United States* (D.C. App. 1966, 222 A. 2d 68).

Trial court could properly find defendant guilty of soliciting for lewd and immoral purpose on testimony of officer, uncontradicted as to time and place, that he noticed defendant, dressed in female attire, motioning him to curb, that defendant offered to perform act of perversion for stated amount, corroborated by testimony of another officer who saw defendant conversing with arresting officer, where there was no evidence introduced of defendant's good character or denial that he was dressed in female attire. *H. H. Berneau v. United States* (D.C. App. 1963, 188 A. 2d 301).

Conviction for soliciting another male for a lewd and immoral purpose was based on sufficient corroboration as to time, place and circumstances. *N. H. Alexander v. United States* (D.C. App. 1963, 187 A. 2d 901).

In prosecution for soliciting for the purpose of prostitution, it was not necessary that testimony of the person solicited be corroborated. *Parker v. United States* (D. C. Mun. App. 1958, 143 A. 2d 98).

Corroboration of testimony of witness for prosecution is not required in a case of solicitation for prostitution. *Price v. United States* (D. C. Mun. App. 1957, 135 A. 2d 854).

A conviction of soliciting for a lewd and immoral purpose may be based on uncorroborated testimony of one government witness. *Brenke v. United States* (D. C. Mun. App. 1951, 78 A. 2d 677).

**— Hearsay**

In prosecution for soliciting for prostitution, even if evidence of conversation between sailor to whom arresting officer had been talking and one of sailors walking behind defendant were hearsay and improperly admitted, error, if any, was not prejudicial where finding of guilt was based upon solicitation which occurred subsequently. *Price v. United States* (D. C. Mun. App. 1957, 135 A. 2d 854).

**— Presumption of innocence**

In prosecution for addressing a person for immoral purposes, brought to court without a jury, record did not establish that accused was not afforded presumption of innocence. *King v. United States* (D. C. Mun. App. 1952, 90 A. 2d 229).

**— Sufficiency**

Evidence sustained conviction of soliciting for purposes of prostitution. *H. M. Wajer v. United States* (D.C. App. 1966, 222 A. 2d 68).

Evidence was insufficient to sustain conviction for unlawful invitation by accused to another to accompany accused for lewd and immoral purpose. *Kelly v. United States* (1952, 194 F. 2d 150, 90 U.S. App. D.C. 125).

Evidence was sufficient to sustain conviction of soliciting for purpose of prostitution. *Parker v. United States* (D. C. Mun. App. 1958, 143 A. 2d 98).

Evidence sustained conviction for soliciting for prostitution. *Price v. United States* (D. C. Mun. App. 1957, 135 A. 2d 854).

Evidence justified conviction for soliciting a person for immoral or lewd purposes. *Bicksler v. United States* (D. C. Mun. App. 1952, 90 A. 2d 233).

Evidence justified conviction for addressing a person for immoral purposes. *King v. United States* (D. C. Mun. App. 1952, 90 A. 2d 229).

In prosecution for soliciting prostitution of any person sixteen years of age or older, lack of testimony as to age of police officers allegedly solicited by defendant did not entitle her to acquittal when officers were in court so that judge, sitting without jury, could use his senses and draw inferences as to their ages by his personal ob-



servation. *Cunningham v. United States* (D. C. Mun. App. 1952, 86 A. 2d 918).

Evidence justified finding that witnesses were solicited directly and personally by defendant and sustained conviction for soliciting prostitution. *Id.*

Evidence as to the provocative position of defendant on a park bench, physical blandishment, challenging verbal invitation, prompt discussion of financial terms, and the ready arrangement for a room, sustained conviction of soliciting prostitution. *Hall v. United States* (D.C. Mun. App. 1943, 34 A. 2d 631).

Evidence sustained conviction of soliciting prostitution. *Curran v. United States* (D.C. Mun. App. 1947, 52 A. 2d 121).

#### Impeachment

Prosecution was not entitled to attempt to impeach testimony of defendant indicted for second-degree murder by referring to thirteen prior convictions of petty offenses of vagrancy, disorderly conduct and soliciting prostitution, inasmuch as, although such offenses were District of Columbia Code offenses, as distinguished from municipal ordinances, none of them was triable by jury. *Y. Pinkney v. United States* (1966, 363 F. 2d 696, 124 U.S. App. D.C. 209).

#### Military service record

Defendant's honorable discharge from United States Army approximately five years before offense charged did not require defendant's acquittal of charge of soliciting for lewd and immoral purpose as a matter of law. *Brenke v. United States* (D. C. Mun. App. 1951, 78 A. 2d 677).

#### Place of action

An information that does not charge that defendant acted in any such place as provided in the statute charges no crime. *Williams v. United States* (1940, 110 F. 2d 554, 71 App. D.C. 377).

#### Prior record of defendant

Fact that defendant during nine-year period had received six sentences for soliciting prostitution did not forfeit her right to equal protection of the law, but it did affect credibility of her testimony. *Hamilton v. United States* (D.C. Mun. App. 1943, 31 A. 2d 887, reversed on other grounds 140 F. 2d 679, 78 U.S. App. D.C. 316).

#### Questions for Congress

Whether the District of Columbia was already adequately protected from the evils of prostitution without the added prohibition of transportation for that purpose was for Congress, not the courts, to decide. *United States v. Beach* (1945, 65 S. Ct. 602, 324 U.S. 193, 89 L. Ed. 865, opinion conformed to 149 F. 2d 837, 80 U.S. App. D.C. 160, certiorari denied 66 S. Ct. 47, 326 U.S. 745, 90 L. Ed. 445).

#### Questions for court

In prosecution for soliciting for purposes of prostitution, whether the defendant or the arresting officer made the solicitation was for trial court under conflicting testimony. *H. M. Wajer v. United States* (D.C. App. 1966, 222 A. 2d 68).

#### Questions for jury

In prosecution for soliciting a person for immoral or lewd purposes, whether a solicitation occurred and whether solicitation was by defendant or by arresting officer, were for jury where testimony was conflicting and conflicting inferences could reasonably be drawn therefrom. *Bicksler v. United States* (D. C. Mun. App. 1952, 90 A. 2d 233).

#### Reopening of prosecution

Reopening of prosecution for soliciting for prostitution, after both government and defense had rested and final argument had commenced, to receive corroborating testimony as to defendant's presence at time and place of alleged offense was within sound discretion of trial court. *Price v. United States* (D. C. Mun. App. 1957, 135 A. 2d 854).

#### Review

Where prior to taking of testimony on information motion to dismiss on ground that information did not charge crime was denied, and evidence was taken and motion on ground that no crime was charged and that

crime had not been established was granted because evidence was insufficient, and judgment of not guilty was then entered on record, judgment was that evidence failed to sustain offense charged and state had no right to appeal. *Korol v. United States* (D. C. Mun. App. 1951, 82 A. 2d 129).

In prosecution for soliciting prostitution, conflicting evidence raised question for trial judge, whose decision was conclusive on appeal where supported by substantial evidence. *Curran v. United States* (D.C. Mun. App. 1947, 52 A. 2d 121).

#### Sentence

Review of vagrancy convictions was not necessary when sentences for vagrancy were ordered to run concurrently with proper sentences for soliciting for lewd and immoral purposes. *Willis and Thompson v. District of Columbia* (D.C. App. 1964, 198 A. 2d 751).

Defendant was not entitled to relief from sentence imposed upon failure to pay fine imposed in addition to maximum imprisonment authorized as punishment on any theory that if she were indigent, alternative sentence coupled with primary sentence would be tantamount to sentence in excess of that authorized and that court should have, as part of sentencing procedure, inquired into her ability to pay where record revealed nothing as to her financial resources, she did not claim inability to pay fine, and there was nothing to indicate that court used alternative sentence to accomplish imprisonment for term longer than permitted by statute. *D. Henderson v. United States* (D.C. App. 1963, 189 A. 2d 132).

#### Subpoena duces tecum

Where appellant was convicted for violation of this section, it was not error for the court to refuse to issue a compulsory process for obtaining witnesses as the rule is well established that a party is not entitled of right to a subpoena duces tecum in any form at any time and under any circumstances; and a subpoena duces tecum too indefinite in terms, too broad in scope or untimely requested may properly be denied. *Kelly v. United States* (D. C. Mun. App. 1950, 73 A. 2d 232).

#### Trial by court

In prosecution for addressing a person for immoral purposes, brought to court without jury, record did not establish that court failed to afford accused protection accused would have been afforded by properly instructed jury. *King v. United States* (D.C. Mun. App. 1952, 90 A. 2d 229).

#### Trial by jury

Refusal to grant motion for trial by jury, defendant being charged with soliciting prostitution, was error. *Blackburn v. United States* (1936, 84 F. 2d 269, 66 App. D.C. 15).

The act of prostitution was not an offense indictable at common law, so as to entitle a person accused thereof to a trial by jury under the Constitution of the United States. *Bailey v. United States* (1938, 98 F. 2d 306, 69 App. D.C. 25).

#### United States attorney, prosecution by

Prosecution for violation of statute rendering it unlawful to invite, entice or persuade any person fifteen years of age or over for purpose of prostitution or any other immoral or lewd purposes, should be conducted by United States attorney in name of and for benefit of United States, since offense is punishable by both fine and imprisonment. *United States v. Paul Strothers* (1956, 228 F. 2d 34, 97 U.S. App. D.C. 63).

#### Waiver of jury trial

A defendant, charged with solicitation for immoral and lewd purpose of committing oral sodomy, was not entitled to jury trial in view of fact that such offense was not indictable at common law and that penalty imposed was not more than \$250 or imprisonment for not more than 90 days or both. *H. Gaithor v. United States* (D.C. App. 1969, 251 A. 2d 644).

#### White Slave Act

The transportation of a woman wholly within the District of Columbia with the intent or purpose to induce or entice the woman transported to practice prostitution violates the Mann Act, 18 U.S.C. § 2421. *United States v.*



*Beach* (1945, 65 S. Ct. 602, 324 U.S. 193, 89 L. Ed. 865, opinion conformed to 149 F. 2d 837, 80 U.S. App. D.C. 160, certiorari denied 66 S. Ct. 47, 326 U.S. 745, 90 L. Ed. 445).

The Mann Act, 18 U.S.C. § 2421, penalizing the transportation in the District of Columbia of any woman with the intent or purpose to induce or entice the woman transported to practice prostitution does not conflict with any other legislation applicable to the District. *Id.*

§ 22-2702. Repealed. Dec. 17, 1941, 55 Stat. 810, ch. 589, § 5.

Section, act Aug. 15, 1935, 49 Stat. 651, ch. 546, § 2, related to inmate or frequenter of house of ill fame.

§ 22-2703. Suspension of sentence of guilty person—Conditions—Enforcement.

The court may impose conditions upon any person found guilty under section 22-2701, and so long as such person shall comply therewith to the satisfaction of the court the imposition or execution of sentence may be suspended for such period as the court may direct; and the court may at or before the expiration of such period remand such sentence or cause it to be executed. Conditions thus imposed by the court may include submission to medical and mental examination, diagnosis and treatment by proper public health and welfare authorities, and such other terms and conditions as the court may deem best for the protection of the community and the punishment, control, and rehabilitation of the defendant. The Director of Public Health of the District of Columbia, the Women's Bureau of the Police Department, the Board of Public Welfare, and the probation officers of the court are authorized and directed to perform such duties as may be directed by the court in effectuating compliance with the conditions so imposed upon any defendant. (Aug. 15, 1935, 49 Stat. 651, ch. 546, § 3; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1).

#### CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

#### TRANSFER OF FUNCTIONS

The Commissioner of the District of Columbia and the Director of the Department of Corrections as successors to the powers and duties of the Board of Public Welfare and the Director of Public Welfare over penal institutions, establishment of a Department of Corrections headed by a Director as successor to former Department of Corrections and abolition of Board of Public Welfare and transfer of specified functions thereof to Department of Public Health and Department of Public Welfare and subsequently to the Director of the Department of Human Resources, see § 24-443; Reorg. Ord. No. 34, dated May 28, 1953, as amended and replaced by Org. Ord. No. 153, dated Feb. 7, 1967, and later amended and redesignated as Org. Ord. No. 7, dated Dec. 26, 1967, as amended; Org. Ord. No. 140, dated Feb. 11, 1964, as amended; Org. Ord. No. 141, dated Feb. 11, 1964, as amended; and Commissioner's Order [Organization Action] No. 69-96, dated Mar. 7, 1969, as amended by Commissioner's Order No. 70-83, dated Mar. 6, 1970. The Orders are set Out in the Appendix to Title 1.

#### CROSS REFERENCE

Police matrons, see §§ 4-116 to 4-118.

§ 22-2704. Abducting, secreting, or enticing child from her home for purposes of prostitution—Harboring such child.

Any person who, for purposes of prostitution, persuades, entices, or forcibly abducts from her home or usual abode, or from the custody and control of her parents or guardian, any female under sixteen

years of age shall be punished by imprisonment for not less than two nor more than twenty years; and whoever knowingly secretes or harbors any such female so persuaded, enticed, or abducted as aforesaid shall suffer imprisonment for not more than eight years. (Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 813).

#### CROSS REFERENCE

Possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

§ 22-2705. Pandering—Inducing or compelling female to become prostitute or engage in prostitution—Penalty.

Any person who, within the District of Columbia shall place or cause, induce, procure, or compel the placing of any female in the charge or custody of any other person, or in a house of prostitution, with intent that she shall engage in prostitution, or who shall compel, induce, entice, or procure or attempt to compel, induce, entice, or procure any female to reside with any other person for immoral purposes or for the purpose of prostitution, or who shall compel, induce, entice, or procure or attempt to compel, induce, entice, or procure her to engage in prostitution, or who takes or detains a female against her will, with intent to compel her by force, threats, menace, or duress to marry him or to marry any other person; or any parent, guardian, or other person having legal custody of the person of a female, who consents to her taking or detention by any person, for the purpose of prostitution or sexual intercourse, shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than five years and by a fine of not more than \$1,000. (June 25, 1910, 36 Stat. 833, ch. 404, § 1; Jan. 3, 1941, 54 Stat. 1225, ch. 936, § 1.)

#### AMENDMENT

1941—Act Jan. 3, 1941, reworded the section throughout, broadened the scope of the offense, and provided that the offense should constitute a felony.

#### CROSS REFERENCE

Possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

#### NOTES TO DECISIONS

##### Cross examination

Appellant's contention that the trial court improperly restricted his cross examination of complaining witnesses is without foundation where the record shows that the court permitted extensive, and in fact, exhaustive cross examination, particularly on matters affecting the witnesses' credibility. *Wright v. United States* (1950, 183 F. 2d 821, 87 U.S. App. D.C. 67).

##### Indictment

It was proper to charge in first count of indictment that defendants compelled, induced, enticed and procured a certain female to engage in prostitution, and in second count to charge an attempt. *Welch v. United States* (1943, 135 F. 2d 465, 77 U.S. App. D.C. 317, certiorari denied 63 S. Ct. 1329, 319 U.S. 769, 87 L. Ed. 1718).

##### Evidence

Evidence was sufficient to sustain conviction for attempting to compel, induce, entice, and procure a certain female to engage in prostitution. *Welch v. United States* (1943, 135 F. 2d 465, 77 U.S. App. D.C. 317, certiorari denied 63 S. Ct. 1329, 319 U.S. 769, 87 L. Ed. 1718).

##### Instructions

Where trial court had not reviewed or commented upon evidence in his charge to jury and elements essential to



convict were explained without reference to any aspect of evidence and counsel prior to charge failed to formulate desired instruction, refusing oral request that the charge be enlarged to include a specific reference to defendant's theory of the evidence was not reversible error. *C. O. Clarke v. United States* (1962, 301 F. 2d 543, 112 U.S. App. D.C. 219).

#### Verdict

Where first count of indictment charged that defendants compelled, induced, enticed and procured a certain female to engage in prostitution, and second count charged an attempt, even if there had been inconsistency between directed verdict on first count and verdict finding defendants guilty on second count, that would constitute no reason for setting aside verdict of jury. *Welch v. United States* (1943, 135 F. 2d 465, 77 U.S. App. D.C. 317, certiorari denied 63 S. Ct. 1329, 319 U.S. 769, 87 L. Ed. 1718).

Where first count of indictment charged that defendants compelled, induced, enticed and procured a certain female to engage in prostitution, and second count charged an attempt, the fact that court directed a verdict on the first count and that jury convicted defendants on the second count resulted in no inconsistency. *Id.*

### § 22-2706. Compelling female to live life of prostitution against her will—Penalty.

Any person who, within the District of Columbia, by threats or duress, detains any female against her will, for the purpose of prostitution or sexual intercourse, or any person who shall compel any female against her will, to reside with him or with any other person for the purposes of prostitution or sexual intercourse, shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than five years and a fine of not more than \$1,000. (June 25, 1910, 36 Stat. 833, ch. 404, § 2; Jan. 3, 1941, 54 Stat. 1225, ch. 936, § 2.)

#### AMENDMENT

1941—Act Jan. 3, 1941, reworded the section throughout, broadened the scope of the offense, and provided that the offense should constitute a felony

#### CROSS REFERENCE

Possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

### § 22-2707. Procurer—Punishment for receiving money or other valuable thing for arranging assignation or debauchery—Penalty.

Any person who, within the District of Columbia, shall receive any money or other valuable thing for or on account of arranging for or causing any female to have sexual intercourse with any other person or to engage in prostitution, debauchery, or any other immoral act, shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than five years and a fine of not more than \$1,000. (June 25, 1910, 36 Stat. 833, ch. 404, § 3; Jan. 3, 1941, 54 Stat. 1226, ch. 936, § 3.)

#### AMENDMENT

1941—Act Jan. 3, 1941, reworded the section throughout, broadened the scope of the offense, and increased the penalty.

#### NOTES TO DECISIONS

##### Amount of money received

Under this section, it is immaterial whether the procurer receives much or little and it is not important whether payment is made all at once in a lump sum or in scattered amounts at different times. *Boykin v. United States* (1942, 130 F. 2d 416, 76 U.S. App. D.C. 147).

##### Attempt

In this case the evidence was sufficient to sustain convictions for attempted procuring. *J. R. Langley v. United States* (D.C. App. 1970, 264 A. 2d 503).

Evidence was sufficient to sustain conviction for attempted procuring, which showed that defendant and

complaining witness bargained until they had agreed upon exchange of money, although uncertain in amount, for services of prostitute, and that immediately thereafter defendant led complaining witness a considerable distance to hotel unknown to witness where prostitute was supposedly waiting. *W. Walker, Jr. v. United States* (D.C. App. 1968, 248 A. 2d 187).

Where defendant, upon obtaining affirmative reply to his question whether police officers were looking for girls, inquired what type they wanted, priced the girls at \$10 each, and revealed, in answer to question put by one officer, that defendant's fee was \$2, fact that defendant's actions never progressed beyond stage of conversation and that no money was received was not fatal to a conviction for an attempt to receive money for arranging for a female to have sexual intercourse, and, had the money passed, the principal crime itself would have been consummated. *Sellers Jr. v. United States* (D. C. Mun. App. 1957, 131 A. 2d 300).

Mere preparation is not an attempt, but preparation may progress to the point of attempt, and question whether it has is one of degree which can be resolved only on basis of facts of each case. *Id.*

#### Brothel keepers

This section does not penalize brothel keeper as such or agents who procure patrons for brothels or for woman elsewhere so long as they do nothing toward bringing the woman there for that purpose and for money or value received. *Boykin v. United States* (1942, 130 F. 2d 416, 76 U.S. App. D.C. 147).

#### Cohabit, definition of

The word "cohabit" as formerly used in this section, making it unlawful for person to receive money or valuable thing for procuring or placing in house of prostitution or elsewhere any female for purpose of causing her illegally to cohabit with any male person or persons, covers promiscuous and casual relations and is not used in strict sense of cohabiting with a single person in manner of husband and wife. *Boykin v. United States* (1942, 130 F. 2d 416, 76 U.S. App. D.C. 147).

#### Constitutionality

This section, prohibiting receiving value for arranging for or causing female to engage in prostitution, debauchery, or any other immoral act, is not void for vagueness or so vague as to violate due process. *J. R. Langley v. United States* (D.C. App. 1970, 264 A. 2d 503).

#### Construction

Where there had been contradictory rulings in district court in interpreting this section, neither interpretation could be taken to have settled the law or as showing intent of Congress. *Boykin v. United States* (1942, 130 F. 2d 416, 76 U.S. App. D.C. 147).

Term "arranging" may include within its meaning the act of procuring as a part of the arrangement, but it certainly does not confine itself to only that activity and has much broader significance embracing many more activities than the one of procuring. *Byas v. United States* (1950, 182 F. 2d 94, 86 U.S. App. D.C. 309).

#### Conviction, grounds for

Under this section, the keeping and maintaining of a girl for prohibited purpose cannot be grounds for conviction. *Boykin v. United States* (1942, 130 F. 2d 416, 76 U.S. App. D.C. 147).

#### Corroborating witness

Failure of prosecution to produce second officer who as a corroborating witness could only have testified to time and place of defendant's arrest for attempted procuring because he did not hear conversation between arresting officer and defendant was not error in view of prosecution's effort to secure a continuance because second officer was in another court and defendant's then counsel's willingness to proceed to trial in second officer's absence. *R. Blakney v. United States* (D.C. App. 1967, 225 A. 2d 654).

#### Cross examination

Appellant's contention that the trial court improperly restricted his cross examination of complaining witnesses is without foundation where the record shows that the court permitted extensive, and in fact, exhaustive cross examination, particularly on matters affecting the witnesses' credibility. *Wright v. United States* (1950, 183 F. 2d 821, 87 U.S. App. D.C. 67).



**Elements of offense**

Two principal elements of crime of procuring are the receipt of money and the arranging of an assignation. *W. Walker, Jr. v. United States* (D.C. App. 1968, 248 A. 2d 187).

Under this section the placing of woman in house of prostitution or elsewhere for purpose of causing her to cohabit illegally with male person or persons and prohibited intent must coincide but payment for the placing need not do so and it may occur before, at, or after the placing, but whenever it takes place it must be for or on account of that act. *Boykin v. United States* (1942, 130 F. 2d 416, 76 U.S. App. D.C. 147).

Under this section, the gist of the offense is the placing of a female in a house of prostitution or elsewhere for purpose of causing her illegally to cohabit with any male person or persons and not the receiving of money. *Id.*

Principal elements of crime described in this section making it unlawful for any one to receive money or other valuable thing for arranging for or causing any female to have sexual intercourse with any other person or engage in prostitution, debauchery, or any other immoral act are the receipt of money and the arranging of an assignation. *Sellers Jr. v. United States* (D. C. Mun. App. 1957, 131 A. 2d 300).

This section making it unlawful for any one to receive money or other valuable things for arranging for or causing any female to have sexual intercourse with any other person or to engage in prostitution, debauchery, or any other immoral act includes not only the actual act of procurement but also the agreement to procure. *Id.*

**Evidence**

Evidence clearly supported finding that appellant at least participated in arranging for a female to commit an act of prostitution with a police officer. *Byas v. United States* (1950, 182 F. 2d 94, 86 U.S. App. D.C. 309).

Evidence of conditions of the defendant's house at the time of her arrest for violating statute, which established presence of the two women referred to in the indictment, was competent and relevant in proof of one element of each offense, i. e., "engagement in prostitution." *Smith v. United States* (1950, 180 F. 2d 775, 86 U.S. App. D.C. 195).

Evidence sustained conviction for attempt to receive money for arranging for a female to have sexual intercourse. *Sellers Jr. v. United States* (D. C. Mun. App. 1957, 131 A. 2d 300).

**Fair trial**

Defendants were not denied fair trial in prosecutions for violating Mann Act and for receiving money for arranging for acts of prostitution, because of actions of trial court and Assistant United States Attorney. *J. A. Fabianich and M. E. Fabianich v. United States* (1962, 302 F. 2d 904, 112 U.S. App. D.C. 319).

Sentences were valid, though trial court allegedly erred in denying motions for acquittal on certain counts, where there were concurrent sentences, and convictions under other courts were not challenged. *Id.*

**Indictment**

To sustain conviction under this section, the government must charge and prove an act of procuring a woman for or placing her in a house of prostitution or elsewhere, for the purpose of causing her to cohabit illegally with a male person or persons, and that the defendant received money or other valuable thing for or on account of the procuring or placing. *Boykin v. United States* (1942, 130 F. 2d 416, 76 U.S. App. D.C. 147).

Where appellant was convicted on seven counts of an eight count indictment of receiving money for arranging for one to engage in prostitution, with four counts relating to one female and three to another, the crimes charged in the several counts were of the same character, permitting joinder of the counts. *Smith v. United States* (1950, 180 F. 2d 775, 86 U.S. App. D.C. 195).

**Instructions**

In a prosecution for attempted procuring involving contents of conversation that concededly took place between defendant and officer at street corner, instruction that if witness testified falsely concerning any material

fact, about which the witness could not be reasonably mistaken, all testimony of such witness could be disregarded, except such parts as were corroborated by other testimony, was not plain error requiring reversal in absence of objection. *W. E. Smith v. United States* (D.C. App. 1970, 269 A. 2d 446).

In this case, instruction by trial court, in prosecution for attempted procuring, that jury must decide whether defendant had intent to procure female for immoral purposes, was proper when placed in context with entire charge as obviously referring to illegal sexual immoralities. *J. R. Langley v. United States* (D.C. App. 1970, 264 A. 2d 503).

In prosecution for violating this section, instruction informing jury to find defendant guilty if jury believed defendant kept, placed, or maintained girl at premises for prohibited purpose was reversibly erroneous, since it permitted jury to find defendant guilty without regard to placing or the intent with which it was done. *Boykin v. United States* (1942, 130 F. 2d 416, 76 U.S. App. D.C. 147).

In prosecution for pandering, where defendant produced witnesses who testified to his general reputation, and court refused requested instruction on weight to be given to evidence of good character but expressed purpose to instruct on the subject, failure to give instruction on weight to be given to evidence of good character was error. *Colbert v. United States* (1946, 146 F. 2d 10, 79 U.S. App. D.C. 261).

An erroneous instruction may be withdrawn or corrected at any time, at least prior to the time the jury retires to deliberate. *Byas v. United States* (1950, 182 F. 2d 94, 86 U.S. App. D.C. 309).

Where judge told the jury that the essential elements of the crime would have to be proved by the government beyond a reasonable doubt before verdict of guilty could be found and immediately thereafter in a concise statement he set out the elements, no error was committed. *Id.*

Objection to court's use of the word "arrange" is without merit since it needs no judicial definition as is a common word and admits of no double entendre which casts an umbrage of legal nicety beyond its ordinary meaning. *Id.*

**Procuring patrons**

This section does not punish merely procuring patrons for a woman, or sharing her earnings, or keeping or maintaining her even with intent to cause her to cohabit illegally. *Boykin v. United States* (1942, 130 F. 2d 416, 76 U.S. App. D.C. 147).

**Review**

In prosecution for violating this section, where arresting officer was permitted to testify that defendant and his daughter were registered at hotel as man and wife, whether testimony was properly allowed to remain in evidence for purpose of showing defendant's knowledge of his daughter's activities would not be determined where reversal was required on other grounds. *Boykin v. United States* (1942, 130 F. 2d 416, 76 U.S. App. D.C. 147).

Defendant's contentions that this section outlaws only the act of placing, and that receiving money for or on account of some other act than placing, does not violate this section would be considered on merits notwithstanding claim that the contentions were too late because raised for the first time on appeal, in view of unusual circumstances in which appeal had been taken and perfected. *Id.*

Court will not entertain an appeal based on a complaint that because of inartful exercise of his right to challenge jurors peremptorily, a party has created such prejudice as to deny himself a fair trial. *Byas v. United States* (1950, 182 F. 2d 94, 86 U.S. App. D.C. 309).

**Sentence**

In prosecution for violating this section where defendant was convicted under separate counts which, in the light of evidence presented to sustain them, differed only in charging separate acts of receiving money for a single placing and where defendant was sentenced under each conviction, the sentence was invalid since it was a sentence for two crimes when only one had been charged. *Boykin v. United States* (1942, 130 F. 2d 416, 76 U.S. App. D.C. 147).



**§ 22-2708. Punishment for causing wife to live in prostitution.**

Any person who by force, fraud, intimidation, or threats, places or leaves, or procures any other person or persons to place or leave, his wife in a house of prostitution, or to lead a life of prostitution, shall be guilty of a felony, and upon conviction thereof shall be imprisoned not less than one nor more than ten years. (June 25, 1910, 36 Stat. 833, ch. 404, § 4.)

**CROSS REFERENCE**

Possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

**§ 22-2709. Punishment for detaining inmate in disorderly house for debt there contracted.**

Any person or persons who attempt to detain any girl or woman in a disorderly house or house of prostitution because of any debt or debts she has contracted, or is said to have contracted, while living in said house of prostitution or disorderly house shall be guilty of a felony, and on conviction thereof be imprisoned for a term not less than one nor more than five years. (June 25, 1910, 36 Stat. 833, ch. 404, § 5.)

**§ 22-2710. Procurer for house of prostitution—Penalty.**

Any person who, within the District of Columbia, shall pay or receive any money or other valuable thing for or on account of the procuring for, or placing in, a house of prostitution, for purposes of sexual intercourse, prostitution, debauchery, or other immoral act, any female, shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than five years and by a fine of not more than \$1,000. (June 25, 1910, ch. 436, § 6 as added Jan. 3, 1941, 54 Stat. 1226, ch. 936, § 4.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 22-2714.

**§ 22-2711. Procurer for third persons—Penalty.**

Any person who, within the District of Columbia, shall receive any money or other valuable thing for or on account of procuring and placing in the charge or custody of another person for sexual intercourse, prostitution, debauchery, or other immoral purposes any female shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than five years and by a fine of not more than \$1,000. (June 25, 1910, ch. 436, § 7, as added Jan. 3, 1941, 54 Stat. 1226, ch. 936, § 4.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 22-2714.

**§ 22-2712. Running house of prostitution—Penalty.**

Any person who, within the District of Columbia, knowingly, shall accept, receive, levy, or appropriate any money or other valuable thing, without consideration other than the furnishing of a place for prostitution or the servicing of a place for prostitution, from the proceeds or earnings of any female engaged in prostitution shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than five years and by a fine of not more than \$1,000. (June 25, 1910, ch. 404, § 8, as added by Jan. 3, 1941, 54 Stat. 1226, ch. 936, § 4.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 22-2714.

**§ 22-2713. Premises occupied for lewdness, assignation, or prostitution declared nuisance.**

Whoever shall erect, establish, continue, maintain, use, own, occupy, or release any building, erection, or place used for the purpose of lewdness, assignation, or prostitution in the District of Columbia is guilty of a nuisance, and the building, erection, or place, or the ground itself in or upon which such lewdness, assignation, or prostitution is conducted, permitted, or carried on, continued, or exists, and the furniture, fixtures, musical instruments, and contents are also declared a nuisance, and shall be enjoined and abated as hereinafter provided. (Feb. 7, 1914, 38 Stat. 280, ch. 16, § 1.)

**CROSS REFERENCE**

Powers and duties of Metropolitan Police, see §§ 4-145, 4-146.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 22-2714, 22-2717, 22-2720.

**NOTES TO DECISIONS****In general**

Intent of this act was "to enjoin and abate houses of lewdness, assignation, and prostitution" as therein defined, but to subject owners or lessees to the provisions of the act only when guilty knowledge was brought home to them. *Holmes v. United States* (1921, 269 F. 489, 50 App. D.C. 147, 12 A.L.R. 427).

**§ 22-2714. Abatement of nuisance under section 22-2713 by injunction—Temporary injunction—Effect of injunction.**

Whenever a nuisance is kept, maintained, or exists as defined in sections 22-2710 to 22-2718 the attorney of the United States for the District of Columbia, or the Attorney-General of the United States, or any citizen of the District of Columbia, may maintain an action in equity in the name of the United States of America, upon the relation of such attorney of the United States for the District of Columbia, the Attorney-General of the United States, or citizen, to perpetually enjoin said nuisance, the person or persons conducting or maintaining the same, and the owner or agent of the building or ground upon which said nuisance exists. In such action the court, or a judge in vacation, shall, upon the presentation of a petition therefor alleging that the nuisance complained of exists, allow a temporary writ of injunction, without bond, if it shall be made to appear to the satisfaction of the court or judge by evidence in the form of affidavits, depositions, oral testimony, or otherwise, as the complainant may elect, unless the court or judge by previous order shall have directed the form and manner in which it shall be presented. Three days' notice, in writing, shall be given the defendant of the hearing of the application, and if then continued at his instance the writ as prayed shall be granted as a matter of course. When an injunction has been granted it shall be binding on the defendant throughout the District of Columbia, and any violation of the provisions of injunction herein provided shall be a contempt as hereinafter provided. (Feb. 7, 1914, 38 Stat. 280, ch. 16 § 2.)

**FEDERAL RULES OF CIVIL PROCEDURE**

Injunctions, see Rule 65, 28 U.S.C. App.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 22-2716, 22-2717, 22-2720.



**§ 22-2715. Abatement of nuisance under section 22-2713—Trial—Dismissal of complaint—Prosecution to judgment—Costs.**

The action when brought shall be triable at the first term of court, after due and timely service of the notice has been given, and in such action evidence of the general reputation of the place shall be admissible for the purpose of proving the existence of said nuisance. If the complaint is filed by a citizen, it shall not be dismissed, except upon a sworn statement made by the complainant and his attorney, setting forth the reasons why the action should be dismissed, and the dismissal approved by the attorney of the United States for the District of Columbia or the Attorney-General of the United States of America in writing or in open court. If the court is of the opinion that the action ought not to be dismissed, it may direct the attorney of the United States for the District of Columbia to prosecute said action to judgment; and if the action is continued more than one term of court, any citizen of the District of Columbia, or the attorney of the United States for the District of Columbia, may be substituted for the complaining party and prosecute said action to judgment. If the action is brought by a citizen, and the court finds there was no reasonable ground or cause for said action, the costs may be taxed to such citizen. (Feb. 7, 1914, 38 Stat. 281, ch. 16 § 3; June 25, 1948, 62 Stat. 909, ch. 646, § 1.)

**FEDERAL RULES OF CIVIL PROCEDURE**

Injunctions, see Rule 65, 28 U.S.C. App.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 22-2714, 22-2717, 22-2720.

**§ 22-2716. Trials for violating injunction granted under section 22-2714—Punishment.**

In case of the violation of any injunction granted under the provisions of section 22-2714, the court, or, in vacation, a judge thereof, may summarily try and punish the offender. The proceedings shall be commenced by filing with the clerk of the court an information, under oath, setting out the alleged facts constituting such violation, upon which the court or judge shall cause a warrant to issue, under which the defendant shall be arrested. The trial may be had upon affidavits, or either party may at any stage of the proceedings demand the production and oral examination of the witnesses. A party found guilty of contempt, under the provisions of this section, shall be punished by a fine of not less than \$200 nor more than \$1,000 or by imprisonment in the District jail not less than three nor more than six months or by both fine and imprisonment. (Feb. 7, 1914, 38 Stat. 281, ch. 16, § 4.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 22-2714, 22-2717, 22-2720.

**§ 22-2717. Order of abatement—Sale of property—Entry of closed premises punishable as contempt.**

If the existence of the nuisance be established in an action as provided in sections 22-2713 to 22-2720, or in a criminal proceeding, an order of abatement shall be entered as a part of the judgment in the case which order shall direct the removal from the building or place of all fixtures, furniture, musical instruments, or movable property used in conducting the

nuisance, and shall direct the sale thereof in the manner provided for the sale of chattels under execution, and the effectual closing of the building or place against its use for any purpose, and so keeping it closed for a period of one year, unless sooner released. If any person shall break and enter or use a building, erection, or place so directed to be closed he shall be punished as for contempt, as provided in section 22-2716. (Feb. 7, 1914, 38 Stat. 281, ch. 16, § 5; Oct. 15, 1970, Pub. L. 91-452, title II, § 257, 84 Stat. 931.)

**AMENDMENT**

1970—Section 257 of Act Oct. 15, 1970, Pub. L. 91-452, amended section by striking out "2721" and inserting in lieu thereof "2720".

**EFFECTIVE DATE OF 1970 AMENDMENT**

See sec. 260 of Act Oct. 15, 1970, Pub. L. 91-452, set out as a note to § 23-545.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 22-2714, 22-2718, 22-2720.

**§ 22-2718. Disposition of proceeds of sale.**

The proceeds of the sale of the personal property as provided in section 22-2717, shall be applied in the payment of the costs of the action and abatement and the balance, if any, shall be paid to the defendant. (Feb. 7, 1914, 38 Stat. 281, ch. 16, § 6.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 22-2714, 22-2717, 22-2720.

**§ 22-2719. Bond for abatement—Order for delivery of premises—Effect of release.**

If the owner appears and pays all costs of the proceeding and files a bond, with sureties to be approved by the clerk, in the full value of the property, to be ascertained by the court or, in vacation, by the collector of taxes of the District of Columbia, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept within a period of one year thereafter, the court, or, in vacation, the judge, may, if satisfied of his good faith, order the premises closed under the order of abatement to be delivered to said owner and said order of abatement canceled so far as the same may relate to said property; and if the proceeding be an action in equity and said bond be given and costs therein paid before judgment and order of abatement, the action shall be thereby abated as to said building only. The release of the property under the provisions of this section shall not release it from judgment, lien, penalty, or liability to which it may be subject by law. (Feb. 7, 1914, 38 Stat. 281, ch. 16, § 7.)

**TRANSFER OF FUNCTIONS**

The Office of the Collector of Taxes was abolished and the functions thereof transferred, see note under § 47-301.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 22-2717, 22-2720.

**§ 22-2720. Tax for maintaining such nuisance.**

Whenever a permanent injunction issues against any person for maintaining a nuisance as herein defined, or against any owner or agent of the building kept or used for the purpose prohibited by sections 22-2713 to 22-2720, there shall be assessed against said building and the ground upon which the same



is located and against the person or persons maintaining said nuisance, and the owner or agent of said premises, a tax of \$300. The assessment of said tax shall be made by the assessor of the District of Columbia and shall be made within three months from the date of the granting of the permanent injunction. In case the assessor fails or neglects to make said assessment the same shall be made by the chief of police, and a return of said assessment shall be made to the collector of taxes. Said tax shall be a perpetual lien upon all property, both personal and real used for the purpose of maintaining said nuisance, and the payment of said tax shall not relieve the person or building from any other penalties provided by law. The provisions of the law relating to the collection and distribution of taxes upon personal and real property shall govern in the collection and distribution of the tax herein prescribed in so far as the same are applicable and not in conflict with the provisions of said sections. (Feb. 7, 1914, 38 Stat. 282, ch. 16, § 8; Oct. 15, 1970, Pub. L. 91-452, title II, § 258, 84 Stat. 931.)

#### AMENDMENT

1970—Section 258 of Act Oct. 15, 1970, Pub. L. 91-452, amended section by striking out "2721" and inserting in lieu thereof "2720".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See section 260 of Act Oct. 15, 1970, Pub. L. 91-452, set out as a note to § 23-545.

#### TRANSFER OF FUNCTIONS

The Office of the Collector of Taxes was abolished and the functions thereof transferred, see note under § 47-301.

#### CROSS REFERENCE

Collection and disbursement of taxes, see § 47-301 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22-2717.

§ 22-2721. Repealed. Oct. 15, 1970, Pub. L. 91-452, title II, § 256, 84 Stat. 931.

Section, act Feb. 14, ch. 16, § 9, 38 Stat. 282, as amended, related to granting immunity to witnesses. For general immunity statute, see 18 U.S.C. 6002.

#### EFFECTIVE DATE OF REPEAL

See section 260 of Act Oct. 15, 1970, Pub. L. 91-452, set out as a note to § 23-545.

§ 22-2722. Keeping bawdy or disorderly houses.

Whoever is convicted of keeping a bawdy or disorderly house in the District shall be fined not more than \$500 or imprisoned not more than one year, or both. (July 16, 1912, 37 Stat. 192, ch. 235, § 1; Dec. 23, 1963, 77 Stat. 617, Pub. L. 88-241, § 11(a).)

#### CODIFICATION

The provisions of § 1 of act July 16, 1912, cited to text of this section, insofar as they relate to punishment for an affray, are classified to § 22-1101.

#### AMENDMENT

1963—Section 11(a) of act Dec. 23, 1963, amended section to read as above set out. Prior to this amendment the section read as follows: "Any person convicted of keeping a bawdy or disorderly house shall be punished by a fine not exceeding five hundred dollars or imprisonment not exceeding one year, or both."

#### EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by Act Dec. 23, 1963, was made effective on Jan. 1, 1964.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22-3203.

#### NOTES TO DECISIONS

##### Appeal

On appeal from conviction of operating a disorderly house where defendant contended that hotel register was improperly admitted, being unlawfully seized property because warrant of arrest was void for insufficiency of supporting affidavit, Municipal Court of Appeals ordered warrant of arrest and supporting affidavit made part of record. *Darnall v. United States* (D.C. Mun. App. 1943, 33 A. 2d 734).

##### Arrest

Affidavits supporting application for warrant for arrest for operation of disorderly house alleged sufficient facts to establish probable cause for arrest. *W. H. Wood and M. J. Blue v. United States* (D.C. Mun. App. 1962, 183 A. 2d 563).

Where apparent facts set out in affidavits supporting application for warrant for arrest are such that reasonably discreet and prudent man would be led to believe that offense charged was committed, there is probable cause justifying issuance of warrant; determination whether offense has been committed or evidence tendered is so strong as to justify ultimate conviction is not necessary. *Id.*

Parade of males into defendant's apartment and her past criminal record as convicted madam and vagrant provided adequate justification for issuance of warrant for arrest resulting in prosecution for keeping disorderly house. *C. J. Bennett, etc. v. United States* (D.C. Mun. App. 1961, 171 A. 2d 252).

In prosecution for keeping a disorderly house, affidavit made by arresting officer in applying for warrant was sufficient to establish probable cause. *Packard et al. v. United States* (D. C. Mun. App. 1950, 77 A. 2d 19).

Affidavit for warrant of arrest, which merely recited police officer's legal conclusion that defendant was maintaining a disorderly house, and which was devoid of single recital of fact to support conclusion and referred to a name other than that of defendant, was insufficient to support warrant. *Darnall v. United States* (D.C. Mun. App. 1943, 33 A. 2d 734).

##### Bawdy house

Where evidence in prosecution for keeping "a bawdy or disorderly house \* \* \*, a premises resorted to for homosexual activities," showed that defendant was the operator of a house used by males, after payment of an initial membership fee plus a fee for each visit, for a variety of homosexual activities including sodomy, conviction was one for keeping a bawdy house as distinguished from a disorderly house, and it was unnecessary to consider contention that court's definition of disorderly house was constitutionally overbroad. *D. G. Harris v. United States* (D.C. App. 1972, 293 A. 2d 851).

##### Common law

What may not have been an infamous crime at common law, may, by statute, be made such and in determining whether a crime is infamous, we must look to the penalty the law imposes, and though the crime of keeping a disorderly house may not have been an infamous crime at common law, it is within the power of Congress to impose a penalty that will make it such in the District of Columbia. *Palmer v. Lenovitz* (1910, 35 App. D.C. 303).

##### Constitutionality

Application of bawdy house statute to situation revealing homosexual acts between consenting adults did not amount to overbroad encroachment upon constitutionally protected conduct. *D. G. Harris v. United States* (D.C. App. 1972, 293 A. 2d 851).

##### Construction

Within statute proscribing the keeping of a bawdy or disorderly house, proscription against keeping a "bawdy house" includes the keeping of a house for homosexual prostitution among males, and in prosecution for keeping such a house it is not necessary to show that house meets definition of "disorderly house." *D. G. Harris v. United States* (D.C. App. 1972, 293 A. 2d 851).



**Disorderly house**

"Disorderly house" is one where acts are performed which tend to corrupt morals of community or promote breaches of peace. *M. A. Payne v. United States* (D.C. Mun. App. 1961, 171 A.2d 509).

Elements necessary to sustain conviction for maintaining disorderly house are that acts are contrary to law and subversive of public morals, that house is commonly resorted to for commission of such acts, and that proprietor knows, or should in reason, know facts and either procures it to be done, connives at it, or does not prevent it. *Id.*

Conduct sufficient to sustain conviction for maintaining disorderly house need not disrupt peace and quiet or be open to public observation so long as it would be offensive to public sensibilities if its presence in community were generally known. *Id.*

**Evidence—Generally**

Even if admission into evidence of reports by police officer who investigated alleged disorderly house was error, such error was harmless where officer had testified fully as to their contents and no prejudice was shown in fact that reports may have gone to jury. *J. J. Killeen and W. H. Fentress v. United States and District of Columbia* (D.C. App. 1966, 224 A.2d 302).

Registration cards seized in search of tourist home in connection with arrest for operating it as disorderly house were admissible as having direct bearing upon the operation. *W. H. Wood and M. J. Blue v. United States* (D.C. Mun. App. 1962, 183 A.2d 563).

Use of chart, which was not admitted as exhibit or taken to jury room, in connection with testimony concerning registration cards taken from tourist home allegedly used as disorderly house, in order that jury could more conveniently view, during trial, information on cards, was not prejudicial. *Id.*

Evidence supported conviction for operating as a disorderly house a tourist home to which constant stream of couples came, especially late at night, on foot, in taxis, or by private automobile, without luggage and in many instances oddly dressed and at which they stayed for brief periods not exceeding two and one-half hours. *Id.*

Evidence sustained conviction for keeping disorderly house. *C. J. Bennett, etc. v. United States* (D.C. Mun. App. 1961, 171 A.2d 252).

Evidence sustained conviction of maintaining disorderly house. *M. A. Payne v. United States* (D.C. Mun. App. 1961, 171 A.2d 509).

Testimony on single act of prostitution in house and unlawful sales prior to period specified in information were admissible in prosecution for maintaining disorderly house. *Id.*

Where warrant of arrest for maintaining disorderly house was void, the arrest, which was for a misdemeanor not committed in presence or within view of arresting officers, was unlawful and hotel register seized at time of arrest was unlawfully seized and inadmissible in evidence. *Darnall v. United States* (D.C. Mun. App. 1943, 33 A.2d 734).

In prosecution for maintaining disorderly house, admission in evidence of hotel register which was seized at time of defendant's arrest under void warrant, notwithstanding defendant's subsequent motion to suppress register as evidence, and objection at time of trial to its admission, was reversible error. *Id.*

**— Sufficiency**

Evidence was sufficient to support finding or inference by jury that restaurant proprietors had requisite knowledge of activities occurring on their premises to be chargeable with keeping disorderly house and vagrancy. *J. J. Killeen and W. H. Fentress v. United States and District of Columbia* (D.C. App. 1966, 224 A.2d 302).

Evidence was sufficient to sustain conviction for operating a disorderly house. *Collins v. United States* (D.C. Mun. App. 1945, 41 A.2d 515).

**Instructions**

In prosecution for keeping "a bawdy or disorderly house . . . , a premises resorted to for homosexual activities" it was harmless error to instruct only on theory that what was charged was keeping a disorderly house, defined as one where acts are done which "are contrary to law

and subversive to public morals," where the verdict under the disorderly house theory necessarily included a finding beyond a reasonable doubt that defendant operated, for profit or gain, a house for the purpose of homosexual activity and that such activity was a matter of course therein, and thus sustained bawdy house conviction. *D. G. Harris v. United States* (D.C. App. 1972, 293 A.2d 851).

Jury instruction in prosecution for keeping disorderly house and vagrancy that, inter alia, presumption that every person is presumed to have knowledge of what goes on in his own premises is not conclusive and that it should find defendant restaurant keepers guilty if convinced beyond reasonable doubt that they knew or should have known of unlawful and immoral acts committed on premises was correct statement of law, and giving of instruction was not error. *J. J. Killeen and W. H. Fentress v. United States and District of Columbia* (D.C. App. 1966, 224 A.2d 302).

Instruction in prosecution for keeping disorderly house and vagrancy that evidence of good character can be considered in determining credibility of witnesses and that such evidence, by itself, may be enough to create a reasonable doubt was a proper statement of law, and giving of instruction was not error where defendants neither offered an instruction on that point nor objected to instruction as given. *Id.*

Defendants in prosecution for keeping disorderly house and vagrancy who at trial neither offered an instruction upon bearing of evidence of good character on credibility of witnesses nor objected to instruction as given were not allowed to raise objection to instruction for first time on appeal. *Id.*

Instructions given to jury in prosecution for operating a disorderly house were not tainted with prejudicial error. *Collins v. United States* (D.C. Mun. App. 1945, 41 A.2d 515).

**Knowledge of acts done on premises**

In prosecution for maintaining a disorderly house, it was not necessary to prove defendants' actual knowledge of acts done on premises if it could be shown that defendants should in reason have known what was happening. *J. J. Killeen and W. H. Fentress v. United States and District of Columbia* (D.C. App. 1966, 224 A.2d 302).

Knowledge of happenings in alleged disorderly house requisite to conviction for keeping disorderly house could be proved inferentially, since a proprietor is presumed to have knowledge of that which goes on in his premises. *Id.*

**Probation officer recommending sentence**

Where accused pleaded guilty to maintaining disorderly house and, on plea for probation, trial judge announced that probation officer had recommended maximum sentence and, on objection to consideration of recommendation, trial judge, without express ruling thereon, sentenced defendant to the near maximum penalty, sentence was set aside. *Ishkanian v. United States* (D.C. Mun. App. 1944, 35 A.2d 176).

A recommendation by a probation officer to trial judge as to sentence to be imposed is not merely unauthorized by §§ 24-101 to 24-105 but is an infringement upon court's judicial function, which officer has no right to exercise and judge no right to permit. *Id.*

**Questions for court**

In prosecution for maintaining disorderly house, objection to introduction of hotel register as unlawfully seized evidence because of invalidity of warrant of arrest raised question for judge presiding at trial. *Darnall v. United States* (D.C. Mun. App. 1943, 33 A.2d 734).

**Waiver**

In prosecution for maintaining a disorderly house, defendant, by failing to move to quash warrant of arrest before he entered plea of not guilty, did not "waive" right to object to introduction of hotel register, seized at time of arrest, as unlawfully seized evidence. *Darnall v. United States* (D.C. Mun. App. 1943, 33 A.2d 734).

**Chapter 28.—RAPE****Sec.**

22-2801. Definition and penalty.



## § 22-2801. Definition and penalty.

Whoever has carnal knowledge of a female forcibly and against her will or whoever carnally knows and abuses a female child under sixteen years of age, shall be imprisoned for any term of years or for life. (Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 808; Apr. 19, 1920, 41 Stat. 567, ch. 153; Jan. 30, 1925, 43 Stat. 798, ch. 115, § 1; July 29, 1970, Pub. L. 91-358, § 204, title II, 84 Stat. 600.)

## AMENDMENTS

1970—Section 204 of Act July 29, 1970, Public Law 91-358, amended section generally. For provisions of this section prior to this amendment, see 1967 edition of the code.

1925—Act Jan. 30, 1925, provided for execution of death penalty by electrocution instead of by hanging.

1920—Act Apr. 19, 1920, eliminated provision for minimum five-year term of imprisonment.

## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

## CROSS REFERENCES

Minimum sentence when previously convicted of a crime of violence, see § 24-203.

Possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

Punishment for first and second degree murder, see § 22-2404.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11-502, 22-3501, 24-203.

## NOTES TO DECISIONS

## Appeal and error

Error, in not giving instruction on lesser offense of simple assault, in prosecution for rape, assault with intent to commit rape, unlawful entry, and second-degree burglary, does not require that conviction of second-degree burglary be set aside, in view of the fact that the jury returned verdict on burglary charge rather than on lesser-included offense of unlawful entry. *United States v. E. L. Huff* (1971, 442 F. 2d 885, 143 U.S. App. D.C. 163).

## Composition of jury

A defendant, convicted of statutory rape, but who was not given death sentence, was not prejudiced by fact that his case was treated as a capital case and people opposed to capital punishment were systematically excluded from jury which found him guilty. *T. M. Springfield v. United States* (1968, 403 F. 2d 572, 131 U.S. App. D.C. 166).

## Concurrent sentences

There was no resulting prejudice to a defendant in a case where concurrent sentences were imposed for crimes of carnal knowledge and housebreaking, as a result of error, if any, in failing to make out prima facie case of housebreaking. *P. E. A. Duckett v. United States* (1969, 410 F. 2d 1004, 133 U.S. App. D.C. 305).

## Constitutionality

Statute which authorized jury to add words "with the death penalty" to verdict in rape case violates constitutional guarantee of right to jury trial but holding affects only those defendants whose trial began after April 8, 1968; overruling *Lindsey v. United States*, 77 U.S. App. D.C. 1, 133 F. 2d 368. *J. Bailey and R. Humphries v. United States* (1968, 405 F. 2d 1352, 132 U.S. App. D.C. 82).

The penalty provisions of rape statute which permits jury to inflict capital punishment are unconstitutional because they inhibit defendants from exercising Fifth Amendment right not to plead guilty and Sixth Amendment right to a jury trial. *T. M. Springfield v. United States* (1968, 403 F. 2d 572, 131 U.S. App. D.C. 166).

This section which empowers the jury to add the words "with the death penalty" to verdict in cases of rape does not violate U. S. Const. Art. 3, § 2, cl. 3 and U. S. Const. Amend. 6, guaranteeing right to "jury trial" on theory that at the time of the adoption of the Constitution

common-law juries did not fix penalty. *Lindsey v. United States* (1943, 133 F. 2d 368, 77 U.S. App. D.C. 1).

## — Due process

In rape prosecution, where record left serious doubt as to whether defendant had enjoyed due process of law regarding his right to effective assistance of counsel and right to testify in his own behalf, defendant was entitled to have sentence vacated. *Mason v. United States* (1952, 193 F. 2d 23, 90 U.S. App. D.C. 1).

## Construction

This section dispensing with element of "forcibly" in cases involving rape of child under 16 years of age would be read to apply in prosecution for assault with intent to rape where the victim although 27 years of age had mind of child about 7 years old. *United States v. A. S. Medley* (1971, 452 F. 2d 1325, 146 U.S. App. D.C. 396).

## Continuance

A general indignation toward those who commit rape is not regarded as "bias or prejudice", and it cannot be assumed in support of a motion for an indefinite continuance, on ground that alleged confession of another man to ten or more similar offenses has inflamed the mind of the community so that a particular defendant cannot receive a fair trial, that all juries impaneled at any given time will not give any defendant a fair trial. *Robinson v. United States* (1942, 128 F. 2d 322, 76 U.S. App. D.C. 29).

In rape prosecution, trial court did not err in denying defendant's motion for an indefinite continuance on ground that alleged confession of another man to ten or more similar offenses had inflamed the mind of the community so that defendant could not receive a fair trial where there was no specific showing of any kind in support of motion. *Id.*

## Conviction for carnal knowledge and taking indecent liberties

A defendant may not properly be convicted of both carnal knowledge and taking indecent liberties with minor child as result of one incident. *United States v. W. D. Heard* (1969, 420 F. 2d 628, 137 U.S. App. D.C. 60).

Since the defendant was charged with both carnal knowledge and taking indecent liberties with minor child, jury should have been instructed to first consider carnal knowledge offense and, if they found defendant guilty beyond a reasonable doubt, sole verdict should have been guilty of that offense, but if they acquitted defendant of carnal knowledge they should have proceeded to consider whether defendant was guilty or not guilty of the crime of indecent liberties. *Id.*

## Death penalty

In prosecution for rape of nine-year-old girl, death sentence was within sound discretion of jury alone, and in considering imposition of death sentence, jury could give weight to any consideration such as age, sex, ignorance, illness or intoxication. *Tatum v. United States* (1951, 190 F. 2d 612, 88 U. S. App. D. C. 386).

Where evidence was sufficient to sustain verdict of guilty in prosecution for rape, jury had exclusive power to determine whether death penalty should be imposed. *Williams v. United States* (1942, 131 F. 2d 21, 76 U.S. App. D.C. 299).

## Defense

Where defense announced that defenses would be, first, that no crime had been committed by defendant, and, secondly, that if he had committed crime, he was not guilty by reason of insanity, court, in stating that defense would have to take one position or other, as defenses were inconsistent, committed error which reviewing court, under rule, would notice on appeal and for which it would reverse judgment, as there was no inconsistency and as inconsistent defenses could be interposed. *Whittaker v. United States* (1960, 281 F. 2d 631, 108 U.S. App. D.C. 268).

In prosecution for rape and robbery, the defendant did not have the obligation of making out a complete defense. *McKenzie v. United States* (1942, 126 F. 2d 533, 75 U.S. App. D.C. 270).

## Discretion of court

In rape prosecution, record sustained trial court's determination, on motion for new trial, that evidence did not sustain charges that defendant was not competently



represented by trial counsel. *Ewing v. United States* (1943, 135 F. 2d 633, 77 U.S. App. D.C. 14, certiorari denied 63 S. Ct. 829, 318 U. S. 776, 87 L. Ed. 1145, rehearing denied 63 S. Ct. 991, 318 U. S. 803, 87 L. Ed. 1167).

In rape prosecution, where hearing on motion for new trial had been continued over and over to allow some supposed new lead to be followed out and when, after final continuance had been granted, with court's insistence that hearing be brought to an end, defendant filed affidavits and insisted on cross-examining those who had made counter affidavits, but court took matter under advisement and at next sitting brought hearing to close without taking further evidence, action of court in determining the matter on affidavits was not an abuse of discretion. *Id.*

#### Due process

The court held that the refusal of the government to comply with Juvenile Court's pre-trial orders granting extensive discovery motions of each of the three juveniles, charged separately with rape, did not then and there deprive the juveniles of due process, equal protection of the law, or the deprivation of the right to effective assistance of counsel at trial, nor did it then and there establish a denial of the juveniles' right to a "fair trial". *District of Columbia v. H. J. Jackson, C. M. Simpson and F. M. Alston* (D.C. App. 1970, 261 A. 2d 511).

#### Elements of offense

The elements of the crime of carnally knowing and abusing a female child under statute of the District of Columbia are penetration of a child under the age of 16. *Wheeler v. United States* (1954, 211 F. 2d 19, 93 U.S. App. D. C. 159, certiorari denied 74 S. Ct. 876, 347 U. S. 1019, 98 L. Ed. 1140, rehearing denied 75 S. Ct. 21, 348 U. S. 852, 99 L. Ed. 671).

#### Evidence—Admissibility

Since immediately after police officers entered defendant's apartment and informed him that female neighbor had charged him with rape, defendant volunteered that he had not been in victim's apartment but that he had been in tavern and no claim was made that defendant was subject to any custodial interrogation, statement is admissible, notwithstanding that defendant had not been previously warned of right to counsel and right to remain silent. *D. E. Bosley v. United States* (1970, 426 F. 2d 1257, 138 U.S. App. D.C. 263).

In prosecution for asserted taking of indecent liberties with child and asserted carnal knowledge, where examining physician was out of jurisdiction and unavailable, report of his medical examination was not admissible. *Whittaker v. United States* (1960, 281 F. 2d 631, 108 U.S. App. D.C. 268).

Incriminating statements made prior to illegal detention of a defendant without taking him to committing magistrate were not inadmissible because of such detention. *Perry v. United States* (1958, 253 F. 2d 337, 102 U. S. App. D. C. 315, certiorari denied 78 S. Ct. 785, 356 U. S. 941, 2 L. Ed. 2d 816).

In prosecution for rape, admission into evidence of manifest kept by taxi driver was not error, where such exhibit met requirements of Federal Business Records Act of being made in usual course of business and within reasonable time after event in issue, in absence of showing of prejudice to defendant. *Hines v. United States* (1955, 220 F. 2d 381, 95 U. S. App. D. C. 118).

In prosecution for rape, action of trial court in admitting into evidence certain articles of wearing apparel worn by victim, which were not turned over to police until morning after crime, was not error, where reasons for articles not being turned over until next morning were adequately explained. *Id.*

In prosecution for carnally knowing a female child, allowing child to testify, over objection that defendant had abused her similarly on previous occasions was proper in view of fact that there was independent evidence which pointed to defendant as having committed the offense charged. *Crawford v. United States* (1952, 198 F. 2d 976, 91 U.S. App. D. C. 234).

Where prosecuting witness is under age of consent her reputation for unchastity is inadmissible. Her reputation for truth and veracity may be attacked, as in the case of any other witness. *Sacks v. United States* (1913, 41 App.

D.C. 34). See, also, *Kidwell v. United States* (1912, 38 App. D.C. 566); *Monalokos v. United States* (1913, 41 App. D.C. 19).

Prosecuting witness in cases of rape may testify as to whether or not she made complaint, when and to whom, although the details of the disclosure are not admissible except on cross-examination or to confirm her testimony after it is impeached, or unless a part of the res gestae. *Harris v. United States* (1921, 269 F. 481, 50 App. D.C. 139). See, also, *Snowden v. United States* (1893, 2 App. D.C. 89); *Lyles v. United States* (1902, 20 App. D.C. 559); *Roney v. United States* (1915, 43 App. D.C. 533).

In prosecutions for statutory rape testimony of similar acts prior to the offense charged in the indictment is admissible. *Weaver v. United States* (1924, 299 F. 893, 55 App. D.C. 26).

On charge of carnal knowledge, evidence of subsequent marriage of parties is admissible. *Id.*

In prosecution for sex offenses, evidence of prior acts between the same parties is admissible as showing a disposition to commit the act charged, the probabilities being that the emotional predisposition or passion will continue. *Bracey v. United States* (1944, 142 F. 2d 85, 79 U.S. App. D.C. 23, certiorari denied 64 S. Ct. 1274, 322 U.S. 762, 88 L. Ed. 1589).

In prosecution for carnally knowing and abusing a 12 year old girl, where defendant elected to defend on issue of conspiracy against himself, and the only evidence which he offered in support of that defense was that which he produced by cross-examination of his 11 year old daughter, who testified that she disliked her father, rebuttal testimony indicating that daughter's dislike was based on father's commission of similar offense against daughter was properly admitted. *Id.*

In rape prosecution, where defense witness had testified to facts which, if believed, established defendant's innocence, and during cross-examination regarding interview with prosecutrix's mother, as to which defense witness had not testified on direct examination, witness denied that she had stated she believed defendant guilty, that he was facing the electric chair, and that she had to be on his side, but the prosecutrix's mother subsequently testified that the defense witness made such statements, evidence was admissible within the "self-contradiction rule," within the "impeachment rule," and for purpose of affecting credibility of defense witness by showing bias, and was not objectionable as being on "collateral matter." *Ewing v. United States* (1943, 135 F. 2d 633, 77 U.S. App. D.C. 14, certiorari denied 63 S. Ct. 829, 318 U.S. 776, 87 L. Ed. 1145, rehearing denied 63 S. Ct. 991, 318 U.S. 803, 87 L. Ed. 1167).

#### —Circumstantial evidence

In prosecution for carnally knowing and abusing a female child under the age of 16 years, child's statement, which had been given to the police, and which was used to impeach the child's testimony exonerating defendant, did not constitute direct evidence of the crime charged. *Wheeler v. United States* (1954, 211 F. 2d 19, 93 U.S. App. D.C. 159, certiorari denied 74 S. Ct. 876, 347 U.S. 1019, 98 L. Ed. 1140, rehearing denied 75 S. Ct. 21, 348 U.S. 852, 99 L. Ed. 671).

In prosecution for rape, circumstantial evidence was sufficient to corroborate complaining witness' testimony. *McGuinn v. United States* (1951, 191 F. 2d 477, 89 U. S. App. D. C. 197).

Only circumstantial evidence is required to corroborate complaining witness' testimony in rape case. *Id.*

#### —Confession

Where issue of voluntariness of confessions was for jury, defendant was not prejudiced because trial judge did not in the first instance hear the testimony as to the admissibility of the confession, out of the presence of the jury. *De Lorenzo v. United States of America* (1955, 219 F. 2d 506, 95 U.S. App. D.C. 74, certiorari denied 75 S. Ct. 897, 349 U.S. 964, 99 L. Ed. 1286).

In rape prosecution, issue of voluntariness of confessions was for jury to determine. *Id.*

#### —Corroboration

Credit cards found in automobile, belonging to companion of rape victim, provided enough corroboration to allow jury to consider case against the defendant.



*United States v. J. O. Gambrill* (1971, 449 F. 2d 1148, 146 U.S. App. D.C. 72).

Charges of rape and assault with intent to commit rape may not be presented to jury solely on testimony of victim, and the degree of corroboration required varies with case, dependent in large part on danger of falsification by particular complainant. *United States v. E. L. Huff* (1971, 442 F. 2d 885, 143 U.S. App. D.C. 163).

Evidence in corroboration of complainant's testimony was sufficient to warrant submission of charges of rape and assault with intent to commit rape. *Id.*

As a general rule, for conviction of a sex offense testimony of the victim must be corroborated both as to the corpus delicti and the identity of the accused; however, the standard by which to determine adequacy of identifying evidence is not as stringent as is required for proof of the offense itself. *United States v. R. Jenkins* (1970, 436 F. 2d 140, 140 U.S. App. D.C. 392).

Where the complaining witness' identification of rapist, shortly after attack, as to skin color, height, build and voice matched that of the defendant, whom she picked out of lineup, and witness testified that she was able to see assailant's face in light over basement door and that she had a good look at him when he dragged her into basement and when he was having intercourse with her, identification evidence was sufficient for jury without further corroboration. *Id.*

Testimony of the complaining witness must be corroborated with respect to fact of sexual assault and generally must be corroborated as to identification of accused by complainant; but in both instances, corroboration need not be by "direct evidence", but may consist of proven circumstances which tend to support complainant's story. *W. A. Carter, Jr. v. United States* (1970, 427 F. 2d 619, 138 U.S. App. D.C. 349).

The need for corroboration of complainant's testimony depends upon danger of falsity and danger of erroneous identification in rape case is not of same magnitude as danger of fabricated rape. *Id.*

Corroboration of evidence by medical evidence sustained conviction for carnal knowledge of 15-year-old complainant. *P. E. A. Duckett v. United States* (1969, 410 F. 2d 1004, 133 U.S. App. D.C. 305).

There existed ample corroboration of identification of defendant charged with carnal knowledge to warrant jury to reach the conclusion of guilt. *T. F. Dade v. United States* (1968, 407 F. 2d 692, 132 U.S. App. D.C. 229).

There were sufficient corroborative facts and circumstances to merit submission to jury of a prosecution for carnally knowing female under 16 years of age. *J. Bailey and R. Humphries v. United States* (1968, 405 F. 2d 1352, 132 U.S. App. D.C. 82).

Independent proof must exist that points to probable guilt of the defendant or at least corroborates indirectly testimony of prosecutrix to warrant a conviction of carnally knowing female under 16 years of age. *Id.*

Since prosecutrix in carnal knowledge prosecution positively identified defendant the day following the crime, and her description of event was supported by her prompt report, condition of her clothing, welts on her neck, and her reported emotional condition, and in view of absence of evidence casting doubt on her trustworthiness or credibility of her testimony that she had abundant and unfettered opportunity to observe defendant prior to the crime, her identification did not require further corroboration because of minimal danger of falsification. *G. W. Thomas v. United States* (1967, 387 F. 2d 191, 128 U.S. App. D.C. 233).

The failure to instruct that corroboration of identity was required in proof of rape required reversal of conviction as to a defendant who preserved the issue by motion for judgment of acquittal at close of plaintiff's evidence and as to whom corroboration was then lacking; however, allowing case against two codefendants to go to jury without such instruction was not plain error, where the two codefendants did not except to court's charge on corroboration of identity and there was evidence in government's case on which jury could have found corroboration as to the two codefendants. *Franklin, Price and Brooks v. United States* (1964, 330 F. 2d 205, 117 U.S. App. D.C. 331).

Where government's own evidence showed that victim was raped several times, merely showing that she was raped was no corroboration of a defendant as one of the offenders. *Id.*

In prosecution for rape and housebreaking, testimony of complainant's mother relating to telephone call made by complainant immediately after alleged attack was properly received in evidence. *B. Smith v. United States* (1962, 312 F. 2d 867, 114 U.S. App. D.C. 140).

In rape prosecution "corroboration," in the sense that there must be circumstances in proof which tend to support the prosecutrix's story, is required. *Ewing v. United States* (1943, 135 F. 2d 633, 77 U.S. App. D.C. 14, certiorari denied 63 S. Ct. 829, 318 U.S. 776, 87 L. Ed. 1145, rehearing denied 63 S. Ct. 991, 318 U.S. 803, 87 L. Ed. 1167).

In rape prosecution, evidence that defendant was present in apartment visiting with prosecutrix and another shortly before crucial time and spent night either in living room or in room across hall, that force was used against door of prosecutrix's bedroom making a new break in already defective lock with no other evidence to explain the new condition, that complaint was made to friends within twelve hours, to police within 24 hours, and was followed by defendant's arrest and confrontation with prosecutrix and medical evidence that the prosecutrix had recently had intercourse for the first time, was sufficient "corroboration." *Id.*

#### — Examination of witnesses

In rape prosecution where during cross-examination defense witness, who had testified to facts which, if believed, established defendant's innocence, was asked whether in interview with prosecutrix's mother witness had given affirmative answer to question whether she thought defendant was guilty and prosecutrix's mother later testified that the defense witness stated that she believed defendant guilty, the province of the jury was not invaded. *Ewing v. United States* (1943, 135 F. 2d 633, 77 U.S. App. D.C. 14, certiorari denied 63 S. Ct. 829, 318 U.S. 776, 87 L. Ed. 1145, rehearing denied 63 S. Ct. 991, 318 U.S. 803, 87 L. Ed. 1167).

In rape prosecution, action of prosecuting attorney in cross-examining defense witness as to whether defendant suggested to witness that they get some whiskey and girls and have a party was not prejudicial error where witness' negative response was later corroborated by defendant. *Id.*

In prosecution for rape, and for robbery of cleaning establishment, where court warned defendants' counsel that if he asked question of witness regarding whether defendant had been identified as the man who robbed another cleaning establishment about a week prior to the commission of the offenses involved, he would do so at his peril, refusal to allow the contradiction of witness' answer was proper. *McKenzie v. United States* (1942, 126 F. 2d 533, 75 U.S. App. D.C. 270).

#### — Hearsay

Where female child, whom defendant was charged with having carnally known and abused, went to her grandmother's home three blocks away within an hour, at most, after alleged attack, and when child arrived she was highly distraught, in shock, and crying, and when grandmother asked child what was wrong with her, child replied that defendant just had something to do with her, court properly admitted grandmother's testimony concerning child's statement to grandmother, under the spontaneous exclamation exception to the hearsay rule. *Wheeler v. United States* (1954, 211 F. 2d 19, 93 U.S. App. D. C. 159, certiorari denied 74 S. Ct. 876, 347 U.S. 1019, 98 L. Ed. 1140, rehearing denied 75 S. Ct. 21, 348 U.S. 852, 99 L. Ed. 671).

In prosecution for carnally knowing a female child, where defendant initiated inquiry into child's statement and made full use thereof to cast doubt upon his identity as the assailant, the interest of justice would not require reversal because of admission, without objection, of other statement by child on same subject which defendant, upon appeal, maintained should have been excluded by trial court as hearsay. *Crawford v. United States* (1952, 198 F. 2d 976, 91 U.S. App. D.C. 234).



## — Impeachment

In prosecution for rape and housebreaking, wherein defendant admitted sex relations and testified that prosecutrix had consented, prosecutor was properly allowed to impeach defendant's credibility by reading affidavit, which defendant had made as indigent defendant to secure subpoena and in which defendant had stated that witness whom he sought to subpoena could establish alibi for him. *B. Smith v. United States* (1962, 312 F. 2d 867, 114 U.S. App. D.C. 140).

## — Res gestae

In prosecution for rape of child about five years old the statements of the child made to her grandmother on the same day of crime was admissible as part of the res gestae. *Snowden v. United States* (2 App. D.C. 89).

## — Sufficiency

In this case, the evidence was sufficient to corroborate the testimony of complaint that identified the defendant as her attacker. *W. A. Carter v. United States* (1970, 427 F. 2d 619, 138 U.S. App. D.C. 349).

In this case, the evidence in rape prosecution was sufficient to submit issue of victim's consent to jury and to support conviction for rape. *B. J. Johnson v. United States* (1970, 426 F. 2d 651, 138 U.S. App. D.C. 174; cert. denied 91 S. Ct. 1258, 401 U.S. 846).

Whether evidence of joint participation in rape was sufficient and whether instruction on subject was deficient did not have to be determined where evidence indicated that certain defendants did commit rape and that the other defendant aided and abetted. *Franklin, Price and Brooks v. United States* (1964, 330 F. 2d 205, 117 U.S. App. D.C. 331).

In prosecution for rape, evidence was sufficient to sustain conviction. *Hines v. United States* (1955, 220 F. 2d 381, 95 U.S. App. D. C. 118). See also, *Robinson v. United States* (1942, 128 F. 2d 322, 76 U.S. App. D.C. 29).

Evidence warranted a conviction for rape, and death penalty therefor. *Holmes v. United States* (1949, 171 F. 2d 1022, 84 U.S. App. D.C. 168).

In rape prosecution, testimony of complaining witness and the circumstantial evidence supporting it, which were sufficient to show that the intercourse occurred and took place by force and against her will in the sense that her resistance was overcome by physical force and threats which put her in fear of her life, sustained jury's implicit finding, that the act was without the "consent" of the complaining witness. *Ewing v. United States* (1943, 135 F. 2d 633, 77 U.S. App. D.C. 14, certiorari denied 63 S. Ct. 829, 318 U.S. 776, 87 L. Ed. 1145, rehearing denied 63 S. Ct. 991, 318 U.S. 803, 87 L. Ed. 1167).

In rape prosecution, "consent" is not shown when the evidence discloses resistance is overcome by threats which put the woman in fear of death or grave bodily harm or by those combined with some degree of physical force. *Id.*

## — Suppression

Ordinarily, one seeking to challenge legality of search or seizure must establish that he was victim of alleged invasion of privacy. *F. Hair & J. I. Burroughs v. United States* (1961, 289 F. 2d 894, 110 U.S. App. D.C. 153).

Evidence obtained under warrant issued on basis of observations derived by police officers from illegal entry is inadmissible. *Id.*

## Harmless error

Assuming arguendo that the defendant's confrontation with victim at precinct station was conducted in an impermissible manner, any error with regard to fact that government elicited a single reference to precinct confrontation was harmless, since, in context of extensive testimony about victim's previous street identification, impact of single reference must have been negligible. *United States v. J. K. Green* (1970, 436 F. 2d 290, 141 U.S. App. D.C. 136).

## Identification

In view of record showing that complainant had ample opportunity to observe her assailant, in terms of time available, lighting, and succession of events at time of offense when the assailant raped her in hallway after robbing her on the elevator and the fact that she gave a description of her assailant to police immediately after offense and stated only that one of the photographs ex-

hibited by police looked like but was not assailant and spontaneously identified him on the street some 11 days afterward, there was sufficiently convincing identification of defendant to obviate need for further corroboration. *United States v. A. C. Hines* (1972, 460 F. 2d 949, 148 U.S. App. D.C. 441).

Introduction in evidence of photograph of defendant and photograph of man selected by complainant as defendant's look-alike was not wholly irrelevant to issue of identification and did not prejudice defendant. *Id.*

Identification of the defendants by rape victim could not stand where she was completely unable to select one of the defendants at first lineup held within six days of the crime, and where intervening exhibition of two single photographs and the ten-man lineup photograph, together with victim's seeing two Negroes seated at counsel table, both of whom she had viewed at the lineup, contained elements of suggestiveness that probably led to victim's testimony at trial that she did "recognize both of them now." *United States v. J. O. Gambrill* (1971, 449 F. 2d 1148, 146 U.S. App. D.C. 72).

Although it is unquestionably highly suggestive to present a single suspect to a witness for identification, such procedure may be justified in some circumstances, as when a single suspect is promptly presented to a witness who is critically ill or to a witness whose recollection of offense is still exceedingly fresh; an interest in speedy identification that justifies failure to arrange a formal lineup may also justify failure to provide suspect with counsel. *United States v. J. K. Green* (1970, 436 F. 2d 290, 141 U.S. App. D.C. 136).

Assuming arguendo that the defendant's confrontation with victim at precinct station was conducted in an impermissible manner, victim's ability to identify was not so irreparably tainted by confrontation as to make her in-court identification inadmissible, since in-court identification had an independent source, in that victim observed her assailant closely and at length at time of crime. *Id.*

## Impartial jury

Where on voir dire only those jurors were excluded who could not under any circumstance render verdict of guilty with death penalty and one juror who was opposed to death penalty was seated and actually served, defendants sentenced under Federal Youth Corrections Act, after being found guilty of carnally knowing female under 16 years of age, were not entitled to reversal of conviction on ground that jury was not impartial. *J. Bailey and R. Humphries v. United States* (1968, 405 F. 2d 1352, 132 U.S. App. D.C. 82).

## Impeachment

Permitting impeachment, in prosecution for rape and for assault with intent to commit rape, of defense witness by means of question as to whether he had been convicted of rape and response thereto that he was convicted of assault with intent to commit rape, does not constitute plain error. *United States v. E. L. Huff* (1971, 442 F. 2d 885, 143 U.S. App. D.C. 163).

## Indictment

Indictment charging defendant with unlawfully attempting to commit crime of rape on specified day against form of statute clearly spelled out charge of attempted forcible rape. *H. S. Bush v. United States* (D.C. App. 1966, 215 A. 2d 853).

Inclusion in information of age of alleged 12-year-old victim of attempted rape was unnecessary in view of charge of defendant with forcible rape, not statutory rape of a minor. *Id.*

Evidence failed to show that defendant was prejudiced by lack of particularity of informations which did not contain that particular facts constituting the charged offenses of attempted forcible rape of, simple assault upon, and threats against a 12-year-old girl. *Id.*

Although complaining witness' name did not appear in body of attempted forcible rape information, her identity was readily available from the other two informations, i.e., simple assault and threats, under which defendant was also tried, from the evidence, and from the list of witnesses in the attempted rape information, and guilty verdict thus cured lack of particularity, if any, in that information. *Id.*



Count of indictment charging defendant with violating this section punishing one who carnally knows a female child under 16 years of age can be joined with count charging defendant with violation of statute punishing any person who takes, or attempts to take, any immoral, improper, or indecent liberties with any child of either sex, under the age of 16 years to arouse or gratify sexual desires, though latter statute provides that it shall not apply to the offenses covered by this section, if jury is told that it cannot find defendant guilty of both counts and can find him guilty under the second count only if he is found not guilty under the first count. *Thompson v. United States* (1956, 228 F. 2d 463, 97 U. S. App. D. C. 116).

That indictment charging rape contained four counts relating to two acts of intercourse did not prejudice defendant, where defendant made no election, stated that he was ready to go to jury on all four counts, and in no way questioned charge allowing case to go to jury only on two counts charging carnal knowledge of a girl under age of consent because testimony was that complaining witness was under 16. *Robinson v. United States* (1942, 128 F. 2d 322, 76 U.S. App. D.C. 29).

That indictment charging rape was signed by an Assistant United States Attorney rather than by the United States Attorney concerned a "matter of form" which did not prejudice defendant. *Id.*

Where indictments charging rape and robbery were returned by a grand jury which did not have upon it any member of the negro race, the indictments could not be quashed on ground that systematic course of procedure had been adopted for purpose of excluding negroes from grand jury on account of their color, in absence of proof or offer of proof of intentional exclusion of negroes from service on grand jury. *McKenzie v. United States* (1942, 126 F. 2d 533, 75 U.S. App. D.C. 270).

#### Instructions

Instruction in prosecution for rape and assault with intent to commit rape that evidence, that was introduced by defendant, as to prior rape of complainant by defendant was to be used, if it at all "solely for your consideration whether it tends to show a predisposition on the part of the defendant to gratify his sexual desires with the complainant," is not plain error, notwithstanding contention that such evidence, that was introduced solely to impeach complainant for hostility to defendant, was not admissible because of its tendency to show criminal propensity. *United States v. E. L. Huff* (1971, 442 F. 2d 885, 143 U.S. App. D.C. 163).

Evidence in prosecution for rape and assault with intent to commit rape required instruction, that was requested but not given, on lesser offense of simple assault. *Id.*

Instruction by trial court, in rape prosecution, that identification of assailant by the complaining witness may be sufficient if circumstances would convince of its accuracy beyond reasonable doubt and that, in considering accuracy of such identification, the jury could consider opportunity which complaining witness had to observe, or other factors and other evidence which may tend to corroborate identification was adequate when considered in context of general instruction that there must be corroboration of testimony of complaining witness. *W. A. Carter, Jr. v. United States* (1970, 427 F. 2d 619, 138 U.S. App. D.C. 349).

Refusal to give requested instruction as to requirement of corroboration of complainant's testimony that identified the defendant as her attacker was not error where the instruction in purporting to summarize evidence corroborating complainant's testimony, presented incomplete, diluted and inaccurate statement of evidence that might have had tendency to mislead jury. *Id.*

The court's instruction that the jury could find defendant guilty of both carnal knowledge and taking indecent liberties with minor child as result of same incident was error. *United States v. W. D. Heard* (1969, 420 F. 2d 628, 137 U.S. App. D.C. 60).

In this case the failure of trial judge in prosecution for carnal knowledge of female under 16 years of age to instruct the jury on need for corroboration of prosecutrix' identification of defendant was not cause for reversal since no objection was made at trial and such

instruction was not requested by defense counsel. *United States v. J. Dews* (1969, 417 F. 2d 753, 135 U.S. App. D.C. 185).

In this case the failure of trial judge in prosecution for carnal knowledge of female under 16 years of age to instruct on lesser included offenses was not reversible error since objection was not taken to portion of charge given and such instruction was not requested. *Id.*

Defendants who were convicted of carnally knowing a female under 16 years of age were not prejudiced because jury was instructed that the statute permitted them to impose the death penalty, even though such provision of the statute was constitutionally invalid, where prosecutor specifically stated that he was not going to seek the death penalty and presented no evidence to that end. *J. Bailey and R. Humphries v. United States* (1968, 405 F. 2d 1352, 132 U.S. App. D.C. 82).

In prosecution on two-count indictment for taking indecent liberties with child and for carnal knowledge, court acted properly at close of government's case when it granted partial judgment of not guilty under second count, stating that there was no evidence to support carnal knowledge charge but submitting to jury lesser included offense of assault with intent to commit carnal knowledge, but court erred in failing to instruct that jury was first to consider included charge of assault with intent to commit carnal knowledge and was only to consider alleged taking of indecent liberties with child if it found defendant not guilty of the former crime. *Whittaker v. United States* (1960, 281 F. 2d 631, 108 U.S. App. D.C. 268).

In rape prosecution, wherein jury had been instructed on verdicts of guilty with death penalty, guilty as charged, not guilty by reason of insanity, or not guilty, and jury after deliberating several hours asked court whether jury could be assured that defendant legally would be imprisoned for remainder of his life, court's response that the maximum term that court could impose was 30 years but that court also was required to impose a minimum sentence so that longest term court could impose would be indeterminate sentence of 10 to 30 years and that at end of minimum sentence parole board would have to decide whether maximum should be served or anything less than the maximum, did not constitute error. *Mallory v. United States* (1956, 236 F. 2d 701, 98 U. S. App. D. C. 406, reversed on other grounds 77 S. Ct. 1356, 354 U. S. 449, 1 L. Ed. 2d 1479).

Count of indictment charging defendant with violating statute punishing one who carnally knows a female child under 16 years of age can be joined with count charging defendant with violation of statute punishing any person who takes, or attempts to take, any immoral, improper, or indecent liberties with any child of either sex, under the age of 16 years to arouse or gratify sexual desires, though latter statute provides that it shall not apply to the offenses covered by the prior statute, if jury is told that it cannot find defendant guilty of both counts and can find him guilty under the second count only if he is found not guilty under the first count. *Thompson v. United States* (1956, 228 F. 2d 463, 97 U. S. App. D. C. 116).

In prosecution for rape, action of trial court in submitting question of death penalty to jury where government had not asked for such penalty, was not error, where court advised jury that government did not ask that penalty and that they could take that fact into consideration, and where death penalty actually was not returned and defendant was not thereby prejudiced. *Hines v. United States* (1955, 220 F. 2d 381, 95 U. S. App. D. C. 118).

In prosecution for rape and sodomy, defendant's prayer for instruction requiring utmost resistance by complaining witness incorrect. *McGuinn v. United States* (1951, 191 F. 2d 477, 89 U. S. App. D. C. 197).

In prosecution for rape and sodomy, defendant's prayers for instructions assuming as fact that complaining witness did not offer opposition should have been denied. *Id.*

In prosecution for rape and sodomy, defendant's prayer for instruction requiring that complaining witness' fear be mortal to negative her consent was properly denied, as fear of grave bodily harm was sufficient. *Id.*



In prosecution for rape and sodomy, court properly instructed jury that there must be absence of consent by complaining witness to warrant conviction, unless consent was induced by putting her in fear of grave bodily harm or death or by exercise of actual force against her person. *Id.*

Where evidence in prosecution for rape of nine-year-old girl raised defense of insanity, but no instructions thereon were given, and counsel for defendant stated in closing argument to jury that verdict of guilty was proper and trial court in its charge referred to such concession of guilt and omitted to instruct jury that notwithstanding concession, defendant was entitled to have jury alone determine his guilt or innocence, there was reversible error. *Tatum v. United States* (1951, 190 F. 2d 612, 88 U.S. App. D. C. 386).

In prosecution on two counts for assault with a dangerous weapon and on one count for rape, where court's charge did not discuss nor define offenses included within the indictment and jury were not told what assault with intent to rape was nor how it was distinguished from rape and were not informed that a verdict of not guilty might be returned, there was prejudicial error. *Williams v. United States* (1942, 131 F. 2d 21, 76 U.S. App. D.C. 299).

In prosecution for rape and robbery, where pistol which victim stated assailant used, clothing which he said he had stolen and money which he had taken were not found in possession of defendant, neighbors testified to good character of defendant and to his having a night job at which he worked regularly, and thorough examination by police failed to shake statement of defendant that he had never seen the prosecuting witness before, such circumstances were important enough to be called to the attention of the jury to be weighed together with evidence in support of legal presumption of innocence. *McKenzie v. United States* (1942, 126 F. 2d 533, 75 U.S. App. D.C. 270).

In prosecution for rape and robbery, failure to instruct jury in precise terms that a not guilty verdict was necessary in event of failure by the government to prove each of the elements of the offenses charged beyond a reasonable doubt was error requiring reversal, notwithstanding the court instructed that defendant was presumed to be innocent and that the government was obliged to rebut the presumption by proof of guilt beyond a reasonable doubt. *Id.*

In prosecution for rape and robbery, where verity of identification of accused by prosecuting witness was point on which case turned, failure to instruct jury in plain words that if circumstances of identification were not convincing, jury should acquit accused was error. *Id.*

In prosecution for rape and robbery where court referring to conditions obtaining at time of prosecuting witness' identification of accused stated that the jury should take into consideration the attitude of the prosecuting witness upon coming in view of the accused and that they should search their reasoning power regarding what motivated the selection of the accused from among all others, in view of fact that verity of identification was the point on which the case turned, the court should have cautioned that if the motivation was not convincing beyond a reasonable doubt the jury should find the defendant not guilty. *Id.*

Nothing suggests that the jury did not understand and respect the action and instructions of the court for unless it appears to the contrary, jurors should be presumed to have understood and followed the court's instructions. *Hall v. United States* (1949, 171 F. 2d 347, 84 U.S. App. D.C. 209).

#### Intent

Specific intent to commit rape is not required to warrant conviction thereof. *McGuinn v. United States* (1951, 191 F. 2d 477, 89 U.S. App. D. C. 197).

#### Jencks Act

In this case, the court held that refusal to submit to jury complainant's Jencks Act statement, which had not been offered or received in evidence, was not error. *W. A. Carter, Jr. v. United States* (1970, 427 F. 2d 619, 138 U.S. App. D.C. 349).

#### Lesser included offense

Assault with intent to rape is lesser offense included in charge of rape. *Johnson v. United States* (1965, 350 F. 2d 784, 122 U.S. App. D.C. 1).

#### Mental capacity

In prosecution for rape of nine-year-old girl, evidence as to alleged insanity of defendant, was sufficient to raise issue to jury under guidance of instructions. *Tatum v. United States* (1951, 190 F. 2d 612, 88 U.S. App. D. C. 386).

After conviction of rape, a sanity inquisition was denied when it did not occur to either his counsel or to the court that he was mentally irresponsible; and that during his examination and cross-examination, it did not "suggest, in the slightest degree, that defendant was not fully and entirely responsible from a mental standpoint." *Jackson v. United States* (1928, 25 F. 2d 549, 58 App. D.C. 125).

Evidence regarding insanity of defendant was insufficient to justify reversal of conviction for rape. *Holloway v. United States* (1945, 148 F. 2d 665, 80 U.S. App. D.C. 3, certiorari denied 68 S. Ct. 1507, 334 U.S. 852, 92 L. Ed. 1774).

#### Newly discovered evidence

Defendant who was convicted of carnally knowing female under 16 years of age was not entitled to a new trial upon newly discovered evidence consisting of discrepancies in testimony of prosecutrix and her mother at the trial of one defendant's younger brother for the same offense. *J. Bailey and R. Humphries v. United States* (1968, 405 F. 2d 1352, 132 U.S. App. D.C. 82).

#### Partial invalidity of statute

Invalidity of portion of a statute which permitted the jury to impose the death penalty upon a person convicted of carnally knowing female under 16 years of age did not render remainder of statute invalid. *J. Bailey and R. Humphries v. United States* (1968, 405 F. 2d 1352, 132 U.S. App. D.C. 82).

Invalidity of statutory provision which permitted the jury to impose death penalty upon person convicted of carnally knowing female under 16 years of age did not render invalid convictions of defendants who received trial by completely fair and impartial jury and were not intimidated by threat of death into either waiving trial by jury or pleading guilty. *Id.*

#### Plea of guilty

This section authorizing jury to recommend death penalty in a rape case does not deprive court of inherent jurisdiction to accept plea of guilty, but defendant does not have absolute right to plead guilty. *United States v. Willis* (D.C.D.C. 1948, 75 F. Supp. 628).

Plea of guilty of carnal knowledge, avoiding possibility of death sentence, was accepted in exercise of trial court's discretion, upon recommendation of United States Attorney and in view of facts of particular case. *Id.*

"In all cases (of rape) the court must have the verdict of the jury upon which to base its judgment," and there is, therefore no error in refusing to accept a plea of guilty. *Green v. United States* (1913, 40 App. D.C. 426).

#### Prejudicial remarks

In prosecution for rape and housebreaking, prosecutor's remark to jury as to defendant's objection to admission of hospital records of physical examination of prosecutrix was improper and required new trial where records were not admitted and examination in fact showed no evidence of rape, and thus any possible or probable implication to jury that such records would be damaging to defendant was misleading. *B. Smith v. United States* (1962, 312 F. 2d 867, 114 U.S. App. D.C. 140).

#### Pre-trial discovery

The court held that any exculpatory information in government's possession should be given, in accordance with juveniles' request, to the three juveniles charged separately with rape. *District of Columbia v. H. J. Jackson, C. M. Simpson and F. M. Alston* (D.C. App. 1970, 261 A. 2d 511).

#### Prosecutor's conduct

Conduct of prosecutor in asking defense witness, in criminal prosecution, whether she had testified at preliminary hearing, for purpose of permitting prosecutor to claim recent fabrication solely on failure of such witnesses to testify at hearing is improper, but is not plain or prejudicial error regarding reversal. *United States v. E. L. Huff* (1971, 442 F. 2d 885, 143 U.S. App. D.C. 163).



**Prosecutor's remarks to jury**

Prosecutor's characterizing defendant in rape action as a teenage hoodlum walking the streets was improper and should have been condemned by the trial court, sua sponte, in the presence of the jury; however, the statement does not require reversal of this case in view of probability that jury convicted on basis of its view of the evidence. *United States v. R. Jenkins* (1970, 436 F. 2d 140, 140 U.S. App. D.C. 392).

**Questions for jury**

In prosecution for murder and rape, evidence regarding whether defendant's oral admissions against interest and his written confession were voluntary was sufficient to justify the submission of the issue of voluntariness to the jury. *Catoe v. United States* (1942, 131 F. 2d 16, 76 U.S. App. D.C. 292).

In rape cases and other cases of the nature of a sexual assault, delay in making complaint is a subject for consideration of jury and may seriously affect credibility of complaining witness. *Stitley v. United States* (D.C. Mun. App. 1948, 61 A. 2d 491).

**Remedy on appeal**

Although defendant who was charged with both carnal knowledge and with taking indecent liberties with minor child did not request that the jury consider indecent liberties charge only after an acquittal of carnal knowledge and jury convicted defendant on both charges after being erroneously instructed that conviction on one charge should not influence verdict on other charge, the proper remedy was to remand case with instruction to vacate judgment of conviction of taking indecent liberties with minor child. *United States v. W. D. Heard* (1969, 420 F. 2d 628, 137 U.S. App. D.C. 60).

**Review**

Defendant was not entitled to vacation of sentence on ground that he was denied effective assistance of counsel because he allegedly advised defendant to take no appeal, where record disclosed that defendant was adequately represented by able, experienced and conscientious counsel, and that defendant was fully apprised of his rights. *Watson, Jr. v. United States* (1960, 281 F. 2d 619, 108 U.S. App. D.C. 256).

Where accused was found not guilty by reason of insanity and was committed to hospital and some two months thereafter accused petitioned for writ of habeas corpus without prepayment of costs and District Court denied such petition without a hearing and without stating reasons for denial, case would be remanded and District Court, if it rejected allegation of poverty, would be required to state basis for such rejection, and if leave to file without costs was permitted or if accused should pay necessary filing fees, hospital superintendent would be directed to report as to accused's condition, and upon the return the District Court should conduct hearing to determine whether accused had recovered sanity and would not be dangerous to himself or others in reasonable future. *Tatem, Sr., v. United States* (1960, 275 F. 2d 894, 107 U.S. App. D.C. 230).

Statement of counsel for defendant in closing argument to jury in prosecution for rape of nine-year-old, that verdict of guilty was proper under the circumstances and evidence, was a defect affecting "substantial rights" within meaning of rule that plain errors or defects affecting "substantial rights" may be noticed on appeal though they were not brought to attention of the trial court. *Tatum v. United States* (1951, 190 F. 2d 612, 88 U. S. App. D.C. 386).

Where counsel for defendant in prosecution for rape of nine-year-old girl stated in closing argument to jury that a verdict of guilty was proper, reference by trial court in charge to the concession of guilt, and failure to caution jury that notwithstanding such concession, defendant was entitled to have the jury alone determine his guilt or innocence, constituted a defect affecting "substantial right" within meaning of rule that plain errors or defects affecting "substantial rights" may be noticed on appeal though they were not brought to attention of the trial court. *Id.*

Where record presented no reversible error and evidence supported conviction for rape, conviction was affirmed.

*Clinton v. United States* (1945, 151 F. 2d 12, 80 U.S. App. D.C. 413).

That failure of the Government to call all of its witnesses whose names and addresses had been given to defendant took him by surprise could not be urged on appeal from conviction for rape, where defendant did not allege or show that witnesses were not available for him and made no proffer of proof that their testimony would have helped him. *Robinson v. United States* (1942, 128 F. 2d 322, 76 U.S. App. D.C. 29).

**— Assignment of error**

In prosecution for rape and sodomy, defendant's assignment of error in trial court's failure to declare mistrial because of prosecuting attorney's comment, in opening statement to jury, that only one woman survived defense challenge to jurors, was without foundation, in absence of motion by defendant for mistrial or exception to trial court's action in merely telling jury to disregard remark as improper after objection thereto. *McGuinn v. United States* (1951, 191 F. 2d 477, 89 U. S. App. D. C. 197).

**Scope of review**

Although Court of Appeals may review sentence given upon plea of guilty, provided there is illegality or impropriety in same, where the defendant made no such claim, and indeed, disposition was favorable to him in its provisions for probation, appeal from sentence is frivolous and would be dismissed. *United States v. C. McElyea* (1970, 439 F. 2d 548, 142 U.S. App. D.C. 38).

A defendant's voluntary plea of guilty entered after receiving the advice of counsel waives objections to non-jurisdictional defects in his conviction. *Id.*

Where a defendant claimed error in taking of his plea, the district court will consider whether he should be allowed to withdraw his plea or whether his conviction and sentence should be set aside, but where the defendant does not allege any error in taking of plea, there is no basis for a remand to provide such consideration in district court. *Id.*

**Sentence**

Defendant's motion, filed before expiration of minimum time of indeterminate sentence imposed by District Court on his conviction of rape, to correct later indeterminate sentence on his subsequent unrelated conviction of assault with intent to rape, will not be dismissed by Court of Appeals as premature, thereby relegating defendant to refile identical motion in District Court, in view of statute and criminal procedure rule authorizing motion attacking sentence and correction of illegal sentence at any time. *Holloway v. United States* (1951, 191 F. 2d 504, 89 U. S. App. D. C. 332).

**Severance**

Where the second defendant moved for severance at first trial after alibi witness had testified for the first defendant, contending that alibi presented was incredible and that second defendant would be prejudiced by its use, which motion was refused, where instruction was given that first defendant's witnesses were offered on behalf of first defendant alone, where counsel for first defendant voiced no objection to the instruction at the time it was given or at any subsequent time, and where second defendant did not take the stand and was not subject to cross-examination concerning either his whereabouts on night of the crime or his reasons for refusing to subscribe to alibi presented by first defendant's witnesses, separate trial should be afforded the defendants on remand if it should appear that the same situation would reoccur. *United States v. J. O. Gambrell* (1971, 449 F. 2d 1148, 146 U.S. App. D.C. 72).

**Speedy trial**

Where defendant was convicted of rape and assault with intent to kill, and death penalty was imposed, but convictions were reversed and new trial ordered, even though 16 months elapsed between date of order awarding new trial and date defendant was sentenced after government was willing to accept pleas of guilty to offenses not punishable by death, and defendant voluntarily entered pleas after alleged unlawful delay, defendant was not deprived of constitutional right to speedy trial. *United States v. Lindsey* (D.C.D.C. 1959, 178 F. Supp. 598).



**Treatment as a capital case**

Defendants were not prejudiced because case was submitted to the jury as a capital case although a provision in the statute which authorized the jury to impose the death penalty for carnally knowing female under 16 years of age was constitutionally invalid, inasmuch as jury was offered no choice as to offenses for which defendant could be found guilty and prosecution made it clear it was not seeking the death penalty. *J. Bailey and R. Humphries v. United States* (1968, 405 F. 2d 1352, 132 U.S. App. D.C. 82).

**Trial procedure**

Defendant, who was convicted of statutory rape, but was not given a death sentence, was not prejudiced by the fact that the case was treated as a capital one, on ground that the verdict of guilty may have been a compromise, where prosecution never requested death penalty or even adverted to it, and trial judge gave it only a one-sentence mention in the charge to jury. *T. M. Springfield v. United States* (1968, 403 F. 2d 572, 131 U.S. App. D.C. 166).

Order of proof and conduct of trial in trial for rape is within court's discretion. *Mears v. United States* (1932, 55 F. 2d 745, 60 App. D.C. 387).

Contention of appellant's counsel that he should have been permitted to argue to the jury the so-called "sociological aspects of the case" is without merit because, for such a crime as rape, there can never be any extenuating circumstances. *Holmes v. United States* (1949, 171 F. 2d 1022, 84 U.S. App. D.C. 168).

In a prosecution for rape, the remarks of the prosecutor were improper where he asked defendant if he were a "sex fiend" since cross-examination is no place for argument or for vituperation; nor could a former offense be used for any other purpose than to reflect upon the credibility of appellant's testimony. *Hall v. United States* (1949, 171 F. 2d 347, 84 U.S. App. D.C. 209).

**Under age of consent**

When a child under the age of consent has been defiled, the law conclusively presumes force on the part of her seducer, and the question of consent is immaterial. *Yeager v. United States* (1900, 16 App. D.C. 356).

Carnal knowledge of child under age specified is rape. *Sanselo v. United States* (1916, 44 App. D.C. 508).

**Withdrawal of guilty plea, hearing on**

Trial court should hold hearing on defendant's presentment motion to be allowed to withdraw plea of guilty to offense of assault with intent to commit carnal knowledge based on allegations of perjured testimony by complaining witness, where government opposition to motion had not been served on court-appointed defense counsel or defendant prior to denial of motion, and government's opposition failed to controvert allegations of defendant's motion and gave erroneous reasons for dismissal of charge against codefendant who had elected to go to trial. *J. E. Hawk v. United States* (1964, 340 F. 2d 792, 119 U.S. App. D.C. 267).

**Chapter 29.—ROBBERY****Sec.**

22-2901. Robbery.

22-2902. Attempt to commit robbery.

**§ 22-2901. Robbery.**

Whoever by force or violence, whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear, shall take from the person or immediate actual possession of another anything of value, is guilty of robbery, and any person convicted thereof shall suffer imprisonment for not less than two years nor more than fifteen years. (Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 810; Dec. 27, 1967, Pub. L. 90-226, § 603, title VI, 81 Stat. 737.)

**AMENDMENT**

1967—Section 603, Act Dec. 27, 1967, Pub. L. 90-226, amended section by striking out "six months" and inserting "two years".

**SENTENCE FOR OFFENSES COMMITTED PRIOR TO DEC. 27, 1967, AND SEPARABILITY OF PROVISIONS**

See §§ 1101 and 1102 of Act Dec. 27, 1967, Pub. L. 90-226, set out as notes to § 22-501.

**CROSS REFERENCES**

Burglary, see § 22-1801.

Grave robbery, see § 22-3103.

Larceny, see § 22-2201 et seq.

Minimum sentence when previously convicted of a crime of violence, see § 24-203.

Possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

Train robbery, see 18 U.S.C. § 1991.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 11-502, 22-2902, 23-546.

**NOTES TO DECISIONS****Abuse of discretion**

Refusal to permit introduction of evidence that the defendant had been mistakenly arrested in another robbery case was not an abuse of discretion, since defense counsel did not bring out any relationship between two charges (other than that they were both for robbery) and did not proffer that there was any similarity between the two offenses in terms of modus operandi. *United States v. L. P. Hallman* (1971, 439 F. 2d 603, 142 U.S. App. D.C. 93).

In robbery prosecution of pickpocket who allegedly took wallet from purse of lady in line of people outside White House grounds waiting to gain entrance to observe children's annual Easter egg roll, denial of request to instruct the jury on lesser included offense of larceny was not abuse of discretion. *R. T. Davis, Jr. v. United States* (1970, 433 F. 2d 1222, 140 U.S. App. D.C. 116).

The trial judge did not exceed his discretion when he ruled that prosecutor would be allowed to impeach defendant, if he testified, with two earlier convictions for petit larceny. *Id.*

The decision of the trial court, rendered after hearing on admissibility, that 1959 conviction of one defendant for housebreaking and larceny and 1962 conviction of another defendant for attempted housebreaking could be brought out on cross-examination in robbery prosecution unless either defendant could satisfy court that since conviction he had led legally blameless life, was not an abuse of discretion. *United States v. J. L. Bailey et al.* (1970, 426 F. 2d 1236, 138 U.S. App. D.C. 242).

In robbery prosecution in this section, in which store detective testified that he saw defendant and codefendant enter store together and saw defendant bump shopper while codefendant opened pocketbook and remove wallet, the trial court did not abuse its discretion in admitting expert testimony on modus operandi of pickpockets. *United States v. O. J. Jackson* (1970, 425 F. 2d 574, 138 U.S. App. D.C. 143).

It was not an abuse of discretion to deny impeachment of complaining witness in prosecution for robbery by reference to complaining witness' prior convictions for assault and rape affecting substantial rights of defendants where impeachment of the witness with three convictions for crimes of auto theft, robbery, and burglary, each crime having element of dishonesty, was permitted. *G. A. Davis, et al. v. United States* (1969, 409 F. 2d 453, 133 U.S. App. D.C. 167).

**Allen charge**

The Court of Appeals, in the exercise of its supervisory power, declared that in the future, in both criminal and civil cases, the American Bar Association standard, eliminating element of "Allen" charge advising that the minority jurors owe deference to the majority, would be adopted as guideline which charges on duty of jurors to consult open-mindedly with disposition to hearken to fellow-jurors and to agree when no violation of conscience is involved must abide, and that American Bar Association approved instruction would be adopted as the vehicle for informing juries of their responsibilities in event of disagreement, when a trial court decides to do so. *United States v. A. C. Thomas* (1971, 449 F. 2d 1177, 146 U.S. App. D.C. 101).



Submission of "Allen" charge, with certain statements added thereto, in prosecution for robbery and assault, is not reversible error since the defendants did not object to the charge as given, either initially or as part of the supplementary instructions, and court's formulation did not in either instance constitute plain error. *United States v. J. Wilson* (1971, 449 F. 2d 1005, 145 U.S. App. D.C. 343).

#### Appeal and error

Even if trial court was in error in determining that a source for an incourt identification existed independently of invalid pretrial confrontations, reversal of robbery conviction is not required, since victim's wallet was found by police in police car in which defendant was being transported upon his apprehension shortly after crime. *United States v. T. A. Horton* (1971, 440 F. 2d 253, 142 U.S. App. D.C. 225).

Error, if any, in refusing to bar use of defendant's prior conviction for impeachment purposes in prosecution for robbery is harmless, given evidence against defendant. *Id.*

#### Arrest—Forcible entry

Exceptions to requirement that officers seeking to effectuate an arrest or search announce their purpose prior to breaking a door or window of a house include situation where announcement imposes a danger to the officer, a danger of flight or a danger of destruction of evidence and situation where the victim or some other person is in peril; likewise, a declaration of purpose is unnecessary where the occupant knows their purpose so that an announcement would be a useless gesture. *United States v. R. S. Wylie* (1972, 462 F. 2d 1178, 149 U.S. App. D.C. 283).

Where within minutes of purse snatching police had followed eyewitnesses' trail of perpetrator to dwelling house and, for five minutes, had loudly shouted in vain, "police officer, open up," and on entering building officers found defendant hiding in crawl space under eaves of roof, it would have been a useless gesture for officers to have announced purpose of their entry; thus, forced entry without notice of authority was proper. *Id.*

#### Assistance of counsel

Where record indicated that the trial court was aware of defendant's long term dissatisfaction with his retained counsel, that defendant had sought to discharge counsel, that defendant had asked chief judge of District Court for counsel from legal aid agency and that defendant was a pauper seeking court-appointed counsel, but record did not reflect specifically what action was taken by District Court, case would be remanded to District Court to determine what action, if any, was taken by District Court on motion to discharge counsel of record and request for appointed counsel and whether defendant was prejudiced thereby. *United States v. T. R. Thomas* (1971, 450 F. 2d 1355, 146 U.S. App. D.C. 308).

The appropriate standard for ineffective assistance of counsel is whether gross incompetence blotted out the essence of a substantial defense. *A. Bruce v. United States* (1967, 379 F. 2d 113, 126 U.S. App. D.C. 336).

Failure of United States Commissioner to assign counsel to defendant at preliminary proceeding and use at trial of testimony that defendant had confessed to police after the preliminary hearing had been continued for four weeks could not serve as a basis for reversal of conviction where neither point had been raised in district court, no objection had been made upon introduction of the defendant's oral confession, and no relief had been asked below. *L. Moon, Jr. v. United States* (1963, 317 F. 2d 544, 115 U.S. App. D.C. 133).

Where defendants, who allegedly entered plea of guilty at preliminary hearing to charge of robbery, were without counsel until arraignment but when counsel was assigned by court, defendants pleaded not guilty and adhered to the plea throughout trial and on appeal and denied that they had had hearing on robbery charge and claimed that they had pleaded guilty to misdemeanor charges only, in determining whether alleged plea of guilty at preliminary hearing was admissible, court was required to assume that defendants, who had not been asked whether they wanted counsel or informed regarding privilege against self-incrimination, did not know their rights and did not intend to waive them when they allegedly pleaded guilty. *Wood v. United States* (1942, 128 F. 2d 265, 75 U.S. App. D.C. 274, 141 A.L.R. 1318).

#### Bifurcated trial

Refusal of trial court to grant bifurcated trial sought on ground that defendant would defend on ground of want of criminal responsibility, was not reversible error where defense assured trial court that there was no defense on merits, and evidence to prove that defendant was one who robbed filling station was very strong. *United States v. R. A. Grimes* (1969, F. 2d 1119, 137 U.S. App. D.C. 184).

#### Concurrent sentences

Since concurrent sentences raised substantial question as to whether Congress intended Federal sentence to be cumulative to sentence for state violation for what was factually same offense, Federal sentence would be vacated without deciding question, inasmuch as this course will not result in overriding needs of government, and interests of justice will be served by avoiding substantial time and effort required for deciding question and by devoting limited resources of courts confronted with ever-mounting dockets to determination of issues that must be decided. *United States v. J. L. Hooper* (1970, 432 F. 2d 604, 139 U.S. App. D.C. 171).

#### Conduct of prosecuting attorney

In robbery prosecution, prosecutor's statements that the defendants did not make a statement that they struck the victim in self-defense and that the prosecutor did not intend to convey that to the jury and that it was only an inference that the prosecutor was trying to say could be drawn from the evidence but that he thought that testimony was that they struck the victim were not reversible error under the evidence. *Johnson v. United States* (1960, 275 F. 2d 898, 107 U.S. App. D.C. 234).

In robbery prosecution, language of prosecuting attorney to jury was not so extreme as to vitiate judgment and permit collateral attack. *Adams v. United States* (1955, 222 F. 2d 45, 95 U.S. App. D. C. 354).

#### Confessions

Admission in evidence in robbery and murder trial of defendant's pretrial address to the court which included statement "I feel I am going in blind, you know just going to start this trial, although personally I know I am guilty" constituted reversible error where he did not intend that the statement be considered as confession or as admission and was therefore not voluntary. *United States v. L. P. Robinson* (1972, 459 F. 2d 1164, 148 U.S. App. D.C. 140).

#### Confrontation

Defendant was not denied his Sixth Amendment right of confrontation when confessions of two codefendants implicating defendant were admitted and such defendants repudiated their confessions at trial inasmuch as defendants' counsel did not avail himself of opportunity to cross-examine codefendants and bring out all details of alleged coerced confession and any details conformatory of noninvolvement of defendant at time of offense. *L. Jackson v. United States* (1970, 439 F. 2d 529, 142 U.S. App. D.C. 19).

#### Consecutive sentences

Sentencing of defendant, who was adjudged guilty on five counts of assaulting five individuals with a dangerous weapon and on one count of robbery from the person, to consecutive terms of imprisonment for robbery and assault is not error since assaults on four individuals, excluding assault charge relating to robbery victim, are separate offenses from robbery and defendant had prior felony conviction. *G. Sutton, Jr. v. United States* (1970, 434 F. 2d 462, 140 U.S. App. D.C. 188; cert. denied 91 S. Ct. 1676, 402 U.S. 988).

If additional punishment is to be meted out in armed robbery prosecution for use of a dangerous weapon, consecutive sentences for robbery and assault with dangerous weapon may be an inappropriate means to accomplish that result and more impregnable sentence may result if the offense is charged and sentenced under statute providing that robbery as crime of violence may be punished more severely when committed with a dangerous weapon and statute authorizing indeterminate sentence up to life for crimes of violence when committed with a dangerous weapon. *Id.*



It is proper to increase punishment where there have been convictions under the conventional robbery statute and under statute prohibiting assaults with a dangerous weapon by imposing consecutive sentences. *United States v. J. L. Suggs and C. Blair* (1967, 269 F. Supp. 732).

Defendant, who allegedly committed crime of assault with a dangerous weapon in parking lot of store or near door to store, and who allegedly committed a robbery in office of store could be given consecutive sentences upon being convicted for both crimes. *Id.*

#### Consecutive sentences for two separate offenses

The distinctions that assault and petit larceny are separate and distinct offenses requiring different elements of proof, and that one is a crime of general intent against the person, and the other a crime of specific intent against property, are no longer conclusive in determining the legality of consecutive sentences for two crimes committed in a single course of conduct. *G. Mahoney v. United States* (D.C. App. 1968, 243 A. 2d 684).

The compelling reasons which call for the application of the rule of lenity are absent in this case, and there is no substantial doubt Congress would have intended, in the discretion of the court, that consecutive punishment be imposed for historically separate offenses, against different societal interests, for which it has provided separate deterrents. *Id.*

#### Constitutionality

This section is valid. *Pope v. Huff* (1944, 141 F. 2d 727, 79 U. S. App. D. C. 18).

#### Construction

The Federal mail robbery statute and the District of Columbia robbery and crime of violence statutes are applicable throughout the District of Columbia. *United States v. W. B. Spears* (1971, 449 F. 2d 946, 145 U.S. App. D.C. 284).

Where evidence in proof of count II which charged defendant under District of Columbia robbery and crime of violence statutes with robbing post office custodian of money showed that the defendant actually consummated the same robbery he was charged with attempting in count I under the Federal mail robbery statute, defendant could not be convicted of both the attempt and the completed robbery since Congress did not intend that a statute drawn to proscribe attempt should also support a separate conviction for completed offense when defendant is charged with and convicted of substantially the same crime he is charged with attempting. *Id.*

Federal statute [Pub. L. 90-226] for District of Columbia, defining crime of burglary in first degree and increasing minimum and maximum punishments therefor and increasing minimum punishment for robbery by amending prior laws on both crimes became effective at 3:05 p.m. when it was signed by the President, and not before. *United States v. R. L. Casson* (1970, 434 F. 2d 415, 140 U.S. App. D.C. 141).

Notation on federal bill as to time of its approval by the President, though such notation is not required by Constitution or statute, constitutes contemporaneous memorandum and is best evidence of fact that nature of case permits. *Id.*

Under statutory provision that United States statutes at large shall be "legal evidence of laws," it is held that bill was approved at time endorsed on official document and stated in Statutes at Large rather than at time alleged in hearsay affidavits based upon hearsay newspaper statements; such hearsay newspaper statements are not sufficient basis for overcoming best evidence of which case was susceptible and presumption of regularity. *Id.*

Ancient distinction that robbery offends person and burglary habitation has not been obliterated by Congress with respect to District of Columbia even where robbery inside dwelling follows closely on heels of housebreaking of that dwelling. *Irby v. United States* (D.C.D.C. 1965, 250 F. Supp. 983).

#### Cross-examination

Record of prosecution for robbery and other offenses wherein defendant, who was denied bifurcated trial, claimed want of criminal responsibility and testified as to his state of mind did not show that the trial court, in its rulings on particular questions asked on cross-examination of defendant, substantially departed from court's

ruling that it would allow cross-examination as to defendant's state of mind but not as to possible participation in offense. *United States v. R. A. Grimes* (1969, 421 F. 2d 1119, 137 U.S. App. D.C. 184).

Cross-examination of defendant's wife, concerning her alleged statements to officers, although she had said nothing of these matters on direct examination and they did not directly challenge her direct testimony, was not proper on any ground and required reversal, despite sufficiency of other evidence and lack of objection, and was not cured by instruction that testimony could be considered only on question of wife's credibility. *C. Dixon v. United States* (1962, 303 F. 2d 226, 112 U.S. App. D.C. 366).

#### Defense, requisites of

In prosecution for rape and robbery, the defendant did not have the obligation of making out a complete defense. *McKenzie v. United States* (1942, 126 F. 2d 533, 75 U.S. App. D.C. 270).

#### Determination of sentence

Although defendant, who was found guilty of robbery by a jury, continued to assert his innocence at allocution, this fact could not properly be considered in determining sentence to be imposed. *V. E. Scott v. United States* (1969, 419 F. 2d 264, 135 U.S. App. D.C. 377).

The court's belief that defendant committed perjury on witness stand in denying participation in robbery with which he was charged could not properly be considered in determining sentence to be imposed. *Id.*

#### Directed verdict

Where foreman of jury in robbery prosecution sent trial judge note stating that jury was unable to reach unanimous decision and felt that more conclusive evidence was needed to bring about full vote, and that seven jurors were of opinion that defendant was guilty, four that he was not guilty, and one was undecided, note neither compelled nor warranted directed verdict of not guilty. *H. Mullin, Jr. v. United States* (1966, 356 F. 2d 368, 123 U.S. App. D.C. 29).

Failure of defendant to object when mistrial was granted and when order was carried out and jury was dispersed barred subsequent claim by defendant that he was entitled to directed verdict of not guilty. *Id.*

#### Double jeopardy

The constitutional immunity from double jeopardy is a personal right which, if not affirmatively pleaded by defendant at time of trial, will be regarded as waived. *United States v. C. E. Scott* (1972, 464 F. 2d 832, 150 U.S. App. D.C. 323).

Where defendant did not raise at his second trial the issue that his acquittal of armed robbery at first trial was acquittal of unarmed robbery as well, defendant waived the defense of double jeopardy. *Id.*

Where first jury returned verdict of not guilty of armed robbery but was unable to agree as to whether defendant was an unarmed robber and mistrial was declared, the acquittal of armed robbery was not an acquittal of unarmed robbery charge and double jeopardy prohibition did not preclude retrial of unarmed robbery charge. *Id.*

Where purpose and effect of proceeding in juvenile court were to provide a prompt preliminary hearing in order to set a date for trial, if allegations of petitions were denied, or to continue case pending completion of full social study and recommendations for disposition of child, case had not reached stage at which juvenile's liberty had been placed in jeopardy by his acknowledgment that he held a toy gun during alleged robbery, and when trial judge subsequently waived jurisdiction to district court for trial, indictment was not subject to dismissal on ground of double jeopardy. *United States v. Dickerson* (1959, 271 F. 2d 487, 106 U.S. App. D.C. 221).

#### Due process

In order to establish denial of due process in pretrial photographic identification, defendant must make showing that the photographic identification procedure was so impermissibly suggestive as to give rise to very substantial likelihood of irreparable misidentification. *United States v. C. J. Ash, Jr.* (1972, 461 F. 2d 92, 149 U.S. App. D.C. 1; cert. granted 92 S. Ct. 2436, 407 U.S. 909).

Defendant's claim that continuation of his robbery trial, after his codefendant changed his plea to guilty at



completion of government's case and after trial judge, in questioning codefendant, elicited statement that implicated defendant, constituted denial of due process is not valid, either on theory that trial judge, having heard statement, would be prejudiced against defendant or on theory that jury must have realized that codefendant had changed his plea and must have been improperly influenced thereby in passing on defendant's guilt. *V. E. Scott v. United States of America* (1969, 419 F. 2d 264, 135 U.S. App. D.C. 377).

#### Elements of offense

In District of Columbia, robbery retains common-law elements modified only to extent that Congress has enlarged it to encompass stealthy as well as forcible takings. *Irby v. United States* (D.C.D.C. 1965, 250 F. Supp. 983).

Robbery conviction requires proof of taking from person of another by sudden or stealthy seizure or snatching, or by putting in fear. *G. R. Hunt v. United States* (1963, 316 F. 2d 642, 115 U.S. App. D.C. 1).

"Robbery", as used in this section, means robbery in the usual common-law sense as expanded to include sudden or stealthy seizure or snatching. *United States v. Mann et al.* (D.C.D.C. 1954, 119 F. Supp. 406).

#### Evidence

Government is not guilty of any impropriety in failing to produce photographs of defendants, made on day of arrest, before they were demanded by defense counsel. *United States v. P. J. Trantham, Jr.* (1971, 448 F. 2d 1036, 145 U.S. App. D.C. 113).

Prosecution may not affirmatively use at trial defendant's testimony in support of motion to suppress evidence. *W. E. Pendergast v. United States* (1969, 416 F. 2d 776, 135 U.S. App. D.C. 20, cert. denied 89 S. Ct. 1782).

#### — Admissibility

Admission of officer's testimony of identification of defendant, at time and place close to offense, by victim who was tendered for cross-examination was not error. *United States v. J. E. Ruth* (1972, 461 F. 2d 1213, 149 U.S. App. D.C. 1).

Where officer had testified on direct as to victim's identifying defendant shortly after crime occurred, permitting officer to give same testimony on rebuttal after victim had recanted identification testimony was not prejudicial. *Id.*

Where testimony offered by defendant in prosecution for armed bank robbery which was excluded constituted only collateral impeachment, the exclusion was not reversible error and would not have been so even if testimony had been offered by defense counsel. *United States v. C. J. Ash, Jr.* (1972, 461 F. 2d 92, 149 U.S. App. D.C. —; cert. granted 92 S.Ct. 2436, 407 U.S. 909).

Photographs of defendant and codefendant, which were constitutionally impermissible because shown to witnesses in violation of the two defendants' right to counsel, were not otherwise admissible in bank robbery trial because subject of photographic identification had been "opened up" by the counsel for codefendant. *Id.*

Defense counsel's accession to procedure whereby all five photographs of defendant, codefendant and three others would be admitted so as to avoid prejudice against defendant, and be admitted by stipulation to avoid dispute whether the photographs, already held admissible, should be offered by codefendant's counsel or by the prosecutor, did not waive defendant's objection to the admission of the photographs in evidence on constitutional grounds. *Id.*

Where police officers who had observed the defendant entering apartment building returned with robbery victim to apartment building and began searching same after being advised of robbery and, when defendant opened his door, victim identified him as robber, officers who entered room, took custody of defendant and companion, and seized toy gun found under mattress of bed in room acted reasonably and toy gun is admissible. *United States v. R. L. Williams* (1972, 454 F. 2d 1016, 147 U.S. App. D.C. 173).

In prosecution for armed robbery of bus passengers and assault with dangerous weapon, even if the defendant's statement, "I didn't mean to do it" made after he was arrested and brought back to the scene and confronted by outraged passengers was somehow attributable to hostile confrontation of passengers, it was not of character to

justify finding that it undermined fairness of trial, considering evidence as whole. *United States v. I. Porcha* (1971, 450 F. 2d 697, 146 U.S. App. D.C. 236).

Robbery victim's testimony identifying pistols as resembling very closely those used at robbery by the defendant and coparticipant who was identified by name, and his testimony that he had identified both defendant and coparticipant, together with stipulation that money had been found on coparticipant at station house, provides adequate proof of joint participation to warrant admission of evidence associated with coparticipant against the defendant. *United States v. L. H. Thurman* (1970, 436 F. 2d 280, 141 U.S. App. D.C. 126).

Police officers, who observed automobile occupied by five men parked in front of a bank and saw the automobile make a U-turn and follow an overdue delivery truck whose driver had just left bank, were authorized in stopping suspicious-acting automobile and detaining the automobile and its occupants for brief questioning, and when officer observed from outside automobile what appeared to be shotgun barrel protruding from underneath the seat, seizure of shotgun was not illegal as actions did not exceed in scope what would be dictated by purpose to disarm, and shotgun is admissible. *T. R. Young v. United States* (1970, 435 F. 2d 405, 140 U.S. App. D.C. 333).

Payroll envelopes, which were identified as having been taken in armed robbery and which were found on or under couch or daybed in living room at time of arrest, were admissible in evidence since they were properly seized at time of arrest which occurred prior to United States Supreme Court decision limiting scope of search incident to arrest to the person or immediate surrounding area. *G. Sutton, Jr. v. United States* (1970, 434 F. 2d 462, 140 U.S. App. D.C. 188; cert. denied 91 S. Ct. 1676, 402 U.S. 988).

Testimony of circumstances surrounding defendant's arrest by officers pursuant to a warrant for his arrest, not for the robberies and murder for which he was being tried, but for armed assault on police officer, offered as indicating consciousness of guilt or resistance to arrest, was admissible in context in which case was tried. *C. Gregory v. United States* (1966, 369 F. 2d 185, 125 U.S. App. D.C. 140).

Admission of hearsay testimony was not prejudicially erroneous where direct testimony affirmed hearsay. *R. Williams v. United States* (1964, 338 F. 2d 530, 119 U.S. App. D.C. 190).

Case wherein defendant was convicted of robbery, resting upon admission of evidence claimed on appeal to have been inadmissible, was not one calling for exercise of reviewing court's discretion under rule permitting reversal for plain error not brought to attention of trial court. *D. Baxter v. United States* (1964, 337 F. 2d 547, 119 U.S. App. D.C. 151).

Evidence that defendant, who was charged with robbery, at time of his apprehension had in his possession an automobile driver's license bearing a name other than his own was irrelevant, but admission of such evidence did not require a reversal when jury trial was waived and evidence of guilt was strong. *L. Fennel v. United States* (1963, 320 F. 2d 784, 116 U.S. App. D.C. 62).

Even though oral and written confessions of defendants made before preliminary hearing may have been inadmissible for violation of rule requiring preliminary hearing without unnecessary delay, defendants' reaffirmation and enlargement of the formal written confession after preliminary hearing, including re-enactment of the crime, were not inadmissible as being the fruit of the original confessions, where the reaffirmation came within an hour after defendants had received both the judicial warning and their counsel's advice that they had right to remain silent and that any statements made by them could be used against them, and the defendants were not merely asked to mechanically state whether the terms of their earlier confession were true and their confessions were reread to them and were reaffirmed, and the defendants made highly incriminating admissions at scene of crime, and in their colloquy with the person who had been robbed and a witness who had been present at time of robbery. *Goldsmith & Carter v. United States* (1960, 277 F. 2d 355, 107 U.S. App. D.C. 305, certiorari denied 81 S. Ct. 106, 364 U.S. 863, 5 L. Ed. 2d 86).



The mere fact that a confession is made to the police, or while an accused is in custody, does not destroy its value as evidence, and once an accused has been legally charged and is in lawful detention, police interrogation is not forbidden. *Id.*

In prosecution for robbery and assault with a dangerous weapon, admission of police officer's testimony that before preliminary hearing the defendants had orally admitted the crimes in officer's presence was not prejudicial, where trial court gave careful instructions to jury to disregard officer's testimony and officer's testimony was cumulative and testimony could have had no measurable impact alongside the overwhelming evidence of guilt from other sources. *Id.*

Where certain challenged evidence, in a robbery prosecution, was not shown to have consisted of statements made during illegal detention and did not result from police interrogation, it could not be deemed inadmissible. *Rogers v. United States* (1959, 263 F. 2d 902, 105 U.S. App. D.C. 65, certiorari denied 79 S. Ct. 1127, 359 U.S. 994, 3 L. Ed. 2d 982).

Where defendant, after arrest but prior to arraignment, denied having any connection with robbery but admitted being in company of two other men, charged with same offense, shortly before and shortly after the robbery, admission of evidence of defendant's statement was not error where statement was not claimed to have been coerced. *Sykes v. United States* (1944, 143 F. 2d 140, 79 U.S. App. D.C. 97).

Housebreaking, robbery and burglary are merely aggravated forms of larceny and evidence competent in one case is competent, also, in the others. *Edwards v. United States* (1944, 139 F. 2d 365, 78 U.S. App. D.C. 226, certiorari denied 64 S. Ct. 523, 321 U.S. 769, 88 L. Ed. 1064).

In prosecution for robbery of a watch, a purse, a key, and \$37 in money, admission of a watch, purse, key, and a \$5 bill, without testimony either of prosecuting witness or officer who allegedly took the articles from defendant, constituted reversible error upon ground that identification of articles was insufficient. *Smith v. United States* (1946, 157 F. 2d 705, 81 U.S. App. D.C. 296).

Where testimony connecting defendant with another crime which had no connection with armed robbery for which he was being tried, was elicited by defendant's own counsel on cross-examination, admission of the testimony was no ground for reversal of conviction. *Felton v. United States* (1948, 170 F. 2d 153, 83 U.S. App. D.C. 277, certiorari denied 69 S. Ct. 18, 335 U.S. 831, 93 L. Ed. 385).

#### — Burden of proof

Where defendant, accused of murder and robbery, introduced evidence that on date thereof he was suffering from mental disease or defect, it became duty of government to prove him sane beyond reasonable doubt at the time of commission of crimes charged. *H. S. Carey v. United States* (1961, 296 F. 2d 422, 111 U.S. App. D.C. 300).

Where there is evidence that accused was of unsound mind when offenses occurred, prosecution is under necessity of establishing to satisfaction of jury beyond reasonable doubt that offenses were not result of accused's insanity. *Douglas v. United States* (1956, 239 F. 2d 52, 99 U.S. App. D.C. 232).

In order to justify conviction, where there is evidence that accused was of unsound mind when offenses occurred, proof, considered with presumption of sanity, must exclude beyond reasonable doubt the hypothesis that conduct indicted was product of a diseased mind or mental defect. *Id.*

#### — Examination of witnesses

In prosecution for robbery, conspiracy to commit robbery, and for carrying a deadly weapon without a license, requiring counsel for one defendant to ask a more precise question than question counsel asked a witness for prosecution as to whether such witness was convicted several times of prostitution during specified years was within discretion of trial court. *Bundy v. United States* (1952, 193 F. 2d 694, 90 U.S. App. D.C. 12, certiorari denied 72 S. Ct. 638, 343 U.S. 908, 96 L. Ed. 1326).

#### — Production of evidence

In robbery prosecution, wherein after direct examination of witness called by the United States was concluded, defendant moved for production of witness' statement

made to the police, and when prosecutor indicated he did not have the statement court told counsel to ask policeman for the statement when he "takes the stand," such action was error since the statute requires production of witness' statement for use in his cross-examination, and court by its action required defendant's counsel to proceed with cross-examination of witness without it. *W. H. Leach v. United States* (1963, 320 F. 2d 670, 115 U.S. App. D.C. 351).

In robbery prosecution, wherein after direct examination of witness called by the United States was concluded, defendant moved for production of witness' statement made to police, error in instructing counsel to ask policeman for statement when he "takes the stand" was harmless where when policeman took the stand entire police file was produced and made available to defense counsel, and after counsel read the file, the matter of the statement was not pursued. *Id.*

In prosecution for robbery, conspiracy to commit robbery, and for carrying a deadly weapon without a license, action of trial court in not requiring production under subpoena of arrest record of a witness for prosecution was not prejudicial to defendant where police officer testified he had no arrest record of witness by name contained in subpoena and did not know such witness used other names mentioned by him by counsel for defendant, and counsel for defendant did not during trial procure any further subpoena for arrest record of witness under any other name. *Bundy v. United States* (1952, 193 F. 2d 694, 90 U.S. App. D.C. 12, certiorari denied 72 S. Ct. 638, 343 U.S. 908, 96 L. Ed. 1326).

#### — Sufficiency

Evidence sustained conviction of first-degree felony-murder, first-degree premeditated murder and armed robbery. *United States v. R. L. Mack* (1972, 466 F. 2d 333, 151 U.S. App. D.C. 162; cert. denied 93 S. Ct. 297, 409 U.S. 952).

Evidence on issue of joint criminal venture and possession of purse and shotgun found in speeding automobile, occupied by defendants as driver and passenger, a short time after a purse had been forcibly taken from a pedestrian by two men, one of whom was armed with pistol, was sufficient to support conviction of armed robbery, assault with a dangerous weapon and possession of unregistered firearm, notwithstanding that at least one of four or five original occupants of vehicle had fled and that identification of defendants was "inconclusive" at best. *United States v. J. E. McCall* (1972, 460 F. 2d 952, 148 U.S. App. D.C. 444).

Evidence that, inter alia, the defendant, and two other men entered store together, that they conversed together until other customers left the store, that defendant did not lie on the floor when one of the codefendants, with a gun, announced a "stick-up" and said "To the floor," and that defendant moved from near the door to near the cash register after a codefendant ordered store employee to open it is sufficient to support defendant's conviction for armed robbery and assault with a dangerous weapon, and conflicting testimony of defendant and his codefendants whereby they all sought to establish that defendant and one of his codefendants were innocent bystanders did not destroy the permissible inference of defendant's guilt. *United States v. W. D. Lumpkin* (1971, 448 F. 2d 1085, 145 U.S. App. D.C. 162).

Evidence, including testimony as to statements of the defendant and codefendant describing the events and circumstances at time of shooting of cab driver, sustained convictions of robbery and felony murder. *United States v. J. R. Carter* (1971, 445 F. 2d 669, 144 U.S. App. D.C. 193; cert. denied 92 S. Ct. 988, 405 U.S. 932).

Evidence, including permissible inference jury was permitted to draw from fact that the defendant was found within an hour of larceny in exclusive possession of recently stolen truck, supported convictions of kidnapping of truck helper, armed robbery, and assault with a dangerous weapon. *United States v. L. B. Wolford* (1971, 444 F. 2d 876, 144 U.S. App. D.C. 1).

Complaining witness' testimony that he was robbed at gunpoint is sufficient to sustain conviction for armed robbery even though the weapon used was not put in evidence. *United States v. R. Stevenson* (1971, 443 F. 2d 661, 143 U.S. App. D.C. 246).



Evidence that the defendant was seen entering getaway car, carrying a gun, some ten minutes before robbery, accompanied by one of confessed active perpetrators, that someone drove getaway car, and that the defendant was seen with two of active robbers one day later is sufficient to take to jury aiding and abetting case against defendant for entering bank with intent to commit robbery therein, bank robbery, armed robbery, and assault with a dangerous weapon. *United States v. T. Parker* (1971, 442 F. 2d 779, 143 U.S. App. D.C. 57).

Evidence of the circumstances of participation in robbery culminating in physical possession by the defendant of a portion of the money is sufficient warrant the verdict. *United States v. J. L. Cunningham* (1970, 436 F. 2d 907, 141 U.S. App. D.C. 177).

In determining whether evidence is sufficient to sustain conviction, the rule is not that inference, no matter how reasonable, is to be rejected if it in turn depends upon another reasonable inference; rather, the question is merely whether total evidence, including reasonable inferences, if put together is sufficient to warrant jury to conclude that defendant is guilty beyond reasonable doubt. *United States v. T. D. Harris* (1970, 435 F. 2d 74, 140 U.S. App. D.C. 270; cert. denied 91 S. Ct. 1675, 402 U.S. 986).

In a criminal case, standard, stated in terms of probability from individual juror's point of view, for determining whether evidence is sufficient to sustain conviction, is whether it is so probable that the defendant is guilty that it would be unreasonable to believe otherwise. *Id.*

In robbery prosecution of pickpocket who allegedly took wallet from purse of lady in line of people outside White House grounds waiting to gain entrance to observe children's annual Easter egg roll, evidence was sufficient to permit the jury to conclude beyond reasonable doubt that the defendant gained possession of the purse from the immediate actual possession of the lady. *R. T. Davis, Jr. v. United States* (1970, 433 F. 2d 1222, 140 U.S. App. D.C. 116).

Evidence in this case, including evidence of defendant's in-trial identification and testimonial references to pre-trial forerunners, sustained conviction for robbery and assault with dangerous weapon. *United States v. T. McNair* (1970, 433 F. 2d 1132, 140 U.S. App. D.C. 26).

Evidence, in prosecution arising out of armed robbery of a grocery supermarket, was sufficient to present question for jury as to guilt of the defendant, even though two employee witnesses of the supermarket, who actually saw bandits depart, could not identify the defendant as either one of the armed robbers who came into the store or as driver of the automobile in which the getaway was accomplished. *United States v. C. Johnson* (1970, 432 F. 2d 626, 139 U.S. App. D.C. 193; cert. denied. 91 S. Ct. 257, 400 U.S. 949).

The evidence portrayed in a view most favorable to the Government, of defendant's presence at scene of crime, his slight association with actual perpetrator, and subsequent flight, did not sustain conviction for robbery. *J. L. Bailey v. United States* (1969, 416 F. 2d 1110, 135 U.S. App. D.C. 95).

In this case in light of the evidence on issue of whether offense was product of mental illness, conviction for robbery of property belonging to United States, assault with a dangerous weapon and carrying dangerous weapon would be affirmed. *T. H. Adams v. United States* (1969, 413 F. 2d 411, 134 U.S. App. D.C. 137).

Evidence was sufficient to sustain robbery conviction of pickpockets. *R. T. Davis, Jr., et ano. v. United States* (1969, 409 F. 2d 458, 133 U.S. App. D.C. 172).

In a robbery prosecution, government made out a case sufficient to go to the jury. *H. J. Macklin v. United States* (1969, 409 F. 2d 174, 133 U.S. App. D.C. 139).

Conflicting evidence in robbery prosecution was sufficient for jury. *E. Trimble v. United States* (1966, 369 F. 2d 950, 125 U.S. App. D.C. 173).

Unchallenged testimony by robbery victim that someone actually saw defendant take wallet out of her purse, together with evidence that defendant was at the bus stop where crime occurred and was found to have stolen money in his possession, was sufficient to sustain conviction for robbery. *Jackson v. United States* (1966, 359 F. 2d 260, 123 U.S. App. D.C. 276).

Evidence sustained conviction for robbery. *R. L. E. Smith v. United States* (1964, 340 F. 2d 797, 119 U.S. App. D.C. 272).

Evidence was sufficient to permit convictions under indictment charging robbery and assault with intent to commit robbery. *J. Rogers and H. Waldon v. United States* (1963, 318 F. 2d 223, 115 U.S. App. D.C. 252).

Evidence sustained conviction for robbery. *R. X. Williams v. United States* (1963, 321 F. 2d 744, 116 U.S. App. D.C. 131).

Evidence supported conviction of robbery. *Thompson v. United States* (1951, 188 F. 2d 652, 88 U.S. App. D.C. 235). See, also, *Bullock v. United States* (1946, 157 F. 2d 702, 81 U.S. App. D.C. 271, certiorari denied 67 S. Ct. 860, 330 U.S. 829, 91 L. Ed. 1278).

One could be convicted of robbery on uncorroborated testimony of complainant. *Thompson v. United States* (1951, 188 F. 2d 652, 88 U. S. App. D. C. 235).

In robbery prosecution, where defendant claimed that he acted under compulsion by another after having intended only an extortion, evidence justified conviction. *Vinci v. United States* (1947, 159 F. 2d 777, 81 U.S. App. D.C. 386).

#### — Suppression

Where police officer had probable cause to arrest defendant for crime of robbery, trial court correctly refused to suppress victim's wallet, that was found by police in police car in which defendant was being transported upon his apprehension shortly after crime. *United States v. T. A. Horton* (1971, 440 F. 2d 253, 142 U.S. App. D.C. 225).

Ordinarily, one seeking to challenge legality of search or seizure must establish that he was victim of alleged invasion of privacy. *F. Hair & J. I. Burroughs v. United States* (1961, 289 F. 2d 894, 110 U.S. App. D.C. 153).

Evidence obtained under warrant issued on basis of observations derived by police officers from illegal entry is inadmissible. *Id.*

In prosecution for robbery, defendant was not entitled to suppression of gun which was taken from defendant's automobile after his arrest by police upon a warrant. *Bennett v. United States* (1957, 249 F. 2d 505, 101 U. S. App. D. C. 413).

#### Ex post facto

Statute providing increased punishment for acts committed "prior to the date of enactment of this Act [Pub. L. 90-226]," is not on its face ex post facto. *United States v. R. L. Casson* (1970, 434 F. 2d 415, 140 U.S. App. D.C. 141).

If legislation must pass notice test to escape ex post facto condemnation, public is charged with knowledge of all published information concerning congressional bill which is available during entire legislative process. *Id.*

If notice is required to avoid ex post facto condemnation of application of statute increasing penalties for certain offenses, congressional record and documents published by Congress proving that bill and all its provisions were in public domain for over six months, received widest publicity and full disclosure by Congress, and distribution of more than 100,000 copies of bill in exact form in which it passed are more than adequate notice to public of contents of bill. *Id.*

Actual notice to a particular individual that legislation has passed or is about to be passed or approved is not prerequisite to application of act, as against ex post facto condemnation. *Id.*

That staff members of congressional committees accommodate public, on request, by informing them of status of bills in various stages of legislative process is a matter of common knowledge of which reviewing court takes judicial notice in considering on ex post facto claim, how much notice was available to public in respect to legislation being considered by Congress. *Id.*

#### Force and violence

Intent of this section is to denounce pocket picking and the like, together with common-law robbery, under the single general name of "robbery" and though it is true that the provision for "sudden and stealthy seizure or snatching" is preceded by the phrase "by force and violence"; yet the requirement for force is satisfied within the sense of this section by an actual physical taking of the property from the person of another even without his



knowledge and consent, and though the property be unattached to his person. *Turner v. United States* (1927, 16 F. 2d 535, 57 App. D.C. 39).

Under this section conviction for "robbery" may be had though victim did not have knowledge of the theft at the time, since "stealth" necessarily connotes lack of knowledge on part of victim. *Spencer v. United States* (1941, 116 F. 2d 801, 73 App. D.C. 98).

The force used to remove money from victim's pocket is sufficient "force or violence" within this section defining "robbery" as a taking by "force or violence," whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear. *Id.*

#### Habeas corpus

Where petitioners were arrested in Pennsylvania, charged with committing certain crimes in the District of Columbia, habeas corpus proceedings would be proper to raise jurisdictional questions respecting their removal to the District. *U.S. ex rel. Miller et al. v. Reing* (D.C. Pa. 1949, 81 F. Supp. 367).

#### Harmless error

In view of clear evidence that the defendant aided and abetted his confederate who was armed with a gun, any error concerned with alleged prolixity of indictment that charged both armed robbery and robbery, or any other claim of defect in presentation of two theories of robbery to jury, is harmless. *United States v. I. Porcha* (1971, 450 F. 2d 697, 146 U.S. App. D.C. 236).

#### Identification

While lineup was not conducted under most ideal circumstances it was not so impermissibly suggestive to misidentification as to preclude identification testimony by eyewitnesses who had ample opportunity to view defendant during armed robbery. *United States v. G. H. Neverson* (1972, 463 F. 2d 1224, 150 U.S. App. D.C. 133).

Where circumstances of photographic identification of defendant by one of the eyewitnesses was fully explored at pretrial hearing and there was no suggestion that police had acted wilfully, recklessly or in bad faith in not producing the photographs which made up group from which witness selected defendant's picture at a time before the importance of recording photographs used in group was emphasized by any court, failure of police to produce photographs at trial, in which Government did not rely on photographic identification and made no reference to it, was not prejudicial to defendant who asserted that failure to produce pictures circumscribed his right to explore fairness of identification process. *United States v. H. R. Thomas, Jr.* (1972, 463 F. 2d 314, 149 U.S. App. D.C. 368; cert. denied 93 S. Ct. 198, 409 U.S. 870).

Although absence of photographs used in making up group of pictures shown to eyewitness who picked defendant's picture was a factor to be considered in weighing evidence concerning identification of defendant by eyewitness, the absence of photographs did not create any presumption of impropriety in identification process. *Id.*

Where witness was asked to come to police station to identify a certain credit card that had been taken from him by a robber, and, on arrival at station and being told that particular officer was not there, decided to wait for officer in lobby, whereupon, while waiting, he saw two officers bring in two men and saw them go into another room, and immediately told person seated at desk that one of men looked like man who robbed him that day, and where police officers testified that they had not intended any confrontation, confrontation at police station was not constitutionally defective by reason of fact that it occurred without benefit of counsel. *United States v. J. A. Conner* (1972, 462 F. 2d 296, 149 U.S. App. D.C. 192).

Where defendants were represented at lineup by counsel, lineup itself met requirements of Sixth Amendment, photograph of that lineup was completely neutral and wholly exact reproduction, witness requested, at time she was leaving lineup, to see photograph of lineup, Government complied with her request seven months after lineup and two weeks immediately prior to trial and witness initiated discussion of lineup photograph from which she identified defendants as the two robbers, photograph of lineup was not subject to suppression because counsel for defendants were not present when witness viewed pho-

tograph. *United States v. R. Brown et al.* (1972, 461 F. 2d 134, 149 U.S. App. D.C. 43).

Where photograph depicted lineup which was fairly conducted, during which defendants were represented by counsel, witness and officer who conducted interview with witness were vigorously cross-examined regarding the interview at which witness identified defendants as robbers from the lineup photograph and there was nothing improper in manner in which photograph was presented to witness, defendants' right to due process was not violated by the witness' pretrial photographic identification. *Id.*

Witness' pretrial identification of defendants in photograph of lineup at which she had not made identification because of lighting conditions was not tainted by other showings of photographs of the defendants to the witness. *Id.*

Where witness to robbery and murder was in close proximity to the robbers and had ample opportunity to observe them at time of robbery and murder, witness had independent source from which she might attempt in-court identification of accused at trial, regardless of whether witness' identification of defendants from photograph of lineup was improper. *Id.*

Police have authority to secure suspect's participation in a timely lineup, with counsel present, even though he is eligible for release on recognizance or bail, because that is the means that best combines and assures both effectiveness and integrity of law enforcement investigation procedures. *United States v. C. J. Ash, Jr.* (1972, 461 F. 2d 92, 149 U.S. App. D.C. 1; cert. granted 92 S. Ct. 2436, 407 U.S. 909).

Presentation by prosecution of photographs of accused to government witnesses, subsequent to arrest and on the eve of trial, was like a lineup as being a critical stage of the prosecution, and required presence of counsel for the accused. *Id.*

Fact that employee of robbed liquor store was unable to identify defendant as robber did not establish that in-court identification by part-owner of liquor store did not have source independent of photographic and lineup identifications where employee and part-owner observed robbers from different angles and under different stresses. *United States v. L. T. Lee* (1972, 459 F. 2d 1365, 148 U.S. App. D.C. 341).

Where victims of robbery reported that one robber had short hair and the other had "an African haircut," photographic identification from nine photographs of five men with bush haircuts and four with shorter hair was not impermissibly suggestive. *Id.*

Where police had probable cause for arrest of defendant following armed robbery, procedure in taking defendant to scene of crime less than 15 minutes after robbery for identification did not give rise to undue suggestability, evidence of identification of defendant at scene was admissible in subsequent prosecution. *United States v. J. Moore* (1972, 459 F. 2d 1360, 148 U.S. App. D.C. 336).

On-the-scene identification of the defendant, conducted within minutes of his arrest as robbery suspect, was not unduly suggestive even though an unusual number of policemen were present, defendant was handcuffed when brought before the witnesses, eyewitnesses were in state of nervousness and counsel was absent, and identification did not violate Fifth and Sixth Amendments. *United States v. W. A. Hines* (1972, 455 F. 2d 1317, 147 U.S. App. D.C. 249; cert. denied 92 S. Ct. 2427, 406 U.S. 975).

Where no suggestion was made to robbery victim that defendant was believed to be one of the two robbers, but only that victim was asked to view two men because they seemed to fit descriptions victim had furnished the police and identification confrontation occurred within an hour to an hour and a half of robbery, the identification confrontation at victim's home shortly after robbery did not violate the defendant's right to due process. *United States v. F. Perry* (1971, 449 F. 2d 1026, 145 U.S. App. D.C. 364).

Identification of the defendants who were charged with armed robbery and assault with a deadly weapon, by victim, after defendants were picked up near scene of the crime and brought back to a squad car did not violate the defendants' due process rights on theory identification was tainted by suggestive circumstances surrounding it since the victim had given officer a detailed description of the robbers, had participated in the search for them



and in fact had pointed out defendants to the arresting officer. *United States v. J. Wilson* (1971, 449 F. 2d 1005, 145 U.S. App. D.C. 343).

Since only a few minutes elapsed from time of liquor store robbery until arrest of defendant in waiting room of dentist, and one of the owners of the liquor store, who had observed robber for several minutes in well-lit liquor store, identified defendant as the robber, the confrontation was not so unnecessarily suggestive as to deny defendant due process. *United States v. D. O. Miller* (1971, 449 F. 2d 974, 145 U.S. App. D.C. 312).

Where robbery took place under excellent lighting condition and complaining witness had a good look at the defendant's face and on the same morning was called to the police station to view by himself a book of approximately 30 colored photographs, 10 of which were of persons of the same age of accused and were not of the typical mug shot variety, there was no showing of possibility of suggestivity in the process of selecting the defendant's picture from array even though prosecution was unable to regroup the photographs that had since been reassembled into other books. *United States v. R. Clemons* (1971, 445 F. 2d 711, 144 U.S. App. D.C. 235; cert. denied 92 S. Ct. 322, 404 U.S. 956).

Evidence that, prior to lineup, victim had unhesitatingly selected the defendant's photograph out of a group of seven photographs shown to her is not subject to condemnation under rule banning use of "mug shots," even though a jury may have conjectured that there was prior suspicion of defendant, where photograph was an ordinary snapshot and had no markings to suggest prior criminal behavior. *United States v. L. P. Hallman* (1971, 439 F. 2d 603, 142 U.S. App. D.C. 93).

District of Columbia Court of General Sessions judge, sitting as a magistrate, had judicial power to issue process, short of commanding formal arrest, requiring the person identified from photographs as possible perpetrator of rape to participate in proper lineup. *C. Wise, Jr. v. The Honorable Tim Murphy et al.* (D.C. App. 1971, 275 A. 2d 205).

Where victim of rape at knife point stated that one photograph among pictures of "possible suspects" revealed features similar to those of the man who assaulted her, requiring the person identified as a possible perpetrator to stand in lineup under constitutional safeguards would not violate Fourth Amendment requirements of reasonableness even in absence of facts warranting formal arrest for rape. *Id.*

Police seeking order to compel person identified from photographs as possible perpetrator of rape to appear for lineup must specify how they arrived at their conclusion that the individuals in the group of photographs shown to the victim were possible suspects. *Id.*

Where the validity of lineup is challenged by defendant on ground of asserted absence of counsel, burden is on the government, at least in the case of routine lineups, to establish that counsel was present. *United States v. J. C. Garner and T. C. Parker* (1970, 439 F. 2d 525, 142 U.S. App. D.C. 15; cert. denied 91 S. Ct. 1531, 402 U.S. 930).

Deficiency of lineup identification arising from absence of counsel is not cured by conducting second lineup, with counsel present, shortly after the initial lineup. *Id.*

Record, including sketch of robber made by witness, a commercial artist, supported finding that there was an independent source for courtroom identification by such witness, notwithstanding deficiency as to intervening lineup identification. *Id.*

Evidence of identification of the defendant as robber after defendant was brought back to scene of robbery within hour after it occurred is admissible. *United States v. J. L. Cunningham* (1970, 436 F. 2d 907, 141 U.S. App. D.C. 177).

Evidence, disclosing that the four defendants dressed in casual attire were placed in lineup with two men with coats and ties and that the sawed-off shotgun which was seized at time of their arrests and which was similar to the one used in robbery was on view in lineup room into which robbery victim was brought and asked to make identifications, raised substantial issue as to whether the lineup was so unnecessarily suggestive and conducive to irreparable mistaken identification as to result in denial of due process and a remand is required for elucidation of

issues surrounding identification. *T. R. Young v. United States* (1970, 435 F. 2d 405, 140 U.S. App. D.C. 333).

Identification of the defendant at scene of crime, about ten minutes after holdup by the two victims thereof who had a good opportunity to observe assailant and had given police a description which corresponded with the defendant who at time of arrest was wearing clothing similar to that described by victims and possessed a gun which looked like weapon used in holdup, did not deprive defendant of constitutional rights, although both victims were together when they identified defendant. *United States v. J. H. L. Wilson* (1970, 435 F. 2d 403, 140 U.S. App. D.C. 331).

Even though confrontation is inherently suggestive because of presentation of a single suspect, in view of countervailing considerations that prompt, on-the-scene identifications are likely to promote fairness by enhancing reliability of identifications and permit expeditious release of innocent subjects, testimony concerning on-the-scene confrontations is admissible in criminal prosecutions. *Id.*

If it is feasible for each witness, victim or otherwise, to stand alone when asked to make an identification, this is the procedure which should be followed in on-the-scene confrontations. *Id.*

Since, in addition to two eyewitnesses who identified defendant at lineup, there was a third eyewitness who saw defendant before robbery and during robbery over period of two minutes from distance as close as two feet and who identified defendant at trial, admission at trial of evidence of two lineup identifications of defendant could not have been prejudicial. *United States v. R. Queen* (1970, 435 F. 2d 66, 140 U.S. App. D.C. 262).

Presence of attorney from legal aid agency on behalf of each suspect, including the defendant, placed in lineup, satisfied constitutional requirement of counsel at lineup even though the "substitute counsel" had not been formally appointed to represent defendant. *Id.*

Evidence of identification of the defendant at lineup, not otherwise challenged as unfair, is admissible although assigned counsel had not been notified and was not present, since substitute counsel of legal aid agency was present. *United States v. T. Kirby* (1970, 427 F. 2d 610, 138 U.S. App. D.C. 340).

Testimony that witness saw the defendant confront victim, that witness heard defendant demand money and saw defendant run away when police arrived, and that witness identified defendant immediately after police pursued and brought him back to scene of crime was properly admitted as on-the-scene identification even though no counsel was present. *O. Solomon v. United States* (1969, 408 F. 2d 1306, 133 U.S. App. D.C. 103).

The proper way to raise a Wade objection is by a motion to suppress identification testimony before trial; that procedure allows a suppression hearing and a decision on disputed evidence before a jury is empaneled, and promotes an orderly and uninterrupted trial; a distinctly second-best procedure is a defense motion to suppress during trial. *Id.*

It would be better practice if district judges, when confronted by cases that appear to involve identification testimony, would on the record and out of presence of jury inquire of defense counsel whether they object on Wade or Stovall grounds to any identification testimony that might be offered; such procedure may also be performed by district judge hearing pretrial motions in a case, if any such motions are made. *Id.*

#### — In-court

Evidence supported finding that each of witnesses who identified defendants as the persons who robbed restaurant had seen defendants under circumstances affording an independent basis for their subsequent in-court identifications, although photographs had been used in identification process. *R. E. Matthews v. United States* (1971, 449 F. 2d 985, 145 U.S. App. D.C. 323).

Although victim of robbery and assault picked defendant out of group sitting in General Sessions courtroom at time when defendant was not accompanied by counsel, since such identification followed three photographic identifications based upon face-to-face encounter taking place only a few hours before first photographic identification, the General Sessions identification did not taint the later in-court identification by victim and the in-court



identification was not improper. *United States v. J. E. York* (1970, 321 F. Supp. 539).

The Government has the burden of presenting clear and convincing evidence that in-court identification of defendant by victim of robbery and assault is based on other than an illegally obtained pretrial identification; but there is no presumption of invalidity. *Id.*

#### —Lineup

Where trial court denied defendant's motion for an order for a lineup at which he could test ability of two witnesses to identify him in unsuggestive circumstances and, though there was no misstatement as such, prosecutor's statements gave impression that there were two eyeball witnesses for each of the robberies, and prosecutor failed to say there was only one witness from each robbery, and person who failed to identify defendant at lineup was only person who witnessed both robberies and the only government witness to first robbery was "prodred" to make an identification at a palpably over-suggestive showup, interest of justice would best be served by remanding case to trial court for further determination of what ought to be done. *United States v. G. Caldwell* (1972, 465 F. 2d 669, 151 U.S. App. D.C. 84).

#### Immediate actual possession

"Immediate actual possession," within this section defining robbery as a taking from the "immediate actual possession" of another, refers to an area within which victim could reasonably be expected to exercise some physical control over his property. *Spencer v. United States* (1941, 116 F. 2d 801, 73 App. D.C. 98).

The word "possession" in this section is not used in strict larcenous sense, but is used in a colloquial sense, meaning nothing more than custody or control. *Neufield v. United States* (1941, 118 F. 2d 375, 73 App. D.C. 174, certiorari denied 62 S. Ct. 580, 316 U.S. 798, 86 L. Ed. 1199).

#### Impeachment

Had defendant taken stand in prosecution for armed robbery, assault with dangerous weapon, and carrying dangerous weapon without license, evidence of prior conviction for impersonating owner of federal check would have been admissible for impeachment purposes. *United States v. J. Moore* (1972, 459 F. 2d 1360, 148 U.S. App. D.C. 336).

Refusal to allow defense counsel to use the arresting officer's grand jury summary, which on its face was inconsistent with his trial testimony that the defendant was one who wore orange shirt and drove car, to impeach his credibility, on ground that defense counsel was not impeaching him because officer testified on his redirect examination out of presence of jury that if he said in the summary that another man wore the orange shirt it was a mistaken identification, is improper and requires reversal of defendant's conviction. *United States v. W. H. Broadus* (1971, 450 F. 2d 1312, 146 U.S. App. D.C. 265).

Refusal to allow defense counsel to use joint written summary of grand jury testimony given by robbery victims to impeach credibility of one of victims as a witness on ground that it was not possible to determine which statements in summary were made by victim and which by other victim is improper. *Id.*

Cross-examination of defendant during which the prosecution was permitted to develop that for some time prior to date of offense defendant had been absent from his military post without leave was improper, and the prejudice was magnified by the erroneous admission of government's rebuttal evidence as to defendant's absence from military post. *United States v. W. A. Shumate et al.* (1970, 429 F. 2d 777, 139 U.S. App. D.C. 98).

In prosecution for, inter alia, robbery, where defendant testified, after being denied bifurcated trial, the trial court did err in permitting impeachment by showing prior offense of housebreaking, though it had occurred six years earlier and defendant had pleaded guilty to the housebreaking offense. *United States v. R. A. Grimes* (1969, 421 F. 2d 1119, 137 U.S. App. D.C. 184).

Where defense raises issue of whether evidence of defendant's prior convictions should be excluded from trial for purposes of impeaching defendant's credibility when he testifies, even though burden of persuasion remains on defendant, there is a duty on judge to make sufficient inquiry to inform himself on relevant considera-

tions *L. B. Jones v. United States* (1968, 402 F. 2d 639, 131 U.S. App. D.C. 88).

On showing that defendant's testimony at his trial for robbery was essential because prosecution based whole case on delayed identification by complaining witness and therefore decision depended on credibility, trial judge's permitting evidence of defendant's prior conviction of assault to be introduced to impeach defendant's credibility was an abuse of discretion. *Id.*

Crime of assault is remotely, if at all, probative on issue of veracity of a defendant who testifies at his own trial. *Id.*

#### Impeachment of witness

Defense witness' robbery conviction is admissible in robbery prosecution for impeachment purposes, notwithstanding contention that robbery is not a crime involving dishonest conduct. *United States v. O. Baber, Jr.* (1971, 447 F. 2d 1267, 145 U.S. App. D.C. 98; cert. denied 92 S. Ct. 324, 404 U.S. 957).

#### Included offense

Larceny is a necessarily included offense of robbery. *W. Walker, Jr. v. United States* (1969, 418 F. 2d 1116, 135 U.S. App. D.C. 280).

#### Inconsistent verdicts

Convictions for both robbery and second degree murder could stand even if they were inconsistent where the conviction of robbery was consistent with the evidence and the conviction of second degree murder was also consistent with the evidence. *L. Jackson v. United States* (1962, 313 F. 2d 572, 114 U.S. App. D.C. 181).

#### Independent crimes

Counts of housebreaking and robbery, to which petitioner pleaded guilty, charged independent crimes, since housebreaking count charged and made necessary proof of entry of dwelling with intent to steal property but proof of entry was not essential to robbery count, whereas robbery charge required proof of taking in particular manner of something of value from victim's person or immediate actual possession, facts that were not essential elements of housebreaking. *Irby v. United States* (D.C.D.C. 1965, F. Supp. 983).

#### Indictment

Robbery indictment should state offense charged more precisely rather than by setting forth omnibus statutory provision under which defendant is charged. *F. H. Jackson v. United States* (1965, 348 F. 2d 772, 121 U.S. App. D.C. 160).

Offense of assault with dangerous weapon was not necessarily included in indictment charging robbery. *R. H. Crosby v. United States* (1964, 339 F. 2d 743, 119 U.S. App. D.C. 244).

Trial court lacked jurisdiction to convict defendant, who had been indicted only for robbery, of assault with dangerous weapon (an offense not necessarily included in robbery) even though defendant failed to object to dangerous-weapon charge. *Id.*

Crimes of robbery and of attempted robbery are similar in nature and joinder in indictment is permissible. *N. L. Drew v. United States* (1964, 331 F. 2d 85, 118 U.S. App. D.C. 11).

Where indictment, containing a single count, charged, in part, the commission of the offense "by force and violence and against resistance, and by putting in fear, and by sudden and stealthy seizure and snatching," this was a proper and sufficient charge to support the conviction. *Tomlinson v. United States* (1938, 93 F. 2d 652, 68 App. D.C. 106, 114 A. L. R. 1315).

Where indictments charging rape and robbery were returned by a grand jury which did not have upon it any member of the negro race, the indictments could not be quashed on ground that systematic course of procedure had been adopted for purpose of excluding negroes from grand jury on account of their color, in absence of proof or offer of proof of intentional exclusion of negroes from service on grand jury. *McKenzie v. United States* (1942, 126 F. 2d 533, 75 U.S. App. D.C. 270).

Where this section did not itself express all of the elements of the crime of robbery at common law but Congress meant to make robbery a crime and by "robbery" meant robbery in the usual common-law sense of the term except as expanded by this section it was necessary and



permissible for indictment to overlap this section in order to charge crime of robbery. *Neufield v. United States* (1941, 118 F. 2d 375, 73 App. D.C. 174, certiorari denied 62 S. Ct. 580, 315 U.S. 798, 86 L. Ed. 1199).

It was proper to charge in robbery indictment that money taken from named individual was property of bank and that money was stolen, notwithstanding fact that this section did not express the elements of common-law robbery that the property shall belong to some one other than the robber, and that it shall be stolen. *Id.*

Variance between indictment and proof, as to ownership of property in robbery, is not material, so long as offense is otherwise described with sufficient certainty to identify the act of robbery and to establish that the property was in the immediate actual possession of the person robbed. *United States v. Mann et al.* (D.C.D.C. 1954, 119 F. Supp. 406).

Ownership of property, alleged to have been subject of robbery, need be alleged in indictment only to show that property was in some one else other than accused and to describe the property taken. *Id.*

#### Informants

Where record of prosecution arising out of armed robbery showed that the informant contacted police, some three weeks after crime, and told them of source and whereabouts of shotgun involved and of alleged conspiracy to murder government's principal witness, but record was otherwise silent as to participation by the informant in offense itself, disclosure of identity of the informant on pain of dismissal should not have been required. *United States v. J. T. Skeens* (1971, 449 F. 2d 1066, 145 U.S. App. D.C. 404).

#### Insanity defense

Where record unequivocally established that, after three years of representing defendant, defense counsel concurred with conclusions reached by psychiatrist and judge that defendant was a malingerer and expressed opinion that it was tactically unwise to raise an insanity defense unless he felt he had a chance, defendant was not entitled to reversal of conviction of armed robbery assault with a deadly weapon and carrying a pistol without a license on ground of judicial interference with his defense counsel's attempt to pursue insanity issue. *United States v. F. L. Simms* (1972, 463 F. 2d 1273, 150 U.S. App. D.C. 182).

Trial judge's decision not to interpose an insanity defense sua sponte was not an abuse of discretion constituting reversible error, especially in view of finding that defendant was malingering. *Id.*

Finding by the trial court that commission of robbery and assault with dangerous weapon was not causally connected with defendant's alleged mental illness and narcotic addiction was supported by substantial testimony. *United States v. E. F. Carter* (1970, 436 F. 2d 200, 141 U.S. App. D.C. 46).

#### Instructions

Evidence on question as to whether missing alibi witness was peculiarly available to defendant was sufficient to support instruction that failure of party to produce as witness one peculiarly within power of such party creates inference that such testimony would be unfavorable. *United States v. C. E. Scott* (1972, 464 F. 2d 832, 150 U.S. App. D.C. 323).

Record in prosecution on charge of robbery by fear failed to show that trial judge's identity instruction, which erroneously included statement that defense did not deny that robbery took place, was plain error warranting reversal by reviewing court even though no objection was made in trial court. *United States v. G. P. Todd* (1972, 463 F. 2d 302, 149 U.S. App. D.C. 356).

Court's "mistake in identity" instruction which included statement that jury should consider not only testimony of victim who recanted prior identification testimony but also other elements including testimony of police officer as to victim's having identified defendant and defendant's grand jury testimony was not erroneous. *United States v. J. E. Ruth* (1972, 461 F. 2d 1213, 149 U.S. App. D.C. 127).

Failure to give the Pendergrast instruction, that is, the model instruction on the inference to be drawn from possession of recently stolen property, did not constitute plain error where other instructions cured any potential

abuse, court properly instructed on presumption of innocence, Government's burden of proving beyond a reasonable doubt the facts from which the inference might be drawn and that the jury might, but not that it must, draw the inference and no objections were voiced at trial. *United States v. J. E. McCall* (1972, 460 F. 2d 952, 148 U.S. App. D.C. 444).

Giving of charge that jury might draw an inference of guilt from "defendants' possession" of recently stolen property was not prejudicial on ground that it created erroneous impression that both defendants could be found guilty if only one was in possession of stolen property where court had carefully instructed the jury to consider evidence against each defendant separately, study the evidence applicable to each defendant individually and render a separate verdict as to each defendant on each charge. *Id.*

Instruction on defendant as witness, including statement that jury might consider defendant's vital interest in outcome, was not improper. *United States v. J. Jones* (1972, 459 F. 2d 1225, 148 U.S. App. D.C. 201).

In absence of direct evidence that defendant charged with entering a bank with intent to commit robbery and attempted robbery was under the influence of narcotics, and in light of defendant's testimony to the contrary, his statements to teller to place the fives, tens, and twenties neatly in bag, his counsel's failure to request specific instruction on narcosis or object to instruction given, and counsel's successful objection to question calling for witness' opinion as to whether defendant was under the influence of drugs, failure to instruct that voluntary narcosis could negate specific intent was not plain error. *United States v. R. Richardson* (1972, 459 F. 2d 1133, 148 U.S. App. D.C. 109).

Giving of unobjected to instruction in robbery prosecution on reasonable doubt that is couched in language identical with recommended model instruction of District of Columbia Junior Bar Association is not plain error. *United States v. O. Baber, Jr.* (1971, 447 F. 2d 1267, 145 U.S. App. D.C. 98; cert. denied 92 S. Ct. 324, 404 U.S. 957).

Since, in prosecution for robbery and assault with a dangerous weapon, there was no evidence that gun used in commission of crime was loaded, giving of instruction that a loaded pistol is a dangerous weapon is error and probably prejudicial. *United States v. H. L. Wyatt* (1971, 442 F. 2d 858, 143 U.S. App. D.C. 136).

Viewing the trial court's charge in its entirety clearly showed that instruction on specific intent was not omitted in prosecution for armed robbery, assault with a dangerous weapon, and carrying a dangerous weapon. *United States v. S. F. Gaither* (1971, 440 F. 2d 262, 142 U.S. App. D.C. 234).

When the only objection made to flight instruction was that there was a question of whether flight by defendant took place, the trial court properly ruled that this was an issue for the jury to decide. *United States v. J. H. L. Wilson* (1970, 435 F. 2d 403, 140 U.S. App. D.C. 331).

Defense counsel who objected to flight instruction on an alternative ground could not urge for the first time, on appeal, an objection that instruction should have been accompanied by a fuller explanation of the variety of motive which might prompt flight. *Id.*

Refusal to instruct that pay envelopes recovered in defendant's apartment were introduced only against the defendant and were not relevant on question of co-defendant's guilt was not error, in that discovery of the envelopes was corroborative of occurrence of robbery and of defendant's participation therein and evidence that defendant participated in robbery was, in view of evidence that two men joined to participate in robbery, circumstantial evidence against the codefendant. *G. Sutton, Jr. v. United States* (1970, 434 F. 2d 462, 140 U.S. App. D.C. 188; cert. denied 91 S. Ct. 1676, 402 U.S. 988).

Submission to the jury of a further "Allen" type instruction, after jury reported a deadlock, to the effect that absolute certainty could not be expected, and that jurors should give deference to opinions of each other, would not be considered a ground for reversal on theory of plain error since defense counsel did not object to the charge. *United States v. C. Johnson* (1970, 432 F. 2d 626, 139 U.S. App. D.C. 193; cert. denied 91 S. Ct. 257, 400 U.S. 949).

The court properly instructed that the defendant's exclusive possession of property recently stolen from robbery



victims was a basis for permissible inference that defendant was one of the robbers unless that possession was satisfactorily explained by the evidence even though prosecution had eyewitness testimony regarding the defendant's acquisition of the property which was in conflict with the explanatory testimony produced by defense. *W. E. Pendergast v. United States* (1969, 416 F. 2d 776, 135 U.S. App. D.C. 20, cert. denied 89 S. Ct. 1782).

Trial judge's statements in instruction that robbery victim identified third defendant as one of persons who attacked and robbed him misstated evidence and doing so, together with giving further instruction that if jury was convinced by identification it could find defendant guilty, was plain error, since even if defendant's presence at robbery scene was shown issue of participation remained. *Cooper v. United States* (1966, 357 F. 2d 274, 123 U.S. App. D.C. 83).

Convictions of two of three defendants for robbery sustained on grounds that evidence was sufficient and minor misstatements in instructions did not affect substantial rights. *Id.*

Robbery prosecution instruction on intent, that "when you do a thing on purpose, you do that which you intend to do", was clearly erroneous, since crime required specific intent to deprive victim of property. *F. H. Jackson v. United States* (1965, 348 F. 2d 772, 121 U.S. App. D.C. 160).

Robbery requires specific intent to deprive victim of property. *Id.*

Reading robbery statute, which defined several patterns of behavior as robbery in single convoluted sentence and did not clearly set forth elements government must prove, and reading of indictment which was in language similar to statute but replaced disjunctives with conjunctives, did not satisfy requirement that jury be given clear statement of each element government must prove. *Id.*

In prosecution for robbery and assault, court's statement in instruction to jury, that "one of the persons charged here" had succeeded in getting pocketbook of one complaining witness went beyond permissible comment on evidence, where identification was issue for jury. *D. Battle and M. F. Davis v. United States* (1965, 345 F. 2d 438, 120 U.S. App. D.C. 221).

Robbery statute does not set forth all essential elements of offense and, therefore, reading robbery statute to jury afforded insufficient guidance as to nature of offense and burden on government to prove every essential element thereof. *A. E. Byrd v. United States* (1965, 342 F. 2d 939, 119 U.S. App. D.C. 360).

Where jury foreman asked if dissenting jurors could be replaced by the (two) alternate jurors and stated, in response to court query, that dissenting jurors were clear minority, court's additional charge, including statement that no juror should go to jury room with blind determination that verdict should represent his own opinion of case at moment and that jurors finding themselves in distinct minority should question soundness of their reason for being in minority was prejudicially erroneous as being possibly coercive. *R. Williams v. United States* (1964, 338 F. 2d 530, 119 U.S. App. D.C. 190).

In view of substantial evidence tending to show that defendant was too drunk to form requisite intent to rob, it was reversible error for trial court to refuse to allow issue to go to jury, though it was not theory of defense. *S. Womack v. United States* (1964, 336 F. 2d 959, 119 U.S. App. D.C. 40).

Instruction in robbery prosecution, wherein there was no direct evidence that complaining witness' wallet had been stolen but witness testified that he had felt a slight jostle and had been told that two people were running down street, that verdict would be relatively simple to arrive at once jury decided which of witnesses were telling truth, was plain error requiring reversal, there being no instruction that different inferences might be drawn from complaining witness' testimony even if it were believed. *L. C. Miller, Jr. v. United States* (1963, 320 F. 2d 767, 116 U.S. App. D.C. 45).

Had defendant, who was charged with taking billfold from pocketbook, but who, upon search conducted immediately after alleged robbery, was not found to have billfold, requested charge on lesser included offense of attempted robbery, its denial would have been reversible error, but failure to give instruction was not plain error.

*R. X. Williams v. United States* (1963, 321 F. 2d 744, 116 U.S. App. D.C. 131).

Failure to give instruction on circumstantial evidence to effect that unless there is substantial evidence of facts which exclude every reasonable hypothesis but that of guilt, verdict must be not guilty was not plain error in robbery case. *Id.*

Instructions which may have implied that jury could infer guilt from circumstances without first resolving conflicts in testimony over whether circumstances had actually occurred were not plain error in view of charge considered as whole. *Id.*

That court failed to instruct that jury must find circumstances of identification of accused as the criminal were convincing in order to convict would not be deemed erroneous where there had been no request for such instruction, court had fully instructed jury on all questions of law including burden of proof and weighing of evidence, and there was evidence from which jury could have reasonably concluded that defendant's identification was established beyond reasonable doubt. *Obery v. United States* (1955, 217 F. 2d 860, 95 U.S. App. D.C. 28, certiorari denied 75 S. Ct. 665, 349 U.S. 923, 99 L. Ed. 1255).

That trial court had failed to instruct that oral confession made by defendant to police should be regarded with caution did not constitute reversible error where there had been no request for such instruction and, under circumstances of case, omission did not affect defendant's substantial rights. *Id.*

In prosecution for rape and robbery, where pistol which victim stated assailant used, clothing which she said he had stolen and money which he had taken were not found in possession of defendant, neighbors testified to good character of defendant and to his having a night job at which he worked regularly, and thorough examination by police failed to shake statement of defendant that he had never seen the prosecuting witness before, such circumstances were important enough to be called to the attention of the jury to be weighed together with evidence in support of legal presumption of innocence. *McKenzie v. United States* (1942, 126 F. 2d 533, 75 U.S. App. D.C. 270).

In prosecution for rape and robbery, failure to instruct jury in precise terms that a not guilty verdict was necessary in event of failure by the government to prove each of the elements of the offenses charged beyond a reasonable doubt was error requiring reversal, notwithstanding the court instructed that defendant was presumed to be innocent and that the government was obliged to rebut the presumption by proof of guilt beyond a reasonable doubt. *Id.*

In prosecution for rape and robbery, where verity of identification of accused by prosecuting witness was point on which case turned, failure to instruct jury in plain words that if circumstances of identification were not convincing, jury should acquit accused was error. *Id.*

In prosecution for rape and robbery where court referring to conditions obtaining at time of prosecuting witness' identification of accused stated that the jury should take into consideration the attitude of the prosecuting witness upon coming in view of the accused and that they should search their reasoning power regarding what motivated the selection of the accused from among all others, in view of fact that verity of identification was the point on which the case turned, the court should have cautioned that if the motivation was not convincing beyond a reasonable doubt the jury should find the defendant not guilty. *Id.*

Where defendant's counsel had characterized person reporting alleged robbery as a "busybody," court's charge that it was duty of citizens to report felonies and that if there was a robbery persons reporting it could not be characterized as "busybodies" was proper. *Beck v. United States* (1944, 140 F. 2d 169, 78 U.S. App. D.C. 10).

In prosecution for robbery, where defendants had denied that they were present at robbery, charge that if jury found that defendants were present jury could consider whether denial of presence was due to consciousness of guilt or some other reason was not improper. *Id.*

The absence from the trial of an eyewitness to the robbery of which defendant was convicted was not prejudicial, where court instructed the jury in effect that they might infer from the witness' absence that his testimony would



not be favorable to the government. *Furgueron v. United States* (1947, 158 F. 2d 193, 81 U.S. App. D.C. 329).

In robbery prosecution, where defendant's testimony was that a robbery occurred and that he participated in it, both before and after, with an interlude of nonparticipation, court's statement to jury that defendant claimed that he had repented and voluntarily withdrawn from robbery was not improper. *Vinci v. United States* (1947, 159 F. 2d 777, 81 U.S. App. D.C. 386).

#### Intent to commit other crime

There is no statutory requirement for either robbery or assault with a dangerous weapon, that there be a specific intent to commit the other. *United States v. J. L. Suggs and C. Blair* (1967, 269 F. Supp. 732).

#### Interrogation by court

Although there were many instances when the defendant's answers were less than direct and it was appropriate for the court to lend assistance to avoid confusion on part of jurors, under circumstances, court's extensive examination of defendant and his alibi witness, that included questions that opened new areas of inquiry or gave an undue eminence to matters otherwise irrelevant to offenses with which defendant was charged, constituted error, and when considered together with an incorrect instruction, required reversal of defendant's conviction. *United States v. H. L. Wyatt* (1971, 442 F. 2d 858, 143 U.S. App. D.C. 136).

#### Joinder

Since the offenses of robbery, assault with dangerous weapon, assault on member of police force, unauthorized use of vehicle, and carrying dangerous weapon were based on two or more connected acts constituting part of common scheme and plan, the defendants were alleged to have participated in same series of acts constituting offenses, and each of defendants aided and abetted offenses charged against other defendants, it was proper for grand jury to join defendants and offenses in the indictment. *United States v. C. Wilson, Jr. et ano.* (1970, 434 F. 2d 494, 140 U.S. App. D.C. 220).

Where defendant, with two others, was charged with robbery in one count of indictment which included a separate count charging the other two persons with another robbery committed the day before and the two counts and the three defendants were tried at same time, there was no reversible error in joinder of defendants and counts or in joint trial, inasmuch as counsel for defendant quite deliberately, after mature consideration extending over a weekend which intervened during the trial, and after the trial judge had suggested severance, deemed it prudent from standpoint of his client to proceed with the trial and so advised the court. *Wynn v. United States* (1960, 275 F. 2d 648, 107 U.S. App. D.C. 190).

Defendant was not deprived of effective assistance of counsel because during the trial his counsel entered an appearance also for two other defendants who were charged with the same robbery and who were also charged with another robbery committed the day before, where no conflict of interests or detriment appeared and the added representation was assumed by counsel as a calculated move on his part to aid defendant in his defense. *Id.*

#### Judgment inconsistent with verdict

Where the jury, under proper instructions, found defendant guilty of armed robbery and rendered no verdict on count charging robbery and since the judgment was to the effect that defendant was convicted of armed robbery, robbery, and assault with dangerous weapon, judgment is inconsistent with verdict and remand for correction of such judgment is required. *United States v. T. D. Harris* (1970, 435 F. 2d 74, 140 U.S. App. D.C. 270; cert. denied 91 S. Ct. 1675, 402 U.S. 986).

#### Jurisdiction

Where Superior Court judge dismissed juvenile's petition for habeas corpus without prejudice to its being filed in the United States District Court for the District of Columbia, the respondent was federal officer, petitioner was charged with federal offense as well as with violations of District of Columbia law and petitioner was challenging the conditions of his confinement, federal

court had jurisdiction to consider the petition. *J. Bland v. C. M. Rodgers* (1971, 332 F. Supp. 989).

1963 robbery conviction was not invalid on ground that, since defendant had been committed to hospital following his 1961 acquittal by reason of insanity, district court was without jurisdiction to try him, in absence of hearing to determine his competency to stand trial in 1963, where prior to both 1961 and 1963 trials defendant was referred to hospital for mental examination resulting, in both instances, in certification by hospital that he was competent to stand trial, and 1963 certification was not objected to by either defendant or government. *W. Green v. United States* (1965, 351 F. 2d 198, 122 U.S. App. D.C. 33).

#### Limited affirmance

In this case where the evidence was sufficient to sustain a conviction of unauthorized use of automobile but the court had doubts as to its sufficiency to support convictions for robbery and for transporting stolen vehicle across state line in violation of Dyer Act, sentence of youthful offenders under Federal Youth Corrections Act would be affirmed in interest of justice limited to a conviction of unauthorized use of automobile. *C. S. Kee and W. J. Johnson v. United States* (1969, 418 F. 2d 465, 135 U.S. App. D.C. 249).

#### Merger of offenses

Contention that it is improper for defendant to be convicted and sentenced on both counts I which charged under Federal mail robbery statute with assaulting post office custodian with intent to rob him, and count II under District of Columbia robbery and crime of violence statute with robbing the custodian because the assault charged in count I "merged" with completed robbery charged in count II will be considered by the Court of Appeals even though issue was not raised in trial court. *United States v. W. B. Spears* (1971, 449 F. 2d 946, 145 U.S. App. D.C. 284).

The part of the Federal mail robbery statute prohibiting assault was intended by Congress to prohibit certain kinds of attempts to rob and cannot support an independent conviction when a defendant is charged with and convicted of committing, in violation of robbery statute applicable in District of Columbia, the same crime he is charged with attempting. *Id.*

Where helper on truck was detained and transported against his will to a different location, several miles away from the scene where truck was hijacked, and purpose of detention, to facilitate success of hijacking, was to secure benefit to hijackers, two separate and distinct crimes were committed, i. e., kidnapping and armed robbery of contents of truck, and the offenses did not merge. *United States v. L. B. Wolford* (1971, 444 F. 2d 876, 144 U.S. App. D.C. 1).

Lesser offense of entry with intent to rob merged into completed bank robbery when the latter offense was proved. *M. Marshall v. United States* (1970, 436 F. 2d 155, 141 U.S. App. D.C. 1).

Convictions of appellant on the three charges of entering with intent to rob were not permissible where appellant was convicted of actual taking or robbery, since those offenses in the circumstances merged into completed robberies. *B. A. Bryant v. United States* (1969, 417 F. 2d 555, 135 U.S. App. D.C. 138; cert. denied 91 S. Ct. 1534, 402 U.S. 932).

#### Mistrial

Where foreman of jury in robbery prosecution sent trial judge note stating that jury was unable to reach unanimous decision and felt that more conclusive evidence was needed to bring about full vote, and that seven jurors were of opinion that defendant was guilty, four that he was not guilty, and one was undecided, trial judge properly declared mistrial, independent of claimed deadlock, because of improper action of jury foreman in revealing status of votes. *H. Mullin, Jr. v. United States* (1966, 356 F. 2d 368, 123 U.S. App. D.C. 29).

#### Model instruction

Model instructions was proposed by the court for use in robbery and larceny cases. *W. E. Pendergast v. United States* (1969, 416 F. 2d 776, 135 U.S. App. D.C. 20, cert. denied 89 S. Ct. 1782).



**New trial**

Since evidence was sufficient to raise jury issue as to robbery, new trial, ordered because of trial court's error in refusing to instruct jury on lesser included offense of larceny, would not be limited to larceny charge only. *E. A. Graves v. United States* (1963, 318 F. 2d 265, 115 U.S. App. D.C. 294).

Denial of motion for new trial made after conviction for robbery and based on newly discovered evidence bearing only upon the credibility of a witness for prosecution was not abuse of discretion. *Wilkins, Jr., v. United States* (1956, 228 F. 2d 37, 97 U.S. App. D.C. 66).

Refusal of defendant's motion for new trial after conviction of robbery on basis of newly discovered evidence discrediting any prosecuting witness was not abuse of discretion, where it appeared that alleged newly discovered evidence consisting of police record of prosecuting witness could have been procured by defendant before trial, and further that such evidence was not of such a nature that new trial would properly produce an acquittal. *Thompson v. United States* (1951, 188 F. 2d 652, 88 U.S. App. D.C. 235).

**"Person" defined**

Dead man is a "person" within robbery statute; accordingly, there can be a robbery even if the victim was dead before property was taken. *United States v. G. L. Butler* (1972, 455 F. 2d 1338, 147 U.S. App. D.C. 270).

Victim of homicide, even though dead, was "person" within robbery statute under circumstances where time interval between stabbing and taking of money from her body was short, and even if intent of taking money did not occur until after she was dead perpetrator could properly be convicted of robbery. *H. S. Carey v. United States* (1961, 296 F. 2d 422, 111 U.S. App. D.C. 300).

**Photographic identification**

Since the record in this case disclosed nothing more than the fact that there was photographic identification, and there was no issue of suggestiveness that was plausibly tendered by circumstances disclosed in record, it is unnecessary to remand case for further proceedings on alleged suggestiveness of photographic identification. *H. B. Dorman v. United States* (1970, 435 F. 2d 385, 140 U.S. App. D.C. 313).

Where witnesses to armed robbery had an excellent opportunity to observe perpetrator, witnesses looked at several hundred police photographs without making any identifications and single photograph was shown within a week after robbery, identification from single photograph was verified by witnesses at lineup, at which defendant was represented by counsel, and witnesses positively identified defendant at trial, the original identification by means of single photograph and lineup in which defendant was the only person wearing dark shirt did not establish a substantial likelihood of irreparable misidentification sufficient to establish a violation of due process. *G. Sutton, Jr. v. United States* (1970, 434 F. 2d 462, 140 U.S. App. D.C. 188; cert. denied 91 S. Ct. 1676, 402 U.S. 988).

The problem of fairness of photographic identification is to be considered in terms of whether the identification has been conducted with impermissible suggestiveness and not by prophylactic rule requiring appointment of counsel for one who is not present at time of identification, has not been arrested for or charged with crime, and is not in custody. *United States v. T. Kirby* (1970, 427 F. 2d 610, 138 U.S. App. D.C. 340).

Record established that the victim's photographic identification of defendant as robber and assailant was not conducted under circumstances so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification. *United States v. J. E. York* (1970, 321 F. Supp. 539).

There is no presumption that photographic identification of defendant by the victim of robbery and assault is invalid. *Id.*

In a prosecution for robbery and assault with a dangerous weapon, where robbery victim on morning after robbery was shown 15 photographs depicting males of various ages, including one photograph of defendant that was not highlighted so as to prompt its selection and victim identified defendant's photograph, which was sixth photograph shown to him, as that of robber and remained

firm in such identification after examining remaining photographs, such identification did not deny due process and did not vitiate subsequent in-court identification. *United States v. E. L. Hamilton* (1969, 420 F. 2d 1292, 137 U.S. App. D.C. 89).

There was a serious and irreconcilable breach of due process of law in view of circumstances surrounding photographic identification of defendants, including the fact that one robbery victim was shown only the photographs of the four suspects, that those photographs contained police markings, and that there was no necessity whatsoever for a photographic identification since the suspects had been apprehended, established that the identification procedure was "so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification". *United States v. S. Washington, Jr., et al.* (1968, 292 F. Supp. 284).

Evidence, including the fact that the defendants were not brought to trial until more than two years after the robbery, and that the robbery victims had never seen any of the individuals involved in the crime prior to the event, established that an in-court identification of the defendants by the robbery victims would not have been arrived at independent of improper photographic identifications secured by the police. *Id.*

**Pickpocketing**

"Pickpocketing," or robbery by stealth, is a crime which, by its very nature, is difficult of proof; unexplained possession plus suspicious circumstances can be submitted to the sound discretion of the jury. *R. T. Davis, Jr. v. United States* (1970, 433 F. 2d 1222, 140 U.S. App. D.C. 116).

**Plea of guilty**

District judge did not abuse his discretion in refusing to permit withdrawal of guilty plea to count as to which defendant at hearing on motion to withdraw plea admitted his guilt since he had entered plea intelligently and voluntarily, with assistance of retained counsel, and candidly admitted all essential facts of crime in open court. *C. D. Everett v. United States* (1964, 336 F. 2d 979, 119 U.S. App. D.C. 60).

**Police lineup procedures**

Where defendant was acquitted of all charges that were not dismissed by the government and he could not again be placed in position of one facing a lineup without first giving the government probable cause to issue new charges against him, as to him, his case for declaratory judgment concerning various aspects of police lineup procedures in District of Columbia was moot. *H. A. Spriggs v. J. V. Wilson, Chief of Police, et al.* (1972, 467 F. 2d 382, 151 U.S. App. D.C. 328).

Dismissal of complaint for declaratory judgment concerning various aspects of police lineup procedures in the District of Columbia was proper exercise of district court's discretion to refuse to grant declaratory relief. *Id.*

**Prejudicial error**

In this case, assuming that failure of the trial judge to inform defendant's counsel of larceny charge before he summed up constituted error, where defendant was indicted for robbery and assault with a deadly weapon, however, that failure lacked the prejudice necessary to constitute reversible error where, *inter alia*, defendant's admission in open court established his intention and his attempt to trick complainants, so that damage was done when defendant took the stand and it was not likely that a variation in summation would have changed the verdict. *W. Walker, Jr. v. United States* (1969, 418 F. 2d 1116, 135 U.S. App. D.C. 280).

Denial of motion of defendant that court obtain assistance of medical expert to examine witness, who identified defendant as robber, and who allegedly had defective eyesight, and to testify concerning vision of witness was not prejudicial error, where matter of vision of witness was adequately explored on cross-examination, and there was other strong identifying testimony. *E. G. Robinson v. United States* (1963, 318 F. 2d 272, 115 U.S. App. D.C. 301).

**Preliminary hearing**

The hearing called for by the Federal Criminal Procedure Rule relating to appearance before commissioner is not an "arraignment" but a preliminary examination



of the arrested person, and it is more accurate to refer to the proceeding as a "preliminary hearing"; such hearing is the occasion for judicial warnings as to such person's rights, and it is also a purpose of the hearing to have a judicial determination as to whether such person should be held. *Goldsmith & Carter v. United States* (1960, 277 F. 2d 335, 107 U.S. App. D.C. 305, certiorari denied 81 S. Ct. 106, 364 U.S. 863, 5 L. Ed. 2d 86).

Where a person was arrested and search of his person produced a newspaper clipping about a robbery, and his explanation for having the clipping was that he had been playing cards with a friend who had stated that the friend's brother and brother's companion had committed such robbery, there was sufficient ground for arresting the brother and brother's companion, and after arrest it was incumbent on police to investigate more thoroughly by verifying or testing the statements about brother and brother's companion before deciding whether brother and companion should have a preliminary hearing or be released, and if the friend was willing to repeat his "charges" in presence of brother and brother's companion and in a manner which convinced officers of the friend's reliability, the police had an adequate basis to take brother and brother's companion before the magistrate and ask that they be held for the grand jury. *Id.*

The questioning of a suspect prior to preliminary hearing cannot be for the purpose of eliciting damaging statements to support the arrest and there cannot be prolonged or intensive questioning easily gliding into the evils of the third degree, and if a suspect, arrested or not, denies knowledge of a crime, the police are entitled, if indeed not obliged, to confront him with those who have implicated him. *Id.*

#### Presentence investigation

Under facts including showing that the defendant, convicted of robbery and assault with a dangerous weapon, had stated that "a probationary report would be more detrimental to me than anything else" and that "a probationary hearing wouldn't do anything for me", the trial court did not abuse its discretion in granting defendant's explicit request to be sentenced without an investigation. *United States v. M. J. Spadoni* (1970, 435 F. 2d 448, 140 U.S. App. D.C. 376).

Imposition of maximum sentence just after guilty verdicts were rendered against defendants, one of whom was 21 years of age and the other 19 years of age, was improper, vacation of sentences at suggestion of United States and reimposition thereafter of same sentences was not curative of procedure followed, sentences must be vacated and pre-sentence investigation must be made with opportunity to present information in mitigation of punishment. *Peters and Mills v. United States* (1962, 307 F. 2d 193, 113 U.S. App. D.C. 236).

#### Presentence report

Denial of defense counsel's request for permission to inspect presentence reports utilized by the court in sentencing constitutes an abuse of discretion, where defendant was sentenced to 18 to 54 years imprisonment. *United States v. B. A. Bryant* (1971, 442 F. 2d 775, 143 U.S. App. D.C. 53).

Discretion whether and to what extent defendant or his counsel is to have access to presentence report, with accompanying opportunity to comment upon it, must be exercised in each individual case; sound judicial administration requires that fact that such discretion has been exercised appear on the face of the record. *Id.*

Discretion of trial judge to furnish to the defendant or his counsel presentence investigation report is to be exercised in individual cases and trial judge is not to adopt a uniform policy of nondisclosure in all cases irrespective of circumstances. *United States v. R. Queen* (1970, 435 F. 2d 66, 140 U.S. App. D.C. 262).

Where defendant's record of prior convictions was disclosed to the defendant and his counsel during trial so that they had opportunity to confirm or deny such record and to explain circumstances, failure of trial judge to furnish defendant or counsel with presentence investigation report did not deny due process to defendant. *Id.*

#### Pretrial hearing

Where a victim tentatively identified the defendant from a photograph shown him about a month after the crime of robbery but police waited seven months there-

after before arresting the defendant though defendant was living at his mother's apartment and working, as police were aware, a few blocks from his home, the defendant was entitled to a full pretrial hearing in which the government would be given an opportunity to justify seven-month delay in defendant's arrest and in which the defendant would be given opportunity to show extent to which delay prejudiced him. *L. B. Jones v. United States* (1968, 402 F. 2d 639, 131 U.S. App. D.C. 88).

#### Probable cause

Where victim of purse snatching observed brown-shirted robber as he ran with purse into adjacent apartment building, a bit later victim's friend observed man clad in brown shirt scramble over back fence and race through abutting alley, a pedestrian almost bowled over by brown-shirted man observed man take refuge in house on that street and police officers arrived within minutes and had followed trail marked by eyewitnesses from scene of crime to defendant's doorstep, police had probable cause for warrantless arrest. *United States v. R. S. Wylie* (1972, 462 F. 2d 1178, 149 U.S. App. D.C. 283).

Where the defendant, in response to investigatory stop by police officer who saw defendant fleeing from direction of robbery, voluntarily entered officer's scout car and stated that he was tired of running, the officer had necessary cause to arrest defendant. *United States v. W. A. Hines* (1972, 455 F. 2d 1317, 147 U.S. App. D.C. 249; cert. denied 92 S. Ct. 2427, 406 U.S. 975).

Where police officer upon hearing defendant identified as robber went to home of defendant's brother to investigate and met another officer who had followed suspect to the home and who was waiting and preparing to call for assistance, officers had probable cause to believe that person who had entered home had been involved in the crime and even if woman who admitted officers into home did not voluntarily consent to officers' entry, the entry was lawful under the circumstances and subsequent arrest was valid. *Id.*

Police officer, who knew robbery had been committed in immediate vicinity and who saw defendant fleeing from direction of robbery and continuously glancing over his shoulder in that direction, had requisite degree of suspicion to make a detention of defendant for purpose of questioning even if probable cause to arrest was lacking. *Id.*

There was probable cause to arrest defendant for crime of robbery, where description of robber was received by arresting officer on his radio, where officer was less than three blocks away from the scene of the crime, and where only a few minutes had elapsed. *United States v. T. A. Horton* (1971, 440 F. 2d 253, 142 U.S. App. D.C. 225).

Police officer, who had heard radio description of person involved in robbery, who answered call about second robbery accompanied by another officer, who saw two suspects on roof, who heard noise which sounded like someone dropping and saw the defendant crouching in basement stairwell, who observed that defendant fitted broadcast description of robber, and who was told by the defendant that he was not "one of those hold-up men," had probable cause for arrest. *United States v. L. H. Thurman* (1970, 436 F. 2d 280, 141 U.S. App. D.C. 126).

Where the defendant was hiding in rear of automobile not 100 yards from scene of bank robbery, a few minutes after robbery, and made no response to inquiries, the police officer had probable cause to arrest. *M. Marshall v. United States* (1970, 436 F. 2d 155, 141 U.S. App. D.C. 1).

Evidence disclosing that shortly after defendants' arrests for violation of Firearms Act police officer determined that the defendants fit the lookout that had been broadcast for an earlier robbery established probable cause to detain defendants for robbery, over and above the violation for which they had been arrested, and their detention, before being taken to a magistrate, for slightly over an hour in order to have a lineup was not unreasonable. *T. R. Young v. United States* (1970, 435 F. 2d 405, 140 U.S. App. D.C. 333).

Victim's physical condition and his positive identification of defendant as participant in robbery were sufficient to give arresting officer probable cause to arrest defendant. *W. E. Pendergast v. United States* (1969, 416 F. 2d 776, 135 U.S. App. D.C. 20, cert. denied 89 S. Ct. 1782, 395 U.S. 926).



In a case where police officers in plain clothes saw two defendants who were known to the officers to be pick-pockets get onto bus, and the first defendant bumped into the victim, and second defendant brushed up against the victim, and officers arrested the second defendant, and search disclosed keycase of the victim, there was probable cause for arrest of the second defendant, and district court properly denied motion of defendants to suppress the keycase in robbery prosecution. *R. T. Davis, Jr. et al. v. United States* (1969, 409 F. 2d 458, 133 U.S. App. D.C. 172).

Where complaining witness who was pursuing defendant and his alleged accomplice shouted to police officer that men he was chasing had robbed him and accomplice was arrested by another officer who blocked exit to alley into which accomplice had run, officer had probable cause to arrest accomplice without warrant so that statement made by accomplice shortly after his arrest that he had seen money he was charged with robbing fall to ground was not inadmissible at trial of defendant and accomplice as fruit of an alleged arrest. *E. Trimble v. United States* (1966, 369 F. 2d 950, 125 U.S. App. D.C. 173).

#### — Entry without warrant

Police officers acted reasonably and did not violate the constitutional rights of defendant when they proceeded in furtherance of their objective to arrest defendant who they had probable cause to believe was armed felon, to make warrantless, unconsented, nonforceable entry into his home late in evening, some few hours after armed robbery and within an hour after they obtained eyewitness identification of defendant, and when magistrate was not readily available. *H. B. Dorman v. United States* (1970, 435 F. 2d 385, 140 U.S. App. D.C. 313).

Police officers, who knew that armed robbers had fled in a maroon automobile bearing license plates registered to another vehicle, that the defendant, whose employer was robbery victim, and who bore same last name as man to whom plates were registered, owned a maroon automobile, that vehicle answering description of getaway vehicle, with engine and exhaust still warm, and bearing no license plates was parked near defendant's address, and that part of money taken consisted of coins, and who, after knocking at door of defendant's apartment and identifying themselves, overheard movement of furniture and observed that person answering door filled description of one of robbers and that there were stacks of coins on dining room table, had probable cause to arrest occupants. *United States v. T. D. Harris* (1970, 435 F. 2d 74, 140 U.S. App. D.C. 270; cert. denied 91 S. Ct. 1675, 402 U.S. 986).

#### Prosecutions

In a robbery case, the Government has the right to charge, as separate assaults, assaults against bystanders who are not robbed. *G. Sutton, Jr. v. United States* (1970, 434 F. 2d 462, 140 U.S. App. D.C. 188; cert. denied 91 S. Ct. 1676, 402 U.S. 988).

#### Prosecutor's remarks

Reference by prosecutor in closing argument of robbery case to "reputable officers" and "very sweet" complaining witness who testified for government did not exceed advocacy. *Jackson v. United States* (1966, 359 F. 2d 260, 123 U.S. App. D.C. 276).

Reversal of robbery conviction would not be appropriate, even assuming that prosecutor's comments in closing argument that government was exceptionally proud of its witnesses in the case were objectionable, where testimony of victim was convincingly substantiated by fact that her critical identification of distinctive nature of items taken from her pocketbook had been given to police before defendant's capture with these items in his possession, and other key government witness likewise gave convincing testimony. *Id.*

Omission from robbery indictment of language in statute that property was taken by a "sudden or stealthy seizure or snatching" would not warrant reversal of conviction where no showing was made that such omission resulted in denial of a substantial right to defendant. *Id.*

#### Purpose

The purpose of Congress in enacting this section was to expand the common-law definition of robbery so that it would comprehend the taking by sudden or stealthy

seizure or snatching. *Neufield v. United States* (1941, 118 F. 2d 375, 73 App. D.C. 174, certiorari denied 62 S. Ct. 580, 315 U.S. 798, 86 L. Ed. 1199).

#### Questions for jury

In prosecution for robbery and assault with dangerous weapon, whether the defendant was one of holdup men in robbery of shoe store was question for jury. *United States v. J. E. York* (1969, 426 F. 2d 1191, 138 U.S. App. D.C. 197).

Jury was justified in finding that assault with intent to commit robbery and robbery were not product of alleged mental disease of defendant, where psychiatrist testified that defendant was suffering from low grade mental illness predisposing to psychosis particularly when defendant was under influence of large amounts of alcohol, and evidence indicated that defendant was completely sober at time of alleged offenses. *T. Hawkins v. United States* (1962, 310 F. 2d 849, 114 U.S. App. D.C. 44).

Evidence upon question whether defendant was not guilty of robbery by reason of insanity was sufficient to raise jury question. *E. C. Campbell v. United States* (1962, 307 F. 2d 597, 113 U.S. App. D.C. 260).

In prosecution for robbery and carrying a dangerous weapon wherein government's testimony on issue of insanity was offered by a number of lay witnesses and a qualified psychiatrist, and on part of defendant there was opposing testimony both lay and psychiatric, issue of insanity was for jury. *Niport v. United States* (1959, 263 F. 2d 901, 105 U.S. App. D.C. 64).

In robbery prosecution, issue of identity of defendant was one of fact which trial court properly submitted to jury. *Thompson v. United States* (1951, 188 F. 2d 652, 88 U.S. App. D.C. 235).

#### Release on personal recognizance

Appellant, who was convicted of robbery and assault with a deadly weapon, and whose appeal presented a substantial claim that he was wrongfully identified, was ordered released on personal recognizance on certain enumerated conditions which were so structured as to allow for a maximum amount of supervision over appellant while still allowing for his freedom from incarceration. *W. Banks v. United States* (1969, 414 F. 2d 1150, 134 U.S. App. D.C. 254).

#### Reversible error

Admission of hearsay declaration by apartment lessee to detective to effect that four men who were friends of his entered his apartment and three of them were carrying guns was not reversible error, since it was not developed by defendant's counsel that his client was not present during conversation between detective and lessee, no objection to admission of statement was made by defense at the time nor was any objection or motion made as to such testimony in subsequent conference and hearings out of presence of jury, and from context of subsequent discussions it appeared that the propriety of the testimony was recognized. *United States v. G. L. Harris* (1970, 437 F. 2d 686, 141 U.S. App. D.C. 253).

Trial court's comment concerning two defendants who entered pleas of guilty during trial of defendant for robbery allegedly involving four men was not plain error that could be considered in absence of objection, where, since jury knew of involvement of defendants who pleaded guilty at the start, court was required to make some explanation concerning their sudden absence from trial and it did so by telling jury that cases of those defendants had been disposed of and jury was not to speculate on what that disposition was. *Id.*

Question regarding defendant's financial condition in prosecution for robbery, though error, did not require reversal where one defendant did not object at the trial and other defendant did not object that it resulted in prejudice until after line of questioning had been completed. *G. A. Davis, et al. v. United States* (1969, 409 F. 2d 453, 133 U.S. App. D.C. 167).

#### Review

Record on appeal from robbery conviction does not support contention that defense witness' inconsistent statement, that was taken by prosecution in cellblock during previous night, and that was marked as government exhibit for identification, was admitted in evidence



and permitted to go to jury; marking for identification is not equivalent to admission. *United States v. O. Baber, Jr.* (1971, 447 F. 2d 1267, 145 U.S. App. D.C. 98; cert. denied 92 S. Ct. 324, 404 U.S. 957).

Appeal from robbery conviction of defendant, who alleged, inter alia, error in admission of defense witness' robbery conviction, in admission of defense witness' prior statement, and in giving of certain instruction on reasonable doubt, and that evidence was insufficient to sustain conviction, is appropriate for disposition without oral argument, notwithstanding contention that there is a constitutional right to oral argument on appeal. *Id.*

Issues as to whether trial court erred in permitting prosecutor to impeach defendant with cross-examination respecting prior conviction of assault and in permitting prosecutor to impeach defense witness with cross-examination respecting her chastity would not be noticed for the first time on appeal from conviction for assault with intent to commit robbery. *C. E. Green v. United States* (1968, 397 F. 2d 643, 130 U.S. App. D.C. 82).

Where there was no suggestion of coercion, with respect to defendant's oral admissions to the police or any factor making it appropriate for the appellate court to reach the question of admissibility despite the absence of objection, the matter was not reviewable. *Gilliam v. United States* (1958, 257 F. 2d 185, 103 U.S. App. D.C. 181, certiorari denied 79 S. Ct. 728, 359 U.S. 947, 3 L. Ed. 2d 680, rehearing denied 79 S. Ct. 899, 359 U.S. 981, 3 L. Ed. 2d 931, certiorari denied 79 S. Ct. 1129, 359 U.S. 995, 3 L. Ed. 2d 983).

#### — Record on appeal

Record upon appeal from conviction in Federal District Court for armed robbery showed no prejudicial error. *Thompson v. United States* (1955, 223 F. 2d 627, 96 U. S. App. D. C. 162, certiorari denied 76 S. Ct. 324, 350 U. S. 949, 100 L. Ed. 827).

#### — Remand

Since counsel for defendant, convicted of robbery and assault with a dangerous weapon, was not appointed until almost one year after offense, counsel was appointed slightly more than one month before trial, although counsel's failure to appear on date case was first set was allegedly due to misunderstanding case was not removed from ready calendar, and it was alleged that counsel had inadequate time in which to obtain specified physical evidence and interview specified witnesses, reviewing court remanded case to trial court for determination whether new trial should be granted on ground of ineffective assistance of counsel. *United States v. W. D. Weaver* (1970, 422 F. 2d 711, 137 U.S. App. D.C. 274).

Though jury was not warranted on evidence in failing to entertain reasonable doubt that except for diseased mental condition defendant would have committed robberies, Court of Appeals would not direct that defendant be acquitted by reason of insanity, but would remand for a new trial, where testimony of expert who had not testified at second trial would be available at retrial, resolvable ambiguities existed in testimony, and dearth of prosecution's nonmedical testimony, might be overcome. *Douglas v. United States* (1956, 239 F. 2d 52, 99 U.S. App. D. C. 232).

#### Reversible error

Any judicial intervention and criticism which occurred in robbery case did not deprive defendant of a fair trial and thus was not reversible error. *Wynder v. United States* (1965, 352 F. 2d 662, 122 U.S. App. D.C. 186).

#### Revocation of probation

Where trial court had imposed a suspended sentence conditioned upon satisfactory completion of three years on probation after conviction of robbery, such probation was revoked on request of United States Probation Officer and on appeal the Court of Appeals remanded the case for preparation of statement of evidence, reporter's notes of hearing being unavailable, and parties were unable to reconstruct such statement and a de novo hearing was held and sentencing judge reaffirmed the revocation of probation, the revocation was not an abuse of discretion. *T. Hurt v. United States* (1966, 374 F. 2d 283, 126 U.S. App. D.C. 69).

#### Right to counsel

Defendant's constitutional right to counsel was not violated when after his arrest but in absence of counsel police showed eyewitnesses a group of photographs and an eyewitness, who had had a good opportunity for observation of defendant did pick defendant's photograph, where judge found that there was an independent source for the identification in court and there was no evidence of unfairness in exhibition of photographs. *United States v. H. R. Thomas, Jr.* (1972, 463 F. 2d 314, 149 U.S. App. D.C. 368; cert. denied 93 S. Ct. 198, 409 U.S. 870).

In the circumstances of the case, defendant's constitutional right to counsel at critical stages of the prosecution was violated when the government, having him in custody, and having failed to arrange corporeal lineup, made presentation of color photographs of defendant and codefendant to witnesses to bank robbery without attendance of defense counsel on the day before trial and the admission of the color photographs at trial produced reversible error. *United States v. C. J. Ash, Jr.* (1972, 461 F. 2d 92, 149 U.S. App. D.C. 1; cert. granted 92 S. Ct. 2436, 407 U.S. 909).

A corporeal lineup is "critical stage" of the prosecution at which defendant is entitled to aid of counsel, even though lineup is held prior to trial or even to the filing of formal charges. *Id.*

Generally, subject to certain exceptions, requirement of presence of counsel is applicable to government exhibition of photographs of a person in custody for an offense to witnesses called to identify the person who committed the offense. *Id.*

Requirement of presence of defense counsel at viewings of photographs by identification witnesses held under auspices of prosecutor is not tantamount to requirement of counsel at every conference between the prosecutor and government witnesses. *Id.*

There are instances in which photographic exhibition— even though event capable of being adduced at trial—is too preliminary and preparatory to be regarded as critical stage of prosecution requiring attendance of defense counsel, such as when case is in the pre-arrest investigative stage, provided there is no undue suggestiveness. *Id.*

There is limited exception to requirement of counsel at photographic identifications conducted after the defendant is in custody where there is on-going investigation and time is of the essence; such exception would be limited to case of special circumstances where even the slight delay involved in attendance of counsel or substitute counsel would not be feasible without jeopardizing the effectiveness and fairness of continuing investigation. *Id.*

Admission of testimony of robbery victims who, at time when defendant was not represented by counsel, identified defendant on his being brought into house by officers following his being restrained by men observing him fleeing from house, did not violate defendant's right to counsel, as defendant neither said nor did anything at that time that his counsel could have stopped had he been present. *Kennedy v. United States* (1965, 353 F. 2d 462, 122 U.S. App. D.C. 291).

#### Search and seizure

Where police officers had received radio dispatched descriptions of getaway car which went out of control and was abandoned, search of car did not violate Fourth Amendment rights of defendant. *United States v. J. Moore* (1972, 459 F. 2d 1360, 148 U.S. App. D.C. 336).

Where police officers found the defendant in waiting room of dentist, and they properly made a search of other rooms of suite of dentist to look for possibly dangerous persons, and in plain view in laboratory of dentist was stolen bottle of whiskey, seizure of bottle and its subsequent admission into evidence were proper. *United States v. D. O. Miller* (1971, 449 F. 2d 974, 145 U.S. App. D.C. 312).

Where testimony of the defendant himself established that he had no authority to open or use drawer, in which gun was found, and there was no suggestion that gun itself belonged to defendant, there was no violation of defendant's Fourth Amendment rights, even if search and seizure of gun were unlawful. *Id.*

Police officers can seize fruits, instrumentalities or evidence of crime that they recognize to be of importance to prosecution of arrestee if items involved are in plain



view of police when they enter premises to make arrest. *United States v. T. D. Harris* (1970, 435 F. 2d 74, 140 U.S. App. D.C. 270; cert. denied 91 S. Ct. 1675, 402 U.S. 986).

Where police officers, upon entering apartment, had made valid arrest pertaining to armed robbery, search of adjoining bedroom, which occurred prior to Supreme Court decision limiting lawful search incident to valid arrest to area within defendant's immediate control and which resulted in discovery of money under mattress, was within permissible area of search. *Id.*

#### Sentence

Where bank robbery had been consummated, defendant could not be properly given a concurrent sentence for entering a bank with intent to commit robbery. *United States v. J. M. Hopkins* (1972, 464 F. 2d 816, 150 U.S. App. D.C. 307).

Where robbery constituted a unitary transaction, defendant could not properly be convicted and sentenced on two robbery counts. *Id.*

Where, though bank employees and a customer were put in fear at point of a pistol, joint conduct of robbers constituted a single continuous transaction, defendant could not properly be convicted and sentenced on four counts of assault with a dangerous weapon. *Id.*

Defendant's sentence was not to depend upon his refusal to express remorse. *Id.*

Where the district court had discretion to sentence 21-year-old defendant under regular adult statutory provision only if it found that the defendant would not derive benefit from rehabilitative treatment under the Youth Corrections Act, and it was not apparent from record, just what the court concluded as to defendant's susceptibility to benefit from commitment under Act, matter would be remanded for further illumination of the district court's intent. *United States v. R. T. Ward* (1971, 454 F. 2d 992, 147 U.S. App. D.C. 149).

The Court of Appeals will consider claim that it was improper for the defendant to be convicted and sentenced on both counts I which charged under Federal mail robbery statute the assault of post office custodian with intent to rob him, and count II which charged under District of Columbia statutes the robbing of custodian, notwithstanding fact that the defendant received concurrent sentences, because of possible harmful effect on defendant of myriad collateral consequences of an improper double felony conviction and desirability of having such issue settled. *United States v. W. B. Spears* (1971, 449 F. 2d 946, 145 U.S. App. D.C. 284).

Where 21-year-old defendant had had number of contacts with authorities, had been continuously involved in a program designed to assist him in making proper social adjustment and had not responded, had been arrested on felony-murder, second-degree murder, armed robbery and robbery charges while on probation for another charge seven months earlier and social worker at children's center had recommended that his commitment to the department be set aside and defendant apparently had been on drugs for sometime, it was more appropriate to sentence the defendant, on guilty plea to robbery charge, under the applicable penalty provision rather than under the Federal Youth Corrections Act. *United States v. R. T. Ward* (1971, 337 F. Supp. 185).

In a prosecution for carrying an unlicensed pistol and for increased punishment by reason of recidivism, defense counsel's concession, in bail application, that defendant had been convicted of robbery in 1957 is insufficient proof, for purpose of sentencing under recidivist statute, that defendant had been convicted of robbery in 1958 as charged by government. *United States v. E. Clemons* (1970, 440 F. 2d 205, 142 U.S. App. D.C. 177; cert. denied 91 S. Ct. 959, 401 U.S. 945).

Since 19-year-old defendant found guilty of 3 counts of robbery and 3 counts of assault with dangerous weapon moved for presentence observation at youth center and after observation was sentenced to 4 to 12 years for robbery and 3 to 9 years for assault with sentence to run concurrently and thereafter defendant filed motion for reconsideration and requested that he be sentenced under Youth Corrections Act but was transferred to penitentiary despite recommendation for confinement in youth institution, and court thereafter denied motion,

sentence will be vacated and case remanded to district court for resentencing under Youth Corrections Act. *United States v. T. P. Waters* (1970, 437 F. 2d 722, 141 U.S. App. D.C. 289).

Where defendant had been committed to hospital for mental observation before trial and had been reported competent to stand trial and during trial judge heard testimony of several witnesses as to the defendant's mental condition and some six weeks elapsed between finding of guilt and imposition of sentence during which probation office conducted investigation and submitted report which was before trial judge when sentence was imposed, sentence is not improper on theory that trial judge should have referred case to legal psychiatric service for the presentence evaluation. *United States v. E. F. Carter* (1970, 436 F. 2d 200, 141 U.S. App. D.C. 46).

Under statute providing that sentence begins to run from date prisoner is received at penal institution for service of sentence, sentence was not illegal, within rule providing that court may correct illegal sentence at any time, merely because court in imposing maximum sentence for robbery gave no credit for time spent in custody before sentence. *T. Williams v. United States* (1964, 335 F. 2d 290, 118 U.S. App. D.C. 255).

Where sentence imposed was within that allowed by statute, relief was available to defendant, in absence of relief at hands of district court, only in executive branch of government. *Id.*

Where at time of sentence upon robbery conviction defendant stated to court that he was "under a psychiatrist for one year" in 1935, that he "had a mental disorder from 1952," that he was "under a doctor in the state prison at Trenton" in 1952, and that all but 63 days of the past 31 years, since he was 19 years old, he had spent in various prisons, and court imposed the maximum penalty without responding to defendant's request for a mental examination prior to sentence, case would be remanded to district court for reconsideration of the sentence. *Wm. H. Leach v. United States* (1963, 320 F. 2d 670, 115 U.S. App. D.C. 351).

On remand for consideration of sentence, district court refused to disturb sentence previously imposed on defendant, who has extensive criminal record, following a third conviction for armed robbery, in view of probation office report failing to refer defendant to legal psychiatric services and recommending that probation be denied and evidence which failed to indicate that defendant was suffering from mental disease. *United States v. W. H. Leach* (D.C.D.C. 1963, 218 F. Supp. 271).

District Court's denial of defendant's motion to vacate sentence of two to seven years imposed on defendant's plea of guilty to charges of robbery, on ground that plea was coerced, would not be disturbed by Court of Appeals, where testimony could be viewed to support thesis that court-appointed counsel of defendant merely brought his professional judgment and experience to bear, as he was bound to do, in advising defendant of high probability of conviction and of sentences some courts had imposed on pleas of guilty in such cases, and it was not shown that counsel's estimate of case was either erroneous or made to mislead defendant, and it did not appear that counsel's estimate of sentence was offered defendant as a promise rather than a hope. *Smith v. United States* (1959, 265 F. 2d 99, 105 U.S. App. D.C. 115).

Where defendant, who had been sentenced on first indictment from two to six years, on each of four counts in second indictment from one to three years, with such sentences to take effect consecutively with one another and with sentence on first indictment, and on third indictment from one to three years concurrently with the other sentences, had actually pleaded guilty only to one count in each of the three indictments, Court of Appeals would set aside sentence on second indictment except as to one sentence from one to three years, and, as to first indictment, district court could resentence defendant in view of fact that existing sentence was a general one covering two counts. *Campbell v. United States* (1958, 258 F. 2d 160, 103 U.S. App. D.C. 308).

Sentence of 3 to 12 years for robbery for which maximum sentence was 15 years was valid as conforming with statute relating to indeterminate sentences and providing for a maximum sentence not exceeding maximum fixed



by law for crime committed, as against contention maximum sentence of entire term imposed by statute violated was required. *McDonald v. Johnston* (C.C.A. 9, 1937, 86 F. 2d 329).

Application for habeas corpus was premature when it challenged the validity of consecutive sentences as the first sentence of robbery had not expired. *Johnson v. Aderhold* (C. C. A. 5, 1934, 73 F. 2d 102).

#### — Consecutive

In determining whether consecutive sentences could be validly imposed upon conviction of housebreaking and robbery, statutes are first examined to ascertain if they will bear interpretation as creating separate offense, and if so court will inquire whether Congress also intended to pyramid penalties or only to establish different degrees or types of offense. *Irby v. United States* (D.C.D.C. 1965, 250 F. Supp. 983).

Defendant who had been convicted of housebreaking and robbery was not entitled to post-conviction relief from consecutive sentences on theory that offenses were committed by single series of chronologically related events, where offenses were independent. *Id.*

#### Severance

Denial of defendant's pretrial motion for severance, in bank robbery prosecution in which defendant's brother was a codefendant, did not constitute abuse of discretion, where there were no statements by defendant's brother received in evidence against defendant, and at defendant's request jury was instructed that fact that defendants were brothers in and of itself should not lead them to conclude that they acted in concert in robbing the bank. *United States v. J. M. Hopkins* (1972, 464 F. 2d 816, 150 U.S. App. D.C. 307).

Where alibi testimony of defendants charged with robbery of drugstore as to their presence at pool hall did not state assuredly that they were there at the same time and, even if they had been, the fact that neither recalled seeing the other was somewhat corroborative of principal defense that neither knew other until arrest, their alibi testimony did not present conflicting and irreconcilable defenses and severance was not required, especially since the United States attorney in his jury argument made no comment on failure of defendants to recall seeing each other. *United States v. C. Wilson, Jr. et ano.* (1970, 434 F. 2d 494, 140 U.S. App. D.C. 220).

Refusal to grant a severance for trial purposes as to defendant tried for several crimes including first-degree murder arising out of two separate robberies was prejudicial to defendant because there was not only the danger that evidence with respect to two robberies would cumulate in juror's minds and tend to prove defendant guilty of each, but also because the evidence as to one of the robberies was so weak that its primary usefulness was to support government's case as to robbery which resulted in the murder. *C. Gregory v. United States* (1966, 369 F. 2d 185, 125 U.S. App. D.C. 140).

#### Speedy trial

A delay of over one year between arrest and trial raises a Sixth Amendment claim of prima facie merit and places on government necessity of justification, the burden of which increases with length of the delay, and when the delay approaches a year and one half, government must provide a justification which convincingly outweighs prejudice which can normally be assumed to have been caused defendant. *United States v. E. Rucker, Jr.* (1972, 464 F. 2d 823, 150 U.S. App. D.C. 314).

A defendant would be deemed significantly prejudiced by 18-month delay in bringing his case to trial where the delay might well have cost defendant opportunity to serve most of sentence for offense of which he was found guilty concurrently with sentences imposed at a prior time, and where government failed to present convincing justification for the delay. *Id.*

Where defendant was arrested on December 19, was accorded a preliminary hearing December 29, was indicted February 10, and arraigned March 4, and thereafter from time to time over next seven months, there were filed assorted defense motions requiring attention by district court down to October 28 when defense first moved for speedy trial, and with government announcing its readi-

ness for trial at any time, defendant's trial counsel represented he was then involved in another lengthy case, and defendant's case was next called for trial December 3, whereupon defense counsel requested that trial date be set for January 11, 1971, at which time trial went forward, defendant was not denied his right to a speedy trial. *United States v. J. M. Hopkins* (1972, 464 F. 2d 816, 150 U.S. App. D.C. 307).

Where there was delay of approximately 21 months between arrest and hearing on defendant's motion to dismiss for lack of speedy trial, Government failed to offer any justification for unusually lengthy interval between arrest and trial, major cause of delay arose from defendant's incarceration in Maryland that began only 26 days after his preliminary hearing and evidence of guilt against defendant was not so overwhelming as to negate any inference of prejudice to him in preparation of his defense, trial court erred in denying defendant's motion to dismiss indictment for want of speedy trial. *C. D. Coleman v. United States* (1971, 442 F. 2d 150, 142 U.S. App. D.C. 402).

#### Summation

Where portions of prosecution's closing argument were objectionable but were sufficiently offset by court's warning to jury respecting same matter, objectionable argument was not ground for reversal of robbery conviction. *E. Trimble v. United States* (1966, 369 F. 2d 950, 125 U.S. App. D.C. 173).

#### Trial procedure

In its context and under all the circumstances of criminal case, trial judge's statement, in course of his response to jury's note of their inability to agree on verdict, that "You have got to reach a decision in this case" was coercive. *M. C. Jenkins v. United States* (1965, 85 S. Ct. 1059).

Viewed in context of whole charge, trial court's statements refusing to accept note that jury was deadlocked after only two hours deliberation and that jury should resume deliberations the next day were not coercive or an improper comment upon the evidence to jury which found defendant guilty on robbery count and not guilty on count charging assault with intent to commit robbery. *M. C. Jenkins v. United States* (1964, 330 F. 2d 220, 117 U.S. App. D.C. 346; rev'd 85 S. Ct. 1059).

In prosecution for rape, and for robbery of cleaning establishment, where court warned defendant's counsel that if he asked question of witness regarding whether defendant had been identified as the man who robbed another cleaning establishment about a week prior to the commission of the offenses involved, he would do so at his peril, refusal to allow the contradiction of witness' answer was proper. *McKenzie v. United States* (1942, 126 F. 2d 533, 75 U.S. App. D.C. 270).

#### Unnecessary delay

A reasonable period of time elapsing between occurrence of oral confession and the time reasonably necessary to reduce it to writing for it to be signed is not "unnecessary delay" within Federal Criminal Procedure Rule governing appearance before commissioner. *Goldsmith & Carter v. United States* (1960, 277 F. 2d 335, 107 U.S. App. D.C. 305, certiorari denied 81 S. Ct. 106, 364 U.S. 863, 5 L. Ed. 2d 86).

Under Federal Rule of Criminal Procedure, preliminary hearing must be made promptly and without unnecessary delay and there is no requirement that preliminary hearing be immediate. *Id.*

Where there is a plea of unnecessary delay before preliminary hearing, the court must examine in detail all the surrounding circumstances, taking into consideration the manner in which the interrogation was conducted, the length of time involved, and particularly the purposes which the police had in conducting their inquiry, if the purposes can be discerned, and the court must not forget that interrogation is not an evil per se but an absolute necessity and that it often leads to releases, not charges. *Id.*

#### Validity of arrest

Allegations of lack of probable cause for defendant's arrest were not sufficient to warrant remand for hearing on that issue, where only attack on arrest related to re-



liability of informant upon whose lead defendants were arrested for robbery and informant's reliability had been established at a hearing in a related case. *W. Cooper and V. Cooper v. United States* (1963, 331 F. 2d 776, 118 U.S. App. D.C. 30).

#### Variance

There is no fatal variance between count which charged that the defendant took money from the "immediate actual possession" of post office custodian and proof that money he took was taken from postal employees, where the evidence showed that custodian had control and custody of money taken, that the defendant took money from an area within which the custodian reasonably could have been expected to exercise some physical control, and that the defendant did so by force directed at the custodian personally. *United States v. W. B. Spears* (1971, 449 F. 2d 946, 145 U.S. App. D.C. 284).

Robbery conviction will not be reversed on grounds there was a variance between indictment and proof where there was no objection to introduction of variant evidence and there was no showing or claim of actual prejudice. *Jackson v. United States* (1966, 359 F. 2d 260, 123 U.S. App. D.C. 276).

#### Verdict

In appropriate case there is duty to set aside verdict of guilty and to direct verdict of not guilty by reason of insanity; though this duty is to be performed with caution because of deference due jury in resolving factual issues. *Douglas v. United States* (1956, 239 F. 2d 52, 99 U. S. App. D. C. 232).

#### Witnesses

Trial court properly rejected attempt by two witnesses who were unfamiliar with the defendant's reputation as to character traits in issue in robbery and assault case to testify as to his character. *United States v. W. A. Hinkle* (1971, 448 F. 2d 1157, 145 U.S. App. D.C. 234).

### § 22-2902. Attempt to commit robbery.

Whoever attempts to commit robbery, as defined in section 22-2901, by an overt act, shall be imprisoned for not more than three years or be fined not more than five hundred dollars, or both. (Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 811.)

#### CROSS REFERENCE

Possession of fire arm, additional penalty, see §§ 22-3201, 22-3202.

#### NOTES TO DECISIONS

##### Acquittal on one count, effect

Under this section and § 22-2901, attempted robbery or actual robbery is possible without assault, and acquittal of assault with intent to rob does not require acquittal of attempted robbery. *Pope v. Huff* (1944, 141 F. 2d 727, 79 U. S. App. D. C. 18).

##### Arrest without warrant

A police officer, who received a report from man that defendant appeared to have robbed a girl and started to walk toward defendant, who called a scout car for assistance when the defendant began running from officer, had probable cause for a warrantless arrest of defendant. *A. B. Clarke v. United States* (D.C. App. 1969, 256 A. 2d 782).

##### Corroboration

Evidence sustained conviction of attempt to commit robbery in violation of this section, notwithstanding fact that testimony of principal prosecution witness was uncorroborated and that intent to rob could only be inferred. *Accardo v. United States* (1957, 249 F. 2d 519, 102 U. S. App. D. C. 4, certiorari denied 78 S. Ct. 787, 356 U. S. 943, 2 L. Ed. 2d 817).

##### Evidence—Sufficiency

Evidence, including testimony of girl friend of one defendant as to incriminating statements which both defendants made to her; sustained convictions for felony murder and for attempted robbery. *A. Calloway and T. L. S. McCovey v. United States* (1968, 399 F. 2d 1006, 130 U.S. App. D.C. 273).

#### Indictment

There was prejudice in joinder of crimes of robbery and attempted robbery and separate trials should have been granted, where the similarities were not so close that proof of one crime would establish proof of the other if there were separate trials, and the jury was confused and was unable to treat the evidence relevant to each charge separately and distinctly. *Nathan L. Drew v. United States* (1964, 331 F. 2d 85, 118 U.S. App. D.C. 11).

Under section 22-2901 robbery includes taking by force or violence, whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear, and to charge a taking "by force and violence, and by sudden and stealthy seizure, and against resistance, and by putting in fear" did not constitute a misjoinder of actions in a single count. *Turner v. United States* (1927, 16 F. 2d 535, 57 App. D. C. 39).

#### Infamous crime

Robbery is an infamous crime, and must be prosecuted by indictment. *United States v. Evans* (1906, 28 App. D.C. 264).

#### Sentence

After defendant's successful appeal of conviction for robbery and for assault with intent to commit robbery, for which he had been given concurrent sentences, defendant was upon his resentence for offense of attempted robbery, which arose out of conduct resulting in original indictment for assault with intent to commit robbery, entitled to credit on sentence for time he was in custody for want of bail prior to imposition of sentence for robbery, an offense with mandatory minimum sentence. *W. L. Short, Jr. v. United States* (1965, 344 F. 2d 550, 120 U.S. App. D.C. 165).

Where defendant, who had been sentenced on first indictment from two to six years, on each of four counts in second indictment from one to three years, with such sentences to take effect consecutively with one another and with sentence on first indictment, and on third indictment from one to three years concurrently with other sentences, had actually pleaded guilty only to one count in each of the three indictments, Court of Appeals would set aside sentence on second indictment except as to one sentence from one to three years, and, as to first indictment, district court could resentence defendant in view of fact that existing sentence was a general one covering two counts. *Campbell v. United States* (1958, 258 F. 2d 160, 103 U.S. App. D.C. 308).

Sentence fixing a maximum of twelve years conformed with the act of July 15, 1932, as did the minimum period of three years, being for a minimum period "not exceeding one-fifth of the maximum period fixed by law." *McDonald v. Johnston* (C. C. A. 9, 1937, 86 F. 2d 329).

### Chapter 30.—SEDUCTION

#### Sec.

22-3001. Seduction.

22-3002. Seduction by teacher.

### § 22-3001. Seduction.

If any person shall seduce and carnally know any female of previous chaste character, between the ages of sixteen and twenty-one years, out of wedlock, such seduction and carnal knowledge shall be deemed a misdemeanor, and the offender, being convicted thereof, shall be punished by imprisonment for a term not exceeding three years, or fined not exceeding two hundred dollars or may be punished by both such fine and imprisonment. (Mar. 3, 1901, 31 Stat. 1332, ch. 854, § 873.)

#### NOTES TO DECISIONS

##### Chastity

Virginity is the test of chastity. *Bray v. United States* (1913, 39 App. D.C. 600)

##### Evidence

Subsequent misconduct of prosecutrix with others is inadmissible "unless, perhaps, when improper relations with others follow closely upon the commission of the offense by the accused, and are preceded by proof of circumstances



tending to show that the prosecutrix had not been previously chaste." *Bray v. United States* (1913, 39 App. D.C. 600).

#### Promise of marriage

"The object of the statute is to protect the chaste virgin against betrayal from an honest belief in the betrayer's protestations of love and affection, or an existing promise of marriage, or a present unqualified promise of marriage as an inducement for the commission of the act," but does not cover a promise of marriage contingent upon pregnancy resulting from the intercourse. *Hamilton v. United States* (1914, 41 App. D.C. 359, 51 L.R.A., N.S. 809).

#### Subsequent marriage

Subsequent marriage of the parties is no bar to prosecution. *Bray v. United States* (1913, 39 App. D.C. 600).

#### § 22-3002. Seduction by teacher.

Any male person, over twenty-one years of age, who is superintendent, tutor, or teacher in any public or private school, seminary, or other institution, or instructor of any female in any branch of instruction, who has sexual intercourse with any female under twenty-one years of age and not under sixteen years of age, with her consent, while under his instruction during the term of his engagement as superintendent, tutor, or teacher, shall be imprisoned for not less than one year nor more than ten. (Mar. 3, 1901, 31 Stat. 1331, ch. 854, § 871; June 30, 1902, 32 Stat. 535, ch. 1329.)

#### AMENDMENT

1902—Act June 30, 1902, inserted the words "and not under sixteen years of age."

### Chapter 31.—TRESPASS—INJURIES TO PROPERTY Sec.

- 22-3101. Forcible entry and detainer.
- 22-3102. Unlawful entry on property.
- 22-3103. Grave robbery—Buying or selling dead bodies.
- 22-3104. Depredation of fixtures in houses.
- 22-3105. Placing explosives with intent to destroy or injure property.
- 22-3106. Stealing or injuring books, manuscripts, publications, works of art.
- 22-3107. Destroying or defacing public records.
- 22-3108. Cutting down or destroying things growing on or attached to the land of another.
- 22-3109. Destroying boundary trees.
- 22-3110. Destroying trees or protections thereto on public grounds—Fastening horses thereto.
- 22-3111. Disorderly conduct in public buildings or grounds—Injury to or destruction of United States property.
- 22-3112. Destroying or defacing buildings, statues, monuments, offices, dwellings, and structures.
- 22-3113. Destroying or defacing building material for streets.
- 22-3114. Destroying cemetery railing or tomb.
- 22-3115. Offenses against property of electric lighting, heating, or power companies.
- 22-3116. Tapping gas pipes.
- 22-3117. Tapping or injuring water-pipes—Tampering with water meters.
- 22-3118. Maliciously making water impure.
- 22-3119. Placing obstructions on or displacement of railway tracks.
- 22-3120. Obstructing public road—Removing milestones.
- 22-3121. Obstructing public highway.
- 22-3122. Fines under section 22-3121 to be collected in name of United States.

#### § 22-3101. Forcible entry and detainer.

Whoever shall forcibly enter upon any premises, or, having entered without force, shall unlawfully detain the same by force against any person previ-

ously in the peaceable possession of the same and claiming right thereto, shall be punished by imprisonment for not more than one year or a fine of not more than one hundred dollars, or both. (Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 851.)

#### CROSS REFERENCE

Jurisdiction of Superior Court, see §§ 11-921, 11-923, 16-1501.

#### § 22-3102. Unlawful entry on property.

Any person who, without lawful authority, shall enter, or attempt to enter, any public or private dwelling, building or other property, or part of such dwelling, building or other property, against the will of the lawful occupant or of the person lawfully in charge thereof, or being therein or thereon, without lawful authority to remain therein or thereon shall refuse to quit the same on the demand of the lawful occupant, or of the person lawfully in charge thereof, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding \$100 or imprisonment in the jail for not more than six months, or both, in the discretion of the court. (Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 824; Mar. 4, 1935, 49 Stat. 37, ch. 23; July 17, 1952, 66 Stat. 766, ch. 941, § 1.)

#### AMENDMENTS

1952—Act of July 17, 1952, amended section generally, and among other changes, extended the coverage to public buildings and other property and to violators "thereon" as well as "therein" and increased the limitation on the fine from \$50 to \$100.

1935—Act Mar. 4, 1935, added the clause relating to unlawful entry of an unoccupied private dwelling.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23-581.

#### NOTES TO DECISIONS

##### Abuse of discretion

Record did not disclose abuse of discretion in denial of defendants' motion for new trial in prosecution for unlawful entry. *A. Fatemi et al. v. United States* (D.C. App. 1963, 192 A. 2d 525).

##### Applicability to White House

The District of Columbia unlawful entry statute applies to all public buildings, i.e., government buildings in the District of Columbia, including the White House or Executive Mansion. *D. H. Whittlesey, et al. v. United States* (D.C. App. 1966, 221 A. 2d 86).

##### Arrest without warrant

Warrantless arrest of defendant, resulting in discovery of heroin upon his person, was justified by fact of defendant's unlawful entry committed in the presence of the arresting officers, in fifth floor of a vacant building being used as a narcotics pad; moreover, considering all the circumstances, the police officers had reasonable grounds to believe that narcotics laws were being violated and for that reason to arrest the defendant. *United States v. Williams* (1970, 442 F. 2d 738, 143 U.S. App. D.C. 16).

##### Assimilation of subsequently enacted statute

The District of Columbia statute providing that provisions of several laws and regulations within District of Columbia for protection of public or private property and preservation of peace and order are extended to all public buildings and public grounds belonging to United States within District of Columbia assimilated subsequently enacted District of Columbia unlawful entry statute, if such assimilation were necessary. *D. H. Whittlesey, et al. v. United States* (D.C. App. 1966, 221 A. 2d 86).



**Bona fide entry**

Where existence of a bona fide belief of a right to enter is genuinely questionable, an issue proper for jury's determination arises, and a defendant who is accused of unlawful entry is entitled to an instruction thereon, but when there is no evidence supportive of accused's claim of a bona fide belief of a right to enter there is no duty to instruct that such a belief constitutes a valid defense. *J. T. Smith v. United States* (D.C. App. 1971, 281 A. 2d 438).

Person who enters building for good purpose and with bona fide belief of his right to enter is not guilty of an unlawful entry in violation of District of Columbia statute. *T. J. McGloin v. United States* (D.C. App. 1967, 232 A. 2d 90).

**Concurrent sentences**

Where defendants received concurrent sentences in prosecution for possession of narcotics, possession of implements of crime, unlawful entry and narcotics vagrancy and evidence was sufficient to support conviction of possession of narcotics and possession of implements of crime, District of Columbia Court of Appeals would not pass upon sufficiency of evidence to support other convictions. *S. Keith, R. L. Payne and T. J. Walker v. United States* (D.C. App. 1967, 232 A. 2d 92).

**Constitutional rights**

Unlawful entry conviction of defendant for failing to leave restaurant following request to leave by one lawfully in charge of the restaurant was not unconstitutional on ground defendant's presence in restaurant was in exercise of his First Amendment right of assembly with his friends in a public place. *A. Drew v. United States* (D.C. App. 1972, 292 A. 2d 164; cert. denied 93 S. Ct. 569, 409 U.S. 1062).

**Construction**

In this case, the court held that the conduct of defendants charged with unlawful entry in refusing to quit steps of United States capitol after being ordered to do so by chief of capitol police and in reading names of Vietnam war dead in ordinary speaking voice did not come within prohibition of Capitol Grounds statute as interpreted. *United States v. J. Nicholson et al.* (D.C. App. 1970, 263 A. 2d 56).

**Conviction**

Although conviction for second-degree burglary is vacated because of insufficiency of indictment, government can seek another grand jury indictment for such offense, but since indictment is sufficient to charge an unlawful entry and evidence is sufficient to support such a conviction, case is remanded for entry of judgment of conviction for unlawful entry if government does not object and trial court considers such action in the interests of justice; otherwise government can decide whether it wishes to submit defendant's case again to grand jury. *United States v. J. B. Seegers, Jr.* (1971, 445 F. 2d 232, 144 U.S. App. D.C. 162).

**Custodial interrogation**

Questions addressed to three defendants by arresting officers seeking an explanation for defendants' being in condemned house were noncoercive and not "custodial interrogation" within rule of *Miranda v. State of Arizona*. *S. Keith, R. L. Payne and T. J. Walker v. United States* (D.C. App. 1967, 232 A. 2d 92).

**Diplomatic immunity**

District of Columbia police had authority to enter embassy and arrest foreign nationals, who had no claim to immunity and who were violating local law by trespassing in embassy, at Minister's request. *A. Fatemi et al. v. United States* (D.C. App. 1963, 192 A. 2d 525).

**Due process**

Actions of United States attorney in entering nolle prosequi of informations charging the more serious offense of unlawful entry and, thereafter, filing new informations regarding the less serious offense of disorderly conduct were not a violation of due process. *Smith v. District of Columbia* (D.C. App. 1966, 219 A. 2d 842).

**Duty to arrest**

When police detectives saw narcotics paraphernalia in possession of defendants, officers were under statutory

duty to arrest the offenders immediately. *S. Keith, R. L. Payne and T. J. Walker v. United States* (D.C. App. 1967, 232 A. 2d 92).

**Elements of offense**

Entry without lawful authority is requisite element of the offense of unlawful entry. *C. Jones, Jr. v. United States* (D.C. App. 1971, 282 A. 2d 561).

When a person enters a place with a good purpose and with a bona fide belief of the right to enter, he lacks the element of criminal intent required by this section and is not guilty of unlawful entry. *J. T. Smith v. United States* (D.C. App. 1971, 281 A. 2d 438).

To be against the will of the lawful occupant the entry must be against the expressed will, that is, after warning to keep off the premises. *Id.*

Where construction company, the occupant of lot, had posted signs indicating its rightful control of the site, it had never authorized the defendant to use the site at night when no one was present, and where site was protected at night by locked gates and a mesh chain length fence topped by barbed wire, there was no need that an explicit "keep out" sign be posted to establish that the defendant was acting against the will of the construction company when he entered the site. *Id.*

One of the necessary elements for unlawful entry conviction is proof that the defendant entered or attempted to enter premises without lawful authority against the will of its lawful occupant. *W. H. Dent v. United States* (D.C. App. 1970, 271 A. 2d 699).

Defendant who was found wandering by police officer inside of four-unit apartment building and on the roof and fire escape thereof could properly be convicted of unlawful entry under District of Columbia statute without showing that owner had not given an express warning that he should stay out of building. *T. J. McGloin v. United States* (D.C. App. 1967, 232 A. 2d 90).

Statute proscribing unauthorized entry is not mere intent to restate common law of criminal trespass; statute punishes one who, without lawful authority, enters premises against will of lawful occupant. *W. H. Bowman v. United States* (D.C. App. 1965, 212 A. 2d 610).

For entry to be against will of lawful occupant in violation of statute entry must be against the expressed will, that is, after warning to keep off; it is not necessary that such warning be verbally expressed, it may be expressed by sign. *Id.*

In a prosecution for unlawfully entering a private dwelling against the will and without consent or authority of lawful occupant, one of essential elements is whether entry was against will of one who was lawful occupant. *Moore v. United States* (D. C. Mun. App. 1957, 136 A. 2d 868).

**Entry to secure divorce evidence**

In prosecution for unlawful entry by a private detective and photographer, employed by husband to secure evidence against his wife in a divorce proceeding, alleged right of husband to make what would otherwise be an illegal entry in order to prevent the debauchment of his wife would be personal to the husband and could not be invoked by the defendants. *Leon and McManaway v. United States* (D. C. Mun. App. 1957, 136 A. 2d 588).

**Evidence—Admissibility**

Prosecuting witness' testimony, in prosecution under this section, that she had had conversation with defendant as to whether or not he was entitled to go into her apartment on occasion when he had come in and beaten her up was admissible in that such testimony, along with her direct testimony that she had not given defendant permission to enter premises, bore directly upon defendant's lack of lawful authority to enter witness' apartment. *W. H. Dent v. United States* (D.C. App. 1970, 271 A. 2d 699).

Where defendants' arrest for narcotics violations was legal, narcotics paraphernalia seized at time of the arrest was properly admitted in defendants' joint trial for narcotics violations. *S. Keith, R. L. Payne and T. J. Walker v. United States* (D.C. App. 1967, 232 A. 2d 92).

**—Sufficiency**

Evidence, including evidence that the defendant was discovered by occupant of home about halfway through window, sustained conviction for unlawful entry. *United*



*States v. R. L. Thomas, Jr.* (1971, 444 F. 2d 919, 144 U.S. App. D.C. 44).

Evidence in this case is sufficient to sustain conviction for unlawful entry. *C. Jones, Jr. v. United States* (D.C. App. 1971, 282 A. 2d 561).

Evidence, which showed that appellant was found in parts of the airlines' offices which were not open to the public and where he had no right to be, sustained conviction for unlawful entry. *V. J. Bond, Jr. v. United States* (D.C. App. 1967, 233 A. 2d 506).

Evidence supported conviction for unlawful entry. *L. Perry v. United States* (D.C. App. 1967, 230 A. 2d 721).

Evidence, including evidence as to exclusive control or possession of television in defendant, sustained conviction for unlawful entry and petit larceny. *J. L. Benboro v. United States* (D.C. App. 1967, 227 A. 2d 772).

Defendants were properly convicted under statute for unlawful entry where they, without a ticket and intent to board a train, had entered restricted area despite sign and public announcements whereby only persons having tickets were permitted through the gate to the restricted area. *W. H. Bowman v. United States* (D.C. App. 1965, 212 A. 2d 610).

#### Ineffective assistance of counsel

Fact that new counsel was appointed not more than 60 minutes before trial did not amount to ineffective assistance of counsel of defendant charged with simple assault, unlawful entry and petit larceny where no continuance was requested and defendant announced he was ready for trial, factual situation was not so complex as to necessitate any extensive investigation and there were no witnesses for the defense who could have been called, new counsel was experienced and diligent and made no claim that he was hampered by appointment shortly before trial. *S. A. Tuttle v. United States* (D.C. App. 1968, 238 A. 2d 590).

#### Infamous crime

Prosecution for unlawful entry, which carries punishment by imprisonment not to exceed six months, is not "infamous crime" within constitutional provision relating to prosecutions by indictment. *A. E. Harvin v. United States* (1971, 445 F. 2d 675, 144 U.S. App. D.C. 199; cert. denied 92 S. Ct. 292, 404 U.S. 943).

Provision of Fifth Amendment requiring prosecution for infamous crimes by indictment does not preclude utilization of Youth Corrections Act following conviction of noninfamous offense upon prosecution by information, notwithstanding that defendant might be imprisoned under that Act up to six years. *Id.*

#### Information

Offense of unlawful entry may be charged by information. *United States v. R. L. Thomas, Jr.* (1971, 444 F. 2d 919, 144 U.S. App. D.C. 44).

#### — Sufficiency

Defendants, who were arrested after refusing to move out of corridor in House wing of Capitol building when ordered to do so by Capitol police, were entitled to know with certainty offense with which they were charged and possible penalty threatened and were entitled to definite reference to the law which they had allegedly violated, and thus where, notwithstanding request of defense, no one had given citation of statute under which prosecution was being had, other than statement of prosecutor that two sections were involved, convictions under section carrying lighter sentence, as requested by prosecutor, were required to be set aside. *D. Smith et al. v. District of Columbia* (1967, 387 F. 2d 233, 128 U.S. App. D.C. 275).

#### Instructions

In burglary prosecution, evidence that, during period of widespread disturbances and looting, the defendant was found hiding in a clothing store that had broken window and locked door did not warrant instruction on lesser offense of unlawful entry. *United States v. R. Sinclair* (1971, 444 F. 2d 888, 144 U.S. App. D.C. 13).

To warrant an instruction that a bona fide belief of a right to enter constitutes a defense to a charge of unlawful entry it is not sufficient that the accused merely claim a belief of a right to enter; a bona fide belief must have some reasonable basis. *J. T. Smith v. United States* (D.C. App. 1971, 281 A. 2d 438).

Defendant is not entitled to an instruction that a good-faith belief by him that he could enter area is a defense to charge of unlawful entry since defendant's transgression of construction site in the daytime when construction activity was in progress and workers were present could not be said to have created a right, or a reasonable belief in such, to trespass on the locked unguarded site at night. *Id.*

#### Jurisdiction

Under former section 11-603, the police court had jurisdiction of information charging that accused unlawfully entered and unlawfully declined to leave dwelling house in District of Columbia. *Fletcher v. McMahon* (1941, 121 F. 2d 729, 73 App. D. C. 263, certiorari denied 62 S. Ct. 131, 314 U. S. 662, 86 L. Ed. 531).

Appellant having been convicted in police court under this section appealed the case and by so doing deprived lower court of jurisdiction, and they had no power to commit appellant to jail. *Prioleau v. Superintendent of Wash. Asylum and Jail* (1925, 2 F. 2d 317, 55 App. D.C. 99).

#### Lawful arrest

Police officer who observed defendant in hallway of building and, upon questioning defendant, received no logical explanation for his presence and who thereupon learned from building manager that the building was usually kept locked and the public was not invited to enter had sufficient ground to arrest defendant for unlawful entry committed in officer's presence, and after that valid arrest, the right to search defendant naturally followed. *W. C. Best v. United States* (D.C. App. 1968, 237 A. 2d 825).

#### Lesser included offense rule

Lesser included offense rule was properly applied when court instructed jury that the offense of larceny from interstate commerce, for which offense appellant was charged, included the lesser offense of taking property without right, an offense for which appellant was not charged, and since sentence for taking property without right ran concurrently with sentence for unlawful entry, court need not consider claim of error predicated on the instruction. *W. E. Humphrey v. United States* (D.C. App. 1967, 236 A. 2d 438).

#### Person lawfully in charge

Under District of Columbia unlawful entry statute making it a misdemeanor offense for any person, without lawful authority to enter a public building against will of lawful occupant or of person lawfully in charge thereof, one who was commanding officer of White House police and who was responsible for security of building had authority to order defendants to leave when they violated the regulations respecting visitors at the White House. *D. H. Whittlesey, et al. v. United States* (D.C. App. 1966, 221 A. 2d 86).

#### Probable cause

Where the arresting officers had knowledge that no one had owner's permission to occupy particular vacant apartment, officers observed broken lock, damaged door panel and the opened door of the apartment, through which the defendant and companion could be seen, officers had probable cause to believe that the defendant and his companion had made unlawful entry, officers' entry into apartment without warrant to effect arrest was justified and search of the premises was valid as incident to lawful arrest. *C. Jones, Jr. v. United States* (D.C. App. 1971, 282 A. 2d 561).

#### Prosecution by indictment

Prosecution by indictment for unlawful entry was not constitutionally required where defendant was subject to imprisonment for more than one year when sentenced under the Federal Youth Corrections Act. *A. E. Harvin v. United States* (D.C. App. 1968, 245 A. 2d 307; aff'd 445 F. 2d 675, 144 U.S. App. D.C. 199; cert. denied 92 S. Ct. 292, 404 U.S. 943).

#### Questions for jury

In prosecution for unlawful attempt to enter a private building, evidence was sufficient to raise jury question as to defendant's guilt. *McFarland v. United State* (D.C. Mun. App. 1960, 163 F. 2d 627).



In prosecution for unlawfully entering a private dwelling against the will and without consent or authority of lawful occupant, wherein complaining witness presented evidence tending to show that she was tenant in possession of apartment and defense introduced testimony of rental agent that apartment was rented to a couple, whether complainant was a lawful occupant was a question for the jury. *Moore v. United States* (D. C. Mun. App. 1957, 136 A. 2d 868).

#### Reasonable cause for arrest

Court in prosecution for unlawful entry was not required to inquire into legality or illegality of defendant's arrest, where no evidence was obtained as result of arrest. *L. E. Smith v. United States* (D.C. Mun. App. 1961, 173 A. 2d 739).

Police officer who, while walking to rear of tavern more than one hour after closing time, saw a man who had been peering from rear of tavern, suddenly pull his head back, and who then observed two men walking away rapidly, one of whom, when stopped by officer, was holding hammer between his legs, had reasonable cause to believe that the two men were engaged in a felonious act, and, therefore, their arrest was proper and admission of hammer in evidence in subsequent criminal prosecution was proper. *McFarland v. United States* (D.C. Mun. App. 1960, 163 A. 2d 627).

#### Review—Remand

In a case in which guilty verdict was ambiguous for failure to state whether it referred to offense of house-breaking or to offense of unlawful entry, the court held that remand for new trial was appropriate remedy. *K. F. Glenn v. United States* (1969, 420 F. 2d 1323, 137 U.S. App. D.C. 120).

#### Sentence

Where youth was found guilty of unlawful entry, an offense punishable by fine or imprisonment in jail for not more than six months, he was subject to sentence under D.C. Code § 22-3202 or under Youth Corrections Act, and was properly sentenced under latter, which authorizes sentence thereunder on conviction of offense punishable by imprisonment, despite youth's service of seven months' presentence jail time for which he claimed credit under statute. *United States v. A. E. Lewis, Jr.* (1971, 447 F. 2d 1262, 145 U.S. App. D.C. 93).

#### Unlawful purposes of occupancy

In prosecution for unlawfully entering a private dwelling against will and without consent or authority of lawful occupant, issues as to whether complaining party occupied apartment under an alias or occupied it for purpose of having adulterous relations with another had no bearing on question of whether she was a lawful occupant. *Moore v. United States* (D. C. Mun. App. 1957, 136 A. 2d 868).

#### Verdict

Where defendant was charged with housebreaking and jury was instructed on elements of both housebreaking and on lesser included offense of unlawful entry and returned one word verdict of "guilty" without specifying to which offense this finding related, the verdict is ambiguous and conviction for housebreaking cannot be founded upon it. *K. F. Glenn v. United States* (1969, 420 F. 2d 1323, 137 U.S. App. D.C. 120).

### § 22-3103. Grave robbery—Buying or selling dead bodies.

Whoever, without legal authority or without the consent of the nearest surviving relative, shall disturb or remove any dead body from a grave for the purpose of dissecting, or of buying, selling, or in any way trafficking in the same, shall be imprisoned not less than one year nor more than three years. (Mar. 3, 1901, 31 Stat. 1334, ch. 854, § 891.)

#### CROSS REFERENCE

Unlawful traffic in dead bodies, see, also, § 2-206.

### § 22-3104. Depredation of fixtures in houses.

Whoever shall wilfully and without color of right enter into any occupied or unoccupied dwelling-house or other building, property of another, and shall cut, break, or tear from its place any gas-pipe, water-pipe, door-bell, or other fixture therein; or whoever shall in such dwelling-house or other building wilfully and without color of right cut, break, or tear down any wall or part of a wall, or door, with intent to cut, break, or tear from its place any pipe or fixture therein, shall be fined not more than two hundred dollars, or be imprisoned not more than two years, or both. (Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 825.)

### § 22-3105. Placing explosives with intent to destroy or injure property.

Whoever places, or causes to be placed, in, upon, under, against, or near to any building, car, vessel, monument, statue, or structure, gunpowder or any explosive substance of any kind whatsoever, with intent to destroy, throw down, or injure the whole or any part thereof, although no damage is done, shall be punished by a fine not exceeding one thousand dollars and by imprisonment for not less than two years or more than ten years. (Mar. 3, 1901, ch. 854, § 825a, as added Mar. 3, 1905, 33 Stat. 1033, ch. 1461; Dec. 27, 1967, Pub. L. 90-226, § 607, title VI, 81 Stat. 739.)

#### AMENDMENT

1967—Section 607, Act Dec. 27, 1967, Pub. L. 90-226, amended section by striking out "or by imprisonment not exceeding ten years.", and inserting in lieu, "and by imprisonment for not less than two years or more than ten years."

#### SENTENCE FOR OFFENSES COMMITTED PRIOR TO DEC. 27, 1967, AND SEPARABILITY OF PROVISIONS

See §§ 1101 and 1102 of Act Dec. 27, 1967, Pub. L. 90-226, set out as notes to § 22-501.

### § 22-3106. Stealing or injuring books, manuscripts, publications, works of art.

Any person who shall steal, wrongfully deface, injure, mutilate, tear, or destroy any book, pamphlet, or manuscript, or any portion thereof belonging to the Library of Congress, or to any public library in the District of Columbia, whether the property of the United States or of the District of Columbia or of any individual or corporation in said District, or who shall steal, wrongfully deface, injure, mutilate, tear, or destroy any book, pamphlet, document, manuscript, print, engraving, medal, newspaper, or work of art, the property of the United States, shall be held guilty of a misdemeanor, and, on conviction thereof, shall, when the offense is not otherwise punishable by some statute of the United States, be punished by a fine of not less than ten dollars nor more than one thousand dollars, and by imprisonment for not less than one month nor more than one year, or both, for every such offense. (Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 849; June 30, 1902, 32 Stat. 535, ch. 1329.)

#### AMENDMENT

1902—Act June 30, 1902, inserted after the words "United States" the words "or of the District of Columbia."



## CROSS REFERENCES

Government property or contracts, malicious mischief, see 18 U.S.C. § 1361.

Public money, property or records, embezzlement and theft, see 18 U.S.C. § 641.

## § 22-3107. Destroying or defacing public records.

Whoever maliciously or with intent to injure or defraud any other person defaces, mutilates, destroys, abstracts, or conceals the whole or any part of any record authorized by law to be made, or pertaining to any court or public office in the District, or any paper duly filed in such court or office, shall be fined not more than three hundred dollars or imprisoned not more than two years or both. (Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 844.)

## § 22-3108. Cutting down or destroying things growing on or attached to the land of another.

Whoever maliciously cuts down or destroys by girdling or otherwise, any standing or growing vine, bush, shrub, sapling, or tree on the land of another, or severs from the land of another any product standing or growing thereon, or any other thing attached thereto, shall, if the value of the thing destroyed, or the amount of damage done to any such thing or to the land is fifty dollars or more, be imprisoned for not less than one year nor more than three years, or, if such value or amount is less than that sum, shall be fined not less than five dollars nor more than one hundred dollars, or be imprisoned not more than one year, or both. (Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 847; Aug. 12, 1937, 50 Stat. 629, ch. 599.)

## AMENDMENT

1937—Act Aug. 12, 1937, increased the value from \$35 to \$50.

## § 22-3109. Destroying boundary trees.

Whoever maliciously cuts down, destroys, or removes any boundary tree, stone, or other mark or monument, or maliciously effaces any inscription thereon, either of his own lands or of the lands of any other person whatsoever, even though such boundary or bounded trees should stand within the person's own land so cutting down and destroying the same, shall be fined not more than one thousand dollars and imprisoned not exceeding one year. (Mar. 3, 1901, 31 Stat. 1333, ch. 854, § 880.)

## § 22-3110. Destroying trees or protections thereto on public grounds—Fastening horses thereto.

It shall not be lawful for any person or persons to girdle, break, wound, destroy, or in any manner injure any of the trees growing or planted and set, or which may hereafter be planted and set on any of the public grounds, open space, or squares or on any private lot, or on any of the streets, or avenues, roads or highways, in the District of Columbia, or any of the boxes, stakes, or any other protection thereof, under a penalty of not exceeding fifty dollars for each and every such offense; and if any person or persons shall tie or in any manner fasten a horse or horses to any of the trees, boxes, or other protection thereof on any streets or avenues, roads, or highways, on any of the public grounds belonging to the United States, or on any of the streets, avenues, or alleys, in the District of Columbia, each and

every such offender shall forfeit and pay for each offense a sum not exceeding ten dollars. (July 29, 1892, 27 Stat. 324, ch. 320, § 13.)

## CROSS REFERENCES

Cutting down or destroying things growing on land of another, see, also § 22-3108.

Prosecutions, see § 22-109.

## § 22-3111. Disorderly conduct in public buildings or grounds—Injury to or destruction of United States property.

Any person guilty of disorderly and unlawful conduct in or about the public buildings and public grounds belonging to the United States within the District of Columbia, or who shall wilfully injure the buildings or shrubs, or shall pull down, impair, or otherwise injure any fence, wall, or other inclosure, or shall injure any sink, culvert, pipe, hydrant, cistern, lamp, or bridge, or shall remove any stone, gravel, sand, or other property of the United States, or any other part of the public grounds or lots belonging to the United States in the District of Columbia, shall be fined not more than \$500, or imprisoned not more than six months, or both. (July 29, 1892, 27 Stat. 325, ch. 320, § 15; Oct. 20, 1967, Pub. L. 90-108, § 2, 81 Stat. 277.)

## CODIFICATION

This section contains the last part of act July 29, 1892. The first part of § 15 of the act appears herein as § 4-120. Section is also classified to 40 U.S.C. § 101.

## AMENDMENTS

1967—Section 2, Pub. L. 90-108, amended section by striking out "shall, upon conviction thereof, be fined not more than \$50." and inserted in lieu thereof "shall be fined not more than \$500, or imprisoned not more than six months, or both."

PROSECUTION OF PRIOR VIOLATIONS NOT AFFECTED BY OCT. 20, 1967, AMENDMENT, APPLICABILITY OF PUB. L. 90-108 TO VIOLATIONS OCCURRING AFTER OCT. 20, 1967

Pub. L. 90-108, section 3 provided as follows:

"Prosecutions for violations of sections 9-118, 9-119 to 9-126, 9-127 to 9-132 and of section 22-3111 occurring prior to the enactment of these amendments [Amendments to sections 9-118, 9-123, 9-125, 9-132 and 22-3111] shall not be affected by these amendments or abated by reason thereof. The provisions of this Act [Amendments to sections 9-118, 9-123, 9-125, 9-132 and 22-3111] shall be applicable to violations occurring after its enactment."

## CROSS REFERENCE

Prosecutions, see § 22-109.

## NOTES TO DECISIONS

## Information—Sufficiency

Defendants, who were arrested after refusing to move out of corridor in House wing of Capitol building when ordered to do so by Capitol police, were entitled to know with certainty offense with which they were charged and possible penalty threatened and were entitled to definite reference to the law which they had allegedly violated, and thus where, notwithstanding request of defense, no one had given citation of statute under which prosecution was being had, other than statement of prosecutor that two sections were involved, convictions under section carrying lighter sentence, as requested by prosecutor, were required to be set aside. *D. Smith et al. v. District of Columbia* (1967, 387 F. 2d 233, 128 U.S. App. D.C. 275).

Information charging defendant arrested during peace demonstration with disorderly conduct in that she did with intent to provoke breach of peace congregate with others on public street and on grounds of United States Capitol, and did refuse to move, which failed to specify which of several potentially applicable statutes was basis of prosecution, was insufficient. *D. Feeley v. District of Columbia* (1967, 387 F. 2d 216, 128 U.S. App. D.C. 258).



**Prosecution by U.S. attorney**

United States, through the United States attorney, and not the District of Columbia, through corporation counsel, is the proper prosecutive authority for alleged violation of this section prescribing maximum fine of \$500, or imprisonment for not more than six months, or both, for disorderly and unlawful conduct in or about public buildings and public grounds belonging to the United States within the District. *District of Columbia v. C. Ackerman* (D.C. App. 1971, 283 A. 2d 24).

**Sentence**

Since prosecutions were brought under general disorderly conduct sections rather than the Capitol Grounds statute, defendants should have been sentenced under statute providing that any person guilty of disorderly conduct in or about public buildings and public grounds shall upon conviction thereof be fined not more than \$50 so that sentences of 91 days in jail were improper notwithstanding that government might have had a choice as to which statute it would proceed under. *D. Feeley, A. Uhrie, B. Dunlap v. District of Columbia* (D.C. App. 1966, 220 A. 2d 325).

### § 22-3112. Destroying or defacing buildings, statues, monuments, offices, dwellings, and structures.

It shall not be lawful for any person or persons to wilfully or wantonly disfigure, cut, chip, or cover or rub with or otherwise place filth or excrement of any kind upon any property, public or private, in the District of Columbia, or any public or private building, statue, monument, office, dwelling or structure of any kind, or which may be in course of erection, or the doors, windows, steps, railing, fencing, balconies, balustrades, stairs, porches, or halls, or the walls or sides, or the walls of any inclosure thereof; or to write, mark, or paint obscene or indecent words or language thereon, or to draw, paint, mark, or write obscene or indecent figures representing obscene or indecent objects; or to write, mark or draw, or paint any other word, sign, or figure thereon, without the consent of the owner or proprietor thereof, or, in case of public property, of the person having charge, custody, or control thereof, under penalty of a fine not to exceed one hundred dollars, or imprisonment not to exceed six months, or both such fine and imprisonment. (July 29, 1892, 27 Stat. 322, ch. 320, § 1; July 8, 1898, 30 Stat. 723, ch. 638; Apr. 21, 1906, 34 Stat. 126, ch. 1647; Nov. 8, 1965, 79 Stat. 1307, Pub. L. 89-347, § 2.)

**AMENDMENTS**

1965—Section 2 of act Nov. 8, 1965, amended section by striking, "destroy, injure, disfigure, cut, chip, break" and inserting in lieu "disfigure, cut, chip."

1906—Act Apr. 21, 1906, inserted the words "wilfully or wantonly", increased the fine limits from \$50 to \$100 and provided for imprisonment or fine and imprisonment.

**CROSS REFERENCE**

Prosecution, see § 22-109.

**NOTES TO DECISIONS****Application of section**

This section does not apply to the destruction of movable property (see § 22-403). *Nation v. District of Columbia* (1910, 34 App. D.C. 453, 26 L.R.A., N.S., 996).

**Evidence**

In prosecution for destroying private property, where complainant purchased premises at foreclosure and sent a letter to defendant alleging ownership, and successfully prosecuted a suit for eviction, while deed was admissible evidence of ownership, it was not the only admissible evidence and complainant's testimony relating thereto, was equally admissible. *Sims v. United States* (D. C. Mun. App. 1956, 120 A. 2d 69).

Evidence supported conviction of destroying private property. *Id.*

**Indictment of information**

The value of the injured property need not be alleged or proved in prosecutions under this section. *Nation v. District of Columbia* (1910, 34 App. D.C. 453, 26 L.R.A., N.S., 996).

**Prosecutions by United States Attorney**

United States Attorney for District of Columbia rather than Corporation Counsel for District was the attorney who should prosecute offense of destroying private property in violation of the District of Columbia Code, where the offense was punishable by fine not to exceed \$100, or imprisonment not to exceed six months, or both. *District of Columbia v. Moody, Hill and Hamilton* (1962, 304 F. 2d 943, 113 U.S. App. D.C. 67).

**Questions for jury**

In prosecution for destroying private property, evidence upon the question as to whether complainant was holder of legal title or had right of possession when the offense was committed was sufficient for the jury. *Sims v. United States* (D. C. Mun. App. 1956, 120 A. 2d 69).

**Variance in proof**

There was no fatal variance between information charging defendant with defacing doors of elevator in private building by drawing, marking and writing sign or figure thereon and proof which showed that defendant, who did not ask for any further particulars, put stickers on door. *J. Patler, etc. v. District of Columbia* (D.C. Mun. App. 1961, 171 A. 2d 508).

### § 22-3113. Destroying or defacing building material for streets.

It shall not be lawful for any person or persons to destroy, break, cut, disfigure, deface, burn, or otherwise injure any building materials, or materials intended for the improvement of any street, avenue, alley, foot pavement, roads, highways, or inclosure, whether public or private property, or remove the same (except in pursuance of law or by consent of the owner) from the place where the same may be collected for purposes of building or improvement as aforesaid; or to remove, cut, destroy, or injure any scaffolding, ladder, or other thing used in or about such building or improvement, under a penalty of not more than twenty-five dollars for each and every such offense. (July 29, 1892, 27 Stat. 322, ch. 320, § 2.)

**CROSS REFERENCE**

Prosecutions, see § 22-109.

### § 22-3114. Destroying cemetery railing or tomb.

If any person shall maliciously cut down, demolish, or otherwise injure any railing, fence, or inclosure around or upon any cemetery, or shall injure or deface any tomb or inscription thereon, he shall be fined not more than one hundred dollars. (Mar. 3 1901, 31 Stat. 1327, ch. 854, § 850.)

### § 22-3115. Offenses against property of electric lighting, heating, or power companies.

Whoever shall knowingly connect or disconnect any electrical conductor belonging to any company using or engaged in the manufacture and supply of electric current for purposes of light, heat, and power, or either of them, or makes any connection with any such electrical conductor for the purpose of using or wasting the electric current, or who in any wise tampers with any meter used to register current consumed, or who interferes with the operating of any dynamo or other electrical appliance of such company, or tampers with or interferes with the poles.



wires, conduits, or other apparatus used by such companies, unless such person or persons shall be duly authorized by or be in the employ of such company, shall be punished by a fine not exceeding one thousand dollars or imprisonment not exceeding one year, or both. (June 30, 1902, 32 Stat. 534, ch. 1329, § 826a.)

#### § 22-3116. Tapping gas pipes.

Any person who, with intent to injure or defraud any gas company in the District of Columbia, shall make or cause to be made any pipe, tube, or other instrument or contrivance, or connect the same, or cause it to be connected with any main service pipe or other pipe for conducting or supplying illuminating gas in such manner as to connect with and be calculated to supply illuminating gas to any burner or orifice by which illuminating gas is consumed, around or without passing through the meter provided for the measuring and registering of the quantity of gas there consumed, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by imprisonment not exceeding six months or by fine not exceeding two hundred and fifty dollars. (June 23, 1874, 18 Stat. 280, ch. 480, § 15.)

#### § 22-3117. Tapping or injuring water-pipes—Tampering with water meters.

Any person who, with intent to injure or defraud the District of Columbia, shall make or cause to be made any pipe, tube, or other instrument or contrivance, or connect the same or cause it to be connected with any water main or service pipe or other pipe for conducting or supplying Potomac water, in such manner as to pass or carry the water, or any portion thereof, around or without passing through the meter provided for the measuring and registering of the Potomac water supplied to any premises, or who shall, without permission from the Commissioner of the District of Columbia, tamper with or break any water meter or break the seal thereof, or in any manner change the reading of the dial thereof, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by imprisonment not exceeding six months, or by fine not exceeding two hundred and fifty dollars. (Apr. 5, 1892, 27 Stat. 14 ch. 34.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 22-3118. Maliciously making water impure.

Every person who maliciously commits any act by reason of which the supply of water, or any part thereof, to the city of Washington, becomes impure, filthy, or unfit for use, shall be fined not less than \$500 nor more than \$1,000, or imprisoned at hard labor not more than three years nor less than one year. (R. S., § 1806; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

#### § 22-3119. Placing obstructions on or displacement of railway tracks.

Whoever maliciously places an obstruction on or near the track of any steam or street railway, or displaces or injures anything appertaining to such

track, with intent to endanger the passage of any locomotive or car, shall be imprisoned for not more than ten years. (Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 846.)

#### § 22-3120. Obstructing public road—Removing milestones.

If any person shall alter or in any manner obstruct or encroach on a public road, or cut, destroy, deface, or remove any milestones set up on such road, or place any rubbish, dirt, logs, or make any pit or hole therein, such person may be indicted, and, upon conviction thereof before the proper court, shall be fined or imprisoned, in the discretion of the court, according to the nature of the offense. (R. S., D. C., § 268.)

#### § 22-3121. Obstructing public highway.

Any person who, without lawful authority, shall obstruct the free use of any of the public highways, which had been used and recognized as public county roads for twenty-five years prior to May 3, 1862, and which were thereafter duly surveyed, recorded, and declared public highways according to law, shall be subject to a fine for each offense of not less than one hundred nor more than two hundred and fifty dollars and be imprisoned till the fine and the costs of suit and collection of the same are paid. (R. S., D. C., § 269.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22-3122.

#### § 22-3122. Fines under section 22-3121 to be collected in name of United States.

The fines provided for in section 22-3121 shall be collected in the name of the United States. (R. S., D. C., §§ 1, 2, 96, 270; June 11, 1878, 20 Stat. 102, ch. 180.)

### Chapter 32.—WEAPONS

#### Sec.

- 22-3201. Possession, sale, transfer, and use of dangerous weapons—Definition.
- 22-3202. Committing crime when armed—Added punishment.
- 22-3203. Unlawful possession of a pistol.
- 22-3204. Carrying concealed weapons.
- 22-3205. Exceptions to section 22-3204.
- 22-3206. Issue of licenses to carry pistol.
- 22-3207. Selling pistol to minors and others.
- 22-3208. Transfers of firearms regulated.
- 22-3209. Dealers of weapons to be licensed.
- 22-3210. Licenses of dealers of weapons—Records—By whom granted—Conditions thereof.
- 22-3211. False information forbidden in sale of weapons.
- 22-3212. Alteration of identifying marks of weapons prohibited.
- 22-3213. Exceptions.
- 22-3214. Possession of certain dangerous weapons prohibited—Exceptions.
- 22-3215. Penalties.
- 22-3215a. Manufacture, transfer, use, possession or transportation of molotov cocktails, or other explosives for unlawful purposes, prohibited—Definitions—Penalties.
- 22-3216. Separability of provisions.
- 22-3217. Dangerous articles—Definition—Taking and destruction—Procedure.

#### CROSS REFERENCE

Federal firearms control laws, see 18 U.S.C. §§ 921 to 928. Unlawful possession or receipt or transportation in commerce of firearms, see title 18 U.S.C. App. 1201 et seq.



### § 22-3201. Possession, sale, transfer, and use of dangerous weapons—Definition.

"Pistol," as used in this chapter, means any firearm with a barrel less than twelve inches in length.

"Sawed-off shotgun," as used in this chapter, means any shotgun with a barrel less than twenty inches in length.

"Machine gun," as used in this chapter, means any firearm which shoots automatically or semi-automatically more than twelve shots without re-loading.

"Person," as used in this chapter, includes individual, firm, association, or corporation.

"Sell" and "purchase" and the various derivatives of such words, as used in this chapter, shall be construed to include letting on hire, giving, lending, borrowing, and otherwise transferring.

"Crime of violence," as used in this chapter, means any of the following crimes, or an attempt to commit any of the same, namely: Murder, manslaughter, rape, mayhem, maliciously disfiguring another, abduction, kidnaping, burglary, robbery, housebreaking, larceny, any assault with intent to kill, commit rape, or robbery, assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment in the penitentiary. (July 8, 1932, 47 Stat. 650, ch. 465, § 1; Dec. 27, 1967, Pub. L. 90-226, § 501, title V, 81 Stat. 736.)

#### AMENDMENT

1967—Section 501, Act Dec. 27, 1967, Pub. L. 90-226 amended the definition "Crime of violence" by adding "robbery" thereto.

#### REPEALS

Section 17 of act July 8, 1932, provided that: "The following sections of the Code of Law for the District of Columbia, 1919, namely, sections 855, 856, and 857 [erroneously declared to be D.C. Code 1919, probably intended to read D.C. Code 1901; codified in D.C. Code 1929, title 6, §§ 114-116], and all other Acts or parts of Acts inconsistent herewith [act July 8, 1932], are hereby repealed."

#### SENTENCE FOR OFFENSES COMMITTED PRIOR TO DEC. 27, 1967, AND SEPARABILITY OF PROVISIONS

See §§ 1101 and 1102 of Act Dec. 27, 1967, Pub. L. 90-226, set out as notes to § 22-501.

#### CROSS REFERENCES

Minimum sentence when previously convicted of a crime of violence, see § 24-203.

Other provisions concerning regulations of firearms see § 1-227 and notes.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 24-203.

#### NOTES TO DECISIONS

##### Construction

Enactment of gun control law (this chapter) for the District of Columbia in 1932 did not foreclose further exercise of power granted District by 1906 Act (§ 1-227) authorizing Council to make and enforce all regulations deemed necessary for regulation of firearms in absence of expression in 1932 Act of intent to preempt the entire field and in view of demonstrated design of the regulations to leave areas preempted by the statute unaffected. *Maryland & District of Columbia Rifle and Pistol Association, Inc. v. W. E. Washington, Commissioner, et al.* (1971, 442 F.2d 123, 142 U.S. App. D.C. 375).

Unsuccessful efforts by D.C. Board of Commissioners to obtain legislation supplementing 1932 gun control law enacted for the District of Columbia, and congressional inaction on the Commissioners' requests, does not indicate doubt as to Commissioners' authority to adopt gun

control regulations and does not obliterate authority derived from 1906 statute (§ 1227) authorizing gun control regulations. *Id.*

##### Merger of offenses

Contention that it is improper for defendant to be convicted and sentenced on both counts I which charged under Federal mail robbery statute with assaulting post office custodian with intent to rob him, and count II under District of Columbia robbery and crime of violence statute with robbing the custodian because the assault charged in count I "merged" with completed robbery charged in count II will be considered by the Court of Appeals even though issue was not raised in trial court. *United States v. W. B. Spears* (1971, 449 F.2d 946, 145 U.S. App. D.C. 284).

##### Sentence

The Court of Appeals will consider claim that it was improper for the defendant to be convicted and sentenced on both counts I which charged under Federal mail robbery statute the assault of post office custodian with intent to rob him, and count II which charged under District of Columbia statutes the robbing of custodian, notwithstanding fact that the defendant received concurrent sentences, because of possible harmful effect on defendant of myriad collateral consequences of an improper double felony conviction and desirability of having such issue settled. *United States v. W. B. Spears* (1971, 449 F.2d 946, 145 U.S. App. D.C. 284).

### § 22-3202. Committing crime when armed—Added punishment.

(a) Any person who commits a crime of violence in the District of Columbia when armed with or having readily available any pistol or other firearm (or imitation thereof) or other dangerous or deadly weapon (including a sawed-off shotgun, shotgun, machinegun, rifle, dirk, bowie knife, butcher knife, switchblade knife, razor, blackjack, billy, or metallic or other false knuckles)—

(1) may, if he is convicted for the first time of having so committed a crime of violence in the District of Columbia, be sentenced, in addition to the penalty provided for such crime, to a period of imprisonment which may be up to life imprisonment; and

(2) shall, if he is convicted more than once of having so committed a crime of violence in the District of Columbia, be sentenced, in addition to the penalty provided for such crime, to a minimum period of imprisonment of not less than five years and a maximum period of imprisonment which may not be less than three times the minimum sentence imposed and which may be up to life imprisonment.

(b) Where the maximum sentence imposed under this section is life imprisonment, the minimum sentence imposed under subsection (a) may not exceed fifteen years' imprisonment.

(c) Any person sentenced under subsection (a) (2) of this section may be released on parole in accordance with chapter 2 of title 24, at any time after having served the minimum sentence imposed under that subsection.

(d) (1) Chapter 402 of title 18 of the United States Code (Federal Youth Corrections Act) shall not apply with respect to any person sentenced under paragraph (2) of subsection (a).

(2) The execution or imposition of any term of imprisonment imposed under paragraph (2) of subsection (a) may not be suspended and probation may not be granted.



(e) Nothing contained in this section shall be construed as reducing any sentence otherwise imposed or authorized to be imposed.

(f) No conviction with respect to which a person has been pardoned on the ground of innocence shall be taken into account in applying this section. (July 8, 1932, 47 Stat. 650, ch. 465, § 2; Dec. 27, 1967, Pub. L. 90-226, § 605, title VI, 81 Stat. 737; July 29, 1970, Pub. L. 91-358, § 205, title II, 84 Stat. 600.)

#### AMENDMENTS

1970—Section 205 of Act July 29, 1970, Public Law 91-358, amended section generally. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

1967—Section 605, Act Dec. 27, 1967, Pub. L. 90-226, amended section to read as set out in supplements I, II, and III of the 1967 edition of the code. For provisions of section prior to this amendment, see 1967 edition of the code.

#### APPLICABILITY OF 1970 AMENDMENT

Section 901(b)(3) of Pub. L. 91-358, provided as follows: (3) The amendments made by sections 201 [sections 22-104 and 22-104a] and 205 [Sections 22-3202 and 22-3213] of this Act shall apply with respect to any person who commits an offense after the effective date of this Act. [For effective date see note preceding § 11-101.]

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### SENTENCE FOR OFFENSES COMMITTED PRIOR TO DEC. 27, 1967, AND SEPARABILITY OF PROVISIONS

See §§ 1101 and 1102 of Act Dec. 27, 1967, Pub. L. 90-226, set out as notes to § 22-501.

#### CROSS REFERENCE

Minimum sentence when previously convicted of a crime of violence, see § 24-203.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22-3213, 24-203.

#### NOTES TO DECISIONS

##### Allen charge

Submission of "Allen" charge, with certain statements added thereto, in prosecution for robbery and assault, is not reversible error since the defendants did not object to the charge as given, either initially or as part of the supplementary instructions, and court's formulation did not in either instance constitute plain error. *United States v. J. Wilson* (1971, 449 F. 2d 1005, 145 U.S. App. D.C. 343).

##### Assistance of counsel

Where record indicated that the trial court was aware of defendant's long term dissatisfaction with his retained counsel, that defendant had sought to discharge counsel, that defendant had asked chief judge of District Court for counsel from legal aid agency and that defendant was a pauper seeking court appointed counsel, but record did not reflect specifically what action was taken by District Court, case would be remanded to District Court to determine what action, if any, was taken by District Court on motion to discharge counsel of record and request for appointed counsel and whether defendant was prejudiced thereby. *United States v. T. R. Thomas* (1971, 450 F. 2d 1355, 146 U.S. App. D.C. 308).

##### Consecutive sentences

Sentencing of defendant, who was adjudged guilty on five counts of assaulting five individuals with a dangerous weapon and on one count of robbery from the person, to consecutive terms of imprisonment for robbery and assault is not error since assaults on four individuals, excluding assault charge relating to robbery victim, are separate offenses from robbery and defendant had prior felony conviction. *G. Sutton, Jr. v. United States* (1970, 434 F. 2d 462, 140 U.S. App. D.C. 188; cert. denied 91 S. Ct. 1676, 402 U.S. 988).

If additional punishment is to be meted out in armed robbery prosecution for use of a dangerous weapon, consecutive sentences for robbery and assault with dangerous weapon may be an inappropriate means to accomplish that result and more impregnable sentence may result if the offense is charged and sentenced under § 22-3201 providing that robbery as crime of violence may be punished more severely when committed with a dangerous weapon and this section authorizing indeterminate sentence up to life for crimes of violence when committed with a dangerous weapon. *Id.*

##### Construction

The Federal mail robbery statute and the District of Columbia robbery and crime of violence statutes are applicable throughout the District of Columbia. *United States v. W. B. Spears* (1971, 449 F. 2d 946, 145 U.S. App. D.C. 284).

Where evidence in proof of count II which charged defendant under District of Columbia robbery and crime of violence statutes with robbing post office custodian of money showed that the defendant actually consummated the same robbery he was charged with attempting in count I under the Federal mail robbery statute, defendant could not be convicted of both the attempt and the completed robbery since Congress did not intend that a statute drawn to proscribe attempt should also support a separate conviction for completed offense when defendant is charged with and convicted of substantially the same crime he is charged with attempting. *Id.*

##### Dangerous or deadly weapon

A pistol, even though nonoperable, was a "dangerous weapon" within meaning of statute forbidding suspension of sentence or probation for person committing crime of violence when armed with a dangerous or deadly weapon. *United States v. J. Prater* (1972, 462 F. 2d 292, 149 U.S. App. D.C. 188).

##### Double jeopardy

The constitutional immunity from double jeopardy is a personal right which, if not affirmatively pleaded by defendant at time of trial, will be regarded as waived. *United States v. C. E. Scott* (1972, 464 F. 2d 832, 150 U.S. App. D.C. 323).

Where defendant did not raise at his second trial the issue that his acquittal of armed robbery at first trial was acquittal of unarmed robbery as well, defendant waived the defense of double jeopardy. *Id.*

Where first jury returned verdict of not guilty of armed robbery but was unable to agree as to whether defendant was an unarmed robber and mistrial was declared, the acquittal of armed robbery was not an acquittal of unarmed robbery charge and double jeopardy prohibition did not preclude retrial of unarmed robbery charge. *Id.*

##### Due process

Exhibition, in presence of defense counsel, of photograph of formal counseled lineup to two eyewitnesses to robbery on day of robbery trial, 14 months after the robbery, did not constitute violation of due process. *United States v. W. S. King* (1972, 461 F. 2d 152, 149 U.S. App. D.C. 61).

##### Evidence

Government is not guilty of any impropriety in failing to produce photographs of defendants, made on day of arrest, before they were demanded by defense counsel. *United States v. P. J. Trantham, Jr.* (1971, 448 F. 2d 1036, 145 U.S. App. D.C. 113).

##### Admissibility

In prosecution for armed robbery of bus passengers and assault with dangerous weapon, even if the defendant's statement, "I didn't mean to do it" made after he was arrested and brought back to the scene and confronted by outraged passengers was somehow attributable to hostile confrontation of passengers, it was not of character to justify finding that it undermined fairness of trial, considering evidence as whole. *United States v. I. Porcha* (1971, 450 F. 2d 697, 146 U.S. App. D.C. 236).

##### Sufficiency

Evidence sustained conviction of first-degree felony-murder, first-degree premeditated murder and armed robbery. *United States v. R. L. Mack* (1972, 466 F. 2d 333, 151 U.S. App. D.C. 162; cert. denied 93 S. Ct. 297, 409 U.S. 952).



Evidence including testimony of policemen and victims that there was a gun and that a voiced threat was made to shoot one victim was sufficient to justify jury in findings that gun was dangerous and that the offense of assault with intent to rob was committed while armed with a dangerous weapon as alleged in indictment. *United States v. J. Prater* (1972, 462 F. 2d 292, 149 U.S. App. D.C. 188).

Evidence on issue of joint criminal venture and possession of purse and shotgun found in speeding automobile, occupied by defendants as driver and passenger, a short time after a purse had been forcibly taken from a pedestrian by two men, one of whom was armed with pistol, was sufficient to support conviction of armed robbery, assault with a dangerous weapon and possession of unregistered firearm, notwithstanding that at least one of four or five original occupants of vehicle had fled and that identification of defendants was "inconclusive" at best. *United States v. J. E. McCall* (1972, 460 F. 2d 952, 148 U.S. App. D.C. 444).

Evidence that, inter alia, the defendant and two other men entered store together, that they conversed together until other customers left the store, that defendant did not lie on the floor when one of the codefendants, with a gun, announced a "stick-up" and said "To the floor.", and that defendant moved from near the door to near the cash register after a codefendant ordered store employee to open it is sufficient to support defendant's conviction for armed robbery and assault with a dangerous weapon, and conflicting testimony of defendant and his codefendants whereby they all sought to establish that defendant and one of his codefendants were innocent bystanders did not destroy the permissible inference of defendant's guilt. *United States v. W. D. Lumpkin* (1971, 448 F. 2d 1085, 145 U.S. App. D.C. 162).

Evidence, including permissible inference jury was permitted to draw from fact that the defendant was found within an hour of larceny in exclusive possession of recently stolen truck, supported convictions of kidnapping of truck helper, armed robbery, and assault with a dangerous weapon. *United States v. L. B. Wolford* (1971, 444 F. 2d 876, 144 U.S. App. D.C. 1).

Complaining witness' testimony that he was robbed at gunpoint is sufficient to sustain conviction for armed robbery even though the weapon used was not put in evidence. *United States v. R. Stevenson* (1971, 443 F. 2d 661, 143 U.S. App. D.C. 246).

Evidence that the defendant was seen entering getaway car, carrying a gun, some ten minutes before robbery, accompanied by one of confessed active perpetrators, that someone drove getaway car, and that the defendant was seen with two of active robbers one day later is sufficient to take to jury aiding and abetting case against defendant for entering bank with intent to commit robbery therein, bank robbery, armed robbery, and assault with a dangerous weapon. *United States v. T. Parker* (1971, 442 F. 2d 779, 143 U.S. App. D.C. 57).

#### Harmless error

In prosecution for assault with intent to kill while armed and carrying dangerous weapon, in view of overwhelming direct evidence timely placing the defendant at scene of crime and equivocal and unsupported nature of his own testimony concerning his whereabouts at time of offense, any emphasis by the court or his counsel on his more general defenses and any other claimed error were harmless beyond reasonable doubt. *United States v. W. D. Craven* (1972, 458 F. 2d 802, 147 U.S. App. D.C. 383).

In view of clear evidence that the defendant aided and abetted his confederate who was armed with a gun, any error concerned with alleged prolixity of indictment that charged both armed robbery and robbery, or any other claim of defect in presentation of two theories of robbery to jury, is harmless. *United States v. I. Porcha* (1971, 450 F. 2d 697, 146 U.S. App. D.C. 236).

#### Identification

Where circumstances of photographic identification of defendant by one of the eyewitnesses was fully explored at pretrial hearing and there was no suggestion that police had acted wilfully, recklessly or in bad faith in not producing the photographs which made up group from which witness selected defendant's picture at a time before the

importance of recording photographs used in group was emphasized by any court, failure of police to produce photographs at trial, in which Government did not rely on photographic identification and made no reference to it, was not prejudicial to defendant who asserted that failure to produce pictures circumscribed his right to explore fairness of identification process. *United States v. H. R. Thomas, Jr.* (1972, 463 F. 2d 314, 149 U.S. App. D.C. 368; cert. denied 93 S. Ct. 198, 409 U.S. 870).

Although absence of photographs used in making up group of pictures shown to eyewitness who picked defendant's picture was a factor to be considered in weighing evidence concerning identification of defendant by eyewitness, the absence of photographs did not create any presumption of impropriety in identification process. *Id.*

Case must be considered on its own facts, and convictions based on eyewitness identification at trial following pretrial identification by photograph will be set aside on that ground only if photographic identification procedure was so impermissibly suggestive as to give rise to very substantial likelihood of irreparable misidentification. *United States v. W. S. King* (1972, 461 F. 2d 152, 149 U.S. App. D.C. 61).

Where witnesses to robbery had ample opportunity to observe defendant at time of robbery, prosecutor offered pretrial photographic identification procedure for protection of defendant, the viewing by the two witnesses of photographs of formal counseled, corporeal lineup was in presence of defense counsel and the procedure was conducted fairly, the photographic identification procedure was not so impermissibly suggestive as to give rise to very substantial likelihood of irreparable misidentification. *Id.*

Fact that employee of robbed liquor store was unable to identify defendant as robber did not establish that in-court identification by part-owner of liquor store did not have source independent of photographic and lineup identifications where employee and part-owner observed robbers from different angles and under different stresses. *United States v. L. T. Lee* (1972, 459 F. 2d 1365, 148 U.S. App. D.C. 341).

Where victims of robbery reported that one robber had short hair and the other had "an African haircut," photographic identification from nine photographs of five men with bush haircuts and four with shorter hair was not impermissibly suggestive. *Id.*

Identification of the defendants who were charged with armed robbery and assault with a deadly weapon, by victim, after defendants were picked up near scene of the crime and brought back to a squad car did not violate the defendants' due process rights on theory identification was tainted by suggestive circumstances surrounding it, since the victim had given officer a detailed description of the robbers, had participated in the search for them and in fact had pointed out defendants to the arresting officer. *United States v. J. Wilson* (1971, 449 F. 2d 1005, 145 U.S. App. D.C. 343).

#### Indictment

The words "said defendants being then and there armed with a certain pistol" were considered as mere surplusage to an indictment for robbery and not to charge a separate offense for the purpose of increasing the punishment. *Tomlinson v. United States* (1938, 93 F. 2d 652, 68 App. D.C. 106, 114 A.L.R. 1315, certiorari denied 58 S. Ct. 645, 303 U.S. 646, 82 L. Ed. 1102).

#### Insanity defense

Where record unequivocally established that, after three years of representing defendant, defense counsel concurred with conclusions reached by psychiatrist and judge that defendant was a malingerer and expressed opinion that it was tactically unwise to raise an insanity defense unless he felt he had a chance, defendant was not entitled to reversal of conviction of armed robbery, assault with a deadly weapon and carrying a pistol without a license on ground of judicial interference with his defense counsel's attempt to pursue insanity issue. *United States v. F. L. Simms* (1972, 463 F. 2d 1273, 150 U.S. App. D.C. 182).

Trial judge's decision not to interpose an insanity defense sua sponte was not an abuse of discretion constituting reversible error, especially in view of finding that defendant was malingering. *Id.*



**Instructions**

Where prosecution goes beyond offering identical hearsay testimony elicited by defense, court should give immediate limiting instruction. *United States v. M. Thompson, Jr.* (1972, 465 F. 2d 583, 150 U.S. App. D.C. 403).

Where defendant elicited hearsay testimony from prosecution witness for purpose of impeachment and did not request any limiting instruction, failure of trial court to sua sponte give limiting instruction following Government's examination of witness during which same hearsay testimony was offered in light favorable to Government was not reversible error. *Id.*

Evidence on question as to whether missing alibi witness was peculiarly available to defendant was sufficient to support instruction that failure of party to produce as witness one peculiarly within power of such party creates inference that such testimony would be unfavorable. *United States v. C. E. Scott* (1972, 464 F. 2d 832, U.S. App. D.C. 323).

Instruction on defendant as witness, including statement that jury might consider defendant's vital interest in outcome, was not improper. *United States v. J. Jones* (1972, 459 F. 2d 1225, 148 U.S. App. D.C. 201).

Viewing the trial court's charge in its entirety clearly showed that instruction on specific intent was not omitted in prosecution for armed robbery, assault with a dangerous weapon and carrying a dangerous weapon. *United States v. S. F. Gaither* (1971, 440 F. 2d 262, 142 U.S. App. D.C. 234).

Since the defendant's trial counsel did not move, during time either side was presenting evidence, for order of production of the two possible witnesses who were alleged to have been in the house at time of robbery, and there was no showing that government had control over the witnesses, the trial court properly denied missing witness instruction. *United States v. R. K. Pugh* (1970, 436 F. 2d 222, 141 U.S. App. D.C. 68).

**Jurisdiction**

Where Superior Court judge dismissed juvenile's petition for habeas corpus without prejudice to its being filed in the United States District Court for the District of Columbia, the respondent was federal officer, petitioner was charged with federal offense as well as with violations of District of Columbia law and petitioner was challenging the conditions of his confinement, federal court had jurisdiction to consider the petition. *J. Bland v. C. M. Rodgers* (1971, 332 F. Supp. 989).

**Merger of offenses**

Contention that it is improper for defendant to be convicted and sentenced on both counts I which charged under Federal mail robbery statute with assaulting post office custodian with intent to rob him, and count II under District of Columbia robbery and crime of violence statute with robbing the custodian because the assault charged in count I "merged" with completed robbery charged in count II will be considered by the Court of Appeals even though issue was not raised in trial court. *United States v. W. B. Spears* (1971, 449 F. 2d 946, 145 U.S. App. D.C. 284).

The part of the Federal mail robbery statute prohibiting assault was intended by Congress to prohibit certain kinds of attempts to rob and cannot support an independent conviction when a defendant is charged with and convicted of committing, in violation of robbery statute applicable in District of Columbia, the same crime he is charged with attempting. *Id.*

Where helper on truck was detained and transported against his will to a different location, several miles away from the scene where truck was hijacked, and purpose of detention, to facilitate success of hijacking, was to secure benefit to hijackers, two separate and distinct crimes were committed, i.e., kidnapping and armed robbery of contents of truck, and the offenses did not merge. *United States v. L. B. Wolford* (1971, 444 F. 2d 876, 144 U.S. App. D.C. 1).

**Prosecutions**

In a robbery case, the Government has the right to charge, as separate assaults, assaults against bystanders who are not robbed. *G. Sutton, Jr. v. United States* (1970, 434 F. 2d 462, 140 U.S. App. D.C. 188; cert. denied 91 S. Ct. 1676, 402 U.S. 988).

Government has the right, in robbery prosecution, to charge lesser included or alternative offenses to armed robbery in order to allow for contingencies in proof. *Id.*

The Government may decline to charge armed robbery under this section authorizing an indeterminate sentence up to life for crimes of violence when committed with a dangerous weapon, and may instead rely on prior formulation of robbery and assault with a dangerous weapon. *Id.*

**Question for jury**

Whether defendant, who armed himself with a pistol following discovery of theft of tape deck from his automobile, who attempted to retrieve deck when companion discovered deck in service station and who shot and seriously wounded service station attendant following argument, had acted in self-defense was for jury. *United States v. D. W. McCrae* (1972, 459 F. 2d 1140, 148 U.S. App. D.C. 116).

**Remand**

Conviction of juvenile of first-degree felony-murder armed robbery, assault with dangerous weapon, assault upon police officer with dangerous weapon and carrying dangerous weapon would be remanded to District Court to consider possibility of sentencing under the Youth Corrections Act. *United States v. W. Howard* (1971, 449 F. 2d 1086, 146 U.S. App. D.C. 10).

**Right to counsel**

Defendant's constitutional right to counsel was not violated when after his arrest but in absence of counsel police showed eyewitnesses a group of photographs and an eyewitness, who had had a good opportunity for observation of defendant did pick defendant's photograph, where judge found that there was an independent source for the identification in court and there was no evidence of unfairness in exhibition of photographs. *United States v. H. R. Thomas, Jr.* (1972, 463 F. 2d 314, 149 U.S. App. D.C. 368; cert. denied 93 S. Ct. 198, 409 U.S. 870).

**Sentence**

The Court of Appeals will consider claim that it was improper for the defendant to be convicted and sentenced on both counts I which charged under Federal mail robbery statute the assault of post office custodian with intent to rob him, and count II which charged under District of Columbia statutes the robbing of custodian, notwithstanding fact that the defendant received concurrent sentences, because of possible harmful effect on defendant of myriad collateral consequences of an improper double felony conviction and desirability of having such issue settled. *United States v. W. B. Spears* (1971, 449 F. 2d 946, 145 U.S. App. D.C. 284).

Where youth was found guilty of unlawful entry, an offense punishable by fine or imprisonment in jail for not more than six months, he was subject to sentence under D.C. Code § 22-3202 or under Youth Corrections Act, and was properly sentenced under latter, which authorizes sentence thereunder on conviction of offense punishable by imprisonment, despite youth's service of seven months' presentence jail time for which he claimed credit under statute. *United States v. A. E. Lewis, Jr.* (1971, 447 F. 2d 1262, 145 U.S. App. D.C. 93).

**Speedy trial**

A delay of over one year between arrest and trial raises a Sixth Amendment claim of prima facie merit and places on government necessity of justification, the burden of which increases with length of the delay, and when the delay approaches a year and one half, government must provide a justification which convincingly outweighs prejudice which can normally be assumed to have been caused defendant. *United States v. E. Rucker, Jr.* (1972, 464 F. 2d 823, 150 U.S. App. D.C. 314).

A defendant would be deemed significantly prejudiced by 18-month delay in bringing his case to trial where the delay might well have cost defendant opportunity to serve most of sentence for offense of which he was found guilty concurrently with sentences imposed at a prior time, and where government failed to present convincing justification for the delay. *Id.*

**Variance**

There is no fatal variance between count which charged that the defendant took money from the "immediate actual possession" of post office custodian and proof that



money he took was taken from postal employees, where the evidence showed that custodian had control and custody of money taken, that the defendant took money from an area within which the custodian reasonably could have been expected to exercise some physical control, and that the defendant did so by force directed at the custodian personally. *United States v. W. B. Spears* (1971, 449 F. 2d 946, 145 U.S. App. D.C. 284).

#### Witnesses

Trial court properly rejected attempt by two witnesses who were unfamiliar with the defendant's reputation as to character traits in issue in robbery and assault case to testify as to his character. *United States v. W. A. Hinkle* (1971, 448 F. 2d 1157, 145 U.S. App. D.C. 234).

### § 22-3203. Unlawful possession of a pistol.

No person shall own or keep a pistol, or have a pistol in his possession or under his control, within the District of Columbia, if—

- (1) he is a drug addict;
- (2) he has been convicted in the District of Columbia or elsewhere of a felony;
- (3) he has been convicted of violating section 22-2701, section 22-2722, or sections 22-3302 to 22-3306; or
- (4) he is not licensed under section 22-3210 to sell weapons, and he has been convicted of violating this chapter.

No person shall keep a pistol for, or intentionally make a pistol available to, such a person, knowing that he has been so convicted or that he is a drug addict. Whoever violates this section shall be punished as provided in section 22-3215, unless the violation occurs after he has been convicted of a violation of this section, in which case he shall be imprisoned for not more than ten years. (July 8, 1932, 47 Stat. 651, ch. 465, § 3; June 29, 1953, 67 Stat. 93, ch. 159, § 204(b).)

#### AMENDMENT

1953—Act June 29, 1953, amended section by substituting the provisions of the text for former language which had provided that no one who had been convicted of a crime of violence should own or possess a pistol in the District of Columbia.

#### DEFINITION

Section 204(a) of act June 29, 1953, provided that: "For the purposes of this section [amending this section and sections 22-3204, 22-3207, 22-3208, 22-3210, and 22-3214], the term 'Dangerous Weapons Act' means the Act of July 8, 1932, as amended, providing for the control of dangerous weapons in the District."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-3207, 22-3208, 22-3210, 24-203.

#### NOTES TO DECISIONS

##### Assistance of counsel

The record did not sustain the claim of ineffective assistance of counsel who was a defense attorney with many years of experience and who presented all substantial defenses, made appropriate motions and objections, attempted to suppress the evidence on the charge of unlawful possession of a pistol after conviction of a felony, and was able to obtain acquittal on a charge of threats to do bodily harm and directed verdict in defendant's favor on a charge of assault by threatening in a menacing manner. *I. Gressette v. United States* (D.C. App. 1969, 256 A. 2d 418).

##### Defenses

Even though defendant, who was charged with making threats in a menacing manner and with unlawfully possessing an automatic pistol, had been discharged from hospital as having recovered from a mental disorder less

than two months before date of alleged crimes, usual presumption of defendant's sanity, under District of Columbia law, existed at the time of trial. *Williams v. United States* (D. C. Mun. App. 1954, 104 A. 2d 828).

##### Double jeopardy

In a case where a defendant waived his right to jury trial and the government entered nolle prosequi after witnesses had been sworn, but before the first witness began to testify, jeopardy did not attach and did not bar subsequent prosecution for carrying pistol without a license. *C. R. Newman v. United States* (1969, 410 F. 2d 259, 133 U.S. App. D.C. 271).

Where defendant was charged by information with violation of statute which makes it unlawful for one to own or have in his possession a pistol if previously convicted of possession of a prohibited weapon, and before any witness took stand prosecuting attorney announced that Government could not go forward with charge and would nolle prosequi and bring new charge of carrying a pistol without a license, plea of double jeopardy was not a valid plea in new prosecution because the two informations charged separate and distinct offenses. *C. R. Newman v. United States* (D.C. App. 1968, 239 A. 2d 152).

##### Evidence—Admissibility

Where police officer was merely investigating possibility that crime might have been committed when he was told by defendant that he had been playing with gun which had gone off accidentally and officer did not believe that crime had been committed until defendant stated he was on parole, statement made by defendant was not inadmissible on basis that defendant had not been advised of his rights and did not have assistance of counsel. *Coleman v. United States* (D.C. App. 1966, 219 A. 2d 496).

##### Corroboration

Defendant's admission that he had been playing with gun and it went off accidentally was sufficiently corroborated by testimony of another placing defendant in room with victim when victim was shot and by detective's testimony that the other person had told him that defendant accidentally shot victim, in prosecution for unlawful possession of pistol after conviction of felony. *Coleman v. United States* (D.C. App. 1966, 219 A. 2d 496).

##### Prior conviction

While statute provided for imprisonment for not more than 10 years on second conviction of carrying a dangerous weapon, where there was no proof that defendant had ever been convicted previously under such statute the felony penalty could not be invoked, so that charge that defendant was in unlawful possession of pistol after he had been previously convicted for carrying a dangerous weapon was within jurisdiction of District of Columbia Court of General Sessions, which could not impose fine of more than \$1,000 or a sentence of longer than one year. *R. B. Burrell v. United States* (D.C. App. 1966, 223 A. 2d 377).

##### Proof of possession

Introduction of pistol in evidence was not necessary to prove unlawful possession of pistol. *Coleman v. United States* (D.C. App. 1966, 219 A. 2d 496).

Inasmuch as suppression order went only to pistol which was wrongfully seized by police, defendant's possession of the pistol could properly be established by independent means, in prosecution for unlawful possession of a pistol after conviction of a felony. *Id.*

##### Prosecution

Prosecutor had authority to charge the defendant, a felon who possessed an unlicensed pistol while not in his dwelling or on his land, under felony-repeater provisions of § 22-3204 rather than under misdemeanor statute [this section] and by doing so did not deny right to equal protection. *R. F. Palmore v. United States* (D.C. App. 1972, 290 A. 2d 573; see also 93 S. Ct. 66, 409 U.S. 840).

##### Sentences

Municipal court could impose a sentence to commence at termination of that imposed for another distinct offense, irrespective of whether initial sentence was imposed by the municipal court or by the district court. *Williams v. United States* (D. C. Mun. App. 1957, 133 A. 2d 112).



**Subject of search**

Under the circumstances of this case, it was not unreasonable for officers to seize pistol which, as convicted felon, defendant was forbidden to possess, incidental to authorized search of his apartment for narcotics, in absence of showing that presence of pistol on premises was attributable to eight-day delay in execution of search warrant. *J. E. Curtis v. United States* (D.C. App. 1970, 263 A. 2d 653).

**Witnesses**

Defendant had no standing to challenge overruling Fifth Amendment claim of a witness. *Coleman v. United States* (D.C. App. 1966, 219 A. 2d 496).

Privilege against self-incrimination is personal to witness who can waive privilege. *Id.*

**§ 22-3204. Carrying concealed weapons.**

No person shall within the District of Columbia carry either openly or concealed on or about his person, except in his dwelling house or place of business or on other land possessed by him, a pistol, without a license therefor issued as hereinafter provided, or any deadly or dangerous weapon capable of being so concealed. Whoever violates this section shall be punished as provided in section 22-3215, unless the violation occurs after he has been convicted in the District of Columbia of a violation of this section or of a felony, either in the District of Columbia or in another jurisdiction, in which case he shall be sentenced to imprisonment for not more than ten years. (July 8, 1932, 47 Stat. 651, ch. 465, § 4; Nov. 4, 1943, 57 Stat. 586, ch. 296; Aug. 4, 1947, 61 Stat. 743, ch. 469; June 29, 1953, 67 Stat. 94, ch. 159, § 204(c).)

**AMENDMENTS**

1953—Act June 29, 1953, amended section by striking out proviso authorizing arrests without a warrant and searches and seizures pursuant thereto for violation of the section which is now covered by section 23-306 and to provide for a maximum penalty of ten years for a conviction of violating the section after having previously been convicted of such offense, or of a felony.

1947—Act Aug. 4, 1947, added proviso authorizing arrests without a warrant and searches and seizures pursuant thereto for violation of the section.

1943—Act Nov. 4, 1943, amended section by inserting word "either openly or" preceding "concealed on or about", and by adding "capable of being so concealed" following "deadly or dangerous weapon."

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 22-3205.

**NOTES TO DECISIONS****Abuse of discretion**

Where names of alleged alibi witnesses were known on day of trial and alibi testimony of witnesses, in light of complainant's positive identification of his assailant, would not have produced defendant's acquittal, refusal of defendant's motion for new trial on basis of newly discovered evidence consisting of alibi witnesses was not an abuse of discretion. *J. Williams v. United States* (1972, 295 A. 2d 503).

**Acquiescence in plea of insanity**

Where petitioner had not himself sought introduction of insanity defense at his trial and had not acquiesced in assertion of that defense, his commitment to hospital for the mentally ill following his acquittal by reason of insanity was not authorized and he was entitled to habeas corpus. *C. C. Rouse v. D. C. Cameron, Sup't etc.* (1967, 387 F. 2d 241, 128 U.S. App. D.C. 283).

**Appeal and error**

Court's refusal to permit defendant, who was arrested after guns were found in vehicle which had been occupied by him and others and which had been stopped after officers observed wired-on license plates and defective tail

lights, to inquire as to nature of police procedure followed in cases of routine spot checks was not error. *D. E. Garriss, Jr. v. United States* (D.C. App. 1972, 295 A. 2d 510).

Trial court erred in granting pretrial motion of defendant to suppress evidence seized without warrant on ground that the information was defective, since motion could be made only by defendant aggrieved by unlawful search or seizure and for defendant to prevail it is necessary for him to demonstrate that the property was illegally seized without warrant. *United States v. R. E. Hobby* (D.C. App. 1971, 275 A. 2d 235).

Record in prosecution for carrying a pistol without a license in violation of this section supported finding that defendant, to whom Miranda warnings were read by policeman from standard police form and who was given the form to read in police station before being questioned, but who was not asked if he understood contents of form, had been sufficiently informed of his right to remain silent and to counsel. *M. J. Brewster v. United States* (D.C. App. 1970, 271 A. 2d 409).

In view of the overwhelming evidence that the particular address claimed by defendant to be his dwelling house was not his dwelling house, any error with respect to whether defendant waived any of his constitutional rights to remain silent and to counsel before being questioned as to his residence was harmless. *Id.*

Where record showed that defendant was found in possession of concealed weapon and his own testimony on trial confirmed such fact, absence of indication that defendant made informed decision, after appropriate advice, to proceed with joint counsel did not require reversal of conviction for carrying concealed weapon. *F. J. Ford v. United States of America* (1967, 379 F. 2d 123, 126 U.S. App. D.C. 346).

Record on appeal from conviction for carrying concealed pistol without license failed to establish plain error warranting reversal, notwithstanding failure to raise issue below, on ground that defendant's arrest for disorderly conduct was sham employed by police as gamble for detecting larger crime. *H. Johnson v. United States* (1966, 370 F. 2d 489, 125 U.S. App. D.C. 243).

**Arrest**

Special police officer, who had been appointed under authority of § 4-115 authorizing commissioning of such officers for duty in connection with property of or under control of corporation or individual, had authority to arrest the defendant, whom officer noted had revolver in top of his trousers, for misdemeanor of carrying a concealed weapon. *United States v. C. J. Dorsey* (1971, 449 F. 2d 1104, 146 U.S. App. D.C. 28).

**Assistance of counsel**

Failure of defense counsel, in prosecution for carrying a pistol without a license and for unlawful possession of marihuana, to call uncle of defendant for purposes of interrogating uncle as to uncle's ownership or prior possession of pistol, did not deprive defendant of his constitutional right to adequate representation where, at a previous trial of defendant for the same offenses, it was suggested to counsel that uncle might claim his Fifth Amendment privilege. *J. Terrell v. United States* (D.C. App. 1972, 294 A. 2d 860; cert. denied 93 S. Ct. 1398, 410 U.S. 938).

Where record indicated that the trial court was aware of defendant's long term dissatisfaction with his retained counsel, that defendant had sought to discharge counsel, that defendant had asked chief judge of District Court for counsel from legal aid agency and that defendant was a pauper seeking court appointed counsel, but record did not reflect specifically what action was taken by District Court, case would be remanded to District Court to determine what action, if any, was taken by District Court on motion to discharge counsel of record and request for appointed counsel and whether defendant was prejudiced thereby. *United States v. T. R. Thomas* (1971, 450 F. 2d 1355, 146 U.S. App. D.C. 308).

**Bifurcated trial**

Refusal of trial court to grant bifurcated trial, sought on ground that defendant would defend on ground of want of criminal responsibility, was not reversible error where defense assured trial court that there was no defense on merits, and evidence to prove that defendant was one who robbed filling station was very strong. *United*



*States v. R. A. Grimes* (1969, 421 F. 2d 1119, 137 U.S. App. D.C. 184).

#### Burden of proof

In prosecution for carrying a pistol without a license, prosecution had no burden of proving that defendant either owned the pistol, customarily carried it, or was intending to use it. *United States v. R. Freeman* (1972, 462 F. 2d 290, 149 U.S. App. D.C. 186).

#### Burden of proving exception

In prosecution for carrying a pistol without a license, the defendant has the burden of bringing himself within exception providing that no person shall carry a pistol without a license except in his dwelling house or place of business or on other land possessed by him. *R. F. White v. United States* (D.C. App. 1971, 283 A. 2d 21).

Defendant had burden of bringing himself within statutory exception to offense charged rather than that of the prosecution to negative it. *M. L. Williams v. United States* (D.C. App. 1968, 237 A. 2d 539).

#### Concealed about his person

"The words 'concealed about his person, as used in the statute, were intended to mean and do mean concealed in such proximity to the person as to be convenient of access and within reach." *Brown v. United States* (1929, 30 F. 2d 474, 58 App. D.C. 311).

#### Collateral estoppel

Collateral estoppel did not bar prosecution for federal offense of carrying pistol without license after previous conviction for violation of regulation requiring registration of same pistol, since different proof was required for the offenses and there were no inconsistencies between convictions. *United States v. J. A. Wilder* (1972, 463 F. 2d 1263, 150 U.S. App. D.C. 172).

#### Consent to defense of insanity

Finding that petitioner himself sought introduction of insanity defense at his trial was clearly erroneous in view of evidence, including evidence that new counsel retained by petitioner's mother did not confer with petitioner prior to filing motion for pretrial mental examination and that petitioner did not even know new counsel's identity when he saw him at hearing on the motion and thought that he was still being represented by assigned counsel. *C. C. Rouse v. D. C. Cameron, Sup't etc.* (1967, 387 F. 2d 241, 128 U.S. App. D.C. 283).

Finding that petitioner evidenced his acquiescence in insanity defense by waiting almost four years to attack validity of his mandatory commitment to hospital for the mentally ill was not warranted in light of petitioner's apparent disabilities, including his lack of financial means and learning in the law and the likelihood that he had been suffering from some mental illness. *Id.*

#### Consolidation

Prosecutions for carrying pistol without license, in violation of District of Columbia Code, and failing to register same pistol, in violation of District regulation, could not be combined in one proceeding, since one was within prosecutorial jurisdiction of District Counsel's office and under jurisdiction of Court of General Sessions while other was under prosecutorial authority of federal attorney and within jurisdiction of District Court. *United States v. J. A. Wilder* (1972, 463 F. 2d 1263, 150 U.S. App. D.C. 172).

#### Constitutional rights

Stops as well as arrests must satisfy the Fourth Amendment requirement of reasonable cause commensurate with extent of official intrusion, and if defendant challenges evidence as fruit of illegal seizure the government must come forward with specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. *T. R. Young v. United States* (1970, 435 F. 2d 405, 140 U.S. App. D.C. 333).

Because police questioning concerning defendant's address could be incriminating in view of charge of violating this section prohibiting carrying an unlicensed pistol except in one's dwelling house, Fifth Amendment applies to questioning concerning defendant's address and the required constitutional warnings as to right to remain silent and right to counsel are also applicable. *M. J. Brewster v. United States* (D.C. App. 1970, 271 A. 2d 409).

Failure to show that defendant was advised of constitutional rights at time of arrest did not entitle him to reversal of conviction for carrying deadly weapon, absent introduction of any statements made by him. *W. C. Best v. United States* (D.C. App. 1968, 237 F. 2d 825).

#### Constitutionality

Statute prohibiting carrying of concealed deadly or dangerous weapon is not unconstitutionally vague or indefinite in its prohibition of objects which are not ordinarily carried about person for personal convenience or for a legitimate purpose. *J. L. Scott v. United States* (D.C. App. 1968, 243 A. 2d 54).

Statute which makes it an offense to carry a pistol without a license was not so clearly unconstitutional as a violation of defendant's constitutional right to keep and bear arms that it should have been ruled upon by trial court despite defendant's failure to raise the point in trial court, and, in such circumstances, the Court of Appeals would decline to exercise its discretion to consider the constitutional question raised for first time on appeal. *M. L. Williams v. United States* (D.C. App. 1968, 237 F. 2d 539).

This section denouncing offense of carrying a pistol without a license to do so is not unconstitutional in permitting imposition of greater penalty when accused has been previously convicted of that offense in District or of felony in District or anywhere. *Kendrick v. United States* (1956, 238 F. 2d 34, 99 U.S. App. D.C. 173).

#### Construction

Words "dwelling house" and "land possessed by him," within this section providing that no person shall carry a pistol without a license except in his dwelling house, place of business or on other land possessed by him, would not be read to include entire apartment building. *R. F. White v. United States* (D.C. App. 1971, 283 A. 2d 21).

The statute being criminal, penal, prohibitive and in derogation of the common law it must be given a strict rather than liberal construction. *Brown v. United States* (D. C. Mun. App. 1949, 66 A. 2d 491).

The qualifying phrase "without a license" is not to be treated as an exception to the statute but rather as a descriptive part of the offense, an "adjectival" and descriptive negative defining the corpus delicti and the phrase is incorporated in the definition forming an integral element of the crime. *Id.*

#### Construction with other laws

The statute making it a crime for a person to carry "elsewhere" than in his home "or place of business or on land possessed by him a pistol without a license \* \* \* or any deadly or dangerous weapon capable of being so concealed," and the statute prohibiting possession "anywhere" with intent to use unlawfully against another an imitation pistol reflect the purpose of Congress to strengthen the existing law and tighten controls over the possession of dangerous weapons and each has distinctive objects of correction. *United States v. J. H. Parker* (D.C. Mun. App. 1962, 185 A. 2d 913).

The statute prohibiting the possession "anywhere" with intent to use unlawfully against another an imitation pistol or other "dangerous weapon" embraces the possession of a real pistol and possession of a pistol may be charged under such statute. *Id.*

Section 22-3214 (b) specifically prohibiting possession of knife with intent to use unlawfully against another was not intended to cover the whole subject matter of knives in District of Columbia, in the sense of repealing deadly weapon statute which required no proof of unlawful intent, and hence information alleging violation of the older statute was sufficient though it specified knife as the deadly weapon and did not allege intent to use knife unlawfully against another. *United States v. W. E. Shannon* (D. C. Mun. App. 1958, 144 A. 2d 267).

#### Continuance

In view of examination of prospective jurors and instructions to jurors, trial court did not abuse discretion in denying continuance of prosecution under this section for carrying unlicensed pistol on ground of publicity regarding gun control, assassination of senator, and other events concomitant with trial. *United States v. E. Clemons* (1970, 440 F. 2d 205, 142 U.S. App. D.C. 177; cert. denied 91 S. Ct. 959, 401 U.S. 945).



The granting or refusal of a continuance is largely left to discretion of the trial judge, and his decision will not be disturbed without a clear showing of abuse in the exercise of that discretion. *W. E. Smith v. United States* (D.C. App. 1967, 235 A. 2d 574).

#### Dangerous purpose

Instrument may be dangerous in its ordinary use as contemplated by its design and construction, or where the purpose of carrying the object, under the circumstances, is its use as a weapon. *J. L. Scott v. United States* (D.C. App. 1968, 243 A. 2d 54).

Statute prohibiting carrying of concealed deadly or dangerous weapon does not prohibit carrying of knives for a legitimate purpose. *Id.*

Statute prohibiting carrying of concealed deadly or dangerous weapon outlaws carrying of otherwise useful object where the surrounding circumstances, such as the time and place the defendant was found in possession of such instrument, or the alteration of the object, indicate that the possessor would use the instrument for a dangerous purpose. *Id.*

#### Dangerous weapon

Test to be applied in determining whether kitchen knife is a "deadly dangerous weapon", within this section prohibiting carrying either openly or concealed on or about person any deadly or dangerous weapon capable of being concealed, is whether, under the circumstances, purpose of carrying such knife was its use as weapon. *J. Nelson v. United States* (D.C. App. 1971, 280 A. 2d 531).

The test of whether the object being carried by an accused is a dangerous weapon is whether the purpose of carrying the object, under circumstances, is its use as weapon. *A. B. Clarke v. United States* (D.C. App. 1969, 256 A. 2d 782).

In a case where the defendant was carrying the razor in company of an armed companion in a crowded, commercial area of the city in late afternoon, and defendant was apprehended after he ran up an alley at approach of a police officer investigating citizen's report concerning him, jury was apprised of circumstances sufficiently probative to allow them to conclude beyond a reasonable doubt that razor was being carried as deadly or dangerous weapon. *Id.*

Under certain circumstances a hawk-bill knife can be a "dangerous weapon" within statute. *W. C. Best v. United States* (D.C. App. 1968, 237 A. 2d 825).

Evidence supported finding that hawk-bill knife found in pocket of defendant who was unable to explain his presence in hallway of building which was usually kept locked and which public was not invited to enter constituted a "dangerous weapon" within statute. *Id.*

#### Deadly or dangerous weapon

A "deadly or dangerous weapon" is one which is likely to produce death or great bodily injury by the use made of it. *J. L. Scott v. United States* (D.C. App. 1968, 243 A. 2d 54).

Evidence that knife taken from defendant in movie theater was ten inches long when extended with blade slightly more than four and one-half inches from shank to tip supported finding that knife was a deadly weapon within meaning of statute prohibiting carrying of concealed deadly or dangerous weapon. *Id.*

#### Deadly weapon

Hawk-billed linoleum clasp knife with three and a half-inch blade altered to open 270 degrees was properly determined to be a "deadly weapon" and was unlawfully carried. *L. Perry v. United States* (D.C. App. 1967, 230 A. 2d 721).

#### Defendant's absence during trial

Federal Rules of Criminal Procedure providing that the defendant shall be present at every stage of trial, including return of verdict, but that his voluntary absence after trial has been commenced in his presence shall not prevent continuing trial to and including return of verdict, is designed primarily to insure defendant's presence, not to permit trial to proceed in his absence. *W. R. Wade v. United States* (1971, 441 F. 2d 1046, 142 U.S. App. D.C. 356).

Since there was no showing of willful intention on part of the defendant to interfere with ordinary processes of court or of desire not to be present at times when he knew

he should have been in court, trial judge was not authorized to proceed without him. *Id.*

#### Delay in charging defendant with felony

The United States Attorney has responsible role in implementing possibility that crimes of violence may be deterred by visiting severe punishment upon convicted felon later found carrying deadly weapon. *R. W. Epperson v. United States* (1967, 371 F. 2d 966, 125 U.S. App. D.C. 303).

The courts will not skimp in affording prosecutor opportunity to obtain and appraise prior record of accused in order to determine whether to seek felony conviction for carrying dangerous weapon without license. *Id.*

#### Double jeopardy

Double jeopardy rule did not prevent prosecution for unlicensed possession of pistol in violation of District of Columbia Code, although defendant had earlier been convicted of violation of District regulation requiring registration of same pistol, although offenses arose from single arrest, since federal offense concerns personal qualifications of individual while regulation concerns firearm in question and required proof is not the same. *United States v. J. A. Wilder* (1972, 463 F. 2d 1263, 150 U.S. App. D.C. 172).

Where same act or transaction constitutes violation of two distinct statutory provisions, test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of fact which other does not. *Id.*

Where defendant was charged by information with violation of statute which makes it unlawful for one to own or have in his possession a pistol if previously convicted of possession of a prohibited weapon, and before any witness took stand prosecuting attorney announced that Government could not go forward with charge and would nolle prosequere it and bring new charge of carrying a pistol without a license, plea of double jeopardy was not a valid plea in new prosecution because the two informations charged separate and distinct offenses. *C. R. Newman v. United States* (D.C. App. 1968, 239 A. 2d 152).

Defendant, who allegedly carried concealed unlicensed pistol on his person and produced it and shot victim, was not put twice in jeopardy for same offense by prosecution upon two counts, for assault with deadly weapon, and also for carrying concealed unlicensed weapon, since element of proof in second count, that gun was unlicensed, was not necessary in proof of assault charge. *Kendrick v. United States* (1956, 238 F. 2d 34, 99 U.S. App. D.C. 173).

#### Dues process

Right of defendant to a fair trial, his Sixth Amendment right to counsel, and the use of compulsory process for witnesses, did not require finding that Government's failure to extend immunity, to defendant's uncle, who allegedly owned pistol found in possession of defendant, who was convicted of carrying a pistol without a license and of unlawful possession of marihuana, amounted to a deprivation of due process of law. *J. Terrell v. United States* (D.C. App. 1972, 294 A. 2d 860; cert. denied 93 S. Ct. 1398, 409 U.S. 1127).

#### Dwelling house

Defendant's possession of unlicensed pistol in apartment house hallway on floor above his own apartment was not within exception providing that no person shall carry a pistol without a license except in his dwelling house, place of business or on other land possessed by him, since the defendant did not have exclusive control and possession of the hallway on the floor above his apartment. *R. F. White v. United States* (D.C. App. 1971, 283 A. 2d 21).

#### Election of offenses

Government is not required to bring all knife cases under code section prohibiting possession of knife with blade longer than three inches; and defendant who carried openly or concealed on or about his person a "pocket knife" which had a black outer case and a blade three-eighths of an inch wide and four and one-quarter inches from shank to tip was properly prosecuted under code section forbidding any person to carry either openly or concealed on or about his person a deadly or dangerous weapon capable of being so concealed. *Degree v. United States* (D.C. Mun. App. 1958, 144 A. 2d 547).



**Evidence—In general**

In prosecution for carrying a pistol without a license, prosecution need not prove that pistol was carried openly or was concealed, in view that it is an offense under this section to carry a pistol without a license irrespective of whether pistol was carried openly or concealed. *United States v. Waters* (D.C.D.C. 1947, 73 F. Supp. 72, appeal dismissed 69 S. Ct. 168, 335 U.S. 869, 93 L. Ed. 413, cause certified 175 F. 2d 340, 84 U.S. App. D.C. 127).

Evidence that defendant taxicab driver did not need to move from front seat of his taxicab to obtain his pistol established that he had pistol "about his person" within this section prohibiting a party from carrying about his person a pistol without license. *Id.*

In prosecution for carrying gun without license, testimony of Lieutenant of Metropolitan Police Department that he had searched records of all persons who held licenses to carry pistols in District of Columbia and that there was no record that defendant had a license was primary evidence of state of facts and not hearsay. *Bussie v. United States* (D. C. Mun. App. 1951, 81 A. 2d 247).

**— Admissibility**

Action of one police officer in reaching under front seat of defendant's automobile constituted an illegal search and pistol found under seat was inadmissible, in prosecution for carrying a pistol without a license, where, at time officer reached under seat, defendant had already been arrested for driving automobile with altered tags and having an altered registration and had been removed from his automobile and placed in police vehicle and officers had the altered tags and registration in their possession, no action of defendant indicating attempt to conceal contraband in automobile and officers had no reason to believe that automobile contained weapons or other contraband. *A. P. Dickerson v. United States* (D.C. App. 1972, 296 A. 2d 708).

Where defendant, who was convicted of carrying a pistol without a license, and of unlawful possession of marihuana, testified that he had been beaten by police and desired hospitalization, Government could rebut such testimony with evidence that defendant's purpose of seeking hospital treatment was that he was a heroin addict, and admission of such evidence did not require a mistrial, as had occurred on previous occasion when such evidence was admitted, where tactical choice of defense counsel was in all probability to proceed. *J. Terrell v. United States* (D.C. App. 1972, 294 A. 2d 860; cert. denied 93 S. Ct. 1398, 410 U.S. 938).

That it was determined that duress, which involved defendant's desire to protect automobile driver and its female passengers and which resulted in defendant's oral admission that pistol found in automobile was his, ceased to exist when defendant, 15 minutes later at precinct station, signed written statement admitting possession did not render written statement admissible, absent determination of whether written confession was produced directly by existence of oral confession. *L. N. Ruffin v. United States et al.* (D.C. App. 1972, 293 A. 2d 477).

Where, following arrest of apartment dweller as an accessory after the fact to fatal shooting, dweller had been informed of her right to counsel and right to remain silent, the search of her purse prior to taking her downstairs to squad car was clearly within scope of protective search and, gun found in purse, was properly admitted in trial of defendant. Convicted of second-degree murder, assault with a dangerous weapon, and carrying a dangerous weapon; fact that officers subsequently determined it to be wiser to release apartment dweller because of potential explosive situation in neighborhood and to issue a summons neither vitiated initial arrest nor invalidated search incident thereto. *United States v. C. R. Honesty* (1971, 459 F. 2d 1279, 148 U.S. App. D.C. 255).

Where pertinent municipal regulation authorized police to move an illegally parked automobile, conduct of officer, who observed the defendant parked in bus zone and who arrested defendant for failure to have driver's permit in his possession, in opening door of defendant's automobile after defendant had been placed in police car and in seizing pistol that was in plain view on floor of automobile was proper and pistol is admissible in prosecution for carrying pistol without a license. *R. H. Banks v. United States* (D.C. App. 1972, 287 A. 2d 85).

Evidence of the circumstances surrounding prior robbery investigation, involving defendant and the complainant in present prosecution for assault with a dangerous weapon and for carrying a pistol without a license, was admissible since such evidence was clearly relevant to the identification question which defendant raised by his defense of mistaken identity; moreover, since no evidence was introduced connecting defendant in any way with the earlier crime, the possibility of any prejudice to defendant in the instant case was remote. *United States v. N. R. Mizell* (1971, 452 F. 2d 1328, 146 U.S. App. D.C. 399).

Where testimony, in prosecution for assault with a dangerous weapon and carrying a concealed weapon, by complaining witness concerning alleged rape by the defendant was highly probative of defendant's intent and motive in pointing gun at her and in explaining circumstances surrounding defendant's use of the gun for purposes of frightening her into submission, and where jury was given immediate cautionary instruction concerning limited purpose of the testimony, and similar instruction was contained in final charge, admission of that testimony was not an abuse of discretion. *R. D. Wooten v. United States* (D.C. App. 1971, 285 A. 2d 308).

Since it was not shown that the defendant, when interrogated by postal inspector, was under arrest or was given reason to believe he was under arrest or that such interrogation was ever shifted to "accusatory stage", and police officers before attempting any interrogation read defendant warning as to his right to counsel and to remain silent, admissions obtained from defendant by postal inspector and police officers were not inadmissible on ground they were the product of custodial interrogation made before defendant was warned as to his right to counsel and to remain silent. *H. G. Brown v. United States* (D.C. App. 1971, 278 A. 2d 462).

Since it is impossible to determine from testimony whether limitations on authority of police officers to cause a temporary investigatory detention were exceeded, and whether gun was discovered in process of an unlimited and full-scale search of defendant's person, or as a consequence of a protective pat down, case will be remanded for a supplementary evidentiary inquiry. *United States v. R. Morris* (1970, 440 F. 2d 224, 142 U.S. App. D.C. 196).

Where police officers, shortly after midnight and in area where many policemen had been shot, observed defendant driving vehicle bearing Virginia rental tags, followed him three or four minutes during which he made five turns and when officers called defendant back, after defendant ran from vehicle that he parked with lights on and rear protruding five to seven feet into street, officers observed bulge under his sweater, officers' conduct in searching defendant was reasonable and gun found was admissible. *United States v. E. M. Marshall* (1970, 440 F. 2d 195, 142 U.S. App. D.C. 167; cert. denied 91 S. Ct. 153, 400 U.S. 909).

Robbery victim's testimony identifying pistols as resembling very closely those used at robbery by the defendant and coparticipant who was identified by name, and his testimony that he had identified both defendant and coparticipant, together with stipulation that money had been found on coparticipant at station house, provides adequate proof of joint participation to warrant admission of evidence associated with coparticipant against the defendant. *United States v. L. H. Thurman* (1970, 436 F. 2d 280, 141 U.S. App. D.C. 126).

Police officers, who observed automobile occupied by five men parked in front of a bank and saw the automobile make a U-turn and follow an overdue delivery truck whose driver had just left bank, were authorized in stopping suspicious-acting automobile and detaining the automobile and its occupants for brief questioning, and when officer observed from outside automobile what appeared to be shotgun barrel protruding from underneath the seat, seizure of shotgun was not illegal as actions did not exceed in scope what would be dictated by purpose to disarm, and shotgun is admissible. *T. R. Young v. United States* (1970, 435 F. 2d 405, 140 U.S. App. D.C. 333).

Where defendant was acting in a suspicious manner outside store, officers who were at store to investigate earlier robbery acted reasonably in asking defendant for identification and in seizing pistol as defendant disclosed its presence in the form of a bulge under his waistband



while pulling his coat aside in an apparent effort to reach toward his rear pocket and, therefore, the pistol was admissible in prosecution under this section. *United States v. L. T. Lee* (D.C. App. 1970, 271 A. 2d 566).

Although there was ample testimony by two police officers of possession of a weapon by appellant without a license in violation of District of Columbia code, this did not render harmless identification and display in front of the jury, of three dangerous weapons which were taken from appellant's companions at time they were arrested but which were not charged to appellant's possession. *F. Macklin, Jr. v. United States* (1969, 410 F. 2d 1046, 133 U.S. App. D.C. 347).

Absent plain error, defendant's failure to voice objection to introduction of knife against him in prosecution for carrying deadly weapon precluded assertion on appeal that admission of the knife was error. *W. C. Best v. United States* (D.C. App. 1968, 237 A. 2d 825).

Photographs of fingerprints discovered at scene of crime and identified as defendant's on basis of prints of defendant retained after prior conviction, did not render them inadmissible, on ground that his conviction for earlier crime had been set aside pursuant to provisions of Youth Corrections Act. *M. C. Stevenson and E. S. Borum v. United States* (1967, 380 F. 2d 590, 127 U.S. App. D.C. 43).

When deputy police chief's certificate that search of police department records disclosed that defendant had no license to carry pistol was admitted in prosecution for carrying weapon in violation of statute, defendant was not prejudiced by failure to produce certificate that police chief had custody of records of pistol licenses, since judicial notice could be taken that custody of the records was in the police chief. *Smith v. United States* (1965, 353 F. 2d 838, 122 U.S. App. D.C. 300).

#### — Burden of proof

In prosecution for carrying gun without license, prosecution was required only to prove that accused carried gun and had no license to carry it, and was not required to prove all contents of original record of all licenses for carrying guns issued by superintendent of police. *Bussie v. United States* (D. C. Mun. App. 1951, 81 A. 2d 247).

The elements of the crime being the carrying of a pistol, without a license, the burden of proceeding does not shift to the defendant once the prima facie case of carrying the weapon has been established but remains with the prosecution. *Brown v. United States* (D.C. Mun. App. 1949, 66 A. 2d 491).

#### — Examination of witnesses

In prosecution for robbery, conspiracy to commit robbery, and for carrying a deadly weapon without a license, requiring counsel for one defendant to ask a more precise question than question counsel asked a witness for prosecution as to whether such witness was convicted several times of prostitution during specified years was within discretion of trial court. *Bundy v. United States* (1952, 193 F. 2d 694, 90 U.S. App. D.C. 12, certiorari denied 72 S. Ct. 638, 343 U.S. 908, 96 L. Ed. 1326).

#### — Illegal search

Refusing to suppress evidence relating to weapon seized from defendant charged with carrying dangerous weapon on ground that it was obtained as result of unlawful search and seizure was not error, where evidence supported finding that defendant was not arrested until officer observed gun in defendant's hand. *E. A. Contee v. United States* (D.C. App. 1965, 212 A. 2d 342).

Impounding of automobile, which motorist had parked in front of police station after being ordered to follow police officers to police precinct, was not authorized under regulation permitting impounding of unattended vehicles found parked in violation of traffic regulation, and pistol discovered in search of automobile was not admissible. *D. A. Williams v. United States* (D.C. Mun. App. 1961, 170 A. 2d 233).

#### — Prior conviction, proof of

Where defendant was charged with carrying unlicensed pistol after felony conviction, and, on defendant's motion, allegations in indictment concerning prior conviction of felony were stricken, and defendant's counsel, out of defendant's hearing, stipulated that defendant had previously been convicted of a felony and waived later proof

thereof, but concession of counsel was made without defendant's knowledge or consent, there was no waiver by defendant of necessity of proof of felony conviction, and imposition of enhanced sentence, on ground of prior felony conviction, was error. *Jackson v. United States* (1955, 221 F. 2d 883, 95 U.S. App. D.C. 328).

#### — Production

In prosecution for robbery, conspiracy to commit robbery, and for carrying a deadly weapon without a license, action of trial court in not requiring production under subpoena of arrest record of a witness for prosecution was not prejudicial to defendant where police officer testified he had no arrest record of witness by name contained in subpoena and did not know such witness used other names mentioned by him by counsel for defendant, and counsel for defendant did not during trial procure any further subpoena for arrest record of witness under any other name. *Bundy v. United States* (1952, 193 F. 2d 694, 90 U.S. App. D.C. 12, certiorari denied 72 S. Ct. 638, 343 U.S. 908, 96 L. Ed. 1326).

In prosecution for carrying gun without license, best procedure to prove that defendant had no license would be to produce official custodian of police records. *Bussie v. United States* (D.C. Mun. App. 1951, 81 A. 2d 247).

#### — Sufficiency

Evidence, including affidavits of records division director that defendant did not have license to carry pistol and evidence that he was not carrying license as required, sustained conviction for carrying pistol without license. *H. Durant, Jr. v. United States* (D.C. App. 1972, 292 A. 2d 157; cert. denied 93 S. Ct. 946, 409 U.S. 1127).

Evidence that pistol was found on floor mat of the defendant's automobile shortly after he alighted from automobile, that automobile was owned by defendant and that ammunition found in possession of defendant was of same caliber as that of pistol found in automobile is sufficient to show that defendant had been in possession of pistol and sustains conviction of carrying pistol without a license despite contention that woman passenger in automobile could have placed pistol on floor mat without defendant's knowledge after he had been removed from automobile. *R. H. Banks v. United States* (D.C. App. 1972, 287 A. 2d 85).

Evidence sustained conviction of right front seat passenger of carrying unlicensed pistol that was lying on left side of rear seat of automobile, notwithstanding the defendant's contention that she did not have possession of the pistol. *T. M. Holley v. United States* (D.C. App. 1972, 286 A. 2d 222).

Evidence that defendant knew that weapon was present under seat in automobile before police stopped vehicle and testimony that both officers saw the gun in defendant's hand supported trial court's finding that defendant was "carrying" the pistol within meaning of statute prohibiting one who has been convicted of a felony from carrying a dangerous weapon. *United States v. R. B. James* (1971, 452 F. 2d 1375, 147 U.S. App. D.C. 43).

Evidence in prosecution for assault with dangerous weapon and carrying a dangerous weapon after conviction of felony did not warrant grant of motion for acquittal on theory of self defense. *Id.*

Evidence on issues whether the defendant, who was occupying driver's seat of automobile belonging to his wife and who along with the codefendant had previously created disturbance at nightclub, had knowledge and control of revolver, that was found under passenger side of front seat of automobile at time it was being occupied by defendant and codefendant, who was sitting on passenger side of front seat, is sufficient to support conviction of carrying a pistol without a license. *J. J. Porter v. United States* (D.C. App. 1971, 282 A. 2d 559).

Evidence that the defendant was a considerable distance from his home, in public eating establishment, standing in front of cash register during evening hour with a kitchen knife openly displayed in his belt is sufficient to present jury question as to whether the knife was a deadly or dangerous weapon, in prosecution for carrying either openly or concealed on person any deadly or dangerous weapon capable of being concealed. *J. Nelson v. United States* (D.C. App. 1971, 280 A. 2d 531).



From facts that the defendant had been present in car immediately before officer noticed narcotics paraphernalia protruding from under seat where defendant had just been seated, that the defendant had been driving car immediately prior to time articles were recovered, that the defendant was owner of the car, that a single needle and syringe were within defendant's reach, and that puncture marks were found on defendant's arm, it was reasonable to infer that the defendant had dominion and control over needle and syringe under his seat, and, viewing evidence in light most favorable to the government, it was adequate to support the jury's finding that defendant had possession of the needle and syringe. *T. Crawford, Jr. v. United States* (D.C. App. 1971, 278 A. 2d 125).

Evidence, in prosecution arising out of armed robbery of a grocery supermarket, was sufficient to present question for jury as to guilt of the defendant, even though two employee witnesses of the supermarket, who actually saw bandits depart, could not identify the defendant as either one of the armed robbers who came into the store or as driver of the automobile in which the getaway was accomplished. *United States v. C. Johnson* (1970, 432 F. 2d 626, 139 U.S. App. D.C. 193; cert. denied 91 S. Ct. 257, 400 U.S. 949).

In this case there was adequate evidence to support convictions of assault and carrying a dangerous weapon. *United States v. L. White* (1970, 429 F. 2d 711, 139 U.S. App. D.C. 32).

Evidence that the defendant had on his person at 3:00 in the morning at bus terminal a "pegged" knife, which is a clasp knife with the blade folding into the handle but which has been altered by insertion of a small peg between the blade and the handle so that the knife could be more quickly opened for use than regular folding knife, is sufficient to support conviction for carrying a dangerous weapon. *J. C. Gilmore v. United States* (D.C. App. 1970, 271 A. 2d 783).

The court held the evidence sustained finding that defendant, who was charged under this section with carrying pistol without a license, had requisite knowledge and control of weapon found between backrest and seat to left of where defendant had been sitting in automobile. *L. R. Kenhan v. United States* (D.C. App. 1970, 263 A. 2d 253).

Knowledge of presence of pistol could be reasonably inferred from fact that one or two inches of butt of pistol were sticking out from between backrest and seat to left of where defendant had been sitting in automobile. *Id.*

Evidence was sufficient to sustain a conviction for carrying a pistol without a license, although the government did not offer any direct proof of defendant's knowledge of gun. *L. L. Powell v. United States* (D.C. App. 1968, 246 A. 2d 641).

Officer's independent testimony with respect to defendant's possession of gun to which no objection was made was sufficient to support defendant's conviction for carrying pistol without a license. *L. G. Lee v. United States* (D.C. App. 1968, 242 A. 2d 212).

Evidence supported conviction for carrying dangerous weapon without license. *R. W. Epperson v. United States* (1967, 371 F. 2d 956, 125 U.S. App. D.C. 303).

Evidence supported conviction for carrying a deadly weapon. *L. Perry v. United States* (D.C. App. 1967, 230 A. 2d 721).

Conviction for carrying concealed weapons would not be reversed, on ground that trial judge, in finding defendant guilty, erroneously considered stipulation, made in connection with motion to suppress evidence, to effect that defendant had a possessory interest in two pistols sought to be suppressed where no formal written stipulation was presented to judge who heard motion to suppress, and it was merely a verbal statement by counsel, and a different judge presided at the trial, and he certified that his decision was based solely on testimony adduced at trial, and in stenographic transcript there appeared no testimony or offer of testimony as to stipulation, and it did not appear to have affected decision in any way, and testimony of police officer supplied essentials on which to predicate a conviction. *Emburgh v. United States* (D.C. Mun. App. 1960, 164 A. 2d 342).

In absence of objection to testimony of police lieutenant who stated that he had searched pistol license records, and

in absence of attempt to cross-examine him as to extent of his knowledge and familiarity with records or contention that he was not in a position to make a complete search and render accurate report, testimony was of sufficient probative force to show that accused had no license even though official custodian was not produced. *Bussie v. United States* (D. C. Mun. App. 1951, 81 A. 2d 247).

#### — Suppression

Although citizen refused to give his name when he told police officers that named person was sitting on porch in certain block, was wearing black shirt, blue knit hat, had artificial leg and had gun in his waistband, officers who found on porch in the described block a sleeping man wearing described clothing and who determined the man had artificial leg, had right to question man and, before questioning, had right to make limited search or frisk to ascertain if he was armed; thus pistol found in his waistband was legally seized and should not have been suppressed. *United States v. W. A. Walker* (D.C. App. 1972, 294 A. 2d 376).

Defendant, who removed revolver from his coat pocket and tossed it into street before pursuing policeman caught up to him, lacked standing to make motion to suppress the weapon as evidence. *C. J. Smith v. United States* (D.C. App. 1972, 292 A. 2d 150).

Record in support of order granting pre-trial motion to suppress pistol seized from beneath seat of defendant's automobile near scene of his arrest for disorderly conduct was insufficient since there were no findings upon which Court of Appeals could base judgment as to whether pistol was product of search and seizure incident to lawful arrest, whether, if so, seizure was so far beyond the area within defendant's immediate control as to be constitutionally impermissible, and whether, if pistol was not product of search and seizure in Fourth Amendment sense (officer testified that he reached under seat in search of seat adjustment lever with intent of driving automobile to precinct station) the intrusion into the automobile was reasonable and warranted under the circumstances. *United States v. H. R. Jones* (D.C. App. 1971, 275 A. 2d 541).

#### Fingerprint tests, duty to make

There is no requirement that imposes on the Government the affirmative duty to make paraffin or fingerprint tests in regard to pistol involved in prosecution for carrying a pistol without a license, and there was no showing of prejudice from failure to make tests. *M. L. Williams v. United States* (D.C. App. 1968, 237 A. 2d 539).

#### Guilty plea

The record did not show that the trial judge failed to determine that defendant's plea of guilty to carrying deadly weapon after previous conviction of like offense or of a felony had been made voluntarily, after proper advice, with understanding of nature of charge and consequences. *H. L. Barnett v. United States* (1968, 403 F. 2d 918, 131 U.S. App. D.C. 192).

#### Harmless error

In prosecution for assault with intent to kill while armed and carrying dangerous weapon, in view of overwhelming direct evidence timely placing the defendant at scene of crime and equivocal and unsupported nature of his own testimony concerning his whereabouts at time of offense, any emphasis by the court or his counsel on his more general defenses and any other claimed error were harmless beyond reasonable doubt. *United States v. W. D. Craven* (1972, 458 F. 2d 802, 147 U.S. App. D.C. 383).

Where it was the defendant's own suspicious and furtive effort in retreating to rear of store when police arrived that brought attention to him before he was arrested, and defendant in fact denied ever seeing gun or going behind store's meat counter in back of which gun was found, while still warm to the touch, presumably from body contact, on floor, no search of defendant's constitutionally protected environs disclosed weapon or resulted in its seizure, oral motion to suppress before jury was sworn was frivolous, and failure to entertain it in prosecution for carrying pistol without a license was harmless error or defect not affecting substantial rights of defendant. *W. J. Shellie v. United States* (D.C. App. 1971, 277 A. 2d 288).



**Identification**

While lineup was not conducted under most ideal circumstances it was not so impermissibly suggestive to misidentification as to preclude identification testimony by eyewitnesses who had ample opportunity to view defendant during armed robbery. *United States v. G. H. Neverson* (1972, 463 F. 2d 1224, 150 U.S. App. D.C. 133).

Where police had probable cause for arrest of defendant following armed robbery, procedure in taking defendant to scene of crime less than 15 minutes after robbery for identification did not give rise to undue suggestibility, and evidence of identification of defendant at scene was admissible in subsequent prosecution. *United States v. J. Moore* (1972, 459 F. 2d 1360, 148 U.S. App. D.C. 336).

Question of identification was one of fact for jury in prosecution for assault and for carrying a deadly weapon. *J. J. Durham v. United States* (D.C. App. 1968, 237 A. 2d 830).

**Impeachment**

Had defendant taken stand in prosecution for armed robbery, assault with dangerous weapon, and carrying dangerous weapon without license, evidence of prior conviction for impersonating owner of federal check would have been admissible for impeachment purposes. *United States v. J. Moore* (1972, 459 F. 2d 1360, 148 U.S. App. D.C. 336).

It is difficult to attach any impeaching quality to evidence which identified and displayed in front of a jury, over objection and against judge's doubts, of three dangerous weapons, which had been taken from defendant's companions when they were arrested but were not charged to possession of defendant, who was indicted for carrying a dangerous weapon without a license in violation of District of Columbia code, and any probative value of the evidence was outweighed by its prejudicial effect. *F. Macklin, Jr. v. United States* (1969, 410 F. 2d 1046, 133 U.S. App. D.C. 347).

**Indictment**

That the indictment charged each defendant with having carried pistol "openly and concealed" about his person, rather than in statutory language "openly or concealed," presents no occasion for reversal of convictions. *United States v. E. Clemons* (1970, 440 F. 2d 205, 142 U.S. App. D.C. 177; cert. denied 91 S. Ct. 959, 401 U.S. 945).

When an indictment carefully traces the language of this section in indicting a defendant for carrying a dangerous weapon without a license, the indictment is valid and it is of no legal significance that the presentment merely states that the defendant was carrying a dangerous weapon, which is not an offense. *United States v. W. Bridges* (1970, 432 F. 2d 692, 139 U.S. App. D.C. 259).

Failure of pistol-carrying count of indictment to allege or prove to show that defendant had been previously convicted of felony, did not preclude imposition of greater penalty applicable to defendant who has previously been convicted of felony, where defendant had on cross-examination admitted prior felonies, and defendant was not denied right of allocution, nor was he prepared to show that he had not been previously convicted, and Government after conviction and before sentence filed information alleging prior convictions. *Kendrick v. United States* (1956, 238 F. 2d 34, 99 U.S. App. D.C. 173).

Pistol-carrying count of indictment was not defective in using conjunctive "and," instead of statutory disjunctive "or," in charging that defendant "did carry openly and concealed a dangerous weapon", where proof tended to show that weapon was concealed when defendant approached scene of shooting and was then produced and carried openly. *Id.*

Indictment charging defendant with carrying a pistol but failing to charge, as required by this section, that pistol was carried by defendant without a license failed to charge an offense. *United States v. Waters* (D.C.D.C. 1947, 73 F. Supp. 72, appeal dismissed 69 S. Ct. 168, 335 U.S. 869, 93 L. Ed. 413, cause certified 175 F. 2d 340, 84 U.S. App. D.C. 127).

**Insanity defense**

Where record unequivocally established that, after three years of representing defendant, defense counsel concurred with conclusions reached by psychiatrist and judge that defendant was a malingerer and expressed opinion

that it was tactically unwise to raise an insanity defense unless he felt he had a chance, defendant was not entitled to reversal of conviction of armed robbery assault with a deadly weapon and carrying a pistol without a license on ground of judicial interference with his defense counsel's attempt to pursue insanity issue. *United States v. F. L. Simms* (1972, 463 F. 2d 1273, 150 U.S. App. D.C. 182).

Trial judge's decision not to interpose an insanity defense sua sponte was not an abuse of discretion constituting reversible error, especially in view of finding that defendant was malingering. *Id.*

Defendant charged with carrying a dangerous weapon without a license was not entitled to a directed verdict of not guilty by reason of insanity where the only evidence of insanity produced was the testimony of a psychiatrist, who stated that defendant was a sexual deviate whose sexual impulses were associated with violence and the implements of violence. *United States v. G. E. Evans* (1972, 459 F. 2d 1134, 148 U.S. App. D.C. 110).

**Instructions**

Where count charged that offense of carrying a dangerous weapon occurred on July 14, in view of testimony elicited during trial concerning confrontation between defendant and another on July 21 when defendant appeared at the other's apartment with a weapon in his hand, it was plain error to charge that defendant could be found guilty of carrying a dangerous weapon on that date. *United States v. L. L. Williams* (1972, 463 F. 2d 958, 150 U.S. App. D.C. 122).

In prosecution for carrying a pistol without a license, court may not charge that mere holding of loaded pistol makes man guilty if the theory of the defense shows, e.g., that defendant did not get the gun except in self-defense. *United States v. R. Freeman* (1972, 462 F. 2d 290, 149 U.S. App. D.C. 186).

In context in prosecution for carrying a pistol without a license, in which defendant claimed he was holding pistol for a friend, defendant was not entitled to instruction to effect that prosecution must prove that possession was not temporary and innocent. *Id.*

Testimony that defendant and a female had run from scene of fatal shooting after female had been released by decedent's brother, and that decedent's brother, who was armed with shotgun, had left scene, coupled with fact that when defendant was apprehended in female's apartment he was in process of shaving off his heavy beard, was sufficient to support an instruction on flight or concealment. *United States v. C. R. Honesty* (1971, 459 F. 2d 1279, 148 U.S. App. D.C. 255).

Although, in prosecution for assault with a dangerous weapon and for carrying a pistol without a license, prosecution evidence was introduced to the effect that the defendant assaulted the complainant in retaliation for her telling the police she believed he had been involved in a robbery, the trial judge is not required to, sua sponte, give a limiting instruction concerning the evidence connecting defendant with the robbery, particularly since the evidence in question concerned not so much acts that had been engaged in by defendant, but rather the activities of the complainant, and since that evidence is relevant on the issues of identity and motive. *United States v. N. R. Mizzell* (1971, 452 F. 2d 1328, 146 U.S. App. D.C. 399).

Viewing the trial court's charge in its entirety clearly showed that instruction on specific intent was not omitted in prosecution for armed robbery, assault with a dangerous weapon, and carrying a dangerous weapon. *United States v. S. F. Gaither* (1971, 440 F. 2d 262, 142 U.S. App. D.C. 234).

Instruction that the Government has no affirmative duty to make a paraffin test of gun seized from defendant charged with assault with a dangerous weapon and with carrying a concealed weapon to determine if he had ever used it is not "plain error" warranting review in absence of objection. *R. D. Wooten v. United States* (D.C. App. 1971, 285 A. 2d 308).

Since the trial judge's charge contained two erroneous instructions equating intent with malice as essential ingredient of murder and stating that law infers or presumes malice from use of deadly weapon in commission of homicide and both instructions were later reread to jury and jury returned verdict, not of first-degree murder, but of murder in second degree and the jury did not ac-



cept whole of government's evidence bearing on degree of defendant's culpability, instructional errors will be noticed by Court of Appeals despite defendant's failure to object at trial and require reversal of conviction of murder in second degree. *United States v. A Wharton* (1970, 433 F. 2d 451, 139 U.S. App. D.C. 293).

Submission to the jury of a further "Allen" type instruction, after jury reported a deadlock, to the effect that absolute certainty could not be expected, and that jurors should give deference to opinions of each other, would not be considered a ground for reversal on theory of plain error since defense counsel did not object to the charge. *United States v. C. Johnson* (1970, 432 F. 2d 626, 139 U.S. App. D.C. 193; cert. denied 91 S. Ct. 257, 400 U.S. 949).

Defendant may not complain on appeal of deficiencies in instructions given by trial judge in manslaughter prosecution where none of alleged shortcomings were brought to the attention of trial court by appropriate objection or request. *United States v. E. Carter* (1969, 420 F. 2d 150, 136 U.S. App. D.C. 308).

A charge to the jury outlining the various necessary elements of offense of carrying deadly or dangerous weapon, defining a "deadly or dangerous weapon" and advising that in determining whether the instrument was such a weapon "you may consider all the circumstances surrounding its possession and use" was adequate. *G. O. Leftwich v. United States* (D.C. App. 1969, 251 A. 2d 646).

In a prosecution for carrying deadly or dangerous weapon, where court's charge on weapon was adequate and there was no cause for confusion in the minds of the jury, it was within the trial court's discretion to give the "Allen" charge reminding jurors that they should give some thought to views of others and should consider their position in light of those views. *Id.*

In prosecution for unlawfully carrying a pistol, failure to instruct jury on "criminal intent" on ground that such intent was an essential ingredient in the crime derived from the common law was not error since carrying a dangerous weapon without a license was not an offense at common law and all that was needed was an intent to commit the proscribed act. *Cooke v. United States* (1960, 275 F. 2d 887, 107 U.S. App. D.C. 223).

Where, although trial judge did not charge jury that it must find that the defendant intended to carry an unlicensed gun in a public place, defendant's trial counsel made no objection, but defendant testified that he intentionally put the gun in his pocket before leaving his shop, omission from the charge was not plain error which could be noticed on appeal in absence of exception in court below. *Id.*

#### Joinder

Since the offenses of robbery, assault with dangerous weapon, assault on member of police force, unauthorized use of vehicle, and carrying dangerous weapon were based on two or more connected acts constituting part of common scheme and plan, the defendants were alleged to have participated in same series of acts constituting offenses, and each of defendants aided and abetted offenses charged against other defendants, it was proper for grand jury to join defendants and offenses in the indictment. *United States v. C. Wilson, Jr. et ano.* (1970, 434 F. 2d 494, 140 U.S. App. D.C. 220).

#### Judicial notice

In prosecution for carrying without a license pistol that was found in defendant's automobile after he was observed parked in bus zone and was unable to produce his driver's license, the trial judge is required to take judicial notice of municipal regulation authorizing police to move an illegally parked automobile since such regulation comes within Superior Court's original jurisdiction. *R. H. Banks v. United States* (D.C. App. 1972, 287 A. 2d 85).

#### Jurisdiction

Jurisdiction of the Court of General Sessions extended to prosecution for carrying a dangerous weapon, possessing a prohibited weapon and driving a motor vehicle without an operator's license, notwithstanding contention that the trial court had jurisdiction only over offenses punishable by fine or imprisonment and that the offenses charged carried penalties of a fine, imprisonment, or both. *W. P. Martin v. United States* (D.C. App. 1971, 283 A. 2d 448).

#### Jury question

Evidence showing that police officers saw defendant drop an object later found to be a .22 caliber sawed-off rifle from his automobile posed question for determination by jury as to defendant's guilt or innocence of carrying dangerous weapon. *R. Watson, Jr. v. United States* (D.C. App. 1970, 262 A. 2d 121).

It was a jury question whether pistol had been lying on front seat of automobile next to defendant driver within convenient access and reach of defendant so that he might have been found to have had possession under statute, or whether pistol fell out of pocket of passenger and police intervened before defendant could have had access to it, in a prosecution for carrying pistol without a license. *H. E. Waterstaat v. United States* (D.C. App. 1969, 252 A. 2d 507).

#### Knowledge

Whether front seat passenger had knowledge of presence of unlicensed gun in rear seat is a question for the trier. *T. M. Holley v. United States* (D.C. App. 1972, 286 A. 2d 222).

#### Lawful arrest

Conduct of police officers, who had information that man was sitting in described automobile with gun, in approaching automobile fitting description and asking occupant to step out of automobile constituted a justifiable investigative stop and it was proper for one officer to seize the pistol that came within his plain view when occupant opened automobile door and to arrest occupant. *E. L. Davis v. United States* (D.C. App. 1971, 284 A. 2d 459).

Where police officers noted automobile bearing license tags registered to a different make automobile and requested driver, without making any similar request of passenger, to follow them to precinct house and to go inside, passenger who accompanied the driver and accidentally revealed a loaded revolver in his pocket while inside precinct house had not therefore been under arrest but gave police officer who observed the pistol sufficient grounds for arrest so that the arrest made by that officer was lawful and accompanying search was valid and evidence of pistol was accordingly not subject to suppression in prosecution for carrying a deadly weapon. *J. B. Conyers v. United States* (D.C. App. 1968, 237 A. 2d 838).

Arrest of defendant, who was observed by officers running across street from church doorway at midnight, and who, when stopped, used obscene language toward officers, on charges of disorderly conduct was lawful, and thus incriminating statement made by defendant and pistol found near scene of arrest were not inadmissible on the grounds asserted. *H. Johnson v. United States* (1966, 370 F. 2d 489, 125 U.S. App. D.C. 243).

#### Moot question

Where a defendant, who was convicted of carrying a dangerous weapon without license in violation of District of Columbia code, had served his sentence, his appeal was not dismissable as moot, since statute under which he was indicted provided for consequence of conviction which did not disappear with expiration of his sentence. *F. Macklin, Jr. v. United States* (1969, 410 F. 2d 1046, 133 U.S. App. D.C. 347).

#### Multiple convictions for the same offense

The fact that the passenger in a vehicle driven by defendant was convicted of carrying pistol without license, following police officer's discovery of pistol lying on seat of vehicle between passenger and driver, did not preclude conviction of driver for same offense. *H. E. Waterstaat v. United States* (D.C. App. 1969, 252 A. 2d 507).

#### Place of business

D.C. 1929, title 6, § 114, permitted the carrying of a dangerous or deadly weapon from the place of purchase to the purchaser's dwelling or place of business, especially when person was conducting himself in a quiet, peaceable, and orderly manner. *Bolt v. United States* (1925, 2 F. 2d 922, 55 App. D.C. 120).

Provision of this section prohibiting a person from carrying a pistol without a license "except in his dwelling house or place of business or on other land possessed by him" manifests the intent that the "place of business" referred to is land, and would not apply so as to exempt a



taxicab driver who carried a pistol without a license while in his taxicab, since the cab would not be the driver's "place of business". *United States v. Waters* (D.C.D.C. 1947, 73 F. Supp. 72, appeal dismissed 69 S. Ct. 168, 335 U.S. 869, 93 L. Ed. 413, cause certified 175 F. 2d 340, 84 U.S. App. D.C. 127).

#### Plain error

In this prosecution for carrying a dangerous weapon, wherein evidence disclosed that the defendant was a part owner and in possession of the apartment building where assault occurred, the prejudice to defendant from counsel's failing to mention the statutory exception, to the prohibition of carrying a weapon if carrying is in a dwelling house or place of business or other land possessed by defendant, required invocation of the "plain error" rule. *A. C. Roumel v. United States* (D.C. App. 1970, 261 A. 2d 240).

Under this section prohibiting the carrying of a weapon "except in his dwelling house or place of business or on other land possessed by him", a person need not be a sole rather than part owner of the premises involved. *Id.*

#### Plea of guilty

Petition alleging that armed robbery guilty plea was not voluntary because the defendant had been falsely told by attorney that attorney had talked to trial judge and had made arrangements for Youth Corrections Act treatment was too specific to be denied as merely conclusory and could not be said to be so palpably incredible as to permit rejection of same without a hearing. *United States v. E. W. Simpson* (1970, 436 F. 2d 162, 141 U.S. App. D.C. 8).

#### Possession of firearms

Fact that the codefendant had been convicted of carrying the same pistol did not preclude conviction of the defendant of carrying the pistol without a license, since the defendants could be found to have jointly possessed weapon, that was found under passenger's side of front seat of automobile. *J. J. Porter v. United States* (D.C. App. 1971, 282 A. 2d 559).

Direct personal possession of prohibited weapon is not required for occupant of automobile to be convicted of violation of this section prohibiting carrying pistol without a license. *L. R. Kenhan v. United States* (D.C. App. 1970, 263 A. 2d 253).

This section clearly establishes that possession of a firearm in one's home is not a crime. *Morton v. United States* (1950, 183 F. 2d 844, 87 U.S. App. D.C. 135).

#### Prejudicial error

Government's introduction, in its case-in-chief, of .22-caliber pellet pistol found on search of rear seat passenger when police stopped automobile occupied by defendant and two others and similar pistols found under driver's seat, in addition to admission of .32-caliber pistol found under seat where defendant had been sitting, with no limiting instruction being given, was prejudicial and required new trial on charge of carrying a pistol without a license, notwithstanding government's contention that purpose of offering additional pistols was to enhance showing that pistol found under seat occupied by defendant had in fact been possessed by him. *C. D. Coleman v. United States* (D.C. App. 1972, 295 A. 2d 896).

#### Prior conviction

While statute provided for imprisonment for not more than 10 years on second conviction of carrying a dangerous weapon, where there was no proof that defendant had ever been convicted previously under such statute the felony penalty could not be invoked, so that charge that defendant was in unlawful possession of pistol after he had been previously convicted for carrying a dangerous weapon was within jurisdiction of District of Columbia Court of General Sessions, which could not impose fine of more than \$1,000 or a sentence of longer than one year. *R. B. Burrell v. United States* (D.C. App. 1966, 223 A. 2d 377).

A state legislature does not violate equal protection provision of Fourteenth Amendment of United States Constitution, in enacting statutes which impose heavier penalty for second or subsequent offenses, since fact of prior conviction in such cases is considered as affording reasonable basis for classification. *Kendrick v. United States* (1956, 238 F. 2d 34, 99 U.S. App. D.C. 173).

Where defendant had been convicted of carrying a dangerous weapon and for housebreaking and larceny, and sentence for first offense was not to take effect under judgment until expiration of sentences on other offenses, but judgment of conviction on other offenses was reversed on appeal, appropriate procedure would be to vacate judgment of conviction on first offense and remand case for entry of judgment thereon with direction for new trial as to other offenses. *Payton v. United States* (1955, 222 F. 2d 794, 96 U.S. App. D.C. 1).

#### Probable cause

After police officers found ammunition and marihuana on person of defendant, earlier occupancy by defendant of vehicle, his assault of police officer, his flight and his resistance to being taken into custody, were sufficient to establish probable cause to search the vehicle for further related evidence, such as ammunition, guns, or drugs. *J. Terrell v. United States* (D.C. App. 1972, 294 A. 2d 860; cert. denied 93 S. Ct. 1398, 410 U.S. 938).

Where police officers who had observed the defendant peering into automobiles later observed defendant holding some object under his coat and when defendant refused to remove his hands from his pockets search for weapons was made disclosing that defendant was concealing beneath his coat a tape player, the connecting wires of which had been broken, action of police in confronting defendant on street was reasonable and disclosure of the tape player gave officers probable cause for arrest even though no victim had reported a loss, and pistol seized two days later during execution of arrest warrant was not the fruit of an unlawful arrest. *L. A. Jenkins v. United States* (D.C. App. 1971, 284 A. 2d 460).

Police officer had probable cause to go into pocket of armed robber suspect's jacket and seize pistol in pocket, when suspect was voluntarily returning to scene of crime with police officer and officer picked up suspect's jacket which was about to be left on fence and felt something heavy and sensed that it might be a pistol. *J. C. Shepard v. United States* (D.C. App. 1971, 274 A. 2d 413).

Since automobile stopped by police officers 45 minutes after offense was reliably identified as one used by suspect to leave scene of offense and search of defendant operator and his companion failed to produce any weapon, police had ample grounds for concluding that weapon used in assault was likely secreted in automobile, authorizing a warrantless search of automobile at scene of arrest, inasmuch as the only way in which a warrant could have been obtained would have been by temporarily seizing automobile and immobilizing it. *United States v. D. Free* (1970, 437 F. 2d 631, 141 U.S. App. D.C. 198).

In this case, since the police officers were investigating reported burglary, and defendants were seen carrying coffee table, and their distinctive clothing matched clothing of men seen in vicinity of burglary, and there was a furtive disposal of instrumentalities of burglary by one defendant, and other defendant attempted to get his gun out of pocket as officers approached, there was probable cause for arrest of defendants and for their search and search of their automobile. *United States v. R. Cunningham et ano.* (1970, 424 F. 2d 942, 138 U.S. App. D.C. 29).

Police officers, who, pursuant to information from an unidentified citizen that certain automobile was carrying weapons, followed automobile and discovered that it had improper license tags, were warranted in stopping automobile, frisking occupants, and arresting defendant when loaded pistol was found in his possession; thus, the defendant was not entitled to have pistol suppressed as evidence in prosecution under this section for carrying pistol without license. *United States v. R. W. Frye* (D.C. App. 1970, 271 A. 2d 788).

Police officer, who as told by taxicab driver who pointed toward three men walking on street that driver had seen person up the street tuck gun under his belt, had probable cause to stop and search the only three men who were present on street even though taxicab driver did not say which of the men he had seen with gun, and gun found on person of defendant in such search was admissible. *H. L. Gaskins v. United States* (D.C. App. 1970, 262 A. 2d 810).

Officers' initial observation of defendant's passing what appeared to be a pistol to his companion in the rear



seat of an automobile, provided the police officers with probable cause to arrest defendant for possession of a pistol or to search vehicle; it was also lawful for officers to ask the defendant's companion to come out of the vehicle incident to the search, and seizure of the pistol when it fell to floor following companion's move to alight from vehicle was proper. *G. Neal v. United States* (D.C. App. 1969, 260 A. 2d 89).

Viewing by officers of the inside of the automobile in which defendant was sitting on parking lot of restaurant at 4:30 A.M. did not constitute a search and was merely a customary check of premises when they saw two other persons lying down in automobile and observed what appeared to be a .38 caliber cartridge on the floor they had probable cause to believe that there was a dangerous weapon in the automobile and were justified in arresting defendant, and revolver which was in plain sight when officers opened door to make arrest was admissible. *J. E. Lucas v. United States* (D.C. App. 1969, 256 A. 2d 574).

Police officers, to whom was communicated through regular channels a report from an unknown eyewitness concerning purported robbery and presence of nearby suspect who was identified in manner which fit defendant's description, had probable cause to arrest without a warrant defendant whom they found near scene of purported robbery, and gun taken in search of defendant's person was admissible in prosecution for carrying the pistol without a license, notwithstanding robbery report was later proved to be false. *C. W. Carter, Jr. v. United States* (D.C. App. 1968, 244 A. 2d 483).

Probable cause to justify arrest for carrying dangerous weapon does not require exact knowledge of character of the weapon. *J. L. Scott v. United States* (D.C. App. 1968, 243 A. 2d 54).

Officer who before beginning conversation with defendant and defendant's companion in lobby of movie theater saw defendant's companion drop knife into cigarette ash container and who saw defendant attempting to slide knife up sleeve of his coat had probable cause for arrest and for subsequent seizure of defendant's knife. *Id.*

Arrest without a warrant for carrying a dangerous or deadly weapon may be made on probable cause. *L. G. Lee v. United States* (D.C. App. 1968, 242 A. 2d 212).

Police officer is not privileged to ignore facts which would give him reasonable cause to believe that a person is carrying a dangerous or deadly weapon. *Id.*

Where officer at early hour in morning saw defendant and another man talking to manager of motel and when officer approached they hurriedly moved away from door and officer received inconsistent answers to his inquiries to the men and officer noted that defendant was carrying bag containing large heavy object and when officer asked if there was gun in the bag, defendant started backing off and did not answer, officer had probable cause to arrest defendant for carrying pistol and to seize the gun. *Id.*

#### Probable cause for arrest

In view of defendant's reaction as observed by trained narcotics officer when defendant first saw officer entering poolroom in which defendant was present and in view of officer's seeing defendant make under-handed throwing motion toward front of poolhall, where officer then found cigarette package which he believed contained narcotics, and defendant's exclamation, in reference to the package, "Don't give that to me," officer had probable cause to arrest defendant. *United States v. J. R. Johnson* (1972, 459 F. 2d 1229, 148 U.S. App. D.C. 205).

Where some 26 minutes following robbery and some three blocks from scene police officers observed individual reasonably matching description given in radio lookout, officers had probable cause to arrest individual, who met broadcast description that robber was wearing three-quarter length trench coat and had scar on his neck; minor discrepancies in age and size were overcome by identifying scar. *D. Atkinson v. United States* (D.C. App. 1972, 295 A. 2d 899).

Proof of intent is not required to use a knife to menace or inflict bodily harm under statute proscribing carrying a deadly or dangerous weapon. *G. O. Leftwich v. United States* (D.C. App. 1969, 251 A. 2d 646).

Proposed charge encompassing the defense theory that an intent to use knife to menace or inflict bodily harm was a necessary ingredient of offense of carrying deadly

or dangerous weapon was incorrect and would have misled jury seriously and was properly refused. *Id.*

Under statute prohibiting carrying of concealed deadly or dangerous weapon, proof of intent to use knife for unlawful purpose is not element of the offense. *J. L. Scott v. United States* (D.C. App. 1968, 243 A. 2d 54).

Evidence established that police officers saw gun handle sticking out of defendant's pocket and had probable cause to believe that defendant was carrying dangerous weapon in violation of law. *United States v. P. Jenkins, Jr.* (1967, 276 F. Supp. 958).

Officer who was investigating speeding violation had probable cause to arrest operator of vehicle; he did not act unreasonably in opening door of vehicle once found and he was not required to disregard weapons which he saw when he opened vehicle's door, and motion to suppress evidence relating to blackjack and gun was properly denied. *R. F. Mosley v. United States* (D.C. App. 1965, 209 A. 2d 796).

Where police were seeking suspect who operated in one block area, robbing prostitutes and their customers, and defendant, who fitted description of suspect, gave evasive and irreconcilable answers to police questions after being stopped in area of robberies, whereupon he was arrested and search revealed a loaded pistol, and defendant admitted he was headed toward an automobile later found to contain prostitute and her customer, there was probable cause for arrest and defendant's motion to suppress evidence was properly denied. *L. A. Franklin v. United States* (D.C. App. 1964, 204 A. 2d 341).

Officer had probable cause to believe that housebreaking had been committed and that defendant was offender, so as to justify arrest without warrant in course of which was discovered a pistol giving rise to prosecution for carrying weapon without license, in view of strong belief communicated to officer by one who knew defendant that defendant was one who had broken into such individual's mother's home, and in view of officer's observation and other information he learned from both such individual and defendant, and accordingly pistol was admissible in evidence. *J. E. Paris v. United States* (1963, 321 F. 2d 378, 116 U.S. App. D.C. 112).

There is a difference between what is required to prove guilt in criminal case and what is required to show probable cause for arrest or search, and, in dealing with probable cause, court deals with probabilities, they are not technical but are factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. *Id.*

Where police officers about 1:30 a.m. observed defendant and his companion seated in parked automobile on dark street, and, as officers approached automobile, defendant and his companion "appeared to duck down" and one of the officers shined his flashlight into rear of automobile where defendant was sitting and noticed a shiny object which appeared to be a gun falling to floor near defendant's feet, and that officer drew his revolver and ordered defendant and his companion out of automobile, and shiny object on floor of automobile was in fact a fully loaded pistol, and on back seat officers found another loaded pistol in a bag, there was probable cause to justify arrest of defendant, and, in prosecution for carrying concealed weapons, trial court properly denied defendant's motion to suppress evidence, on ground that there was no probable cause for arrest and that search incidental thereto was unlawful. *Emburgh v. United States* (D.C. Mun. App. 1960, 164 A. 2d 342).

#### Prosecution

Prosecutor had authority to charge the defendant, a felon who possessed an unlicensed pistol while not in his dwelling or on his land, under felony-repeater provisions of this section rather than under misdemeanor statute [§ 22-3203] and by doing so did not deny right to equal protection. *R. F. Palmore v. United States* (D.C. App. 1972, 290 A. 2d 573; see also 93 S. Ct. 66, 409 U.S. 840).

Statutes proscribing the carrying of a dangerous weapon and possession of a prohibited weapon and providing for imprisonment for not more than ten years in event of violation occurring after conviction for previous weapons offense or felony do not mandatorily require prosecution as a "repeater"; rather, if the Government, in the exercise of its prosecutorial discretion, chooses to proceed against



a defendant as a second offender, then it must do so under the second offender provisions contained in the statutes. *W. P. Martin v. United States* (D.C. App. 1971, 283 A. 2d 448).

In view of statutes proscribing the carrying of a dangerous weapon and possession of prohibited weapon, prosecution had no authority to charge the defendant under § 22-104 as a "general" repeat offender for carrying a dangerous weapon and possessing a prohibited weapon, and as the defendant received no proper and timely notice that he was subject to as much as ten years' imprisonment under the statutes specifically covering the offenses, the defendant in effect was merely tried as a first offender on a misdemeanor and the Court of General Sessions did not lack jurisdiction on theory that the defendant faced possibility of being sentenced to up to ten years in prison. *Id.*

#### Prosecutor's comments

In a prosecution for carrying a deadly or dangerous weapon, the prosecutor did not comment on defendant's failure to testify and there was no error requiring a reversal where the comment was that defendant "spoke very loud and clear as to this knife. And when was that? That was when he saw the officer. Because, what did he do? He took it from the small of his back and he threw it to the ground, trying to get rid of it". *G. O. Leftwitch v. United States* (D.C. App. 1969, 251 A. 2d 646).

#### Prosecutor's remarks to jury

Prosecutor's statement to effect that defense counsel could not have known of unloaded condition of guns unless client had told counsel was error but was harmless in view of defense counsel's immediate objection and statement of how he obtained such knowledge and defense counsel's reiteration of the circumstances in closing argument. *D. E. Garris, Jr. v. United States* (D.C. App. 1972, 295 A. 2d 510).

Where prosecutor realizes that he has made misstatement, it would be sound policy for him to join in defense's motion for curing instruction. *Id.*

In a case where jury was apprised of circumstances sufficiently probative to allow them to conclude beyond reasonable doubt that the razor was being carried as a deadly or dangerous weapon, under the circumstances defendant's conviction did not turn in any significant degree on remarks during closing argument by government counsel which attempted to place jury in shoes of victims or likely victims of crime, and in this case no reversal was required. *A. B. Clarke v. United States* (D.C. App. 1969, 256 A. 2d 782).

A demonstration of the way a razor might be used as a weapon made by officer during trial was relevant to issue of whether razor was dangerous or deadly weapon, and was not prejudicial to the defendant. *Id.*

#### Purpose

Acquittal by defendant of assault with a dangerous weapon, did not require his acquittal on companion charge of carrying a pistol which he used to defend himself on ground that such acquittal demonstrated conclusively that defendant was carrying pistol for a lawful purpose notwithstanding defendant was exposed to a serious current threat by victim, that he did not have time to get a license and that he made a serious attempt to secure police protection, in light of the history of antiweapon legislation evidencing the clearest intent to drastically tighten ban on carrying dangerous weapons. *Cooke v. United States* (1960, 275 F. 2d 887, 107 U.S. App. D.C. 223).

#### Purpose of carrying weapon

In a case where police officer observed defendant walking along a street looking into parked automobiles and trying their door handles, and officer pulled abreast of defendant in patrol automobile, and defendant quickly withdrew behind nearby tree, and officer got out of automobile and approached defendant who reached behind his back and pulled large butcher knife from his belt, in area of small of his back, and threw it to ground in tree box space, test as to whether defendant was carrying deadly or dangerous weapon in violation of statute was whether the purpose of carrying butcher knife was its use as weapon. *G. O. Leftwitch v. United States* (D.C. App. 1969, 251 A. 2d 646).

#### Questions for jury

Whether defendant, who armed himself with a pistol following discovery of theft of tape deck from his automobile, who attempted to retrieve deck when companion discovered deck in service station and who shot and seriously wounded service station attendant following argument, had acted in self-defense was for jury. *United States v. D. W. McCrae* (1972, 459 F. 2d 1140, 148 U.S. App. D.C. 116).

In prosecution for robbery and carrying a dangerous weapon wherein government's testimony on issue of insanity was offered by a number of lay witnesses and a qualified psychiatrist, and on part of defendant there was opposing testimony both lay and psychiatric, issue of insanity was for jury. *Niport v. United States* (1959, 263 F. 2d 901, 105 U.S. App. D.C. 64).

In prosecution for violation of this section defining the offense a person commits in carrying a pistol without license except in his dwelling house or place of business or on other land possessed by him, jury question was presented as to whether place at which defendant was carrying weapons was his place of business. *Alexander v. United States* (1954, 210 F. 2d 727, 93 U.S. App. D.C. 240).

In prosecution for violation of statute forbidding carrying of pistol on or about one's person without a license question whether, in having loaded pistol under hinged front seat of automobile so that he could get it by alighting from automobile and tilting driver's seat upward and forward, defendant had the weapon in such proximity to his person as to be convenient of access and within reach was one for jury. *Wilson v. United States* (1952, 198 F. 2d 299, 91 U.S. App. D.C. 135).

"The defendant had a right to carry the revolver, loaded or unloaded, from the place of purchase to his home; and whether he had it on his person at the time of his arrest, for that purpose only, or for some unlawful purpose as well, was a question of fact, which should have been submitted to the jury." *Bell v. United States* (1920, 265 F. 1007, 49 App. D.C. 367).

In prosecution for carrying gun without license, whether defendant had license was a question for the jury. *Bussie v. United States* (D.C. Mun. App. 1951, 81 A. 2d 247).

#### Release pending appeal

Appellant's motion for release on his personal recognition pending his appeal from a conviction of carrying a dangerous weapon, after conviction of a felony, would be denied where paying deference to the action of District Court, considered with appellant's record, including the conviction and his failure to comply with prior probation and release requirements, the Court of Appeals was of the opinion that no one or more conditions of release would reasonably assure that the appellant would not pose a danger to any other person or to the community if released pending the appeal. *United States v. A. Blyther, Jr.* (1969, 407 F. 2d 1279, 132 U.S. App. D.C. 344).

#### Remand

Conviction of juvenile of first-degree felony-murder armed robbery, assault with dangerous weapon, assault upon police officer with dangerous weapon and carrying dangerous weapon would be remanded to District Court to consider possibility of sentencing under the Youth Corrections Act. *United States v. W. Howard* (1971, 449 F. 2d 1086, 146 U.S. App. D.C. 10).

#### Retrial

Since the issue of whether defendant, who was convicted of carrying a dangerous weapon came within the exception of this section on the ground that he was at least a "possessor" of the apartment building where assault occurred was not fully litigated at trial, government would be given option of a retrial to show if it could, that defendant did not come within the exception. *A. C. Roumel v. United States* (D.C. App. 1970, 261 A. 2d 240).

#### Right to testify

Since the defendant presented six witnesses whose version of the events leading to defendant's arrest for carrying dangerous weapon could not have materially differed from any evidence defendant would have given had he chosen to testify, even if court did rule that government could impeach defendant by use of his prior record, defendant was not precluded from testifying and was not



prejudiced in his defense. *R. Watson, Jr. v. United States* (D.C. App. 1970, 262 A. 2d 121).

#### Role of United States Attorney

Delay of almost three months between charging defendant with misdemeanor of carrying deadly weapon and charging him instead with felony of carrying dangerous weapon after having previously been convicted of felony was not objectionable although prosecutor knew the day after arrest that defendant could be held for felony because of previous conviction in District of Columbia of carrying a deadly weapon, in view of time it took to obtain so-called "rap sheet" from F.B.I. showing defendant's felony record outside the District. *R. W. Epperson v. United States* (1967, 371 F. 2d 956, 125 U.S. App. D.C. 303).

#### Ruling of district court as binding on Court of General Sessions

United States district court decision in prosecution for narcotics violation, which suppressed certain evidence as products of illegal search and seizure was not binding on District of Columbia Court of General Sessions, where defendant was charged with possession of prohibited weapon and possession of numbers slips, and which had held previously to United States District Court ruling that certain evidence, which was seized under same circumstances as evidence in federal prosecution, was admissible. *B. R. Burrell v. United States* (D.C. App. 1969, 252 A. 2d 897).

#### Search and seizure

When arrest on traffic charge is used as pretext to justify search for evidence of other crimes, search is invalid. *United States v. H. Green* (1972, 465 F. 2d 620, 151 U.S. App. D. C. 35).

Police officers who observed speeding car run stop sign late at night and who observed furtive movement of driver as car was brought to stop acted reasonably in ordering driver from car, frisking him, and in searching beneath front seat of car. *Id.*

Conduct of officers making arrest for traffic violation who proceed to conduct search must be viewed from vantage point of prudent, reasonable, cautious officer unseen at time of arrest guided by his experience and training. *Id.*

Where defendant, after patdown at scene of arrest for driving without proper permit resulted in discovery of five bullets, indicated, in response to question regarding presence of a gun, that gun was under front seat of car, seizure of gun was proper. *United States v. M. R. Wheeler* (1972, 459 F. 2d 1228, 148 U.S. App. D.C. 204).

Where police officers had probable cause to arrest when they stopped defendant some 26 minutes following robbery and within three blocks of scene, it was immaterial whether search of paper bag defendant was carrying, which search revealed two fully loaded pistols, occurred prior to or following arrest; probable cause to arrest for robbery gave reasonable cause to search. *D. Atkinson v. United States* (D.C. App. 1972, 295 A. 2d 899).

Warrantless search of vehicle in which defendant was found, based on probable cause, which would have been valid immediately, was not rendered invalid merely because it became necessary to move the vehicle from a hostile crowd which gathered after defendant was taken into custody, especially where defendant asked a friend to take the vehicle to defendant's fiancée, who was later shown to be the owner of the vehicle. *J. Terrell v. United States* (D.C. App. 1972, 294 A. 2d 860; cert. denied 93 S. Ct. 1398, 410 U.S. 938).

Officer who received radio report that man of a specific description had a gun and was seated in a specific booth in a restaurant and who entered restaurant and saw defendant who matched description given in radio report acted reasonably in putting his gun to defendant's side and seizing gun from under defendant's coat. *E. D. Murphy v. United States* (D.C. App. 1972, 293 A. 2d 849).

Where officers had stopped defendant after observing him at night driving automobile with expired inspection sticker and defendant was wholly bereft of any documents which could have aided in determining to whom car belonged, officers' decision to secure automobile and leave it parked on street until matter of ownership could be resolved constituted legitimate reason for being present beside automobile at time one officer shined flashlight into automobile and observed partially obscured pistol on front seat; thus, seizure of pistol was within "plain

view" exception to requirement of obtaining search warrant. *F. Payne, Jr. v. United States* (D.C. App. 1972, 292 A. 2d 800).

Pat down of defendant, which revealed a concealed weapon, violated Fourth Amendment's protection against unreasonable "intrusion," where there was little, if any, evidence from which it could be concluded that police officers, who observed defendant for about six minutes, and who stated that they saw a passing of money on a street which the officers characterized as being located in a "high narcotics area," had either an articulable suspicion or reasonable grounds to believe that the suspects, defendant included, were armed and dangerous, so that pistol was seized in an illegal search and should have been suppressed in prosecution for carrying a pistol without a license. *N. Gray v. United States* (D.C. App. 1972, 292 A. 2d 153).

Actions of police officers in stopping rented vehicle in order to determine if the defendant had proper license and rental agreement was reasonable, and seizure of pistol that was in plain view of officer who was looking at interior of car with flashlight while other officer was engaged in conversation with defendant did not violate the Fourth Amendment. *R. F. Palmore v. United States* (D.C. App. 1972, 290 A. 2d 573; see also 93 S. Ct. 66, 409 U.S. 840).

Police officers, who, upon arriving at scene of holdup that had occurred a few minutes earlier, were told that escaping culprits had fled down alley, who then proceeded down alley and observed the defendant standing in alley approximately 400 or 500 feet from scene of crime, who, as they approached defendant, saw defendant turn his back and begin fumbling with something in front of him, and also observed an old crumpled paper bag in defendant's right hand, acted reasonably in stopping defendant and inquiring as to contents of bag, and after defendant handed bag to officer and explained, "that's not my gun," defendant was properly arrested for carrying weapon, the seizure of which was amply justified. *C. M. Williams v. United States* (D.C. App. 1972, 287 A. 2d 814).

Where two police officers had been provided information by a reliable informant, indicating possible illegal narcotics activity and, after observing the defendant and another emerge from building as predicted, officers had right to stop the occupants of the taxicab long enough to ask to talk to them and to investigate, seizure of the pistol, that the defendant held in plain view of the officers, was proper and, once the defendant was lawfully under arrest, the seizure of the cartridges, in reasonable search of the vehicle incident to such arrest, was clearly appropriate. *United States v. R. B. James* (1971, 452 F. 2d 1375, 147 U.S. App. D.C. 43).

Where postal inspector was called at his home at about 3 o'clock in the morning and informed by a reliable source that an unidentified postal employee had brought pistol onto employment premises, and subject of investigation was alleged violation of federal regulations prohibiting carrying of firearm while on federal property except for official purposes, warrantless search of the defendant's coat in post office cloak room and seizure of pistol by postal authorities was reasonable and constitutionally permissible. *H. G. Brown v. United States* (D.C. App. 1971, 278 A. 2d 462).

Police officer, who found 9 rounds of .22-caliber bullets on defendant's person when he was searched prior to incarceration after being stopped for traffic offenses and charged with disorderly conduct, had probable cause to make warrantless search of automobile that defendant had been driving and that was owned by another person who had the right to drive the automobile away at any time, and to seize pistol that was seen protruding from under the automobile seat. *P. G. Hurley v. United States* (D.C. App. 1971, 273 A. 2d 840).

Since it is impossible to determine from testimony in this case whether limitations on authority of police officers to cause a temporary investigatory detention were exceeded, and whether gun was discovered in process of an unlimited and full-scale search of defendant's person, or as a consequence of a protective pat down, case will be remanded for a supplementary evidentiary inquiry. *United States v. R. Morris* (1970, 440 F. 2d 224, 142 U.S. App. D.C. 196).



Police, who received information that there had been a holdup and robbery of a motel and who saw defendant, who was wearing outer clothing fitting description of one of robbers, in a restaurant in vicinity in company of a known felon, and who observed a bulge under defendant's shirt resembling a pistol, had probable cause to arrest and search defendant, and pistol discovered in course of search was admissible in prosecution on charge of carrying a pistol. *T. A. Teresi v. United States* (D.C. App. 1963, 187 A. 2d 492).

Removal of unlicensed pistol from floor of parked automobile did not constitute an unreasonable search and seizure where officer, who discovered pistol lying in plain view on automobile floor, was making an investigation at scene of reported burglary and after noticing defendant's keys in ignition in violation of law had opened automobile door to remove keys. *C. A. Campbell v. United States* (D.C. Mun. App. 1961, 174 A. 2d 87).

#### Self-defense

Where defendant, who was seated on right front fender of his automobile was attacked by disorderly group of men and women, retreated to driver's side of automobile, obtained pistol on floor of automobile under driver's seat and fired on his pursuers while backing away, defendant was justified in using weapon in self-defense, and fact that he had it in his hands did not constitute violation of statute forbidding carrying of pistol on or about one's person without a license. *Wilson v. United States* (1952, 198 F. 2d 299, 91 U.S. App. D.C. 135).

#### Sentences

Objection to sentence was not properly addressed to the appellate court where it was within the statutory maximum and judgment did not reveal inconsistent or legally impermissible approaches, mistake of law, failure to use sentencing aids, failure to exercise discretion, or failure to supply legally required findings. *United States v. R. Freeman* (1972, 462 F. 2d 290, 149 U.S. App. D.C. 186).

One-year sentence imposed upon defendant convicted of carrying a dangerous weapon without a license was not plainly illegal so as to entitle trial court to vacate such sentence and resentence defendant to a term of three to ten years, even though trial court, when first sentence was imposed, was operating under misapprehension that defendant was serving another sentence, where such misapprehension was the fault of the court itself or the prosecutor. *United States v. G. E. Evans* (1972, 459 F. 2d 1134, 148 U.S. App. D.C. 110).

Defendant convicted of carrying a pistol without a license, in violation of this section, was not eligible for sentencing under Young Adult Offenders Act. *D. Atkinson v. United States* (D.C. App. 1972, 295 A. 2d 899).

In imposing a more severe sentence on conviction of carrying a pistol without a license where defendant has suffered a prior similar conviction or a prior felony conviction, the mandatory statutory procedure must be followed. *C. D. Coleman v. United States* (D.C. App. 1972, 295 A. 2d 896).

Sentence of from three to nine years on conviction of carrying a pistol without a license in violation of District of Columbia law is required to be vacated and case remanded for resentencing since the record is barren of any presentence notice to defendant or proof to court of existence of statutory preconditions of imposition of greater than one-year sentence, to wit, prior conviction of similar offense or of any other felony. *United States v. H. Lucas, Jr.* (1971, 441 F. 2d 1056, 142 U.S. App. D.C. 366).

Sentence on conviction of carrying a pistol without a license and assault with a dangerous weapon could be cumulated, notwithstanding that both counts arose out of single transaction, since the evidence militated against conclusion that defendant carried pistol with particular purpose in mind of using it to inflict injury but rather portrayed a sudden flare-up and precipitous resort to the pistol during verbal affray. *Id.*

In a prosecution for carrying an unlicensed pistol and for increased punishment by reason of recidivism, defense counsel's concession, in bail application, that defendant had been convicted of robbery in 1957 is insufficient proof, for purpose of sentencing under recidivist statute, that defendant had been convicted of robbery in 1958 as charged by government. *United States v. E. Clemons*

(1970, 440 F. 2d 205, 142 U.S. App. D.C. 177; cert. denied 91 S. Ct. 959, 401 U.S. 945).

In proceedings to increase punishment under recidivist statutes, not only existence of prior conviction but also its character, its continuing efficacy, and its constitutional validity are among inquiries appropriate. *Id.*

Proceeding to increase punishment under recidivist statute is criminal in character, and the accused recidivist must be sheltered by suitable safeguards against improper sentence. *Id.*

Procedural standards to be observed in imposing increased punishment under recidivist statute include reasonable notice of recidivist charge, the opportunity to be heard, the right to counsel, and proof of prior conviction. *Id.*

Where prosecuting attorney filed "Information of Prior Conviction" with clerk but during sentencing proceedings there was no mention of Information or prior conviction and there was no proof of such conviction in the presence of the defendant, imposition of sentence on basis that defendant, found guilty of carrying pistol without a license, had prior offense was improper. *United States v. E. M. Marshall* (1970, 440 F. 2d 195, 142 U.S. App. D.C. 167; cert. denied 91 S. Ct. 153, 400 U.S. 909).

A sentence of not less than three or more than ten years was not unduly severe after defendant pleaded guilty to carrying deadly weapon after previous conviction of similar offense or of a felony, who had prior convictions of house breaking, grand larceny and receiving stolen property and who had failed to consistently report back to jail in interim between entry of his guilty plea and date of sentencing. *H. L. Barnett v. United States* (1968, 403 F. 2d 918, 131 U.S. App. D.C. 192).

Where general sentence imposed following convictions for robbery, assault with a dangerous weapon, and carrying concealed weapon was in excess of statutory maximum for carrying concealed weapon, and convictions for robbery and assault with dangerous weapon were required to be reversed because of absence of indication that defendant made informed decision, after appropriate advice, to proceed with joint counsel, case would be remanded for resentencing on count of carrying concealed weapon. *F. J. Ford v. United States of America* (1967, 379 F. 2d 123, 126 U.S. App. D.C. 346).

Determination of whether evidence was sufficient to sustain conviction for carrying a dangerous weapon without a license would not be made where defendant was convicted upon sufficient evidence of a different offense and sentences imposed upon defendant for the two offenses ran concurrently. *J. Hart v. United States* (D.C. App. 1963, 187 A. 2d 329).

Trial court did not abuse discretion in sentencing defendant, who had entered plea of guilty and whose motions for continuation of bail and for immediate sentencing were denied, to one year imprisonment without crediting him for 52 days which had elapsed between plea of guilty and date on which he was sentenced. *R. W. Epperson v. S. A. Anderson, Supt. etc.* (1963, 326 F. 2d 665, 117 U.S. App. D.C. 122).

Defendant simultaneously carrying two pistols, each of which was unlicensed, committed but a single offense and could not be given consecutive sentences by reason of being separately charged with carrying of unlicensed pistol in two separate informations. *Cormier v. United States* (D. C. Mun. App. 1957, 137 A. 2d 212).

#### Special policemen

Despite fact that the defendant was a special policeman at time of his arrest for carrying a pistol without a license in violation of statute, he did not come within the "policemen or other duly appointed law-enforcement officers" exception to the statute, since a special policeman is not empowered to exercise his authority outside the property or area he is appointed to protect, or to carry weapons away from such area with certain exceptions, and since the factual circumstances in the instant case were not even close to being within those limited exceptions. *J. E. Franklin v. United States* (1972, 458 F. 2d 861, 148 U.S. App. D.C. 39).

Since the defendant, although in uniform, was not due to report for duty as special policeman for six hours and was not traveling without deviation, immediately before or immediately after period of actual duty, be-



tween area where he worked and his residence, he was not "policeman" nor "law enforcement officer" within provision exempting policemen or law enforcement officers from statute proscribing carrying a pistol either openly or concealed without a license. *J. E. Franklin v. United States* (D.C. App. 1970, 271 A. 2d 784).

Special policemen are commissioned for special purpose of protecting property on premises of employer and do not have general duties and broad authority of a policeman or law enforcement officer in the ordinary sense of those terms. *Id.*

#### Verdict

Where concurrent sentences were imposed for second-degree murder and for carrying a pistol without a license, murder conviction was affirmed and there were difficult factual and legal problems with respect to the weapons conviction, public interest and the interest of administration of justice required that the conviction on weapons count be vacated. *United States v. D. Bobbitt* (1971, 450 F. 2d 685, 146 U.S. App. D.C. 224).

#### Waiver of trial by jury

In a prosecution, without jury, where there is a right to trial by jury, did and for the record of what occurred in open court was silent as to waiver of defendant's right to a jury trial, case would be remanded for a determination, after hearing, of whether defendant knowingly and voluntarily waived his right to jury trial in open court and requested a trial by the court, even though informations had been stamped with notation "Jury Trial Demand Withdrawn". *F. H. Jackson v. United States* (D.C. App. 1970, 262 A. 2d 106).

The court said that the public interest in obtaining swift and certain justice for those charged with crime, requires that trial court assume responsibility for making certain that record in all criminal trials in which accused has a constitutional right to trial by jury, which are conducted without a jury contains evidence from which it may be found that defendant knowingly and voluntarily waived such right. *Id.*

The court held that in trials commenced after issuance of this opinion, there should be in the record a statement in open court by defendant himself in order to provide a basis for subsequently determining, if necessary, that he knowingly and voluntarily waived his constitutional right to trial by jury. *Id.*

#### § 22-3205. Exceptions to section 22-3204.

The provisions of section 22-3204 shall not apply to marshals, sheriffs, prison or jail wardens, or their deputies, policemen or other duly appointed law-enforcement officers, or to members of the Army, Navy, Air Force, or Marine Corps of the United States or of the National Guard or Organized Reserves when on duty, or to the regularly enrolled members of any organization duly authorized to purchase or receive such weapons from the United States, provided such members are at or are going to or from their places of assembly or target practice, or to officers or employees of the United States duly authorized to carry a concealed pistol, or to any person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person having in his possession, using, or carrying a pistol in the usual or ordinary course of such business or to any person while carrying a pistol unloaded and in a secure wrapper from the place of purchase to his home or place of business or to a place of repair or back to his home or place of business or in moving goods from one place of abode or business to another. (July 8, 1932, 47 Stat. 651, ch. 465, § 5).

#### CODIFICATION

"Air Force" was inserted on authority of section 207(a) (f) of Act July 26, 1947, ch. 343, 61 Stat. 502.

#### NOTES TO DECISIONS

##### Assistance of counsel

In this case the record did not show that defendant's trial counsel who declined to cross-examine either complainant or arresting officer ineffectively assisted defendant who himself testified and denied assault. *J. J. Scott v. United States* (D.C. App. 1969, 259 A. 2d 353; leave to appeal denied 427 F. 2d 609, 138 U.S. App. D.C. 339).

##### Burden of proving exception

Defendant had burden of bringing himself within statutory exception to offense charged rather than that of the prosecution to negative it. *M. L. Williams v. United States* (D.C. App. 1968, 237 A. 2d 539).

##### Business of repairing firearms

Defendant charged with carrying pistol for which he had no license, was not within District of Columbia statute providing that licensing provisions did not apply to persons engaged in business of repairing firearms when pistol is carried unloaded in a secure wrapper from place of business to home, where defendant claimed that repairing guns was only his hobby and that he had volunteered to work on gun which he claimed belonged to another. *Cormier v. United States* (D. C. Mun. App. 1957, 137 A. 2d 212).

##### Special policemen

Despite fact that the defendant was a special policeman at time of his arrest for carrying a pistol without a license in violation of statute, he did not come within the "policemen or other duly appointed law-enforcement officers" exception to the statute, since a special policeman is not empowered to exercise his authority outside the property or area he is appointed to protect, or to carry weapons away from such area with certain exceptions, and since the factual circumstances in the instant case were not even close to being within those limited exceptions. *J. E. Franklin v. United States* (1972, 458 F. 2d 861, 148 U.S. App. D.C. 39).

Since the defendant, although in uniform, was not due to report for duty as special policeman for six hours and was not traveling without deviation, immediately before or immediately after period of actual duty, between area where he worked and his residence, he was not "policeman" nor "law enforcement officer" within provision exempting policemen or law enforcement officers from statute proscribing carrying a pistol either openly or concealed without a license. *J. E. Franklin v. United States* (D.C. App. 1970, 271 A. 2d 784).

Special policemen are commissioned for special purpose of protecting property on premises of employer and do not have general duties and broad authority of a policeman or law enforcement officer in the ordinary sense of those terms. *Id.*

A defendant was neither a "policeman" nor a "law enforcement officer" so as to be exempt from section 22-3205 against carrying a pistol without a license, where defendant was a special policeman appointed by the Commissioners and he was not "on actual duty in the area" of the place where he was arrested nor was he "traveling without deviation immediately before and immediately after the period of actual duty between such places and his residence" within the Commissioner's regulation authorizing the carrying of firearms by special policemen under such circumstances. *McKenzie v. United States* (D.C. Mun. App. 1960, 158 A. 2d 912).

#### § 22-3206. Issue of licenses to carry pistol.

The superintendent of police of the District of Columbia may, upon the application of any person having a bona fide residence or place of business within the District of Columbia or of any person having a bona fide residence or place of business within the United States and a license to carry a pistol concealed upon his person issued by the lawful authorities of any State or subdivision of the United States, issue a license to such person to carry a pistol within the District of Columbia for not more than one year from date of issue, if it appears that the



applicant has good reason to fear injury to his person or property or has any other proper reason for carrying a pistol and that he is a suitable person to be so licensed. The license shall be in duplicate, in form to be prescribed by the Commissioner of the District of Columbia and shall bear the name, address, description, photograph, and signature of the licensee and the reason given for desiring a license. The original thereof shall be delivered to the licensee, and the duplicate shall be retained by the superintendent of police of the District of Columbia and preserved in his office for six years. (July 8, 1932, 47 Stat. 651, ch. 465, § 6.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under section 4-103.

#### § 22-3207. Selling pistol to minors and others.

No person shall within the District of Columbia sell any pistol to a person who he has reasonable cause to believe is not of sound mind, or is forbidden by section 22-3203 to possess a pistol, or, except when the relation of parent and child or guardian and ward exists, is under the age of twenty-one years. (July 8, 1932, 47 Stat. 652, ch. 465, § 7; June 29, 1953, 67 Stat. 94, ch. 159, § 204(d).)

#### AMENDMENT

1953—Act June 29, 1953, substituted "forbidden by section 22-3203 to possess a pistol" for a "a drug addict, or is a person who has been convicted in the District of Columbia or elsewhere of a crime of violence" and increased the age requirement from eighteen to twenty-one.

#### § 22-3208. Transfers of firearms regulated.

No seller shall within the District of Columbia deliver a pistol to the purchaser thereof until forty-eight hours shall have elapsed from the time of the application for the purchase thereof, except in the case of sales to marshals, sheriffs, prison or jail wardens or their deputies, policemen, or other duly appointed law-enforcement officers, and, when delivered, said pistol shall be securely wrapped and shall be unloaded. At the time of applying for the purchase of a pistol the purchaser shall sign in duplicate and deliver to the seller a statement containing his full name, address, occupation, color, place of birth, the date and hour of application, the caliber, make, model, and manufacturer's number of the pistol to be purchased and a statement that he is not forbidden by section 22-3203 to possess a pistol. The seller shall, within six hours after such application, sign and attach his address and deliver one copy to such person or persons as the superintendent of police of the District of Columbia may designate, and shall retain the other copy for six years. No machine gun, sawed-off shotgun, or blackjack shall be sold to any person other than the persons designated in section 22-3214 as entitled to possess the same, and then only after permission to make such sale has been obtained from the superintendent of police of the District of Columbia. This section shall not apply to sales at wholesale to licensed dealers. (July 8, 1932, 47 Stat. 652, ch. 465, § 8; June 29, 1953, 67 Stat. 94, ch. 159, § 204(e).)

#### AMENDMENT

1953—Act June 29, 1953, substituted "a statement that he is not forbidden by section 22-3203 to possess a pistol" for "a statement that he has never been convicted in the District of Columbia or elsewhere of a crime of violence."

#### TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under section 4-103.

#### § 22-3209. Dealers of weapons to be licensed.

No retail dealer shall within the District of Columbia sell or expose for sale or have in his possession with intent to sell, any pistol, machine gun, sawed-off shotgun, or blackjack without being licensed as provided in section 22-3210. No wholesale dealer shall, within the District of Columbia, sell, or have in his possession with intent to sell, to any person other than a licensed dealer, any pistol, machine gun, sawed-off shotgun, or blackjack. (July 8, 1932, 47 Stat. 652, ch. 465, § 9.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22-3210.

#### § 22-3210. Licenses of dealers of weapons—Records—By whom granted—Conditions thereof.

The Commissioner of the District of Columbia may, in his discretion, grant licenses and may prescribe the form thereof, effective for not more than one year from date of issue, permitting the licensee to sell pistols, machine guns, sawed-off shotguns, and blackjacks at retail within the District of Columbia subject to the following conditions in addition to those specified in section 22-3209, for breach of any of which the license shall be subject to forfeiture and the licensee subject to punishment as provided in this chapter.

1. The business shall be carried on only in the building designated in the license.

2. The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can be easily read.

3. No pistol shall be sold (a) if the seller has reasonable cause to believe that the purchaser is not of sound mind or is forbidden by section 22-3203 to possess a pistol or is under the age of twenty-one years, and (b) unless the purchaser is personally known to the seller or shall present clear evidence of his identity. No machine gun, sawed-off shotgun, or blackjack shall be sold to any person other than the persons designated in section 22-3214 as entitled to possess the same, and then only after permission to make such sale has been obtained from the superintendent of police of the District of Columbia.

4. A true record shall be made in a book kept for the purpose, the form of which may be prescribed by the commissioners, of all pistols, machine guns, and sawed-off shotguns in the possession of the licensee, which said record shall contain the date of purchase, the caliber, make, model, and manufacturer's number of the weapon, to which shall be added, when sold, the date of sale.

5. A true record in duplicate shall be made of every pistol, machine gun, sawed-off shotgun, and blackjack sold, said record to be made in a book kept for the purpose, the form of which may be prescribed by the Commissioner of the District of Columbia and shall be personally signed by the purchaser and by



the person effecting the sale, each in the presence of the other and shall contain the date of sale, the name, address, occupation, color, and place of birth of the purchaser, and, so far as applicable, the caliber, make, model, and manufacturer's number of the weapon, and a statement by the purchaser that he is not forbidden by section 22-3203 to possess a pistol. One copy of said record shall, within seven days, be forwarded by mail to the superintendent of police of the District of Columbia and the other copy retained by the seller for six years.

6. No pistol or imitation thereof or placard advertising the sale thereof shall be displayed in any part of said premises where it can readily be seen from the outside. No license to sell at retail shall be granted to anyone except as provided in this section. (July 8, 1932, 47 Stat. 652, ch. 465, § 10; June 29, 1953, 67 Stat. 94, ch. 159, § 204 (f), (g).)

#### AMENDMENTS

1953—Par. 3(a) amended by act June 29, 1953, § 204(f), which substituted "is forbidden by section 22-3203 to possess a pistol or is under the age of twenty-one" for "is a drug addict or has been convicted in the District of Columbia or elsewhere of a crime of violence or is under the age of eighteen."

Par. 5, first sentence, amended by act June 29, 1953, § 204(g), which substituted "a statement by the purchaser that he is not forbidden by section 22-3203 to possess a pistol" for "a statement signed by the purchaser that he has never been convicted in the District of Columbia or elsewhere of a crime of violence."

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under section 4-103.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-3203, 22-3209, 22-3214.

#### § 22-3211. False information forbidden in sale of weapons.

No person shall, in purchasing a pistol or in applying for a license to carry the same, or in purchasing a machine gun, sawed-off shotgun, or blackjack within the District of Columbia, give false information or offer false evidence of his identity. (July 8, 1932, 47 Stat. 653, ch. 465, § 11.)

#### § 22-3212. Alteration of identifying marks of weapons prohibited.

No person shall within the District of Columbia change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark or identification on any pistol, machine gun, or sawed-off shotgun. Possession of any pistol, machine gun, or sawed-off shotgun upon which any such mark shall have been changed, altered, removed, or obliterated shall be prima facie evidence that the possessor has changed, altered, removed, or obliterated the same within the District of Columbia: *Provided, however*, That nothing contained in this section shall apply to any officer or agent of any of the departments of the United States or the District of Columbia engaged in experimental work (July 8, 1932, 47 Stat. 653, ch. 465, § 12.)

#### § 22-3213. Exceptions.

Except as provided in section 22-3202 and section 22-3214(b), this chapter shall not apply to toy or

antique pistols unsuitable for use as firearms. (July 8, 1932, 47 Stat. 653, ch. 465, § 13; July 29, 1970, Pub. L. 91-358, § 205(b), title II, 84 Stat. 601.)

#### AMENDMENT

1970—Section 205(b) of Act July 29, 1970, Public Law 91-358 amended section by striking out "This" and inserting in lieu thereof the following: "Except as provided in section 2 and section 14(b) of this Act [section 22-3202 and section 22-3214(b)], this".

#### APPLICABILITY OF 1970 AMENDMENT

Section 901(b)(3) of Pub. L. 91-358, provided as follows: (3) The amendments made by sections 201 [sections 22-104 and 22-104a] and 205 [sections 22-3202 and 22-3213] of this Act shall apply with respect to any person who commits an offense after the effective date of this Act. [For effective date see note preceding § 11-101.]

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### § 22-3214. Possession of certain dangerous weapons prohibited—Exceptions.

(a) No person shall within the District of Columbia possess any machine gun, sawed-off shotgun, or any instrument or weapon of the kind commonly known as a blackjack, slung shot, sand club, sandbag, switch-blade knife, or metal knuckles, nor any instrument, attachment, or appliance for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearms: *Provided, however*, That machine guns, or sawed-off shotguns, and blackjacks may be possessed by the members of the Army, Navy, Air Force, or Marine Corps of the United States, the National Guard, or Organized Reserves when on duty, the Post Office Department or its employees when on duty, marshals, sheriffs, prison or jail wardens, or their deputies, policemen, or other duly-appointed law-enforcement officers, officers or employees of the United States duly authorized to carry such weapons, banking institutions, public carriers who are engaged in the business of transporting mail, money, securities, or other valuables, wholesale dealers and retail dealers licensed under section 22-3210.

(b) No person shall within the District of Columbia possess, with intent to use unlawfully against another, an imitation pistol, or a dagger, dirk, razor, stiletto, or knife with a blade longer than three inches, or other dangerous weapon.

(c) Whoever violates this section shall be punished as provided in section 22-3215, unless the violation occurs after he has been convicted in the District of Columbia of a violation of this section or of a felony, either in the District of Columbia or in another jurisdiction, in which case he shall be imprisoned for not more than ten years. (July 8, 1932, 47 Stat. 654, ch. 465, § 14; June 29, 1953, 67 Stat. 94, ch. 159, § 204(h).)

#### REFERENCE IN TEXT

The "Post Office Department", referred to in subsec. (a), was abolished and all its functions, powers, and duties were transferred to the United States Postal Service by section 4(a) of Act Aug. 12, 1970, Pub. L. 91-375, 84 Stat. 773. Section 6(o) of that Act provided that a reference in another law to the Post Office Department shall be considered a reference to the United States Postal Service.

#### CODIFICATION

In subsec. (a), "Air Force" was inserted on authority of section 207(a)(f) of Act July 26, 1947, ch. 343, 61 Stat. 502.



## AMENDMENT

1953—Act June 29, 1953, designated existing provisions as subsec. (a), included switch-blade knives in the list of weapons forbidden to be possessed and added subsecs. (b) and (c).

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9-132, 22-3208, 22-3210, 22-3213.

## SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 40, section 193m, U.S. Code.

## NOTES TO DECISIONS

## Abuse of discretion

The decision of the trial court, rendered after hearing on admissibility, that 1959 conviction of one defendant for housebreaking and larceny and 1962 conviction of another defendant for attempted housebreaking could be brought out on cross-examination in robbery prosecution unless either defendant could satisfy court that since conviction he had led legally blameless life, was not an abuse of discretion. *United States v. J. L. Bailey at ano.* (1970, 426 F. 2d 1236, 138 U.S. App. D.C. 242).

## Appeal and error

Where judge hearing case without jury had opportunity visually to inspect knife, that was included in record, and it appeared that blade exceeded requisite length by fraction of inch, denying defense the opportunity to demonstrate in court by measuring instrument that blade was not beyond requisite length was not error even if cutting edge of blade measured less than requisite length. *S. McIntyre v. United States* (D.C. App. 1971, 283 A. 2d 814).

## Construction

Defendant who was convicted of possession of weapon which he seized from his wife when she attempted to shoot him "possessed" the gun within statute proscribing possession of prohibited weapon, where he held the gun long enough to threaten to shoot wife. *Earl Cooke v. United States* (D.C. App. 1965, 213 A. 2d 508).

## Construction with other laws

The statute making it a crime for a person to carry "elsewhere" than in his home "or place of business or on land possessed by him a pistol without a license \* \* \* or any deadly or dangerous weapon capable of being so concealed," and the statute prohibiting possession "anywhere" with intent to use unlawfully against another an imitation pistol reflect the purpose of Congress to strengthen the existing law and tighten controls over the possession of dangerous weapons and each has distinctive objects of correction. *United States v. J. H. Parker* (D.C. Mun. App. 1962, 185 A. 2d 913).

The statute prohibiting the possession "anywhere" with intent to use unlawfully against another an imitation pistol or other "dangerous weapon" embraces the possession of a real pistol and possession of a pistol may be charged under such statute. *Id.*

The 1953 act specifically prohibiting possession of knife with intent to use unlawfully against another was not intended to cover the whole subject matter of knives in District of Columbia, in the sense of repealing deadly weapon statute which required no proof of unlawful intent, and hence information alleging violation of the older statute was sufficient though it specified knife as the deadly weapon and did not allege intent to use knife unlawfully against another. *United States v. W. E. Shannon* (D. C. Mun. App. 1958, 144 A. 2d 267).

## Double jeopardy

Where defendant was charged by information with violation of statute which makes it unlawful for one to own or have in his possession a pistol if previously convicted of possession of a prohibited weapon, and before any witness took stand prosecuting attorney announced that Government could not go forward with charge and would nolle prosequere it and bring new charge of carrying a pistol without a license, plea of double jeopardy was not a valid plea in new prosecution because the two informations charged separate and distinct offenses. *C. R. Newman v. United States* (D.C. App. 1968, 239 A. 2d 152).

## Election of offenses

Government is not required to bring all knife cases under code section prohibiting possession of knife with blade longer than three inches; and defendant who carried openly or concealed on or about his person a "pocket knife" which had a black outer case and a blade three-eighths of an inch wide and four and one-quarter inches from shank to tip was properly prosecuted under code section forbidding any person to carry either openly or concealed on or about his person a deadly or dangerous weapon capable of being so concealed. *Degree v. United States* (D.C. Mun. App. 1958, 144 A. 2d 547).

## Evidence—Sufficiency

Evidence was sufficient to sustain a conviction for possession of prohibited weapon. *B. R. Burrell v. United States* (D.C. App. 1969, 252 A. 2d 897).

Evidence was sufficient to sustain a conviction for assault and possession of dangerous weapon with intent to use the same unlawfully. *C. Willis v. United States* (D.C. App. 1969, 250 A. 2d 569).

## Hearing de novo

It was not erroneous to deny a hearing de novo upon the issue of whether girl in whose apartment defendant, charged with possession of submachine gun, was staying gave her valid consent to search of bed wherein defendant had secreted gun where conflict in testimony between police officers at pretrial hearing on issue was not substantially inconsistent and defendant at no time proffered substance of any new evidence that would be offered by additional officers he had subpoenaed. *R. W. Dupont v. United States* (D.C. App. 1969, 259 A. 2d 355).

## Inconsistent verdict

In this case, the court held that since there was evidence that defendant not only struck officer with nightstick but also hit him and engaged in general scuffling, finding by jury that defendant was not guilty of charge involving possession of nightstick did not preclude conviction on charge of simple assault. *C. T. Matthews v. United States* (D.C. App. 1970, 267 A. 2d 826; cert. denied 92 S. Ct. 221, 404 U.S. 884).

## Insanity

A general verdict of not guilty by reason of insanity carried with it a finding that, except for the question as to his sanity, defendant was guilty as charged. *Rucker v. United States* (1960, 280 F. 2d 623, 108 U.S. App. D.C. 75).

In prosecution for assault with intent to kill and possession of a rifle with intent to use it unlawfully against another, where the court found the defendant not guilty by reason of insanity and it did not appear that defendant actually understood and acquiesced that the question of his guilt was being tried in that it did not appear that he understood and acquiesced in what was being accomplished without witnesses or evidence and he protested promptly a few day after the verdict, the defendant was entitled to a new trial. *Id.*

## Jurisdiction

Jurisdiction of the Court of General Sessions extended to prosecution for carrying a dangerous weapon, possessing a prohibited weapon and driving a motor vehicle without an operator's license, notwithstanding contention that the trial court had jurisdiction only over offenses punishable by fine or imprisonment and that the offenses charged carried penalties of a fine, imprisonment, or both. *W. P. Martin v. United States* (D.C. App. 1971, 283 A. 2d 448).

## Prosecution

Statutes proscribing the carrying of a dangerous weapon and possession of a prohibited weapon and providing for imprisonment for not more than ten years in event of violation occurring after conviction for previous weapons offense or felony do not mandatorily require prosecution as a "repeater"; rather, if the Government, in the exercise of its prosecutorial discretion, chooses to proceed against a defendant as a second offender, then it must do so under the second offender provisions contained in the statutes. *W. P. Martin v. United States* (D.C. App. 1971, 283 A. 2d 448).

In view of statutes proscribing the carrying of a dangerous weapon and possession of prohibited weapon, pros-



ecution had no authority to charge the defendant under § 22-104 as a "general" repeat offender for carrying a dangerous weapon and possessing a prohibited weapon, and as the defendant received no proper and timely notice that he was subject to as much as ten years' imprisonment under the statutes specifically covering the offenses, the defendant in effect was merely tried as a first offender on a misdemeanor and the Court of General Sessions did not lack jurisdiction on theory that the defendant faced possibility of being sentenced to up to ten years in prison. *Id.*

#### Purpose

Acquittal by defendant of assault with a dangerous weapon did not require his acquittal on companion charge of carrying a pistol which he used to defend himself on ground that such acquittal demonstrated conclusively that defendant was carrying pistol for a lawful purpose notwithstanding defendant was exposed to a serious current threat by victim, that he did not have time to get a license and that he made a serious attempt to secure police protection, in light of the history of antiweapon legislation evidencing the clearest intent to drastically tighten ban on carrying dangerous weapons. *Cooke v. United States* (1960, 275 F. 2d 887, 107 U.S. App. D.C. 223).

#### Ruling of district court as binding on Court of General Sessions

United States district court decision, in prosecution for narcotics violation, which suppressed certain evidence as products of illegal search and seizure was not binding on District of Columbia Court of General Sessions, where defendant was charged with possession of prohibited weapon and possession of numbers slips, and which had held previously to United States District Court ruling that certain evidence, which was seized under same circumstances as evidence in federal prosecution, was admissible. *B. R. Burrell v. United States* (D.C. App. 1969, 252 A. 2d 897).

#### Search and seizure

Where defendant left hotel shortly after robbery in hotel had been committed, matched description given police officer of one of the robbers with respect to clothing, age, and general appearance, broke into run after officer started to follow him, and tried to break away after officer overtook him and said he would like to talk to him, action of the arresting officer in subduing defendant and discovering switchblade knife in his back pocket was accomplished with probable cause and was not unreasonable under circumstances, and admission of knife in prosecution under this section presented no plain error or defect affecting substantial rights. *J. E. Herring v. United States* (D.C. App. 1971, 273 A. 2d 835).

A defendant, who was lawfully arrested for operating automobile without a valid permit, was taken to police station in his own automobile, and charged with driving without a valid permit, possession of prohibited weapon and possession of numbers slips, but did not protest or withhold his consent to use by police of his automobile to drive him to police station and was not coerced in any way, there was no seizure of defendant's automobile by police prior to arrival at police station. *B. R. Burrell v. United States* (D.C. App. 1969, 252 A. 2d 897).

#### Self-defense

Defendant who was convicted of possession of weapon which he seized from his wife when she attempted to shoot him was not acting in self-defense where he pushed wife over the bed after he seized the weapon and threatened to shoot her. *Earl Cooke v. United States* (D.C. App. 1965, 213 A. 2d 508).

#### Sentence—Consecutive

Consecutive sentences were properly imposed on defendant convicted of simple assault and possession of prohibited weapon, notwithstanding that both offenses arose out of his attack on his wife, where government had to prove that defendant attempted to inflict bodily injury and did not have to prove possession of weapon in order to sustain assault charge, and the weapon charge, on the other hand, required proof of possession of weapon but did not require evidence of attempt to harm. *E. Cooke v. United States* (D.C. App. 1965, 213 A. 2d 508).

#### Waiver of trial by jury

In a prosecution, without jury, where there is a right to trial by jury, and for the record of what occurred in open court was silent as to waiver of defendant's right to a jury trial, case would be remanded for a determination, after hearing, of whether defendant knowingly and voluntarily waived his right to jury trial in open court and requested a trial by the court, even though informations had been stamped with notation "Jury Trial Demand Withdrawn". *F. H. Jackson v. United States* (D.C. App. 1970, 262 A. 2d 106).

The court said that the public interest in obtaining swift and certain justice for those charged with crime, requires that trial court assume responsibility for making certain that record in all criminal trials in which accused has a constitutional right to trial by jury which are conducted without a jury, contains evidence from which it may be found that defendant knowingly and voluntarily waived such right. *Id.*

The court held that in trials commenced after issuance of this opinion, there should be in the record a statement in open court by defendant himself in order to provide a basis for subsequently determining, if necessary, that he knowingly and voluntarily waived his constitutional right to trial by jury. *Id.*

#### Witnesses

Where witness in prosecution for murder and possession of prohibited weapon was long time drug addict who had used drugs on day of trial and who had been hospitalized for drug addiction, trial court abused its discretion by refusing defendant's request that trial judge subpoena and examine locally available hospital records pertaining to witness' competency. *United States v. R. H. Crosby* (1972, 462 F. 2d 1201, 149 U.S. App. D.C. 306).

#### § 22-3215. Penalties.

Any violation of any provision of this chapter for which no penalty is specifically provided shall be punished by a fine of not more than \$1,000 or imprisonment for not more than one year, or both. (July 8, 1932, 47 Stat. 654, ch. 465, § 15.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-3203, 22-3204, 22-3214.

#### NOTES TO DECISIONS

##### Appeal and error

Record in prosecution for carrying a pistol without a license in violation of § 22-3204 supported finding that defendant, to whom Miranda warnings were read by policeman from standard police form and who was given the form to read in police station before being questioned, but who was not asked if he understood contents of form, had been sufficiently informed of his right to remain silent and to counsel. *M. J. Brewster v. United States* (D.C. App. 1970, 271 A. 2d 409).

In view of the overwhelming evidence that the particular address claimed by defendant to be his dwelling house was not his dwelling house, any error with respect to whether defendant waived any of his constitutional rights to remain silent and to counsel before being questioned as to his residence was harmless in prosecution for violation of § 22-3204 prohibiting the carrying of an unlicensed pistol except in one's dwelling house. *Id.*

##### Double jeopardy

Defendant, who allegedly carried concealed unlicensed pistol on his person and produced it and shot victim, was not put twice in jeopardy for same offense by prosecution upon two counts, for assault with deadly weapon, and also for carrying concealed unlicensed weapon, since element of proof in second count, that gun was unlicensed, was not necessary in proof of assault charge. *Kendrick v. United States* (1956, 238 F. 2d 34, 99 U.S. App. D.C. 173).

##### Indictment

Failure of pistol-carrying count of indictment to allege or prove to show that defendant had been previously convicted of felony, did not preclude imposition of greater penalty applicable to defendant who has previously been



convicted of felony, where defendant had on cross-examination admitted prior felonies, and defendant was not denied right of allocution, nor was he prepared to show that he had not been previously convicted, and Government after conviction and before sentence filed information alleging prior conviction. *Kendrick v. United States* (1956, 238 F. 2d 34, 99 U.S. App. D.C. 173).

Pistol-carrying count of indictment was not defective in using conjunctive "and", instead of statutory disjunctive "or," in charging that defendant "did carry openly and concealed a dangerous weapon", where proof tended to show that weapon was concealed when defendant approached scene of shooting and was then produced and carried openly. *Id.*

#### Prior conviction

A State legislature does not violate equal protection provision of Fourteenth Amendment of United States Constitution, in enacting statutes which impose heavier penalty for second or subsequent offenses, since fact of prior conviction in such cases is considered as affording reasonable basis for classification. *Kendrick v. United States* (1956, 238 F. 2d 34, 99 U.S. App. D.C. 173).

Where defendant was charged with carrying unlicensed pistol after felony conviction, and, on defendant's motion, allegations in indictment concerning prior conviction of felony were stricken, and defendant's counsel, out of defendant's hearing, stipulated that defendant had previously been convicted of a felony and waived later proof thereof, but concession of counsel was made without defendant's knowledge or consent, there was no waiver by defendant of necessity of proof of felony conviction, and imposition of enhanced sentence, on ground of prior felony conviction, was error. *Jackson v. United States* (1955, 221 F. 2d 883, 95 U.S. App. D.C. 328).

#### Sentences

Procedural standards to be observed in imposing increased punishment under recidivist statute include reasonable notice of recidivist charge, the opportunity to be heard, the right to counsel, and proof of prior conviction. *United States v. E. Clemons* (1970, 440 F. 2d 205, 142 U.S. App. D.C. 177; cert. denied 91 S. Ct. 959, 401 U.S. 945).

Where prosecuting attorney filed "Information of Prior Conviction" with clerk but during sentencing proceedings there was no mention of Information or prior conviction and there was no proof of such conviction in the presence of the defendant, imposition of sentence on basis that defendant, found guilty of carrying pistol without a license, had prior offense was improper. *United States v. E. M. Marshall* (1970, 440 F. 2d 195, 142 U.S. App. D.C. 167; cert. denied 91 S. Ct. 153, 400 U.S. 909).

A sentence of not less than three nor more than ten years was not unduly severe after defendant pleaded guilty to carrying deadly weapon after previous conviction of similar offense or of a felony who had prior convictions of house breaking, grand larceny and receiving stolen property and who had failed to consistently report back to jail in interim between entry of his guilty plea and date of sentencing. *H. L. Barnett v. United States* (1968, 403 F. 2d 918, 131 U.S. App. D.C. 192).

Sentence of 360 days for carrying pistol without license was not excessive but was legally permissible under statute providing that applicable penalty was fine of not more than \$1,000 or imprisonment for not more than one year, or both. *F. R. Gillard v. United States* (D.C. App. 1964, 202 A. 2d 776).

A legally permissible sentence is not subject to review or control by District of Columbia Court of Appeals. *Id.*

#### § 22-3215a. Manufacture, transfer, use, possession or transportation of molotov cocktails, or other explosives for unlawful purposes, prohibited—Definitions—Penalties.

(a) No person shall within the District of Columbia manufacture, transfer, use, possess, or transport a molotov cocktail. As used in this subsection, the term "molotov cocktail" means (1) a breakable container containing flammable liquid and having a wick or a similar device capable of being ignited, or (2) any other device designed to explode or produce

uncontained combustion upon impact; but such term does not include a device lawfully and commercially manufactured primarily for the purpose of illumination, construction work, or other lawful purpose.

(b) No person shall manufacture, transfer, use, possess, or transport any device, instrument, or object designed to explode or produce uncontained combustion, with the intent that the same may be used unlawfully against any person or property.

(c) No person shall, during a state of emergency in the District of Columbia declared by the Commissioner pursuant to law, or during a situation in the District of Columbia concerning which the President has invoked any provision of chapter 15 of title 10, United States Code, manufacture, transfer, use, possess, or transport any device, instrument, or object designed to explode or produce uncontained combustion, except at his resident or place of business.

(d) Whoever violates this section shall (1) for the first offense, be sentenced to a term of imprisonment of not less than one and not more than five years, (2) for the second offense, be sentenced to a term of imprisonment of not less than three and not more than fifteen years, and (3) for the third or subsequent offense, be sentenced to a term of imprisonment of not less than five years and of any term of years up to life imprisonment. In the case of a person convicted of a third or subsequent violation of this section, chapter 402 of title 18, United States Code (Federal Youth Corrections Act) shall not apply. (July 8, 1932, 47 Stat. 654, ch. 465, § 15A; as added July 29, 1970, Pub. L. 91-358, title II, § 209, 84 Stat. 603.)

#### EFFECTIVE DATE

See note preceding section 11-101.

#### § 22-3216. Separability of provisions.

If any part of this chapter is for any reason declared void, such invalidity shall not affect the validity of the remaining portions of this chapter. (July 8, 1932, 47 Stat. 654, ch. 465, § 16.)

#### § 22-3217. Dangerous articles—Definition—Taking and destruction—Procedure.

(a) As used in this section, the term "dangerous article" means (1) any weapon such as a pistol, machine gun, sawed-off shotgun, blackjack, slingshot, sandbag, or metal knuckles, or (2) any instrument, attachment, or appliance for causing the firing of any firearms to be silent or intended to lessen or muffle the noise of the firing of any firearms.

(b) A dangerous article unlawfully owned, possessed, or carried is hereby declared to be a nuisance.

(c) When a police officer, in the course of a lawful arrest or lawful search, discovers a dangerous article which he reasonably believes is a nuisance under subsection (b) he shall take it into his possession and surrender it to the property clerk of the Metropolitan Police Department.

(d) (1) Within thirty days after the date of such surrender, any person may file in the office of the property clerk of the Metropolitan Police Department a written claim for possession of such dangerous article. Upon the expiration of such period, the property clerk shall notify each such claimant, by registered mail addressed to the address shown on



the claim, of the time and place of a hearing to determine which claimant, if any, is entitled to possession of such dangerous article. Such hearing shall be held within sixty days after the date of such surrender.

(2) At the hearing the property clerk shall hear and receive evidence with respect to the claims filed under paragraph (1). Thereafter he shall determine which claimant, if any, is entitled to possession of such dangerous article and shall reduce his decision to writing. The property clerk shall send a true copy of such written decision to each claimant by registered mail addressed to the last known address of such claimant.

(3) Any claimant may, within thirty days after the day on which the copy of such decision was mailed to such claimant, file an appeal in the Superior Court of the District of Columbia. If the claimant files an appeal, he shall at the same time give written notice thereof to the property clerk. If the decision of the property clerk is so appealed, the property clerk shall not dispose of the dangerous article while such appeal is pending and, if the final judgment is entered by such court, he shall dispose of such dangerous article in accordance with the judgment of such court. The Superior Court of the District of Columbia is authorized to determine which claimant, if any, is entitled to possession of the dangerous article and to enter a judgment ordering a disposition of such dangerous article consistent with subsection (f).

(4) If there is no such appeal, or if such appeal is dismissed or withdrawn, the property clerk shall dispose of such dangerous article in accordance with subsection (f).

(5) The property clerk shall make no disposition of a dangerous article under this section, whether in accordance with his own decision or in accordance with the judgment of the Superior Court of the District of Columbia, until the United States attorney for the District of Columbia certifies to him that such dangerous article will not be needed as evidence.

(e) A person claiming a dangerous article shall be entitled to its possession only if (1) he shows on satisfactory evidence that he is the owner of the dangerous article or is the accredited representative of the owner, and that the ownership is lawful; and (2) he shows on satisfactory evidence that at the time the dangerous article was taken into possession by a police officer it was not unlawfully owned and was not unlawfully possessed or carried by the claimant or with his knowledge or consent; and (3) the receipt of possession by him will not cause the article to be a nuisance. A representative is accredited if he has a power of attorney from the owner.

(f) If a person claiming a dangerous article is entitled to its possession as determined under subsections (d) and (e), possession of such dangerous article shall be given to such person. If no person so claiming is entitled to its possession as determined under subsections (d) and (e), or if there be no claimant, such dangerous article shall be destroyed. In lieu of such destruction, any such serviceable dangerous article may, upon order of the

Commissioner of the District of Columbia, be transferred to and used by any Federal or District Government law-enforcing agency, and the agency receiving same shall establish property responsibility and records of these dangerous articles.

(g) The property clerk shall not be liable in damages for any action performed in good faith under this section. (July 8, 1932, ch. 465, § 18, as added Feb. 20, 1952, 66 Stat. 8, ch. 47, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended section by striking out "municipal court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### NOTES TO DECISIONS

##### Arrest, search and seizure

Where police officers searched accused's premises under valid search warrant and arrested persons in accused's absence, pistols which were found and which accused had allegedly received as stolen property and which might have affected escape of those lawfully arrested were validly seized, and hence subsequent arrest of accused for receiving stolen property was not invalid as fruit of unlawful search, and narcotics taken from accused's person were admissible in subsequent narcotics prosecution. *Palmer v. United States* (1953, 203 F. 2d 66, 92 U.S. App. D.C. 103).

#### Chapter 33.—VAGRANCY

##### Sec.

22-3301. Repealed.

22-3302. "Vagrants" defined.

22-3303. Prosecutions—Burden of proof to show lawful employment.

22-3304. Penalty—Conditions imposed by court.

22-3305. Prosecutions.

22-3306. Right to strike or picket not abrogated.

§ 22-3301. Repealed. Dec. 17, 1941, 55 Stat. 810, ch. 589, § 5.

Section, acts July 29, 1892, 27 Stat. 323, ch. 320, § 8; July 8, 1898, 30 Stat. 723, ch. 638; Mar. 3, 1909, 35 Stat. 711, ch. 250, defined vagrancy, provided for prosecution and the giving of security and is now covered by section 22-3302 et seq.

§ 22-3302. "Vagrants" defined.

The following classes of persons shall be deemed vagrants in the District of Columbia:

(1) Any person known to be a pickpocket, thief, burglar, confidence operator, or felon, either by his own confession or by his having been convicted in the District of Columbia or elsewhere of any one of such offenses or of any felony, and having no lawful employment and having no lawful means of support realized from a lawful occupation or source, and not giving a good account of himself when found loitering around in any park, highway, public building, or other public place, store, shop, or reservation, or at any public gathering or assembly.

(2) Repealed. June 29, 1953, 67 Stat. 97, ch. 159, § 209.

(3) Any person leading an immoral or profligate life who has no lawful employment and who has



no lawful means of support realized from a lawful occupation or source.

(4) Any person who keeps, operates, frequents, lives in, or is employed in any house or other establishment of ill fame, or who (whether married or single) engages in or commits acts of fornication or perversion for hire.

(5) Any person who frequents or loafs, loiters, or idles in or around or is the occupant of or is employed in any gambling establishment or establishment where intoxicating liquor is sold without a license.

(6) Any person wandering abroad and lodging in any grocery or provision establishment, vacant house, or other vacant building, outhouse, market place, shed, barn, garage, gasoline station, parking lot or in the open air, and not giving a good account of himself.

(7) Any person wandering abroad and begging, or who goes about from door to door or places himself in or on any highway, passage, or other public place to beg or receive alms.

(8) Any person who wanders about the streets at late or unusual hours of the night without any visible or lawful business and not giving a good account of himself.

(9) And all persons who by the common law are vagrants, whether embraced in any of the foregoing classifications or not.

(Dec. 17, 1941, 55 Stat. 808, ch. 589, § 1; June 29, 1953, 67 Stat. 97, ch. 159, § 209 (b).)

#### AMENDMENT

1953—Act June 29, 1953, repealed par. (2) relating to possession of implements of crime which is now covered by section 22-3601.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-3203, 22-3303 to 22-3306, 33-416a.

#### NOTES TO DECISIONS

##### Authority of police officer

Where defendant set off hotel burglar alarm by leaving through side door and willingly returned inside with employee who called police and defendant confessed to having committed act of prostitution, but element of vagrancy of loitering about public place was lacking, there was no misdemeanor committed in presence of officer and arrest was unlawful. *S. A. Curtis v. United States and District of Columbia* (D.C. App. 1966, 222 A. 2d 840).

That, within period of about three weeks, defendant on four occasions at late hours was observed in downtown area many blocks from home, on one occasion was talking to male in dark alley, on another was walking in parking lot, on another was in company of known prostitute, and on another was in company of convicted felon, gave reasonable ground for officer's belief that her presence on streets was not for any legitimate purpose and was sufficient justification for calling upon her to account for her actions and for her arrest where she failed to do so. *E. R. Harris v. District of Columbia* (D.C. App. 1963, 192 A. 2d 814).

That defendant was in taxicab when officer stopped her and was not then wandering about streets did not preclude him from stopping her and questioning her, where it could be inferred that hailing and boarding cab were part of effort to avoid questioning by police. *Id.*

A person found loitering has duty to give a good account of himself. *C. H. Kelley v. United States* (1961, 298 F. 2d 310, 111 U.S. App. D.C. 396).

Where police officer observed defendant walking along street shortly after noon hour carrying a paper bag and recognized him as a convicted thief and pursued him because officer assumed that defendant was carrying

stolen goods, even though he had no information that an offense had been committed, arrest for vagrancy was invalid for lack of any evidence of loitering. *Jones v. District of Columbia* (D.C. Mun. App. 1960, 158 A. 2d 771).

Officers of the law have no right to compel one to account for his actions merely because that person is on street at an unusual hour. *Beall v. District of Columbia* (D. C. Mun. App. 1951, 82 A. 2d 765).

Where female defendant was seen wandering around streets time after time in early morning hours, often alone but sometimes in company of a known prostitute, and engaging in conversations with men, with no indication that such course of conduct had any legitimate purpose, arresting officer had reasonable grounds for believing that her use of streets was not for any legitimate purpose and could ask that she account for her actions. *Id.*

Police officer who saw defendant loitering around bus terminal and mingling with the crowd and recognized him as a professional pickpocket was authorized, under par. (1) of this section, to question defendant, and, upon defendant's failure to give a good account of himself, to place defendant under arrest. *Clark v. District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 711).

##### Consolidation of trials

Where information charged accused with vagrancy in being employed in house of ill fame, and informations charging other two defendants were similar except that period of time over which alleged vagrancy had continued differed in each case, and only common ground between the acts of all defendants was that they took place at designated address and "divers other places in the District of Columbia," and there was no conspiracy or joint commission of crime alleged, granting consolidation of trials against all defendants was error. *Hunt v. District of Columbia* (D.C. Mun. App. 1946, 47 A. 2d 783).

Where information charged accused with vagrancy in being a person leading an immoral and profligate life and in being employed in a house of ill fame, and vagrancy informations against two other defendants charged some similar acts, granting consolidations of trials against all defendants was error. *District of Columbia v. Hunt* (1947, 163 F. 2d 838, 82 U.S. App. D.C. 159).

##### Constitutionality

Since the term loitering as used in this section failed to supply the necessary statutory criteria by which one could objectively distinguish lawful from unlawful conduct the statute was unconstitutional. *H. M. Ricks v. District of Columbia* (1968, 414 F. 2d 1097, 134 U.S. App. D.C. 201).

Since under the Narcotics Vagrancy and General Vagrancy Statutes anyone using street for a lawful business in a lawful manner may do so without restriction, statutes are not an unreasonable restriction on freedom of movement in violation of due process clause of Fifth Amendment. *H. M. Ricks and J. N. Williams v. United States; H. M. Ricks v. District of Columbia* (D.C. App. 1967, 228 A. 2d 316; rev'd 414 F. 2d 1097, 134 U.S. App. D.C. D.C. 201).

Convictions for violation of Narcotics Vagrancy and General Vagrancy Statutes were not invalid on ground that defendants were being punished solely for their status as vagrants. *Id.*

Convictions of defendants for violation of Narcotics Vagrancy and General Vagrancy Statutes on proof showing defendants' associations with known narcotics users and prostitutes did not violate Eighth Amendment's prohibition against cruel and unusual punishment despite claim that there was an absence of any overt criminal act. *Id.*

Statute providing that any person leading "immoral or profligate life" who has no lawful employment and who has no lawful means of support realized from lawful occupation or source is vagrant is not unconstitutional on ground that words "immoral or profligate life" are too vague and uncertain. *E. J. Hicks v. District of Columbia* (D.C. App. 1964, 197 A. 2d 154).

##### Construction

Vagrancy statute, because it defines a crime, must be construed narrowly in favor of defendant. *J. Johnson v. District of Columbia* (D.C. App. 1967, 230 A. 2d 483).



When an individual is unable to give a good account to police when wandering at late and unusual hours and is associated with criminals or narcotics addicts and is not lawfully employed, these factors, together with others enumerated in statutes, constitute probable cause for arrest for vagrancy. *H. M. Ricks and J. N. Williams v. United States; H. M. Ricks v. District of Columbia* (D.C. App. 1967, 228 A. 2d 316; rev'd 414 F. 2d 1097, 134 U.S. App. D.C. 201).

Vagrancy statutes were not invalid on ground that they were "catch-alls" used when other crimes could not be proven or that they allegedly required a lesser quantum of proof to convict. *Id.*

Word "loitering" as used in Narcotics Vagrancy and General Vagrancy Statutes was not unconstitutionally vague, particularly where additional conditions were necessary to constitute offense. *Id.*

Reference to "failure to give a good account" as used in Narcotics Vagrancy and General Vagrancy Statutes restricts rather than enlarges application of statutes and allows suspected vagrant to dissipate probable cause by satisfactorily explaining his conduct, and the arresting officer is not the only one who must evaluate account given by person questioned. *Id.*

Narcotics Vagrancy and General Vagrancy Statutes delineate with specificity what vagrancy is, and the definitions are neither numerous nor susceptible to widely divergent interpretations. *Id.*

"Known" is sometimes used in sense of "reputed", but in code section defining vagrancy, Congress clearly and specifically provided that one could come within purview of statute only if he was "known" to be a "pick-pocket, \* \* \* felon" by either conviction or confession. *L. R. Ferguson v. District of Columbia* (D.C. App. 1965, 208, A. 2d 96).

Evidence would not sustain vagrancy conviction. *Id.* The vagrancy statute must be construed narrowly in favor of defendant. *Harris v. District of Columbia* (1958, 251 F. 2d 913, 102 U.S. App. D.C. 202).

Under this section providing that anyone who wanders about streets at late or unusual hours of the night without visible and lawful business and "not giving a good account of himself" is deemed a vagrant, quoted words mean not giving a good account upon order or demand to explain presence in the street, rather than just in response to casual or bantering questions. *Beail v. District of Columbia* (1953, 201 F. 2d 176, 91 U.S. App. D.C. 110).

Under statute defining vagrant as person who wanders about streets at late and unusual hours of night "without any visible and lawful business" and not giving a good account of himself, quoted phrase does not refer to ordinary vocation of person, but has reference to purpose of being on street, and "business" as specified therein is not to be limited to pursuit of monetary gain. *Beail v. District of Columbia* (D. C. Mun. App. 1951, 82 A. 2d 765).

Vagrant statute is not to be construed as a curfew law, forbidding persons to be on streets after certain hour of night. *Id.*

Vagrancy statutes are designed to prevent crime and if officer must wait until crime is committed, preventive purposes of statute wholly fails. *Id.*

One standing on a platform for the primary purpose of picking a pocket is loitering within the meaning of the statute. *Williams v. District of Columbia* (D.C. Mun. App. 1949, 65 A. 2d 924).

This section is in nature of a police regulation to prevent crime, and was enacted for the enforcement of good order and public safety, and must be construed in view of that purpose. *Clark v. District of Columbia* (D.C. Mun. App. 1944, 34 A. 2d 711).

This section should not be so construed as to bar from society or intercourse with other human beings, persons who have been convicted of crime and have served the sentence imposed. *Id.*

#### Continuance

In prosecution for vagrancy, the continuance of defendant's trial for three days at request of prosecution was a matter in discretion of trial court which was not unreasonably exercised. *Burns v. District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 714).

#### Defenses

The mere irregularity of trying accused on vagrancy charge after he was validly arrested on a warrant charging disorderly conduct was no defense to the vagrancy charge. *Davenport v. District of Columbia* (D. C. Mun. App. 1948, 61 A. 2d 486).

#### Degree of proof

In vagrancy prosecution against defendant charged with frequenting houses of ill fame, government was not required to prove that occupants of house previously arrested were duly convicted in court. *Fields v. District of Columbia* (D.C. Mun. App. 1951, 77 A. 2d 563).

To convict under this section, it must be shown that defendant was found prowling around one of the public places mentioned in this section, and that he was doing so while having no visible and lawful means of support, and that he was a person known to be pickpocket, thief or burglar. *Clark v. District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 711).

Where vagrancy information charged that each defendant was a person who frequented and was employed in a house of ill fame and who engaged in and who committed acts of fornication for hire, statement of intermediate appellate court that government was required to prove that each individual frequented the house and that each engaged in acts of fornication for hire was erroneous. *District of Columbia v. Hunt* (1947, 163 F. 2d 833, 82 U.S. App. D.C. 159).

Appellant's own admission, not only to the officers but at the trial that she was "living" at the premises which were shown to be a house of ill fame, was sufficient to establish her guilt of "frequenting" such an establishment. *Wilson v. District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 214).

#### Double jeopardy

Fact that defendant, who allegedly sold liquor in railroad station without a license, was previously prosecuted for disorderly conduct, indecent exposure, solicitation to prostitution, violation of the A. B. C. Laws, and drinking in public, and was convicted of some of such offenses, did not preclude subsequent prosecution for vagrancy, on ground that such prosecution constituted double jeopardy, though testimony and witnesses employed in prior prosecutions were the same as those used in the vagrancy prosecution. *Davenport v. District of Columbia* (D. C. Mun. App. 1948, 61 A. 2d 486).

#### Entrapment

A woman accused of violation of vagrancy statute which proscribes commission of acts of fornication for hire had no defense of entrapment, where she had "hustled for about 20 years" and police officer had merely afforded her an opportunity to go to a hotel room and offer to engage in prostitution. *R. Golden v. District of Columbia* (D.C. App. 1965, 210 A. 2d 2).

#### Evidence—Generally

Evidence was insufficient to sustain vagrancy conviction. *E. R. Harris v. District of Columbia* (D.C. Mun. App. 1961, 167 A. 2d 359).

Evidence sustained conviction of being a vagrant. *Y. Pinkney v. District of Columbia* (D.C. Mun. App. 1961, 168 A. 2d 198).

In prosecution for vagrancy, where defendant was not confronted with an order or demand to explain her presence in the street, her conviction was reversed. *Beail v. District of Columbia* (1953, 201 F. 2d 176, 91 U.S. App. D.C. 110).

On defendant's motion, at conclusion of government's case, for judgment of acquittal, government's evidence was construed in light most favorable to government and was accepted as true, together with all reasonable inferences to be drawn therefrom. *Mitchell v. District of Columbia* (D.C. Mun. App. 1955, 113 A. 2d 566).

Contention that trial court erred in basing conviction for act of fornication for hire, when there had been no direct proof, is without merit under the rule of *District of Columbia v. Hunt* (1947, 82 U.S. App. D.C. 159, 163 F. 2d 833), since government's failure to prove expressly that she engaged in acts of fornication or perversion for hire is not fatal to prosecution so long as proof of the other violation is sufficient to sustain the conviction. *Wilson*



*v. District of Columbia* (D.C. Mun. App. 1949, 65 A. 2d 214).

#### — Admissibility

Even if admission into evidence of reports by police officer who investigated alleged disorderly house was error, such error was harmless where officer had testified fully as to their contents and no prejudice was shown in fact that reports may have gone to jury. *J. J. Killeen and W. H. Fentress v. United States and District of Columbia* (D.C. App. 1966, 224 A. 2d 302).

Defendant's statement to police officers that she had been "hustling for about 20 years" was properly admitted in vagrancy prosecution, absent showing that statement was other than completely voluntary and spontaneous or that it was sought or elicited in response to police interrogation. *R. Golden v. District of Columbia* (D.C. App. 1965, 210 A. 2d 2).

Where prosecutions for disorderly conduct and for vagrancy were consolidated for trial, evidence of prior criminal convictions of defendants, though not relevant to charge of disorderly conduct, were required to establish vagrancy under statute. *M. A. Riley and J. T. Ruffin v. District of Columbia* (D.C. App. 1965, 207 A. 2d 121).

For purposes of showing a continued course of immorality in vagrancy prosecution, prior acts and admissions of defendant showing defendant's acts to be part of a continuous operation were properly admitted. *G. Coley etc. v. District of Columbia* (D.C. Mun. App. 1962, 177 A. 2d 889).

Evidence sustained finding of habitually immoral conduct on part of defendant and sustained conviction for vagrancy. *Id.*

In vagrancy prosecution, testimony of arresting officer regarding character of certain women with whom defendant had been seen was admissible. *Rogers v. District of Columbia* (D.C. Mun. App. 1943, 31 A. 2d 649).

Where defendant was arrested for vagrancy on Sunday, July 4, but criminal division of the Municipal Court was in session Monday notwithstanding that Monday was a legal holiday and defendant was not taken into court until Tuesday, defendant's detention was unlawful and testimony of arresting officer in vagrancy prosecution as to admissions made to him by defendant after arrest was improperly admitted. *Burns v. District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 714).

In prosecution for vagrancy, where elements of offense required by this chapter to be established by prosecution were prima facie proven by record of defendant's convictions, and evidence of loitering and circumstantial incidents of defendant's conduct immediately before arrest and any possible deficiency was supplied by defendant's oral testimony, error in admitting testimony of arresting officer as to admissions made to him by defendant after arrest, by reason of defendant's unlawful detention, did not require reversal. *Id.*

Where defendant was arrested without warrant Friday evening and could have been taken to court for arraignment on Saturday but was not taken into court until Tuesday, the detention was unlawful, and, in prosecution for vagrancy which followed, admission of statements made by defendant to arresting officer was error notwithstanding statements were made at time of arrest and while detention was still lawful. *Hayes v. District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 709).

In vagrancy prosecution based on defendant's acts in railroad station, employees at station were properly permitted to testify for the government, over objection that they were biased. *Davenport v. District of Columbia* (D. C. Mun. App. 1948, 61 A. 2d 486).

Statements made by the operator of house of ill fame, in appellant's presence while they were both under arrest, to the effect that appellant was visiting her and that she was operating a house of ill fame, were hearsay, but since such statements were received without objection, the trial judge had a right to consider them along with defendant's silence. *Wilson v. District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 214).

#### — Circumstantial

Circumstantial evidence may sustain vagrancy conviction, but inferential proof of ultimate fact may not be based upon mere possibility, speculation or conjecture.

*J. Johnson v. District of Columbia* (D.C. App. 1967, 230 A. 2d 483).

#### — Confession

In prosecution for vagrancy, defendant's admission at trial of accuracy of his criminal record produced by prosecution satisfied burden of prosecution of proving by confession or conviction defendants criminal record. *Burns v. District of Columbia* (D.C. Mun. App. 1944, 34 A. 2d 714).

In prosecution for vagrancy, where arresting officer, who was sole witness, testified that defendant was loitering at bus terminal and mingling with the crowd and that officer recognized defendant as a professional pick-pocket and that defendant, after his arrest, admitted that federal bureau of investigation record showing prior convictions was correct, conviction did not depend solely upon an uncorroborated "confession." *Clark v. District of Columbia* (D.C. Mun. App. 1944, 34 A. 2d 711).

In vagrancy prosecution, on conflicting evidence regarding whether statement voluntarily given by defendant immediately after her arrest was intended for health department only, trial judge was justified in admitting the statement as a "confession." *Rogers v. District of Columbia* (D.C. Mun. App. 1943, 31 A. 2d 649).

#### — Examination of witnesses

In vagrancy prosecution where defendant's witness testified that defendant had been working for witness, question whether witness carried a number of girls on his pay roll for purpose of showing that they worked for him when in fact they were nothing more than prostitutes constituted proper cross-examination. *Rogers v. District of Columbia* (D.C. Mun. App. 1943, 31 A. 2d 649).

#### — Sufficiency

Evidence, including evidence that female defendant, while sober, well-behaved, and decently attired, was seen flagging down automobiles in early morning hours, was insufficient to sustain conviction for vagrancy. *J. Johnson v. District of Columbia* (D.C. App. 1967, 230 A. 2d 483).

Evidence was sufficient to support finding or inference by jury that restaurant proprietors had requisite knowledge of activities occurring on their premises to be chargeable with keeping disorderly house and vagrancy. *J. J. Killeen and W. H. Fentress v. United States and District of Columbia* (D.C. App. 1966, 224 A. 2d 302).

In absence of evidence that defendant under either federal or local law would suffer further penalties or disabilities from judgment of conviction or consequences collateral thereto having material effect on present legal rights, conviction for misdemeanor after service of part of sentence imposed and suspension of the balance became moot, and reviewing court had no power to consider appeal upon its merits. *E. R. Thompson v. District of Columbia* (D.C. App. 1964, 200 A. 2d 92).

Evidence was sufficient to sustain conviction on charge of vagrancy. *F. F. Walker v. District of Columbia* (D.C. App. 1963, 196 A. 2d 92).

Testimony of police officers that defendant was idling in a park at late hour, that he was a known felon and that he wanted to "roll queers" was sufficient to establish elements of charge of vagrancy, and burden then shifted to defendant to establish that he had a lawful employment or a lawful means of support realized from a lawful occupation or source. *Id.*

Evidence sustained vagrancy conviction. *E. R. Harris v. District of Columbia* (D.C. App. 1963, 192 A. 2d 814).

Vagrancy conviction cannot stand without evidence of course of conduct or mode of living or status prejudicial to public welfare. *B. Drew v. District of Columbia* (D.C. App. 1963, 187 A. 2d 325).

Evidence did not sustain conviction of vagrancy, absent evidence of course of conduct or mode of living or status prejudicial to public welfare. *Id.*

Evidence was insufficient to prove elements necessary to support conviction for vagrancy under District of Columbia code denominating as vagrants persons leading immoral life and who have no lawful employment or lawful means of support and persons who operate or who are employed in houses of ill fame. *Baker and Fredricksen v. District of Columbia* (D.C. Mun. App. 1962, 184 A. 2d 198).



In prosecution for vagrancy under information which charged that defendant was by confession or conviction known to be a pickpocket, thief, burglar, confidence operator or felon, evidence that defendant was a known thief because she had once been convicted of taking and carrying away property of another without right was not sufficient to establish that she was known to be a thief within meaning of this section. *Harris v. District of Columbia* (1958, 251 F. 2d 913, 102 U.S. App. D.C. 202).

Evidence was sufficient to sustain conviction for being a vagrant. *Mitchell v. District of Columbia* (D.C. Mun. App. 1955, 113 A. 2d 566).

Evidence sustained defendant's conviction of vagrancy. *Beall v. District of Columbia* (D. C. Mun. App. 1951, 82 A. 2d 765).

Evidence that defendant had offered girls in railroad station money to commit an immoral act, that he had looked into a window of a girls' dormitory, that he had entered women's restroom, and that he sold liquor in railroad station without a license, was sufficient to establish that he led an "immoral or profligate life" within meaning of par. (3) of this section. *Davenport v. District of Columbia* (D.C. Mun. App. 1948, 61 A. 2d 486).

In prosecution for vagrancy, evidence that defendant was moving about after midnight in a crowd on a loading platform at bus terminal, and that defendant was observed mingling with crowds on loading platform at a second bus terminal on two other occasions on same night, established that defendant was "loitering" and failed to give a good account of himself within this section. *Burns v. District of Columbia* (D.C. Mun. App. 1944, 34 A. 2d 714).

In prosecution for vagrancy, in absence of any proof on behalf of defendant of lawful employment or means of support, evidence which was adequate to prove other elements of the offense justified conviction. *Clark v. District of Columbia* (D.C. Mun. App. 1944, 34 A. 2d 711).

Evidence was sufficient to sustain conviction on charge of vagrancy. *Roger v. District of Columbia* (D.C. Mun. App. 1943, 31 A. 2d 649).

#### Immorality and profligate

The phrase "leading an immoral and profligate life" as used in this section necessitated so much guesswork as to its coverage as to render statute invalid. *H. M. Ricks v. District of Columbia* (1968, 414 F. 2d 1097, 134 U.S. App. D.C. 201).

The terms "immorality" and "profligateness" are not terms of art. *Id.*

#### Impeachment

Prosecution was not entitled to attempt to impeach testimony of defendant indicted for second-degree murder by referring to thirteen prior convictions of petty offenses of vagrancy, disorderly conduct and soliciting prostitution, inasmuch as, although such offenses were District of Columbia Code offenses, as distinguished from municipal ordinances, none of them was triable by jury. *Y. Pinkney v. United States* (1966, 363 F. 2d 696, 124 U.S. App. D.C. 209).

#### Instructions

Jury instruction in prosecution for keeping disorderly house and vagrancy that, inter alia, presumption that every person is presumed to have knowledge of what goes on in his own premises is not conclusive and that it should find defendant restaurant keepers guilty if convinced beyond reasonable doubt that they knew or should have known of unlawful and immoral acts committed on premises was correct statement of law, and giving of instruction was not error. *J. J. Killeen and W. H. Fentress v. United States and District of Columbia* (D.C. App. 1966, 224 A. 2d 302).

Instruction in prosecution for keeping disorderly house and vagrancy that evidence of good character can be considered in determining credibility of witnesses and that such evidence, by itself, may be enough to create a reasonable doubt was a proper statement of law, and giving of instruction was not error where defendants neither offered an instruction on that point nor objected to instruction as given. *Id.*

Defendants in prosecution for keeping disorderly house and vagrancy who at trial neither offered an instruction upon bearing of evidence of good character on credibility

of witnesses nor objected to instruction as given were not allowed to raise objection to instruction for first time on appeal. *Id.*

#### Jury trial

In vagrancy prosecution, the defendant was not entitled to a jury trial. *Rogers v. District of Columbia* (D.C. Mun. App. 1943, 31 A. 2d 649).

#### Knowledge of acts done on premises

In prosecution for maintaining a disorderly house, it was not necessary to prove defendants' actual knowledge of acts done on premises if it could be shown that defendants should in reason have known what was happening. *J. J. Killeen and W. H. Fentress v. United States and District of Columbia* (D.C. App. 1966, 224 A. 2d 302).

Knowledge of happenings in alleged disorderly house requisite to conviction for keeping disorderly house could be proved inferentially, since a proprietor is presumed to have knowledge of that which goes on in his premises. *Id.*

#### Lawful means of support

Burden of defendants, charged with vagrancy, or proving lawful means of support does not arise until prosecution has proven other elements of offense. *Baker and Fredrickson v. District of Columbia* (D.C. Mun. App. 1962, 184 A. 2d 198).

Woman living together with man "common law" has no "lawful" means of support, realized from a "lawful" occupation or source, for purposes of vagrancy statute. *Harris v. District of Columbia* (D. C. Mun. App. 1957, 132 A. 2d 152).

#### Nature of vagrancy

"Vagrancy" consists of a continuing course of immorality, a pattern of iniquity, rather than a solitary instance of wrongdoing; absent evidence of a course of conduct or mode of living or status prejudicial to public welfare, a vagrancy conviction cannot stand. *R. Golden v. District of Columbia* (D.C. App. 1965, 210 A. 2d 2).

The defendant violated vagrancy statute which proscribes the commission of acts of fornication for hire, where she asked a telephone caller, who identified himself as someone who had "tricked" with her before, to call again because she was busy, met him at a hotel room, offered to engage in prostitution for a fee of \$30, accepted \$20 and disrobed, and after her arrest admitted that she had "hustled for about 20 years." *Id.*

"Vagrancy" consists of a continued course of immorality, a pattern in iniquity, rather than a solitary incidence of wrong-doing. *G. Coley etc. v. District of Columbia* (D.C. Mun. App. 1962, 177 A. 2d 889).

Where defendant was charged and convicted of being a vagrant under this section defining vagrant as person who wanders about streets at late and unusual hours at night without any visible and lawful business and not giving a good account of herself, defendant could be guilty of vagrancy under this section, notwithstanding fact that she might be a person of fixed abode having lawful means of support. *Beall v. District of Columbia* (D.C. Mun. App. 1951, 82 A. 2d 765).

"Vagrancy" is a status or condition and this section punishes one for being a certain kind of person, not for doing of an overt act, and crime is personal and individual and cannot be committed jointly or in concert, since in essence it is a personal condition arrived at not instantaneously but by a mode of living. *Hunt v. District of Columbia* (D. C. Mun. App. 1946, 47 A. 2d 783).

This section denounces and makes punishable being in a state of vagrancy rather than the particular conduct enumerated in this section as evidencing or characterizing such condition. *District of Columbia v. Hunt* (1947, 163 F. 2d 833, 82 U.S. App. D.C. 159).

Statute prescribes as an element of the offense of vagrancy (a) defendant's notoriety as a pickpocket, etc., either by his own confession or by earlier conviction, and (b) his not giving a good account of himself when found loitering and apprehended and when these elements have been established, the statute says that defendant shall have the burden of showing that he has lawful employment or lawful means of support realized from a lawful occupation or source. *Williams v. District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 924).



**Not giving a good account of himself**

The phrase "not giving a good account of himself" as used in this section was much too loose to satisfy constitutional requirements. *H. M. Ricks v. District of Columbia* (1968, 414 F. 2d 1097, 134 U.S. App. D.C. 201).

The phrase "a good account" as used in this section was so indefinite as to render statute unconstitutional. *Id.*

Proscription contained in this section against wandering without any visible or lawful business coupled with requirements that wanderer give "a good account" of himself granted unfettered discretion to administrative and judicial authorities and rendered statute invalid. *Id.*

**Police vagrancy observation practices**

Since the ruling of the Court in action for injunctive and declaratory relief from allegedly unconstitutional police vagrancy observation practices is directed only to the procedures used by the police and not the statute itself, suit in nature of class action is not proper and court will only pass on facts of plaintiff's case. *M. J. Gomez v. J. Wilson, Chief of Police, et al.* (1971, 323 F. Supp. 87).

Where the plaintiff while walking street on May 10, 1967 was stopped by policeman who filled out vagrancy observation form and told plaintiff that they would arrest him for vagrancy if they saw him there again, and on December 13, 1967 plaintiff, who was sober and well-behaved while he was walking in the same geographic locality around 11:00 p.m., was stopped by police officers and questioned regarding homosexuality and use of marijuana and ordered to remove coat and roll up his sleeves, police officers' intrusion on plaintiff's Fourth Amendment rights was not reasonably related to circumstances justifying interference and all police forms would be ordered expunged. *Id.*

Although three subsections of this section have been declared unconstitutional, since plaintiff's complaint for injunctive and declaratory relief from police vagrancy observation practices sought to have the whole statute declared unconstitutional and since there was no showing that vagrancy reports on plaintiff had been made pursuant to one of subsections declared unconstitutional, case should not have been dismissed by the District Court and full evidentiary hearing must be held. *M. J. Gomez v. J. Wilson, Chief of Police, et al.* (1970, 430 F. 2d 495, 139 U.S. App. D.C. 122).

**Poverty not a crime**

Statute providing that any person leading immoral or profligate life who has no lawful employment and who has no lawful means of support realized from lawful occupation or source is vagrant does not make criminal the status or condition of poverty and unemployment. *E. J. Hicks v. District of Columbia* (D.C. App. 1964, 197 A. 2d 154).

**Prior convictions**

One can be found guilty of violating either Narcotics Vagrancy Statute or the General Vagrancy Statute without having been previously convicted. *H. M. Ricks and J. N. Williams v. United States; H. M. Ricks v. District of Columbia* (D.C. App. 1967, 228 A. 2d 316; rev'd 414 F. 2d 1097, 134 U.S. App. D.C. 201).

Both the Narcotics Vagrancy Statute and General Vagrancy Statute employ separate paragraphs which disjunctively set up criteria amounting to vagrancy and both require factors, other than prior convictions, which conjunctively amount to violation, so that prior convictions are not essential to all subsections of the statutes. *Id.*

Prior convictions of accused are admissible in prosecution for violation of vagrancy statutes. *Id.*

Narcotics Vagrancy and General Vagrancy Statutes do not improperly require presentation and proof of prior convictions, and do not deny due process and fair trial. *Id.*

**Probable cause for arrest**

Arrest for vagrancy without warrant was justified under evidence, including testimony of experienced police officers that they had observed defendant in company of known prostitutes and narcotics violators on four occasions during two nights. *J. L. Worthy v. United States* (1968, 409 F. 2d 1105, 133 U.S. App. D.C. 188).

**Prosecutions for continuing offense**

The prosecution of a defendant charged with violation of a continuing offense is a bar to a subsequent prosecution for same offense charged to have been committed at any time before institution of first prosecution, but is not a bar to a subsequent prosecution for continuing the offense thereafter, as this is a new violation of the law. *Thomas v. District of Columbia* (D.C. Mun. App. 1960, 161 A. 2d 52).

Where defendant was charged with vagrancy in three consecutive informations and each information charged vagrancy during a separate period, each information charged a separate crime, not one single continuing one, and trial court could correctly impose consecutive sentences. *Id.*

**Purpose**

A course of conduct rather than an overt act is prohibited by the Narcotics Vagrancy and General Vagrancy Statutes. *H. M. Ricks and J. N. Williams v. United States; H. M. Ricks v. District of Columbia* (D.C. App. 1967, 228 A. 2d 316; rev'd 414 F. 2d 1097, 134 U.S. App. D.C. 201).

Purpose of Narcotics Vagrancy and General Vagrancy Statutes is to prevent crimes which may likely flow from the vagrant's mode of life. *Id.*

Purpose of vagrancy statute is to prevent crime likely to flow from vagrant's mode of life, and if officer were precluded from arresting thereunder until crime was committed, its purpose would wholly fail. *E. R. Harris v. District of Columbia* (D.C. App. 1963, 192 A. 2d 814).

The purpose of this chapter is to prevent crimes which may likely flow from vagrants mode of life. *District of Columbia v. Hunt* (1947, 163 F. 2d 833, 82 U.S. App. D.C. 159).

It was not purpose of this section to deprive persons of use of public sidewalks, so long as they are used either for legitimate purpose of pleasure or business; but when course of conduct indicates reasonable belief that use of street is not for legitimate purposes, officer may ask one to account for his actions. *Harris v. District of Columbia* (D.C. Mun. App. 1957, 132 A. 2d 152).

**Resisting unlawful arrest**

Where defendant was unlawfully arrested for vagrancy, defendant had right to raise voice in protest and could not properly be arrested for disorderly conduct for making such protest. *S. A. Curtis v. United States and District of Columbia* (D.C. App. 1966, 222 A. 2d 840).

**Search and seizure**

Although it is incident to an arrest for vagrancy the search was not for that reason required to be limited to a frisk. *J. L. Worthy v. United States* (1968, 409 F. 2d 1105, 133 U.S. App. D.C. 188).

Where defendant's arrest was illegal, search of defendant's pocketbook and seizure of narcotics paraphernalia was unlawful and admission of evidence was reversible error. *S. A. Curtis v. United States and District of Columbia* (D.C. App. 1966, 222 A. 2d 840).

Where defendant was a frequenter of an establishment where intoxicating liquor was being illegally sold and by doing so was guilty of a misdemeanor being committed in presence of officers, officers were within their proper duty in arresting defendant without a warrant, and as incident of arrest search of defendant was lawful, and narcotics then and there seized were properly admitted in evidence against him in prosecution for narcotics violations. *M. T. Smith, Jr. v. United States* (1965, 353 F. 2d 877, 122 U.S. App. D.C. 339).

**Severance**

Where prosecutions for disorderly conduct and vagrancy were consolidated for trial, and no pretrial objection was presented by defendant to consolidation and no request was made for severance during five months intervening between filing of informations and date of trial, and it was not until prior criminal records of defendants were offered into evidence in support of vagrancy charge that severance was requested on ground of prejudice to right of defendants to fair trial, request was not timely made and would be deemed waived. *M. A. Riley and J. T. Ruffin v. District of Columbia* (D.C. App. 1965, 207 A. 2d 121).



Where prosecutions for disorderly conduct and for vagrancy were consolidated for trial, and defendants waived right to severance, and trial was before judge sitting without jury, defendants were not prejudiced by introduction in evidence of prior criminal records in support of vagrancy charge. *Id.*

#### Statistics as evidence

Statistical likelihood that a particular societal segment will engage in criminality is not permissible as an all-out substitute for proof of individual guilt. And not even past violation of the criminal law authorizes one's subjection to innately vague statutory specifications of crime *H. M. Ricks v. District of Columbia* (1968, 414 F. 2d 1097, 134 U.S. App. D.C. 201).

#### Temporary detention

To justify a temporary detention in police-citizen street encounter, under this section, police officer must be able to point to specific and articulate facts that, taken together with the rational inferences from the facts, reasonably warrant the intrusion, and a mere hunch of criminal activity will not justify the officer in making detention for investigatory purposes. *M. J. Gomez v. J. Wilson, Chief of Police, et al.* (1971, 323 F. Supp. 87).

#### Thief

The word "thief" as used in this section does not cover a person who has been guilty only of unauthorized borrowing. *Harris v. District of Columbia* (1958, 251 F. 2d 913, 102 U.S. App. D.C. 202; rev'g 132 A. 2d 152).

#### Waiver

In vagrancy prosecution, motion of defendant for dismissal, made at conclusion of Government's case, was "waived" when defendant offered testimony in her own behalf. *Rogers v. District of Columbia* (D.C. Mun. App. 1943, 31 A. 2d 649).

In vagrancy prosecution, motion of defendant for a finding of not guilty at conclusion of government's case, apparently denied by trial court, was not error where the record did not show that such a motion was made; and even if made, it was waived when defendant offered testimony in her own behalf. *Wilson v. District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 214).

### § 22-3303. Prosecutions—Burden of proof to show lawful employment.

In all prosecutions under paragraphs 1 or 3 of section 22-3302 the burden of proof shall be upon the defendant to show that he has lawful employment or has lawful means of support realized from a lawful occupation or source. (Dec. 17, 1941, 55 Stat. 809, ch. 589, § 2.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-3203, 22-3304 to 22-3306.

#### NOTES TO DECISIONS

##### Generally

Vagrancy statute places burden of proof upon a defendant charged with its violation to show that he had lawful employment or lawful means of support. *Barnard v. District of Columbia* (D. C. Mun. App. 1956, 125 A. 2d 514).

In vagrancy prosecutions, the burden was on defendant to establish, and not on the Government to disprove, legitimacy of defendant's employment. *Rogers v. District of Columbia* (D.C. Mun. App. 1943, 31 A. 2d 649).

##### Constitutionality

Provision of this section placing on defendant the burden of proving lawful employment or lawful means of support realized from a lawful occupation or source, after prosecution has first proved, or offered evidence tending to prove, the other elements of the offense, is constitutional. *Rogers v. District of Columbia* (D.C. Mun. App. 1943, 31 A. 2d 649).

##### Evidence

In prosecution for vagrancy where government established a prima facie case, defendant's uncontradicted and uncorroborated statement that he had been doing light work on his father-in-law's farm, in absence of

testimony as to details of work or compensation or as to when work ceased was insufficient to discharge defendant's burden of proving that he had lawful means of support realized from a lawful occupation or source. *Burns v. District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 714).

Where appellant says he was entitled to an acquittal because he offered evidence to show "lawful employment," when taken with the government's testimony, presented a question of fact, and we cannot say the trial judge decided incorrectly. *Williams v. District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 924).

#### Government's burden

In prosecution against three defendants for vagrancy for frequenting and being employed in a house of ill-fame, government had burden of proving that each defendant frequented the house and that each engaged in acts of fornication for hire. *Hunt v. District of Columbia* (D. C. Mun. App. 1946, 47 A. 2d 783).

In vagrancy prosecution, wherein evidence was introduced that defendant sold liquor in railroad station without a license, burden was shifted to defendant to establish, and was not on the government to disprove, legitimacy of employment. *Davenport v. District of Columbia* (D. C. Mun. App. 1948, 61 A. 2d 486).

In prosecution for vagrancy, defendant has no burden to prove lawful employment or means of support until government has first proved other elements of offense. *Clark v. District of Columbia* (D.C. Mun. App. 1944, 34 A. 2d 711).

### § 22-3304. Penalty—Conditions imposed by court.

Any person convicted of vagrancy under the provisions of sections 22-3302 to 22-3306 shall be punished by a fine of not more than \$300 or imprisonment for not more than ninety days, or by both such fine and imprisonment, in the discretion of the court. The court may impose conditions upon any person found guilty under the aforesaid provisions and so long as such person shall comply therewith to the satisfaction of the court the imposition or execution of sentence may be suspended for such period as the court may direct; and the court may at or before the expiration of such period remand such sentence or cause it to be executed. Conditions thus imposed by the court may include submission to medical and mental examination, diagnosis, and treatment by proper public health and welfare authorities, and such other terms and conditions as the court may deem best for the protection of the community and the punishment, control, and rehabilitation of the defendant. The Director of Public Health of the District of Columbia, the Women's Bureau of the Police Department, the Board of Public Welfare, and the probation officers of the court are authorized and directed to perform such duties as may be directed by the court in effectuating compliance with the conditions so imposed upon any defendant. (Dec. 17, 1941, 55 Stat. 809, ch. 589, § 3; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

#### CHANGE OF NAME

"Director of Public Health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

#### TRANSFER OF FUNCTIONS

The Commissioner of the District of Columbia and the Director of the Department of Corrections as successors to the powers and duties of the Board of Public Welfare and the Director of Public Welfare over penal institutions, establishment of a Department of Corrections headed by a Director as successor to former Department of Corrections and abolition of Board of Public Welfare and transfer of specified functions thereof to Department of Public Health and Department of Public



Welfare and subsequently to the Director of the Department of Human Resources, see § 24-443; Reorg. Ord. No. 34, dated May 28, 1953, as amended and replaced by Org. Ord. No. 153, dated Feb. 7, 1967, and later amended and redesignated as Org. Ord. No. 7, dated Dec. 26, 1967, as amended; Org. Ord. No. 140, dated Feb. 11, 1964, as amended; Org. Ord. No. 141, dated Feb. 11, 1964, as amended; and Commissioner's Order [Organization Action] No. 69-96, dated Mar. 7, 1969, as amended by Commissioner's Order No. 70-83, dated Mar. 6, 1970. The Orders are set Out in the Appendix to Title 1.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-3203, 22-3305, 22-3306.

#### NOTES TO DECISIONS

##### Impeachment

Prosecution was not entitled to attempt to impeach testimony of defendant indicted for second-degree murder by referring to thirteen prior convictions of petty offenses of vagrancy, disorderly conduct and soliciting prostitution, inasmuch as, although such offenses were District of Columbia Code offenses, as distinguished from municipal ordinances, none of them was triable by jury. *Y. Pinkney v. United States* (1966, 363 F. 2d 696, 124 U.S. App. D.C. 209).

##### Indigent prisoners, discharge of

Sentence for violation of District of Columbia vagrancy statute was for violation of "law of United States" within Indigent Prisoners' Act authorizing indigent prisoner, who has been sentenced for violation of any "law of United States," and who has been imprisoned for failure to pay fine, and who has been confined for 30 days, to apply for discharge. *D. C. Clemmer, Director, Department of Corrections etc. v. N. H. Alexander* (1961, 295 F. 2d 176, 111 U.S. App. D.C. 210).

Municipal Court of District of Columbia is "court established by enactment of Congress" within Indigent Prisoners' Act authorizing indigent prisoner who has been imprisoned by "court established by enactment of Congress" for failure to pay fine, and who has been confined for 30 days, to apply for discharge. *Id.*

#### § 22-3305. Prosecutions.

All prosecutions under sections 22-3302 to 22-3306 shall be in the Superior Court of the District of Columbia in the name of the District of Columbia, by the corporation counsel or any of his assistants. (Dec. 17, 1941, 55 Stat. 810, ch. 589, § 4; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-3203, 22-3304, 22-3306.

#### § 22-3306. Right to strike or picket not abrogated.

Nothing in sections 22-3302 to 22-3306 shall be construed so as to interfere with or impede or di-

minish in any way the right to strike or the right to picket. (Dec. 17, 1941, 55 Stat. 810, ch. 589, § 6.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-3203, 22-3304, 22-3305.

### Chapter 34.—MISCELLANEOUS

#### Sec.

- 22-3401. Omitted.
- 22-3402. Repealed.
- 22-3403. Repealed.
- 22-3404. Kosher meat—Sale—Labeling—Signs displayed where kosher and nonkosher meats are sold.
- 22-3405. Kosher meat—"Meat"—"Person"—Definition
- 22-3406. Kosher meat—Penalties.
- 22-3407. Repealed.
- 22-3408. Repealed.
- 22-3409. Mislabelling potatoes.
- 22-3410. Mislabelling potatoes—Sign to show grade.
- 22-3411. Mislabelling potatoes—Law not applicable to seed potatoes.
- 22-3412. Mislabelling potatoes—Penalties.
- 22-3413. Procuring enlistment of criminals.
- 22-3414, 22-3415. Repealed.
- 22-3416. Sale of unwholesome food prohibited.
- 22-3417. "Food" defined.
- 22-3418. Duty of Director of Public Health.
- 22-3419. Council to make rules and regulations.
- 22-3420. Prosecutions for violations.
- 22-3421. Penalty for violation.
- 22-3422. Sections 22-3416 to 22-3422 supplemental to Federal Food, Drug, and Cosmetic Act.
- 22-3423. Use, by private detective or collection agencies, of the words "District of Columbia", "District", the initials "D.C." to create impression that agency represents the District, is prohibited.
- 22-3424. Penalty for violation of section 22-3423.
- 22-3425. Prosecutions for violations of section 22-3423—Corporation counsel defined.
- 22-3426. Debt adjusting — Prohibitions — Exceptions — Penalties—Prosecutions for violations.
- 22-3427. Breaking and entering vending machines and similar devices—Penalties.

#### § 22-3401. Omitted.

Sec. act Leg. Assembly, Aug. 23, 1871, p. 96, ch. 69, § 21, defined a "Gift enterprise". Since act Sept. 21, 1961, Pub. L. 87-267, § 1, repealed sections 22-3402 and 22-3403 which made it unlawful to engage in a "gift enterprise" business and imposed certain penalties for so doing, this section is now obsolete and is therefore omitted.

#### §§ 22-3402, 22-3403. Repealed. Sept. 21, 1961, 75 Stat. 565, Pub. L. 87-267, § 1.

Section R.S., D.C., § 1176, made it unlawful to engage in a gift enterprise as defined in section 22-3401.

Section R.S., D.C., § 1177, imposed penalties for engaging in any gift-enterprise business in the District.

#### § 22-3404. Kosher meat—Sale—Labeling—Signs displayed where kosher and nonkosher meats are sold.

It shall be unlawful for any person—

- (a) To sell or offer for sale within the District of Columbia as kosher, any meat which is not kosher;
- (b) To label or brand as kosher any meat, or the package containing any meat, sold or offered for sale or prepared within the District of Columbia, which is not kosher; or

(c) To sell or offer for sale within the District of Columbia in the same place of business both kosher and nonkosher meats, (1) without displaying conspicuously in said place of business a sign in block letters at least four inches in height containing the words "kosher and nonkosher meat sold here," and



(2) without displaying over such kosher meat the words "kosher meat" and over such nonkosher meat the words "nonkosher meat," in block letters at least four inches in height. (Apr. 15, 1926, 44 Stat. 253, ch. 145, § 1.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-3405, 22-3406.

#### § 22-3405. Kosher meat—"Meat"—"Person"—Definition.

As used in sections 22-3404 to 22-3406—

(a) The term "meat" includes raw meat and meat prepared for human consumption, whether alone or in combination with other products;

(b) The term "person" means individual, partnership, corporation, or association. (Apr. 15, 1926, 44 Stat. 253, ch. 145, § 2.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22-3406.

#### § 22-3406. Kosher meat—Penalties.

Any person who violates any provision of sections 22-3404 to 22-3406 shall, upon conviction thereof, be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment; but no person shall be convicted of any such violation in respect of any meat which was not kosher at the time he acquired such meat, if he acquired it in good faith as kosher from a person duly authorized in accordance with the orthodox Hebrew ritual to prepare kosher. (Apr. 15, 1926, 44 Stat. 253, ch. 145, § 3.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22-3405.

#### § 22-3407. Repealed. Aug. 13, 1962, 76 Stat. 360, Pub. L. 87-581, § 203.

Section act Mar. 3, 1901, 31 Stat. 1334, ch. 854, § 892, fixed the hours of work for laborers and mechanics on public works.

The repealing act also provided that the provisions of the repealed statutes shall continue to apply with respect to contracts existing on the effective date of the repealing act or entered into pursuant to invitations for bids outstanding at the time of enactment of repealing act.

Effective date of act repealing this section is 60 days after its enactment. [Aug. 13, 1962.]

#### CROSS REFERENCE

Provisions establishing standards for hours of work and overtime pay of laborers and mechanics employed on work done under contract for, or with the financial aid of, the United States, for any territory, or for the District of Columbia, see 40 U.S.C. §§ 327 to 333.

#### § 22-3408. Repealed. Aug. 13, 1962, 76 Stat. 360, Pub. L. 87-581, § 203.

Section of act Mar. 3, 1901, 31 Stat. 1334, ch. 854, § 893, prescribed the penalties for violation of section 22-3407.

Effective date of act repealing this section is 60 days after its enactment. [Aug. 13, 1962.]

#### § 22-3409. Mislabelling potatoes.

No person, firm, or corporation shall sell, offer for sale, keep, or expose for sale in the District of Columbia potatoes in any package which is not plainly marked or labeled with the name of the United States grade which represents a standard no higher than the actual grade of potatoes contained therein: *Pro-*

*vided, however,* That the term "unclassified" or "ungraded" may be used. The director of weights, measures, and markets shall administer sections 22-3409 to 22-3412 and the District of Columbia Council is authorized to establish necessary rules and regulations therefor. (Aug. 12, 1937, 50 Stat. 626, ch. 597, § 1; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1).

#### CHANGE OF NAME

The name of "superintendent of weights, measures, and markets" was changed to "director of weights, measures, and markets" by act Apr. 11, 1946. See section 10-101a.

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(207) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners under this section with respect to establishing rules and regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

#### TRANSFER OF FUNCTIONS

Status of department of weights, measures, and markets and director thereof, see notes under section 10-101.

#### CROSS REFERENCE

Rules and regulations, publication and effect, see §§ 1-1506, 4-177, 4-178.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-3410 to 22-3412.

#### § 22-3410. Mislabelling potatoes—Sign to show grade.

No person, firm, or corporation shall sell, offer for sale, keep or expose for sale in the District of Columbia any potatoes otherwise than in packages as provided in section 22-3409 without having plainly and conspicuously displayed in proximity to said potatoes a printed sign where it may readily be seen and in letters of not less than one-half inch high printed in Gothic type clearly and distinctly stating the United States grade of said potatoes. (Aug. 12, 1937, 50 Stat. 626, ch. 597, § 2.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-3409, 22-3411 to 22-3412.

#### § 22-3411. Mislabelling potatoes—Law not applicable to seed potatoes.

The provisions of sections 22-3409 to 22-3412 shall not apply to officially certified seed potatoes which meet the grade or certification requirements as labeled and which are sold exclusively for seed purposes, provided they are sold in original packages and bear the official seal and certification of the department of agriculture of the State or country where the potatoes were grown. (Aug. 12, 1937, 50 Stat. 626, ch. 597, § 3.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-3409, 22-3412.

#### § 22-3412. Mislabelling potatoes—Penalties.

Any person, firm, or corporation which shall violate any provisions of sections 22-3409 to 22-3412 shall be fined not more than \$50 for the first offense and not more than \$200 for each subsequent offense. (Aug. 12, 1937, 50 Stat. 626, ch. 597, § 4.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22-3409, 22-3411.



**§ 22-3413. Procuring enlistment of criminals.**

It shall be unlawful for any person, with knowledge of the fact, to present or offer to any recruiting agent or officer, or any muster-in officer in the United States military or naval service, either as a volunteer or as a substitute for any person, any person charged with the commission of any criminal offense, and confined or held on bail for the trial of such offense within the District; and it shall in like manner be unlawful for any person, in any way or manner, to abet, aid, or assist in procuring the offer or acceptance of any person so charged or held for trial, or released on bail and awaiting trial, either as a volunteer or as a substitute for any person drafted, or liable to draft, in the military or naval service of the United States, whether the person so drafted, or liable to draft, shall be a resident of the District, or shall reside elsewhere. And any person who shall knowingly offend against any of the provisions of this section shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not less than two hundred and fifty dollars and not more than one thousand dollars, and by imprisonment in the District jail for a term not less than six months nor more than one year. (R. S., D. C., § 1179.)

**§ 22-3414. Repealed. July 30, 1947, ch. 389, § 2, 61 Stat. 646.**

Section, act Feb. 8, 1917, ch. 34, 39 Stat. 900, prohibited in the District of Columbia, use of the flag for advertising purposes and mutilation of the flag. For current provisions, see 4 U.S.C. 3. For penalties for desecration of the flag, see 18 U.S.C. 700.

**§ 22-3415. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 864.**

Section, act Mar. 1, 1911, ch. 187, 36 Stat. 963, prohibited discrimination by theater proprietors against persons wearing uniform of armed forces. For current provisions, see 18 U.S.C. 244.

**§ 22-3416. Sale of unwholesome food prohibited.**

No person shall sell, or cause to be sold, or offer for sale any food which is unwholesome or unfit for use. (Dec. 16, 1941, 55 Stat. 807, ch. 587, § 1.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 22-3417, 22-3419 to 22-3422.

**NOTES TO DECISIONS****Construction with other laws**

This section prohibiting the sale of unwholesome food in the District of Columbia does not, as does the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 331 (a, g), cover manufacture as well as sale, and it does not, as does 21 U.S.C. § 342 (a) (3, 4), cover food which is adulterated without being unwholesome or unfit for use. *Rubenstein v. United States* (1946, 153 F. 2d 127, 80 U.S. App. D.C. 322).

**§ 22-3417. "Food" defined.**

For the purposes of sections 22-3416 to 22-3422 the term "food" means any article used for consumption by a human being or an animal. (Dec. 16, 1941, 55 Stat. 807, ch. 587, § 2.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 22-3419 to 22-3422.

**§ 22-3418. Duty of Director of Public Health.**

It shall be the duty of the Director of Public Health of the District of Columbia, and he or his duly appointed agent is hereby authorized, to inspect all food possessed or offered for sale, and condemn, denature, destroy, seize or remove such food as may be unfit for consumption. (Dec. 16, 1941, 55 Stat. 807, ch. 587, § 3; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

**CHANGE OF NAME**

"Director of Public Health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 22-3417, 22-3419 to 22-3422.

**§ 22-3419. Council to make rules and regulations.**

The District of Columbia Council is authorized to make such rules and regulations as may be necessary to carry out the provisions of sections 22-3416 to 22-3422. (Dec. 16, 1941, 55 Stat. 808, ch. 587, § 4.)

**TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL**

Section 402(208) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners to make rules and regulations under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 22-3417, 22-3420 to 22-3422.

**§ 22-3420. Prosecutions for violations.**

Prosecutions for violations of any of the provisions of sections 22-3416 to 22-3422 or of any regulations promulgated thereunder shall be on information in the Superior Court of the District of Columbia by the corporation counsel of the District of Columbia or any of his assistants. (Dec. 16, 1941, 55 Stat. 808, ch. 587, § 5; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

**AMENDMENT**

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

**EFFECTIVE DATE OF 1970 AMENDMENT**

See note preceding section 11-101.

**CHANGE OF NAME**

"Municipal court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 22-3417, 22-3419, 22-3421, 22-3422.

**§ 22-3421. Penalty for violation.**

Any person violating any of the provisions of sections 22-3416 to 22-3422 or any of the regulations promulgated thereunder shall, upon conviction, be



fined not more than \$300 or imprisoned for not more than ninety days. (Dec. 16, 1941, 55 Stat. 808, ch. 587, § 6.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-3417, 22-3419, 22-3420, 22-3422.

§ 22-3422. Sections 22-3416 to 22-3422 supplemental to Federal Food, Drug, and Cosmetic Act.

Sections 22-3416 to 22-3422 shall in no respect be considered as a repeal of any of the provisions of the Federal Food, Drug, and Cosmetic Act, but shall be construed as supplemental thereto. (Dec. 16, 1941, 55 Stat. 808, ch. 587, § 7.)

#### REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in the text, is classified to 21 U.S.C. ch. 9.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-3417, 22-3419 to 22-3421.

§ 22-3423. Use, by private detective or collection agencies, of the words "District of Columbia", "District", the initials "D.C." to create impression that agency represents the District, is prohibited.

No person engaged in the business of collecting or aiding in the collection of private debts or obligations, or engaged in furnishing private police, investigation, or other private detective services, shall use as part of the name of such business, or employ in any communication, correspondence, notice, advertisement, circular, or other writing or publication, the words "District of Columbia", "District", the initials "D.C.", or any emblem or insignia utilizing any of the said terms as part of its design, in such manner as reasonably to convey the impression or belief that such business is a department, agency, bureau, or instrumentality of the municipal government of the District of Columbia or in any manner represents the District of Columbia. As used in this section and section 22-3424, the word "person" means and includes individuals, associations, partnerships, and corporations. (Oct. 16, 1962, 76 Stat. 1071, Pub. L. 87-837, § 1.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-3424, 22-3425.

§ 22-3424. Penalty for violation of section 22-3423.

Any person who violates section 22-3423 shall be punished by a fine of not more than \$300 or by imprisonment for not more than ninety days, or by both such fine and imprisonment. (Oct. 16, 1962, 76 Stat. 1071, Pub. L. 87-837, § 2.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22-3423.

§ 22-3425. Prosecutions for violations of section 22-3423—Corporation Counsel defined.

All prosecutions for violations of section 22-3423 shall be conducted in the name of the District of Columbia by the Corporation Counsel or any of his assistants. As used in this section the term "Corporation Counsel" means the attorney for the District of Columbia, by whatever title such attorney may be known, designated by the Commissioner of the District of Columbia to perform the functions prescribed for the Corporation Counsel in this sec-

tion. (Oct. 16, 1962, 76 Stat. 1071, Pub. L. 87-837, § 3).

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 22-3426. Debt adjusting—Prohibitions—Exceptions—Penalties—Prosecutions for violations.

(a) As used in this section—

(1) "Debt adjusting" means an activity, whether referred to by the term "budget counseling", "budget planning", "budget service", "credit advising", "debt adjusting", "debt counseling", "debt help", "financial adjusting", "financial arranging", "prorating", or some other term of like import, which involves a particular debtor's entering into an express or implied contract whereby the debtor agrees to pay an amount or amounts of money periodically or otherwise to a person who agrees, for a consideration, to distribute such money among specified creditors in accordance with a plan agreed upon between the debtor and the person to whom the debtor makes or agrees to make such payments.

(2) "Person" does not include an individual admitted to the bar of the United States District Court for the District of Columbia.

(3) "Partnership" does not include a partnership all the members of which are admitted to the bar of the United States District Court for the District of Columbia.

(b) Except as provided in subsection (c), no person, partnership, association, or corporation shall engage in the business of debt adjusting in the District of Columbia.

(c) The provisions of this section shall not apply to those situations involving debt adjusting incurred incidentally in the lawful practice of law in the District of Columbia nor shall anything in this section be construed to apply to any nonprofit or charitable corporation or association which engages in debt adjusting even though the nonprofit corporation or association may charge and collect nominal sums as reimbursement for expenses in connection with such services.

(d)(1) Whoever violates subsection (b) shall be subject to a fine of not more than \$1,000 and to imprisonment for not more than six months, or to both.

(2) Prosecutions for violations of this section shall be conducted in the name of the District of Columbia by the Corporation Counsel or any of his assistants. (May 22, 1970, Pub. L. 91-266, 84 Stat. 264.)

§ 22-3427. Breaking and entering vending machines and similar devices—Penalties.

Whoever in the District of Columbia breaks open, opens, or enters, without right, any parking meter, coin telephone, vending machine dispensing goods or services, money changer, or any other device designed to receive currency, with intent to carry away any part of such device or anything contained therein, shall be sentenced to a term of imprisonment of not more than three years, or to a fine of not more than \$3,000, or both. (July 29, 1970, Pub. L. 91-358, § 203, title II, 84 Stat. 600.)



## EFFECTIVE DATE

See note preceding section 11-101.

## Chapter 35—SEXUAL PSYCHOPATHS

Sec.

- 22-3501. Indecent acts—Children.
- 22-3502. Sodomy.
- 22-3503. Definitions.
- 22-3504. Filing of statement.
- 22-3505. Right to counsel.
- 22-3506. Examination by psychiatrists.
- 22-3507. When hearing is required.
- 22-3508. Hearing—Commitment to Saint Elizabeths Hospital.
- 22-3509. Parole—Discharge.
- 22-3510. Stay of criminal proceedings.
- 22-3511. Criminal law unchanged.

## § 22-3501. Indecent acts—Children.

(a) Any person who shall take, or attempt to take any immoral, improper, or indecent liberties with any child of either sex, under the age of sixteen years with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires, either of such person or of such child, or of both such person and such child, or who shall commit, or attempt to commit, any lewd or lascivious act upon or with the body, or any part or member thereof, of such child, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires, either of such person or of such child, or of both such person and such child shall be imprisoned in a penitentiary, not more than ten years.

(b) Any such person who shall, in the District of Columbia, take any such child or shall entice, allure, or persuade any such child, to any place whatever for the purpose either of taking any such immoral, improper, or indecent liberties with such child, with said intent or of committing any such lewd, or lascivious act upon or with the body, or any part or member thereof, of such child with said intent, shall be imprisoned in the penitentiary not more than five years.

(c) Consent by a child to any act or conduct prescribed by subsection (a) or (b) shall not be a defense, nor shall lack of knowledge of the child's age be a defense.

(d) The provisions of this section shall not apply to the offenses covered by section 22-2801. (June 9, 1948, 62 Stat. 347, ch. 428, title I, § 103.)

## NOTES TO DECISIONS

## Arrest, search and seizure

Even though police officers may have had probable cause to believe that defendant had committed, in his home, a perverted act on a 10- or 11-year-old boy and that defendant was in his home about two hours later when the officers arrived there, their entry, without a warrant, into his unlocked home, after their repeated knocking, to which there was no response, to make a search as a necessary prerequisite to possible arrest was illegal, in absence of any urgency for an arrest. *Morrison v. United States* (1959, 262 F. 2d 449, 104 U.S. App. D.C. 352).

Where police officers admitted themselves to defendant's unlocked private home and searched for defendant whom officers wished to arrest for having allegedly committed a perverted act on a 10- or 11-year-old boy earlier in the day, and boy showed officers the room in which alleged offense had occurred and pointed out handkerchief which boy said had been used by defendant and which allegedly bore some tangible evidence of the offense, handkerchief was merely evidentiary material and was not instrument or means by which alleged

crime was committed, the fruits of a crime, a weapon by which escape might be effected or property the possession of which is a crime, and consequently handkerchief could not be seized legally without any warrant whatsoever and without any arrest of defendant, who was not at home. *Id.*

## Conviction for carnal knowledge and taking indecent liberties

A defendant may not properly be convicted of both carnal knowledge and taking indecent liberties with minor child as result of one incident. *United States v. W. D. Heard* (1969, 420 F. 2d 628, 137 U.S. App. D.C. 60).

Since the defendant was charged with both carnal knowledge and taking indecent liberties with minor child, jury should have been instructed to first consider carnal knowledge offense and, if they found defendant guilty beyond a reasonable doubt, sole verdict should have been guilty of that offense, but if they acquitted defendant of carnal knowledge they should have proceeded to consider whether defendant was guilty or not guilty of the crime of indecent liberties. *Id.*

## Corpus delicti

In prosecution for taking indecent liberties with 11-year-old girl, corpus delicti could not be established by child's uncorroborated testimony on witness stand. *Wilson v. United States* (1959, 271 F. 2d 492, 106 U.S. App. D.C. 226).

A requisite element of evidence in prosecution for taking indecent liberties with minor child is establishment of corpus delicti. *Jones v. United States* (1956, 231 F. 2d 244, 97 U.S. App. D.C. 291).

## Counsel—Assistance of

Where trial counsel, in prosecution for taking indecent liberties with a child, did not utilize defense of insanity because counsel thought the evidence did not warrant it and because he felt that, in good conscience, he could not urge it upon the court, defendant was not denied the effective assistance of counsel because of failure to raise defense of insanity, and hence his motion to vacate judgment for such reason would be denied. *United States v. Plummer, Jr.* (D.C.D.C. 1959, 171 F. Supp. 1).

## —Conduct of

Reversal of conviction under this section would not be justified where defendant received a fair trial and conduct of his trial counsel could hardly have affected the result in view of overwhelming evidence of defendant's guilt and trial judge gave careful instructions to jury. *Holley v. United States* (1959, 267 F. 2d 628, 105 U.S. App. D.C. 351).

## Criminal sentencing

Where Chief of Legal Psychiatric Division expressed opinion raising doubt of competency for criminal sentencing for allegedly sexually violating the person of a child five years of age, so as to call for a hearing under the Sexual Psychopath Act, trial judge erred in proceeding to sentence for criminal offense, and Court of Appeals would remand for competency hearing. *G. Fuller v. United States* (1967, 390 F. 2d 468, 129 U.S. App. D.C. 53).

## Disclosure of prior record

Where evidence of identification of defendant as perpetrator of offense involving sexual abuse of a little girl was inconclusive, and trial court had denied defendant's motion to permit defendant to testify without having his prior record exposed, and once defendant's prior record was disclosed to jury it was impossible, on facts of case, to say with assurance that jury would have found defendant guilty beyond reasonable doubt of crime for which he was on trial, new trial was required. *R. A. Barber v. United States* (1968, 392 F. 2d 517, 129 U.S. App. D.C. 193).

## Elements of offense

The elements of the offense of taking indecent liberties with a minor child are taking immoral, improper, or indecent liberties with a child under the age of 16 with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the child or of the accused. *A. Allison v. United States* (1969, 409 F. 2d 445, 133 U.S. App. D.C. 159).

Evidence was sufficient to establish all elements of the offense of taking indecent liberties with a minor child. *Id.*



Words "force" and "assault" are not a necessary element to commission of crime of taking of improper and indecent liberties. *Younger, Jr. v. United States* (1959, 263 F. 2d 735, 105 U.S. App. D.C. 51, certiorari denied 79 S. Ct. 1299, 360 U.S. 905, 3 L. Ed. 2d 1257).

#### Evidence—Admissibility

In prosecution for asserted taking of indecent liberties with child and asserted carnal knowledge, where examining physician was out of jurisdiction and unavailable, report of his medical examination was not admissible. *Whittaker v. United States* (1960, 281 F. 2d 631, 108 U.S. App. D.C. 268).

In prosecution for taking indecent liberties with a female child under 16 years of age, testimony of officer investigating the crime as to what someone told him the child said was prejudicial where there was no other testimony that the child identified the person who molested her. *Pinkard v. United States* (1957, 240 F. 2d 632, 99 U.S. App. D.C. 394).

In prosecution for taking indecent liberties with a female child under 16 years of age, hearsay statement of officer investigating the incident that witness told officer that two boys, each of whom took the stand, told her that two men had molested the girl was prejudicial notwithstanding it was contradicted by later testimony. *Id.*

In prosecution for taking indecent liberties with five-year-old girl, incompetent to testify, her mother's testimony as to girl's statement of what defendant did to her was admissible as evidence of spontaneous declaration under exception to hearsay rule. *Jones v. United States* (1956, 231 F. 2d 244, 97 U.S. App. D.C. 291).

Where alleged offense of taking indecent liberties with female child occurred on a Monday night, and child had earlier opportunity to complain, testimony concerning statement child made on following Thursday morning and in answer to her mother's inquiries, was hearsay, and its admission in prosecution for the alleged offense was, under the circumstances, prejudicial error. *Smith v. United States* (1954, 215 F. 2d 682, 94 U.S. App. D.C. 320).

#### —Sufficiency

In this case wherein defendant was charged with four counts of taking indecent liberties with a child, and three counts of sodomy, the evidence was insufficient to sustain conviction except with respect to one indecent liberties count. *P. Coltrane v. United States* (1969, 418 F. 2d 1131, 135 U.S. App. D.C. 295).

In prosecution for taking indecent liberties with five-year-old girl, incompetent to testify, her mother's testimony as to child's statement of what defendant did to her was insufficient to support verdict of conviction because of failure to establish corpus delicti, in absence of evidency of injury to child. *Jones v. United States* (1956, 231 F. 2d 244, 97 U.S. App. D.C. 291).

Evidence was insufficient to sustain conviction for taking immoral, improper and indecent liberties with minor children. *Hinton v. United States* (1952, 196 F. 2d 605, 91 U.S. App. D.C. 13).

#### Former jeopardy protection

A jury which was specifically prohibited from considering a charge of taking indecent liberties with minor child if defendant were to be found guilty of assault with intent to commit carnal knowledge, and defendant was found guilty of the latter charge, its verdict of not guilty of the former charge was a nullity and did not clothe defendant with former jeopardy protection or preclude reviewing court from directing entry of judgment of guilty on indecent liberties charge upon finding that evidence was insufficient to sustain conviction for assault with intent to commit carnal knowledge. *A. Allison v. United States* (1969, 409 F. 2d 445, 133 U.S. App. D.C. 159).

#### Indecent liberties

An assault with intent to commit carnal knowledge on a child is certainly the taking of indecent liberties with a child, but with intent of going beyond the liberties referred to in statute, and intent to commit carnal knowledge is to take indecent liberties plus an intent much more vicious, violent or aggravated. *Younger Jr. v. United States* (1959, 263 F. 2d 735, U.S. App. D.C. 51, certiorari denied 79 S. Ct. 1299, 360 U.S. 905, 3 L. Ed. 2d 1257).

#### Indictment

Count of indictment charging defendant with violating statute punishing one who carnally knows a female child under 16 years of age can be joined with count charging defendant with violation of statute punishing any person who takes, or attempts to take, any immoral, improper, or indecent liberties with any child of either sex, under the age of 16 years to arouse or gratify sexual desires, though latter statute provides that it shall not apply to the offenses covered by the prior statute, if jury is told that it cannot find defendant guilty of both counts and can find him guilty under the second count only if he is found not guilty under the first count. *Thompson v. United States* (1956, 228 F. 2d 463, 97 U.S. App. D.C. 116).

#### Insanity

Where significant evidence was introduced on trial of defendant for taking immoral liberties with female child that defendant might have been of unsound mind at time of alleged crime including evidence of delusions and hearing of voices, prosecution had burden of proving sanity beyond a reasonable doubt. *Goforth v. United States* (1959, 269 F. 2d 778, 106 U.S. App. D.C. 111).

#### Insanity defense

Failure of government psychiatrist, in testifying in opposition to defendant's insanity defense, to disclose that defendant, at time he was examined by the witness and found to lack symptoms of mental illness, was receiving daily doses of major tranquilizers which could have been expected to abate any symptoms of acute mental disturbance constituted reversible error. *United States v. W. Bennett* (1972, 460 F. 2d 872, 148 U.S. App. D.C. 364).

Failure of defendant's trial counsel to explore issue as to whether failure of government psychiatrist, in testifying in opposition to defendant's insanity defense, to disclose that defendant, at time he was examined by the witness and found to lack symptoms of mental illness, was receiving daily doses of major tranquilizers which could have been expected to abate any symptoms of acute mental disturbance constituted reversible error, did not preclude review of such issue as defendant or his counsel may have been unaware of the significance of the major tranquilizer medication. *Id.*

#### Instructions

The court's instruction that the jury could find defendant guilty of both carnal knowledge and taking indecent liberties with minor child as result of same incident was error. *United States v. W. D. Heard* (1969, 420 F. 2d 628, 137 U.S. App. D.C. 60).

Defendant was convicted of an assault on a female under age of 16 with intent to commit carnal knowledge and with taking immoral, improper and indecent liberties with a female under age of 16, in violation of Miller Act, and the court should have given requested instruction that jury should consider count based on Miller Act only if they acquitted on the other count and, although failure to so instruct did not impair verdict under Miller Act, conviction for other offense must be set aside. *H. C. Dozier v. United States* (1967, 382 F. 2d 482, 127 U.S. App. D.C. 206).

Failure of court to instruct on simple assault as less offense under count charging taking immoral, improper, and indecent liberties with female under age of 16 furnished no basis for reversal, as jury was instructed on simple assault as less offense under count charging assault on female under age of 16 with intent to commit carnal knowledge. *Id.*

Giving instruction, in prosecution for taking indecent liberties with child, stating that an element was that defendant "took or attempted to take" indecent liberties was not reversible error, even if instruction referred to separate offenses, where no objection was made, penalty for each offense was the same, defendant's sentence was well within statutory prescription, and evidence of guilt was overwhelming. *R. C. King v. United States* (1964, 329 F. 2d 257, 117 U.S. App. D.C. 302).

In prosecution on two-count indictment for taking indecent liberties with child and for carnal knowledge, court acted properly at close of government's case when it granted partial judgment of not guilty under second count, stating that there was no evidence to support carnal knowledge charge but submitting to jury lesser included offense of assault with intent to commit carnal



knowledge, but court erred in failing to instruct that jury was first to consider included charge of assault with intent to commit carnal knowledge and was only to consider alleged taking of indecent liberties with child if it found defendant not guilty of the former crime. *Whittaker v. United States* (1960, 281 F. 2d 631, 108 U.S. App. D.C. 268).

In prosecution for taking immoral liberties with female child under 16 years of age wherein significant evidence was introduced that defendant might have been of unsound mind at time of alleged crime including evidence of delusions and hearing of voices, court should have instructed jury on issue of sanity and failure of court to do so required new trial. *Goforth v. United States* (1959, 269 F. 2d 778, 106 U.S. App. D.C. 111).

Where defendant was charged with offense of assault upon female child with intent to commit carnal knowledge, trial court properly instructed jury that if it found defendant not guilty on count as charged, jury should then consider lesser included offense of taking improper and indecent liberties with a child. *Younger, Jr. v. United States* (1959, 263 F. 2d 735, 105 U.S. App. D.C. 51, certiorari denied 79 S. Ct. 1299, 360 U.S. 905, 3 L. Ed. 2d 1257).

#### Lesser included offense

The crime of taking indecent liberties is a lesser included offense of assault with intent to commit carnal knowledge. *A. Allison v. United States* (1969, 409 F. 2d 445, 133 U.S. App. D.C. 159).

#### Matters to be considered on remand

Where Court of Appeals remanded case for competency hearing under Sexual Psychopath Act because of psychiatric opinion, district court would be authorized to receive, or to direct prosecutor to file, statement looking toward application of Sexual Psychopath Act, and hearing on remand should also embrace issue of possibility of lack of competency at trial. *G. Fuller v. United States* (1967, 390 F. 2d 468, 129 U.S. App. D.C. 53).

Where Court of Appeals remanded to District Court case for competency hearing under Sexual Psychopath Act because of psychiatric opinion raising doubt of competency of defendant, inquiry at hearing on remand should embrace mental condition of defendant at time of alleged offense, what kind of judgment or sentence was appropriate, and what kind of disposition should be made of defendant, including a possible civil commitment under the Hospitalization of the Mentally Ill Act. (25-501 et seq.) *Id.*

#### New trial

Where conviction for taking indecent liberties with child under age of 16 years, rested almost entirely on testimony of 12-year-old girl, and four days after guilty verdict defendant introduced in support of motion for new trial on ground that interest of justice required granting of new trial, affidavit of girl's mother, who had not testified at trial, and who had seen and talked with girl shortly after alleged offense, contradicting testimony of girl in two respects and giving mother's opinion that nothing happened to girl, trial court erred in denying motion. *Benton v. United States* (1951, 188 F. 2d 625, 88 U.S. App. D.C. 158).

#### Prosecutor's statement

Statement of the prosecutor, in his closing argument, that defendant's testimony was a recent fabrication designed to lure jury and hoodwink them, although not a permissible statement, did not warrant reversal of conviction for taking indecent liberties with eleven-year-old boy in view of eminently fair charge in which the district judge sought to compensate indirectly for such an impermissible comment. *C. W. Gibson v. United States* (1968, 403 F. 2d 569, 131 U.S. App. D.C. 163).

#### Remedy on appeal

Although defendant who was charged with both carnal knowledge and with taking indecent liberties with minor child did not request that the jury consider indecent liberties charge only after an acquittal of carnal knowledge and jury convicted defendant on both charges after being erroneously instructed that conviction on one charge should not influence verdict on other charge, the proper remedy was to remand case with instruction to vacate judgment of conviction of taking indecent liberties with minor child. *United States v. W. D. Heard* (1969, 420 F. 2d 628, 137 U.S. App. D.C. 60).

#### Review

Shortcomings that attended conduct of a preliminary hearing did not, under the circumstances, infect case with error which invalidated judgment of conviction based on valid indictment returned against defendant, nor was the judgment of conviction invalidated by police misbehavior in view of fact conviction was reached entirely apart therefrom. *W. L. Gilliam v. United States* (1963, 323 F. 2d 615, 116 U.S. App. D.C. 313).

Where defense announced that defenses would be, first, that no crime had been committed by defendant, and, secondly, that if he had committed crime, he was not guilty by reason of insanity, court, in stating that defense would have to take one position or other, as defenses were inconsistent, committed error which reviewing court, under rule, would notice on appeal and for which it would reverse judgment, as there was no inconsistency and as inconsistent defenses could be interposed. *Whittaker v. United States* (1960, 281 F. 2d 631, 108 U.S. App. D.C. 268).

#### Reviewing court's authority

Where evidence does not sustain conviction of assault with intent to commit carnal knowledge but was sufficient to establish all elements of taking indecent liberties with minor child, reviewing court in remanding with directions to enter judgment of guilty of taking indecent liberties would accord permission to trial judge to grant new trial if he should deem it to be in the best interest of justice. *A. Allison v. United States* (1969, 409 F. 2d 445, 133 U.S. App. D.C. 159).

#### Scope of review

Although Court of Appeals may review sentence given upon plea of guilty, provided there is illegality or impropriety in same, where the defendant made no such claim, and indeed, disposition was favorable to him in its provisions for probation, appeal from sentence is frivolous and would be dismissed. *United States v. C. McElyea* (1970, 439 F. 2d 548, 142 U.S. App. D.C. 38).

A defendant's voluntary plea of guilty entered after receiving the advice of counsel waives objections to nonjurisdictional defects in his conviction. *Id.*

Where a defendant claimed error in taking of his plea, the district court will consider whether he should be allowed to withdraw his plea or whether his conviction and sentence should be set aside, but where the defendant does not allege any error in taking of plea, there is no basis for a remand to provide such consideration in district court. *Id.*

#### Speedy trial

Where according to government 323 days of total delay in bringing defendant to trial were attributable to government mental hospital, 56 days to courts, 55 to defendant and 23 days for diverse reasons to government while the reason for 99 days of delay was unclear, and according to defendant 499 days of delay were attributable to government and 60 days to defendant, and in three instances case had to be continued for lack of any report from hospital relating to defendant's mental competence and in each instance motion was made for dismissal but ruling was postponed, conviction was reversed on appeal for denial of speedy trial. *United States v. L. L. Dunn* (1972, 459 F. 2d 1115, 148 U.S. App. D.C. 91).

#### Witnesses

With children of tender years, it is proper for a trial judge to conduct a preliminary voir dire on issue of testimonial maturity; questioning at such hearing should be handled in a way that is meaningful and not by inquiry that borders on the casual and uses leading questions. *United States v. D. W. Schoefeld* (1972, 465 F. 2d 560, 150 U.S. App. D.C. 380; cert. denied 93 S. Ct. 210, 409 U.S. 881).

Where 12-year-old complainant was student in sixth grade and transcript revealed intelligent comprehension in terms of answering questions, there was no basis for claim that trial judge, who was not requested to conduct preliminary voir dire as to testimonial maturity, was clearly erroneous either in proceedings without a preliminary voir dire or in accepting testimony of complainant and her 13-year-old brother. *Id.*



## § 22-3502. Sodomy.

(a) Every person who shall be convicted of taking into his or her mouth or anus the sexual organ of any other person or animal, or who shall be convicted of placing his or her sexual organ in the mouth or anus of any other person or animal, or who shall be convicted of having carnal copulation in an opening of the body except sexual parts with another person, shall be fined not more than \$1,000 or be imprisoned for a period not exceeding ten years. Any person convicted under this section of committing such act with a person under the age of sixteen years shall be fined not more than \$1,000 or be imprisoned for a period not exceeding twenty years. And in any indictment for the commission of any of the acts, hereby declared to be offenses, it shall not be necessary to set forth the particular unnatural or perverted sexual practice with the commission of which the defendant may be charged, nor to set forth the particular manner in which said unnatural or perverted sexual practice was committed, but it shall be sufficient if the indictment set forth that the defendant committed a certain unnatural and perverted sexual practice with a person or animal, as the case may be: *Provided*, That the accused, on motion, shall be entitled to be furnished with a bill of particulars, setting forth the particular acts which constitute the offense charged.

(b) Any penetration, however slight, is sufficient to complete the crime specified in this section. Proof of emission shall not be necessary. (June 9, 1948, 62 Stat. 347, ch. 428, title I, § 104.)

## NOTES TO DECISIONS

## Arrest, search and seizure

Even though police officers may have had probable cause to believe that defendant had committed, in his home, a perverted act on a 10- or 11-year-old boy and that defendant was in his home about two hours later when the officers arrived there, their entry, without a warrant, into his unlocked home, after their repeated knocking, to which there was no response, to make a search as a necessary prerequisite to possible arrest was illegal, in absence of any urgency for arrest. *Morrison v. United States* (1959, 262 F. 2d 449, 104 U.S. App. D.C. 352).

Where police officers admitted themselves to defendant's unlocked private home and searched for defendant whom the officers wished to arrest for having allegedly committed a perverted act on a 10- or 11-year-old boy earlier in the day, and boy showed officers the room in which alleged offense had occurred and pointed out handkerchief which boy said had been used by defendant and which allegedly bore some tangible evidence of the offense, handkerchief was merely evidentiary material and was not instrument or means by which alleged crime was committed, the fruits of a crime, a weapon by which escape might be effected or property the possession of which is a crime, and consequently handkerchief could not be seized legally without any warrant whatsoever and without any arrest of defendant, who was at home. *Id.*

## Assignment of error

In prosecution for rape and sodomy, defendant's assignment of error in trial court's failure to declare mistrial because of prosecuting attorney's comment, in opening statement to jury, that only one woman survived defense challenge to jurors, was without foundation, in absence of motion by defendant for mistrial or exception to trial court's action in merely telling jury to disregard remark as improper after objection thereto. *McGuinn v. United States* (1951, 191 F. 2d 477, 89 U.S. App. D. C. 197).

## Attempt to commit sodomy

The government's proof at trial that a completed act of sodomy has taken place will not entitle defendant to an acquittal on the only charge against him, an attempt to commit sodomy. *United States v. L. M. Fleming* (D.C. App. 1966, 215 A. 2d 836).

The general attempt statute permits one to be convicted of an attempt to commit sodomy. *Id.*

## Bifurcation

Insanity defense of defendant charged with sexual assault on a 13-year-old boy was not so prejudiced by the presentation of details of the crime as to entitle defendant to two separate juries in a bifurcated trial on the merits and his insanity defense where the defense on the merits was slight and its resolution was likely to be rapid. *United States v. W. Bennett* (1972, 460 F. 2d 872, 148 U.S. App. D.C. 364).

## Evidence—Admissibility

In prosecution of two men for sodomy, admission of one defendant's confession of prior acts of sodomy between defendants was proper under exception that evidence of other offenses than that charged is admissible in cases involving sex offenses to show defendants' mental disposition or passion. *United States v. Kelly et al.* (D.C.D.C. 1954, 119 F. Supp. 217).

## — Sufficiency

In this case wherein defendant was charged with four counts of taking indecent liberties with a child, and three counts of sodomy, the evidence was insufficient to sustain conviction except with respect to one indecent liberties count. *P. Coltrane v. United States* (1969, 418 F. 2d 1131, 135 U.S. App. D.C. 295).

Where evidence in prosecution for sodomy is equally susceptible of construction as showing only attempt to commit sodomy as completion of such crime, conviction of sodomy cannot stand and to sustain conviction of sodomy, there must be substantial evidence of facts consistent with accused's guilt and inconsistent with every reasonable hypothesis of innocence. *United States v. Kelly et al.* (D.C.D.C. 1954, 119 F. Supp. 217).

## Insanity defense

Failure of government psychiatrist, in testifying in opposition to defendant's insanity defense, to disclose that defendant, at time he was examined by the witness and found to lack symptoms of mental illness, was receiving daily doses of major tranquilizers which could have been expected to abate any symptoms of acute mental disturbance constituted reversible error. *United States v. W. Bennett* (1972, 460 F. 2d 872, 148 U.S. App. D.C. 364).

Failure of defendant's trial counsel to explore issue as to whether failure of government psychiatrist, in testifying in opposition to defendant's insanity defense, to disclose that defendant, at time he was examined by the witness and found to lack symptoms of mental illness, was receiving daily doses of major tranquilizers which could have been expected to abate any symptoms of acute mental disturbance constituted reversible error, did not preclude review of such issue as defendant or his counsel may have been unaware of the significance of the major tranquilizer medication. *Id.*

## Instructions

In prosecution for rape and sodomy, court properly instructed jury that there must be absence of consent by complaining witness to warrant conviction, unless consent was induced by putting her in fear of grave bodily harm or death or by exercise of actual force against her person. *McGuinn v. United States* (1951, 191 F. 2d 477, 89 U.S. App. D. C. 197).

In prosecution for rape and sodomy, defendant's prayers for instructions assuming as fact that complaining witness did not offer opposition should have been denied. *Id.*

In prosecution for rape and sodomy, defendant's prayers for instruction requiring utmost resistance by complaining witness incorrect. *Id.*

In prosecution for rape and sodomy, defendant's prayer for instruction requiring that complaining witness' fear be mortal to negative her consent was properly denied, as fear of grave bodily harm was sufficient. *Id.*



**Moral turpitude**

Consensual sodomy is a "crime of moral turpitude" within scope of statute providing for deportation of an alien who is convicted of a crime involving moral turpitude committed within five years after entry into United States. *J. Velez-Lazano v. Immigration and Naturalization Service* (1972, 463 F. 2d 1305, 150 U.S. App. D.C. 214).

**Review**

Record on appeal from sodomy conviction, challenged on grounds of sufficiency of evidence presented by government, revealed no error affecting substantial rights of accused. *W. Hehl v. United States* (1960, 288 F. 2d 131, 109 U.S. App. D.C. 346).

**§ 22-3503. Definitions.**

For the purposes of sections 22-3503 to 22-3511—

(1) The term "sexual psychopath" means a person, not insane, who by a course of repeated misconduct in sexual matters has evidenced such lack of power to control his sexual impulses as to be dangerous to other persons because he is likely to attack or otherwise inflict injury, loss, pain, or other evil on the objects of his desire.

(2) The term "court" means a court in the District of Columbia having jurisdiction of criminal offenses or delinquent acts.

(3) The term "patient" means a person with respect to whom there has been filed with the clerk of any court a statement in writing setting forth facts tending to show that such person is a sexual psychopath.

(4) The term "criminal proceeding" means a proceeding in any court against a person for a criminal offense, and includes all stages of such a proceeding from (A) the time the person is indicted, charged by an information, or charged with a delinquent act, to (B) the entry of judgment, or, if the person is granted probation, the completion of the period of probation.

(June 9, 1948, 62 Stat. 347, ch. 428, title II, § 201; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, § 157(c) (1) (A) (B), title I, 84 Stat. 574.)

**AMENDMENT**

1970—Section 157(c) (1) (A) (B) of Act July 29, 1970, Public Law 91-358 amended section, (A) by amending paragraph (2) to read as follows:

"(2) The term 'court' means a court in the District of Columbia having jurisdiction of criminal offenses or delinquent acts.", and

(B) by striking out "an offense in the juvenile court of the District of Columbia" in paragraph (4) and inserting in lieu thereof "a delinquent act".

**EFFECTIVE DATE OF AMENDMENT**

See note preceding section 11-101.

**CHANGE OF NAME**

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 22-3505 to 22-3507, 22-3509 to 22-3511.

**NOTES TO DECISIONS****Burden of proof**

The evidence adduced at habeas corpus proceeding did not support the trial court's finding that petitioner, who had originally been committed under the District of Columbia Sexual Psychopath Act, was likely to inflict injury, loss, pain or other evil on others by his sexual misconduct if he were released. *M. I. Millard v. D. W. Harris, Acting Sup't, etc.* (1968, 406 F. 2d 964, 132 U.S. App. D.C. 146; rev'g 373 F. 2d 468).

Habeas corpus petitioner who had been committed under the District of Columbia Sexual Psychopath Act had the burden to show that his past behavior, examined under the illumination provided by psychiatric evaluation of those actions, did not justify conclusion that he fell within statutory definition of one who was likely to inflict injury on others. *Id.*

Whether habeas corpus petitioner who was committed under the District of Columbia Sexual Psychopath Act should be released on habeas corpus would be determined on likelihood that he would, if released, be dangerous to others because of sexual misconduct. *Id.*

Petitioner who was confined in hospital pursuant to proceeding under District of Columbia Sexual Psychopath Act had the burden to show by a preponderance of the evidence that his continued confinement as sexual psychopath was not justified. *Id.*

**Conditions justifying commitment**

Predictions of dangerousness which would justify commitment under the District of Columbia Sexual Psychopath Act requires determination of type of conduct of which individual may engage; likelihood or probability that he will indulge in that conduct; and effect that such conduct if engaged in will have on others. *M. I. Millard v. D. W. Harris, Acting Sup't, etc.* (1968, 406 F. 2d 964, 132 U.S. App. D.C. 146; rev'g 373 F. 2d 468).

In determining what acts may be considered in applying District of Columbia Sexual Psychopath Act, court must read "sexual" in common meaning of that term. *Id.*

**Constitutionality**

The statute defining sexual psychopaths and providing for their commitment to hospital for the insane after a judicial hearing and upon a finding by the court or verdict of a jury, if demanded, is not unconstitutional. *Malone v. Overholser* (D.C.D.C. 1950, 93 F. Supp. 647).

**Construction**

The District of Columbia Sexual Psychopath Act was not repealed by the 1964 Hospitalization of Mentally Ill Act. *M. I. Millard v. D. W. Harris, Acting Sup't, etc.* (1968, 406 F. 2d 964, 132 U.S. App. D.C. 146; rev'g 373 F. 2d 468).

Court of Appeals would not read into the District of Columbia Sexual Psychopath Act the procedural protections of the Hospitalization of the Mentally Ill Act. *Id.*

"Injury" within statute defining sexual psychopath as person who has evidenced such lack of power to control sexual impulses as to be dangerous to persons because he is likely to attack or otherwise inflict injury, loss, pain or other evil, includes injury to feelings and "pain" includes mental suffering. *C. W. Carras v. District of Columbia* (D.C. Mun. App. 1962, 183 A. 2d 393).

**Dangerous conduct**

Statute defining sexual psychopath as a person who by repeated sexual misconduct evinces inability to control sexual impulses so as to be likely to be dangerous to others requires that the dangerous conduct be not merely repulsive or repugnant but must have serious effect on the viewer. *M. I. Millard v. D. C. Cameron, Sup't etc.* (1966, 373 F. 2d 468, 125 U.S. App. D.C. 383; rev'd and remanded 406 F. 2d 964).

**Dues process**

Since a proceeding under District of Columbia Sexual Psychopath Act is closely related to behavior of person rather than to his mental condition considered apart from his behavior, constitutional guarantees implicit in due process of law must come into play. *M. I. Millard v. D. W. Harris, Acting Sup't, etc.* (1968, 406 F. 2d 964, 132 U.S. App. D.C. 146; rev'g 373 F. 2d 468).



**Evidence**

Failure of the trial court in habeas corpus proceeding to distinguish between petitioner's sexual and nonsexual misconduct as a reason for his commitment under District of Columbia Sexual Psychopath Act and trial court's failure to evaluate the likelihood, as opposed to mere possibility, that petitioner would engage in sexual misconduct if released constituted reversible error. *M. I. Millard v. D. W. Harris, Acting Sup't, etc.* (1968, 406 F. 2d 964, 132 U.S. App. D.C. 146; rev'g 373 F. 2d 468).

Evidence in habeas corpus proceeding established that if released, the petitioner, who had been committed under District of Columbia Sexual Psychopath Act, would be unlikely to engage in sexual misconduct other than exhibitionism. *Id.*

Evidence at habeas corpus proceeding established that likelihood of serious injury to a child who might see the petitioner expose himself in public was too remote to justify commitment under District of Columbia Sexual Psychopath Act. *Id.*

Evidence at habeas corpus proceeding established that future sexual misconduct of petitioner, if any, was not sufficiently likely to cause kind of harm required by District of Columbia Sexual Psychopath Act to justify further commitment. *Id.*

**Grounds for commitment**

Commitment under sections 22-3503 to 22-3511 cannot be based simply on determination that a person is likely to engage in particular acts and court must also determine harm, if any, that is likely to flow from these acts; since mere possibility of injury is insufficient, harm must be likely. *T. B. Cross v. D. W. Harris* (1969, 418 F. 2d 1095, 135 U.S. App. D.C. 259).

In enacting sections 22-3503 to 22-3511 Congress did not intend to authorize indefinite preventive detention for those who have propensity to behave in way that is merely offensive or obnoxious to others; and threatened harm must be substantial so that before a commitment is required a person must be found likely to engage in sexual misconduct in circumstances where that misconduct will inflict substantial injury upon others. *Id.*

In determining question of likelihood of harm to ascertain whether a person should be committed under sections 22-3501 to 22-3511 particularly relevant considerations are: seriousness of expected harm; availability of in-patient and out-patient treatment for individual concerned; and expected length of confinement required for in-patient treatment. *Id.*

**Habeas corpus**

Inasmuch as habeas corpus petitioner would continue to suffer adverse consequences as result of commitment under sections 22-3503 to 22-3511, issue of validity of the commitment was not moot even though petitioner had been released. *R. Justin v. L. Jacobs* (1971, 449 F. 2d 1017, 145 U.S. App. D.C. 355).

Claims of habeas corpus petitioner that he was being given inadequate medical treatment at hospital to which he had been committed as a sexual psychopath and that he was being confined in an improper place were rendered moot by his discharge. *Id.*

Where the petitioner was in custody in hospital pursuant to commitment as sexual psychopath when he filed his habeas corpus petition, federal habeas corpus court did not lose jurisdiction to decide legality of commitments when the hospital thereafter unconditionally released petitioner. *Id.*

Inasmuch as habeas corpus petitioner committed to hospital in 1958 as a sexual psychopath had been discharged, mental condition of petitioner at time of his 1967 bid for release is no longer an issue in the case. *Id.*

Claim that there was insufficient evidence of course of repeated misconduct in sexual matters to justify 1958 commitment as sexual psychopath is not cognizable in habeas corpus proceeding in view of petitioner's failure to appeal from the 1958 commitment hearing. *Id.*

A habeas corpus petitioner, who was under hospital commitment as a sexual psychopath, was not entitled to be released on the ground that he was not mentally ill, as psychiatric testimony established that the petitioner was still a sexual psychopath who was likely to be of danger to others if permitted to return to society. *In re*

*J. E. Clatterbuck v. D. W. Harris, Superintendent, etc.* (1968, 295 F. Supp. 84).

**Limitation of applicability of chapter**

The protection of the District of Columbia Hospitalization of the Mentally Ill Act is limited to those who are declared insane or of unsound mind pursuant to a court order and does not include any person previously committed under the Sexual Psychopath Act. *M. I. Millard v. D. W. Harris, Acting Sup't, etc.* (1968, 406 F. 2d 964, 132 U.S. App. D.C. 146; rev'g 373 F. 2d 468).

**Nature of proceeding**

Proceedings under statute, to determine whether defendant in pending criminal action is sexual psychopath, is a civil one. *Miller v. Overholser* (1953, 206 F. 2d 415, 92 U.S. App. D.C. 110).

Statute providing for commitment of sexual psychopaths to hospital for the insane is not a criminal statute but merely extends the law relating to commitment of persons who are mentally incompetent so as to include persons who are sexual psychopaths as defined in the statute. *Malone v. Overholser* (D.C.D.C. 1950, 93 F. Supp. 647).

**"Not insane" construed**

Judicial decision rendered in 1968 interpreting words "not insane" as used in sections 22-3503 to 22-3511 as meaning "not mentally ill" should have been used by the court in ruling on petitioner's 1967 bid for release from hospital to which he had been committed as a sexual psychopath. *R. Justin v. L. Jacobs* (1971, 449 F. 2d 1017, 145 U.S. App. D.C. 355).

Judicial decision rendered in 1968 defining words "not insane" in sections 22-3503 to 22-3511 as meaning "not mentally ill" would not be retroactively applied to challenge petitioner's 1958 commitment to hospital as a sexual psychopath where petitioner had been released and there was no issue of continuing confinement. *Id.*

Under sections 22-3503 to 22-3511, term "not insane" must be read to mean "not 'mentally ill'" within meaning of sections 21-501 to 21-591 and sections 22-3503 to 22-3511 apply only to those who are not mentally ill while compulsory treatment of those who are mentally ill is governed by sections 21-501 to 21-591. *T. B. Cross v. D. W. Harris* (1969, 418 F. 2d 1095, 135 U.S. App. D.C. 259).

The words "not insane" as used in District of Columbia Sexual Psychopath Act means "not mentally ill". *M. I. Millard v. D. W. Harris, Acting Sup't, etc.* (1968, 406 F. 2d 964, 132 U.S. App. D.C. 146; rev'g 373 F. 2d 468).

When words "not insane" in District of Columbia Sexual Psychopath law is read to mean "not mentally ill" the sole justification for commitment under the act is the patient's dangerousness. *Id.*

**Release of sexual psychopath**

Continued detention in mental institution of a mentally ill person, who was committed under the Sexual Psychopath Act, is unwarranted since, by statutory definition, a mentally ill person cannot be a sex psychopath. *E. Norwood v. L. Jacobs* (1970, 430 F. 2d 903, 139 U.S. App. D.C. 162).

Although an indefinite commitment pursuant to the Sexual Psychopath Law is justifiable only upon a theory of therapeutic treatment, and although the evidence in instant case clearly disclosed that petitioner was not being given therapeutic treatment adequate for his condition, petitioner was not to be released from his confinement as a sexual psychopath, in view of the fact that while treatment was not being given, the fault lay entirely with petitioner who steadfastly refused appropriate and available treatment, namely, psychotherapy. *In re J. E. Clatterbuck v. D. W. Harris, Superintendent, etc.* (1968, 295 F. Supp. 84).

**Repeated misconduct**

Word "repeated" within statute defining sexual psychopath as person who by course of repeated misconduct in sexual matters has evidenced such lack of power to control his sexual impulses as to be dangerous to other persons does not mean habitual and does not require establishment of course of habitual sexual misconduct. *C. H. Lomax v. District of Columbia* (D.C. App. 1965, 211 A. 2d 772).



**Sufficiency of record**

Since examining doctors concluded that person committed under sections 22-3503 to 22-3511 was not insane but they had no occasion to consider whether he was nonetheless mentally ill, there was no record on the question and habeas corpus petition must be remanded for hearing and findings of fact necessary to determine whether statute was properly applied to petitioner. *T. B. Cross v. D. W. Harris* (1969, 418 F. 2d 1095, 135 U.S. App. D.C. 259).

**§ 22-3504. Filing of statement.**

(a) Whenever it shall appear to the United States attorney for the District of Columbia that any person within the District of Columbia, other than a defendant in a criminal proceeding, is a sexual psychopath, such attorney may file with the clerk of the Superior Court of the District of Columbia a statement in writing setting forth the facts tending to show that such a person is a sexual psychopath.

(b) Whenever it shall appear to the United States attorney for the District of Columbia that any defendant in any criminal proceeding prosecuted by such attorney or any of his assistants is a sexual psychopath, such attorney may file with the clerk of the court in which such proceeding is pending a statement in writing setting forth the facts tending to show that such defendant is a sexual psychopath.

(c) Whenever it shall appear to any court that any defendant in any criminal proceeding pending in such court is a sexual psychopath, the court may, if it deems such procedure advisable, direct the officer prosecuting the defendant to file with the clerk of such court a statement in writing setting forth the facts tending to show that such defendant is a sexual psychopath.

(d) Any statement filed in a criminal proceeding pursuant to subsection (b) or (c) may be filed only (1) before trial, (2) after conviction or plea of guilty but before sentencing, or (3) after conviction or plea of guilty but before the completion of probation.

(e) This section shall not apply to an individual in a criminal proceeding who is charged with rape or assault with intent to rape. (June 9, 1948, 62 Stat. 348, ch. 428, title II, § 202; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91-358, title I, § 157(c) (2), 84 Stat. 574.)

**AMENDMENT**

1970—Section 157(c) (2) of Act July 29, 1970, Public Law 91-358, amended subsec. (a) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

**EFFECTIVE DATE OF 1970 AMENDMENT**

See note preceding section 11-101.

**CHANGE OF NAME**

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 22-3503, 22-3505 to 22-3507, 22-3509 to 22-3511.

**NOTES TO DECISIONS****Criminal sentencing**

Where Chief of Legal Psychiatric Division expressed opinion raising doubt of competency for criminal sentencing for allegedly sexually violating the person of a child

five years of age, so as to call for a hearing under the Sexual Psychopath Act, trial judge erred in proceeding to sentence for criminal offense, and Court of Appeals would remand for competency hearing. *G. Fuller v. United States* (1967, 390 F. 2d 468, 129 U.S. App. D.C. 53).

**Legislative authority**

While Congress has the authority to prohibit acts of exhibition even if the acts are unlikely to do serious harm and may punish willful violations of laws forbidding indecent behavior, the test of what anticipated conduct may justify preventive detention is simply whether legislature has power to prohibit such conduct or to attack evil it portends. *T. B. Cross v. D. W. Harris* (1969, 418 F. 2d 1095, 135 U.S. App. D.C. 259).

**Matters to be considered on remand**

Where Court of Appeals remanded case for competency hearing under Sexual Psychopath Act because of psychiatric opinion, district court would be authorized to receive, or to direct prosecutor to file, statement looking toward application of Sexual Psychopath Act, and hearing on remand should also embrace issue of possibility of lack of competency at trial. *G. Fuller v. United States* (1967, 390 F. 2d 468, 129 U.S. App. D.C. 53).

Where Court of Appeals remanded to District Court case for competency hearing under Sexual Psychopath Act because of psychiatric opinion raising doubt of competency of defendant, inquiry at hearing on remand should embrace mental condition of defendant at time of alleged offense, what kind of judgment or sentence was appropriate, and what kind of disposition should be made of defendant, including a possible civil commitment under the Hospitalization of the Mentally Ill Act. (21-501 et seq.) *Id.*

**§ 22-3505. Right to counsel.**

A patient shall have the right to have the assistance of counsel at every stage of the proceeding under sections 22-3503 to 22-3511. Before the court appoints psychiatrists pursuant to section 22-3506 it shall advise the patient of his right to counsel and shall assign counsel to represent him unless the patient is able to obtain counsel or elects to proceed without counsel. (June 9, 1948, 62 Stat. 348, ch. 428, title II, § 203.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 22-3503, 22-3506, 22-3507, 22-3509 to 22-3511.

**§ 22-3506. Examination by psychiatrists.**

(a) When a statement has been filed with the clerk of any court pursuant to section 22-3504, such court shall appoint two qualified psychiatrists to make a personal examination of the patient. The patient shall be required to answer questions asked by the psychiatrists under penalty of contempt of court. Each psychiatrist shall file a written report of the examination, which shall include a statement of his conclusion as to whether the patient is a sexual psychopath.

(b) The counsel for the patient shall have the right to inspect the reports of the examination of the patient. No such report and no evidence resulting from the personal examination of the patient shall be admissible against him in any judicial proceeding except a proceeding under sections 22-3503 to 22-3511 to determine whether the patient is a sexual psychopath. (June 9, 1948, 62 Stat. 348, ch. 428, title II, § 204.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 22-3503, 22-3505, 22-3507 to 22-3511.



## NOTES TO DECISIONS

## In general

Nature of crime of sodomy, with which accused was charged, was not sufficient alone, to require the District Court, before accepting guilty plea, to order a mental examination of accused, although court could properly consider nature of crime in that connection, and where there was no indication by prosecuting attorney that accused might be a sexual psychopath, and no request for a mental examination was made by prosecution or accused, convictions could not be set aside in collateral proceeding, such as *coram nobis*, because of court's failure to order examination on its own motion. *Carter v. United States* (1960, 283 F. 2d 200, 108 U.S. App. D.C. 405).

## Expert testimony

The likelihood of a recurrence of sexual misconduct, likely frequency of such behavior, and magnitude of harm to other persons that is likely to result are three questions of fact on which expert testimony would be relevant in proceeding to commit person under section 22-3501 to 22-3511. *T. B. Cross v. D. W. Harris* (1969, 418 F. 2d 1095, 135 U.S. App. D.C. 259).

## Hearing

Though sexual psychopath statute requires psychiatric report to include a legal conclusion, it also requires a hearing in which psychiatrist can be examined and cross examined. *M. I. Millard v. D. C. Cameron, Sup't etc.* (1966, 373 F. 2d 468, 125 U.S. App. D.C. 383; rev'd and remanded 406 F. 2d 964).

## Justification for lack of treatment

One involuntarily committed to public hospital as sexual psychopath is entitled to relief upon showing that he was not receiving reasonably suitable and adequate treatment, and lack of such treatment cannot be justified by lack of staff or facilities. *M. I. Millard v. D. C. Cameron, Sup't etc.* (1966, 373 F. 2d 468, 125 U.S. App. D.C. 383; rev'd and remanded 406 F. 2d 964).

## Psychiatrists report as basis for commitment

Conclusory statement in psychiatrists' report was insufficient for commitment as sexual psychopath, in absence of full hearing, and court's statement that it acted upon "the testimony and evidence adduced" did not provide adequate assurance that statute had been complied with and that an informed judgment had been made. *M. I. Millard v. D. C. Cameron, Sup't etc.* (1966, 373 F. 2d 468, 125 U.S. App. D.C. 383; rev'd and remanded 406 F. 2d 964).

## § 22-3507. When hearing is required.

If, in their reports filed pursuant to section 22-3506, both psychiatrists state that the patient is a sexual psychopath, or if both state that they are unable to reach any conclusion by reason of the partial or complete refusal of the patient to submit to thorough examination, or if one states that the patient is a sexual psychopath and the other states that he is unable to reach any conclusion by reason of the partial or complete refusal of the patient to submit to thorough examination, then the court shall conduct a hearing in the manner provided in section 22-3508 to determine whether the patient is a sexual psychopath. If, on the basis of the reports filed, the court is not required to conduct such a hearing, the court shall enter an order dismissing the proceeding under sections 22-3503 to 22-3511 to determine whether the patient is a sexual psychopath. (June 9, 1948, 62 Stat. 349, ch. 428, title II, § 205.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-3503, 22-3505, 22-3506, 22-3509 to 22-3511.

## § 22-3508. Hearing—Commitment to Saint Elizabeths Hospital.

Upon the evidence introduced at a hearing held for that purpose, the court shall determine whether or not the patient is a sexual psychopath. Such

hearing shall be conducted without a jury unless, before such hearing and within fifteen days after the date on which the second report is filed pursuant to section 22-3506, a jury is demanded by the patient or by the officer filing the statement. The rules of evidence applicable in judicial proceedings in the court shall be applicable to hearings pursuant to this section; but, notwithstanding any such rule, evidence of conviction of any number of crimes the commission of which tends to show that the patient is a sexual psychopath and of the punishment inflicted therefor shall be admissible at any such hearing. The patient shall be entitled to an appeal as in other cases. If the patient is determined to be a sexual psychopath, the court shall commit him to Saint Elizabeths Hospital to be confined there until released in accordance with section 22-3509. (June 9, 1948, 62 Stat. 349, ch. 428, title II, § 206.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-3503, 22-3505 to 22-3507, 22-3509 to 22-3511.

## NOTES TO DECISIONS

## Generally

Under statute providing for commitment of sexual psychopaths to hospital for the insane, alleged psychopath is entitled to a hearing before the court at which he is entitled to representation by counsel and he may be committed only upon a finding by the court or upon the verdict of a jury. *Malone v. Overholser* (D.C.D.C. 1950, 93 F. Supp. 647).

## Bail

Trial court has power to permit one adjudged sexual psychopath to remain at liberty on bond pending appeal. *C. W. Carras v. District of Columbia* (D.C. Mun. App. 1962, 183 A. 2d 393).

Question of right of defendant adjudged to be sexual psychopath to bail pending appeal was moot, where case was in reviewing court and ready for disposition adverse to defendant on merits so that no practical relief could be given as to bail. *Id.*

## Basis for indefinite commitment

Indefinite commitment under sexual psychopath law is justifiable only upon a theory of therapeutic treatment. *M. I. Millard v. D. C. Cameron, Sup't etc.* (1966, 373 F. 2d 468, 125 U.S. App. D.C. 383; rev'd and remanded 406 F. 2d 964).

## Confinement

Notwithstanding psychiatrists' report and testimony of one psychiatrist to effect that defendant, arrested for indecent exposure, would not physically attack any one in any manner, in view of fact defendant had twice before been committed for similar offenses, defendant was properly committed as sexual psychopath. *C. W. Carras v. District of Columbia* (D.C. Mun. App. 1962, 183 A. 2d 393).

Intent of Sexual Psychopath Act is commitment for remedial treatment, and incarceration of sexual psychopath in place maintained for confinement of violent, criminal, hopeless insane, instead of in place designed and operated for mentally ill who are not insane, is not authorized by statute. *Miller v. Overholser* (1953, 206 F. 2d 415, 92 U.S. App. D.C. 110).

## Constitutionality

The statute defining sexual psychopaths and providing for their commitment to hospital for the insane after a judicial hearing and upon a finding by the court or verdict of a jury, if demanded, is not unconstitutional. *Malone v. Overholser* (D.C.D.C. 1950, 93 F. Supp. 647).

## Evidence—Sufficiency

Evidence sufficiently demonstrated "course of repeated misconduct in sexual matters" within statutory definition of sexual psychopath on part of defendant accused of indecent exposure. *C. H. Lomax v. District of Columbia* (D.C. App. 1965, 211 A. 2d 772).

Evidence sustained finding that defendant arrested for indecent exposure was sexual psychopath. *C. W. Carras*



v. *District of Columbia* (D.C. Mun. App. 1962, 183 A. 2d 393).

#### Hearing

Though sexual psychopath statute requires psychiatric report to include a legal conclusion, it also requires a hearing in which psychiatrist can be examined and cross examined. *M. I. Millard v. D. C. Cameron, Sup't etc.* (1966, 373 F. 2d 468, 125 U.S. App. D.C. 383; rev'd and remanded 406 F. 2d 964).

#### Nature of proceeding

Statute providing for commitment of sexual psychopaths to hospital for the insane is not a criminal statute but merely extends the law relating to commitment of persons who are mentally incompetent so as to include persons who are sexual psychopaths as defined in the statute. *Malone v. Overholser* (D.C.D.C. 1950, 93 F. Supp. 647).

#### Psychiatrists report as basis for commitment

Conclusory statement in psychiatrists' report was insufficient for commitment as sexual psychopath, in absence of full hearing, and court's statement that it acted upon "the testimony and evidence adduced" did not provide adequate assurance that statute had been complied with and that an informed judgment had been made. *M. I. Millard v. D. C. Cameron, Sup't etc.* (1966, 373 F. 2d 468, 125 U.S. App. D.C. 383; rev'd and remanded 406 F. 2d 964).

#### Release of sexual psychopath

Although an indefinite commitment pursuant to the Sexual Psychopath Law is justifiable only upon a theory of therapeutic treatment, and although the evidence in instant case clearly disclosed that petitioner was not being given therapeutic treatment adequate for his condition, petitioner was not to be released from his confinement as a sexual psychopath, in view of the fact that, while treatment was not being given, the fault lay entirely with petitioner who steadfastly refused appropriate and available treatment, namely, psychotherapy. *In re J. E. Clatterbuck v. D. W. Harris, Superintendent, etc.* (1968, 295 F. Supp. 84).

#### Substantial injury

In this case on remand of habeas corpus petition of person committed under sections 22-3503 to 22-3511, if court determines that petitioner was not mentally ill then it must decide whether person, an admitted sexual psychopath under prior construction of these sections, was dangerous to other persons within new construction and a finding of dangerousness must be based on high probability of substantial injury. *T. B. Cross v. D. W. Harris* (1969, 418 F. 2d 1095, 135 U.S. App. D.C. 259).

#### § 22-3509. Parole—Discharge.

Any person committed under sections 22-3503 to 22-3511 may be released from confinement when the Superintendent of Saint Elizabeths Hospital finds that he has sufficiently recovered so as to not be dangerous to other persons, provided if the person to be released be one charged with crime or undergoing sentence therefor, the Superintendent of the hospital shall give notice thereof to the judge of the criminal court and deliver him to the court in obedience to proper precept. (June 9, 1948, 62 Stat. 349, ch. 428, title II, § 207.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-3503, 22-3505 to 22-3508, 22-3510, 22-3511.

#### NOTES TO DECISIONS

##### Habeas corpus

Habeas corpus relief would be available to one involuntarily committed to public hospital as sexual psychopath but who is not receiving reasonably suitable and adequate treatment, and lack of such treatment could not be justified by lack of staff or facilities. *M. I. Millard v. D. C. Cameron, Sup't etc.* (1966, 373 F. 2d 468, 125 U.S. App. D.C. 383; rev'd and remanded 406 F. 2d 964).

One committed as a sexual psychopath to hospital for the insane may at any time after commitment test by habeas corpus proceeding the question of whether he has recovered. *Malone v. Overholser* (D.C.D.C. 1950, 93 F. Supp. 647).

#### Standards for release

Standards provided for release of sexual psychopath from hospital are not so vague as to invalidate Sexual Psychopath Act. *Miller v. Overholser* (1953, 206 F. 2d 415, 92 U.S. App. D.C. 110).

#### § 22-3510. Stay of criminal proceedings.

Any statement filed in a criminal proceeding pursuant to subsection (b) or (c) of section 22-3504 shall stay such criminal proceeding until whichever of the following first occurs:

- (1) The proceeding under sections 22-3503 to 22-3511 to determine whether the patient is a sexual psychopath is dismissed pursuant to section 22-3507 or withdrawn;
- (2) It is determined pursuant to section 22-3508 that the patient is not a sexual psychopath; or
- (3) The patient is discharged from Saint Elizabeths Hospital pursuant to section 22-3509. (June 9, 1948, 62 Stat. 349, ch. 428, title II, § 208.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-3503, 22-3505 to 22-3507, 22-3509, 22-3511.

#### § 22-3511. Criminal law unchanged.

Nothing in sections 22-3503 to 22-3511 shall alter in any respect the tests of mental capacity applied in criminal prosecutions under the laws of the District of Columbia. (June 9, 1948, 62 Stat. 350, ch. 428, title II, § 209.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-3503, 22-3505 to 22-3507, 22-3509, 22-3510.

### Chapter 36.—IMPLEMENTS OF CRIME

#### Sec.

22-3601. Possession of implements of crime—Penalty.

#### § 22-3601. Possession of implements of crime—Penalty.

No person shall have in his possession in the District any instrument, tool, or other implement for picking locks or pockets, or that is usually employed, or reasonably may be employed in the commission of any crime, if he is unable satisfactorily to account for the possession of the implement. Whoever violates this section shall be imprisoned for not more than one year and may be fined not more than \$1,000, unless the violation occurs after he has been convicted in the District of a violation of this section or of a felony, either in the District or in another jurisdiction, in which case he shall be imprisoned for not less than one nor more than ten years. (June 29, 1953, 67 Stat. 97, ch. 159, § 209(a).)

#### CROSS REFERENCES

Definition of District, see note under § 1-319.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 24-203.

#### NOTES TO DECISIONS

##### Appeal and error

Where defendant did not move to suppress narcotics paraphernalia, defendant urged no justification for his failure to move to suppress and he did not attempt to show lack of opportunity to raise motion before trial or



lack of awareness of grounds for motion before trial, defendant's contention that paraphernalia was obtained as result of illegal search and seizure would not be considered on appeal. *G. W. Brown v. United States* (D.C. App. 1972, 289 A. 2d 891).

In view of defendant's failure to move to suppress narcotics paraphernalia before trial, absent showing of plain error, admission of narcotics paraphernalia into evidence and denial of motion for judgment of acquittal of possession of narcotics paraphernalia were not errors. *Id.*

In prosecution for possession of narcotics paraphernalia, allowing the case to go to jury on evidence presented was not manifest error. *C. Richardson v. United States* (D.C. App. 1971, 276 A. 2d 237).

Since the defendant made no motion for judgment of acquittal at trial, contention that evidence was insufficient to support conviction was not before the Court of Appeals. *Id.*

#### Arrest

A small crowbar, three pairs of pliers and two screwdrivers, found in automobile at time of its owner's arrest, were not such tools as are usually employed or reasonably may be employed in commission of crime within former provision of section 22-3302 defining as a vagrant one found in possession of such tools without satisfactorily accounting therefor, so that his possession thereof was not a misdemeanor committed in arresting officer's presence, as required to justify arrest without warrant. *Green v. District of Columbia* (D.C. Mun. App. 1952, 91 A. 2d 712).

#### Assistance of counsel

Where the essential element of the government's proof was that two defendants, either jointly or severally, were in position to exercise dominion over two-room basement apartment in which narcotic paraphernalia and dangerous drug were found, but counsel representing both defendants jointly made no effort to develop on direct examination testimony, elicited by government on cross-examination, that one defendant's residence in apartment had been of temporary nature and in closing argument failed to comment on that testimony, that defendant was prejudiced by joint representation and was denied the effective assistance of counsel. *P. D. McIver v. United States* (D.C. App. 1971, 280 A. 2d 527).

Where defense counsel, jointly representing defendant and codefendant, elicited testimony that defendant was a resident in two room apartment in which narcotic paraphernalia and dangerous drug were found and defense counsel opened door to testimony that defendant had been seen to use heroin at apartment thereby involving defendant with narcotics in very substantial way, since obviously someone must have had such control at apartment as to give rise to presumption of constructive possession of articles seized, the defendant was prejudiced by joint representation and was denied effective assistance of counsel. *Id.*

#### Burden of proof

It was not incumbent on the prosecution, in a case involving possession of implements of crime, wherein possession of a large quantity of narcotic paraphernalia was proved, to show that defendant possessor was unable to satisfactorily account for its possession since that was a matter for the defense. *W. J. Johnson v. United States* (D.C. App. 1969, 255 A. 2d 494).

#### Concurrent sentences

Where defendants received concurrent sentences in prosecution for possession of narcotics, possession of implements of crime, unlawful entry and narcotics vagrancy and evidence was sufficient to support conviction of possession of narcotics and possession of implements of crime, District of Columbia Court of Appeals would not pass upon sufficiency of evidence to support other convictions. *S. Keith, R. L. Payne and T. J. Walker v. United States* (D.C. App. 1967, 232 A. 2d 92).

#### Constitutionality

This section which makes it a crime to have in possession any implement that is usually employed in commission of crime without being able to give satisfactory account is not unconstitutional for vagueness. *C. Tompkins v. United States* (D.C. App. 1970, 272 A. 2d 100).

Since the defendant did not introduce evidence to show that he was addicted to heroin at time of arrest and since the defendant had stated in application for pretrial release that he was not physically addicted to narcotics at that time, question whether statute on possession of implements usually employed in commission of crime is unconstitutional as it applies to possession of items needed by narcotics addict was not reached. *Id.*

This section prohibiting possession of any instrument, tool, or other implement that is usually employed, or reasonably may be employed, in commission of any crime, in the absence of a satisfactory account, is constitutional as applied to nonmedical person, who, on arrest, was found to be in possession of a case containing a wet needle, needle holder and syringe, but without the cooker, and whose statements of intent to use hypodermic and needle for injection of heroin were sufficiently corroborated. *L. F. McKoy v. United States* (D.C. App. 1970, 263 A. 2d 649).

This section prohibiting possession of any instrument, tool, or other implement that is usually employed, or reasonably may be employed in the commission of any crime, in the absence of a satisfactory account, provides sufficient notice so that persons of ordinary intelligence can ascertain the line separating guilty from innocent acts and therefore is not unconstitutionally vague. *L. F. McKoy v. United States* (D.C. App. 1970, 263 A. 2d 645).

This section prohibiting possession of implements of crime is unconstitutional in its application to crowbars. *Washington v. United States* (1956, 232 F. 2d 357, 98 U.S. App. D.C. 100).

This section providing that no person shall have in his possession any instrument, tool or other equipment or other implement which reasonably may be employed in commission of any crime if he is unable satisfactorily to account for possession of the implement places burden of proof of intent upon defendant and is unconstitutional as applied to implements which do not in themselves give rise to sinister implications. *Benton v. United States* (1956, 232 F. 2d 341, 98 U.S. App. D.C. 84).

#### Custodial interrogation

Questions addressed to three defendants by arresting officers seeking an explanation for defendants' being in condemned house were noncoercive and not "custodial interrogation" within rule of *Miranda v. State of Arizona*. *S. Keith, R. L. Payne and T. J. Walker v. United States* (D.C. App. 1967, 232 A. 2d 92).

#### Duty to arrest

When police detectives saw narcotics paraphernalia in possession of defendants, officers were under statutory duty to arrest the offenders immediately. *S. Keith, R. L. Payne and T. J. Walker v. United States* (D.C. App. 1967, 232 A. 2d 92).

#### Elements of offense

Defendant's possession of syringe, needle, and soda bottle top containing traces of heroin is sufficient for a jury as to remaining elements of charged offense of possession of narcotics paraphernalia, i.e., whether implements are usually employed in commission of a crime and whether the defendant intended to use such implements in a crime. *C. Richardson v. United States* (D.C. App. 1971, 276 A. 2d 237).

To convict under this section (prohibiting possession of any instrument, tool, or other implement that is usually employed, or reasonably may be employed, in the commission of any crime, in the absence of a satisfactory account), the government must prove that the implements are usually or reasonably may be employed in the commission of crime, and that defendant intended to use implements for crime; proof of intent may be either by inference from possession of sinister items, or otherwise. *L. F. McKoy v. United States* (D.C. App. 1970, 263 A. 2d 649).

#### Evidence

Under this section providing that no person shall have in his possession any instrument, tool, or other implement for picking locks or pockets, or that is usually employed or reasonably may be employed in commission of any crime, if he is unable satisfactorily to account for possession of implement, if order or demand was necessary, requirement was satisfied by evidence in prosecution



thereunder. *Benton v. United States* (1956, 232 F. 2d 341, 98 U.S. App. D.C. 84).

#### —Admissibility

Admission of testimony by hospital guard as to the defendant's statement that he had three pills which he had put in cooker and had flushed down toilet, and which was not made in response to interrogation but was volunteered in context of request by defendant to be released, was not erroneous for failure to make the defendant, charged with possession of narcotics paraphernalia, aware of his right to have attorney present. *C. Tompkins v. United States* (D.C. App. 1970, 272 A. 2d 100).

Where defendants' arrest for narcotics violations was legal, narcotics paraphernalia seized at time of the arrest was properly admitted in defendants' joint trial for narcotics violations. *S. Keith, R. L. Payne and T. J. Walker v. United States* (D.C. App. 1967, 232 A. 2d 92).

On stating that he kept small crowbar, found on front seat of his automobile, to get starter out of jam and used pliers and screwdrivers, found on floor of automobile, to work on it, in answer to questions asked by police officer before arresting him without warrant on charge of vagrancy in possessing tools usually employed or reasonably employable in commission of crime without satisfactorily accounting therefor, gave legitimate reasons for possession of such tools, in view of evidence that he was a mechanic, so that tools were improperly received in evidence against him in prosecution for such offense. *Green v. District of Columbia* (D. C. Mun. App. 1952, 91 A. 2d 712).

#### —Sufficiency

Evidence that narcotics paraphernalia was discovered in room in which was found a notebook containing record in defendant's handwriting of narcotics purchases and amounts purchases would sell for after being cut was sufficient to sustain conviction of defendant on charge of possession of implements of crime. *G. Mahoney v. United States* (D.C. App. 1972, 295 A. 2d 895).

Evidence that the defendant was in possession of a syringe that contained apparently usable quantity of heroin is sufficient to support conviction for possession of implements of crime. *C. Jones, Jr. v. United States* (D.C. App. 1971, 282 A. 2d 561).

From facts that the defendant had been present in car immediately before officer noticed narcotics paraphernalia protruding from under seat where defendant had just been seated, that the defendant had been driving car immediately prior to time articles were recovered, that the defendant was owner of the car, that a single needle and syringe were within defendant's reach, and that puncture marks were found on defendant's arm, it was reasonable to infer that the defendant had dominion and control over needle and syringe under his seat, and, viewing evidence in light most favorable to the government, it was adequate to support the jury's finding that defendant had possession of the needle and syringe. *T. Crawford, Jr. v. United States* (D.C. App. 1971, 278 A. 2d 125).

#### —Suppression

Granting of motion to suppress evidence, consisting of narcotics instruments taken from handbag of defendant at precinct station where she was being held on a charge of failing or refusing to pay taxi cab fare, was proper since defendant's arrest was unreasonable and premature where defendant at time of her arrest appeared to be attempting to raise the necessary fare by making a telephone call, so that element of scienter was lacking. *United States v. M. Brown* (D.C. App. 1972, 294 A. 2d 499).

The denial of a motion to suppress evidence relating to stolen property and to narcotics paraphernalia found on defendants after the arrest for a pedestrian traffic violation was proper. *J. R. West et ano. v. United States* (D.C. App. 1969, 249 A. 2d 740).

#### Inferences

Since the police officers failed to segregate contents of match box on which defendant's hand allegedly was resting at time of search from other narcotic paraphernalia found on dresser next to defendant and since this tenant or lessee of apartment was present at time of raid, it could not be inferred that defendant ever

possessed material subsequently identified as narcotic implements. *W. C. Cook v. United States* (D.C. App. 1971, 272 A. 2d 444).

In the case, the court held that defendant's admission of his intent to use hypodermic and needle for criminal purpose was sufficiently corroborated and statement was sufficiently trustworthy for admission on proof of intent in prosecution for possession of implements of a crime, since although possession of a wet needle, needle holder and syringe but not the cooker, might not be sufficient to establish corpus delicti, it did constitute substantial independent evidence which would tend to establish trustworthiness of admission by defendant, a nonmedical person, to arresting officer. *L. F. McKoy v. United States* (D.C. App. 1970, 263 A. 2d 649).

#### Intent

Fact that only possible use of complete narcotics "kit", which consisted of a syringe, two needles, a "cooker" and three caps containing traces of heroin, found in defendant's possession was to administer heroin, supplied requisite criminal intent to use such implements in a crime; thus, defendant's conduct fell within proscription of this section prohibiting possession of implements of a crime. *L. F. McKoy v. United States* (D.C. App. 1970, 263 A. 2d 645).

No rational inference of criminal intent can be drawn from mere possession of tools which reasonably may be employed in crime. *Benton v. United States* (1956, 232 F. 2d 341, 98 U.S. App. D.C. 84).

Under this section providing that no person shall have in his possession any instrument, tool, or other implement for picking locks or pockets, or that is usually employed or reasonably may be employed in commission of any crime, if he is unable satisfactorily to account for possession of the implement, proof of intent is essential element of government's case. *Id.*

#### Narcotics paraphernalia

Proof of possession of a syringe containing liquid with more than traces of heroin is sufficient to sustain conviction for possession of implements of a crime. *C. Jones, Jr. v. United States* (D.C. App. 1971, 282 A. 2d 561).

Single implement of narcotics paraphernalia, when seized separately, need not compel a finding that it is instrumentality for illegal use of narcotics. *Id.*

Presence of apparently usable quantity of heroin in a syringe is sufficient to negate possession of syringe for legitimate use. *Id.*

Each case of possession of narcotics paraphernalia must be governed by its own facts. *Id.*

Defendant could be convicted of possession of narcotics paraphernalia under this section rendering unlawful a possession of instruments of a crime, even though no criminal statute prohibited use or consumption of narcotics, as statute makes it unlawful for any person to manufacture, possess, or have under his control, sell, prescribe, administer, disburse, or compound any narcotic drug. *A. L. Wheeler v. United States* (D.C. App. 1971, 276 A. 2d 722).

Constitutional prohibition against cruel and unusual punishments did not prevent conviction of defendant for possession of narcotics paraphernalia even though the paraphernalia is used to satisfy his own craving for heroin. *Id.*

#### Presumption

Validity of presumption created by statute depends on presence of rational connection between facts proved and ultimate fact presumed and presumption cannot be sustained if inference of one from proof of the other is arbitrary because of lack of connection between the two in common experience. *Benton v. United States* (1956, 232 F. 2d 341, 98 U.S. App. D.C. 84).

#### Probable cause

Where the arresting officers had knowledge that no one had owner's permission to occupy particular vacant apartment, officers observed broken lock, damaged door panel and the opened door of the apartment, through which the defendant and companion could be seen, officers had probable cause to believe that the defendant and his companion had made unlawful entry, officers' entry into apartment without warrant to effect arrest was justified and search of the premises was valid as incident to lawful



arrest. *C. Jones, Jr. v. United States* (D.C. App. 1971, 282 A. 2d 561).

#### Remand

Where defendant was convicted under first count of unlawful entry and his conviction under second count of possession of implements of crime consisting of crowbars was under statute which is unconstitutional in its application to crowbars, case was remanded with directions either to modify judgment by setting aside verdict on second count and dismissing that count or in the alternative to vacate judgment entirely, set aside verdict on second count, dismiss that count and resentence defendant for unlawful entry, notwithstanding that general sentence was for period less than maximum for unlawful entry. *Washington v. United States* (1956, 232 F. 2d 357, 98 U.S. App. D.C. 100).

#### Satisfactory account

A "satisfactory account" within meaning of this section prohibiting possession of any instrument, tool, or other implement that is usually employed, or reasonably may be employed, in the commission of any crime in the absence of a satisfactory account means a lawful purpose for possessing such implement. *L. F. McKoy v. United States* (D.C. App. 1970, 263 A. 2d 645).

The "satisfactory account" clause of this section does not violate the privilege against self-incrimination because of its availability as an affirmative defense. *Id.*

#### Search warrant

Where affidavit stated that a police informant had purchased on several occasions from the defendant on defendant's premises a substance that later proved to be hashish, magistrate could reasonably infer that alleged transfers were not made in pursuance of proper order forms, and affidavit supporting government's application for search warrant is not insufficient for failure to allege that informant-purchaser lacked written order forms required of a transferee of marijuana. *A. R. Rutledge v. United States* (D.C. App. 1971, 283 A. 2d 213).

#### Subject of search

Under the circumstances of this case, it was not unreasonable for officers to seize pistol which, as convicted felon, defendant was forbidden to possess, incidental to authorized search of his apartment for narcotics, in absence of showing that presence of pistol on premises was attributable to eight-day delay in execution of search warrant. *J. E. Curtis v. United States* (D.C. App. 1970, 263 A. 2d 653).

#### Verdict

Acceptance of guilty verdict after one juror, during poll of the jury, repeatedly expressed verdict different from that announced by foreman, after repeated "identification" and "interrogation" of such juror, and after rest of jury had been polled without defendant's request is prejudicial error. *R. C. Jones v. United States* (D.C. App. 1971, 273 A. 2d 842).

When a juror being polled dissents from the verdict to which he has agreed in jury room, jury should either be discharged or returned to jury room for further deliberation. *Id.*

#### Warning of constitutional rights

The case was remanded to determine whether defendant who was convicted of possession of implements of crime had been warned of his constitutional rights by arresting officers before he made incriminating statements. *W. J. Johnson v. United States* (D.C. App. 1969, 255 A. 2d 494).

## Chapter 37.—WAREHOUSE RECEIPTS

[Transferred from title 28, chapter 21.]

#### Sec.

- 22—3701. Issue of receipt for goods not received.
- 22—3702. Issue of receipt containing false statement.
- 22—3703. Issue of duplicate receipts not so marked.
- 22—3704. Issue for warehouseman's goods of receipt which do not state that fact.
- 22—3705. Delivery of goods without obtaining negotiable receipts.
- 22—3706. Negotiation of receipt for mortgaged goods.

### § 22-3701. Issue of receipt for goods not received.

A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years or by a fine not exceeding five thousand dollars, or by both. (Apr. 15, 1910, 36 Stat. 309, ch. 167, § 50.)

### § 22-3702. Issue of receipt containing false statement.

A warehouseman, or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year or by a fine not exceeding one thousand dollars, or by both. (Apr. 15, 1910, 36 Stat. 309, ch. 167, § 51.)

### § 22-3703. Issue of duplicate receipts not so marked.

A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "Duplicate," except in the case of a lost or destroyed receipt after proceedings as provided for in section 28-1907, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years or by a fine not exceeding five thousand dollars, or by both. (Apr. 15, 1910, 36 Stat. 309, ch. 167, § 52.)

#### REFERENCES IN TEXT

Section 28-1907, referred to in this section, was repealed by act Dec. 23, 1963, 77 Stat. 774, Pub. L. 88-243, § 15(a) (8), and is now covered by section 28-7-601.

### § 22-3704. Issue for warehouseman's goods of receipt which do not state that fact.

Where there are deposited with or held by a warehouseman goods of which he is the owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents, or servants who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. (Apr. 15, 1910, 36 Stat. 310, ch. 167, § 53.)

### § 22-3705. Delivery of goods without obtaining negotiable receipts.

A warehouseman, or any officer, agent, or servant of a warehouseman, who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the



possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in sections 28-1907 and 28-1930, be found guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. (Apr. 15, 1910, 36 Stat. 310, ch. 167, § 54.)

#### REFERENCES IN TEXT

Sections 28-1907 and 28-1930, referred to in this section, were repealed by act Dec. 23, 1963, 77 Stat. 774, Pub. L. 88-243, § 15(a) (8), and are now covered by sections 28:7-601, 28:7-206 and 28:7-210.

#### § 22-3706. Negotiation of receipt for mortgaged goods.

Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. (Apr. 15, 1910, 36 Stat. 310, ch. 167, § 55.)







## TITLE 23.—CRIMINAL PROCEDURE

*This title was enacted by Pub. L. 91-358, § 210 (a), title II, July 29, 1970, 84 Stat. 604.*

Chap.	Sec.
1. General Provisions.....	23-101
3. Indictments and Informations.....	23-301
5. Warrants and Arrests.....	23-501
7. Extradition and Fugitives from Justice....	23-701
9. Fresh Pursuit.....	23-901
11. Professional Bondsmen.....	23-1101
13. Bail Agency and Pretrial Detention.....	23-1301
15. Out-of-State Witnesses.....	23-1501
17. Death Penalty.....	23-1701

### CODIFICATION OF TITLE 23 OF DISTRICT OF COLUMBIA CODE

Section 210(a) of Act July 29, 1970, Pub. L. 91-358 provided in part:

"(a) The general and permanent laws of the District of Columbia relating to criminal procedure are revised, codified, and enacted as title 23 of the District of Columbia Code, 'Criminal Procedure', and may be cited 'D.C. Code, sec.', as follows:"

#### EFFECTIVE DATE

Section 901(a) of Pub. L. 91-358, 84 Stat. 667, provided: "Except as provided in part E of title I, section 502, and subsection (b) of this section, this Act and the amendments made by this Act [section 210(a) enacted title 23, entitled 'Criminal Procedure'] shall take effect on the first day of the seventh calendar month which begins after the date of its enactment." Also see notes preceding section 11-101.

#### REPEAL AND PRESERVATION OF RIGHTS AND LIABILITIES

Section 210(b) of Act July 29, 1970, Pub. L. 91-358, provided:

(b) The following provisions of law are repealed on the effective date of this Act, except with respect to rights and duties which matured, penalties which were incurred, and proceedings which were begun before the effective date of this Act:

(1) Sections 397 and 398 of the Revised Statutes of the District of Columbia (D.C. Code, secs. 4-140, 4-141).

(2) The following provision of British law in effect in the District of Columbia: 23 Geo. II, chapter 11, sections 1 and 2 (D.C. Code, secs. 23-204, 23-205).

(3) The following sections of the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901:

(A) Sections 911 to 914 (D.C. Code, secs. 23-301 to 23-304).

(B) Sections 915 to 917 (D.C. Code, secs. 23-201 to 23-203).

(C) Sections 918 to 924 (D.C. Code, secs. 23-107 to 23-113).

(D) Section 926 (D.C. Code, sec. 23-114).

(E) Sections 930 and 931 (D.C. Code, secs. 23-401, 23-402).

(F) Sections 932 and 933 (D.C. Code, secs. 23-101, 23-102).

(G) Sections 935 and 938 (D.C. Code, secs. 23-105, 23-106).

(H) Section 939 (D.C. Code, sec. 23-104).

(I) Section 1200 (D.C. Code, sec. 23-706).

(J) Section 1203 (D.C. Code, sec. 23-705).

(4) Act of January 30, 1925 (43 Stat. 798; D.C. Code, secs. 23-701 to 23-704).

(5) Act of April 21, 1928 (45 Stat. 440; D.C. Code, secs. 23-403 to 23-410).

(6) Act of March 3, 1933 (47 Stat. 1482; D.C. Code, secs. 23-601 to 23-612).

(7) Section 5 of the Act of April 5, 1938 (52 Stat. 198, 199; D.C. Code, sec. 23-505).

(8) Uniform Act on Fresh Pursuit (53 Stat. 1124; D.C. Code, secs. 23-501 to 23-504).

(9) Act of March 5, 1952 (66 Stat. 15; D.C. Code, secs. 23-801 to 23-804).

(10) Sections 207, 402, and 407(b) of the District of Columbia Law Enforcement Act of 1953 (67 Stat. 90, 96, 102, 106; D.C. Code, secs. 23-306, 23-115, and 23-411).

(11) The District of Columbia Bail Agency Act (80 Stat. 327; D.C. Code, secs. 23-901 to 23-909).

(12) Act of July 30, 1968 (82 Stat. 460; D.C. Code, sec. 23-101a).

#### TITLE REFERRED TO IN OTHER SECTIONS

This title is referred to in sections 11-941, 11-946.

### Chapter 1.—GENERAL PROVISIONS

Sec.	
23-101.	Conduct of prosecutions.
23-102.	Abandonment of prosecution; enlargement of time for taking action.
23-103.	Statements prior to sentence.
23-104.	Appeals by United States and District of Columbia.
23-105.	Challenges to jurors.
23-106.	Witnesses for defense; fees.
23-107.	Discharge or acquittal of joint defendant during trial in order to be witness.
23-108.	Depositions.
23-109.	Powers of investigators assigned to United States attorney.
23-110.	Remedies on motion attacking sentence.
23-111.	Proceedings to establish previous convictions.
23-112.	Consecutive and concurrent sentences.

#### § 23-101. Conduct of prosecutions

(a) Prosecutions for violations of all police or municipal ordinances or regulations and for violations of all penal statutes in the nature of police or municipal regulations, where the maximum punishment is a fine only, or imprisonment not exceeding one year, shall be conducted in the name of the District of Columbia by the Corporation Counsel for the District of Columbia or his assistants, except as otherwise provided in such ordinance, regulation, or statute, or in this section.

(b) Prosecutions for violations of section 6 of the Act of July 29, 1892 (D.C. Code, sec. 22-1107), relating to disorderly conduct, and for violations of section 9 of that Act (D.C. Code, sec. 22-1112), relating to lewd, indecent, or obscene acts, shall be conducted in the name of the District of Columbia by the Corporation Counsel or his assistants.

(c) All other criminal prosecutions shall be conducted in the name of the United States by the United States attorney for the District of Columbia or his assistants, except as otherwise provided by law.

(d) An indictment or information brought in the name of the United States may include, in addition to offenses prosecutable by the United States, offenses prosecutable by the District of Columbia,



and such prosecution may be conducted either solely by the Corporation Counsel or his assistants or solely by the United States attorney or his assistants if the other prosecuting authority consents.

(e) Separate indictments or informations, or both, charging offenses prosecutable by the District of Columbia and by the United States may be joined for trial if the offenses charged therein could have been joined in the same indictment. Such prosecution may be conducted either solely by the Corporation Counsel or his assistants or solely by the United States attorney or his assistants if the other prosecuting authority consents.

(f) If in any case any question shall arise as to whether, under this section, the prosecution should be conducted by the Corporation Counsel or by the United States attorney, the presiding judge shall forthwith, either on his own motion or upon suggestion of the Corporation Counsel or the United States attorney, certify the case to the District of Columbia Court of Appeals, which court shall hear and determine the question in a summary way. In every such case the defendant or defendants shall have the right to be heard in the District of Columbia Court of Appeals. The decision of such court shall be final. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 604.)

#### EFFECTIVE DATE

See note preceding section 23-101.

#### CROSS REFERENCE

Duties of corporation counsel, see § 1-301.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### United States Attorney

United States, through the United States attorney, and not the District of Columbia, through corporation counsel, is the proper prosecutive authority for alleged violation of section 22-3111 prescribing maximum fine of \$500, or imprisonment for not more than six months, or both, for disorderly and unlawful conduct in or about public buildings and public grounds belonging to the United States within the District. *District of Columbia v. C. Ackerman* (D.C. App. 1971, 283 A. 2d 24).

Use by the United States attorney of a document entitled "Summons", which notifies the recipient to appear for an interview in office of United States attorney, is an improper usurpation of judicial power since United States attorney does not possess the subpoena power. *United States v. C. Thomas* (1970, 320 F. Supp. 527).

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Advisory opinions on appeal

Where Court of General Sessions of the District of Columbia granted motion to dismiss disorderly conduct charge on several grounds but subsequently vacated dismissal with respect to jurisdictional ground only and question of prosecutorial authority was certified to Court of Appeals, any action Court of Appeals might take on certified question could not alter dismissal of charges and hence certificate was dismissed. *District of Columbia v. M. S. Barry et al.* (1967, 387 F. 2d 860, 128 U.S. App. D.C. 295).

##### Certification by judge

Where question as to proper prosecuting authority as between District of Columbia Corporation Counsel and United States Attorney is raised, the court must certify question to Court of Appeals for District of Columbia, and Municipal Court of Appeals was required to reverse action of Municipal Court in dismissing informations brought by Corporation Counsel after ruling that United States Attorney was proper prosecuting authority and the court would remand with instructions to reinstate informations and to certify questions to Court of Appeals.

*District of Columbia v. Moody, Hill & Hamilton* (D.C. Mun. App. 1961, 175 A. 2d 782).

Defendant cannot compel certification to court of appeals. "We think the language used means that whenever the judge or either of the officials named shall entertain a doubt as to who should conduct the prosecution, the question shall be certified to this court, and not otherwise. \* \* \* If it is not so certified it becomes part of his regular defense." *Mullowny v. Mowatt* (1915, 43 App. D.C. 49).

##### Corporation Counsel's authority to prosecute

Under statute restricting corporation counsel's authority to cases in which punishment is fine only or imprisonment not to exceed one year, corporation counsel lacked authority to initiate prosecution for disorderly conduct which was punishable by fine of not more than \$250 or imprisonment of not more than 90 days, or both. *District of Columbia v. Mark Grimes* (1968, 404 F. 2d 1337, 131 U.S. App. D.C. 360).

##### Evidence

A person cannot be convicted of one offense by proof that he committed another. *Posey v. United States* (D.C. Mun. App. 1945, 41 A. 2d 300).

Evidence of a separate offense other than one for which accused is on trial is admissible as an exception to the general rule, when the several offenses are so closely connected in time and locality as to be but parts of a single continuing transaction. *Id.*

##### Indictment

Indictment was not vitiated by presence of assistant to Attorney-General in grand jury room in oil lease case. *United States v. Fall* (1940, 10 F. 2d 648, 56 App. D.C. 83). See, also, *United States v. Doheny* (1940, 10 F. 2d 651, 56 App. D.C. 86).

##### Prosecution by Corporation Counsel

Informations charging disorderly conduct were properly prosecuted by the Corporation Counsel on behalf of the District of Columbia even though the informations charged an offense punishable by a fine or by imprisonment, or both. *Smith v. District of Columbia* (D.C. App. 1966, 219 A. 2d 842).

The making of false statement of lien under oath in application for certificate or duplicate certificate of title for motor vehicle in District of Columbia must be prosecuted by corporation counsel, under Motor Vehicle Lien Law, § 40-714. *Shelton v. United States* (1948, 165 F. 2d 241, 83 U.S. App. D.C. 32).

All traffic violations should be prosecuted by information filed by corporation counsel. *Persham v. United States* (1939, 104 F. 2d 249, 70 App. D.C. 116).

Under this section Congress intended that all prosecutions for violations of § 40-608, should be at instance of corporation counsel and in name of District of Columbia. *District of Columbia v. Moyer* (1938, 93 F. 2d 527, 68 App. D.C. 98).

Prosecutions of street railways under section 16 of the Act of May 23, 1908 (35 Stat. 246) (see §§ 44-202, 44-203, 44-206, 44-207) should be conducted by the corporation counsel in the name of the District of Columbia. *United States v. Capital Trac. Co.* (1912, 38 App. D.C. 469).

##### Prosecution by United States Attorney

United States Attorney for District of Columbia rather than corporation counsel for District was the attorney who should prosecute offense of destroying private property in violation of the District of Columbia Code, where the offense was punishable by fine not to exceed \$100, or imprisonment not to exceed six months, or both. *District of Columbia v. Moody, Hill and Hamilton* (1962, 304 F. 2d 943, 113 U.S. App. D.C. 67).

Prosecution for violation of § 22-2701 rendering it unlawful to invite, entice or persuade any person fifteen years of age or over for purposes of prostitution or any other immoral or lewd purpose, should be conducted by United States attorney in name of and for benefit of United States, since offense is punishable by both fine and imprisonment. *United States v. Paul Strothers* (1956, 228 F. 2d 34, 97 U.S. App. D.C. 63).

Prosecution in District of Columbia for second-degree murder was properly conducted in name of the United States rather than in name of District of Columbia.



*Morton v. Welch* (C.C.A. Va. 1947, 162 F. 2d 840, certiorari denied 68 S. Ct. 44, 332 U.S. 779, 92 L. Ed. 363, certiorari denied 68 S. Ct. 1498, 334 U.S. 848, 92 L. Ed. 1771).

Prosecutions for refilling registered containers under 1901 Code § 878c (§ 48-303), should be conducted by the district attorney in the name of the United States. *District of Columbia v. Simpson* (1913, 40 App. D.C. 498).

Corporation counsel "has no authority to prosecute offenses where the maximum punishment may be both a fine and imprisonment." *Id.*

Prosecutions of bucket-shops under D.C. Code of 1901 § 869a (§ 22-1509) et seq. should be in the name of the United States. *United States v. Cella* (1911, 37 App. D.C. 423, certiorari denied 32 S. Ct. 526, 223 U.S. 728, 56 L. Ed. 633).

#### § 23-102. Abandonment of prosecution; enlargement of time for taking action

If any person charged with a criminal offense shall have been committed or held to bail to await the action of the grand jury and within nine months thereafter the grand jury shall not have taken action on the case, either by ignoring the charge or by returning an indictment, the prosecution of such charge shall be deemed to have been abandoned and the accused shall be set free or his bail discharged, as the case may be: but, the court having jurisdiction to try the offense for which the person has been committed, when practicable and upon good cause shown in writing and upon due notice to the accused, may from time to time enlarge the time for the taking action in such case by the grand jury. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 605.)

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Indictment after 9-month-period

By this section prosecution of the offense is not finally barred so that accused may not be held to answer upon an indictment found after the 9-month period within which the grand jury may act has elapsed. *United States v. Cadarr* (1905, 25 S. Ct. 487, 197 U.S. 475, 49 L. Ed. 842). See, also, *Arnstein v. United States* (1924, 296 F. 946, 54 App. D.C. 199, certiorari denied 44 S. Ct. 454, 264 U.S. 595, 68 L. Ed. 867).

##### Release of prisoners

This is not a statute of limitations. "The result of the failure to prosecute has reference solely to the right in the pending prosecution to be freed, if imprisoned, or released from bail, if under bond." *United States v. Cadarr* (1905, 25 S. Ct. 487, 197 U.S. 475, 49 L. Ed. 842).

#### § 23-103. Statements prior to sentence

Before imposing sentence the court may disclose to the defendant's counsel and to the prosecuting attorney, but not to one and not the other, all or part of any pre-sentencing report submitted to the court in the case. The court also prior to imposing sentence shall afford counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment. At any time when the defendant or his counsel addresses the court on the sentence to be imposed, the prosecuting attorney shall, if he wishes, have an equivalent opportunity to address the court and to make a recommendation to the court on the sentence to be imposed and to present information in support of his recommendation. Such information as the defendant or his counsel or the prosecuting attorney may present shall at all times be subject to the applicable rules

of mutual discovery. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 605.)

#### § 23-104. Appeals by United States and District of Columbia

(a) (1) The United States or the District of Columbia may appeal an order, entered before the trial of a person charged with a criminal offense, which directs the return of seized property, suppresses evidence, or otherwise denies the prosecutor the use of evidence at trial, if the United States attorney or the Corporation Counsel conducting the prosecution for such violation certifies to the judge who granted such motion that the appeal is not taken for purpose of delay and the evidence is a substantial proof of the charge pending against the defendant.

(2) A motion for return of seized property or to suppress evidence shall be made before trial unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion.

(b) The United States or the District of Columbia may appeal a ruling made during the trial of a person charged with a criminal offense which suppresses or otherwise denies the prosecutor the use of evidence on the ground that it was invalidly obtained, if the United States attorney or the Corporation Counsel conducting the prosecution for such violation certifies to the judge who made the ruling that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of the charge being tried against the defendant. The trial court shall adjourn the trial until the appeal shall be resolved; except that, if the decision on appeal has not been rendered within the ninety-six-hour period following the adjournment of the trial, the trial shall resume on the next day of regular court business following the expiration of the ninety-six-hour period, and the appeal shall be deemed void and without effect.

(c) The United States or the District of Columbia may appeal an order dismissing an indictment or information or otherwise terminating a prosecution in favor of a defendant or defendants as to one or more counts thereof, except where there is an acquittal on the merits.

(d) The United States or the District of Columbia may appeal any other ruling made during the trial of a person charged with an offense which the United States attorney or the Corporation Counsel certifies as involving a substantial and recurring question of law which requires appellate resolution. Such an appeal may be taken only during the trial and only with leave of the court. The trial court shall adjourn the trial until the appeal shall be resolved; except that, if the decision on appeal has not been rendered within the ninety-six-hour period following the adjournment of the trial, the trial shall resume on the next day of regular court business following the expiration of the ninety-six-hour period, and the appeal shall be deemed void and without effect.

(e) Any appeal taken pursuant to this section either before or during trial shall be expedited. If an appeal is taken pursuant to subsection (b) or (d) during trial, the appellate court shall hear argument on such appeal within forty-eight hours of the ad-



journalment of the trial pursuant to that subsection shall dispense with any requirement of written briefs other than the supporting materials previously submitted to the trial court, shall render its decision within forty-eight hours of argument on appeal, and may dispense with the issuance of a written opinion in rendering its decision. Such appeal and decision shall not affect the right of the defendant, in a subsequent appeal from a judgment of conviction, to claim as error reversal by the trial court on remand of a ruling appealed from during trial.

(f) Pending the prosecution and determination of an appeal taken pursuant to this section, the defendant shall be detained or released in accordance with chapter 13 of this title. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 606.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-721.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Appeal and error

Where defendant did not move to suppress narcotics paraphernalia, defendant urged no justification for his failure to move to suppress and he did not attempt to show lack of opportunity to raise motion before trial or lack of awareness of grounds for motion before trial, defendant's contention that paraphernalia was obtained as result of illegal search and seizure would not be considered on appeal. *G. W. Brown v. United States* (D.C. App. 1972, 289 A. 2d 891).

In view of defendant's failure to move to suppress narcotics paraphernalia before trial, absent showing of plain error, admission of narcotics paraphernalia into evidence and denial of motion for judgment of acquittal of possession of narcotics paraphernalia were not errors. *Id.*

##### Construction

Objective of 1970 amendment granting government right to appeal orders entered prior to trial suppressing evidence is to accord conclusiveness at trial level to pretrial rulings of motion to suppress by equating such rulings with final orders for purposes of appeal, and unless appealed disposition of pretrial motion on suppression issue would seem necessarily binding on trial judge should motion be renewed subsequently. *United States v. M. E. Dockery* (D.C. App. 1972, 294 A. 2d 158).

##### Evidence—Suppression

Although citizen refused to give his name when he told police officers that named person was sitting on porch in certain block, was wearing black shirt, blue knit hat, had artificial leg and had gun in his waistband, officers who found on porch in the described block a sleeping man wearing described clothing and who determined the man had artificial leg, had right to question man and, before questioning, had right to make limited search or frisk to ascertain if he was armed; thus pistol found in his waistband was legally seized and should not have been suppressed. *United States v. W. A. Walker* (D.C. App. 1972, 294 A. 2d 376).

Actions of police officer, who had observed the defendant acting somewhat suspiciously while standing among group of people at corner bus stop, in placing his hand on defendant's elbow and saying, "Hold it, sir, could I speak with you a second?", to which defendant's instantaneous reply was, "It's registered, its registered.", following which remark officer asked what was registered and received answer that defendant's pistol was registered, and then conducted search for pistol that he recovered from defendant's person did not amount to an unconstitutional intrusion on defendant's rights against arrest without probable cause. *United States v. J. L. Burrell* (D.C. App. 1972, 286 A. 2d 845; petition for rehearing en banc denied 288 A. 2d 248).

Heroin found in the defendant's pocket during search incident to an arrest for grand larceny should not have been suppressed on theory that the search which brought heroin to light infringed Fourth Amendment rights.

*United States v. C. E. Bynum* (D.C. App. 1971, 283 A. 2d 649).

##### Jencks Act

Under Jencks Act providing that when witness has testified on direct examination in trial of case defense may obtain from Government any statement or report from such witness which is relevant to subject matter of testimony of that witness, after Government witness had testified on direct examination in hearing on motion to suppress evidence, Government is required to furnish the statement or report made by such witness in accordance with defense demand with names and addresses of Government witnesses not testifying at hearing excised or suffer the striking of the testimony of the witness. *United States v. M. E. Dockery* (D.C. App. 1972, 294 A. 2d 158).

##### Motion to suppress evidence

Fact that defendant's conviction of carrying a pistol without a license was void because of failure to obtain his personal waiver of right to trial by jury did not entitle defendant to another hearing on his pretrial motion to suppress. *F. Payne, Jr. v. United States* (D.C. App. 1972, 292 A. 2d 800).

Addition of provision to rule for motion to suppress evidence obtained by unlawful search and seizure requiring that motion be made before trial unless opportunity therefore did not exist or the defendant was not aware of grounds for the motion is intended to place further restriction upon manner in which search and seizure issues can be raised. *J. L. Young v. United States* (D.C. App. 1971, 284 A. 2d 671).

Admission into evidence of two coats that were in paper bag defendant had handed to woman companion when police officers asked defendant to come over to police car was not "plain error" such as would provide ground for reversal in absence of motion to exclude the evidence in trial court. *Id.*

Inasmuch as defense counsel might have concluded that evidence to support motion to suppress was lacking, counsel was not negligent in failing to raise wrongful seizure issue with respect to stolen property taken from the defendant prior to his arrest. *Id.*

When a pretrial motion to suppress has been heard and decided, that decision becomes the law of the case and only if new grounds, including new facts, are advanced that the defendant could not reasonably have been aware of may a trial judge entertain a renewed motion to suppress. *L. A. Jenkins v. United States* (D.C. App. 1971, 284 A. 2d 460).

Where the arresting officers had knowledge that no one had owner's permission to occupy particular vacant apartment, officers observed broken lock, damaged door panel and the opened door of the apartment, through which the defendant and companion could be seen, officers had probable cause to believe that the defendant and his companion had made unlawful entry, officers' entry into apartment without warrant to effect arrest was justified and search of the premises was valid as incident to lawful arrest. *C. Jones, Jr. v. United States* (D.C. App. 1971, 282 A. 2d 561).

Motions to suppress evidence should be heard during trial only in the most exceptional cases. *J. Bailey v. United States* (D.C. App. 1971, 279 A. 2d 508).

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Appeal by United States

Once weapon was seen, police had no alternative but to seize it for their protection, and validity of the seizure does not depend on failure to find or seize property described in warrant or failure to specify pistol in warrant or failure to make subsequent inventory and return on warrant. *United States v. D. E. Yates* (D.C. App. 1971, 279 A. 2d 516).

Since the trial court granted motion to suppress narcotics seized in course of on-the-street encounter before all the evidence had been presented, and testimony of police officer who approached passenger side of automobile where defendant was sitting was not taken, and during cross-examination of officer who did testify court interrupted with comments and leading questions, the government was deprived of fair hearing. *United States v. J. F. Crickenberger* (D.C. App. 1971, 275 A. 2d 232).



An appeal by the United States from an order granting motion to suppress a pistol, the Court reversed and held that where the defendant was acting in a suspicious manner outside store, officers who were at store to investigate earlier robbery acted reasonably in asking defendant for identification and in seizing pistol as defendant disclosed its presence in the form of a bulge under his waistband while pulling his coat aside in an apparent effort to reach toward his rear pocket and, therefore, the pistol was admissible in prosecution for carrying a pistol without a license. *United States v. L. T. Lee* (D.C. App. 1970, 271 A. 2d 566).

In District of Columbia criminal appeals, the government is restricted as is the defendant, though this does not mean that United States cannot appeal from final decision unless opposite decision would also have been final; and government may appeal only from an order against it which terminates a prosecution or makes a decision whose distinct or plenary character meets the standards of precedents applicable to finality problems in all federal courts. *Carroll v. United States* (1957, 77 S. Ct. 1332, 354 U.S. 394, 1 L. Ed. 2d 1442).

In view of this section giving government same right of appeal in criminal prosecution as is given to defendant, government's right of appeal is determined by 18 U.S.C. § 3731 giving Courts of Appeals jurisdiction of appeals from all "final" decisions of district courts of United States. *United States v. Cefaratti* (1953, 202 F. 2d 13, 91 U.S. App. D.C. 297, certiorari denied 73 S. Ct. 646, 345 U.S. 907, 97 L. Ed. 1343).

An order that does not terminate an action but is, on the contrary, made in the course of an action, has the finality that is required for appeal under 28 U.S.C. § 1291 governing appellate jurisdiction of Courts of Appeals, if (1) it has a final and irreparable effect on the rights of the parties, being a final disposition of a claimed right; (2) it is too important to be denied review; and (3) claimed right is not an ingredient of cause of action and does not require consideration with it. *Id.*

United States may appeal cases and it need not be taken directly to the Supreme Court. *United States v. Burroughs* (1933, 65 F. 2d 796, 62 App. D.C. 163, affirmed in part 54 S. Ct. 287, 290 U.S. 534, 78 L. Ed. 484).

#### Appeal to circuit court

Where the trial court's decision is one arresting a judgment of conviction in a criminal case, it is not appealable unless such decision is for insufficiency of the indictment and based upon the invalidity or construction of the statutes, in which event, the appeal is taken directly to the Supreme Court. Accordingly, the Government should have appealed this case to the Supreme Court and we must certify the case to that court. *United States v. Waters* (1949, 175 F. 2d 340, 84 U.S. App. D.C. 127).

#### Arrest of judgment of conviction

Where the trial court's decision was one arresting a judgment of conviction in a criminal case, it is not appealable unless such decision was for insufficiency of the indictment and based upon the invalidity or construction of the statutes, in which event, the appeal is taken directly to the Supreme Court. Accordingly, the Government should have appealed this case to the Supreme Court and the case must be certified to that court. *United States v. Waters* (1949, 175 F. 2d 340, 84 U.S. App. D.C. 127).

#### Certification to Supreme Court

In this case the Supreme Court held that certification to it under the Federal Criminal Appeals Act (18 U.S.C. 3731) was not proper since (1) the Government's appeal to the Court of Appeals for the District of Columbia circuit from dismissal of indictment by a District Court in the District of Columbia was not pursuant to that Act but rather expressly pursuant to this section, which contains no provision allowing transfer to the Supreme Court, and (2) the Court of Appeals made no determination that it lacked jurisdiction to hear the Government's appeal under this section; and returned the case to the Court of Appeals for further proceedings. *United States v. P. E. Sweet* (1970, 90 S. Ct. 1958, 399 U.S. 517).

#### Direct appeal to Supreme Court

Once an appeal is properly before the Supreme Court under the Criminal Appeals Act (18 U.S.C. 3731), the Court will not refuse to consider it, despite contention that it should do so as matter of sound judicial administration, even if appeal might have been taken to another court. *United States v. M. Vuitch* (1971, 91 S. Ct. 1294, 402 U.S. 62).

#### Double jeopardy

Dismissal of embezzlement prosecution for "want of prosecution" was not equivalent to a finding that defendant had been denied his constitutional right to speedy trial. *J. P. Mann v. United States* (1962, 304 F. 2d 394, 113 U.S. App. D.C. 27).

Where guilt of defendant, as a matter of law and fact, is submitted to Municipal Court of the District of Columbia, an appeal by the United States is not permitted, since defendant cannot be retried for the same offense, and therefore, even if the ruling of the trial court were found to be erroneous, the judgment could not be vacated and a new trial ordered. *United States v. Martin* (D. C. Mun. App. 1951, 81 A. 2d 651).

#### Evidence—Admissibility

Since the police officers had what they believed was credible information that defendant who fit description given officers had a gun in his pocket, since defendant was reluctant to remove his hand from his pocket, and since there was obvious large bulge in pocket when he did remove his hand, officers were justified in conducting a limited protective search for weapons, and removal of currency and numbers slips by officer who claimed to have found gun was reasonable and fact numbers slips and money rather than gun were removed from pocket did not render those items inadmissible. *United States v. M. Dowling* (D.C. App. 1970, 271 A. 2d 406).

#### Finality of decisions

The underlying concepts of finality of decisions as prerequisite to appeal are the same under 28 U.S.C. § 1291, defining appellate jurisdiction of Courts of Appeals, as the successor to applicable provision of 1901 District of Columbia Code, as to such section as successor to the nationally applicable appeal provisions of the Judicial Code. *Carroll v. United States* (1957, 77 S. Ct. 1332, 354, 1 L. Ed. 2d 1442).

In District of Columbia criminal cases, the government is not permitted to appeal where decision against it may have some characteristics of finality, yet does not either terminate the prosecution or pertaining to an independent peripheral matter such as would be appealable in other federal courts. *Id.*

An order entered after indictment and before trial, granting motion to suppress the only substantial evidence in support of counts charging purchase and concealment of narcotics, was an appealable "final decision". *United States v. Cefaratti* (1953, 202 F. 2d 13, 91 U.S. App. D.C. 297, certiorari denied 73 S. Ct. 646, 345 U.S. 907, 97 L. Ed. 1343).

#### Judgment of acquittal

Where it was clear from repeated statements of trial judge in prosecution for having possession of a dangerous weapon, that the trial judge was not ruling on the information as such but on the ultimate guilt of the defendant under agreed statement of facts, and trial judge made an entry granting motion of defendant to dismiss and discharging defendant, such action was equivalent to the granting of a motion for judgment of acquittal, and therefore the United States had no right of appeal to Municipal Court of Appeals of the District of Columbia. *United States v. Martin* (D. C. Mun. App. 1951, 81 A. 2d 651).

#### Jurisdiction of court of appeals

The appellate jurisdiction of the United States Court of Appeals for the District of Columbia in criminal cases is not affected by the act of 1907. *United States v. Burroughs* (1933, 53 S. Ct. 574, 289 U.S. 159, 77 L. Ed. 1096).



**Order quashing indictment**

Government may appeal from order quashing indictment and discharging defendant without day. *United States v. Cadarr* (1904, 24 App. D.C. 143 reversed on other grounds 197 U.S. 478, 49 L. Ed. 842).

**Order quashing warrant of arrest**

Under § 11-772 [now § 17-301] providing that any party aggrieved by any final order or judgment of the Municipal Court for the District of Columbia may appeal to the Municipal Court of Appeals, such court has jurisdiction of government's appeal from an order of the municipal court for such district quashing a warrant of arrest in a disorderly house case, in view of this section entitling the government to appeal in criminal prosecutions. *United States v. Basiliko* (D.C. Mun. App. 1944, 35 A. 2d 185).

An order quashing a warrant of arrest in a disorderly house case was appealable. *Id.*

**Order sustaining demurrer**

Government may appeal from order sustaining demurrer to indictment for violation of 1901 code, § 869a et seq. (§ 22-1509). *United States v. Cella* (1911, 37 App. D.C. 423, certiorari denied 32 S. Ct. 526, 233 U.S. 728, 56 L. Ed. 633).

**Quashed information**

The United States may appeal from an order of the Municipal Court for the District of Columbia quashing an information for failure to state a crime, and discharging the defendant. *United States v. Martin* (D.C. Mun. App. 1951, 81 A. 2d 651).

**Verdicts**

This section does not authorize an appeal by the government from a verdict of not guilty in a criminal case, because only the determination of a moot question is involved, which is not a judicial function and cannot be required by Congress of a federal court. *United States v. Evans* (1907, 30 App. D.C. 58, certiorari quashed 29 S. Ct. 58, 213 U.S. 297, 53 L. Ed. 803).

Court of appeals has no power to review by writ or error a judgment of not guilty rendered by the police court. *District of Columbia v. Burns* (1908, 32 App. D.C. 203).

This section provided that in criminal prosecutions the United States or the District should have the same right of appeal as the defendant had, including a bill of exceptions, but provided that if there was error in the rulings of the court during the trial, a verdict for defendant should not be set aside. *District of Columbia v. Kendall* (1927, 20 F. 2d 287, 57 App. D. C. 271).

**§ 23-105. Challenges to jurors**

(a) In a trial for an offense punishable by death, each side is entitled to twenty peremptory challenges. In a trial for an offense punishable by imprisonment for more than one year, each side is entitled to ten peremptory challenges. In all other criminal cases, each side is entitled to three peremptory challenges. If there is more than one defendant, or if a case is prosecuted both by the United States and by the District of Columbia, the court may allow additional peremptory challenges and permit them to be exercised separately or jointly, but in no event shall one side be entitled to more peremptory challenges than the other.

(b) The court may direct that jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. In addition to those otherwise allowed, each side is entitled to one peremptory challenge if one or two alternate jurors are to be impaneled, to two peremptory challenges if three or four alternate jurors are to be impaneled, and to three peremptory challenges if five or six alternate jurors are to be impaneled.

(c) Any juror or alternate juror may be challenged for cause.

(d) No verdict shall be set aside for any cause which might be alleged as ground for challenge of a juror before the jury is sworn, except when the objection to the juror is that he had a bias against the defendant such as would have disqualified him, such disqualification was not known to or suspected by the defendant or his counsel before the juror was sworn, and the basis for such disqualification was the subject of examination or request for examination of the prospective jurors by or on request of the defendant. (July 29, 1970, Pub. L. 91-358, § 210 (a), title II, 84 Stat. 607.)

**CROSS REFERENCES**

Challenges in civil cases, see § 11-1902, 28 U.S.C. § 1870.  
Qualifications of jurors, see § 11-1901.

**NOTES TO DECISIONS UNDER PRIOR LAW****Action by defendant**

Action required to be taken by a "defendant" under provisions of District of Columbia Code relating to criminal procedure, where an accused has counsel, is to be taken by the counsel rather than by the accused personally. *Hensley v. United States* (C.A.D.C. 1960, 281 F. 2d 605, 108 U.S. App. D.C. 242).

**Cases consolidated for trial**

When cases are consolidated for trial under U. S. R. S. § 1024, defendant is entitled, in cases of felony, to 10 peremptory challenges only *Miller v. United States* (38 App. D.C. 361, 40 L.R.A., N.S., 973). See, also, *Nestlerode v. United States* (1941, 122 F. 2d 56, 74 App. D.C. 276).

**Constitutional law**

There is nothing in the Constitution which requires the Congress to grant peremptory challenges to defendants in criminal cases, and regulations are left to common law or enactments of Congress. *United States v. Wood* (1936, 57 S. Ct. 177, 299 U.S. 123, 81 L. Ed. 78, rehearing denied 57 S. Ct. 319, 299 U.S. 624, 81 L. Ed. 459).

While accused has a constitutional right to a speedy trial by an impartial jury, it does not follow that the rejection of qualified persons for insufficient cause would deprive appellant of that right. It is significant in this respect that although appellant was entitled to ten peremptory challenges he had not used any of them. *Shettel v. United States* (1940, 118 F. 2d 34, 72 App. D.C. 250).

**Exclusion of Negroes**

Fact that 19 members of jury panel selected in prosecution of three Negroes jointly indicted on charge of murder in perpetration of robbery were members of Negro race indicated that Negroes had not been systematically excluded from panel in violation of Fifth Amendment, and defendants could not complain that thereafter Government peremptorily challenged every Negro juror who had been called to sit in the panel. *Hall v. United States* (1948, 168 F. 2d 161, 83 U.S. App. D.C. 166, 4 A.L.R. 2d 1193, certiorari denied 68 S. Ct. 1509, 334 U.S. 853, 92 L. Ed. 1775, rehearing denied 69 S. Ct. 9, 335 U.S. 839, 93 L. Ed. 391).

**Joint defendants**

Defendant was not entitled to three peremptory challenges in selecting jury, in addition to those allowed codefendant; the defendants were properly treated as one defendant in allowance and exercise of challenges. *S. Yankowitz v. United States* (D.C. Mun. App. 1962, 182 A. 2d 889).

Five defendants jointly indicted for conspiracy are entitled to only 10 peremptory challenges to be shared between them. *Lorenz v. United States* (1904, 24 App. D.C. 337, certiorari denied 25 S. Ct. 796, 196 U.S. 640, 49 L. Ed. 631).

**New trial**

This section "gives no new right to the defendant, and adds nothing to the discretionary powers which the courts have always exercised in such cases. If not declaratory merely of a long-existing rule of practice, it would seem rather a limitation, than otherwise, of the ordinary discretionary power of the courts to grant new trials." *Paolucci v. United States* (1907, 30 App. D.C. 217, 12 Ann.



Cas. 920, certiorari denied 28 S. Ct. 568, 208 U.S. 617, 52 L. Ed. 646).

A challenge to the jury panel because it contains names of women, made for first time on motion for new trial, will not be reviewed. *Nelson v. United States* (1932, 53 F.2d 935, 60 App. D.C. 323).

#### Purpose

"Peremptory challenges" are exercised by party in rejection, and not in selection of jurors, and is not aimed at disqualification but is exercised upon qualified jurors as a matter of favor to challenger. *Hall v. United States* (1948, 168 F.2d 161, 83 U.S. App. D.C. 166, 4 A.L.R. 2d 1193, certiorari denied 68 S. Ct. 1509, 334 U.S. 853, 92 L. Ed. 1775, rehearing denied 69 S. Ct. 9, 335 U.S. 839, 93 L. Ed. 391).

#### Right to new panel

Defendant charged with adultery is entitled to a new jury panel when it appears that 12 members of the current panel acted as jurors in another case involving the keeping of a disorderly house, in which case it was shown that the defendant frequented that house for immoral purposes. *Kleindienst v. United States* (1918, 48 App. D.C. 190).

A failure to exhaust the peremptory challenges and to examine the jurors on the voir dire is no waiver of defendant's right to a new panel when such right exists *Id.*

### § 23-106. Witnesses for defense; fees

The court shall order at any time that a subpoena be issued for service upon a named witness on behalf of a defendant if the defendant makes an application for such an order and makes a satisfactory showing that he is financially unable to pay the fees of the witness and that the presence of the witness is necessary to an adequate defense. If the court orders the subpoena to be issued the costs incurred by the process and the fees of the witness so subpoenaed shall be paid in the same manner in which similar costs and fees are paid in case of a witness subpoenaed in behalf of the prosecuting authority. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 607.)

#### CROSS REFERENCES

Competency and credibility of witnesses who have been convicted of crime, see § 14-305.

Immunity of witnesses generally, see 18 U.S.C. 6002.

### § 23-107. Discharge or acquittal of joint defendant during trial in order to be witness

(a) When two or more persons are jointly indicted or charged by information, or charged by separate indictments or informations which have been joined for trial, the court may, with the consent of the prosecuting authority, direct that a defendant who has not gone into his defense be discharged so that he may be a witness for the prosecution.

(b) When two or more persons are jointly tried, a person desiring that another defendant testify on his behalf may request a judgment of acquittal on behalf of such defendant, which the court shall consider in the same manner as a motion made by such defendant.

(c) At the request of a defendant who wishes to testify on behalf of another person with whom he is jointly tried, if the evidence against such defendant is sufficient to be submitted to the jury and if such other person consents, the court may submit the case concerning such defendant to the jury separately so that his testimony may not be considered against him by such jury.

(d) A discharge granted pursuant to subsection (a), or an acquittal secured pursuant to subsection (b) or (c), shall be a bar to another prosecution for the same offense of the defendant so discharged or acquitted. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 607.)

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Construction

This section, authorizing court to discharge defendant desiring to become witness for government, is not source of trial judge's authority to dismiss defendant so that he may be witness against his former codefendants, but is an immunity statute enacted for benefit and protection of defendant who is discharged for that purpose before he has been in jeopardy. *Carrado v. United States* (1954, 210 F.2d 712, 93 U.S. App. D.C. 183, certiorari denied 74 S. Ct. 874, 347 U.S. 1018, 98 L. Ed. 1140)

As used in this section granting immunity to defendant discharged, before he has "gone into his defense", for purpose of becoming government witness, quoted words mean "before he has been put in jeopardy", and statute's draftsman intended it to provide immunity from second prosecution for defendant who would not otherwise be entitled to it because he had not been in jeopardy. *Id.*

##### Order of discharge

Order of discharge of codefendant in narcotics prosecution upon his entering plea of guilty to another narcotics count was not discharge for purpose of allowing him to give evidence for other parties accused with him such as would have entitled defendant to demand that codefendant be granted immunity and required to testify. *J. V. Earl v. United States* (1966, 361 F.2d 531, 124 U.S. App. 77).

Although government might have granted discharged codefendant immunity and required him to testify, government's refusal to do so did not deny defendant fair trial. *Id.*

### § 23-108. Depositions

(a) If a material witness for either the prosecution or the defendant resides more than twenty-five miles from the place of holding court, is sick or infirm, or is about to leave the District of Columbia, and the prosecution or the defendant applies in writing to the court for a commission to examine such witness, the court may grant the commission, and enter an order stating for what length of time notice shall be given to the other party before such witness shall be examined. At or before the time fixed in the notice, when the examination is upon written interrogatories, the other party may file cross-interrogatories. When the examination is conducted orally, the other party may cross-examine the deponent. If the other party fails to file written interrogatories or fails to attend an oral examination, the clerk shall file the following interrogatories:

"(1) Are all your statements in the foregoing answers made from your own personal knowledge? If not, show what is stated upon information and give its source.

"(2) State everything you know in addition to what is stated in your above answers concerning this case favorable to either the prosecution or the defendant."

(b) The court may order in any case that the examination be conducted orally.

(c) The commission shall issue from the clerk's office, the examination of the witnesses shall be made and certified, and the return thereof made in



the same manner as in civil cases, and unimportant irregularities or errors in the proceedings under the commission shall not cause the deposition to be excluded where no substantial prejudice can be wrought to the prosecution or the defendant by such irregularities or errors.

(d) Copies of the depositions or answers to interrogatories shall be made available to all of the parties upon the completion of the examination. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 608.)

#### CROSS REFERENCE

Depositions in civil cases, see § 14-104 et seq.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### In general

Action required to be taken by a "defendant" under provisions of District of Columbia Code relating to criminal procedure, where an accused has counsel, is to be taken by the counsel rather than by the accused personally. *Hensley v. United States* (C.A.D.C. 1960, 281 F. 2d 605, 108 U.S. App. D.C. 242).

#### § 23-109. Powers of investigators assigned to United States attorney

Any special investigator appointed by the Attorney General and assigned to the United States attorney for the District shall have authority to execute all lawful writs, process, and orders issued under authority of the United States, and command all necessary assistance to execute his duties, and shall have the same powers to make arrests as are possessed by members of the Metropolitan Police Department of the District of Columbia. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 608.)

#### § 23-110. Remedies on motion attacking sentence

(a) A prisoner in custody under sentence of the Superior Court claiming the right to be released upon the ground that (1) the sentence was imposed in violation of the Constitution of the United States or the laws of the District of Columbia, (2) the court was without jurisdiction to impose the sentence, (3) the sentence was in excess of the maximum authorized by law, (4) the sentence is otherwise subject to collateral attack, may move the court to vacate, set aside, or correct the sentence.

(b) A motion for such relief may be made at any time.

(c) Unless the motion and files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the prosecuting authority, grant a prompt hearing thereon, determine the issues, and make findings of fact and conclusions of law with respect thereto. If the court finds that (1) the judgment was rendered without jurisdiction, (2) the sentence imposed was not authorized by law or is otherwise open to collateral attack, (3) there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner, resentence him, grant a new trial, or correct the sentence, as may appear appropriate.

(d) A court may entertain and determine the motion without requiring the production of the prisoner at the hearing.

(e) The court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner.

(f) An appeal may be taken to the District of Columbia Court of Appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

(g) An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section shall not be entertained by the Superior Court or by any Federal or State court if it appears that the applicant has failed to make a motion for relief under this section or that the Superior Court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 608.)

#### NOTES TO DECISIONS

##### Construction

Overriding intent of Congress in enacting the District of Columbia Court Reform and Criminal Procedure Act of 1970 is to create largely independent local court system. *J. Bland v. C. M. Rodgers* (1971, 332 F. Supp. 989).

The District of Columbia Court Reform and Criminal Procedure Act of 1970 extinguishes the traditional authority of federal court to review local judicial actions in the District of Columbia by the issuance of writs of habeas corpus. *Id.*

##### Record on appeal

It would not be appropriate for the Court of Appeals to treat contention, based on material outside the record on appeal, that erroneous information was given at sentencing proceeding by the prosecution; such matter would be appropriate for motion to vacate or to reduce sentence, which could be filed in the trial court presently or after disposition of the appeal. *J. Terrell v. United States* (D.C. App. 1972, 294 A. 2d 860; cert. denied 93 S. Ct. 1398, 410 U.S. 938).

##### Timeliness

Motion for new trial in interest of justice filed more than five days after verdict was untimely. *J. Williams v. United States* (1972, 295 A. 2d 503).

#### § 23-111. Proceedings to establish previous convictions

(a) (1) No person who stands convicted of an offense under the laws of the District of Columbia shall be sentenced to increased punishment by reason of one or more previous convictions, unless prior to trial or before entry of a plea of guilty, the United States attorney or the Corporation Counsel, as the case may be, files an information with the clerk of the court, and serves a copy of such information on the person or counsel for the person, stating in writing the previous convictions to be relied upon. Upon a showing by the Government that facts regarding previous convictions could not with due diligence be obtained prior to trial or before entry of a plea of guilty, the court may postpone the trial or the taking of the plea of guilty for a reasonable period for the purpose of obtaining such facts. Clerical mistakes in the information may be amended at any time prior to the pronouncement of sentence.

(2) An information may not be filed under this section if the increased punishment which may be imposed is imprisonment for a term in excess of three years, unless the person either waived or was



afforded prosecution by indictment for the offense for which such increased punishment may be imposed.

(b) If the prosecutor files an information under this section, the court shall, after conviction but before pronouncement of sentence, inquire of the person with respect to whom the information was filed whether he affirms or denies that he has been previously convicted as alleged in the information, and shall inform him that any challenge to a previous conviction which is not made before sentence is imposed may not thereafter be raised to attack the sentence.

(c) (1) If the person denies any allegation of the information of previous conviction, or claims that any conviction alleged is invalid, he shall file a written response to the information. A copy of the response shall be served upon the prosecutor. The court shall hold a hearing to determine any issues raised by the response which would except the person from increased punishment. The failure of the Government to include in the information the complete criminal record of the person or any facts in addition to the convictions to be relied upon shall not constitute grounds for invalidating the notice given in the information required by subsection (a) (1). The hearing shall be before the court without a jury and either party may introduce evidence. Except as otherwise provided in paragraph (2) of this subsection, the prosecuting authority shall have the burden of proof beyond a reasonable doubt on any issue of fact. At the request of either party, the court shall enter findings of fact and conclusions of law.

(2) A person claiming that a conviction alleged in the information was obtained in violation of the Constitution of the United States shall set forth his claim, and the factual basis therefor, with particularity in his response to the information. The person shall have the burden of proof by a preponderance of the evidence on any issue of fact raised by the response. Any challenge to a previous conviction, not raised by response to the information before an increased sentence is imposed in reliance thereon, shall be waived unless good cause be shown for failure to make a timely challenge.

(d) (1) If the person files no response to the information, or if the court determines, after hearing, that the person is subject to increased punishment by reason of previous convictions, the court shall proceed to impose sentence upon him as provided by law.

(2) If the court determines that the person has not been convicted as alleged in the information, that a conviction alleged in the information is invalid, or that the person is otherwise not subject to an increased sentence as a matter of law, the court shall, at the request of the prosecutor, postpone sentence to allow an appeal from that determination. If no such request is made, the court shall impose sentence as provided by law. The person may appeal from an order postponing sentence as if sentence had been pronounced and a final judgment of conviction entered. (July 29, 1970, Pub. L. 91-358, § 210 (a), title II, 84 Stat. 609.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-721.

## NOTES TO DECISIONS

### Construction

In imposing a more severe sentence on conviction of carrying a pistol without a license where defendant has suffered a prior similar conviction or a prior felony conviction, the mandatory statutory procedure must be followed. *C. D. Coleman v. United States* (D.C. App. 1972, 295 A. 2d 896).

### § 23-112. Consecutive and concurrent sentences

A sentence imposed on a person for conviction of an offense shall, unless the court imposing such sentence expressly provides otherwise, run consecutively to any other sentence imposed on such person for conviction of an offense, whether or not the offense (1) arises out of another transaction, or (2) arises out of the same transaction and requires proof of a fact which the other does not. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 610.)

## Chapter 3.—INDICTMENTS AND INFORMATIONS

### SUBCHAPTER I.—GENERAL PROVISIONS

#### Sec.

23-301. Prosecution by indictment or information.

### SUBCHAPTER II.—JOINDER

23-311. Joinder of offenses and of defendants.

23-312. Joinder of indictments or informations for trial.

23-313. Relief from prejudicial joinder.

23-314. Joinder of inconsistent offenses concerning the same property.

### SUBCHAPTER III.—SUFFICIENCY

23-321. Description of money.

23-322. Intent to defraud.

23-323. Perjury.

23-324. Subornation of perjury.

### SUBCHAPTER I.—GENERAL PROVISIONS

#### § 23-301. Prosecution by indictment or information

An offense prosecuted in the Superior Court which may be punished by death shall be prosecuted by indictment returned by a grand jury. An offense which may be punished by imprisonment for a term exceeding one year shall be prosecuted by indictment, but it may be prosecuted by information if the defendant, after he has been advised of the nature of the charge and of his rights, waives in open court prosecution by indictment. Any other offense may be prosecuted by indictment or by information. An information subscribed by the proper prosecuting officer may be filed without leave of court. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 611.)

#### EFFECTIVE DATE

See note preceding section 23-101.

### SUBCHAPTER II.—JOINDER

#### § 23-311. Joinder of offenses and of defendants

(a) Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) Two or more offenses may be charged in the same indictment or information as provided in subsection (a) even though one or more is in violation



of the laws of the United States and another is in violation of the laws applicable exclusively to the District of Columbia and may be prosecuted as provided in section 11-502(3).

(c) Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 611.)

#### EFFECTIVE DATE

See note preceding section 23-101.

#### NOTES TO DECISIONS

##### Joinder of offenses

Joinder of charges arising from three separate armed robberies was proper where the evidence for each of the crimes was relevant to establish common scheme and plan and went to issue of identity, the evidence as to each crime was clearly separable and distinct and not likely to cause confusion, and there was no showing that any prejudice resulted from refusing to grant severance. *United States v. D. O. Miller* (1971, 449 F. 2d 974, 145 U.S. App. D.C. 312).

#### § 23-312. Joinder of indictments or informations for trial

The court may order two or more indictments or informations or both to be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single indictment or information. The procedure shall be the same as if the prosecution were under such single indictment or information. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 611.)

#### § 23-313. Relief from prejudicial joinder

If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants, or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the court may order the attorney for the government to deliver to the court for inspection in camera any statements or confessions made by the defendants which the government intends to introduce in evidence at the trial. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 611.)

#### § 23-314. Joinder of inconsistent offenses concerning the same property

An indictment or information may contain a count for larceny, a count for obtaining the same property by false pretenses, a count for embezzlement thereof, and a count for receiving or concealing the same property, knowing it to be stolen or embezzled, or any of such counts, and the jury may convict of any of such offenses, and may find any or all of the persons indicted guilty of any of said offenses. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 611.)

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### False pretenses and embezzlement

A general verdict of guilty on an indictment containing counts for false pretenses and embezzlement is inconsistent, and the rule "to the effect that in a criminal case a general judgment \* \* \* of guilty on each count, cannot be reversed on error if any count is good and is sufficient to support the judgment does not apply." *Davis v. United States* (1911, 37 App. D.C. 126). See, also, *Fulton v. United States* (1916, 45 App. D.C. 27).

##### Larceny and embezzlement

It is not error to refuse to require the government to elect between larceny and embezzlement counts where the same evidence is relied on to support both counts. *Means v. United States* (1933, 65 F. 2d 206, 62 App. D.C. 118).

#### SUBCHAPTER III.—SUFFICIENCY

#### § 23-321. Description of money

In every indictment or information, except for forgery, in which it is necessary to make an averment as to any money or bank bill or notes, United States Treasury notes, postal and fractional currency, or other bills, bonds, or notes, issued by lawful authority and intended to pass and circulate as money, it shall be sufficient to describe such money, bills, notes, currency, or bonds simply as money, without specifying any particular coin, note, bill, or bond; and such allegation shall be sustained by proof that the accused has stolen or embezzled any amount of coin, or any such note, bill, currency, or bond, although the particular amount or species of such coin, note, bill, currency, or bond be not proved. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 612.)

#### EFFECTIVE DATE

See note preceding section 23-101.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Purpose

The purpose of this section was to relieve the Government from the necessity of detailed particularization in either allegations or proof of money taken. *Neufield v. United States* (1941, 118 F. 2d 375, 73 App. D.C. 174, certiorari denied 62 S. Ct. 580, 315 U.S. 798, 86 L. Ed. 1199).

#### § 23-322. Intent to defraud

In an indictment or information in which it is necessary to allege an intent to defraud, it shall be sufficient to allege that the party accused did the act complained of with intent to defraud, without alleging an intent to defraud any particular person or body corporate. On the trial of such an indictment or information it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove a general intent to defraud. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 612.)

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Forgery

Forgery of checks was done with intent to defraud. *Easterday v. United States* (1923, 292 F. 664, 53 App. D.C. 387, certiorari denied 44 S. Ct. 181, U.S. 719, 68 L. Ed. 523).

#### § 23-323. Perjury

In every information or indictment for perjury, it shall be sufficient to set forth the substance of the offense charged upon the defendant, and by what court, or before whom the oath was taken (averring such court, or person or persons, to have a compe-



tent authority to administer the same) together with the proper averment or averments to falsify the matter or matters wherein the perjury or perjuries is or are assigned; without setting forth the bill, answer, information, indictment, declaration, or any part of any record of proceeding either in law or equity, other than as aforesaid; and without setting forth the commission or authority of the court, or person or persons before whom the perjury was committed; any law, usage, or custom to the contrary notwithstanding. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 612.)

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Constitutional guarantees

In prosecution for perjury allegedly committed by witness before Senate Internal Security Subcommittee, count charging that witness perjured himself when he stated that he, while editor of magazine, had not published articles by persons, other than Russians, whom he knew to be Communists violated the First Amendment to the Federal Constitution providing that Congress shall make no law abridging freedom of speech or of the press, and the Sixth Amendment protecting an accused in the right to be informed of nature and cause of the accusation against him. *United States v. Lattimore* (D.C.D.C. 1953, 112 F. Supp. 507).

##### Federal rules of criminal procedure

In prosecution for perjury allegedly committed by witness before Senate Internal Security Subcommittee, count of indictment charging that witness lied in denying that he had ever been a sympathizer or promoter of communism or Communist interests, was fatally defective because it did not meet requirements of Federal Rule of Criminal Procedure 7, 18 U.S.C. App., requiring that indictment shall be plain, concise and definite written statement of essential acts constituting offense charged. *United States v. Lattimore* (D.C.D.C. 1953, 112 F. Supp. 507).

Under Federal Rule of Criminal Procedure 7, 18 U.S.C. App., a general allegation of materiality is sufficient in an indictment for perjury or subornation of perjury without setting forth in detail how and why the particular question addressed to the witness was material. *United States v. Meyers* (D.C.D.C. 1948, 75 F. Supp. 486, affirmed 171 F. 2d 800, 84 U.S. App. D.C. 101, 11 A.L.R. 2d 1, certiorari denied 69 S. Ct. 602, 336 U.S. 912, 93 L. Ed. 1076).

##### Materiality

Indictment charging witness with perjury allegedly committed before Senate Internal Security Subcommittee was not invalid in its entirety because it failed to plead the particulars of materiality of testimony given by witness before committee. *United States v. Lattimore* (D.C.D.C. 1953, 112 F. Supp. 507).

Perjury indictment setting out in each count a statement allegedly made by defendant in course of testimony before congressional subcommittee, alleging that such statement was false and setting forth what the true facts were and alleging generally that testimony sought to be elicited from defendant was material to the inquiry, was sufficient as against motion to dismiss. *United States v. Meyers* (D.C.D.C. 1948, 75 F. Supp. 486, affirmed 171 F. 2d 800, 84 U.S. App. D.C. 101, 11 A.L.R. 2d 1, certiorari denied 69 S. Ct. 602, 336 U.S. 912, 93 L. Ed. 1076).

##### Oath

Failure to set forth person before whom oath was taken together with his authority to administer same was not fatal to perjury indictment, especially in view of rule requiring merely that indictment be plain, concise, and definite written statement of essential facts constituting offense charged and providing that it need not contain any other matter not necessary to such statement. *United States v. Young* (D.C.D.C. 1953, 113 F. Supp. 20).

Indictment charging alleged perjury by witness before Senate Internal Security Subcommittee was not invalid because it failed to allege name of Senator administering oath to witness. *United States v. Lattimore* (D.C.D.C. 1953, 112 F. Supp. 507).

#### § 23-324. Subordination<sup>1</sup> of perjury

In every information or indictment for subornation of perjury, or for corrupt bargaining or contracting with others to commit perjury, it shall be sufficient to set forth the substance of the offense charged upon the defendant, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding either in law or equity, and without setting forth the commission or authority of the court, or person or persons before whom the perjury was committed, or was agreed or promised to be committed, any law, usage, or custom to the contrary notwithstanding. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 612.)

### Chapter 5.—WARRANTS AND ARRESTS

#### SUBCHAPTER I.—DEFINITIONS

##### Sec.

23-501. Definitions.

#### SUBCHAPTER II.—SEARCH WARRANTS

23-521. Nature and issuance of search warrants.

23-522. Applications for search warrants.

23-523. Time of execution of search warrants.

23-524. Execution of search warrants.

23-525. Disposition of property.

#### SUBCHAPTER III.—WIRE INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

23-541. Definitions.

23-542. Interception, disclosure, and use of wire or oral communications prohibited.

23-543. Possession, sale, distribution, manufacture, assembly, and advertising of wire or oral communication intercepting devices prohibited.

23-544. Confiscation of wire or oral communication intercepting devices.

23-545.<sup>2</sup> Immunity of witnesses.

23-546. Applications for authorization or approval of interception of wire or oral communications.

23-547. Procedure for authorization or approval of interception of wire or oral communications.

23-548. Additional procedure for approval of interception of wire or oral communications.

23-549. Maintenance and custody of records.

23-550. Inventory.

23-551. Procedure for disclosure and suppression of intercepted wire or oral communications.

23-552. Government appeals.

23-553. Authorization for disclosure and use of intercepted wire or oral communications.

23-554. Authorization for recovery of civil damages.

23-555. Reports concerning intercepted wire or oral communications.

23-556. Relation to Federal law on wire interception and interception of oral communications.

#### SUBCHAPTER IV.—ARREST WARRANT AND SUMMONS

23-561. Issuance, form, and contents.

23-562. Execution and return.

23-563. Territorial and other limits.

#### SUBCHAPTER V.—ARREST WITHOUT WARRANT

23-581. Arrests without warrant by law enforcement officers.

23-582. Arrests without warrant by other persons.

#### SUBCHAPTER VI.—AUTHORITY TO BREAK AND ENTER UNDER CERTAIN CONDITIONS

23-591. Authority to break and enter under certain conditions.

<sup>1</sup> So in original, does not conform to chapter analysis.

<sup>2</sup> Section 252 of Act Oct. 15, 1970, Pub. L. 91-452, repealed § 23-545 without amending the chapter analysis.



## SUBCHAPTER I.—DEFINITIONS

## § 23-501. Definitions

As used in subchapters II, IV, and V of this chapter—

(1) The term "judicial officer" means a judge of the Superior Court of the District of Columbia or of the United States District Court for the District of Columbia, or a United States commissioner or magistrate for the District of Columbia.

(2) The term "law enforcement officer" means an officer or member of the Metropolitan Police Department of the District of Columbia or of any other police force operating in the District of Columbia, or an investigative officer or agent of the United States.

(3) The term "prosecutor" means the United States Attorney for the District of Columbia or his assistant, the Corporation Counsel of the District of Columbia or his assistant, or an attorney employed by, and who has entered an appearance on behalf of, the United States or the District of Columbia in a criminal case or in an investigation being conducted by a grand jury.

(July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 613.)

## REFERENCE IN TEXT

The Act of Oct. 17, 1968, Pub. L. 90-578, terminated the office of United States commissioner and established in place thereof the office of United States magistrate. The Act became operative in the District of Columbia on June 27, 1969, when two United States magistrates assumed the office pursuant to appointment by order of the District Court dated June 20, 1969. See §§ 401(a) and 402(a) (b) of said Act (28 U.S.C. 631 note).

## EFFECTIVE DATE

See note preceding section 23-101.

## SUBCHAPTER II.—SEARCH WARRANTS

## SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 23-501, 23-591.

## § 23-521. Nature and issuance of search warrants

(a) Under circumstances described in this subchapter, a judicial officer may issue a search warrant upon application of a law enforcement officer or prosecutor. A warrant may authorize a search to be conducted anywhere in the District of Columbia and may be executed pursuant to its terms.

(b) A search warrant may direct a search of any or all of the following:

- (1) one or more designated or described places or premises;
- (2) one or more designated or described vehicles;
- (3) one or more designated or described physical objects; or
- (4) designated persons.

(c) A search warrant may direct the seizure of designated property or kinds of property, and the seizure may include, to such extent as is reasonable under all the circumstances, taking physical or other impressions, or performing chemical, scientific, or other tests or experiments of, from, or upon designated premises, vehicles, or objects.

(d) Property is subject to seizure pursuant to a search warrant if there is probable cause to believe that it—

- (1) is stolen or embezzled;
- (2) is contraband or otherwise illegally possessed;
- (3) has been used or is possessed for the purpose of being used, or is designed or intended to be used, to commit or conceal the commission of a criminal offense; or
- (4) constitutes evidence of or tends to demonstrate the commission of an offense or the identity of a person participating in the commission of an offense.

(e) A search warrant may be addressed to a specific law enforcement officer or to any classification of officers of the Metropolitan Police Department of the District of Columbia or other agency authorized to make arrests or execute process in the District of Columbia.

(f) A search warrant shall contain—

(1) the name of the issuing court, the name and signature of the issuing judicial officer, and the date of issuance;

(2) if the warrant is addressed to a specific officer, the name of that officer, otherwise, the classifications of officers to whom the warrant is addressed;

(3) a designation of the premises, vehicles, objects, or persons to be searched, sufficient for certainty of identification;

(4) a description of the property whose seizure is the object of the warrant;

(5) a direction that the warrant be executed during the hours of daylight or, where the judicial officer has found cause therefor, including one of the grounds set forth in section 23-522(c) (1), an authorization for execution at any time of day or night;

(6) where the judicial officer has found cause therefor, including one of the grounds set forth in subparagraph (A), (B), or (D) of section 23-591(c) (2), an authorization that the executing officer may break and enter the dwelling house or other building or vehicles to be searched without giving notice of his identity and purpose; and

(7) a direction that the warrant and an inventory of any property seized pursuant thereto be returned to the court on the next court day after its execution.

(July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 614.)

## EFFECTIVE DATE

See note preceding section 23-101.

## CROSS REFERENCES

Advance information of raid to attorneys or bondsmen unlawful, see § 23-1109.

Examination of books and search of premises of certain businesses, property pledged, see §§ 4-148, 4-149.

Inspector of weights, measures, and markets may inspect and search without warrants, see § 10-126.

Major and superintendent [now Chief of Police] may authorize search in gaming houses, bawdy-houses, etc., see § 4-145.

Search warrant in prevention of cruelty to animals, see § 22-805.

Search warrants under Uniform Narcotic Drug Act, see § 33-414.



Search warrant to discover and eradicate plant diseases and insects, see § 6-904.

Search warrant to discover illegal use of milk containers. see §§ 48-205, 48-305.

Search warrant under Alcoholic Beverage Control Act. see § 25-129.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23-522, 23-523, 23-524.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Affidavit—Sufficiency

Failure of search warrant affidavit to set forth factual circumstances from which magistrate could appraise informant's credibility and to state circumstances upon which informant based his conclusion was not fatal where, according to affidavits, information triggered investigation by officers who set out details and results of their investigation of gambling and lottery law violations. *United States v. S. A. Berry* (1972, 463 F. 2d 1278, 150 U.S. App. D.C. 187).

Search warrant affidavit reciting uncorroborated tip that first person was picking up numbers and taking them to address of second person, a well-known gambler, together with investigative officers' observations of comings and goings and delivery of "small package," all in accordance with officers' knowledge as to operation of numbers game, was sufficient to support warrant for search, leading to lottery and gambling charges, where affidavit recited that participants had gambling law convictions and that premises had been established by police records to have recently housed gambling operation, although it would have been helpful had officers elaborated on modus operandi of numbers operation. *Id.*

##### Construction

The laws dealing with narcotics and drug problems are controlling over the general search warrant provisions of the United States and District of Columbia Codes. *United States v. C. Thomas et al.* (D.C. App. 1972, 294 A. 2d 164; cert. denied 93 S. Ct. 341, 448, 409 U.S. 992).

District of Columbia narcotics statute (section 33-414) providing that "the judge or commissioner shall insert a direction in the warrant that it may be served at any time in the day or night," qualifies sections 23-521 to 23-523 permitting a nighttime execution of the search warrant if, and only if, there is an express authorization therefore pursuant to statute; the latter sections are applicable to nonnarcotic cases only. *United States v. H. Green* (1971, 331 F. Supp. 44).

The search warrant provisions of this section are not inapplicable to search warrants issued in connection with Federal offenses. *United States v. L. Gooding* (1971, 328 F. Supp. 1005).

##### Evidence—Suppression

Where none of the grounds set forth in § 23-522 for search warrant authorizing execution at night were included in either application or warrant, search made pursuant to warrant well after ending of daylight hours is invalid and evidence seized is subject to suppression, though warrant was issued in connection with alleged violations of federal narcotics laws. *United States v. L. Gooding* (1971, 328 F. Supp. 1005).

##### Nighttime searches

Even though search warrant and supporting affidavit did not comply with the specific provisions of the District of Columbia Code relating to nighttime searches, search warrant, which was issued pursuant to Comprehensive Drug Abuse Prevention and Control Act on basis that there was reason to believe premises contained contraband and which permitted day or nighttime execution was valid. *United States v. C. Thomas et al.* (D.C. App. 1972, 294 A. 2d 164; cert. denied 93 S. Ct. 341, 448, 409 U.S. 992).

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Seizure—validity

Once weapon was seen, police had no alternative but to seize it for their protection, and validity of the seizure does not depend on failure to find or seize property de-

scribed in warrant or failure to specify pistol in warrant or failure to make subsequent inventory and return on warrant. *United States v. D. E. Yates* (D.C. App. 1971, 279 A. 2d 516).

##### Sufficiency of affidavit

Averment in affidavit that on two occasions defendant looked about, as if to see "if he was being watched," is entirely conclusory and insufficient to support a probability that defendant was engaged in some sort of illegal conduct. *United States v. L. Long* (1971, 439 F. 2d 628, 142 U.S. App. D.C. 118).

Affidavit that asserted that two unnamed informants had personal knowledge that defendant was engaged in a numbers operation in apartment of a third party, together with a statement of results of observations of defendant's movements when entering and leaving the apartment, does not contain sufficient corroborative facts, either from informants or from the FBI, to subject defendants to a lawful search, even though there is no dispute as to reliability of the informants. *Id.*

##### Sufficiency of warrant

Affidavit which was attached to search warrant and which provided the requisite specificity that the warrant (whose description of subject premises embraced not only the apartment where defendants lived but also another apartment for which there was no probable cause) otherwise lacked was incorporated in the warrant by reference, though the warrant contained no words of incorporation, since statute at the time provided that the "warrant shall have annexed to it, or inserted therein, a copy of the affidavit upon which it is issued." *S. H. Moore v. United States* (1972, 461 F. 2d 1236, 149 U.S. App. D.C. 150; aff'g 263 A. 2d 652).

In order to determine whether a search warrant was properly issued, only the information submitted to the magistrate may be considered, since it is sufficient that affidavit showed probable cause at time the warrant was issued. *United States v. C. E. Ketterman et al* (D.C. App. 1971, 276 A. 2d 243).

A search warrant need only identify property with reasonable particularity, and, as to narcotics, a detailed description, such as chemical composition, is unnecessary since a more general description is sufficient to describe and thus limit what the executing officer may seize. *Id.*

Since the affidavit in support of search warrant stated that reliable informant had been in specified apartment within past 36 hours and had seen narcotics and pistol with specified serial number known to have been stolen, that check with national crime investigating center revealed that described pistol was stolen, and that informant had earlier provided information on narcotics and gun violations which had proven true and reliable, search warrant describing ".38 caliber special pistol and narcotics \* \* \* as set forth in affidavit attached" was sufficiently particular, notwithstanding that warrant, in addition referred to "any other instrumentalities of the crime of Narcotics & Receiving Stolen Property and any other proceeds of the crime of Narcotics & Receiving Stolen Property and property constituting evidence of such crime." *Id.*

It was not in the interests of justice that Court of Appeals entertain for the first time on appeal objection that warrant authorizing search for and seizure of described clothing worn by defendant at the time of alleged crime did not comply with requirements of a federal rule specifying property for which a search warrant may be issued. *W. H. Fuller v. United States* (1968, 407 F. 2d 1199, 132 U.S. App. D.C. 264; cert. denied 89 S. Ct. 999, 393 U.S. 1120).

#### § 23-522. Applications for search warrants

(a) Each application for a search warrant shall be made in writing upon oath or affirmation to a judicial officer.

(b) Each application shall include—

- (1) the name and title of the applicant;
- (2) a statement that there is probable cause to believe that property of a kind or character described in section 23-521(d) is likely to be found



in a designated premise, in a designated vehicle or object, or upon designated persons;

(3) allegations of fact supporting such statement; and

(4) a request that the judicial officer issue a search warrant directing a search for and seizure of the property in question.

The applicant may also submit depositions or affidavits of other persons containing allegations of fact supporting or tending to support those contained in the application.

(c) The application may also contain—

(1) a request that the search warrant be made executable at any hour of the day or night, upon the ground that there is probable cause to believe that (A) it cannot be executed during the hours of daylight, (B) the property sought is likely to be removed or destroyed if not seized forthwith, or (C) the property sought is not likely to be found except at certain times or in certain circumstances; and

(2) a request that the search warrant authorize the executing officer to break and enter dwelling houses or other buildings or vehicles to be searched without giving notice of his identity and purpose, upon probable cause to believe that one of the conditions set forth in subparagraph (A), (B), or (D) of section 23-591(c)(2) is likely to exist at the time and place at which such warrant is to be executed.

Any request made pursuant to this subsection must be accompanied and supported by allegations of fact supporting such request. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 615.)

#### CROSS REFERENCE

Search warrants in narcotic drug cases, see § 33-414.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23-521.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Construction

The laws dealing with narcotics and drug problems are controlling over the general search warrant provisions of the United States and District of Columbia Codes. *United States v. C. Thomas et al.* (D.C. App. 1972, 294 A. 2d 164; cert. denied 93 S.Ct. 341, 448, 409 U.S. 992).

District of Columbia narcotics statute (section 33-414) providing that "the judge or commissioner shall insert a direction in the warrant that it may be served at any time in the day or night.", qualifies sections 23-521 to 23-523 permitting a nighttime execution of the search warrant, if and only if, there is an express authorization therefore pursuant to statute; the latter sections are applicable to nonnarcotic cases only. *United States v. H. Green* (1971, 331 F. Supp. 44).

The search warrant provisions of this section are not inapplicable to search warrants issued in connection with federal offenses. *United States v. L. Gooding* (1971, 328 F. Supp. 1005).

##### Nighttime searches

Even though search warrant and supporting affidavit did not comply with the specific provisions of the District of Columbia Code relating to nighttime searches, search warrant, which was issued pursuant to Comprehensive Drug Abuse Prevention and Control Act on basis that there was reason to believe premises contained contraband and which permitted day or nighttime execution was valid. *United States v. C. Thomas et al.* (D.C. App. 1972, 294 A. 2d 164; cert. denied 93 S.Ct. 341, 448, 409 U.S. 992).

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Compliance with federal rules of criminal procedure

Statute of the District of Columbia dealing with issuance of search warrants on complaint under oath need not be complied with when Federal Rule of Criminal Procedure 41, 18 U.S.C. App., dealing with search and seizure has been complied with. *Shay v. United States* (1954, 212 F. 2d 809, 93 U.S. App. D.C. 379, certiorari denied 74 S. Ct. 865, 347 U.S. 1012, 98 L. Ed. 1136).

Search warrant, which had been executed in accordance with Federal Rule of Criminal Procedure 41, 18 U.S.C. App., was valid even though it did not comply with this section authorizing issuance of search warrants. *Ledbetter v. United States* (1954, 211 F. 2d 628, 93 U.S. App. D.C. 155, certiorari denied 74 S. Ct. 789, 347 U.S. 977, 98 L. Ed. 1116).

##### Description of premises

Search warrant which described premises as "The Humidor" is sufficient to search entire four-story building. *Irwin v. United States* (1937, 89 F. 2d 678, 67 App. D.C. 41).

##### Espionage Act

There is nothing in the Espionage Act which makes it inapplicable in the District of Columbia and search warrant may be issued where property is used as means of committing felony. *Nuckols v. United States* (1938, 99 F. 2d 353, 69 App. D.C. 120, certiorari denied 59 S. Ct. 89, 305, U.S. 626, 83 L. Ed. 401).

Search warrant conforms in every respect to the requirements of the Espionage Act and does not infringe the rights of appellant under the Fourth Amendment. *Hysler v. United States* (C.C.A. Fla. 1937, 86 F. 2d 918).

##### Evidence as admissible

Once accused is under arrest and in custody, search made at another place, without warrant, is not incident to arrest and article discovered through search is inadmissible. *H. Bowling v. United States* (1965, 350 F. 2d 1002, 122 U.S. App. D.C. 25).

Where search was illegal, revolver found in search should not have been admitted in evidence in robbery prosecution. *Id.*

Where search bears a reasonable relation to the arrest, evidence secured during the search is admissible. *Collins v. United States* (D.C. Mun. App. 1945, 41 A. 2d 515).

In prosecution under indictment for housebreaking and grand larceny, admission of stolen article allegedly obtained by illegal search of defendant's room was not error in view of testimony that defendant agreed to the search and even pointed out stolen articles. *Alderman v. United States* (1948, 165 F. 2d 622, 83 U.S. App. D.C. 48).

##### Hotels

A hotel is a public place and search thereof is not so rigidly restricted as search of a private home. *Collins v. United States* (D.C. Mun. App. 1945, 41 A. 2d 515).

##### Illegal search, legalization

Under rule that officers should not be encouraged to proceed in an irregular manner on chance that all will end well, an illegal search cannot be legalized by what it brings to light. *Darnall v. United States* (D.C. Mun. App. 1943, 33 A. 2d 734).

##### Person aggrieved

In order to qualify as a "person aggrieved by an unlawful search and seizure" within Rule 41(e) of the Federal Rules of Criminal Procedure, 18 U.S.C. App., authorizing such a person to move the court for district in which property was seized for return of the property and to suppress for use as evidence anything so obtained, one must have been a victim of a search or seizure, one against whom the search was directed, as distinguished from one who claims prejudice only through use of evidence gathered as a consequence of a search or seizure directed at someone else. *Jones v. United States* (1960, 80 S. Ct. 725, 362 U.S. 257, 4 L. Ed. 2d 697).

A defendant charged with violation of narcotics laws had standing to contend that entry and subsequent seizure were unlawful notwithstanding he testified that property seized was not his and that place of arrest was not his home, where to hold that defendant's failure to acknowledge interest in narcotics or premises pre-



vented his attack upon search, would be to permit the Government to have advantage of contradictory positions as basis for conviction, since conviction flowed from defendant's possession of narcotics at time of search, yet fruits of that search, upon which conviction depended, were admitted into evidence on ground that defendant did not have possession of narcotics at that time, so that prosecution subjected defendant to penalties meted out to one in lawless possession while refusing him remedies designated for one in that situation. *Id.*

#### Probable cause

Affidavit, reciting that informants, who had previously been found reliable, had told police that defendant was selling narcotics from his apartment and describing in great detail a sale to one of informants made by defendant and witnessed by police and recounting corroborating details, was sufficient to support issuance of search warrant. *Hagan v. United States* (1966, 364 F. 2d 669, 124 U.S. App. D.C. 276).

Affidavit reciting that confidential informant whose reliability had been proven told narcotics agents that defendant was selling heroin in his apartment, that agents furnished him with funds to purchase narcotics, and that informant was observed to enter the apartment building and then emerge, surrendering to agents a narcotic substance purchased from defendant, disclosed probable cause for issuance of the warrant. *Jones v. United States*, (1965, 353 F. 2d 908, 122 U.S. App. D.C. 370).

Personal observations of suspicious conduct of defendant, charged with violations of gambling laws, during careful investigation, together with information received, gave probable cause for issuance of search warrant and warrant for arrest. *J. Minowitz v. United States* (1962, 298 F. 2d 682, 112 U.S. App. D.C. 21).

Allegations in affidavits upon basis of which a search warrant was issued, to the effect, among other things that certain drugs were delivered to a certain person in a certain apartment, were sufficient to create probable cause and justify issuance of search warrant for items described. *G. C. Hunt v. United States* (D.C. Mun. App. 1961, 171 A. 2d 515).

Affidavits before Commissioner were sufficient to satisfy requisite of probable cause for issuance both of arrest warrants of persons who were subsequently convicted of illegal gambling on evidence showing that they maintained betting office and issuance of search warrants for search of premises which contained such office. *Silverman et al. v. United States* (1960, 275 F. 2d 173, 107 U.S. App. D.C. 144, certiorari granted 80 S. Ct. 1237, 363 U.S. 801, 4 L. Ed. 2d 1145).

"Probable cause" exists for a search warrant if affiant has reasonable grounds at the time of his affidavit and the issuance of the warrant for the belief that the law was being violated on the premises to be searched, and if the apparent facts set out in the affidavit are such that a reasonably discreet and prudent man would be led to believe there was a commission of the offense charged. *Herson v. United States* (1936, 80 F. 2d 529, 65 App. D.C. 86).

Probable cause to justify a search must be determined by existence of facts known to officer before, not after, the search. *Darnall v. United States* (D.C. Mun. App. 1943, 33 A. 2d 734).

#### Remand

Since Court of Appeals, sua sponte, determined that government had not shown sufficient probable cause for a search or an arrest without a warrant and it was possible that government had additional evidence on question of probable cause which it did not bring forth since defense had not challenged introduction of evidence, case would be remanded for further proceedings. *Townsley v. United States*, (D.C. App. 1965, 215 A. 2d 482).

#### Search—Reasonableness

In testing the reasonableness of a search at time of arrest, all circumstances must be considered. *Collins v. United States* (D.C. Mun. App. 1945, 41 A. 2d 515).

Where police department had made a long, careful, and thorough investigation which indicated that hotel was being used for disorderly purposes and that misdemeanors were being committed therein continually, those in charge of the arrest were justified in organizing a raiding squad

sufficiently large to make all necessary and proper arrests, and officers were properly permitted to testify as to what they saw while making search even though a search warrant had not been obtained. *Id.*

#### — Validity

Where arrest which led to search was made without probable cause or warrant, search was illegal. *H. Bowling v. United States* (1965, 350 F. 2d 1002, 122 U.S. App. D.C. 25).

An automobile, including its trunk, may be searched without a warrant at time and place its occupants are placed under lawful arrest. *United States v. J. S. Washington* (D.C.D.C. 1965, 249 F. Supp. 40).

Search without a warrant is permitted only where search is incident to a valid arrest or where exceptional circumstances are present. *Townsley v. United States* (D.C. App. 1965, 215 A. 2d 482).

Defendant, allegedly a known felon, was under unlawful arrest when he answered officers' call to come out of restaurant although he had been committing no offense, not even loitering, and evidence then produced on demand that he reveal content of pocket was unlawfully seized. *C. H. Kelley v. United States* (1961, 298 F. 2d 310, 111 U.S. App. D.C. 396).

Items not described in a search warrant but discovered in course of search made pursuant to such warrant were admissible in evidence. *G. C. Hunt v. United States* (D.C. Mun. App. 1961, 171 A. 2d 515).

When a lawful search is executed pursuant to a lawful search warrant, contraband may be seized although not specifically described in the warrant. *Id.*

Premises under control of a person arrested may be searched contemporaneously as an incident to the arrest, and material seized as a result of such search may be introduced in evidence, even though not described in a search warrant. *Id.*

Where two plain-clothes men and complaining witness went to defendant's home with intention of making a search, if possible, for stolen goods and not to talk with him about reports of his possible involvement in three robberies, seizure of stolen property found in apartment was not incident to lawful arrest and was unlawful and could not be justified by exceptional circumstances and fruits of search were inadmissible in criminal prosecution. *United States v. E. E. Evans* (1961, 194 F. Supp. 90).

Defendant's invitation to "come on in" made to two plain-clothes men and complaining witnesses did not constitute a consent to search of apartment, and defendant did not waive any right to complain that search violated the Fourth Amendment. *Id.*

Action of officers who, with permission of owners, entered vacant row house adjoining that in which they suspected defendants were maintaining unlawful betting office, in inserting antenna spike under baseboard and into party wall and connecting ear phones so that they were then able to overhear defendants conduct their betting business by telephone, did not constitute such an unlawful "search and seizure" as is proscribed by the betting business by telephone, did not constitute such Fourth Amendment to the federal Constitution and such actions did not constitute an interference with any communications system in violation of the Communications Act of 1934. *Silverman et al. v. United States* (1960, 275 F. 2d 173, 107 U.S. App. D.C. 144, certiorari granted 80 S. Ct. 1237, 363 U.S. 801, 4 L. Ed. 2d 1145).

A search may be made only under a valid search warrant or as an incident to a lawful arrest. *Collins v. United States* (D.C. Mun. App. 1945, 41 A. 2d 515).

Even in connection with a valid arrest, a search is unlawful if it is merely exploratory and general and made solely to find evidence of defendant's guilt. *Id.*

#### — Waiver of consent

Waiver of consent to search must be proved by clear and positive testimony, and it must be established that there was no duress or coercion, actual or implied. *United States v. Willis* (D.C.D.C. 1965, 248 F. Supp. 265).

#### Sufficiency of copy

Where defendants although present at time when premises were searched pursuant to warrant, made no claim to property when inquiry was made in that respect by



searching officers, and defendants disavowed any interest in premises, they were without right to have been served with a copy of search warrant, and could not claim that copy left on premises was defective. *Shaw v. United States* (1954, 209 F. 2d 298, 93 U.S. App. D.C. 90, certiorari denied 74 S. Ct. 430, 347 U.S. 905, 98 L. Ed. 1063).

#### § 23-523. Time of execution of search warrants

(a) A search warrant shall not be executed more than ten days after the date of issuance and shall be returned to the court after its execution or expiration in accordance with section 23-521(f) (7).

(b) A search warrant may be executed on any day of the week and, in the absence of express authorization in the warrant pursuant to section 23-521(f) (5), shall be executed only during the hours of daylight. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 615.)

#### NOTES TO DECISIONS

##### Construction

The laws dealing with narcotics and drug problems are controlling over the general search warrant provisions of the United States and District of Columbia Codes. *United States v. C. Thomas et al.* (D.C. App. 1972, 294 A. 2d 164; cert. denied 93 S.Ct. 341, 448, 409 U.S. 992).

District of Columbia narcotics statute (section 33-414) providing that "the judge or commissioner shall insert a direction in the warrant that it may be served at any time in the day or night.", qualifies sections 23-521 to 23-523 permitting a nighttime execution of the search warrant, if and only if, there is an express authorization therefore pursuant to statute; the latter sections are applicable to nonnarcotic cases only. *United States v. H. Green* (1971, 331 F. Supp. 44).

This section providing that search warrant, absent express authorization in warrant pursuant to § 23-521, should be executed only during hours of daylight is, as special or local statute, qualification upon prior general federal statute providing that search warrant relating to offenses involving controlled substances may be served at any time of day or night if judge or United States magistrate is satisfied that there is probable cause to believe that grounds exist for warrant and its service at such time. *United States v. L. Gooding* (1971, 328 F. Supp. 1005).

The search warrant provisions of this section are not inapplicable to search warrants issued in connection with Federal offenses. *Id.*

##### Execution at night

Even though search warrant and supporting affidavit did not comply with the specific provisions of the District of Columbia Code relating to nighttime searches, search warrant, which was issued pursuant to Comprehensive Drug Abuse Prevention and Control Act on basis that there was reason to believe premises contained contraband and which permitted day or nighttime execution was valid. *United States v. C. Thomas et al.* (D.C. App. 1972, 294 A. 2d 164; cert. denied 93 S.Ct. 341, 448, 409 U.S. 992).

Search warrant and its execution during the nighttime hours is proper in narcotics case where there is a showing of probable cause both as to its existence for its service at such time, and where it is accompanied by a supporting affidavit as well as by an insertion within the warrant as to when it could be served. *United States v. H. Green* (1971, 331 F. Supp. 44).

Where none of the grounds set forth in § 23-522 for search warrant authorizing execution at night were included in either application or warrant, search made pursuant to warrant well after ending of daylight hours is invalid and evidence seized is subject to suppression, though warrant was issued in connection with alleged violations of federal narcotics laws. *United States v. L. Gooding* (1971, 328 F. Supp. 1005).

#### § 23-524. Execution of search warrants

(a) An officer executing a warrant directing a search of a dwelling house or other building or a

vehicle shall execute such warrant in accordance with section 23-591.

(b) An officer executing a warrant directing a search of a person shall give, or make reasonable effort to give, notice of his identity and purpose to the person, and, if such person thereafter resists or refuses to permit the search, such person shall be subject to arrest by such officer pursuant to section 23-581(a) for violation of section 432 of the Revised Statutes of the United States relating to the District of Columbia (D.C. Code, sec. 22-505) (resisting a police officer) or other applicable provision of law.

(c) (1) An officer or agent executing a search warrant shall write and subscribe an inventory setting forth the time of the execution of the search warrant and the property seized under it.

(2) If the search is of a person, a copy of the warrant and of the return shall be given to that person.

(3) If the search is of a place, vehicle, or object, a copy of the warrant and of the return shall be given to the owner thereof if he is present, or if he is not, to an occupant, custodian, or other person present; or if no person is present, the officer shall post a copy of the warrant and of the return upon the premises, vehicle, or object searched.

(d) A copy of the warrant shall be filed with the court whose judge or magistrate authorized its issuance on the next court day after its execution, together with a copy of the return.

(e) An officer or agent executing a search warrant may seize any property discovered in the course of the lawful execution of such warrant if he has probable cause to believe that such property is subject to seizure under section 23-521(d), even if the property is not enumerated in the warrant or the application therefor, and no additional warrant shall be required to authorize such seizure, if the property is fully set forth in the return. Such seizure may include taking physical or other impressions or performing chemical, scientific, or other tests or experiments.

(f) An officer or agent executing a search warrant may take photographs and measurements during the execution.

(g) An officer executing a warrant directing a search of premises or a vehicle may search any person therein (1) to the extent reasonably necessary to protect himself or others from the use of any weapon which may be concealed upon the person, or (2) to the extent reasonably necessary to find property enumerated in the warrant which may be concealed upon the person. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 615.)

#### CROSS REFERENCES

Execution of warrants by police force, see § 4-138.  
Search warrants in narcotic drug cases, see § 33-414.

#### NOTES TO DECISIONS

##### Federal search

Search under state warrant but conducted by District of Columbia police, producing evidence examined by federal experts who later testified at federal trial, was a "federal search" subject to federal rule. *United States v. R. Haywood* (1972, 464 F. 2d 756, 150 U.S. App. D.C. 247).

Claim that federal search under state warrant did not comply with federal rule was not cognizable, separate



from constitutional objection, where no objection was raised at trial or until 28 U.S.C. 2255 motion was filed. *Id.*

### § 23-525. Disposition of property

An officer or agent who seizes property in the execution of a search warrant shall cause it to be safely kept for use as evidence. No property seized shall be released or destroyed except in accordance with law and upon order of a court or of the United States attorney or Corporation Counsel for the District of Columbia or one of their assistants. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 616.)

#### CROSS REFERENCES

Disposition of drugs seized under Uniform Narcotic Drug Act, see § 33-417.

Powers and duties of property clerk of Metropolitan Police, see § 4-151 et seq.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Admissibility of evidence

Failure to strictly adhere to ordinance in ministerial matters in delivering property to county police officers who returned it to rightful owner rather than delivering it to marshal in accordance with District of Columbia code requirements did not render testimony concerning such inadmissible. *A. A. Brooks, Jr. v. State of Maryland* (Maryland Ct. of App. 1964, 200 A. 2d 177).

### SUBCHAPTER III.—WIRE INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

#### § 23-541. Definitions

As used in this subchapter—

(1) the term "wire communication" means any communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception furnished or operated by any person engaged as a common carrier in providing or operating such facilities;

(2) the term "oral communication" means any oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying the expectation;

(3) the term "intercept" means the aural acquisition of the contents of any wire or oral communication through the use of any intercepting device;

(4) the term "intercepting device" means any electronic, mechanical, or other device or apparatus which can be used to intercept a wire or oral communication other than—

(A) any telephone or telegraph instrument, equipment, or facility, or any component thereof, (i) furnished to the subscriber or user by a communications common carrier in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business; or (ii) being used by a communications common carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties; or

(B) a hearing aid or similar device being used to correct subnormal hearing to not better than normal;

(5) the term "investigative or law enforcement officer" means any officer of the United States or of the District of Columbia who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in this subchapter, and any attorney authorized by law to prosecute or participate in the prosecution of such offenses;

(6) the term "contents", when used with respect to any wire or oral communication, includes any information concerning the identity of the parties to the communication or the existence, substance, purport, or meaning of that communication;

(7) the term "judge" means a judge of the Superior Court of the District of Columbia, a judge of the District of Columbia Court of Appeals, a judge of the United States District Court for the District of Columbia, and a judge of the United States Court of Appeals for the District of Columbia circuit;

(8) the term "judge of competent jurisdiction" means, in addition to the judges included in paragraph (7)—

(A) a judge of a United States district court or a United States court of appeals not in the District of Columbia; and

(B) a judge of any court of general criminal jurisdiction of a State who is authorized by a statute of that State to enter orders authorizing interceptions of wire or oral communications;

(9) the term "aggrieved person" means a person who was a party to any intercepted wire or oral communication or a person against whom the interception was directed;

(10) the term "communication common carrier" has the same meaning which is given the term "common carrier" by section 3(h) of the Communications Act of 1934 (47 U.S.C. 153(h)); and

(11) the term "United States attorney" means the United States attorney for the District of Columbia or any of his assistants designated by him or otherwise designated by law to act in his place for the particular purpose in question.

(July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 616.)

#### EFFECTIVE DATE

See note preceding section 23-101.

### § 23-542. Interception, disclosure, and use of wire or oral communications prohibited

(a) Except as otherwise specifically provided in this subchapter, any person who in the District of Columbia—

(1) willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire or oral communication;

(2) willfully discloses or endeavors to disclose to any other person the contents of any wire or oral communication, or evidence derived therefrom, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication; or

(3) willfully uses or endeavors to use the contents of any wire or oral communication, or evidence derived therefrom, knowing or having reason to know, that the information was obtained



through the interception of a wire or oral communication;

shall be fined not more than \$10,000 or imprisoned not more than five years, or both; except that paragraphs (2) and (3) of this subsection shall not apply to the contents of any wire or oral communication, or evidence derived therefrom, that has become common knowledge or public information.

(b) It shall not be unlawful under this section for—

(1) an operator of a switchboard, or an officer, agent, or employee of a communication common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication, in the normal course of his employment while engaged in any activity which is a necessary incident to the rendering of his service or to the protection of the rights or property of the carrier of such communication, or to provide information, facilities, or technical assistance to an investigative or law enforcement officer who, under this subchapter, is authorized to intercept a wire or oral communication, but no communication common carrier shall utilize service observing or random monitoring except for mechanical or service quality control checks;

(2) a person acting under color of law to intercept a wire or oral communication, where such person is a party to the communication, or where one of the parties to the communication has given prior consent to such interception; or

(3) a person not acting under color of law to intercept a wire or oral communication, where such person is a party to the communication, or where one of the parties to the communication has given prior consent to such interception, unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States, any State, or the District of Columbia, or for the purpose of committing any other injurious act.

(July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 617.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23-544, 23-556.

#### § 23-543. Possession, sale, distribution, manufacture, assembly, and advertising of wire or oral communication intercepting devices prohibited

(a) Except as otherwise specifically provided in subsection (b) of this section, any person who in the District of Columbia—

(1) willfully possesses, sells, distributes, manufactures, or assembles an intercepting device, the design of which renders it primarily useful for the purpose of the surreptitious interception of a wire or oral communication; or

(2) willfully places in any newspaper, magazine, handbill, or other publication any advertisement of—

(A) any intercepting device, the design of which renders it primarily useful for the purpose of the surreptitious interception of a wire or oral communication; or

(B) any intercepting device where such advertisement promotes the use of such device for the purpose of the surreptitious interception of a wire or oral communication;

shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

(b) It shall not be unlawful under this section for—

(1) a communication common carrier or an officer, agent, or employee of, or a person under contract with a communication common carrier, in the usual course of the communication common carrier's business; or

(2) a person under contract with the Government of the United States, a State or a political subdivision thereof, or the District of Columbia, or an officer, agent, or employee of the Government of the United States, a State or a political subdivision thereof, or the District of Columbia; to possess, sell, distribute, manufacture or assemble, or advertise any intercepting device, while acting in furtherance of the appropriate activities of the United States, a State or political subdivision thereof, the District of Columbia, or a communication common carrier. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 618.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23-544, 23-556.

#### § 23-544. Confiscation of wire or oral communication intercepting devices

Any intercepting device in the District of Columbia—

- (1) possessed;
- (2) used;
- (3) sold;
- (4) distributed; or
- (5) manufactured or assembled;

in violation of section 23-542 or 23-543 may be seized and forfeited to the District of Columbia. Insofar as applicable and not inconsistent with the provisions of this chapter, all provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws; the disposition of such property; the remission or mitigation of such forfeitures; the compromise of claims; and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this title; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents or other persons as may be authorized or designated for that purpose by the Commissioner, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer. The proceeds from the sale of any property forfeited under this section shall be deposited in the Treasury to the credit of the general fund of the District of Columbia. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 619.)



§ 23-545. Repealed. Oct. 15, 1970, Pub. L. 91-452, title II, § 252, 84 Stat. 931

#### CODIFICATION

This section was enacted as a part of the revision and codification of title 23 by sec. 210(a) of Act July 29, 1970, Pub. L. 91-358, 84 Stat. 604, 619. For effective date of the section, see note preceding § 23-101. As so enacted, the section read as follows:

#### "§ 23-545. Immunity of witnesses

"(a) Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before a court or grand jury in the District of Columbia involving any violation of this subchapter and the person presiding over the proceeding communicates to the witness an order issued under this section, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination. But no testimony or other information compelled under the order issued under subsection (b) of this section, or any information obtained by the exploitation of such testimony or other information, may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

"(b) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before a court or grand jury in the District of Columbia, the court before which the proceeding is or may be held shall issue, upon the request of the United States attorney, an order requiring such individual to give any testimony or provide any other information which he refuses to give or provide on the basis of his privilege against self-incrimination.

"(c) The United States attorney may, with the approval of the Attorney General or the Deputy Attorney General, or any Assistant Attorney General designated by the Attorney General, request an order under subsection (b) when in the judgment of the United States attorney—

"(1) the testimony or other information from such individual may be necessary to the public interest; and

"(2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination."

#### EFFECTIVE DATE OF REPEAL AND SAVINGS CLAUSE

Sec. 260 of Act Oct. 15, 1970, Pub. L. 91-452, provided: "The provisions of part V of title 18, United States Code, added by title II of this Act, and the amendments and repeals made by title II of this Act [sections 252 to 258 amended secs. 22-2717 and 22-2720 and repealed secs. 22-2721, 23-545, 35-802, 35-1129, and 35-1346], shall take effect on the sixtieth day following the date of enactment of this Act. No amendment to or repeal of any provision of law under title II of this Act shall affect any immunity to which any individual is entitled under such provision by reason of any testimony or other information given before such day."

#### CROSS REFERENCE

For general immunity statute, see 18 U.S.C. 6002.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23-556.

§ 23-546. Applications for authorization or approval of interception of wire or oral communications

(a) The United States attorney may authorize, in writing, any investigative or law enforcement officer to make application to a court for an order authorizing the interception of wire or oral communications.

(b) The United States attorney may authorize, in writing, any investigative or law enforcement officer to make application to a court for an order of approval of the previous interception of any wire or oral communication, when the contents of such communication—

(1) relate to an offense other than that specified in an order of authorization;

(2) were intercepted in an emergency situation; or

(3) were intercepted in an emergency situation and relate to an offense other than that contemplated at the time the interception was made.

(c) An application for an order of authorization (as provided in subsection (a) of this section) or of approval (as provided in paragraph (2) of subsection (b) of this section) may be authorized only when the interception of wire or oral communications may provide or has provided evidence of the commission of or a conspiracy to commit any of the following offenses:

(1) Any of the offenses specified in the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901, and listed in the following table:

Offense:	Specified in—
Arson-----	sections 820, 821 (D.C. Code, secs. 22-401, 22-402).
Blackmail-----	section 819 (D.C. Code, sec. 22-2305).
Bribery-----	section 861 (D.C. Code, sec. 22-701).
Burglary-----	section 823 (D.C. Code, sec. 22-1801).
Destruction of property of value in excess of \$200.	section 848 (D.C. Code, sec. 22-403).
Gambling-----	sections 863, 866, 869e (D.C. Code, secs. 22-1501, 22-1505 22-1513).
Grand larceny-----	section 826 (D.C. Code, sec. 22-2201).
Kidnapping-----	section 812 (D.C. Code, sec. 22-2101).
Murder-----	sections 798, 800 (D.C. Code, secs. 22-2401, 22-2403).
Obstruction of justice..	section 862 (D.C. Code, sec. 22-703).
Receiving stolen property of value in excess of \$100.	section 829 (D.C. Code, sec. 22-2205).
Robbery-----	section 810 (D.C. Code, sec. 22-2901).

(2) Bribery as specified (A) in the second paragraph under the center heading "General Expenses" in the first section of the Act of July 1, 1902 (D.C. Code, sec. 22-702), and (B) in the Act of February 26, 1936 (D.C. Code, sec. 22-704).

(3) Extortion and threats as specified in sections 1501 and 1502 of the Omnibus Crime Control and Safe Streets Act of 1968 (D.C. Code, secs. 22-2306, 22-2307).

(4) Offenses involving dealing in narcotic drugs, marihuana, and other dangerous drugs as specified in sections 2 and 16 of the Uniform Narcotic Drug Act (D.C. Code, secs. 33-402, 33-416) and section 203 of the Dangerous Drug Act for the District of Columbia (D.C. Code, sec. 33-702). (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 620.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23-547, 23-556.

§ 23-547. Procedure for authorization or approval of interception of wire or oral communications

(a) Each application for an order authorizing or approving the interception of a wire or oral communication shall be made in writing upon oath or affirmation to a judge and shall state the applicant's



authority to make the application. Each application shall include—

(1) the identity of the investigative or law enforcement officer making the application, and the officer authorizing the application;

(2) a full and complete statement of the facts and circumstances relied upon by the applicant to justify his belief that an order should be issued, including (A) details as to the particular offense that has been, is being, or is about to be committed, (B) a particular description of the nature and location of the facilities from which or the place where the communication is to be or was intercepted, (C) a particular description of the type of communications sought to be or which were intercepted, and (D) the identity of the person, if known, who committed, is committing, or is about to commit the offense and whose communications are to be or were intercepted;

(3) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear or appeared to be unlikely to succeed if tried or to be too dangerous;

(4) a statement of the period of time for which the interception is or was required to be maintained, and if the nature of the investigation is or was such that the authorization for interception should not automatically terminate or should not have automatically terminated when the described type of communication has been or was first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will or would occur thereafter;

(5) a full and complete statement of the facts concerning all previous applications, known to the individual authorizing or making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire or oral communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each such application; and

(6) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain results.

(b) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(c) Upon application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire or oral communications within the District of Columbia, if the judge determines on the basis of the facts submitted by the applicant that—

(1) there is or was probable cause for belief that the person whose communication is to be or was intercepted is or was committing, has committed, or is about to commit a particular offense enumerated in section 23-546;

(2) there is or was probable cause for belief that particular communications concerning that offense will or would be obtained through the interception;

(3) normal investigative procedures have or would have been tried and have or had failed or reasonably appear or appeared to be unlikely to succeed if tried or to be too dangerous; and

(4) there is or was probable cause for belief that the facilities from which, or the place where, the wire or oral communications are to be or were intercepted were used, are being used, or are about to be used, in connection with the commission of the offense, or are or were leased to, listed in the name of, or commonly used by the person referred to in paragraph (1).

(d) If the facilities from which a wire communication is to be or was intercepted are or were being used by, are or were about to be used by, or are or were leased to, listed in the name of, or commonly used by, a licensed physician, a licensed attorney, or practicing clergyman, or if the place where an oral communication is to be or was intercepted is or was a place used primarily for habitation by a husband and wife or primarily by a licensed physician, licensed attorney, or practicing clergyman for his own professional purposes, no order authorizing or approving such interception may be issued unless the court, in addition to the matters provided in subsection (c) of this section, determines that—

(1) such facilities or place are or were being used or are or were about to be used in connection with conspiratorial activities characteristic of organized crime; and

(2) such interceptions will be so conducted as to minimize or eliminate the number of interceptions of privileged wire or oral communications between licensed physicians and patients, licensed attorneys and clients, practicing clergymen and confidants, and husbands and wives.

No otherwise privileged wire or oral communication intercepted in accordance with, or in violation of, the provisions of this subchapter shall lose its privileged character.

(e) Each order authorizing or approving the interception of any wire or oral communication shall specify—

(1) the identity of the person, if known, or otherwise a particular description of the person, if known, whose communications are to be or were intercepted;

(2) the nature and location of the communication facilities as to which, or the place where, authority to intercept or any approval of interception is or was granted;

(3) a particular description of the type of communication sought to be or which was intercepted, and a statement of the particular offense to which it relates;

(4) the identity of the agency authorized to intercept or whose interception is approved, and of the person authorizing the application; and

(5) the period of time during or for which the interception is authorized or approved, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

(f) An order authorizing the interception of a wire or oral communication shall, upon request of the applicant, direct that a communication common car-



rier, landlord, custodian, or other person shall furnish the applicant forthwith all information, facilities, or technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier, landlord, custodian, or person is according to the person whose communications are to be intercepted. Any communication common carrier, landlord, custodian, or other person furnishing such facilities or technical assistance shall be compensated therefore by the applicant at the prevailing rates.

(g) No order entered under this section may authorize or approve the interception of any wire or oral communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than thirty days. Extensions of an order may be granted, but only upon application for an extension made in accordance with subsection (a) of this section and the court making the findings required by subsection (c) of this section. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than thirty days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize or eliminate the interception of communications not otherwise subject to interception under this subchapter, and must terminate upon attainment of the authorized objective, or in any event in thirty days.

(h) Whenever an order authorizing interception is entered pursuant to this subchapter, the order may require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Reports shall be made at such intervals as the judge may require. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 621.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23-551, 23-555, 23-556.

#### § 23-548. Additional procedure for approval of interception of wire or oral communications

(a) Notwithstanding any other provision of this subchapter, any investigative or law enforcement officer, specially designated by the United States attorney for the District of Columbia, who reasonably determines that—

(1) an emergency situation exists with respect to conspiratorial activities characteristic of organized crime that requires a wire or oral communication to be intercepted before an order authorizing the interception can with due diligence be obtained, and

(2) there are grounds upon which an order could be entered under this subchapter to authorize interception,

may intercept the wire or oral communication if an application for an order approving the interception is initiated in accordance with this section within twelve hours and is completed within seventy-two hours after the interception has occurred, or begins

to occur. In the absence of an order, the interception shall immediately terminate when the communication sought is obtained or when the application for the order is denied, whichever is earlier. In the event the application for approval is denied, or in any other case where the interception is terminated without an order having been issued, the contents of any wire or oral communication intercepted shall be treated as having been obtained in violation of this subchapter, and an inventory shall be served as provided for in section 23-550 on the person named in the application.

(b) When an investigative or law enforcement officer, while engaged in intercepting wire or oral communications in the manner authorized by this subchapter, intercepts wire or oral communications relating either to offenses other than those specified in the order of authorization or to offenses other than those offenses for which interception was made pursuant to subsection (a) of this section, he shall make an application to a judge as soon as practicable for approval for disclosure and use, in accordance with section 23-553, of the information intercepted. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 623.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23-550, 23-555, 23-556.

#### § 23-549. Maintenance and custody of records

(a) The contents of any wire or oral communication intercepted by any means authorized by this subchapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire or oral communication under this subchapter shall be done in such way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, the recordings shall be made available to the judge issuing the order and sealed under his directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for ten years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of subsection (a) of section 23-553, for investigations. The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire or oral communication or evidence derived therefrom under subsection (b) of section 23-553.

(b) Applications made and orders granted under this subchapter shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. The applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for ten years.

(c) Any violation of the provisions of this subsection may be punished as contempt of court. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 624.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23-551, 23-556.



**§ 23-550. Inventory**

(a) Within a reasonable time but not later than ninety days after the filing of an application for an order of approval under section 23-548 which is denied, or the termination of the period of any order or extensions thereof, the issuing or denying judge shall cause to be served, on the persons named in the order or the application, and such other parties to intercepted communications as the judge may determine, in his discretion, are necessary in the interest of justice, an inventory which shall include notice of—

(1) the fact of the entry of the order or the application for an order of approval which was denied;

(2) the date of the entry of the order or the denial of the application for an order of approval;

(3) The period of authorized, approved, or disapproved interception; and

(4) whether during the period wire or oral communications were intercepted.

The judge, upon the filing of a motion, may in his discretion make available to the person or his counsel for inspection such portions of the intercepted communications, applications, and orders as the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge, the serving of the inventory required by this subsection may be postponed. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 624.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 23-548, 23-551, 23-556.

**§ 23-551. Procedure for disclosure and suppression of intercepted wire or oral communications**

(a) The contents of any intercepted wire or oral communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States or the District of Columbia unless not less than ten days before the trial, hearing, or proceeding—

(1) the inventory as provided in section 23-550 has been served; and

(2) the parties to the action have been served with a copy of the order and accompanying application under which the interception was authorized or approved.

This ten-day period may be waived by court order where a court finds that it was not possible to furnish the party with the above information ten days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving the information.

(b) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States or the District of Columbia, may move to suppress the contents of any intercepted wire or oral communication, or evidence derived therefrom, on the grounds that—

(1) the communication was unlawfully intercepted;

(2) the order of authorization or approval under which it was intercepted is insufficient on its face;

(3) the interception was not made in conformity with the order of authorization or approval;

(4) service was not made as provided in section 23-547; or

(5) the seal prescribed by section 23-549(a) is not present and there is no satisfactory explanation for its absence.

The motion shall be made before the trial, hearing or proceeding unless there was no opportunity to make the motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this subchapter and shall not be received in evidence in the trial, hearing, or proceeding. The judge, upon the filing of the motion by the aggrieved person, may in his discretion make available to the aggrieved person or his counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interests of justice. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 624; Dec. 7, 1970, Pub. L. 91-530, § 2(c), 84 Stat. 1390.)

**AMENDMENT**

1970—Section 2(c) of act Dec. 7, 1970, Pub. L. 91-530, amended the section (1) by striking out "suppression" in the heading and inserting in place thereof "suppression" and (2) by striking out "subsection (1) of this section" in subsec. (b) (5) and inserting in lieu thereof "section 23-549(a)".

**EFFECTIVE DATE OF 1970 AMENDMENT**

Section 2(d) of act Dec. 7, 1970, Pub. L. 91-530, provided: The amendments made by subsections (a) and (c) of this section [subsec. (c) amended § 23-551] shall take effect on the first day of the seventh calendar month which begins after the date of the enactment of the Act of July 29, 1970 (84 Stat. 473).

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 23-552, 23-556.

**§ 23-552. Government appeals**

In addition to any other right to appeal, the United States or the District of Columbia, as the case may be, shall have the right to appeal from an order granting a motion to suppress made under section 23-551 or from the denial of an application for an order of approval, if the United States or the District of Columbia, as the case may be, shall certify to the judge or other official granting such motion or denying the application that the appeal is not taken for purposes of delay. Appeal shall be taken within thirty days after the date the order was entered and shall be diligently prosecuted. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 625.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 23-556.

**§ 23-553. Authorization for disclosure and use of intercepted wire or oral communications**

(a) Any investigative or law enforcement officer who, by any authorized means and in conformity with this subchapter, has obtained knowledge of the contents of any wire or oral communication, or evidence derived therefrom, may disclose or use such contents or evidence to the extent that such disclosure or use is appropriate to the proper performance of his official duties.



(b) Any person who, by any authorized means and in conformity with this subchapter, has obtained knowledge of the contents of any wire or oral communication intercepted in accordance with this subchapter, or other lawful authority, or evidence derived therefrom, may disclose the contents of such communication or evidence while giving testimony under oath or affirmation in any criminal trial, hearing, or proceeding before any grand jury or court.

(c) The contents of any wire or oral communication intercepted in conformity with this subchapter, or evidence derived therefrom, may otherwise be disclosed or used only by court order upon a showing of good cause. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 625.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23-548, 23-549, 23-556.

#### § 23-554. Authorization for recovery of civil damages

(a) Any person whose wire or oral communication is intercepted, disclosed, or used in violation of this subchapter shall—

(1) have a civil cause of action against any person who intercepts, discloses, or uses, or procures any other person to intercept, disclose, or use, such communications; and

(2) be entitled to recover from any such person—

(A) actual damages, but not less than liquidated damages computed at the rate of \$100 a day for each day of violation, or \$1,000 whichever is higher;

(B) punitive damages; and

(C) a reasonable attorney's fee and other litigation costs reasonably incurred.

(b) Good faith reliance on a court order or legislative authorization shall constitute a complete defense to an action brought under this section or any other law.

(c) As used in this section, the term "person" includes the District of Columbia. The District of Columbia shall not assert any governmental immunity to avoid liability under this section. Judgment against the District of Columbia shall not constitute a bar to action against any other person. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 626.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23-556.

#### § 23-555. Reports concerning intercepted wire or oral communications

(a) Within thirty days after the expiration of an order or an extension entered under section 23-547 or 23-548 or the denial of an order of approval, the issuing or denying court shall report to the chief judge of the District of Columbia of Appeals—

(1) that an order or extension was applied for;

(2) the kind of order or extension applied for;

(3) if the order or extension was granted as applied for, was modified, or was denied;

(4) the period of the interceptions authorized by the order, and the number and duration of any extensions of the order;

(5) the offense specified in the order or application, or extension of an order;

(6) the identity of the applying investigative or law enforcement officer, the agency making the application, and the person authorizing the application; and

(7) the character and location of the facilities from which and the place where communications were (and were to be) intercepted.

(b) In January of each year the United States Attorney for the District of Columbia shall report to the Congress of the United States and the chief judge of the District of Columbia Court of Appeals—

(1) the information required by paragraphs (1) through (7) of subsection (a) of this section with respect to each application for an order or extension made during the immediately preceding calendar year;

(2) a general description of the interceptions made under such order or extension, including—

(A) the approximate character and frequency of incriminating communications intercepted;

(B) the approximate character and frequency of other communications intercepted;

(C) the approximate number of persons whose communications were intercepted; and

(D) the approximate character, amount, and cost of the manpower and other resources used in the interceptions;

(3) the number of arrests resulting from interceptions made under such order or extension;

(4) the offenses for which the arrests were made;

(5) the number of trials resulting from such interceptions;

(6) the number of motions to suppress made with respect to such interceptions;

(7) the number of motions to suppress granted or denied;

(8) the number of convictions resulting from such interceptions;

(9) the offenses for which the convictions were obtained;

(10) a general assessment of the importance of the interceptions; and

(11) for purposes of comparison, the information required by paragraphs (2) through (10) of this subsection with respect to orders and extensions obtained in other preceding calendar years.

(c) Reports made pursuant to the section shall be made in accordance with regulations prescribed by the Director of the Administration Office of the United States Courts under section 2519(3) of title 18, United States Code. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 626.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23-556.

#### § 23-556. Relation to Federal law on wire interception and interception of oral communications

(a) Sections 23-542, 23-543, 23-545, 23-553, 23-554, and 23-555 of this subchapter shall be construed to supplement, and not to supersede or otherwise limit, the provisions of chapter 119 of title 18, United States Code (relating to wire interception and interception of oral communications).



(b) Sections 23-546, 23-547, 23-548, 23-549, 23-550, 23-551, and 23-552 of this subchapter shall be construed not to supersede or otherwise limit the provisions of chapter 119 of title 18, United States Code, except in cases of irreconcilable conflict. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 627.)

#### REFERENCE IN TEXT

Section 23-545 (Immunity of witnesses), referred to in text, was repealed by act Oct. 15, 1970, Pub. L. 91-452, title II, § 252, 84 Stat. 931. For general immunity statute enacted by Pub. L. 91-452, see 18 U.S.C. 6002.

### SUBCHAPTER IV.—ARREST WARRANT AND SUMMONS

#### SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 23-501, 23-591.

#### § 23-561. Issuance, form, and contents

(a) (1) A judicial officer may issue a warrant for the arrest of any person upon a sworn complaint which states facts constituting an offense over which the judicial officer has jurisdiction for trial or preliminary examination, and establishing probable cause to believe that the person committed the offense. More than one warrant may issue on the same complaint.

(2) Upon request of the prosecutor, a summons shall issue instead of an arrest warrant. More than one summons may issue on the same complaint. If a person fails to appear in response to a summons, a warrant shall issue for his arrest.

(b) (1) An arrest warrant shall be signed by the judicial officer and shall state or contain the name of the issuing court, the date of issuance of the warrant, a description of the offense charged, and the name of the person to be arrested or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall command that the person be arrested and brought before the issuing court or officer. If the complaint establishes probable cause to believe that one of the conditions set out in subparagraphs (A) through (D) of section 23-591(c) (2) is likely to exist at the time and place at which such warrant is to be executed, the warrant may contain an authorization that it be executed as provided in section 23-591.

(2) A summons shall be in the same form as an arrest warrant except that it shall summon the person named to appear before the issuing court or officer at a stated time and place.

(c) An arrest warrant may be directed to a specific law enforcement officer or to any classifications of officers of the Metropolitan Police of the District of Columbia or other agency authorized to make arrests or execute process.

(d) Each complaint shall be made in writing upon oath or affirmation. Except for good cause shown, no warrant shall be issued unless the complaint has been approved by an appropriate prosecutor. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 627.)

#### EFFECTIVE DATE

See note preceding section 23-101.

#### § 23-562. Execution and return

(a) (1) A warrant issued pursuant to this subchapter shall be executed by the arrest of the person named. The officer need not have the warrant in his possession at the time of the arrest, but upon request he shall show the warrant to the person as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall inform the person of the offense charged and of the fact that a warrant has been issued.

(2) A summons shall be served upon a person by delivering a copy to him personally, by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by mailing it to the person's last known address.

(b) (1) The officer executing a warrant shall make return thereof to the judicial officer before whom the person is brought for preliminary examination. At the request of the appropriate prosecutor, any unexecuted and unexpired warrant shall be returned to the issuing court or judicial officer and shall be canceled.

(2) On or before the return day the person to whom a summons was delivered for service shall make return thereof to the court or officer before whom the summons is returnable.

(3) At the request of the appropriate prosecutor made at any time while the complaint is pending, a warrant returned unexecuted and not canceled or expired or a summons returned unserved or a duplicate thereof may be delivered by the judicial officer to the marshal or other authorized person for execution or service.

(c) (1) A law enforcement officer within the District of Columbia making an arrest under a warrant issued pursuant to this subchapter, making an arrest without a warrant, or receiving a person arrested by a special policeman or other person pursuant to section 23-582, shall take the arrested person without unnecessary delay before the court or other judicial officer empowered to commit persons charged with the offense for which the arrest was made. This subsection, however, shall not be construed to conflict with or otherwise supersede section 3501 of title 18, United States Code. When a person arrested without a warrant is brought before a judicial officer, a complaint or information shall be filed forthwith.

(2) Before taking an arrested person to a judicial officer, a law enforcement officer may perform any recording, fingerprinting, photographing, or other preliminary police duties required in the particular case, and if such duties are performed with reasonable promptness, the period of time required therefor shall not constitute a delay within the meaning of this section. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 628.)

#### CROSS REFERENCE

Execution of warrants by police force, see § 4-138.

#### NOTES TO DECISIONS

##### Probable cause

Where police officers, in attempting to execute warrant for arrest of usually armed suspect who was involved in narcotics and wanted for murder, saw two men enter apartment building of suspect's "number one girl friend"



with a private key about 11:30 P.M., saw lights in area of girl friend's apartment light up, waited from 11:00 P.M. to 5:00 A.M. in order to avoid armed resistance and then announced their presence three times, one of which informed the girl friend that they had a warrant for the suspect, before girl friend opened her door, such officers had probable cause to enter the apartment and search for the suspect and to require girl friend to open the door even without their having a search warrant, and constitutionally protected interest of privacy was not unreasonably impaired. *United States v. R. W. Brown* (1972, 467 F. 2d 419, 151 U.S. App. D.C. 365).

Arrest warrant, issued under rule governing execution of arrest warrants, provides authority to enter any premises for purpose of enforcing warrant, if police officer has probable cause to believe that subject is located therein. *Id.*

#### Standards

Standards to be applied for execution of an arrest warrant at a residence of a third party not named in the warrant is reasonable belief of police officer that person named in the warrant is present in the third party's residence. *United States v. R. W. Brown* (1972, 467 F. 2d 419, 151 U.S. App. D.C. 365).

#### § 23-563. Territorial and other limits

(a) A warrant or summons for an offense punishable by imprisonment for more than one year issued by the Superior Court of the District of Columbia may be served at any place within the jurisdiction of the United States.

(b) A warrant or summons issued by the Superior Court of the District of Columbia for an offense punishable by imprisonment for not more than one year, or by a fine only, or by such imprisonment and a fine, may be served in any place in the District of Columbia but may not be executed more than one year after the date of issuance.

(c) A person arrested outside the District of Columbia on a warrant issued by the Superior Court of the District of Columbia shall be taken before a judge, commissioner, or magistrate, and held to answer in the Superior Court pursuant to the Federal Rules of Criminal Procedure as if the warrant had been issued by the United States District Court for the District of Columbia.

(d) When an application alleges that (1) an act which would constitute a felony if committed by an adult has been committed by a child, (2) the child may not with due diligence be found within the District of Columbia, and (3) if the District of Columbia is a party to article XVII of the Interstate Compact on Juveniles, the child is not known to be in a jurisdiction which is a party to such article, a juvenile officer may secure a warrant for the arrest of the child as if he were an adult. When the child is brought before the issuing court or officer pursuant to the warrant he shall be ordered transferred to the Family Division of the Superior Court pursuant to section 16-2302. If the child is found in a jurisdiction which is a party to such article and if the District of Columbia is a party to such article, he shall be returned as provided in that article and the warrant shall be null and void. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 628.)

#### REFERENCE IN TEXT

The Interstate Compact on Juveniles, referred to in subsec. (d), is set out as a note to § 32-1102.

## SUBCHAPTER V.—ARREST WITHOUT WARRANT

### SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 23-501.

#### § 23-581. Arrests without warrant by law enforcement officers

(a)(1) A law enforcement officer may arrest, without a warrant having previously been issued therefor—

(A) a person whom he has probable cause to believe has committed or is committing a felony;

(B) a person whom he has probable cause to believe has committed or is committing an offense in his presence;

(C) a person whom he has probable cause to believe has committed or is about to commit any offense listed in paragraph (2) and, unless immediately arrested, may not be apprehended, may cause injury to others, or may tamper with, dispose of, or destroy evidence.

(2) The offenses referred to in subparagraph (C) of paragraph (1) are the following:

(A) The following offenses specified in the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901, and listed in the following table:

Offense:	Specified in—
Assault -----	section 806 (D.C. Code, sec. 22-504).
Petit larceny-----	section 827 (D.C. Code, sec. 22-2202).
Receiving stolen goods--	section 829 (D.C. Code, sec. 22-2205).
Unlawful entry-----	section 824 (D.C. Code, sec. 22-3102).

(B) Attempts to commit the following offenses specified in such Act and listed in the following table:

Offense:	Specified in—
Burglary -----	section 823 (D.C. Code, sec. 22-1801).
Grand larceny-----	section 826 (D.C. Code, sec. 22-2201).
Unauthorized use of vehicles.	section 826b (D.C. Code, sec. 22-2204).

(b) A law enforcement officer may, even if his jurisdiction does not extend beyond the District of Columbia, continue beyond the District, if necessary, a pursuit commenced within the District of a person who has committed an offense or whom he has probable cause to believe has committed or is committing a felony, and may arrest that person in any State the laws of which contain provisions equivalent to those of section 23-901. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 629.)

#### EFFECTIVE DATE

See note preceding section 23-101.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23-524, 23-582.

#### 1970 AMENDMENT OF FORMER SECTION 23-306

Section 2 of Act Oct. 22, 1970, Pub. L. 91-497, 84 Stat. 1093, provided:

Subsection (b) of section 207 of the Act entitled "An Act to provide for the more effective prevention, detection, and punishment of crime in the District of Columbia", approved June 29, 1953 (D.C. Code, 23-306(b)) is amended—



(1) by striking out "section 863(a)" and inserting in lieu thereof "sections 863(a) and 842 (b) and (c)"; and

(2) by inserting immediately before the period at the end the following: "(failure to pay for lodging or food; D.C. Code, sec. 22-1301)".

As so amended, former section 23-306 read:

§ 23-306. Arrests without warrant for unlawful possession of implements of crime—Burglar tools—Weapons—Lottery tickets—Stolen property.

(a) Arrests without a warrant, and searches of the person and seizures pursuant thereto, may be made for violation of any section listed in subsection (b), by police officers, as in the case of a felony, upon probable cause that the person arrested is violating the section involved at the time of arrest.

(b) Subsection (a) shall apply with respect to section 22-3601 (possession of implements of crime), sections 22-3203, 22-3204, and 22-3214, providing for the control of dangerous weapons in the District, section 22-1502 (possession of lottery tickets), and section 22-1301(b) and (c) (failure to pay for food and lodging).

(c) Arrests without a warrant, and searches of the person and seizures pursuant thereto, may be made for violation of section 22-2202 (petit larceny), by police officers, as in the case of a felony, upon probable cause that the person arrested has in his possession at the time of the arrest, property taken in violation of that section.

(d) No evidence discovered in the course of any arrest, search, or seizure authorized by this section shall be admissible in any criminal proceeding against the person arrested unless at the time of such arrest he was violating one of the sections referred to in subsection (b) or had in his possession property taken in violation of the section referred to in subsection (c).

[Title 23 was enacted into law by section 210(a) of Pub. L. 91-358, eff. Feb. 1, 1971. As of that date, section 207 of the Act of June 29, 1953 (former section 23-306) was repealed by section 210(b) (10) of Pub. L. 91-358.]

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Probable cause

Where police officer, who was on routine patrol looking for burglary suspects or people breaking into automobiles, observed defendant and an unidentified companion walking on street and looking into parked automobiles, where his observation of the two continued for more than an hour until he and a fellow officer lost them in grounds of zoo, where the officers later observed them coming out of zoo with defendant carrying a brown paper bag that he had not had when he went into the zoo, and where defendant's companion ran when he saw the officers, the police had reasonable grounds to believe that the bag contained the proceeds of a crime, to stop defendant and to ask him to put down the bag, which then opened a bit and revealed what appeared to be a tape deck. *M. J. Smith v. United States* (D.C. App. 1972, 295 A. 2d 64; cert. denied 93 S. Ct. 1932, — U.S. —).

Where police officers who had observed the defendant peering into automobiles later observed defendant holding some object under his coat and when defendant refused to remove his hands from his pockets search for weapons was made disclosing that defendant was concealing beneath his coat a tape player, the connecting wires of which had been broken, action of police in confronting defendant on street was reasonable and disclosure of the tape player gave officers probable cause for arrest even though no victim had reported a loss, and pistol seized two days later during execution of arrest warrant was not the fruit of an unlawful arrest. *L. A. Jenkins v. United States* (D.C. App. 1971, 284 A. 2d 460).

Fact that only one of the two police officers who confronted defendant on public street saw tape player that defendant was concealing under his coat did not render officers' testimony incredible. *Id.*

##### Stop and frisk

In justifying particular intrusion, police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. *J. S. Stephenson v. United States* (D.C. App. 1972, 296 A. 2d 606; cert. denied 93 S. Ct. 1535, 411 U.S. 907).

Fourth Amendment does not require policeman who lacks precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow crime to occur or criminal to escape. *Id.*

Where two police officers observed defendant and companion running down street in downtown area at 4:30 a.m., where defendant and companion slowed to a walk when they spotted officers, where one officer had knowledge of prior recent crimes in that area, officers were justified in stopping defendant and companion to question them as to their prior whereabouts. *Id.*

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Arrest

"Arrest" occurred when police officer waved motorist to a halt and restricted his liberty of movement pursuant to traffic violation, notwithstanding officer's testimony that he did not place motorist under arrest until after glove compartment had been opened and numbers slips discovered, when officer formally arrested him for both traffic violation and lottery violation. *United States v. J. S. Washington* (D.C.D.C. 1965, 249 F. Supp. 40).

A man is under "arrest" at that point when officer has effectively restrained him and he is cognizant of that restraint, not necessarily when officer formally proclaims that he is being taken into custody. *Id.*

##### Cause for arrest

Where a police officer had a conversation with the victim of an assault and petit larceny and proceeded in patrol car in search of the assailants, and the stolen articles were in plain view of officer in defendant's hand and at his feet in the gutter, an arrest was authorized when the officer saw the stolen articles. *R. L. Thompkins v. United States* (D.C. App. 1969, 251 A. 2d 636).

Where in making an initial stop of the defendant, the officer was engaged in routine on-the-street investigation in nearby area of a crime minutes after it occurred in an early hour of the morning in his effort to find perpetrator while the trail was still warm, and under these circumstances the initial stop of defendant was neither an arrest nor an arbitrary detention, but arrest occurred after officer saw the articles which fit description of stolen property, which gave sufficient cause to arrest, and seizure was not invalid. *Id.*

##### Evidence

Where police officer, after making informal arrest for traffic violation, searched glove compartment of automobile for driver's registration card, discovering numbers slips, and then formally arrested driver for both traffic violation and lottery violation, and made further search of automobile for lottery evidence, the lottery evidence was not subject to suppression. *United States v. J. S. Washington* (D.C.D.C. 1965, 249 F. Supp. 40).

##### — Sufficiency

Officer's independent testimony with respect to defendant's possession of gun to which no objection was made was sufficient to support defendant's conviction for carrying pistol without a license. *L. G. Lee v. United States* (D.C. App. 1968, 242 A. 2d 212).

##### Probable cause

Arrests without warrant and searches and seizures pursuant thereto may be made for a misdemeanor upon probable cause that the person arrested has in his possession at the time of arrest property taken in violation of section 22-2202. *F. C. Clemm, Jr. v. United States* (D.C. App. 1970, 260 A. 2d 687).

Police officer, who was told by taxicab driver who pointed toward three men walking on street that driver had seen person up the street tuck gun under his belt, had probable cause to stop and search the only three men who were present on street even though taxicab driver did not say which of the men he had seen with gun, and gun found on person of defendant in such search was admissible. *H. L. Gaskins v. United States* (D.C. App. 1970, 262 A. 2d 810).

Viewing by officers of the inside of the automobile in which defendant was sitting on parking lot of restaurant at 4:30 a.m. did not constitute a search and was merely a customary check of premises and when they saw two other persons lying down in automobile and observed what appeared to be a .38 caliber cartridge on the floor they had



probable cause to believe that there was a dangerous weapon in the automobile and were justified in arresting defendant, and revolver which was in plain sight when officers opened door to make arrest was admissible. *J. E. Lucas v. United States* (D.C. App. 1969, 256 A. 2d 574).

Standard to be applied in determining probable cause for arrest is that of a reasonable, cautious and prudent police officer and must be judged in the light of his experience and training, and bases for finding of probable cause must be those factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. *B. Wright, Jr. v. United States* (D.C. App. 1968, 242 A. 2d 833).

Arrest without a warrant for carrying a dangerous or deadly weapon may be made on probable cause. *L. G. Lee v. United States* (D.C. App. 1968, 242 A. 2d 212).

Police officer is not privileged to ignore facts which would give him reasonable cause to believe that a person is carrying a dangerous or deadly weapon. *Id.*

Where officer at early hour in morning saw defendant and another man talking to manager of motel and when officer approached they hurriedly moved away from door and officer received inconsistent answers to his inquiries to the men and officer noted that defendant was carrying bag containing large heavy object and when officer asked if there was gun in the bag, defendant started backing off and did not answer, officer had probable cause to arrest defendant for carrying pistol and to seize the gun. *Id.*

Evidence established that police officers saw gun handle sticking out of defendant's pocket and had probable cause to believe that defendant was carrying dangerous weapon in violation of law. *United States v. P. Jenkins, Jr.* (1967, 276 F. Supp. 958).

Police officers may arrest without warrant when there is probable cause to believe that felony has been committed and that arrested person committed it, or when misdemeanor has been committed in their presence or view, and may also arrest for certain misdemeanors, including petit larceny, using probable cause standard. *E. C. Singleton v. United States* (D.C. App. 1967, 225 A. 2d 315).

Sales clerk may report shoplifting incident to special policeman who can then arrest suspect on probable cause. *Id.*

#### Probable cause for arrest

Police officers who saw parked automobile resting on its axles and three tires scattered nearby when they came upon scene at which two security officers from nearby apartment building had stopped the defendant, observed by security officers walking away from vicinity of vehicle carrying jumper cables and a jack plate, for questioning during which neighbor called out from window to say that defendant was one of the men who had been "messing" with stripped vehicle had probable cause to arrest for petit larceny notwithstanding arresting officers did not actually see the defendant remove or carry away tires from vehicle. *United States v. C. E. Bynum* (D.C. App. 1971, 283 A. 2d 649).

A police officer in the District of Columbia has the power to make a warrantless arrest of a citizen when he has a probable cause to believe that the citizen has committed felony or certain misdemeanors designated by statute, and the classic test for probable cause is whether the officer had knowledge of facts and circumstances which would warrant a prudent man in believing that an offense had been committed. *A. B. Clarke v. United States* (D.C. App. 1969, 256 A. 2d 782).

Officers who, in responding to radio report of possible robbery, found defendant being restrained outside dwelling, who observed one victim still handcuffed to stair rail, and who were informed by men restraining defendant that they had observed him fleeing from house, had probable cause to believe that defendant had committed crime and thus had probable cause for arrest. *Kennedy v. United States* (1965, 353 F. 2d 462 122 U.S. App. D.C. 291).

The evidence, including police officer's testimony that when he looked through partially opened window of parked automobile he recognized operator of automobile as meeting the description given in police broadcast, disclosed that the on-the-spot arrest of operator was made with probable cause. *Smith v. United States* (1965, 353 F. 2d 838, 122 U.S. App. D.C. 300).

Evidence discovered subsequent to time of arrest may not be considered in determining probable cause. *Id.*

Validity of arrest without a warrant depended on whether officers had probable cause to believe that offense had been or was being committed. *Townsley v. United States* (D.C. App. 1965, 215 A. 2d 482).

Probable cause needed for an arrest without a warrant must be as great or greater than that required to be shown in order to obtain a warrant. *Id.*

Police officer who saw parked automobile bearing temporary District of Columbia tags and a Virginia inspection sticker was authorized to make initial inquiry about ownership of automobile and, in course thereof, to make arrest for illegal possession of blackjack which he saw on floor of automobile. *H. Jefferson and R. Cooper v. United States* (1965, 349 F. 2d 714, 121 U.S. App. D.C. 279).

Where, over a period of two and a half months, officers had placed numbers bets on fifteen separate occasions at one location, and, on ten separate occasions, had observed a suspect depart from that location with bulging pockets and enter other premises, from which he subsequently departed "without the bulge," officers had reasonable grounds to believe that latter premises were being used in lottery operations, and that defendant, who at time such premises were searched pursuant to a search warrant was the only male present and was leaving "hastily," was participating therein, justifying arrest of defendant without an arrest warrant and seizure and use of incriminating evidence found in course of search of defendant made in connection with such arrest. *Stephens v. United States* (1959, 271 F. 2d 832, 106 U.S. App. D.C. 249).

Police officers who were on routine investigation of report that heroin was being "capped" at rooming house and who saw paraphernalia used by narcotics addicts in room from public hallway to which they had been properly admitted had probable cause to enter the room to arrest defendant, and having done so, properly seized heroin found in envelope and the paraphernalia. *Jennings v. United States* (1957, 247 F. 2d 784, 101 U.S. App. D.C. 198).

Where police officer observed defendant and another, both of whom he recognized as having prior convictions for larceny, carrying a console-type record player and followed them into a liquor store, saw that the record player was new and questioned them about the machine and defendant gave improbable and unbelievable answers, officer had probable cause to arrest defendant for petit larceny, and refusal of trial court to suppress the evidence seized at time of arrest was not erroneous. *Brooks v. United States* (D.C. Mun. App. 1960, 159 A. 2d 876).

Probable cause to justify arrest without warrant means more than a bare suspicion, and it exists where the facts and circumstances within officers' knowledge are sufficient in themselves to warrant a reasonable belief that an offense has been or is being committed. *Cormier v. United States* (D. C. Mun. App. 1957, 137 A. 2d 212).

Where officers were told during nighttime, by a young girl, that a man fitting general description had chased girl out of house with a gun, officers had probable cause to arrest defendant without warrant. *Id.*

Where officers had probable cause to arrest defendant without warrant, ensuing search was legal and unregistered guns discovered thereby were admissible in evidence. *Id.*

Where officer observed person on street at 5:19 a.m., and, when asked what he was doing on street at such hour, person answered evasively, and when turning to leave, officer's elbow bumped solid unseen object on person's stomach, officer had probable cause for arrest and search which revealed concealed loaded pistol. *Dickerson v. United States* (D.C. Mun. App. 1956, 120 A. 2d 588).

In determining whether police officer had probable cause for arrest and search of person, which revealed concealed pistol, question was not whether person was proved guilty beyond reasonable doubt, but whether as practical matter, man of ordinary and reasonable caution would have reason to believe that person was carrying a gun. *Id.*

Where first defendant had once informed arresting officer that defendant was engaged in numbers business, and first defendant was known to have police record as



numbers violator and had been acting suspiciously, and officer, while going to inform second defendant of parking violation, saw second defendant pass to first defendant, in manner and at time that number slips are usually passed, an envelope, officer could, without warrant, seize envelope and arrest defendants. *Price et ano., v. United States* (D.C. Mun. App. 1956, 119 A. 2d 718).

#### Remand

Since Court of Appeals, sua sponte, determined that government had not shown sufficient probable cause for a search or an arrest without a warrant and it was possible that government had additional evidence on question of probable cause which it did not bring forth since defense had not challenged introduction of evidence, case would be remanded for further proceedings. *Townesley v. United States* (D.C. App. 1965, 215 A. 2d 482).

#### Search and seizure

In District of Columbia principle that police may make arrest and incidental search in public place without warrant upon probable cause is applicable to suspected violations of statute prohibiting carrying concealed weapons. *United States v. A. Huff et ano.* (1967, 279 F. Supp. 143).

Where defendants were lawfully stopped originally pursuant to police officer's power to check for traffic violations and when officer asked driver to check glove compartment for registration card, officer thought he saw a revolver in the compartment, sufficient information existed to warrant officer in believing that an offense had been committed and there was probable cause for search without warrant, and that did not evaporate when no gun was found in glove compartment. *Id.*

Once cause existed to search automobile for prohibited weapon, likely places within automobile could be inspected. *Id.*

Police officer's limited inspection of glove compartment in automobile, where motorist had indicated his registration card was located, was incident to arrest for traffic violation and reasonable, though officer was allegedly also concerned with protecting himself by searching for weapon in glove compartment. *United States v. J. S. Washington* (D.C.D.C. 1965, 249 F. Supp. 40).

Where informal traffic arrest preceded officer's search in glove compartment for driver's registration card, opening of such compartment and subsequent uncovering of envelopes showing lottery violation was not subject to objection that search took place prior to arrest. *Id.*

Where officer was authorized to make arrest of automobile occupants for illegal possession of blackjack which lay on floor of automobile, his ensuing search of automobile at same place was authorized as incidental to arrest. *H. Jefferson and R. Cooper v. United States* (1965, 349 F. 2d 714, 121 U.S. App. D.C. 279).

#### Special policeman as "police officer"

Special policeman, while on duty and in his prescribed area of authority, is a "police officer" within arrest statute, and may arrest when he has probable cause to believe that arrested person has perpetrated crime of petit larceny on merchandise of his employer. *E. C. Singleton v. United States* (D.C. App. 1967, 225 A. 2d 315).

Special policeman, who observed defendant's suspicious actions within department store and followed him to another store where defendant produced merchandise from underneath his coat, was authorized to make arrest on basis of probable cause for belief that defendant had committed petit larceny in department store. *Id.*

#### Validity of arrest

A defendant's arrest on a charge of petit larceny was lawful depending upon whether arresting officer had probable cause to believe that they had in their possession "fruits of the crime." *S. Smith and W. Jeffries v. United States* (D.C. App. 1968, 247 A. 2d 293).

#### § 23-582. Arrests without warrant by other persons

(a) A special policeman shall have the same powers as a law enforcement officer to arrest without warrant for offenses committed within premises to which his jurisdiction extends, and may arrest outside the premises on fresh pursuit for offenses committed on the premises.

(b) A private person may arrest another—

(1) whom he has probable cause to believe is committing in his presence—

(A) a felony, or

(B) an offense enumerated in section 23-581

(a) (2); or

(2) in aid of a law enforcement officer or special policeman, or other person authorized by law to make an arrest.

(c) Any person making an arrest pursuant to this section shall deliver the person arrested to a law enforcement officer without unreasonable delay. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 630.)

#### CROSS REFERENCE

Appointment and compensation of special policemen, see § 4-115.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23-562.

### SUBCHAPTER VI.—AUTHORITY TO BREAK AND ENTER UNDER CERTAIN CONDITIONS

#### § 23-591. Authority to break and enter under certain conditions

(a) Any officer authorized by law to make arrests, or to execute search warrants, or any person aiding such an officer, may break and enter any premises, any outer or inner door or window of a dwelling house or other building, or any part thereof, any vehicle, or anything within such dwelling house, building, or vehicle, or otherwise enter to execute search or arrest warrants, to make an arrest where authorized by law without a warrant, or where necessary to liberate himself or a person aiding him in the execution of such warrant or in making such arrest.

(b) Breaking and entry shall not be made until after such officer or person makes an announcement of his identity and purpose and the officer reasonably believes that admittance to the dwelling house or other building or vehicle is being denied or unreasonably delayed.

(c) An announcement of identity and purpose shall not be required prior to such breaking and entry—

(1) if the warrant expressly authorizes breaking and entry without such a prior announcement, or

(2) if circumstances known to such officer or person at the time of breaking and entry, but, in the case of the execution of a warrant, unknown to the applicant when applying for such warrant, give him probable cause to believe that—

(A) such notice is likely to result in the evidence subject to seizure being easily and quickly destroyed or disposed of,

(B) such notice is likely to endanger the life or safety of the officer or another person,

(C) such notice is likely to enable the party to be arrested to escape, or

(D) such notice would be a useless gesture.

(d) Whoever, after notice is given under subsection (b) or after entry where such notice is unnecessary under subsection (c), destroys, conceals, disposes of, or attempts to destroy, conceal, or dispose of, or otherwise prevents or attempts to prevent the seizure of, evidence subject to seizure shall be fined



not more than \$5,000 or imprisoned for not more than 5 years, or both.

(e) As used in this section and in subchapters II and IV, the terms "break and enter" and "breaking and entering" include any use of physical force or violence or other unauthorized entry but do not include entry obtained by trick or stratagem. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 630.)

#### EFFECTIVE DATE

See note preceding section 23-101.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23-521, 23-522, 23-524, 23-561.

### Chapter 7.—EXTRADITION AND FUGITIVES FROM JUSTICE

#### Sec.

23-701. Warrants for the arrest of fugitives from justice.

23-702. Procedure on arrest of fugitives.

23-703. Failure to appear.

23-704. Extradition.

23-705. Removal proceedings and returns to foreign countries not affected.

23-706. Confinement.

23-707. Definitions.

#### § 23-701. Warrants for the arrest of fugitives from justice

Whenever any person who is (1) within the District of Columbia, (2) charged with any offense committed in any State, and (3) liable by the Constitution and laws of the United States to be delivered over upon the demand of the Governor of that State, any judge of the Superior Court may, upon complaint on oath or affirmation of any credible witness, setting forth the offense, that the person is a fugitive from justice, and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to bring the person so charged before the Superior Court, to answer the complaint. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 631.)

#### EFFECTIVE DATE

See note preceding section 23-101.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23-702.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Detention pending requisition

Where state circuit court granted writ of habeas corpus discharging petitioner, who had been ordered recommitted for violation of conditional pardon, on ground that state statute was unconstitutional and after state court of last resort had reversed the decision petitioner was arrested in District of Columbia on a fugitive warrant, detention of petitioner pending receipt of requisition from Governor of the state was authorized. *Herzog v. Colpoys* (1944, 143 F. 2d 137, 79 U. S. App. D. C. 81).

##### Original jurisdiction

The Chief Judge of District Court in District of Columbia exercises an executive function by presiding at extradition hearings and General Sessions Court exercises a judicial function by issuing detention warrant and setting bail, thus there is no court having original jurisdiction over offense within appeal provisions of Bail Reform Act, and appeal from an order of detention is, therefore, properly directed to District of Columbia Court of Appeals. *J. T. Hoffman v. United States* (1968, 403 F. 2d 927, 131 U.S. App. D.C. 201).

#### § 23-702. Procedure on arrest of fugitives

(a) Any person arrested upon a warrant issued pursuant to section 23-701, or arrested within the District of Columbia as a fugitive from justice without a warrant having been issued, shall be taken before the Criminal Division of the Superior Court for preliminary examination on a complaint charging him as a fugitive.

(b) If, upon the examination of the person charged, it shall appear to the court that there is reasonable cause to believe that the complaint is true and that the person may be lawfully demanded of the chief judge, the person shall be detained or released according to law, in like manner as if the offense had been committed in the District of Columbia, to appear before the court at a future date, allowing thirty days to obtain a requisition from the Governor of the State from which the person is a fugitive. The complaint of fugitivity from another jurisdiction shall create a presumption that the person is unlikely to appear if released, which may be overcome only by clear and convincing proof.

(c) If the person so released or detained shall appear before the court upon the day ordered, he shall be discharged, unless he shall be demanded by requisition, pursuant to subsection (g) of this section or section 23-704, or unless the court shall find cause to detain or to release him as provided by subsection (b) until a later day; but regardless of whether the person shall be detained or released as provided in subsection (b) or discharged, his delivery to any person authorized by the warrant of the Governor shall be a discharge of any bond or obligation.

(d) The Chief of Police of the Metropolitan Police Department shall give notice to the police official or sheriff of the city or county from which the person is a fugitive that the person is so held in the District of Columbia.

(e) A person detained as provided by this section shall not be detained in jail longer than to allow a reasonable time for the person receiving the notice required by subsection (d) to apply for and obtain a proper requisition for the person detained according to the circumstances of the case and the distance of the place where the offense is alleged to have been committed.

(f) (1) At any time prior to the filing of a requisition, a person arrested pursuant to this section may in open court waive further proceedings pursuant to this chapter.

(2) Following waiver, a judge of the Superior Court may, in his discretion, if the United States attorney consents, release the person upon such conditions as the judge shall deem necessary to insure his appearance before the proper official in the State from which he is a fugitive, and shall otherwise order his return to the jurisdiction of that State in the custody of a proper official.

(3) Following waiver, a person not released pursuant to paragraph (2) of this subsection shall be ordered to return to the jurisdiction from which he is a fugitive in the custody of a proper official, and may be detained to await return.

(4) A person detained pursuant to paragraph (3) for more than three days (not including Saturdays, Sundays, and holidays) shall be returned to the



court and shall thereupon be released pursuant to paragraph (2), unless the court shall find good reason to extend his detention for an additional three days to obtain the attendance of a proper official of the demanding jurisdiction.

(g) If a person has not waived further proceedings pursuant to subsection (f), and a requisition from the Governor of the jurisdiction from which the person is a fugitive is presented to the court, the court shall order the requisition to be filed and referred to the chief judge for extradition proceedings pursuant to section 23-704, and shall order the person committed pending those proceedings. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 631.)

#### CROSS REFERENCE

Other provisions concerning bail, see §§ 16-704 and 23-1301 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23-703, 23-902.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Original jurisdiction

The Chief Judge of District Court in District of Columbia exercises an executive function by presiding at extradition hearings and General Sessions Court exercises a judicial function by issuing detention warrant and setting bail, thus there is no court having original jurisdiction over offense within appeal provisions of Bail Reform Act, and appeal from an order of detention is, therefore, properly directed to District of Columbia Court of Appeals. *J. T. Hoffman v. United States* (1968, 403 F. 2d 927, 131 U.S. App. D.C. 201).

#### § 23-703. Failure to appear

Any person released pursuant to section 23-702 who fails to appear as required shall be punished by a fine not exceeding \$5,000 or imprisonment for not more than five years, or both. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 632.)

#### § 23-704. Extradition

(a) In all cases where the laws of the United States provide that fugitives from justice shall be delivered up, the chief judge of the Superior Court shall cause to be apprehended and delivered up fugitives from justice who shall be found within the District of Columbia, in the same manner and under the same regulations as the executive authority of a State is required to do by the provisions of chapter 209 of title 18, United States Code, and all executive and judicial officers are required to obey the lawful precepts or other process issued for that purpose, and to aid and assist in that delivery.

(b) The chief judge of the Superior Court may also surrender, on demand of the Governor of any State, any person in the District of Columbia charged in that State in the manner provided in subsection (a) of this section with committing an act in the District of Columbia, or in another State, intentionally resulting in a crime in the State whose executive authority is making the demand, even though the accused was not in that State at the time of the commission of the crime, and has not fled therefrom.

(c) No person apprehended in accordance with the provisions of subsections (a) and (b) of this section shall be delivered over to the agent whom the executive authority demanding him shall have ap-

pointed to receive him unless he shall first be taken before the chief judge of the Superior Court of the District of Columbia who shall inform him of the demand made for his surrender, and of the crime with which he is charged, and that he has the right to demand and procure legal counsel.

(d) If the person or his counsel shall state that he desires to test the legality of the person's arrest, the chief judge shall hold a hearing to determine whether the person shall be delivered over as demanded. At the hearing, the person shall have the same rights to challenge his detention and extradition as if the hearing were upon a writ of habeas corpus.

(e) If the chief judge shall order the person delivered over, he may appeal, within twenty-four hours, from that order to the District of Columbia Court of Appeals if the chief judge who rendered the order, or a judge of the District of Columbia Court of Appeals, issues a certificate of probable cause. The appeal shall be expedited by the District of Columbia Court of Appeals. An application for a writ of habeas corpus on behalf of a person who is authorized to demand a hearing pursuant to this subsection shall not be entertained if it appears that the applicant has failed to demand such a hearing or that the chief judge, after hearing, has ordered him delivered over, unless it also appears that the remedy by hearing is inadequate or ineffective to test the legality of his detention.

(f) Nothing contained in this subsection shall prevent a person from waiving his right to appear before the chief judge of the Superior Court and voluntarily returning in custody of a proper official to the jurisdiction of the State which is demanding him.

(g) No person demanded by the Governor of a State pursuant to this section shall be released upon bond or other obligation except pursuant to an order of a court of the demanding State.

(h) Any associate judge designated by the chief judge or acting chief judge shall have the same power to act pursuant to this section as the chief judge. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 632.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23-702, 23-706.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Conditions for granting extradition

To support a rendition of accused by asylum state to demanding state, it must be shown that he is the individual named in the writ of extradition, he is substantially charged with a crime in demanding state and he is a fugitive, which is to say he was in demanding state when crime was committed, and asylum state is to consider no other issues. *J. Martin v. State of Maryland* (D.C. App. 1972, 287 A.2d 823).

In extradition proceeding, courts in asylum state will not judge adequacy of demanding state's indictment or consider issues that may appropriately be raised at trial. *Id.*

Issues surrounding person's previous arrest and possible suppression of evidence there seized are not proper subject of consideration at extradition proceeding. *Id.*

##### Hearing

Even if evidence forwarded to demanding state had been seized in course of illegal arrest in District of Columbia, chief judge of the Superior Court, before ordering extradition, is not required to hold hearing on issue of



whether there had been probable cause for the arrest in District of Columbia, whether evidence had been illegally seized or whether the demanding state's indictment was fruit of the illegal arrest. *J. Martin v. State of Maryland* (D.C. App. 1972, 287 A. 2d 823).

In conducting extradition hearing, chief judge of superior court should give detainee same rights to challenge his detention and extradition as on writ of habeas corpus. *Id.*

#### Nature of proceeding

Extradition proceeding is not a criminal trial but is civil in nature. *J. Martin v. State of Maryland* (D.C. App. 1972, 287 A. 2d 823).

In performing his duties of extradition pursuant to statute, chief judge is carrying out functions of executive. *Id.*

### NOTES TO DECISIONS UNDER PRIOR LAW

#### Affidavit—Sufficiency

Affidavit for interstate rendition of an accused which is framed in the conclusory statutory language and which lacks any identification of sources does not show probable cause under the Fourth Amendment to the United States Constitution. *O. L. Kirkland and E. Smith v. P. H. Preston and L. Moore* (1967, 385 F. 2d 670, 128 U.S. App. D.C. 148).

Where affidavit submitted by Florida authorities in support of extradition alleged in conclusory statutory language that accuseds were guilty of second-degree arson, affidavit was insufficient to show probable cause for extradition and accuseds were entitled to writ of habeas corpus releasing them from custody of asylum jurisdiction. *Id.*

#### Arrest in different State

Defendant indicted in State of Pennsylvania for obtaining money under false pretenses, arrested in District of Columbia upon warrant issued under this section on requisition of Governor of Pennsylvania, was remanded to custody of the agent of the State of Pennsylvania. *Barrett v. Bigger* (1927, 17 F. 2d 669, 57 App. D.C. 81, certiorari denied 47 S. Ct. 765, 274 U.S. 752, 71 L. Ed. 1332).

#### Burden of proof

If the extradition papers make out a prima facie case, the burden of proving absence from the State is on petitioner. *Levy v. Splain* (1920, 267 F. 333, 50 App. D.C. 31). See, also, *Ellison v. Splain* (1920, 267 F. 247, 49 App. D.C. 99).

#### Conditions for granting extradition

Interstate extradition under Federal Constitution and implementing statutes is conditioned on requirements that person demanded must be substantially charged with a crime and must be a fugitive. *J. Moncrief v. S. A. Anderson* (1964, 342 F. 2d 902, 119 U.S. App. D.C. 323).

#### Criminal arrest

Apprehension of a fugitive for purpose of extradition is a "criminal arrest" since it deprives fugitive of his liberty for purposes of insuring his presence at criminal trial. *O. L. Kirkland and E. Smith v. P. H. Preston and L. Moore* (1967, 385 F. 2d 670, 128 U.S. App. D.C. 148).

#### Cruel and unusual punishment

Even if mental condition of alleged convict, who had allegedly escaped from custody in North Carolina, were such that, after extradition order had been properly entered, convict was in fact psychotic and could not assist counsel who had promptly filed habeas corpus petition after entry of the extradition order, return of convict to North Carolina would not be cruel and unusual punishment. *Lathan v. Reid* (1960, 280 F. 2d 66, 108 U.S. App. D.C. 58, certiorari denied 81 S. Ct. 107, 364 U.S. 865, 5 L. Ed. 2d 86).

#### Detention of accused person

"An accused person may be held a reasonable time to await the preparation and transmission of extradition papers from the demanding State." *Stallings v. Splain* (1919, 258 F. 510, 49 App. D.C. 38, affirmed 40 S. Ct. 537, 253 U.S. 339, 64 L. Ed. 940).

#### Duty and authority of chief judge

The Chief Judge of the United States District Court for the District of Columbia has executive authority similar to that of State governors in requisition proceedings.

*Maktos v. Matthews* (1952, 194 F. 2d 354, 90 U.S. App. D.C. 183).

This section expressly confers upon the Chief Justice of the Supreme Court (District Court of the United States) of the District authority to act in requisition proceedings. *Hill v. Dorsey* (1928, 22 F. 2d 1003, 57 App. D.C. 305).

Chief Justice acts in extradition matters in an executive capacity. *Reed v. Colpoys* (1938, 99 F. 2d 396, 69 App. D.C. 163, certiorari denied 59 S. Ct. 97, 305 U.S. 598, 83 L. Ed. 379). See, also, *Lee Won Sing v. Cottone* (1941, 123 F. 2d 169, 74 App. D.C. 374).

#### Evidence

Where uncontradicted testimony showed that defendant was in Baltimore, Maryland, on day that Maryland indictment charged that he unlawfully deserted his wife and no evidence was offered by defendant to rebut presumption of fugitivity created by recitals of indictment, that issue was closed and there was ample basis for the requisition made by Governor of Maryland. *Brown Sr. v. Ward, U.S. Marshal etc.* (1960, 275 F. 2d 884, 107 U.S. App. D.C. 220).

Relator, held for extradition, could not complain that his petition for habeas corpus was denied on basis of evidence received at requisition hearing where his counsel made no request at any stage that relator be put on stand and no proffer at all of any evidence contradicting what was established at the requisition hearing. *Id.*

To justify commitment for extradition there must be evidence to prove guilt of the accused. *Foster v. Goldsoll* (1919, 48 App. D.C. 505, certiorari denied 39 S. Ct. 495, 250 U.S. 647, 63 L. Ed. 1188).

#### False imprisonment

Where after District of Columbia judge had issued executive order, in compliance with requisition proceedings from Pennsylvania, ordering the petitioner, arrested in District, be delivered to Pennsylvania authority, petitioner instituted habeas corpus proceedings, trial court denied writ, but did not order any stay of requisition proceedings, and while appeal of habeas corpus proceeding was pending, District Marshal delivered petitioner to Pennsylvania detective, detective was protected by his warrant and executive order of judge from liability to petitioner for false imprisonment when he received him and returned him to Pennsylvania. *Robinson Jr. v. Harris, District Attorney* (D.C.D.C. 1955, 135 F. Supp. 239).

#### Finding of trial judge

If evidence is conflicting as to presence of defendant in demanding state, the finding of the trial judge will not be disturbed on appeal. *Jackson v. Snyder* (1924, 293 F. 842, 54 App. D.C. 23).

#### Fourth Amendment standards

Affidavit submitted by demanding state to chief executive of asylum state for extradition of fugitive must present facts sufficient to establish a showing of probable cause under Fourth Amendment standards. *O. L. Kirkland and E. Smith v. P. H. Preston and L. Moore* (1967, 385 F. 2d 670, 128 U.S. App. D.C. 148).

The Fourth Amendment, which governs arrests, governs extradition arrests. *Id.*

To be valid under the Fourth Amendment, an arrest must be preceded by a finding of probable cause. *Id.*

#### Fugitive from justice

"Fugitivity," which will justify extradition, means presence in demanding state when crime was allegedly committed. *J. Moncrief v. S. A. Anderson* (1964, 342 F. 2d 902, 119 U.S. App. D.C. 323).

Fugitivity question in extradition proceeding is one of fact to be determined in first instance by governor of asylum state or in District of Columbia by Chief Judge of the District Court sitting in an executive capacity. *Id.*

Under 18 U.S.C. § 3182, implementing U.S. Const. Art. 4, § 2, concerning interstate extradition, the governor of the asylum state has for decision the legal question whether the demanded person has been substantially charged with a crime, and the factual question whether he is a fugitive from justice. *Bruzaud v. Matthews* (1953, 207 F. 2d 25, 93 U.S. App. D.C. 47).

If petitioner offers proof showing with precision that he left the demanding state before the commission of



the alleged crime "It would then devolve upon the person detaining him 'to show that he was a fugitive from justice by producing evidence that he was in the state at the time charged in the indictment, or to prove that said date had been erroneously charged and could be carried back to the necessary time.'" *Levy v. Splain* (1920, 267 F. 333, 50 App. D.C. 31).

"To be a fugitive from justice, in the sense of the act of Congress regulating the subject under consideration. It is not necessary that the party charged should have left the state in which the crime is alleged to have been committed, after an indictment found, or for the purpose of avoiding a prosecution anticipated or begun, but simply that, having within a State committed that which by its laws constitutes a crime, when he is sought to be subjected to its criminal process to answer for his offense he has left its jurisdiction and is found within the territory of another." *DePoilly v. Palmer* (1906, 28 App. D.C. 324).

#### Habeas corpus

The issues to be decided in habeas corpus case commenced when chief judge signed extradition papers were (1) whether identity of remanded person was established, (2) whether he was substantially charged with a crime in demanding state, and (3) whether he was a "fugitive from justice," that is to say, was he present in the demanding state when a crime was allegedly committed. *Kyles v. Preston* (D.C.D.C. 1966, 253 F. Supp. 628).

Where order for extradition of alleged convict from District of Columbia was properly entered, even if, at time of hearing on habeas corpus petition, which had been filed promptly by convict after extradition order had been entered, convict was psychotic and could not assist counsel, convict was not entitled to habeas corpus, and extradition would not be delayed until restoration of convict to competency. *Lathan v. Reid* (1960, 280 F. 2d 66, 108 U.S. App. D.C. 58, certiorari denied 81 S. Ct. 107, 364 U.S. 865, 5 L. Ed. 2d 86).

In habeas corpus proceeding brought by relator held for extradition, hearing court will not consider guilt or innocence of accused, will not try any issues in the criminal case, will not construe any statutes of requisitioning state and will not inquire into validity of the indictment. *Brown Sr., v. Ward, U.S. Marshal, etc.* (1960, 275 F. 2d 884, 107 U.S. App. D.C. 220).

On habeas corpus, where there is no claim that the extradition papers are not regular on their face, there is but one question open for investigation, namely, whether petitioner was in demanding state at the time the crime charged was committed. *Levy v. Splain* (1920, 267 F. 333, 50 App. D.C. 31). See, also, *Watts v. Splain* (1922, 277 F. 335, 51 App. D.C. 129).

When indictment charged conspiracy on a certain day without a continuando, the accused in extradition proceeding should be discharged on habeas corpus when he proved he was not in the state when the offense was charged to have been committed. *Levy v. Splain* (1920, 267 F. 333, 50 App. D.C. 31).

On habeas corpus review in court of asylum state of an extradition order of governor, the inquiry of the court is limited to the two questions which were before governor, namely, whether demanded person has been substantially charged with crime, and factual question whether he is a fugitive from justice. *Bruzard v. Matthews* (1953, 207 F. 2d 25, 93 U.S. App. D.C. 47).

Where indictment involved in extradition proceeding charged commission of crime within Virginia, this section permitting extradition from the district without showing of fugitivity of person charged with committing, outside the demanding state, an act which intentionally resulted in a crime in the demanding State was not applicable. *In re Gibson* (D.C.D.C. 1956, 147 F. Supp. 591).

Where extradition is sought for commission of crime within demanding state, it is jurisdictional that person sought to be extradited was in demanding state at time the alleged offense was committed, and, in absence of allegation as to date of offense in the indictment or papers accompanying request for requisition or of testimony as to such date at the requisition or habeas corpus proceeding, there is no prima facie case of fugitivity made by the warrant itself, and the usual presumption of fugitivity cannot arise. *Id.*

#### Indictment

Presence of demanding state's indictment alone in extradition proceeding is not necessarily conclusive evidence that person sought to be extradited is a fugitive from demanding state, but it raises presumption of fugitivity, which may be overcome, but which will not be disturbed except on clear and convincing proof to contrary. *J. Moncrief v. S. A. Anderson* (1964, 342 F. 2d 902, 119 U.S. App. D.C. 323).

Title 18 U.S.C. § 3182, does not permit a requisition to be based upon a warrant of arrest, but requires demanding governor to produce copy of an indictment or copy of an accusatory affidavit, and when an indictment had been returned and copy of it attached to requisition, no purpose was served by also attaching a copy of an earlier affidavit made by complaining witness, but affidavit was mere surplusage. *Bruzard v. Matthews* (1953, 207 F. 2d 25, 93 U.S. App. D.C. 47).

"It is only in cases when it is apparent that the indictment does not charge an offense at all, that another court will pass on it." *Wheeler v. Palmer* (1914, 42 App. D.C. 395).

Indictment need only show that accused was substantially charged with a crime under the law of the demanding state. The legal sufficiency of the indictment as a pleading must be tested in the courts of the demanding state. *Webster v. Splain* (1917, 45 App. D.C. 567). See, also, *Wheeler v. Palmer* (1914, 42 App. D.C. 395); *Farr v. Palmer* (1904, 24 App. D.C. 234); *DePoilly v. Palmer* (1906, 28 App. D.C. 324); *Goodale v. Splain* (1914, 42 App. D.C. 235).

Formal defects in indictment will not prevent removal of petitioners to another district for trial but "if indictment were a mere information, or upon inspection, set forth no crime against United States, or a wholly different crime from that alleged as the basis for proceedings, or if such crime be charged to have been committed in another district from that to which the extradition is sought, the commissioner could not properly consider it as ground for removal." *Whitaker v. Hitt* (1923, 285 F. 797, 52 App. D.C. 149, 27 A.L.R. 951).

When an extradition demand is accompanied by an indictment, that document embodies a grand jury's judgment that constitutional probable cause exists. *O. L. Kirkland and E. Smith v. P. H. Preston and L. Moore* (1967, 385 F. 2d 670, 128 U.S. App. D.C. 148).

#### Mental competency

In hearing to determine whether to extradite from District of Columbia one who had allegedly escaped from custody in North Carolina, evidence supported finding that alleged fugitive was mentally competent for purposes of the hearing. *Lathan v. Reid* (1960, 280 F. 2d 66, 108 U.S. App. D.C. 58, certiorari denied 81 S. Ct. 107, 364 U.S. 865, 5 L. Ed. 2d 86).

Where alleged fugitive was competent for purposes of hearing to determine whether to extradite him from District of Columbia, and the government's evidence as to identity, fugitivity, and charge of criminality was clear and complete, extradition order was valid. *Id.*

#### Original jurisdiction

The Chief Judge of District Court in District of Columbia exercises an executive function by presiding at extradition hearings and General Sessions Court exercises a judicial function by issuing detention warrant and setting bail, thus there is no court having original jurisdiction over offense within appeal provisions of Bail Reform Act, and appeal from an order of detention is, therefore, properly directed to District of Columbia Court of Appeals. *J. T. Hoffman v. United States* (1968, 403 F. 2d 927, 131 U.S. App. D.C. 201).

#### Question of law

Question whether person demanded in extradition proceeding is substantially charged with crime in demanding state is question of law and can be determined from extradition papers. *J. Moncrief v. S. A. Anderson* (1964, 342 F. 2d 902, 119 U.S. App. D.C. 323).

#### Review

In light of newly presented allegations, which raised question in regard to element requisite to lawful extradition of petitioner, Court of Appeals would grant petition to petitioner for leave to appeal without prepayment of



costs from order of District Court dismissing habeas corpus petition without hearing, would vacate order of dismissal, and would remand for reconsideration in light of evidence subsequently presented at extradition hearing that petitioner was not in demanding state on date of alleged offense. *J. Moncrief v. S. A. Anderson* (1964, 342 F. 2d 902, 119 U.S. App. D.C. 323).

Factual decision in extradition proceeding that person demanded is a fugitive from demanding state is reviewable by way of habeas corpus, but should not be disturbed if there is evidence pro and con on question or if there is some evidence sustaining the finding. *Id.*

#### Sheriff's application

It is immaterial when sheriff used the wrong gender of prisoner in application to the governor for a requisition on the authorities of the District of Columbia. *John v. Splain* (1921, 269 F. 717, 50 App. D.C. 201).

#### § 23-705. Removal proceedings and returns to foreign countries not affected

Nothing contained in this chapter shall repeal, modify, or in any way affect existing law concerning the procedure for the return of any person apprehended in the District of Columbia to a Federal judicial district to answer a Federal charge, or repeal, modify, or affect existing law or treaty concerning the return to a foreign country of a person apprehended or detained in the District of Columbia as a fugitive from a foreign country. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 633.)

#### § 23-706. Confinement

(a) The agent of the demanding State to whom the prisoner may have been delivered in accordance with the provisions of section 23-704, may, when necessary, confine the prisoner in a facility of the District of Columbia Department of Corrections, and the Department of Corrections must receive and safely keep the prisoner for such reasonable time as will enable the officer or person having charge of him to proceed on his route, such officer or person being chargeable with the expense of keeping.

(b) The officer or agent of a demanding State to whom a prisoner may have been delivered following extradition proceedings in another State, or to whom a prisoner may have been delivered after waiving extradition in the other State, and who is passing through the District of Columbia with a prisoner for the purpose of immediately returning the prisoner to the demanding State, may, when necessary, confine the prisoner in a facility of the Department of Corrections. The Department of Corrections must receive and safely keep the prisoner for such reasonable time as will enable the officer or agent to proceed on his route, such officer or agent being chargeable with the expense of keeping. That officer or agent shall produce and show to the Department of Corrections satisfactory written evidence of the fact that he is actually transporting the prisoner to the demanding State after a requisition by the executive authority of the demanding State. The prisoner shall not be entitled to demand a new requisition while in the District of Columbia. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 633.)

#### § 23-707. Definitions

For purposes of this chapter—

(1) the term "State" includes any territory or possession of the United States; and

(2) the term "Governor" means the executive authority of a State.

(July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 634.)

### Chapter 9.—FRESH PURSUIT

#### Sec.

23-901. Arrests in the District of Columbia by officers of other States.

23-902. Hearing; commitment; discharge.

23-903. "Fresh pursuit" defined.

#### § 23-901. Arrests in the District of Columbia by officers of other States

Any member of a duly organized peace unit of any State (or county or municipality thereof) of the United States who enters the District of Columbia in fresh pursuit and continues within the District of Columbia in fresh pursuit of a person in order to arrest him on the ground that he is believed to have committed a felony in such State shall have the same authority to arrest and hold that person in custody as has any member of any duly organized peace unit of the District of Columbia to arrest and hold in custody a person on the ground that he is believed to have committed a felony in the District of Columbia. This section shall not be construed so as to make unlawful any arrest in the District of Columbia which would otherwise be lawful. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 634.)

#### EFFECTIVE DATE

See note preceding section 23-101.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23-581, 23-902.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Authority

Only authority for Maryland state police officer to arrest person within District of Columbia exists by virtue of Uniform Act on Fresh Pursuit which grants peace officer of another state who enters District of Columbia in fresh pursuit of person believed to have committed felony same authority to arrest as District of Columbia peace officers. *District of Columbia v. Perry*, (D.C. App. 1966, 215 A. 2d 845).

Arrest of defendant by Maryland state police officer within District of Columbia for speeding, a misdemeanor in Maryland was unauthorized by Uniform Act on Fresh Pursuit. *Id.*

##### Compliance with laws of neighboring jurisdiction

Defendants who were observed by Maryland officers parking in an alley and attempting to gain admission to motel located near boundary between Maryland and District of Columbia, Maryland officer's failure to comply with District of Columbia Fresh Pursuit Statute did not vitiate defendants' arrests which took place just beyond dividing line. *C. L. Boddie et al. v. State of Maryland* (Md. App. 1969, 252 A. 2d 290).

Maryland officers who are making arrest in District of Columbia may not with impunity ignore District of Columbia's Fresh Pursuit Statute. *Id.*

##### Probable cause for arrest

An arresting officer observing defendants park automobile in an alley alongside a motel and attempt to enter motel at 4:36 a.m. and who knew of prior motel holdups including one that night had probable cause to believe that defendants had committed felony. *C. L. Boddie et al. v. State of Maryland* (Md. App. 1969, 252 A. 2d 290).

Probable cause for an arrest exists when facts and circumstances within the knowledge of arresting officer, or of which he has reasonably trustworthy information, are sufficient to warrant reasonably cautious person to believe that felony has been committed by person arrested. *Id.*



Only a probability, and not prima facie showing, of criminal activity is the standard of probable cause for arrest. *Id.*

The rule of probable cause for an arrest is nontechnical conception of reasonable ground for belief of guilt, requiring less evidence for such belief than would justify conviction, but more evidence than that which would arouse mere suspicion. *Id.*

The fact that officer, who had probable cause to arrest defendants on a charge of assault with intent to murder, did not arrest defendants on that offense, or that defendants were subsequently acquitted of such offense, did not mean that arresting officer did not have probable cause to arrest. *Id.*

Legality of arrest is measured by existence of probable cause at time of arrest. *Id.*

#### § 23-902. Hearing; commitment; discharge

If an arrest is made in the District of Columbia by an officer of another State in accordance with the provisions of section 23-901, he shall without unnecessary delay take the person arrested before a judge of the Superior Court of the District of Columbia, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the judge determines that the arrest was lawful, he shall order the release or detention of the person arrested, pursuant to section 23-702, to await for a reasonable time a requisition from the Governor of the State demanding the extradition of the person arrested. If the judge determines that the arrest was unlawful he shall order the person discharged. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 634.)

#### § 23-903. "Fresh pursuit" defined

For purposes of this chapter, the term "fresh pursuit" shall include fresh pursuit as defined by the common law, also the pursuit of a person who has committed a felony or one whom the pursuing officer has reasonable grounds to believe has committed a felony. It shall also include the pursuit of a person whom the pursuing officer has reasonable grounds to believe has committed a felony, although no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. Such term shall not necessarily imply an instant pursuit, but pursuit without unreasonable delay. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 634.)

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Compliance with laws of neighboring jurisdiction

Defendants who were observed by Maryland officers parking in an alley and attempting to gain admission to motel located near boundary between Maryland and District of Columbia, Maryland officer's failure to comply with District of Columbia Fresh Pursuit Statute did not vitiate defendants' arrests which took place just beyond dividing line. *C. L. Boddie et al. v. State of Maryland* (Md. App. 1969, 252 A. 2d 290).

Maryland officers who are making arrest in District of Columbia may not with impunity ignore District of Columbia's Fresh Pursuit Statute. *Id.*

#### Chapter 11.—PROFESSIONAL BONDSMEN

##### Sec.

23-1101. Definitions.

23-1102. Bonding business impressed with public interest.<sup>1</sup>

23-1103. Procuring business through official or attorney for a consideration prohibited.

##### Sec.

23-1104. Attorneys procuring employment through official or bondsman for a consideration prohibited.

23-1105. Receiving other than regular fee for bonding prohibited; bondsmen prohibited from endeavoring to secure dismissal or settlement.

23-1106. Posting names of authorized bondsmen; list to be furnished prisoners; prisoners may communicate with bondsmen; record to be kept by police.

23-1107. Bondsmen prohibited from entering place of detention unless requested by prisoner; record of visit to be kept.

23-1108. Qualifications of bondsmen; rules to be prescribed by courts; list of agents to be furnished; renewal of authority to act; detailed records to be kept; penalties and disqualifications.

23-1109. Giving advance information of proposed raid prohibited.

23-1110. Designation of official to take bail or collateral when court is not in session; issuance of citations.

23-1111. Penalties.

23-1112. Enforcement.

#### § 23-1101. Definitions

For purposes of this chapter—

(1) the term "bonding business" means the business of becoming surety for compensation upon bonds in criminal cases in the District of Columbia; and

(2) the term "bondsman" means any person or corporation engaged in the bonding business either as a principal or as an agent, clerk, or representative of another engaged in such business.

(July 29, 1970, Pub. L. 91-358; § 210(a), title II, 84 Stat. 635.)

##### EFFECTIVE DATE

See note preceding section 23-101.

##### CROSS REFERENCE

Other provisions concerning bail, see §§ 16-704 and 23-1301 et seq.

#### § 23-1102. Bonding business impressed with public interests

The bonding business is impressed with a public interest. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 635.)

#### § 23-1103. Procuring business through official or attorney for a consideration prohibited

It shall be unlawful for any bondsman, either directly or indirectly, to give, donate, lend, contribute, or to promise to give, donate, lend, or contribute any money, property, entertainment, or other thing of value whatsoever to any attorney at law, police officer, deputy United States marshal, jailer, probation officer, clerk, or other attaché of a criminal court, or public official of any character, for procuring or assisting in procuring any person to employ the bondsman to execute as surety any bond for compensation in any criminal case in the District of Columbia. It shall be unlawful for any attorney at law, police officer, deputy United States marshal, jailer, probation officer, clerk, bailiff, or other attaché of a criminal court, or public official of any character, to accept or receive from a bondsman any money, property, entertainment, or other thing of value whatsoever for procuring or assisting in procuring a person to employ a bondsman to execute as surety any bond for compensation in a criminal case in the

<sup>1</sup> Analysis does not conform to section catchline.



District of Columbia. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 635.)

**§ 23-1104. Attorneys procuring employment through official or bondsman for a consideration prohibited**

It shall be unlawful for any attorney at law, either directly or indirectly, to give, loan, donate, contribute, or to promise to give, loan, donate, or contribute any money, property, entertainment, or other thing of value whatsoever to, or to split or divide any fee or commission with, any bondsman, police officer, deputy United States marshal, probation officer, bailiff, clerk, or other attaché of any criminal court for causing or procuring or assisting in causing or procuring a person to employ the attorney to represent him in a criminal case in the District of Columbia. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 635.)

**§ 23-1105. Receiving other than regular fee for bonding prohibited; bondsmen prohibited from endeavoring to secure dismissal or settlement**

It shall be lawful to charge for executing a bond in a criminal case in the District of Columbia, but it shall be unlawful for a bondsman, either directly or indirectly, to charge, accept, or receive a sum of money, or other thing of value, other than the regular fee for bonding, from a person for whom he has executed bond, for any other service whatever performed in connection with any indictment, information, or charge upon which the person is bailed or held in the District of Columbia. It also shall be unlawful for any bondsman to settle, or attempt to settle, or to procure or attempt to procure the dismissal of any indictment, information, or charge against any person in custody or held upon bond in the District of Columbia, with a court, or with the prosecuting attorney in a court in the District of Columbia. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 636.)

**§ 23-1106. Posting names of authorized bondsmen; list to be furnished prisoners; prisoners may communicate with bondsmen; record to be kept by police**

A typewritten or printed list alphabetically arranged of all persons engaged under the authority of any of the courts of criminal jurisdiction in the District of Columbia in the business of becoming surety upon bonds for compensation in criminal cases shall be posted in a conspicuous place in each police precinct, jail, prisoner's dock, house of detention, and every other place in the District of Columbia in which persons in custody of the law are detained, and one or more copies thereof kept on hand; and when a person who is detained in custody in a place of detention shall request a person in charge thereof to furnish him the name of a bondsman, or to put him in communication with a bondsman, the list shall be furnished to the person in charge of the place of detention within a reasonable time to put the person detained in communication with the bondsman selected, and the person in charge of the place of detention shall contemporaneously with that transaction make in the blotter or book of record kept in the place of detention, a record showing the name of the person requesting the bondsman, the offense with which the person is

charged, the time at which the request was made, the bondsman requested, and the person by whom the bondsman was called, and preserve that as a permanent record in the book or blotter in which entered. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 636.)

**§ 23-1107. Bondsmen prohibited from entering place of detention unless requested by prisoner; record of visit to be kept**

It shall be unlawful for a bondsman to enter a police precinct, jail, prisoner's dock, house of detention, or other place where persons in the custody of the law are detained in the District of Columbia for the purpose of obtaining employment as a bondsman, without having been previously called by a person, detained or by some relative or other authorized person acting for or on behalf of the person detained. Whenever a bondsman enters a police precinct, jail, prisoner's dock, house of detention, or other place where persons in the custody of the law are detained in the District of Columbia, he shall forthwith give to the person in charge thereof his mission there and the name of the person calling him and requesting him to come to such place. That information shall be recorded by the person in charge of the place of detention and preserved as a public record, and the failure of the bondsman to give that information, or the failure of the person in charge of the place of detention to make and preserve a record of that information, shall constitute a violation of this chapter. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 636.)

**§ 23-1108. Qualifications of bondsmen; rules to be prescribed by courts; list of agents to be furnished; renewal of authority to act; detailed records to be kept; penalties and disqualifications**

(a) It shall be the duty of the United States District Court for the District of Columbia and the Superior Court of the District of Columbia, each, to provide, under reasonable rules and regulations, the qualifications of persons and corporations applying for authority to engage in the bonding business in criminal cases in the District of Columbia, and the terms and conditions upon which the business shall be carried on, and no person or corporation shall, either as principal, or as agent, clerk, or representative of another, engage in the bonding business in either court until he shall, by order of the court, be authorized to do so. The courts, in making these rules and regulations, and in granting authority to persons to engage in the bonding business, shall take into consideration both the financial responsibility and the moral qualities of the person so applying, and no person shall be permitted to engage, either as principal or agent, in the bonding business, who has ever been convicted of an offense involving moral turpitude, or who is not known to be a person of good moral character. It shall be the duty of each of the courts to require every person qualifying to engage in the bonding business as principal to file with the court a list showing the name, age, and residence of each person employed by the bondsman as agent, clerk, or representative in the bonding business, and require an affidavit from each of these persons stating that he will abide by the terms and provisions of this chapter. Each of the courts shall



require the authority of each of those persons to be renewed from time to time at such periods as the court may by rule provide, and before the authority shall be renewed the court shall require from each of those persons an affidavit that since his previous qualification to engage in the bonding business he has abided by the provisions of this chapter, and any person swearing falsely in any of the affidavits shall be guilty of perjury.

(b) Each court shall prescribe such rules and regulations as may be necessary to insure that whenever a bondsman becomes surety for compensation upon a bond in a criminal case before the court, the bondsman shall make a record, which shall be accurate to the best of the maker's knowledge and belief and shall thereafter be open for inspection by the court or its designated representative, and by the designated representative of other law enforcement agencies of the District of Columbia, of the following matters:

- (1) the full name and address of the person for whom the bond is executed (referred to in this subsection as the "defendant") and the full name and address of his employer, if any;
- (2) the offense with which the defendant is charged;
- (3) the name of the court or officer authorizing the defendant's admission to bail;
- (4) the amount of the bond;
- (5) the name of the person who called the bondsman, if other than the defendant;
- (6) the amount of the bondsman's charge for executing the bond;
- (7) the full name and address of the person to whom the bondsman presented his bill for the charge;
- (8) the full name and address of the person paying the charge; and
- (9) the manner of payment of the charge.

Whoever violates any rule or regulation prescribed under this subsection shall be fined not more than \$500 or imprisoned not more than six months, or both, and if he is a bondsman shall be disqualified from thereafter engaging in any manner in the bonding business for such period of time as the trial judge shall order. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 637.)

#### CROSS REFERENCE

Perjury, see § 22-2501.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Evidence

Evidence was insufficient to sustain finding that bondsman was guilty of infraction of court rule providing that any bondsman who procures or assists in procuring or attempts to procure retention or employment of any attorney to represent any person charged with offense cognizable in Municipal Court for the District of Columbia, or solicits or receives or enters into any agreement to receive any fee, commission money, or property or things of value for procuring or assisting or attempting to procure retention or employment of any attorney to represent any person charged with offense cognizable in Municipal Court, shall be suspended. *Matter of Leon B. Greene* (D. C. Mun. App. 1957, 130 A. 2d 593).

##### Grounds for renewal of license

Order of District Court denying application of a professional bondsman for renewal of his license to engage in bonding business on ground that applicant lacked

qualifications for a bondsman was set aside. *In re Carter* (1951, 192 F. 2d 15, 89 U.S. App. D.C. 310, certiorari denied 72 S. Ct. 89, 342 U.S. 862, 96 L. Ed. 648, rehearing denied 72 S. Ct. 173, 342 U.S. 889, 96 L. Ed. 667).

##### Moral turpitude

"Moral turpitude", within statute precluding licensing as a bondsman a person convicted of any offense involving moral turpitude, includes crimes in which fraud was an ingredient. *In the Matter of Nathaniel Madden* (D.C. Mun. App. 1962, 184 A. 2d 204).

Conviction of an offense involving moral turpitude precludes qualification for licensing of a bondsman, and courts have no latitude or discretion in the matter. *Id.*

Conviction for fraudulent filing of Federal income tax returns was conviction of an offense involving "moral turpitude," within statute precluding licensing as a bondsman a person convicted of an offense involving moral turpitude. *Id.*

##### Nature of license

License to engage in bonding business, once granted, becomes a right, which ought not to be taken away on the strength of vague, indefinite, and uncorroborated testimony. *Matter of Leon B. Greene* (D. C. Mun. App. 1957, 130 A. 2d 593).

##### Revocation of license

When an authorization to engage in the bonding business has been approved by the district court and is outstanding, it can be revoked, prior to the expiration of the term, only upon a proceeding which contains the elements of due process of law, i. e., a hearing and revelation of all matter upon which a decision is to be based. *In re Carter* (1949, 177 F. 2d 75, 85 U.S. App. D.C. 229, certiorari denied 70 S. Ct. 250, 338 U.S. 900, 94 L. Ed. 554).

#### § 23-1109. Giving advance information of proposed raid prohibited

It shall be unlawful for any police officer or other public official, in advance of any raid by police or other peace officers or public officials or the execution of any search warrant or warrant of arrest, to give or furnish, either directly or indirectly, any information concerning the proposed raid or arrest to any person engaged in any manner in the bonding business, or to any attorney at law; but it shall not be unlawful for any police or other peace officer, in conducting any raid or in executing any search warrant or warrant of arrest, to communicate to any attorney at law or person engaged in the bonding business, any fact necessary to enable the officer to obtain from the attorney at law or person engaged in the bonding business information necessary to enable the officer to carry out the raid or execute the process. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 638.)

#### § 23-1110. Designation of official to take bail or collateral when court is not in session; issuance of citations

(a) The judges of the Superior Court of the District of Columbia shall have the authority to appoint some official of the Metropolitan Police Department to act as a clerk of the court with authority to take bail or collateral from persons charged with offenses triable in the Superior Court at all times when the court is not open and its clerks accessible. The official so appointed shall have the same authority at those times with reference to taking bonds or collateral as the clerk of the Municipal Court had on March 3, 1933; shall receive no compensation for these services other than his regular salary; shall be subject to the orders and rules of the Superior Court in dis-



charge of his duties, and may be removed as the clerk at any time by the judges of the court. The United States District Court for the District of Columbia shall have power to authorize the official appointed by the Superior Court to take bond of persons arrested upon writs and process from that court in criminal cases between 4 o'clock post-meridian and 9 o'clock antemeridian and upon Sundays and holidays, and shall have power at any time to revoke the authority granted by it.

(b) (1) An officer or member of the Metropolitan Police Department who arrests without a warrant a person for committing a misdemeanor may, instead of taking him into custody, issue a citation requiring the person to appear before an official of the Metropolitan Police Department designated under subsection (a) of this section to act as a clerk of the Superior Court.

(2) Whenever a person is arrested without a warrant for committing a misdemeanor and is booked and processed pursuant to law, an official of the Metropolitan Police Department designated under subsection (a) of this section to act as a clerk of the Superior Court may issue a citation to him for an appearance in court or at some other designated place, and release him from custody.

(3) No citation may be issued under paragraph (1) or (2) unless the person authorized to issue the citation has reason to believe that the arrested person will not cause injury to persons or damage to property and that he will make an appearance in answer to the citation.

(4) Whoever willfully fails to appear as required in a citation, shall be fined not more than the maximum provided for the misdemeanor for which such citation was issued or imprisoned for not more than one year, or both. Prosecution under this paragraph shall be by the prosecuting officer responsible for prosecuting the offense for which the citation is issued. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 638.)

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Jurisdiction to expunge arrest record

Jurisdiction of trial court over graduate student who had been arrested in connection with civil disturbance at which he was innocently and unavoidably present, had posted collateral with police officer designated to act as clerk of court but had not been prosecuted due to lack of evidence and who sought to have arrest record expunged is provided by statute which allows police officers to be designated to act as clerk of court to accept collateral. *T. Irani v. District of Columbia* (D.C. App. 1971, 272 A. 2d 849).

Fact that graduate student, arrested for parading without permit, established without contradiction that he had been arrested in connection with civil disturbance at which he was innocently and unavoidably present, having just left cancelled class at local university where disturbance was in process, justified some relief, in action by the student to have the arrest record expunged. *Id.*

##### Preservation of records

Section 4-137 governing preservation and destruction of metropolitan police force records relates to records required to be kept under section 4-134 requiring keeping, inter alia, of arrest books and to central criminal records required under section 4-134a, as well as to records under this section of receipt and disbursement of money posted by arrested persons as collateral, photographs and fingerprints. *B. M. Spock v. District of Columbia* (D.C. App. 1971, 283 A. 2d 14).

#### § 23-1111. Penalties

Any person violating any provision of this chapter shall be fined not less than \$50 nor more than \$100, or imprisoned for not less than ten nor more than sixty days, or both, where no other penalty is provided by this chapter; and if the person so convicted is (1) a police officer or other public official, he shall upon recommendation of the trial judge also be forthwith dismissed from office, (2) a bondsman, he shall be disqualified from thereafter engaging in any manner in the bonding business for such a period of time as the trial judge shall order, or (3) an attorney at law, he shall be subject to suspension or disbarment as attorney at law. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 639.)

#### § 23-1112. Enforcement

It shall be the duty of the Superior Court and of the United States District Court for the District of Columbia to see that this chapter is enforced, and upon the impaneling of each grand jury in the District of Columbia it shall be the duty of the judge impaneling such jury to charge it to investigate the manner in which this chapter is enforced and all violations thereof in connection with the matter under investigation by such jury. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 639.)

### Chapter 13.—BAIL AGENCY AND PRETRIAL DETENTION

#### SUBCHAPTER I.—DISTRICT OF COLUMBIA BAIL AGENCY

##### Sec.

- 23-1301. District of Columbia Bail Agency.
- 23-1302. Definitions.
- 23-1303. Interviews with detainees; investigations and reports; information as confidential; consideration and use of reports in making bail determinations.
- 23-1304. Executive committee; composition; appointment and qualifications of Director.
- 23-1305. Duties of Director; compensation; tenure.
- 23-1306. Chief assistant and other agency personnel; compensation.
- 23-1307. Annual reports to executive committee, Congress, and Commissioner.
- 23-1308. Budget estimates.

#### SUBCHAPTER II.—RELEASE AND PRETRIAL DETENTION

- 23-1321. Release in noncapital cases prior to trial.
- 23-1322. Detention prior to trial.
- 23-1323. Detention of addict.
- 23-1324. Appeal from conditions of release.
- 23-1325. Release in capital cases or after conviction.
- 23-1326. Release of material witnesses.
- 23-1327. Penalties for failure to appear.
- 23-1328. Penalties for offenses committed during release.
- 23-1329. Penalties for violation of conditions of release.
- 23-1330. Contempt.
- 23-1331. Definitions.
- 23-1332. Applicability of subchapter.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 11-923, 23-104.

#### SUBCHAPTER I.—DISTRICT OF COLUMBIA BAIL AGENCY

##### § 23-1301. District of Columbia Bail Agency

The District of Columbia Bail Agency (hereafter in this subchapter referred to as the "agency") shall continue in the District of Columbia and shall secure



pertinent data and provide for any judicial officer in the District of Columbia or any officer or member of the Metropolitan Police Department issuing citations, reports containing verified information concerning any individual with respect to whom a bail or citation determination is to be made. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 639.)

#### EFFECTIVE DATE

See note preceding section 23-101.

#### CROSS REFERENCE

Bail and collateral security, see § 16-704.

### § 23-1302. Definitions

As used in this chapter—

(1) the term “judicial officer” means, unless otherwise indicated, the Supreme Court of the United States, the United States Court of Appeals for the District of Columbia Circuit, the District of Columbia Court of Appeals, United States District Court for the District of Columbia, the Superior Court of the District of Columbia or any justice or judge of those courts or a United States commissioner or magistrate; and

(2) the term “bail determination” means any order by a judicial officer respecting the terms and conditions of detention or release (including any order setting the amount of bail bond or any other kind of security) made to assure the appearance in court of—

(A) any person arrested in the District of Columbia, or

(B) any material witness in any criminal proceeding in a court referred to in paragraph (1). (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 640.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23-1303.

### § 23-1303. Interviews with detainees; investigations and reports; information as confidential; consideration and use of reports in making bail determinations

(a) The agency shall, except when impracticable, interview any person detained pursuant to law or charged with an offense in the District of Columbia who is to appear before a judicial officer or whose case arose in or is before any court named in section 23-1302(1). The interview, when requested by a judicial officer, shall also be undertaken with respect to any person charged with intoxication or a traffic violation. The agency shall seek independent verification of information obtained during the interview, shall secure any such person's prior criminal record which shall be made available by the Metropolitan Police Department, and shall prepare a written report of the information for submission to the appropriate judicial officer. The report to the judicial officer shall, where appropriate, include a recommendation as to whether such person should be released or detained under any of the conditions specified in subchapter II of this chapter. If the agency does not make a recommendation, it shall submit a report without recommendation. The agency shall provide copies of its report and recommendations (if any) to the United States attorney for the District of Columbia or the Corporation Counsel of the District of Columbia, and to counsel for the person concern-

ing whom the report is made. The report shall include but not be limited to information concerning the person accused, his family, his community ties, residence, employment, and prior criminal record, and may include such additional verified information as may become available to the agency.

(b) With respect to persons seeking review under subchapter II of this chapter of their detention or conditions of release, the agency shall review its report, seek and verify such new information as may be necessary, and modify or supplement its report to the extent appropriate.

(c) The agency, when requested by any appellate court or a judge or justice thereof, or by any other judicial officer, shall furnish a report as provided in subsection (a) of this section respecting any person whose case is pending before any such appellate court or judicial officer or in whose behalf an application for a bail determination shall have been submitted.

(d) Any information contained in the agency's files, presented in its report, or divulged during the course of any hearing shall not be admissible on the issue of guilt in any judicial proceeding, but such information may be used in proceedings under sections 23-1327, 23-1328, and 23-1329, in perjury proceedings, and for the purposes of impeachment in any subsequent proceeding.

(e) The agency, when requested by a member or officer of the Metropolitan Police Department acting pursuant to court rules governing the issuance of citations in the District of Columbia, shall furnish to such member or officer a report as provided in subsection (a).

(f) The preparation and the submission by the agency of its report as provided in this section shall be accomplished at the earliest practicable opportunity.

(g) A judicial officer in making a bail determination shall consider the agency's report and its accompanying recommendation, if any. The judicial officer may order such detention or may impose such terms and set such conditions upon release, including requiring the execution of a bail bond with sufficient solvent sureties as shall appear warranted by the facts, except that such judicial officer may not order any detention or establish any term or condition for release not otherwise authorized by law.

(h) The agency shall—

(1) supervise all persons released on nonsurety release, including release on personal recognizance, personal bond, nonfinancial conditions, or cash deposit or percentage deposit with the registry of the court;

(2) make reasonable effort to give notice of each required court appearance to each person released by the court;

(3) serve as coordinator for other agencies and organizations which serve or may be eligible to serve as custodians for persons released under supervision and advise the judicial officer as to the eligibility, availability, and capacity of such agencies and organizations;

(4) assist persons released pursuant to subchapter II of this chapter in securing employment or necessary medical or social services;



(5) inform the judicial officer and the United States attorney for the District of Columbia or the Corporation Counsel of the District of Columbia of any failure to comply with pretrial release conditions or the arrest of persons released under its supervision and recommend modifications of release conditions when appropriate;

(6) prepare, in cooperation with the United States marshal for the District of Columbia and the United States attorney for the District of Columbia, such pretrial detention reports as are required by Rule 46(h) of the Federal Rules of Criminal Procedure; and

(7) perform such other pretrial functions as the executive committee may, from time to time, assign.

(July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 640.)

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Original jurisdiction

The Chief Judge of District Court in District of Columbia exercises an executive function by presiding at extradition hearings and General Sessions Court exercises a judicial function by issuing detention warrant and setting bail, thus there is no court having original jurisdiction over offense within appeal provisions of Bail Reform Act, an appeal from an order of detention is, therefore, properly directed to District of Columbia Court of Appeals. *J. T. Hoffman v. United States* (1968, 403 F. 2d 927, 131 U.S. App. D.C. 201).

#### § 23-1304. Executive committee; composition; appointment and qualifications of Director

(a) The agency shall function under authority of and be responsible to an executive committee of five members of which three shall constitute a quorum. The executive committee shall be composed of the respective chief judges of the United States Court of Appeals for the District of Columbia Circuit, the United States District Court for the District of Columbia, the District of Columbia Court of Appeals, the Superior Court, or if circumstances may require, the designee of any such chief judge, and a fifth member who shall be selected by the chief judges.

(b) The executive committee shall appoint a Director of the agency who shall be a member of the bar of the District of Columbia. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 641.)

#### § 23-1305. Duties of Director; compensation; tenure

The Director of the agency shall be responsible for the supervision and execution of the duties of the agency. The Director shall receive such compensation as may be set by the executive committee but not in excess of the compensation authorized for GS-16 of the General Schedule contained in section 5332 of title 5, United States Code. The Director shall hold office at the pleasure of the executive committee. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 642.)

#### § 23-1306. Chief assistant and other agency personnel; compensation

The Director, subject to the approval of the executive committee, shall employ a chief assistant and such assisting and clerical staff and may make assignments of such agency personnel as may be neces-

sary properly to conduct the business of the agency. The staff of the agency, other than clerical, shall be drawn from law students, graduate students, or such other available sources as may be approved by the executive committee. The chief assistant to the Director shall receive compensation as may be set by the executive committee, but in an amount not in excess of the amount authorized for GS-14 of the General Schedule contained in section 5332 of title 5, United States Code, and shall hold office at the pleasure of the executive committee. All other employees of the agency shall receive compensation, as set by the executive committee, which shall be comparable to levels of compensation established in such chapter 53. From time to time, the Director, subject to the approval of the executive committee, may set merit and longevity salary increases. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 642.)

#### § 23-1307. Annual reports to executive committee, Congress, and Commissioner

The Director shall on June 15 of each year submit to the executive committee a report as to the agency's administration of its responsibilities for the previous period of June 1 through May 31, a copy of which report will be transmitted by the executive committee to the Congress of the United States, and to the Commissioner of the District of Columbia. The Director shall include in his report, to be prepared as directed by the Commissioner of the District of Columbia, a statement of financial condition, revenues, and expenses for the past June 1 through May 31 period. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 642.)

#### § 23-1308. Budget estimates

Budget estimates for the agency shall be prepared by the Director and shall be subject to the approval of the executive committee. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 642.)

### SUBCHAPTER II.—RELEASE AND PRETRIAL DETENTION

#### SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 23-1303.

#### § 23-1321. Release in noncapital cases prior to trial

(a) Any person charged with an offense, other than an offense punishable by death, shall, at his appearance before a judicial officer, be ordered released pending trial on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer, unless the officer determines, in the exercise of his discretion, that such a release will not reasonably assure the the<sup>1</sup> appearance of the person as required or the safety of any other person or the community. When such a determination is made, the judicial officer shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or the safety of any other person or the community, or,

<sup>1</sup> So in original.



if no single condition gives that assurance, any combination of the following conditions:

(1) Place the person in the custody of a designated person or organization agreeing to supervise him.

(2) Place restrictions on the travel, association, or place of abode of the person during the period of release.

(3) Require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security as directed, of a sum not to exceed 10 per centum of the amount of the bond, such deposit to be returned upon the performance of the conditions of release.

(4) Require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof.

(5) Impose any other condition, including a condition requiring that the person return to custody after specified hours of release for employment or other limited purposes.

No financial condition may be imposed to assure the safety of any other person or the community.

(b) In determining which conditions of release, if any, will reasonably assure the appearance of a person as required or the safety of any other person or the community, the judicial officer shall, on the basis of available information, take into account such matters as the nature and circumstances of the offense charged, the weight of the evidence against such person, his family ties, employment, financial resources, character and mental conditions, past conduct, length of residence in the community, record of convictions, and any record of appearance at court proceedings, flight to avoid prosecution, or failure to appear at court proceedings.

(c) A judicial officer authorizing the release of a person under this section shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform such person of the penalties applicable to violations of the conditions of his release, shall advise him that a warrant for his arrest will be issued immediately upon any such violation, and shall warn such person of the penalties provided in section 23-1328.

(d) A person for whom conditions of release are imposed and who, after twenty-four hours from the time of the release hearing, continues to be detained as a result of his inability to meet the conditions of release, shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. Unless the conditions of release are amended and the person is thereupon released, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on a condition which requires that he return to custody after specified hours shall, upon application, be entitled to a review by the judicial officer who imposed the condition. Unless the requirement is removed and the person is thereupon released on another condition, the judicial officer shall set forth in writing the reasons for continuing the requirement. In the event that the judicial officer who imposed conditions of release is not available,

any other judicial officer may review such conditions.

(e) A judicial officer ordering the release of a person on any condition specified in this section may at any time amend his order to impose additional or different conditions of release, except that if the imposition of such additional or different conditions results in the detention of the person as a result of his inability to meet such conditions or in the release of the person on a condition requiring him to return to custody after specified hours, the provisions of subsection (d) shall apply.

(f) Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(g) Nothing contained in this section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

(h) The following shall be applicable to any person detained pursuant to this subchapter:

(1) The person shall be confined, to the extent practicable, in facilities separate from convicted persons awaiting or serving sentences or being held in custody pending appeal.

(2) The person shall be afforded reasonable opportunity for private consultation with counsel and, for good cause shown, shall be released upon order of the judicial officer in the custody of the United States marshal or other appropriate person for limited periods of time to prepare defenses or for other proper reasons.

(July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 642.)

#### EFFECTIVE DATE

See note preceding section 23-101.

#### CROSS REFERENCE

Bail and collateral security, see § 16-704.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23-1322 to 23-1326, 23-1328, 23-1329.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Custodial release—Preparation of defense

Where limited custodial release offered only means by which defendant could present viable defense to second-degree murder charge, good faith representation by defendant that there were witnesses who could exculpate him but that, although defendant knew such witnesses by sight he did not know them by name was sufficient showing of "good cause" to warrant limited release of defendant in custody of United States marshal in order to obtain witnesses. *United States v. B. Reese* (1972, 463 F. 2d 830, 149 U.S. App. D.C. 427).

When denial of custodial release in order to obtain witnesses may deprive defendant of his only opportunity to establish his claim of defense, bona fide representation as to the character of the defense sought to be established should be accommodated unless outweighed by compelling reasons for denying release. *Id.*

It is for the district court, with the aid of the parties, to work out questions of judgment involved in balancing opportunity of an incarcerated defendant to be released in custody of United States marshal in order to search for witnesses against the need to take into account the safety of his custodians and to guard against the risk of flight. *Id.*

The degree of cooperation with respect to discovery between the government and a defendant who seeks custodial release in order to seek witnesses is to be taken into consideration as to the type and length of custodial release appropriate. *Id.*



## NOTES TO DECISIONS UNDER PRIOR LAW

## Appeal from conviction for contempt

Pending an appeal from an order refusing to discharge defendant on habeas corpus from conviction for contempt, defendant is entitled to bail. *In re Moss* (1904, 23 App. D.C. 474).

## Excessive bail

Requiring defendant, convicted of traffic violation for which \$5 fine was imposed, to post \$200 bail bond pending appeal, was improper. *H. W. Starr v. District of Columbia* (D.C. Man. App. 1962, 176 A. 2d 878).

Amount of bail must bear some reasonable relation to purpose for which it is given. *Id.*

## § 23-1322. Detention prior to trial

(a) Subject to the provisions of this section, a judicial officer may order pretrial detention of—

(1) a person charged with a dangerous crime, as defined in section 23-1331(3), if the Government certifies by motion that based on such person's pattern of behavior consisting of his past and present conduct, and on the other factors set out in section 23-1321(b), there is no condition or combination of conditions which will reasonably assure the safety of the community;

(2) a person charged with a crime of violence, as defined in section 23-1331(4), if (i) the person has been convicted of a crime of violence within the ten-year period immediately preceding the alleged crime of violence for which he is presently charged; or (ii) the crime of violence was allegedly committed while the person was, with respect to another crime of violence, on bail or other release or on probation, parole, or mandatory release pending completion of a sentence; or

(3) a person charged with any offense if such person, for the purpose of obstructing or attempting to obstruct justice, threatens, injures, intimidates, or attempts to threaten, injure, or intimidate any prospective witness or juror.

(b) No person described in subsection (a) of this section shall be ordered detained unless the judicial officer—

(1) holds a pretrial detention hearing in accordance with the provisions of subsection (c) of this section;

(2) finds—

(A) that there is clear and convincing evidence that the person is a person described in paragraph (1), (2), or (3) of subsection (a) of this section;

(B) that—

(i) in the case of a person described only in paragraph (1) of subsection (a), based on such person's pattern of behavior consisting of his past and present conduct, and on the other factors set out in section 23-1321(b), or

(ii) in the case of a person described in paragraph (2) or (3) of such subsection, based on the factors set out in section 23-1321(b), there is no condition or combination of conditions of release which will reasonably assure the safety of any other person or the community; and

(C) that, except with respect to a person described in paragraph (3) of subsection (a) of

this section, on the basis of information presented by proffer or otherwise to the judicial officer there is a substantial probability that the person committed the offense for which he is present before the judicial officer; and

(3) issues an order of detention accompanied by written findings of fact and the reasons for its entry.

(c) The following procedures shall apply to pretrial detention hearings held pursuant to this section:

(1) Whenever the person is before a judicial officer, the hearing may be initiated on oral motion of the United States attorney.

(2) Whenever the person has been released pursuant to section 23-1321 and it subsequently appears that such person may be subject to pretrial detention, the United States attorney may initiate a pretrial detention hearing by ex parte written motion. Upon such motion the judicial officer may issue a warrant for the arrest of the person and if such person is outside the District of Columbia, he shall be brought before a judicial officer in the district where he is arrested and shall then be transferred to the District of Columbia for proceedings in accordance with the section.

(3) The pretrial detention hearing shall be held immediately upon the person being brought before the judicial officer for such hearing unless the person or the United States attorney moves for a continuance. A continuance granted on motion of the person shall not exceed five calendar days, unless there are extenuating circumstances. A continuance on motion of the United States attorney shall be granted upon good cause shown and shall not exceed three calendar days. The person may be detained pending the hearing.

(4) The person shall be entitled to representation by counsel and shall be entitled to present information by proffer or otherwise, to testify, and to present witnesses in his own behalf.

(5) Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(6) Testimony of the person given during the hearing shall not be admissible on the issue of guilt in any other judicial proceeding, but such testimony shall be admissible in proceedings under sections 23-1327, 23-1328, and 23-1329, in perjury proceedings, and for the purposes of impeachment in any subsequent proceedings.

(7) Appeals from orders of detention may be taken pursuant to section 23-1324.

(d) The following shall be applicable to persons detained pursuant to this section:

(1) The case of such person shall be placed on an expedited calendar and, consistent with the sound administration of justice, his trial shall be given priority.

(2) Such person shall be treated in accordance with section 23-1321—

(A) upon the expiration of sixty calendar days, unless the trial is in progress or the trial has been delayed at the request of the person



other than by the filing of timely motions (excluding motions for continuances); or

(B) whenever a judicial officer finds that a subsequent event has eliminated the basis for such detention.

(3) The person shall be deemed detained pursuant to section 23-1325 if he is convicted.

(e) The judicial officer may detain for a period not to exceed five calendar days a person who comes before him for a bail determination charged with any offense, if it appears that such person is presently on probation, parole, or mandatory release pending completion of sentence for any offense under State or Federal law and that such person may flee or pose a danger to any other person or the community if released. During the five-day period, the United States attorney or the Corporation Counsel for the District of Columbia shall notify the appropriate State or Federal probation or parole officials. If such officials fail or decline to take the person into custody during such period, the person shall be treated in accordance with section 23-1321, unless he is subject to detention under this section. If the person is subsequently convicted of the offense charged, he shall receive credit toward service of sentence for the time he was detained pursuant to this subsection. (July 29, 1970, Pub. L. 91-358, § 210 (a), title II, 84 Stat. 644.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23-1323, 23-1324, 23-1329.

### § 23-1323. Detention of addict

(a) Whenever it appears that a person charged with a crime of violence, as defined in section 23-1331(4), may be an addict, as defined in section 23-1331(5), the judicial officer may, upon motion of the United States attorney, order such person detained in custody for a period not to exceed three calendar days, under medical supervision, to determine whether the person is an addict.

(b) Upon or before the expiration of three calendar days, the person shall be brought before a judicial officer and the results of the determination shall be presented to such judicial officer. The judicial officer thereupon (1) shall treat the person in accordance with section 23-1321, or (2) upon motion of the United States attorney, may (A) hold a hearing pursuant to section 23-1322, or (B) hold a hearing pursuant to subsection (c) of this section.

(c) A person who is an addict may be ordered detained in custody under medical supervision if the judicial officer—

(1) holds a pretrial detention hearing in accordance with subsection (c) of section 23-1322;

(2) finds that—

(A) there is clear and convincing evidence that the person is an addict;

(B) based on the factors set out in subsection (b) of section 23-1321, there is no condition or combination of conditions of release which will reasonably assure the safety of any other person or the community; and

(C) on the basis of information presented to the judicial officer by proffer or otherwise, there is a substantial probability that the person com-

mitted the offense for which he is present before the judicial officer; and

(3) issues an order of detention accompanied by written findings of fact and the reasons for its entry.

(d) The provisions of subsection (d) of section 23-1322 shall apply to this section. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 646.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23-1324.

### § 23-1324. Appeal from conditions of release

(a) A person who is detained, or whose release on a condition requiring him to return to custody after specified hours is continued, after review of his application pursuant to section 23-1321(d) or section 23-1321(e) by a judicial officer, other than a judge of the court having original jurisdiction over the offense with which he is charged or a judge of a United States court of appeals or a Justice of the Supreme Court, may move the court having original jurisdiction over the offense with which he is charged to amend the order. Such motion shall be determined promptly.

(b) In any case in which a person is detained after (1) a court denies a motion under subsection (a) to amend an order imposing conditions of release, (2) conditions of release have been imposed or amended by a judge of the court having original jurisdiction over the offense charged, or (3) he is ordered detained or an order for his detention has been permitted to stand by a judge of the court having original jurisdiction over the offense charged, an appeal may be taken to the court having appellate jurisdiction over such court. Any order so appealed shall be affirmed if it is supported by the proceedings below. If the order is not so supported, the court may remand the case for a further hearing, or may, with or without additional evidence, order the person released pursuant to section 23-1321(a). The appeal shall be determined promptly.

(c) In any case in which a judicial officer other than a judge of the court having original jurisdiction over the offense with which a person is charged orders his release with or without setting terms or conditions of release, or denies a motion for the pretrial detention of a person, the United States attorney may move the court having original jurisdiction over the offense to amend or revoke the order. Such motion shall be considered promptly.

(d) In any case in which—

(1) a person is released, with or without the setting of terms or conditions of release, or a motion for the pretrial detention of a person is denied, by a judge of the court having original jurisdiction over the offense with which the person is charged, or

(2) a judge of a court having such original jurisdiction does not grant the motion of the United States attorney filed pursuant to subsection (c), the United States attorney may appeal to the court having appellate jurisdiction over such court. Any order so appealed shall be affirmed if it is supported by the proceedings below. If the order is not so supported, (A) the court may remand the case for a further hearing, (B) with or without additional



evidence, change the terms or conditions of release, or (C) in cases in which the United States attorney requested pretrial detention pursuant to sections 23-1322 and 23-1323, order such detention. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 647.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23-1322, 23-1325.

#### NOTES TO DECISIONS

##### Review

Where, prior to accused's conviction of second-degree burglary, he had been convicted of taking property without right, housebreaking, disorderly conduct and drunkenness, had been twice convicted of unlawful entry and petit larceny and had been arrested four times on charges of housebreaking, trial court's inability to find that if released accused would not pose danger to community and its refusal to grant bail pending appeal from second degree burglary conviction were not improper. *W. A. Johnson v. United States* (D.C. App. 1972, 291 A. 2d 697).

#### § 23-1325. Release in capital cases or after conviction

(a) A person who is charged with an offense punishable by death shall be treated in accordance with the provisions of section 23-1321 unless the judicial officer has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. If such a risk of flight or danger is believed to exist, the person may be ordered detained.

(b) A person who has been convicted of an offense and is awaiting sentence shall be detained unless the judicial officer finds by clear and convincing evidence that he is not likely to flee or pose a danger to any other person or to the property of others. Upon such finding, the judicial officer shall treat the person in accordance with the provisions of section 23-1321.

(c) A person who has been convicted of an offense and sentenced to a term of confinement or imprisonment and has filed an appeal or a petition for a writ of certiorari shall be detained unless the judicial officer finds by clear and convincing evidence that

- (1) the person is not likely to flee or pose a danger to any other person or to the property of others, and
- (2) the appeal or petition for a writ of certiorari raises a substantial question of law or fact likely to result in a reversal or an order for new trial. Upon such findings, the judicial officer shall treat the person in accordance with the provisions of section 23-1321.

(d) The provisions of section 23-1324 shall apply to persons detained in accordance with this section, except that the finding of the judicial officer that the appeal or petition for writ of certiorari does not raise by clear and convincing evidence a substantial question of law or fact likely to result in a reversal or order for new trial shall receive de novo consideration in the court in which review is sought. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 647.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23-1322.

#### NOTES TO DECISIONS

##### Constitutional rights

There is no constitutional right to an appeal from a conviction or to bail on appeal. *W. A. Johnson v. United States* (D.C. App. 1972, 291 A. 2d 697).

It is within discretion of state to allow or not to allow appeal and right of appeal may be given upon such terms as legislature may deem proper; however, if right is given, there must be no invidious discrimination between persons and different groups of persons. *Id.*

##### Construction

Requirement that before granting bail pending appeal, trial court must find that release on bail will not pose danger to other persons or to property of others is not unreasonable. *W. A. Johnson v. United States* (D.C. App. 1972, 291 A. 2d 697).

Postconviction bail provisions of this section apply to persons convicted of purely "local" offenses and do not operate to deny bail to those convicted in District of Columbia under federal criminal statutes having nationwide application, when such bail would otherwise be available under Bail Reform Act. *United States v. B. J. Thompson* (1971, 452 F. 2d 1333, 147 U.S. App. D.C. 1; cert. denied 92 S.Ct. 1251, 405 U.S. 998).

If construed to deny bail to those convicted in District of Columbia under federal criminal statutes having nationwide application, when bail would otherwise be available under Bail Reform Act, this section would be violative of equal protection, absent a rational relationship between classification created by the section and any legitimate governmental policy. *Id.*

##### Remand

Notwithstanding whether this section or Bail Reform Act is applicable to criminal offenses committed in District of Columbia, since the district court's order denying bail pending appeal did no more than repeat statutory standards contained in this section and stated that defendant had failed to meet them, whereas federal rules of appellate procedure clearly stated that district court was to give reasons for action taken if it refused release pending appeal, remand for further findings is necessary. *United States v. B. J. Thompson* (1971, 452 F. 2d 1333, 147 U.S. App. D.C. 1; cert. denied 92 S.Ct. 1251, 405 U.S. 998).

##### Review

Where, prior to accused's conviction of second-degree burglary, he had been convicted of taking property without right, housebreaking, disorderly conduct and drunkenness, had been twice convicted of unlawful entry and petit larceny and had been arrested four times on charges of housebreaking, trial court's inability to find that if released accused would not pose danger to community and its refusal to grant bail pending appeal from second degree burglary conviction were not improper. *W. A. Johnson v. United States* (D.C. App. 1972, 291 A. 2d 697).

#### § 23-1326. Release of material witnesses

If it appears by affidavit that the testimony of a person is material in any criminal proceeding, and if it is shown that it may become impracticable to secure his presence by subpoena, a judicial officer shall impose conditions of release pursuant to section 23-1321. No material witness shall be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and further detention is not necessary to prevent a failure of justice. Release may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 648.)

#### § 23-1327. Penalties for failure to appear

(a) Whoever, having been released under this title prior to the commencement of his sentence, willfully fails to appear before any court or judicial officer as required, shall, subject to the provisions of the Federal Rules of Criminal Procedure, incur a forfeiture of any security which was given or pledged for his release, and, in addition, shall, (1) if he was



released in connection with a charge of felony, or while awaiting sentence or pending appeal or certiorari prior to commencement of his sentence after conviction of any offense, be fined not more than \$5,000 and imprisoned not less than one year and not more than five years, (2) if he was released in connection with a charge of misdemeanor, be fined not more than the maximum provided for such misdemeanor and imprisoned for not less than ninety days and not more than one year, or (3) if he was released for appearance as a material witness, be fined not more than \$1,000 or imprisoned for not more than one year, or both.

(b) Any failure to appear after notice of the appearance date shall be prima facie evidence that such failure to appear is willful. Whether the person was warned when released of the penalties for failure to appear shall be a factor in determining whether such failure to appear was willful, but the giving of such warning shall not be a prerequisite to conviction under this section.

(c) The trier of facts may convict under this section even if the defendant has not received actual notice of the appearance date if (1) reasonable efforts to notify the defendant have been made, and (2) the defendant, by his own actions, has frustrated the receipt of actual notice.

(d) Any term of imprisonment imposed pursuant to this section shall be consecutive to any other sentence of imprisonment. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 648.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23-1303, 23-1322.

#### NOTES TO DECISIONS

##### Contempt

Although it is mandatory that accused be present at beginning stage of trial, this does not mean that the trial court is helpless when a defendant does not appear at beginning of trial as directed; proper exercise of court's contempt power, after appropriate factual inquiry, appears to be a prescribed method of punishing other defendant who fails to appear for trial and, in addition, one who willfully fails to appear as required is subject to prosecution. *N. K. Campbell v. United States* (D.C. App. 1972, 295 A.2d 498).

##### Effective assistance of counsel

Where the defendant was 40-year-old man who had prior experience with police and with criminal arrests and who knew that he had to be in courtroom on particular day and what the consequences of failure to appear would be, failure on part of defendant's court appointed attorney to advise the defendant to appear at the designated time is not ineffective representation of counsel. *United States v. A. Moss* (1970, 438 F.2d 147, 141 U.S. App. D.C. 306).

Court appointed attorney is under no duty to search for defendant in court building when defendant fails to appear in designated courtroom at appointed time. *Id.*

Court appointed attorney's lack of memory concerning events of day on which defendant allegedly failed to appear in court and inability of attorney, as witness, to clearly recall what had transpired does not constitute breach of any professional obligation nor amount to ineffective representation of counsel. *Id.*

##### Evidence—Sufficiency

Evidence in this case is sufficient to support conviction for willful failure to appear in court as required by defendant's release on his personal recognizance. *United States v. A. Moss* (1970, 438 F.2d 147, 141 U.S. App. D.C. 306).

#### § 23-1328. Penalties for offenses committed during release

(a) Any person convicted of an offense committed while released pursuant to section 23-1321 shall be subject to the following penalties in addition to any other applicable penalties:

(1) A term of imprisonment of not less than one year and not more than five years if convicted of committing a felony while so released; and

(2) A term of imprisonment of not less than ninety days and not more than one year if convicted of committing a misdemeanor while so released.

(b) The giving of a warning to the person when released of the penalties imposed by this section shall not be a prerequisite to the application of this section.

(c) Any term of imprisonment imposed pursuant to this section shall be consecutive to any other sentence of imprisonment. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 649.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23-1303, 23-1321, 23-1322.

#### § 23-1329. Penalties for violation of conditions of release

(a) A person who has been conditionally released pursuant to section 23-1321 and who has violated a condition of release shall be subject to revocation of release, an order of detention, and prosecution for contempt of court.

(b) Proceedings for revocation of release may be initiated on motion of the United States attorney. A warrant for the arrest of a person charged with violating a condition of release may be issued by a judicial officer and if such person is outside the District of Columbia he shall be brought before a judicial officer in the district where he is arrested and shall then be transferred to the District of Columbia for proceedings in accordance with this section. No order of revocation and detention shall be entered unless, after a hearing, the judicial officer finds that—

(1) there is clear and convincing evidence that such person has violated a condition of his release; and

(2) based on the factors set out in subsection (b) of section 23-1321, there is no condition or combination of conditions of release which will reasonably assure that such person will not flee or pose a danger to any other person or the community.

The provisions of subsections (c) and (d) of section 23-1322 shall apply to this subsection.

(c) Contempt sanctions may be imposed if, upon a hearing and in accordance with principles applicable to proceedings for criminal contempt, it is established that such person has intentionally violated a condition of his release. Such contempt proceedings shall be expedited and heard by the court without a jury. Any person found guilty of criminal contempt for violation of a condition of release shall be imprisoned for not more than six months, or fined not more than \$1,000, or both.



(d) Any warrant issued by a judge of the Superior Court for violation of release conditions or for contempt of court, for failure to appear as required, or pursuant to subsection (c) (2) of section 23-1322, may be executed at any place within the jurisdiction of the United States. Such warrants shall be executed by a United States marshal or by any other officer authorized by law. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 649.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23-1303, 23-1322.

### § 23-1330. Contempt

Nothing in this subchapter shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt. (July 29, 1970, Pub. L. 91-358, § 210(a) title II, 84 Stat. 649.)

#### CROSS REFERENCE

Contempt power of Superior Court, see § 11-944.

### § 23-1331. Definitions

As used in this subchapter:

(1) The term "judicial officer" means, unless otherwise indicated, any person or court in the District of Columbia authorized pursuant to section 3041 of title 18, United States Code, or the Federal Rules of Criminal Procedure, to bail or otherwise release a person before trial or sentencing or pending appeal in a court of the United States, and any judge of the Superior Court.

(2) The term "offense" means any criminal offense committed in the District of Columbia, other than an offense triable by court-martial, military commission, provost court, or other military tribunal, which is in violation of an Act of Congress.

(3) The term "dangerous crime" means (A) taking or attempting to take property from another by force or threat of force, (B) unlawfully entering or attempting to enter any premises adapted for overnight accommodation of persons or for carrying on business with the intent to commit an offense therein, (C) arson or attempted arson of any premises adaptable for overnight accommodation of persons or for carrying on business, (D) forcible rape, or assault with intent to commit forcible rape, or (E) unlawful sale or distribution of a narcotic or depressant or stimulant drug (as defined by any Act of Congress) if the offense is punishable by imprisonment for more than one year.

(4) The term "crime of violence" means murder, forcible rape, carnal knowledge of a female under the age of sixteen, taking or attempting to take immoral, improper, or indecent liberties with a child under the age of sixteen years, mayhem, kidnaping, robbery, burglary, voluntary manslaughter, extortion or blackmail accompanied by threats of violence, arson, assault with intent to commit any offense, assault with a dangerous weapon, or an attempt or conspiracy to commit any of the foregoing offenses as defined by any Act of Congress or any State law, if the offense is punishable by imprisonment for more than one year.

(5) The term "addict" means any individual who habitually uses any narcotic drug as defined by section 4731 of the Internal Revenue Code of 1954 so as to endanger the public morals, health, safety, or welfare.

(July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 650.)

#### REFERENCE IN TEXT

Section 4731 of the Internal Revenue Code of 1954, referred to in par. (5), was repealed by section 1101(b) (3) (A) of Pub. L. 91-513, 84 Stat. 1292. For current definition of "addict", see section 102(1) of the Controlled Substances Act, Pub. L. 91-513, 84 Stat. 1242 (21 U.S.C. 802(1)).

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23-1322, 23-1323.

### § 23-1332. Applicability of subchapter

The provisions of this subchapter shall apply in the District of Columbia in lieu of the provisions of sections 3146 through 3152 of title 18, United States Code. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 650.)

## Chapter 15.—OUT-OF-STATE WITNESSES

Sec.

23-1501. Definitions.

23-1502. Hearing on recall of out-of-State witnesses by State courts; determination; travel allowance; penalty.

23-1503. Certificate providing for attendance of witnesses at criminal prosecutions in the District of Columbia; travel allowance; penalty.

23-1504. Exemption from arrest.

### § 23-1501. Definitions

As used in this chapter—

(1) The term "witness" includes a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding.

(2) The term "State" includes the Commonwealth of Puerto Rico, the District of Columbia, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States.

(3) The term "summons" includes a subpoena, order, or other notice requiring the appearance of a witness. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 650.)

#### EFFECTIVE DATE

See note preceding section 23-101.

§ 23-1502. Hearing on recall of out-of-State witnesses by State courts; determination; travel allowance; penalty

(a) If a judge of a court of record in any State which by its laws has made provision for commanding persons within that State to attend and testify in the District of Columbia certifies under the seal of the court (1) that there is a criminal prosecution pending in that court, or that a grand jury investigation has commenced or is about to commence, (2) that a person within the District of Columbia is a material witness in the prosecution or grand jury investigation, and (3) that his presence will be required for a specified number of days, upon presentation of that certificate to any judge of the Superior Court of the District of Columbia, except as provided in subsection (c), such judge shall fix a time and place for a hearing, and shall make an



order directing the witness to appear at a time and place certain for the hearing.

(b) If at the hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to attend and testify in the prosecution or grand jury investigation in the requesting State, and that the laws of such State and of any other State through which the witness may be required to pass by ordinary course of travel, will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the prosecution or grand jury investigation, as the case may be, at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

(c) If the certificate presented under subsection (a) recommends that the witness be taken into immediate custody and delivered to an officer of the requesting State to assure his attendance, in the requesting State, the judge may in lieu of notification of hearing, direct that the witness be forthwith brought before him for a hearing. If the judge at the hearing is satisfied of the desirability of the custody and delivery of the witness, he may, in lieu of issuing subpoena or summons, order the witness to be forthwith taken into custody and delivered to an officer of the requesting State. The certificate shall be prima facie proof of the desirability of the custody and delivery of the witness.

(d) Any witness who is summoned as above provided and, after being paid or tendered by some properly authorized person the fees and allowances authorized for witnesses in criminal cases in United States district courts, fails without good cause to attend and testify as directed in the summons, shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from the Superior Court. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 651.)

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Hearing mandatory

Under Uniform Act to Secure Attendance of Witnesses from Without a State in Criminal Proceedings, it is mandatory that a hearing be had and a determination made as to whether witness is material and necessary, and that it will not cause undue hardship to witness to be compelled to attend and testify, and the certificate is prima facie evidence of all facts stated therein. *United States ex. rel. State of Pennsylvania v. J. M. McDevitt* (D.C. App. 1963, 195 A. 2d 741).

In proceeding to issue process to require a person to return as a witness to testify before investigating grand jury in Pennsylvania, evidence supported findings that it was not established that person was material and necessary witness or that compelling his attendance would not cause him undue hardship, and hence denial of application was not an abuse of discretion. *Id.*

#### § 23-1503. Certificate providing for attendance of witnesses at criminal prosecutions in the District of Columbia; travel allowance; penalty

(a) If a person in any State, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions or grand jury investigations in the District of Columbia, is a material witness in such a prosecu-

tion or a grand jury investigation in the District of Columbia which has commenced or is about to commence, a judge may issue a certificate under seal stating these facts and specifying the number of days the witness will be required. The certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of the United States or the District of Columbia to assure his attendance in the District of Columbia. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

(b) If the witness is summoned to attend and testify in the District of Columbia he shall be tendered the fees and allowances authorized for witnesses in criminal cases in United States district courts. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within the District of Columbia for a period longer than that specified in the certificate, unless otherwise ordered by the court. If the witness, after coming into the District of Columbia, fails without good cause to attend and testify as directed in the summons, he may be punished in the manner provided for the punishment of any other witness who disobeys a summons issued from the court in the District of Columbia where the prosecution has been instituted or the grand jury investigation has commenced or is about to commence. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 651.)

#### § 23-1504. Exemption from arrest

(a) Any person who comes into the District of Columbia in obedience to a summons directing him to attend and testify in the District of Columbia shall not, while in the District of Columbia, pursuant to the summons, be subject to arrest or the service of process, civil or criminal, in connection with any matter which arose before his entrance into the District of Columbia under the summons.

(b) Any person who is in the process of passing through the District of Columbia for the purpose of proceeding to or returning from a State which has summoned him to attend and testify shall not be subject to arrest or the service of process, civil or criminal, in connection with any matter which arose at some other time. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 652.)

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Immunity from process

Letter directing defendant to appear at federal office, on account of criminal complaint, lest warrant be issued for arrest, was not a "summons within the meaning of the Uniform Act to Secure the Attendance of Witnesses from without a State in Criminal Proceedings," and defendant who appeared accordingly was not exempt from process under District of Columbia statute exempting persons appearing in obedience to summons. *R. C. Buffkin v. Alum-Co. National, Inc., et al.* (1963, 331 F. 2d 96, 118 U.S. App. D.C. 22).

#### Chapter 17.—DEATH PENALTY

##### Sec.

- 23-1701. Capital punishment.
- 23-1702. Provision for death chamber; appointment of executioner and assistants; fees.
- 23-1703. Sentences to be in writing and certified copy furnished.
- 23-1704. Who may be present at execution; fact of execution to be certified to clerk of court.
- 23-1705. Place of execution.



### § 23-1701. Capital punishment

The mode of capital punishment in the District of Columbia shall be by the process commonly known as electrocution. The punishment of death shall be inflicted by causing to pass through the body of the convict a current of electricity of sufficient intensity to cause death, and the application of the current shall be continued until the convict is dead. The time fixed for the execution of the sentence shall not be considered an essential part of the sentence, and if it be not executed at the time therein appointed, by reason of the pendency of an appeal or for other cause, the court may appoint another day for carrying the same into execution. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 652.)

#### EFFECTIVE DATE

See note preceding section 23-101.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Authority to execute capital punishment

Regardless of the legislation under which the appeal was brought, Congress had unmistakably invested the respondent, the superintendent of the jail, with authority within the District to carry into effect the death sentence in capital cases. *Price v. Moyer* (1923, 288 F. 269, 53 App. D.C. 63).

##### Construction

Section 23-703 must be read in connection with § 23-114 and with their legislative history. When this is done, it is clear that § 23-703 is intended not for the benefit of defendants upon whom death sentences are to be imposed but as an aid to the prison authorities charged with execution of such sentences. *Wheeler v. Reid* (1949, 175 F. 2d 829, 84 U.S. App. D.C. 180).

### § 23-1702. Provision for death chamber; appointment of executioner and assistants; fees

The Commissioner of the District of Columbia shall provide a death chamber and necessary apparatus for inflicting the death penalty by electrocution and designate an executioner and necessary assistants, not exceeding three in number. The District of Columbia Council shall fix the fees for the executioner and his assistants. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 652.)

#### CROSS REFERENCE

Place of execution, see § 23-1705.

### § 23-1703. Sentences to be in writing and certified copy furnished

If a person is sentenced to death for a conviction in the District of Columbia the presiding judge shall sentence the convicted person to death according to the terms of this chapter, and make the sentence in

writing, such sentence shall be filed with the papers in the case against the convicted person, and a certified copy thereof shall be transmitted, by the clerk of the court in which such sentence is pronounced, to the District of Columbia Department of Corrections not less than ten days prior to the time fixed in the sentence of the court for the execution. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 652.)

#### CROSS REFERENCE

Time of execution, see § 23-1701.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Construction

This section must be read in connection with § 23-114 and with their legislative history. When this is done, it is clear that this section is intended not for the benefit of defendants upon whom death sentences are to be imposed, but as an aid to the prison authorities charged with execution of such sentences. *Wheeler v. Reid* (1949, 175 F. 2d 829, 84 U.S. App. D.C. 180).

### § 23-1704. Who may be present at execution; fact of execution to be certified to clerk of court

At the execution of the death penalty there shall be present only the following persons: The executioner and his assistant; the prison physician and one other physician if the condemned person so desires; the condemned person's counsel and relatives, not exceeding three, if they so desire; the prison chaplain and such other ministers of the Gospel, not exceeding two, as may attend by desire of the condemned; the superintendent of the prison, or, in the event of his disability, a deputy designated by him; and not fewer than three nor more than five respectable citizens whom the superintendent of the prison shall designate, and, if necessary to insure their attendance, shall subpoena to be present. The fact of execution shall be certified by the prison physician and the executioner to the clerk of the court in which sentence was pronounced, which certificate shall be filed by the clerk with the papers in the case. No person under the age of twenty-one years shall be allowed to witness any execution. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 653.)

### § 23-1705. Place of execution

Any person adjudged to suffer death shall be executed within the walls of the designated facility of the Department of Corrections, or within the yard or inclosure thereof, and not elsewhere. (July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 653.)







## TITLE 24.—PRISONERS AND THEIR TREATMENT

Chap.	Sec.
1. Probation .....	24-101
2. Indeterminate Sentences and Paroles.....	24-201
3. Insane Criminals.....	24-301
4. Prisons and Prisoners.....	24-401
5. Rehabilitation of Alcoholics.....	24-501
6. Rehabilitation of Users of Narcotics.....	24-601
7. Interstate Agreement on Detainers.....	24-701

### Chapter 1.—PROBATION

Sec.
24-101. Omitted.
24-102. Repealed.
24-103. Investigations and reports by probation officers.
24-104. Discharge from or continuance of probation— Modification or revocation of order.
24-105. Quarters for probation officers—Payment of expenses.
24-106. Services of a psychiatrist and a psychologist available to probation officers, the Board of Parole and other designated officers.

#### CHAPTER REFERRED TO IN U.S. CODE

This chapter is referred to in section 5023 of title 18, U.S. Code.

#### § 24-101. Omitted.

##### CODIFICATION

Section, acts June 25, 1910, 36 Stat. 864, ch. 433, § 1; Mar. 4, 1919, 40 Stat. 1324, ch. 122, which related to appointment of probation officers, assistant probation officers and other probation personnel by the United States District Court for the District of Columbia and the District of Columbia Court of General Sessions, and their general powers and duties, has been omitted from this Code as superseded and now covered by §§ 11-1722 and 11-1725 of this Code, and by 18 U.S.C. §§ 3654-3656.

Act Mar. 4, 1923, 42 Stat. 1488, ch. 265 (Classification Act of 1923), which also had been cited as one of the sources of this section, and which was later superseded by the Classification Act of 1949 (Oct. 28, 1949, 63 Stat. 954, ch. 782, since repealed and superseded, in turn), was not a specific amendment of this section, but, in reclassifying government employees by salary grades, had affected the provisions of this section that had prescribed salaries for the specified positions. Present provisions relating to compensation of probation officers and other probation personnel are now covered by § 11-1726 of this Code; 5 U.S.C. §§ 5101 et seq., 5331 et seq., and 18 U.S.C. § 3656. See, also, the several acts set out as notes under § 603 of title 28, U.S.C.

Acts June 25, 1936, 49 Stat. 1921, ch. 804; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1, which also had been cited as sources of this section, were not specific amendments of this section, having only affected the names of the courts mentioned.

#### § 24-102. Repealed. Dec. 23, 1963, 77 Stat. 626, Pub. L. 88-241, § 21, effective Jan. 1, 1964.

Section of act June 25, 1910, 36 Stat. 864, ch. 433, § 2, dealt with the authority of the United States District Court for the District of Columbia and the former Municipal Court to place certain convicted offenders on probation. The section insofar as it related to the United States District Court was repealed by act June 25, 1958, 72 Stat. 216, Pub. L. 85-463, § 2. The surviving provisions of the section are now reenacted as section 16-710.

#### § 24-103. Investigations and reports by probation officers.

The probation officers shall carefully investigate all cases referred to them by the court, and make recommendations to the court to enable it to decide whether the defendant ought to be placed under probation, and shall report to the court, from time to time as may be required by it, touching all cases in their care, to the end that the court may be at all times fully informed of the circumstances and conduct of probationers. (June 25, 1910, 36 Stat. 864, ch. 433, § 3.)

##### CROSS REFERENCE

Services of a psychiatrist and a psychologist available to probation officers, see § 24-106.

##### NOTES TO DECISIONS

##### Abuse of discretion

Where probationer, against whom judgment of pater-nity had been entered, was committed once for being in arrears in weekly payments for support of child, but was released and was warned of action which the court would take for defaults in the future, and the court waited some 8 months, during which period probationer fell at least 12 payments in arrears, before acting on its warning and committing probationer for 30 days, there was no arbitrary, capricious, or wilful treatment of probationer at hands of court, and court did not abuse its discretion *Stevens v. District of Columbia* (D. C. Mun. App. 1956, 127 A. 2d 147).

##### Recommending sentence

Where accused pleaded guilty to maintaining disorderly house and, on plea for probation, trial judge announced, that probation officer had recommended maximum sentence and, on objection to consideration of recommendation, trial judge, without express ruling thereon, sentenced defendant to the near maximum penalty, sentence was not set aside. *Ishkanian v. United States* (D.C. Mun. App. 1944, 35 A. 2d 176).

A recommendation by a probation officer to trial judge as to sentence to be imposed is not merely unauthorized by this chapter but is an infringement upon court's judicial function, which officer has no right to exercise and judge no right to permit. *Id.*

##### Sentencing procedure

In sentencing, the judge must consider a program of rehabilitation designed to preclude, so far as current learning can furnish a guide, a repetition of the crime, and to such end Congress has placed several aids at disposal of judge, including provisions for presentence investigation, for commitment prior to sentence to a hospital for examination to determine mental competence of the offender, and for appointment of psychiatrist and psychologist. *Wm. H. Leach v. United States* (1963, 320 F. 2d 670, 115 U.S. App. D.C. 351).

#### § 24-104. Discharge from or continuance of probation—Modification or revocation of order.

Upon the expiration of the term fixed for such probation, the probation officer shall report that fact to the court, with a statement of the conduct of the probationer while on probation, and the court may thereupon discharge the probationer from further supervision, or may extend the probation, as shall seem advisable. At any time during the pro-



bationary term the court may modify the terms and conditions of the order of probation, or may terminate such probation, when in the opinion of the court the ends of justice shall require, and when the probation is so terminated the court shall enter an order discharging the probationer from serving the imposed penalty; or the court may revoke the order of probation and cause the rearrest of the probationer and impose a sentence and require him to serve the sentence or pay the fine originally imposed, or both, as the case may be, and the time of probation shall not be taken into account to diminish the time for which he was originally sentenced. (June 25, 1910, 36 Stat. 865, ch. 433, § 4.)

#### NOTES TO DECISIONS

##### Abuse of discretion

Where probationer, against whom judgment of paternity had been entered, was committed once for being in arrears in weekly payments for support of child, but was released and was warned of action which the court would take for defaults in the future, and the court waited some 8 months, during which period probationer fell at least 12 payments in arrears, before acting on its warning and committing probationer for 30 days, there was no arbitrary, capricious, or wilful treatment of probationer at hands of court, and court did not abuse its discretion. *Stevens v. District of Columbia* (D. C. Mun. App. 1956, 127 A. 2d 147).

##### Extension of probation

Where this section under which probation was extended did not require a hearing either at the time of extension or of revocation of probation, and procedure in the statute was complied with, probationer was not entitled to order setting aside revocation of extended probation on ground that extension of probation was entered ex parte. *United States v. Freeman* (D.C.D.C. 1958, 160 F. Supp. 532, affirmed 254 F. 2d 352, 103 U.S. App. D.C. 15).

The extension of the probation every six months after the return unexecuted of an attachment for violation of terms of probation kept the probation alive and did not violate this section, which does not limit the number or length of extensions of probation. *Cooper v. United States* (D.C. Mun. App. 1946, 48 A. 2d 771).

##### Probable cause

A probationer who had been arrested on another charge was properly arrested by probation officer for violation of terms of probation when she appeared in another court to answer the new charge, since only the execution of the sentence had been suspended and the requirement as to probable cause for the commission of an offense did not apply to her. *Cooper v. United States* (D.C. Mun. App. 1946, 48 A. 2d 771).

##### Revocation

The court had jurisdiction to reconsider defendant's probation and revoke it if the public interest seemed to justify such action. *Cooper v. United States* (D.C. Mun. App. 1946, 48 A. 2d 771).

That the judge who had originally sentenced defendant was no longer in office did not prevent another judge of the same court from revoking the defendant's probation. *Id.*

##### Rights of probationer

Probationer, against whom judgment of paternity has been entered, does not stand on equal footing with other citizens, and privilege of probation could be revoked by court in any procedural fashion authorized by statute, and, apart from statute, probationer, committed summarily, has no recourse to the Constitution and may not insist on a trial in any strict or formal sense. *Stevens v. District of Columbia* (D. C. Mun. App. 1956, 127 A. 2d 147).

#### § 24-105. Quarters for probation officers—Payment of expenses.

The chief probation officer of each court shall be entitled, for himself and his assistants, to a room in the building occupied by that court, and all necessary stationery and supplies for the transaction of the business of his office, and all the probation officers except volunteer officers shall be entitled to their necessary expenses in performing the duties of their office, under the direction of the court, the amount of the expense for such stationery, supplies, and expenses to be fixed and allowed by the court upon proper vouchers submitted to it by the probation officers, and accounts duly verified by their oath. (June 25, 1910, 36 Stat. 865, ch. 433, § 5; Mar. 4, 1919, 40 Stat. 1325, ch. 122.)

#### CODIFICATION

Provisions of section 5 of act June 25, 1910, as amended by act Mar. 4, 1919, which authorized an appropriation of \$8,000 for the payment of expenses, are omitted as obsolete.

#### CROSS REFERENCE

Annual estimate of expenditures, see § 47-213.

#### § 24-106. Services of a psychiatrist and a psychologist available to probation officers, the Board of Parole and other designated officers.

The Commissioner shall appoint a qualified psychiatrist and a qualified psychologist whose services shall be available to the following officers to assist them in carrying out their duties:

(1) In criminal cases, the judges and probation officers of the United States District Court for the District of Columbia and the judges and Director of Social Services of the Superior Court of the District of Columbia.

(2) The judges and such personnel assigned to the Family Division of the Superior Court as the Chief Judge may designate.

(3) Such officers of the Department of Corrections as the Director thereof shall designate.

(4) The Board of Parole of the District.  
(June 29, 1953, 67 Stat. 105, ch. 159, § 405; Aug. 16, 1954, 68 Stat. 730, ch. 737, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, § 159(d), title I, 84 Stat. 577.)

#### AMENDMENTS

1970—Section 159(d) of Act July 29, 1970, Public Law 91-358, amended section generally. For provisions of this section prior to this amendment, see 1967 edition of the code.

1954—Act Aug. 16, 1954, substituted "(1) In criminal cases, the judges of the district court and the probation officers", for "(1) the probation officers."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded Act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions. See section 11-101.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CROSS REFERENCES

Board of Parole, see § 24-201a.

Department of Corrections, see § 24-441.



Investigations and reports by probation officers, see § 24-103.

Family Division of Superior Court, physical and mental examinations and treatment of child, see § 16-2315.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 24-302.

#### NOTES TO DECISIONS

##### Presentence examination

A prisoner who requested a mental examination before sentence could have been examined under statute providing a qualified psychiatrist and a qualified psychologist for district judges to assist them in carrying out their duties. *W. R. Leach v. United States* (1964, 334 F. 2d 945, 118 U.S. App. D.C. 197).

##### Procedural safeguards

Transfer of prisoners to mental hospital requires protective procedures at least similar to those provided in 1964 Civil Commitment Act (now title 21, section 501, et seq., D.C. Code) providing full system of procedural safeguards before finding of mental illness can be made. *R. E. Mathews, Jr. v. K. L. Hardy et al.* (1969, 420 F. 2d 607, 137 U.S. App. D.C. 39).

Under section 24-302 providing that if director of department of corrections believes prisoner is mentally ill, he can refer prisoner to psychiatrist and, if psychiatrist concurs in that belief, director can then transfer prisoner to mental hospital, before prisoner may be involuntarily transferred he is entitled to judicial hearing, jury trial, and same rights of notice, counsel and cross-examination as are provided for in title 21, section 501 et seq., and same procedures for release from hospital as are embodied in those sections. *Id.*

## Chapter 2.—INDETERMINATE SENTENCES AND PAROLES

### Sec.

- 24-201. Repealed.
- 24-201a. Board of Parole—Rules and regulations.
- 24-201b. Transfer of powers of Board of Indeterminate Sentence and Parole—Duties of parole executive—Cooperation with Board.
- 24-201c. Applications for reduction of minimum sentence—Jurisdiction of court—Limits on reduction for certain crimes.
- 24-202. Repealed.
- 24-203. Imposition of indeterminate sentences authorized—Life and death sentences.
- 24-204. Parole authorized—Conditions—Custody.
- 24-205. Violation of parole—Warrant—Arrest—Return to confinement.
- 24-206. Revocation of parole after retaking—Hearing—New parole.
- 24-207. Repeal of inconsistent laws—Savings provision.
- 24-208. Power of Board—Prisoners sentenced to more than 180 days—Minimum sentence required to be served.
- 24-209. Federal Parole Board—Authority over United States prisoners convicted in the District of Columbia.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 22-3202.

### § 24-201. Repealed. July 17, 1947, 61 Stat. 379, ch. 263, § 7.

Section, act July 15, 1932, 47 Stat. 696, ch. 492, § 1, related to former Board of Indeterminate Sentence and Parole, and is now covered by §§ 24-201a to 24-201c.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24-201b, 24-203, 24-207.

### § 24-201a. Board of Parole—Rules and regulations.

A Board of Parole for the penal and correctional institutions of the District of Columbia is hereby created to consist of three members appointed by the Commissioner of the District of Columbia, one

of whom shall serve on a full-time basis and be designated by the Commissioner as Parole Executive. The other two members shall serve without compensation, one of whom shall be elected Chairman of the said Board. The Board of Parole shall select its own Chairman and shall have power to establish rules and regulations for its procedure. (July 17, 1947, 61 Stat. 378, ch. 263, § 1.)

#### ABOLITION OF BOARD AND TRANSFER OF FUNCTIONS

The Board of Parole was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorg. Plan No. 5 of 1952. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorg. Plan No. 3 of 1967.

Reorganization Order No. 33 dated May 28, 1953, and effective June 21, 1953, established a Board of Parole under the direction and control of a Commissioner and consisting of three members for the purpose of developing and administering an effective parole system. The new Board was authorized to exercise all powers of the previously existing Board of Parole which the order abolished. All positions under the previously existing Board of Parole were transferred to the new Board including the duties, powers, and authorities of all officers and employees. Reorganization Order No. 33 was amended and redesignated as Org. Ord. No. 6, dated Dec. 26, 1967. The latter order continued the Board of Parole and prescribed its purpose, composition, and functions. The Plans and Orders are set out in the appendix to title 1, Administration.

#### CROSS REFERENCE

Services of a psychiatrist and a psychologist available to the Board of Parole, see § 24-106.

### § 24-201b. Transfer of powers of Board of Indeterminate Sentence and Parole—Duties of parole executive—Cooperation with Board.

Upon appointment of the members of the Board of Parole, the powers of the Board of Indeterminate Sentence and Parole created by section 24-201, not specifically repealed, shall be transferred to and vested in the Board of Parole. The officers and employees of the Board of Indeterminate Sentence and Parole, except the members thereof, together with all official records, furniture and supplies, and all unexpended balances of any appropriations, shall be transferred to the Board of Parole. It shall be the duty of the parole executive to prepare for the consideration of the Board of Parole all applications of prisoners for parole in such form and at such times and together with such information and records as the Board of Parole may require, to perform such administrative duties as the Board may prescribe, and to supervise prisoners on parole in accordance with the terms and conditions prescribed by the Board. The Department of Corrections, and all other agencies and officials of the District shall cooperate with the Board and shall furnish the Board with such information, files, and records as it may deem necessary in the performance of its duties: *Provided*, That confidential information and records shall not be required to be produced. (July 17, 1947, 61 Stat. 378, ch. 263, § 2.)

### § 24-201c. Applications for reduction of minimum sentence—Jurisdiction of court—Limits on reduction for certain crimes.

When by reason of his training and response to the rehabilitation program of the Department of Corrections it appears to the Board that there is a reasonable probability that a prisoner will live and



remain at liberty without violating the law, and that his immediate release is not incompatible with the welfare of society, but he has not served his minimum sentence, the Board in its discretion may apply to the court imposing sentence for a reduction of his minimum sentence. The court shall have jurisdiction to act upon the application at any time prior to the expiration of the minimum sentence and no hearing shall be required. If a prisoner is serving a sentence for a crime for which a minimum sentence is prescribed by section 24-203(b) his minimum sentence shall not be reduced under this section below the minimum sentence so prescribed. (July 17, 1947, 61 Stat. 379, ch. 263, § 4; June 29, 1953, 67 Stat. 92, ch. 159, § 201 (b).)

#### AMENDMENT

1953—Act June 29, 1953, added provisions forbidding reduction of a minimum sentence when said sentence was prescribed by section 24-203(b).

#### EFFECTIVE DATE OF 1953 AMENDMENT

Section 201(c) of act June 29, 1953, provided that "The amendments made by this section [to this section and section 24-203] shall not apply with respect to any sentence imposed for a crime committed before the date of enactment of this Act [June 29, 1953]."

§ 24-202. Repealed. July 17, 1947, 61 Stat. 379, ch. 263, § 7.

Section, acts July 15, 1932, 47 Stat. 697, ch. 492, § 2; June 6, 1940, 54 Stat. 242, ch. 254, § 1, related to employees of Board of Indeterminate Sentence and Parole, and is now covered by section 24-201b.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24-203, 24-207.

§ 24-203. Imposition of indeterminate sentences authorized—Life and death sentences.

(a) Except as provided in subsections (b) and (c), in imposing sentence on a person convicted in the District of Columbia of a felony, the justice or judge of the court imposing such sentence shall sentence the person for a maximum period not exceeding the maximum fixed by law, and for a minimum period not exceeding one-third of the maximum sentence imposed, and any person so convicted and sentenced may be released on parole as herein provided at any time after having served the minimum sentence. Where the maximum sentence imposed is life imprisonment, a minimum sentence shall be imposed which shall not exceed fifteen years' imprisonment. Nothing in sections 22-2601, 24-201, 24-202 to 24-209 and 24-425 shall abrogate the power of the justice or judge to sentence the convicted prisoner to the death penalty as on June 6, 1940 or thereafter may be provided by law.

(b) The minimum sentence imposed under this section on a person convicted of an assault with intent to commit rape in violation of section 22-501, or of armed robbery in violation of section 22-3202 shall be not less than two years if the violation occurs after the person has been convicted in the District of Columbia or elsewhere of a crime of violence as defined in section 22-3201, providing for the control of dangerous weapons in the District of Columbia. The minimum sentence imposed under this section on a person convicted of rape in violation of section 22-2801, shall not be less than seven years if the violation occurs after the person has been convicted in the District of Columbia or elsewhere of a

crime of violence, as so defined. The maximum sentence in each case to which this subsection applies shall not be less than three times the minimum sentence imposed, and shall not be more than the maximum fixed by law.

(c) For a person convicted of—

(1) a violation of section 22-505 (relating to assault with a dangerous weapon on a police officer) occurring after the person has been convicted of a violation of that section or of a felony, either in the District of Columbia or in another jurisdiction;

(2) a violation of section 22-3203, providing for the control of dangerous weapons in the District (relating to illegal possession of a pistol), occurring after the person has been convicted of violating that section; or

(3) a violation of section 22-3601 (relating to possession of implements of crime) occurring after the person has been convicted in the District of Columbia of a violation of that section or of a felony, either in the District of Columbia or in another jurisdiction,

the minimum sentence imposed under this section shall not be less than one year, and the maximum sentence shall not be less than three times the minimum sentence imposed nor more than the maximum fixed by law. (July 15, 1932, 47 Stat. 697, ch. 492, § 3; June 6, 1940, 54 Stat. 242, ch. 254, § 2; June 29, 1953, 67 Stat. 91, ch. 159, § 201(a).)

#### REFERENCES IN TEXT

Sections 24-201 and 24-202, referred to in subsec. (a), were repealed by act July 17, 1947, 61 Stat. 379, ch. 263, § 7.

Subsection (b) of this section, as added by act June 29, 1953, provided in part as follows: "... armed robbery in violation of section 810 of such Act (D.C. Code 22-3202)". Section 810 of act March 3, 1901, is found in the code as section 22-2901 and concerns the crime of robbery. Section 22-3202 concerns the commission of a crime while armed.

#### AMENDMENTS

1953—Act June 29, 1953, added "(a) Except as provided in subsections (b) and (c)" at the beginning of the first sentence, and added subsecs. (b) and (c).

1940—Act June 6, 1940, amended section generally, and among other changes, increased the minimum period of sentence from one-fifth of the maximum period fixed by law to one-third of said period.

#### EFFECTIVE DATE OF 1953 AMENDMENT

Amendment of section by act June 29, 1953, not applicable with respect to any sentence imposed for a crime committed before June 29, 1953, see section 201(c) of act June 29, 1953, set out as a note under section 24-201c.

#### SHORT TITLE

Section 1 of act June 29, 1953, provided that: "This Act [which added §§ 1-319, 2-1901, 4-134a, 4-134b, 4-134c, 4-156a, 4-186, 4-187, 11-332, 22-109, 22-1002, 22-1515, 22-3601, 23-115, 23-306, 24-106, 25-128, 25-139, amended §§ 4-134, 4-135, 4-137, 4-156, 11-605, 11-606, 11-756, 11-1402, 11-1417, 22-201, 22-505, 22-507, 22-1107, 22-1121, 22-1207, 22-1301, 22-1502, 22-1505, 22-1508, 22-1514, 22-2201, 22-2202, 22-2203, 22-2204a, 22-2205, 22-2208, 22-2701, 22-3203, 22-3204, 22-3207, 22-3208, 22-3210, 22-3214, 22-3302, 23-401, 23-411, 23-608, 24-201c, 24-203, 25-107, 25-109 to 25-111, 25-115, 25-121, 25-128, 25-129, repealed § 4-109, and enacted provisions set out as notes under §§ 1-319, 4-186, 24-201c, 25-109] may be cited as the 'District of Columbia Law Enforcement Act of 1953.'"

#### DEFINITIONS

Section 102 of act of June 29, 1953, provided: "Sec. 102. For the purpose of this Act [for classifica-



tion of act, see Short Title note under § 24-203]—

“(1) The term ‘Commissioners’ means the Board of Commissioners of the District of Columbia;

“(2) The term ‘district court’ means the United States District Court for the District of Columbia;

“(3) The term ‘United States attorney’ means the United States Attorney for the District of Columbia;

“(4) The term ‘municipal court’ means The Municipal Court for the District of Columbia; and

“(5) The term ‘District’ means the District of Columbia.”

#### SAVINGS PROVISION

Section 2(b) of act June 6, 1940, provided that act June 6, 1940 should not affect the penalty, sentence, or forfeiture for felonies committed prior thereto.

#### ELIGIBILITY FOR PAROLE OF PERSONS CONVICTED OF FELONIES COMMITTED PRIOR TO JUNE 6, 1940

Section 9 of act June 6, 1940, provides as follows: “(a) Where as justice or a judge of the District Court of the United States for the District of Columbia has imposed or shall impose a life sentence on a prisoner convicted of a felony committed before this amendatory act takes effect such prisoner shall be eligible to parole under the provisions of said act approved July 15, 1932, as amended, after having served fifteen years of his life sentence.

“(b) Where a justice or judge of the District Court of the United States has imposed or shall impose a sentence for a definite term of imprisonment on a prisoner convicted of a felony committed before this amendatory act takes effect, such prisoner shall be eligible to parole under the provisions of said act approved July 15, 1932, as amended, after having served one-third of the sentence imposed.”

#### CROSS REFERENCES

Assault with intent to kill, rob, rape, or poison, see § 22-501.

Burglary, see § 22-1801.

Committing crime when armed, added punishment, see § 22-3202.

Definition of “crime of violence”, see § 22-3201.

Inapplicability to sentences imposed under 21 U.S.C. 848, see 21 U.S.C. 848(c).

Rape, definition and penalty, see § 22-2801.

Robbery, see § 22-2901.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24-201c, 24-207.

#### SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 21, section 848, U.S. Code.

#### NOTES TO DECISIONS

##### Application of statute

This act is applicable to persons convicted in the District of Columbia of offenses defined in the general laws of the United States. *Sims v. Rives* (1936, 84 F. 2d 871, 66 App. D.C. 24, certiorari denied 56 S. Ct. 960, 298 U.S. 682, 80 L. Ed. 1402).

##### Bail in felony-murder case

In view of the outstanding detention record of defendant, who had been convicted four times in an eight-year period for felony-murder in connection with an attempted robbery and whose first three convictions had been reversed, coupled with defendant's strong area ties, his family's help, assured employment, his apparent determination to live a useful and productive life, would be admitted to bail pending appeal from fourth conviction. *United States v. E. M. Harrison* (1968, 405 F. 2d 355, 131 U.S. App. D.C. 390).

##### Constitutionality

The Indeterminate Sentence Act applies to convictions in the District for offenses defined in the general laws of the United States, and thus applied is constitutionally valid. *Farnsworth v. Zerst* (C.C.A. Ga., 1938, 98 F. 2d 541).

##### Contempt

This section is inapplicable to a criminal contempt conviction not only because it ought not and is not intended to apply, but also because it cannot be made applicable

in view of fact that trial judge has nonarbitrary discretion in matter of sentence. *Warring v. Huff* (1941, 122 F. 2d 641, 74 App. D.C. 302, certiorari denied 62 S. Ct. 183, 314 U. S. 678, 86 L. Ed. 543).

##### Crime committed before passage of act

Indeterminate Sentence Act was not applicable where crime of grand larceny was committed before passage of that act. *De Benque v. United States* (1936, 85 F. 2d 202, 66 App. D.C. 36, 106 A.L.R. 839, certiorari denied 56 S. Ct. 960, 298 U.S. 681, 80 L. Ed. 1402, rehearing denied 57 S. Ct. 6, 299 U.S. 620, 81 L. Ed. 457).

Where defendants were found guilty in 1939 of having committed robbery in District of Columbia on June 10, 1932, sentence to prison of 3 to 15 years was not void on theory that it should be for not less than 6 months nor more than 15 years. *United States v. Neufeld* (D.C.D.C. 1945, 62 F. Supp. 600).

Claim of defendants that much had come to light after their conviction which would show that defendants were innocent could not be considered in passing on motion to set aside sentences as void because sentences allegedly did not comply with law in effect when offenses were committed. *Id.*

##### Jurisdiction upon conditional release

Where defendant was sentenced in 1936 to 30-year term for second-degree murder and was given conditional release when his accumulated good time and industrial good time allowances and his time already served totaled 30 years, defendant was thereafter under the supervision of the United States Board of Parole until his maximum sentence expired, not counting his good time and industrial time allowances. *Johnson v. Ward, U.S. Marshal, etc.* (D.C.D.C. 1959, 171 F. Supp. 26).

##### Meaning of indeterminate sentence

An indeterminate sentence is one for the maximum period imposed by the court, subject to termination by the Parole Board at any time after service of the minimum period. *Story v. Rives* (1938, 97 F. 2d 182, 68 App. D.C. 325, certiorari denied 59 S. Ct. 71, 305 U.S. 595, 83 L. Ed. 377). See, also, *United States v. Neufeld* (D.C.D.C. 1945, 62 F. Supp. 600).

An “indeterminate sentence” differs from a “determinate sentence” only in that the former imposes a minimum term; the good time and industrial time off provisions, however, are geared to the maximum term and the minimum term does not affect the computation. *Johnson v. Ward, U.S. Marshal etc.* (D.C.D.C. 1959, 171 F. Supp. 26).

##### Second-degree murder

Indeterminate Sentence Act is inapplicable to second-degree murder and the existing statute providing a penalty of imprisonment for life or for not less than 20 years remains in effect. *Anderson v. Rives* (1936, 85 F. 2d 673, 66 App. D.C. 174).

##### Sentences

Prospect of having conviction “automatically” set aside under Youth Corrections Act was a difference so important as to outweigh possibility of longer confinement and to warrant conclusion that second sentence, of thirty-four months to one hundred and two months, under Indeterminate Sentence Law, was more severe than first sentence, of three to nine years, under Youth Corrections Act, for robbery; and, accordingly, second sentence, entered on motion to correct, was invalid where offender had already begun to serve first sentence. *E. J. Tutum v. United States* (1962, 310 F. 2d 854, 114 U.S. App. D.C. 49).

Where the first sentences imposed under Indeterminate Sentence law were void, since the said statute was by its own terms inapplicable, the passing of the term did not deprive the court of power to resentence. *De Benque v. United States* (1936, 85 F. 2d 202, 66 App. D.C. 36, 106 A.L.R. 839, certiorari denied 56 S. Ct. 960, 298 U.S. 681, 80 L. Ed. 1402, rehearing denied 57 S. Ct. 6, 299 U.S. 620, 81 L. Ed. 457).

This provision brings the described sentences, although not indeterminate ones, within the new scheme by treating one-fifth thereof as the equivalent of the minimum in an indeterminate sentence and may include prisoners sentenced before the date of the act if imprisoned in the institutions under the jurisdiction of the board, but it



does not extend the board's jurisdiction to prisoners in other institutions nor require their return to the District although convicted there before the act was passed. *Aderhold v. Lee* (C.C.A. 5, 1934, 68 F. 2d 824).

As maximum sentence on each count was 3 years, and as it did not exceed the maximum of 10 years fixed by law, and when minimum sentence on each of four counts was 2 years, the sentence therefore did not exceed one-fifth of the maximum period fixed by law of 10 years and was not in violation of Indeterminate Sentence and Parole law. *United States ex rel. Bracey v. Hill* (C.C.A. 3, 1935, 77 F. 2d 970). See, also, *Bracey v. Zerbst* (C.C.A. 10, 1938, 93 F. 2d 8).

Sentence fixing a maximum of 12 years conformed with the act, as did the minimum period of 3 years, being for a minimum period not exceeding one-fifth of the maximum period fixed by law. *McDonald v. Johnston* (C.C.A. 9, 1937, 86 F. 2d 329).

A sentence is legal so far as it is within provisions of law and jurisdiction of court, and is void only as to excess when such excess is separable and may be dealt with without disturbing valid portion of sentence. *United States v. Newfield* (D.C.D.C. 1945, 62 F. Supp. 600).

#### § 24-204. Parole authorized—Conditions—Custody.

(a) Whenever it shall appear to the Board of Parole that there is a reasonable probability that a prisoner will live and remain at liberty without violating the law, that his release is not incompatible with the welfare of society, and that he has served the minimum sentence imposed or the prescribed portion of his sentence, as the case may be, the Board may authorize his release on parole upon such terms and conditions as the Board shall from time to time prescribe. While on parole, a prisoner shall remain in the legal custody and under the control of the Attorney General of the United States or his authorized representative until the expiration of the maximum of the term or terms specified in his sentence without regard to good time allowance.

(b) Notwithstanding the provisions of subsection (a) of this section, the District of Columbia Council promulgate rules and regulations under which the Board of Parole, in its discretion, may discharge a parolee from supervision prior to the expiration of the maximum term or terms for which he was sentenced. (July 15, 1932, 47 Stat. 697, ch. 492, § 4; June 6, 1940, 54 Stat. 242, ch. 254, § 3; July 17, 1947, 61 Stat. 378, ch. 263, § 3; May 22, 1965, 79 Stat. 113, Pub. L. 89-24, § 1.)

#### AMENDMENTS

1965—Act May 22, 1965, amended section by adding (a) at the beginning and by adding subsection (b) thereto.

1947—Act July 17, 1947, amended section generally.

1940—Act June 6, 1940, inserted "or to such other place as the board may indicate," after "return to his home;" substituted the Attorney General or his representative in place of superintendent of the institution as the party to have control of the paroled prisoner; "without regard to the good-time allowance" for "less such good-time allowance as is, or may hereafter be, provided by law," and "paroled: Provided, however, That the conditions prescribed and the residential limits may be thereafter changed or modified as the Board in its judgment may determine" for "paroled, which limits, however, may be thereafter changed in the discretion of the board."

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(210) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (b) relating to rules and regulations permitting the discharge of parolees, to the District of Columbia Council, subject to the right of the Commissioner as provided by

section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

#### COMMISSIONERS AUTHORITY NOT AFFECTED

Sec. 2 Act May 22, 1965, provided: Nothing in this Act shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan.

#### CROSS REFERENCE

Inapplicability to sentences imposed under 21 U.S.C. 848, see 21 U.S.C. 848(c).

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4-134c, 24-203, 24-207.

#### SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 21, section 848, U.S. Code.

#### NOTES TO DECISIONS

##### Applicability of statute

This section concerning paroles is not applicable to prisoner who is given a conditional release. *Johnson v. Ward, U.S. Marshal, etc.* (D.C.D.C. 1959, 171 F. Supp. 26).

##### Discretion of board

Material facts in prisoner's suit against parole board claiming that racial discrimination was basis of denial of parole must be such as would legitimately tend to show that parole board acted under color of law, and thereby subjected prisoner to deprivation of his federal rights. *R. Richardson, Jr. v. H. F. Rivers, D.C. Board of Parole et al.* (1964, 335 F. 2d 996, 118 U.S. App. D.C. 333).

Prisoner's conclusory assertions that racial discrimination was basis of parole board's denial of parole as against board's affidavits in denying discrimination did not create a genuine issue as to a material fact when viewed in light of board's broad discretionary power. *Id.*

A prisoner may be released from imprisonment before he has served the maximum period of his sentence, less lawful good-time allowance, only in the discretion of the Board of Indeterminate Sentence and Parole. *De Benque v. United States* (1936, 85 F. 2d 202, 66 App. D.C. 36, 106 A.L.R. 839).

The District of Columbia Board of Indeterminate Sentence and Parole has authority to impose conditions or to exercise supervision over prisoners convicted in the District of Columbia and thereafter released because of good conduct allowance. *In re Reed* (1947, 158 F. 2d 323, 81 U.S. App. D.C. 310).

##### Dispositional alternatives

The parole board has a wide choice of dispositional alternatives: (1) it may excuse the violation altogether and withdraw its warrant; (2) it may immediately revoke parole; and (3) it may withhold revocation until parolee has completed service of his intervening sentence and then revoke parole. *A. Shelton et al. v. United States Board of Parole et al.* (1967, 388 F. 2d 567, 128 U.S. App. D.C. 311).

The parole board is vested with broad discretion in the dispositional process. *Id.*

##### Intent of Congress

Congress intended to provide uniform administration of Federal and District of Columbia law with respect to control of released prisoners. *Johnson v. Ward, U.S. Marshal* (1960, 278 F. 2d 245, 107 U.S. App. D.C. 365).

##### Jurisdiction upon conditional release

Where defendant was sentenced in 1936 to 30-year term for second-degree murder and was given conditional release when his accumulated good time and industrial good time allowances and his time already served totaled 30 years, defendant was thereafter under the supervision of the United States Board of Parole until his maximum sentence expired, not counting his good time and industrial time allowances. *Johnson v. Ward, U.S. Marshal etc.* (D.C.D.C. 1959, 171 F. Supp. 26).



**Parties interested**

Where federal prisoner was released pursuant to 18 U.S.C. § 4164, a prisoner who has served term for which he was sentenced, less deductions allowed for good conduct, shall upon release be treated as if released on parole and be subject to laws relating to parole of federal prisoners until expiration of maximum term specified in sentence, released prisoner was under supervision of parole board until maximum sentence, not counting time off for good behavior, expired, as against contention that because parole law in effect when original criminal acts were committed provided for measurement of parole period by maximum sentence less good time allowance, prisoner could not be subject to conditions of parole law after his release because he had served maximum sentence less good-time allowance. *Hicks v. Reid* (1952, 194 F. 2d 327, 90 U.S. App. D.C. 109, certiorari denied 73 S. Ct. 51, 344 U.S. 840, 97 L. Ed. 653).

**Prisoners confined outside district**

Same privileges of parole are accorded to prisoners sentenced in the District of Columbia and committed to penal institutions outside of the District as to those sentenced and confined within the District. *Bracey v. Hill*. (D.C. Pa., 1935, 11 F. Supp. 148).

**Prompt disposition of consequences of parole violation**

Where fact of parole violation has been conclusively established by an adjudication, either state or federal, that a criminal offense was committed during release period, parole violator may apply to parole board for immediate determination of disposition to be made concerning consequences of his parole violation and to seek what is in effect concurrent service on all, or a part of, the unexpired portion of his original sentence with the sentence imposed for criminal offense which constituted the parole violation. *A. Shelton et al. v. United States Board of Parole et al.* (1967, 388 F. 2d 567, 128 U.S. App. D.C. 311).

**Review**

The parole board's selection of a particular disposition, after full and fair consideration of available facts, may be regarded as almost unreviewable, but failure to afford a procedure whereby violator may seek a favorable disposition, or an outright refusal to consider proffered evidence in mitigation, is not immune from judicial review. *A. Shelton et al. v. United States Board of Parole et al.* (1967, 388 F. 2d 567, 128 U.S. App. D.C. 311).

Where parole boards recently issued new regulations, in lieu of informal procedures, concerning the processing and disposition of applications for withdrawal or execution of parole violator warrants prior to expiration of the intervening sentence, appeals not otherwise disposed of would be remanded so that petitioners might pursue the administrative remedies provided in those regulations. *Id.*

Judicial reviews of dispositional phase of parole revocation proceedings is available, if at all, only after the violator has pursued his administrative remedies. *Id.*

**§ 24-205. Violation of parole—Warrant—Arrest—Return to confinement.**

If said Board of Parole, or any member thereof, shall have reliable information that a prisoner has violated his parole, said board, or any member thereof, at any time within the term or terms of the prisoner's sentence, may issue a warrant to any officer hereinafter authorized to execute the same for the retaking of such prisoner. Any officer of the District of Columbia penal institutions, any officer of the Metropolitan Police Department of the District of Columbia, or any federal officer authorized to serve criminal process within the United States to whom such warrant shall be delivered is authorized and required to execute such warrant by taking such prisoner and returning or removing him to the penal institution of the District of Columbia from which he was paroled or to such penal or correctional institution as may be designated by the Attorney General of the United States. (July 15, 1932, 47

Stat. 698, ch. 492, § 5; June 6, 1940, 54 Stat. 242, ch. 254, § 4; July 17, 1947, 61 Stat. 378, ch. 263, § 2.)

**AMENDMENT**

1940—Act June 6, 1940, substituted "him to said penal institution," for "or removing him to the penal institution of the District of Columbia from which he was paroled or to such penal or correctional institution as may be designated by the Attorney General of the United States."

**TRANSFER OF FUNCTIONS**

Board of Parole was substituted for Board of Indeterminate Sentence and Parole to conform to act July 17, 1947, which transferred the powers of the Board of Indeterminate Sentence and Parole not specifically repealed, to the Board of Parole. See § 24-201b.

**CROSS REFERENCE**

Inapplicability to sentences imposed under 21 U.S.C. 848, see 21 U.S.C. 848(c).

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 24-203, 24-207.

**SECTION REFERRED TO IN U.S. CODE**

This section is referred to in title 21, section 848, U.S. Code.

**NOTES TO DECISIONS****Crime committed while on parole**

Petition for writ of habeas corpus, on the ground that petitioner's confinement after expiration of his sentence was illegal, was denied where petitioner had committed a crime while on parole, and the judge imposing the second sentence had no power to make it and the unexpired portion of the first sentence run concurrently. *Hammerer v. Huff* (1940, 110 F. 2d 113, 71 App. D.C. 246).

**Jail sentence while on probation**

When probationer was actually serving a jail sentence while on probation with respect to another sentence, even in jail, he was subject to the conditions of the probation and by its terms he was to refrain from violation of law. *Burns v. United States* (1932, 53 S. Ct. 154, 287 U.S. 216, 77 L. Ed. 266).

**Jurisdiction**

One hundred-eighty days before expiration of maximum five-year term, mandatory releasee's release became unconditional, he was no longer deemed as if released on parole, board of parole no longer had jurisdiction over him, board had no authority to issue parole violation warrant on basis of prior parole violations and releasee could not be required to serve the full five-year term. *Birch v. Anderson* (1965, 358 F. 2d 520, 123 U.S. App. D.C. 153).

Defendant, a narcotics violator who had been imprisoned in a District of Columbia penal institution and then conditionally released, was subject to provisions of District of Columbia Code dealing with parole. *T. Gaskins v. R. F. Kennedy, Attorney General, et ano.* (1965, 350 F. 2d 311.)

Notwithstanding defendant was convicted of violating general federal statute, as distinguished from a criminal law of the District of Columbia, and was released under federal mandatory good time statute from District of Columbia penal institution, District parole board had authority to arrest him under District of Columbia code provision authorizing arrest of parole violators. *C. Fuller v. K. A. Weakley, Supt. Lorton Reformatory etc., et al.* (1965, 349 F. 2d 90, 4th Ct.).

The District of Columbia Parole Board did not err in acting pursuant to D.C. Parole Act with regard to prisoner who had been convicted of a federal crime rather than offense made criminal by D.C. Code, since the act establishing D.C. Parole Board transferred authority over prisoners held in District prisons to D.C. Board, and provisions of D.C. Parole Act, rather than federal parole law, were to be applied to such prisoners. *R. A. Howerton v. Hugh F. Rivers et al.* (1963, 326 F. 2d 653, 117 U.S. App. D.C. 110).

Where petitioner was released from District of Columbia Reformatory on parole, but a warrant was subsequently issued against him for violation of that parole and petitioner was confined at a Federal Penitentiary in Kansas upon conviction of a new and separate offense in



Missouri, District of Columbia Board of Parole did not lose its jurisdiction over petitioner to Federal Parole Board and had the right to file a detainer against petitioner. *Noll v. Board of Parole for Government of District of Columbia* (1951, 191 F. 2d 653, 89 U.S. App. D.C. 206).

#### Parties interested

Defendant who had not been paroled or retaken on warrant was not in a position to challenge the validity of this section under the Fourth Amendment. *Sims v. Rives* (1936, 84 F. 2d 871, 66 App. D.C. 24, certiorari denied 56 S. Ct. 960, 298 U.S. 682, 80 L. Ed. 1402).

#### Return to confinement

Where petitioner who had been granted parole by Board of Indeterminate Sentence and Parole for District of Columbia was re-arrested on reliable information for parole violation, was taken to United States Penitentiary outside District, hearing was had before Board of Parole, and certificate of revocation was signed by assistant parole executive of United States Board of Parole and transmitted to warden, certificate of revocation was valid although not issued by Board of Indeterminate Sentence and Parole for District of Columbia. *Stillwell v. Looney* (D.C.D.C. 1953, 110 F. Supp. 1, affirmed 207 F. 2d 359).

#### Review

There is no right of judicial review of exercise by parole board of its discretionary powers. *Boddie v. Weakley* (1966, 456 F. 2d 242, Fourth Circuit).

#### Unreasonable delay

Parole board's seven-month delay in executing its parole violator's warrant was not unreasonable, especially since reason for delay was to allow accused to serve two intervening sentences. *Ginyard v. Clemmer* (1966, 357 F. 2d 291, 123 U.S. App. D.C. 100).

#### Unexpired sentence

The unexpired portion of a parole violator's original sentence begins to run not when he is in prison by arrest or conviction for a new and separate offense but only when his parole has been revoked and he has been returned to custody of revoking authority. *Noll v. Board of Parole for Government of District of Columbia* (1951, 191 F. 2d 653, 89 U.S. App. D.C. 206).

Where petitioner was released from District of Columbia Reformatory on parole but a subsequent warrant was issued for violation of that parole, fact that petitioner served time in various places of detention other than in District of Columbia did not fulfill requirement of serving District of Columbia sentence. *Id.*

#### § 24-206. Revocation of parole after retaking—Hearing—New parole.

When a prisoner has been retaken upon a warrant issued by the Board of Parole, he shall be given an opportunity to appear before the Board, a member thereof, or an examiner designated by the Board. At such hearing he may be represented by counsel. The Board may then, or at any time in its discretion, terminate the parole or modify the terms and conditions thereof. If the order of parole shall be revoked, the prisoner, unless subsequently reparaoled, shall serve the remainder of the sentence originally imposed less any commutation for good conduct which may be earned by him after his return to custody. For the purpose of computing commutation for good conduct, the remainder of the sentence originally imposed shall be considered as a new sentence. The time a prisoner was on parole shall not be taken into account to diminish the time for which he was sentenced.

In the event a prisoner is confined in, or as a parolee is returned to a penal or correctional institution other than a penal or correctional institution of the District of Columbia, the Board of Parole created by section 723a of title 18, U.S. Code, shall have and exercise the same power and authority as

the Board of Parole of the District of Columbia had the prisoner been confined in or returned to a penal or correctional institution of the District of Columbia. (July 15, 1932, 47 Stat. 698, ch. 492, § 6; June 6, 1940, 54 Stat. 242, ch. 254, § 5; July 17, 1947, 61 Stat. 379, ch. 263, § 5.)

#### REFERENCES IN TEXT

Title 18 U.S.C. § 723a, referred to in the text, was repealed by act June 25, 1948, 62 Stat. 862, ch. 645, § 21, and is now covered by 18 U.S.C. § 4201.

#### AMENDMENTS

1947—Act July 17, 1947, amended section generally, and among other changes, permitted the parole violator, upon recommitment, to earn commutation for good conduct.

1940—Act June 6, 1940, added the provisions relating to the authority of the Board of Parole when a prisoner is removed to an institution designated by the Attorney General.

#### CROSS REFERENCE

Inapplicability to sentences imposed under 21 U.S.C. 848, see 21 U.S.C. 848(c).

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4-134c, 24-203, 24-207.

#### SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 21, section 848, U.S. Code.

#### NOTES TO DECISIONS

##### Appearance and hearing

Alleged parole violator was entitled to present testimony of witnesses appearing voluntarily. *G. J. Reed, Chairman, U.S. Board of Parole et al. v. L. D. Butterworth* (1961, 297 F. 2d 776, 111 U.S. App. D.C. 365).

The provision of this section that a paroled prisoner arrested for violation of parole should be given an opportunity to appear before board meant an effective appearance, including presence of counsel, if desired by prisoner, and receipt of testimony if he has testimony to present. *Fleming v. Tate* (1946, 156 F. 2d 848, 81 U.S. App. D.C. 205).

Participation by counsel in proceedings against parole violator need be no greater than necessary to insure that board is accurately informed from parolee's standpoint before it acts, and permitted presentation of testimony by parolee is governed by same rule. *Id.*

Prisoner who had been retaken on warrant issued by Board of Parole was entitled to explain before Board his assertion that he had been leading a decent life and was entitled to more than a pro forma proceeding, and he would either be given an opportunity to explain such matters before Board or be discharged. *United States ex rel. McCreary v. Kenton* (D.C.D.C. 1960, 190 F. Supp. 689).

There is no denial of administrative due process to prisoner who is not entitled to have witnesses summoned and heard or who may not appear with counsel at hearing concerning revocation of parole. *Id.*

This section providing that a prisoner shall be given an opportunity to "appear" before the Board of Indeterminate Sentence and Parole of District of Columbia contemplates an effective appearance and not the mere physical presence of prisoner, and implies that he must be given a "hearing" wherein he is entitled to be represented by retained counsel, present evidence, and adduce witnesses. *In re Tate* (D.C.D.C. 1946, 63 F. Supp. 961).

Under this section providing that a prisoner returned to an institution for alleged violation of his parole shall be given an opportunity to appear before the Board of Indeterminate Sentence and Parole of District of Columbia, a summary and informal hearing is sufficient. *Id.*

##### Assignment of counsel

Where it was undisputed that revocation of prisoner's conditional release was due to his failure to make report to parole supervisor, it was not necessary that indigent prisoner be furnished counsel at routine revocation hearing. *Gaskins v. Kennedy* (1965, 350 F. 2d 311, Fourth Circuit).

Under this section providing that a prisoner returned to an institution for alleged violation of his parole shall



be given an opportunity to appear before the Board of Indeterminate Sentence and Parole of District of Columbia, right of counsel is statutory and not constitutional, and prisoner would not be entitled to have counsel assigned to represent him. *In re Tate* (D.C.D.C. 1946, 63 F. Supp. 961).

#### Certificate of revocation

Where petitioner who had been granted parole by Board of Indeterminate Sentence and Parole for District of Columbia was re-arrested on reliable information for parole violation, was taken to United States Penitentiary outside District, hearing was had before Board of Parole, and certificate of revocation was signed by assistant parole executive of United States Board of Parole and transmitted to warden, certificate of revocation was valid although not issued by Board of Indeterminate Sentence and Parole for District of Columbia. *Stillwell v. Looney* (D.C.D.C. 1953, 110 F. Supp. 1, affirmed 207 F. 2d 359).

#### Commutation of sentence

Any right to commutation which defendant may have earned for good conduct at any time prior to recommitment was conditional and was forfeited by violation of parole. *Jones v. Clemmer* (1947, 163 F. 2d 852, 82 U.S. App. D.C. 288).

The amendment of July 17, 1947, to this section permitting parole violator to earn commutation for good conduct applied to service of remainder of sentences after recommitment, although sentences were originally imposed prior to such amendment. *Id.*

#### Construction

The amendment of July 17, 1947, to this section so as to permit parole violator upon recommitment to earn commutation for good conduct was remedial and was to be construed liberally. *Jones v. Clemmer* (1947, 163 F. 2d 852, 82 U.S. App. D.C. 288).

#### Deprivation of rights

Colorable claim of deprivation of rights to assistance of retained counsel and to present testimony of voluntary witnesses in parole revocation hearing is justiciable. *Boddie v. Weakley* (1966, 356 F. 2d 242, Fourth Circuit).

#### Discretion of board

Under this section, parolee should be permitted to present any pertinent matter, and, although board's discretion in continuing or revoking parole is uncontrolled, it cannot act in disregard of facts or refuse to hear argument. *Fleming v. Tate* (1946, 156 F. 2d 848, 81 U.S. App. D.C. 205).

The granting or revocation of a parole is within discretion of Board of Indeterminate Sentence and Parole of the District of Columbia. *In re Tate* (D.C.D.C. 1946, 63 F. Supp. 961).

#### Dispositional alternatives

The parole board has a wide choice of dispositional alternatives: (1) it may excuse the violation altogether and withdraw its warrant; (2) it may immediately revoke parole; and (3) it may withhold revocation until parolee has completed service of his intervening sentence and then revoke parole. *A. Shelton et al. v. United States Board of Parole et al.* (1967, 388 F. 2d 567, 128 U.S. App. D.C. 311).

The parole board is vested with broad discretion in the dispositional process. *Id.*

#### Good time allowance

Where prisoner, who was sentenced for violation of District of Columbia Code and transferred to federal penitentiary at Leavenworth, was later conditionally released and placed under supervision of United States Board of Parole at Washington, D.C., but was later taken into custody on a warrant issued by United States Board of Parole for violation of conditions of his release and transferred to a penal institution operated by District of Columbia, prisoner after recommitment accumulated good time at rate of six days per month as fixed by District of Columbia Code and not at rate of eight days per month as was the case when he was confined in federal penitentiary. *G. P. Clokey v. U.S. Parole Board et al.* (1962, 310 F. 2d 86, U.S. App. 4th Ct.).

#### Habeas corpus

A parole violator, who was returned to prison without permitting counsel who had previously represented

prisoner to appear in his behalf or permitting his employer to testify, was entitled to release in habeas corpus proceeding. *Fleming v. Tate* (1946, 156 F. 2d 848, 81 U.S. App. D.C. 205).

On writ of habeas corpus, District Court had no jurisdiction to review on merits a revocation of a parole by the Board of Indeterminate Sentence and Parole of District of Columbia, and only issue was whether petitioner had been deprived of his legal rights by manner in which revocation hearing was conducted. *In re Tate* (D.C.D.C. 1946, 63 F. Supp. 961).

Where, at hearing before Board of Indeterminate Sentence and Parole of District of Columbia to revoke a parole, parolee's counsel was not permitted to appear, parolee's employer was not permitted to testify, and parole was revoked, parolee's right under this section to appear before the board was violated and parolee would be discharged on habeas corpus without prejudice to subsequent proceedings for revocation of his parole in conformity with this section. *Id.*

#### Jurisdiction

Defendant, a narcotics violator who had been imprisoned in a District of Columbia penal institution and then conditionally released, was subject to provisions of District of Columbia Code dealing with parole. *Gaskins v. Kennedy* (1965, 350 F. 2d 311, Fourth Circuit).

Although defendant had been convicted of violating a general federal law, as distinguished from a criminal statute of the District of Columbia, defendant who had been in prison in District of Columbia penal institution and conditionally released was subject to supervision of the District parole board and statute empowering board to revoke parole was applicable to him. *Id.*

Where petitioner was released from District of Columbia Reformatory on parole, but a warrant was subsequently issued against him for violation of that parole and petitioner was confined at a Federal Penitentiary in Kansas upon conviction of a new and separate offense in Missouri, District of Columbia Board of Parole did not lose its jurisdiction over petitioner to Federal Parole Board and had the right to file a detainer against petitioner. *Noll v. Board of Parole for Government of District of Columbia* (1951, 191 F. 2d 653, 89 U.S. App. D.C. 206).

#### Prompt disposition of consequence of parole violation

Where fact of parole violation has been conclusively established by an adjudication, either state or federal, that a criminal offense was committed during release period, parole violator may apply to parole board for immediate determination of disposition to be made concerning consequences of his parole violation and to seek what is in effect concurrent service on all, or a part of, the unexpired portion of his original sentence with the sentence imposed for criminal offense which constituted the parole violation. *A. Shelton et al. v. United States Board of Parole et al.* (1967, 388 F. 2d 567, 128 U.S. App. D.C. 311).

#### Review

The parole board's selection of a particular disposition, after full and fair consideration of available facts, may be regarded as almost unreviewable, but failure to afford a procedure whereby violator may seek a favorable disposition, or an outright refusal to consider proffered evidence in mitigation, is not immune from judicial overview. *A. Shelton et al., v. United States Board of Parole et al.* (1967, 388 F. 2d 567, 128 U.S. App. D.C. 311).

Where parole boards recently issued new regulations, in lieu of informal procedures, concerning the processing and disposition of applications for withdrawal or execution of parole violator warrants prior to expiration of the intervening sentence, appeals not otherwise disposed of would be remanded so that petitioners might pursue the administrative remedies provided in those regulations. *Id.*

Judicial review of dispositional phase of parole revocation proceedings is available, if at all, only after the violator has pursued his administrative remedies. *Id.*

#### Revocation of parole

Failure of Board of Parole to give immediate hearing and revoke parole when paroled prisoner was returned to reformatory pursuant to sentences for crimes committed while on parole did not permit parole to continue running



in satisfaction of original sentences after prisoner's re-entry of reformatory. *Washington v. Clemmer* (1948, 169 F. 2d 300, 83 U.S. App. D.C. 268).

#### Right to counsel

Prisoner is not entitled to services of appointed counsel in routine parole revocation hearing, but he has statutory right to assistance of retained counsel, and there is a judicially enforceable right to fundamental fairness, and right to fairness includes right to present testimony of voluntary witnesses. *Boddie v. Weakley* (1966, 356 F. 2d 242, Fourth Circuit).

That indigent parolee was not furnished counsel at hearing pursuant to which his parole was revoked did not render his subsequent confinement unlawful. *R. E. Jones v. H. F. Rivers, et al., D. Clemmer et al.* (C.A. 4th, 1964, 338 F. 2d 862).

Alleged parole violator was entitled to counsel at hearing. *G. J. Reed, Chairman, U.S. Board of Parole et al. v. L. D. Butterworth* (1961, 297 F. 2d 776, 111 U.S. App. D.C. 365).

In proceeding for writ of habeas corpus by petitioner who had been arrested for violation of conditional release and imprisoned, where there was no showing that petitioner was advised of his right to have his counsel present at hearing before parole board respecting revocation of conditional release, record failed to disclose that petitioner had made an election not to have his counsel present at hearing. *Moore v. Reid et al.* (1957, 246 F. 2d 654, 100 U.S. App. D.C. 373).

Where person was arrested and imprisoned for violation of conditional release and brought before the District of Columbia Parole Board for hearing on revocation of conditional release, under circumstances, his failure to have counsel present at hearing was critical and effectively denied him of his statutory right to appear before board. *Id.*

Under this section giving a paroled prisoner an opportunity to appear before Parole Board at hearing on revocation of his parole, appearance includes right to counsel if the prisoner so elects. *Id.*

#### Rules of evidence

Although parole violator is entitled to present testimony at hearing before board, it is not required that receipt of testimony be governed by strict rules of evidence. *Fleming v. Tate* (1946, 156 F. 2d 848, 81 U.S. App. D.C. 205).

#### Sentence upon reimprisonment

Prisoner was not entitled, on return to prison following revocation of parole, to credit against remaining sentence for time spent on parole. *R. A. Howerton v. Hugh F. Rivers et al.* (1963, 326 F. 2d 653, 117 U.S. App. D.C. 110).

Prisoner was not entitled, on return to prison following revocation of parole, to credit against remaining sentence for time spent on parole. *E. Bates v. H. F. Rivers, Executive etc.* (1963, 323 F. 2d 311, 116 U.S. App. D.C. 306).

Title 18 U.S.C. § 4164, providing that federal prisoners shall be subject to all provisions of law relating to the parole of United States prisoners, did not require that a District of Columbia prisoner who had his conditional release revoked be recommitted under good conduct deduction provisions of the general federal statutes without regard to this section providing for computation of good conduct deductions for recommitted parolees, and fact that prisoner, as a result of application of this section was required to serve more time than a prisoner convicted under general federal law did not deny prisoner the equal protection or due process of law as guaranteed by the Fifth Amendment. *Gilstrap v. Clemmer et al.* (C.A. Va. 1960, 284 F. 2d 804).

The provision of this former section that unexpired term of imprisonment of any paroled prisoner shall begin to run from date he is returned to institution does not require that original sentence shall run from date of his imprisonment for new and separate offense, but refers only to reimprisonment on original sentence under order of parole board. *Washington v. Clemmer* (1948, 169 F. 2d 300, 83 U.S. App. D.C. 268).

#### Service of sentence

The unexpired portion of a parole violator's original sentence begins to run not when he is in prison by arrest or conviction for a new and separate offense but only

when his parole has been revoked and he has been returned to custody of revoking authority. *Noll v. Board of Parole for Government of District of Columbia* (1951, 191 F. 2d 653, 89 U.S. App. D.C. 206).

Where petitioner was released from District of Columbia Reformatory on parole but a subsequent warrant was issued for violation of that parole, fact that petitioner served time in various places of detention other than in District of Columbia did not fulfill requirement of serving District of Columbia sentence. *Id.*

#### Time limitation on issuance of violator warrant

The parole board's jurisdiction to issue a violator warrant with respect to a mandatory release terminates 180 days before expiration of the maximum sentence. *A. Shelton et al. v. United States Board of Parole et al.* (1967, 388 F. 2d 567, 128 U.S. App. D.C. 311).

#### Violation of conditions

District of Columbia Board of Indeterminate Sentence and Parole had power to impose conditions upon release of prisoner who had served full time of sentence with deductions for good conduct and in event of violation of conditions to recommit him to serve out balance of his term. *Gould v. Green* (1944, 141 F. 2d 533, 78 U.S. App. D.C. 363).

### § 24-207. Repeal of inconsistent laws—Savings provision.

All acts or parts of acts inconsistent with the provisions of sections 22-2601, 24-201, 24-202 to 24-209 and 24-425 are hereby repealed: *Provided, however,* That for any felony committed before July 15, 1932, the penalty, sentence, or forfeiture provided by law for such felony at the time such felony was committed shall remain in full force and effect and shall be imposed, notwithstanding said sections. (July 15, 1932, 47 Stat. 698, ch. 492, § 7.)

#### REFERENCES IN TEXT

Sections 24-201 and 24-202, referred to in the text, were repealed by act July 17, 1947, 61 Stat. 379, ch. 263, § 7.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 24-203.

#### SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 21, section 848, U.S. Code.

#### NOTES TO DECISIONS

##### Prisoners confined outside District

Parole board under Indeterminate Sentence Act had no jurisdiction over prisoners convicted of murder in the District of Columbia, but confined in the United States penitentiary at Atlanta, Ga. *Aderhold v. Lee* (C.C.A. 5, 1934, 68 F. 2d 824, certiorari denied 54 S. Ct. 718, 292 U.S. 633, 78 L. Ed. 1486).

##### Purpose

This section was intended to repeal those provisions of existing acts requiring the imposition of a definite, as distinguished from an indeterminate, sentence. *Anderson v. Rives* (1936, 85 F. 2d 673, 66 App. D.C. 174).

### § 24-208. Power of Board—Prisoners sentenced to more than 180 days—Minimum sentence required to be served.

The power of the Board of Parole shall extend to all prisoners whose sentences exceed one hundred and eighty days regardless of the nature of the offense: *Provided,* That in the case of a prisoner convicted of an offense other than a felony, including violations of municipal regulations and ordinances and Acts of Congress in the nature of municipal regulations and ordinances, the prisoner may not be paroled until he has served one-third of the sentence imposed, and in the case of two or more sentences for other than a felony, no parole may be granted



until after the prisoner has served one-third of the aggregate sentences imposed. (July 15, 1932, 47 Stat. 698, ch. 492, § 9; June 6, 1940, 54 Stat. 242, ch. 254, § 7 (a); July 17, 1947, 61 Stat. 379, ch. 263, § 6.)

#### AMENDMENTS

1947—Act July 17, 1947, amended section generally.

1940—Act June 6, 1940, substituted "any prisoner convicted of two or more crimes other than a felony, including violations of municipal regulations and ordinances and Acts of Congress in the nature of municipal regulations and ordinances, when the aggregate of the sentences imposed is in excess of one year, said Board of Indeterminate Sentence and Parole may parole said prisoner, under the provisions of this Act, after said prisoner has served one-third of the aggregate sentence imposed", for "a prisoner convicted of felony committed prior to the effective date of this Act [July 15, 1932] and in the case of any prisoner convicted of misdemeanor when the aggregate sentence imposed is in excess of one year, said Board of Indeterminate Sentence and Parole may parole said prisoner, under the provisions of this Act, after said prisoner has served one-fifth of the sentence imposed."

#### CONVICTION OF PRIOR MISDEMEANORS OR FELONIES

Subsection (b) of section 7 of act June 6, 1940, provided: "In the case of a prisoner convicted of misdemeanors committed prior to the effective date of this amendatory act [June 6, 1940], when the aggregate sentence imposed is in excess of one year, and in the case of a prisoner convicted of felony committed prior to the effective date of said act approved July 15, 1932, said Board of Indeterminate Sentence and Parole may parole said prisoner under the provisions of said act approved July 15, 1932, as amended, after said prisoner has served one-fifth of the sentence imposed."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24-203, 24-207.

#### NOTES TO DECISIONS

##### Powers of board

Under this section creating District of Columbia Board of Indeterminate Sentence and Parole and providing for transfer of powers from federal board of parole to district board upon appointment of members of district board, the district board receives such powers over prisoners confined in penal institutions of district as existed in federal board of parole on date of appointment of members of district board, and not merely powers which existed in federal board of parole at time this chapter became effective. *Gould v. Green* (1944, 141 F. 2d 533, 78 U.S. App. D.C. 363).

Under this section creating District of Columbia Board of Indeterminate Sentence and Parole and providing for transfer of powers from federal board of parole over prisoners confined in penal institutions in District of Columbia to district board upon appointment of members of district board, authority of district board was not limited to prisoners thereafter convicted. *Id.*

#### § 24-209. Federal Parole Board—Authority over United States prisoners convicted in the District of Columbia.

The Board of Parole created by section 723a of title 18, U.S. Code, shall have and exercise the same power and authority over prisoners convicted in the District of Columbia of crimes against the United States and now or hereafter confined in any United States penitentiary or prison (other than the penal institutions of the District of Columbia) as is vested in the Board of Indeterminate Sentence and Parole over prisoners confined in the penal institutions of the District of Columbia. (July 15, 1932, ch. 492, § 10, as added June 5, 1934, 48 Stat. 880, ch. 391.)

#### REFERENCES IN TEXT

Title 18 U.S.C. § 723a, referred to in the text, was repealed by act June 25, 1948, 62 Stat. 862, ch. 645, § 21, and is now covered by 18 U.S.C. § 4201.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24-203, 24-207.

#### NOTES TO DECISIONS

##### In general

There is no doubt that Congress intended this section to be applicable to persons convicted in the District of Columbia of crimes against the general laws of the United States. *Sims v. Rives* (1936, 84 F. 2d 871, 66 App. D. C. 24).

This section gives to the United States Board of Parole the same power and authority over prisoners convicted in the District of Columbia of crimes against the United States as is vested in the Board of Indeterminate Sentence and Parole. *Story v. Rives* (1938, 97 F. 2d 182, 68 App. D.C. 325).

The term "prisoners confined in", as used in this section transferring power over prisoners confined in penal institutions of District of Columbia from United States Board of Parole to the District Board of Penal Institutions, is used to designate group of persons by institutions rather than to delimit powers of District board to such persons only while they are in confinement. *Ex parte Gould* (D.C.D.C. 1943, 51 F. Supp. 354).

The power of United States Board of Parole to impose conditions on release on account of deductions for good conduct of United States prisoners passed from United States Board of Parole to District Board of Penal Institutions with respect to United States prisoners in penal institutions of the District of Columbia. *Id.*

##### Jurisdiction

Where petitioner was released from District of Columbia Reformatory on parole, but a warrant was subsequently issued against him for violation of that parole and petitioner was confined at a Federal Penitentiary in Kansas upon conviction of a new and separate offense in Missouri, District of Columbia Board of Parole did not lose its jurisdiction over petitioner to Federal Parole Board and had the right to file a detainer against petitioner. *Noll v. Board of Parole for Government of District of Columbia* (1951, 191 F. 2d 653, 89 U.S. App. D.C. 206).

##### Prisoners confined outside District

This section is not inconsistent with the authority of the Attorney General to transfer prisoners from the District of Columbia. *Bracey v. Hill* (D.C. Pa. 1935, 11 F. Supp. 148).

The same privileges of parole are accorded prisoners sentenced in the District of Columbia and committed to penal institutions outside of the District as to those sentenced and confined within the District. *Id.*

This section removes the question whether a defendant, who was sentenced in the District of Columbia, could be committed to a penal institution outside of the District because of the deprivation of parole. *Id.*

One sentenced for violation of the laws of the District of Columbia, convicted and confined in District, could be confined outside the District, and such confinement does not violate any constitutional rights. *MacAboy v. Klecka* (D.C. Md. 1938, 22 F. Supp. 960).

The United States Board of Parole and not the District Board of Penal Institutions, has jurisdiction over prisoners convicted in District of Columbia and transferred to some Federal institution other than penal institutions of the District. *Ex parte Gould* (D.C.D.C. 1943, 51 F. Supp. 354).

##### Release of prisoners not on parole

Neither this section nor §§ 24-201 to 24-208 have any bearing upon the release of prisoners other than on parole, and neither restricts in any way the power of the United States Board to supervise prisoners so released from institutions other than in the District under the provisions of section 4 of the act of June 29, 1932 (18 U.S.C. former § 716b [now 18 U.S.C. § 4164]). *Story v. Rives* (1938, 97 F. 2d 182, 69 App. D.C. 325).

##### Release of prisoners on parole

This act constituted an extension of power in the United States Board over District of Columbia prisoners in that it permitted the board to release such prisoners on parole from non-District institutions after serving only one-fifth of their maximum terms. *Story v. Rives* (1938, 97 F. 2d 182, 68 App. D.C. 325).



## Service of sentence

The unexpired portion of a parole violator's original sentence begins to run not when he is in prison by arrest or conviction for a new and separate offense but only when his parole has been revoked and he has been returned to custody of revoking authority. *Noll v. Board of Parole for Government of District of Columbia* (1951, 191 F. 2d 653, 89 U.S. App. D.C. 206).

Where petitioner was released from District of Columbia Reformatory on parole but a subsequent warrant was issued for violation of that parole, fact that petitioner served time in various places of detention other than in District of Columbia did not fulfill requirement of serving District of Columbia sentence. *Id.*

## United States prisoner

Prisoner sentenced for violation of the laws of the District of Columbia is a "United States prisoner" within the meaning of 18 U.S.C. § 716b [now 18 U.S.C. § 4164]. *MacAboy v. Klecka* (D.C. Md. 1938, 22 F. Supp. 960).

## Chapter 3.—INSANE CRIMINALS

## Sec.

24-301. Commitment of persons of unsound mind to the District of Columbia General Hospital—Certification to the court—Acquittal by jury on grounds of insanity—Confinement in a mental institution—Conditions for release after confinement—Conditional release—Expenses—Writ of habeas corpus—Inconsistent provisions of Federal Statutes superseded—Return order for apprehension of escaped inmates—Procedure and time limitation for pleading insanity as a defense.

24-302. Commitment of mentally ill person while serving sentence.

24-303. Restoration to sanity—Delivery of person to court—Delivery of person to Director of Department of Corrections.

§ 24-301. Commitment of persons of unsound mind to the District of Columbia General Hospital—Certification to the court—Acquittal by jury on grounds of insanity—Confinement in a mental institution—Conditions for release after confinement—Conditional release—Expenses—Writ of habeas corpus—Inconsistent provisions of Federal Statutes superseded—Return order for apprehension of escaped inmates—Procedure and time limitation for pleading insanity as a defense.

(a) If it appears to a court having jurisdiction of—

(1) a person arrested or indicted for, or charged by information with, an offense, or

(2) a child subject to a transfer motion in the Family Division of the Superior Court of the District of Columbia pursuant to section 16-2307, that, from the court's own observations or from prima facie evidence submitted to it and prior to the imposition of sentence, the expiration of any period of probation, or the hearing on the transfer motion, as the case may be, such person or child (hereafter in this subsection and subsection (b) referred to as the "accused") is of unsound mind or is mentally incompetent so as to be unable to understand the proceedings against him or properly to assist in his own defense, the court may order the accused committed to the District of Columbia General Hospital or other mental hospital designated by the court, for such reasonable period as the court may determine for examination and observation and for care and treatment if such is necessary by the psychiatric staff of said hospital. If, after such examination and observation, the superintendent of the hospital, in the case of a mental hospital, or the chief psychiatrist of the District of Columbia General Hospital, in the

case of District of Columbia General Hospital, shall report that in his opinion the accused is of unsound mind or mentally incompetent, such report shall be sufficient to authorize the court to commit by order the accused to a hospital for the mentally ill unless the accused or the Government objects, in which event, the court, after hearing without a jury, shall make a judicial determination of the competency of the accused to stand trial or to participate in transfer proceedings. If the court shall find the accused to be then of unsound mind or mentally incompetent to stand trial or to participate in transfer proceedings, the court shall order the accused confined to a hospital for the mentally ill.

(b) Whenever an accused person confined to a hospital for the mentally ill is restored to mental competency in the opinion of the superintendent of said hospital, the superintendent shall certify such fact to the clerk of the court in which the indictment, information, or charge against the accused is pending and such certification shall be sufficient to authorize the court to enter an order thereon adjudicating him to be competent to stand trial or to participate in transfer proceedings, unless the accused or the Government objects, in which event, the court, after hearing without a jury, shall make a judicial determination of the competency of the accused to stand trial or to participate in transfer proceedings.

(c) When any person tried upon an indictment or information for an offense, or tried in the juvenile court of the District of Columbia for an offense, is acquitted solely on the ground that he was insane at the time of its commission, that fact shall be set forth by the jury in their verdict.

(d) (1) If any person tried upon an indictment or information for an offense raises the defense of insanity and is acquitted solely on the ground that he was insane at the time of its commission, he shall be committed to a hospital for the mentally ill until such time as he is eligible for release pursuant to this subsection or subsection (e).

(2) A person confined pursuant to paragraph (1) shall have a hearing, unless waived, within 50 days of his confinement to determine whether he is entitled to release from custody. At the conclusion of the criminal action referred to in paragraph (1) of this subsection, the court shall provide such person with representation by counsel—

(A) in the case of a person who is eligible to have counsel appointed by the court, by continuing any appointment of counsel made to represent such person in the prior criminal action or by appointing new counsel; or

(B) in the case of a person who is not eligible to have counsel appointed by the court, by assuring representation by retained counsel.

If the hearing is not waived, the court shall cause notice of the hearing to be served upon the person, his counsel, and the prosecuting attorney and hold the hearing. Within ten days from the date the hearing was begun, the court shall determine the issues and make findings of fact and conclusions of law with respect thereto. The person confined shall have the burden of proof. If the court finds by a preponderance of the evidence that the person confined is



entitled to his release from custody, either conditional or unconditional, the court shall enter such order as may appear appropriate.

(3) An appeal may be taken from an order entered under paragraph (2) to the court having jurisdiction to review final judgments of the court entering the order.

(e) Where any person has been confined in a hospital for the mentally ill pursuant to subsection (d) of this section, and the superintendent of such hospital certifies (1) that such person has recovered his sanity, (2) that, in the opinion of the superintendent, such person will not in the reasonable future be dangerous to himself or others, and (3) in the opinion of the superintendent, the person is entitled to his unconditional release from the hospital, and such certificate is filed with the clerk of the court in which the person was tried, and a copy thereof served on the United States Attorney or the Corporation Counsel of the District of Columbia, whichever office prosecuted the accused, such certificate shall be sufficient to authorize the court to order the unconditional release of the person so confined from further hospitalization at the expiration of fifteen days from the time said certificate was filed and served as above; but the court in its discretion may, or upon objection of the United States or the District of Columbia shall, after due notice, hold a hearing at which evidence as to the mental condition of the person so confined may be submitted, including the testimony of one or more psychiatrists from said hospital. The court shall weigh the evidence and, if the court finds that such person has recovered his sanity and will not in the reasonable future be dangerous to himself or others, the court shall order such person unconditionally released from further confinement in said hospital. If the court does not so find, the court shall order such person returned to said hospital. Where, in the judgment of the superintendent of such hospital, a person confined under subsection (d) above is not in such condition as to warrant his unconditional release, but is in a condition to be conditionally released under supervision, and such certificate is filed and served as above provided, such certificate shall be sufficient to authorize the court to order the release of such person under such conditions as the court shall see fit at the expiration of fifteen days from the time such certificate is filed and served pursuant to this section: *Provided*, That the provisions as to hearing prior to unconditional release shall also apply to conditional releases, and, if, after a hearing and weighing the evidence, the court shall find that the condition of such person warrants his conditional release, the court shall order his release under such conditions as the court shall see fit, or, if the court does not so find, the court shall order such person returned to such hospital.

(f) When an accused person shall be acquitted solely on the ground of insanity and ordered confined in a hospital for the mentally ill, such person and his estate shall be charged with the expense of his support in such hospital.

(g) Nothing herein contained shall preclude a person confined under the authority of this section

from establishing his eligibility for release under the provisions of this section by a writ of habeas corpus.

(h) The provisions of this section shall supersede in the District of Columbia the provisions of any Federal statutes or parts thereof inconsistent with this section.

(i) When a person has been ordered confined in a hospital for the mentally ill pursuant to this section and has escaped from such hospital, the court which ordered confinement shall, upon request of the Government, order the return of the escaped person to such hospital. The return order shall be effective throughout the United States. Any Federal judicial officer within whose jurisdiction the escaped person shall be found shall, upon receipt of the return order issued by the committing court, cause such person to be apprehended and delivered up for return to such hospital.

(j) Insanity shall not be a defense in any criminal proceeding in the United States District Court for the District of Columbia or in the Superior Court of the District of Columbia, unless the accused or his attorney in such proceeding, at the time the accused enters his plea of not guilty or within fifteen days thereafter or at such later time as the court may for good cause permit, files with the court and serves upon the prosecuting attorney written notice of his intention to rely on such defense. No person accused of an offense shall be acquitted on the ground that he was insane at the time of its commission unless his insanity, regardless of who raises the issue, is affirmatively established by a preponderance of the evidence.

(k) (1) A person in custody or conditionally released from custody, pursuant to the provisions of this section, claiming the right to be released from custody, the right to any change in the conditions of his release, or other relief concerning his custody, may move the court having jurisdiction to order his release, to release him from custody, to change the conditions of his release, or to grant other relief.

(2) A motion for relief may be made at any time after a hearing has been held or waived pursuant to subsection (d) (2) of this section.

(3) Unless the motion and the files and records of the case conclusively show that the person is entitled to no relief, the court shall cause notice thereof to be served upon the prosecuting authority, grant a prompt hearing thereon, determine the issues, and make findings of fact and conclusions of law with respect thereto. On all issues raised by his motion, the person shall have the burden of proof. If the court finds by a preponderance of the evidence that the person is entitled to his release from custody, either conditional or unconditional, a change in the conditions of his release, or other relief, the court shall enter such order as may appear appropriate.

(4) A court may entertain and determine the motion without requiring the production of the persons at the hearing.

(5) A court shall not be required to entertain a second or successive motion for relief under this section more often than once every six months. A court for good cause shown may in its discretion entertain



such a motion more often than once every six months.

(6) An appeal may be taken from an order entered under this section to the court having jurisdiction to review final judgments of the court entering the order.

(7) An application for habeas corpus on behalf of a person who is authorized to apply for relief by motion pursuant to this section shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court having jurisdiction to entertain a motion pursuant to this section, unless it also appears that the remedy by motion is inadequate or ineffective to test the validity of his detention. (Mar. 3, 1901, 31 Stat. 1340, ch. 854, 927; Apr. 14, 1906, 34 Stat. 113, ch. 1624; July 2, 1945, 59 Stat. 311, ch. 217; Aug. 9, 1955, 69 Stat. 609, ch. 673, § 1; Dec. 27, 1967, Pub. L. 90-226, § 201, title II, 81 Stat. 735; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 159 (e), title II, § 207, 84 Stat. 570, 577, 601.)

#### REFERENCE IN TEXT

The words "or tried in the juvenile court of the District of Columbia for an offense" in subsection (c) appear to be obsolete in view of the amendments made by Public Law 91-358, and more specifically the amendments made by section 111 (revision of title 11) and section 121 (revision of chapter 23 of title 16) which, in part, consolidated the juvenile court into the Superior Court of the District of Columbia (see § 11-901) and eliminated jury trials in juvenile cases (see § 16-2316).

#### AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358, amended subsection (j) by striking out "District of Columbia court of general sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

Section 159(e) of Act July 29, 1970, Public Law 91-358 amended subsection (a) by striking out "juvenile court" and inserting in lieu thereof "Family Division of the Superior Court."

Section 207 of Act July 29, 1970, Public Law 91-358 further amended section as follows:

(1) by striking out "(a) Whenever a person is arrested" and all that follows down through "is mentally incompetent" in the first sentence of subsection (a) and inserting in lieu thereof the following:

"(a) If it appears to a court having jurisdiction of—  
 "(1) a person arrested or indicted for, or charged by information with, an offense, or

"(2) a child subject to a transfer motion in the Family Division of the Superior Court of the District of Columbia pursuant to section 16-2307 of the District of Columbia Code.

that, from the court's own observations or from prima facie evidence submitted to it and prior to the imposition of sentence, the expiration of any period of probation, or the hearing on the transfer motion, as the case may be, such person or child (hereafter in this subsection and subsection (b) referred to as the 'accused') is of unsound mind or is mentally incompetent";

(2) by striking out the period at the end of the second sentence of subsection (a) and inserting in lieu thereof "or to participate in transfer proceedings";

(3) by inserting after "stand trial" in the third sentence of subsection (a) "or to participate in transfer proceedings";

(4) by making the same insertions after "stand trial" in both places in subsection (b);

(5) by amending subsection (d) to read as above set out. For provisions of subsection (d), prior to this amendment see 1967 edition of the Code;

(6) by adding the last sentence to subsection (j); and

(7) by adding subsection (k) thereto.

1967—Section 201, Act Dec. 27, 1967, Pub. L. 90-226, amended section by adding subsections (i) and (j).

1955—Act Aug. 9, 1955, amended section generally.

1945—Act July 2, 1945, inserted the references to the

juvenile court of the District of Columbia wherever appearing, provided for committing the accused to the Gallinger Municipal Hospital for psychiatric evaluation, and for a report on the accused's sanity by the psychiatric staff, and substituted "Federal Security Administrator" for "Secretary of the Interior."

1906—Act Apr. 14, 1906, inserted "or is charged by an information" following "whenever a person is indicted."

#### EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11-101.

#### TRANSFER OF FUNCTIONS

Gallinger Municipal Hospital (predecessor to District of Columbia General Hospital) was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorg. Plan No. 5 of 1952. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorg. Plan No. 3 of 1967.

Reorganization Order No. 57 of the Board of Commissioners dated June 30, 1953, and effective Aug. 15, 1953, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical functions. The order abolished the previously existing Gallinger Municipal Hospital and transferred all of its positions and functions to the new department. It further provided that within the department the District of Columbia General Hospital is to perform all functions previously performed by Gallinger Municipal Hospital. Reorganization Order No. 57 was amended and redesignated as Org. Ord. No. 141, dated Feb. 11, 1964, Part IV, paragraph D, 1, set forth the functions of D.C. General Hospital. Functions set forth in Org. Ord. No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order [Organization Action] No. 69-96, dated Mar. 7, 1969, as amended by Commissioner's Order No. 70-83, dated Mar. 6, 1970. The Orders are set out in the Appendix to title 1, Administration.

#### CROSS REFERENCES

General provisions concerning payment of hospitalization of mentally ill persons, see § 21-586.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-2222, 16-2307, 24-303.

#### NOTES TO DECISIONS

##### Acceptance of guilty plea

Where psychiatrist's report on defendant's competency to stand trial on bad check charge had included statement that defendant's crimes were product of specified mental disease particularly affecting financial judgment and that defendant required further treatment to insure against repetition of the offenses, court properly refused to accept plea of guilty and proceeded to trial to determine that defendant was not guilty by reason of insanity, though defendant had been judicially declared competent to stand trial and to assist in his own defense. *W. Overholser, Sup't etc. v. F. C. Lynch* (1961, 288 F. 2d 388, 109 U.S. App. D.C. 404; reversed on other grounds 1962, 82 S. Ct. 1063).

##### Acquiescence in plea of insanity

Where petitioner had not himself sought introduction of insanity defense at his trial and had not acquiesced in assertion of that defense, his commitment to hospital for the mentally ill following his acquittal by reason of insanity was not authorized and he was entitled to habeas corpus. *C. C. Rouse v. D. C. Cameron, Sup't etc.* (1967, 387 F. 2d 241, 128 U.S. App. D.C. 283).

##### Administrative credit against sentence

Defendant, who pleaded guilty in 1964 to narcotics offense carrying mandatory minimum sentence, who, after arrest, was unable to make bail and was thus in jail when he moved for mental examination, and who was given administrative credit for time spent in jail prior to trial before and after commitment for examination, was also entitled to credit against sentence for time spent in hospital pursuant to order for examination, and credit was



to be given administratively by Attorney General and not as exercise of sentencing court's discretion. *P. R. Sawyer v. R. Clark, Attorney General etc., et al.* (1967, 386 F. 2d 633, 128 U.S. App. D.C. 206).

#### Admissibility of statements made by accused

Purpose of statute providing that no statement made by accused in course of any examination into his sanity may be admitted in evidence against the accused on issue of guilt in any criminal proceeding is to permit statement of the accused to be admitted into evidence only on issue of sanity, and not on the issue of whether or not the defendant committed the acts charged. *United States v. W. Bennett* (1972, 460 F. 2d 872, 148 U.S. App. D.C. 364).

Testimony of government psychiatrist, in prosecution for sexual assault on 13-year-old boy, that defendant's sanity was evidenced by his very good recollection of the events was prejudicial to defendant's defense on the merits and entitled defendant, upon remand, to a bifurcated trial on the merits and his insanity defense, even though the defense on the merits was a bare denial, where a limiting instruction would not have effectively dispelled the prejudice, and a mistrial would have been an unattractive result. *Id.*

Statute to effect that no statement made by accused in course of examination into his sanity or mental competency shall be admitted in evidence against accused on issue of guilt in criminal proceeding is applicable to mental examinations ordered by District of Columbia courts when it appears that accused is of unsound mind or mentally incompetent to understand proceedings against him. *P. A. Battle v. D. C. Cameron, Superintendent etc.* (1966, 260 F. Supp. 804).

#### Adequate assistance of counsel

Failure of petitioner's counsel to object to certificate of competency was not shown to have constituted inadequate assistance of counsel. *Mordecai v. United States* (D.C.D.C. 1966, 252 F. Supp. 694).

#### Adjudication of insanity

Commitment to mental hospital pursuant to code after verdict of not guilty by reason of insanity is not adjudication of insanity or incompetency. *W. Green v. United States* (1965, 351 F. 2d 198, 122 U.S. App. D.C. 33).

#### Amnesia

Amnesia per se in case where recollection was present during time of alleged offenses and where defendant has ability to construct a knowledge of what happened from other sources, and where he has present ability to follow course of proceedings against him and discuss them rationally with his attorney does not constitute incompetency per se, and loss of memory should bar prosecution only when its presence would in fact be crucial to construction and presentation of defense and hence essential to fairness and accuracy of the proceedings. *United States v. R. Wilson* (1966, 263 F. Supp. 528).

Where defendant after crimes were committed was involved in automobile accident and suffered cerebral contusions and concussion which resulted in amnesia which prevented him from recollecting any events that took place on afternoon when crimes were committed, but who could construct a knowledge of what transpired from information given to him from other sources, and, except for such vacuity of memory, was perfectly able to follow course of proceedings against him and to discuss them with his attorney, was legally competent to stand trial. *Id.*

#### Appeal

Mental patient had standing to appeal District Court's order releasing him to prison from institution to which he had been committed after being found not guilty of robbery by reason of insanity. *L. W. Green v. United States* (1965, 349 F. 2d 203, 121 U.S. App. D.C. 226).

Where accused was found not guilty by reason of insanity and was committed to hospital and some two months thereafter accused petitioned for writ of habeas corpus without prepayment of costs and District Court denied such petition without a hearing and without stating reasons for denial, case would be remanded and District Court, if it rejected allegation of poverty, would be required to state basis for such rejection, and if leave to file without costs was permitted or if accused should

pay necessary filing fees, hospital superintendent would be directed to report as to accused's condition, and upon the return the District Court should conduct hearing to determine whether accused had recovered sanity and would not be dangerous to himself or others in reasonable future. *Tatem, Sr. v. United States* (1960, 275 F. 2d 894, 107 U.S. App. D.C. 230).

Where it appeared to Court of Appeals reviewing conviction of an attempted abortion resulting in death that evidence did not permit trier of fact to conclude beyond a reasonable doubt that defendant had no mental disease or defect, case would be remanded with instructions that unless Government advised trial court without unreasonable delay that it can meet its burden of proof at a new trial, defendant is to be acquitted on ground of insanity and committed to a mental hospital and dealt with in accordance with statute, that is, hospitalized until she is free from such abnormal condition as would render her dangerous to herself or community in the reasonably foreseeable future. *Hopkins v. United States* (1960, 275 F. 2d 155, 107 U.S. App. D.C. 126).

Where trial court did not have benefit of construction of Court of Appeals respecting this section providing for the conditional release of patients who have been committed to mental hospital after acquittal of crime by reason of insanity, Court of Appeals would refrain from review of evidence and allow trial court to evaluate it in the first instance in light of principles held applicable. *Hough v. United States* (1959, 271 F. 2d 458, 106 U.S. App. D.C. 192).

Though jury was not warranted on evidence in failing to entertain reasonable doubt that except for diseased mental condition defendant would have committed robberies, Court of Appeals would not direct that defendant be acquitted by reason of insanity, but would remand for a new trial, where testimony of expert who had not testified at second trial would be available at retrial, resolvable ambiguities existed in testimony, and dearth of prosecution's nonmedical testimony, might be overcome. *Douglas v. United States* (1956, 239 F. 2d 52, 99 U.S. App. D.C. 232).

Appeal from commitment to St. Elizabeths Hospital under this section was moot in view of the fact that petitioner had been determined by a jury to be of sound mind and had been released from the hospital. *Savage v. White* (1926, 14 F. 2d 352, 56 App. D.C. 365).

#### Bases of confinement

Confinement of the mentally ill rests upon basis substantially different from that which supports confinement of those convicted of crime since confinement of mentally ill depends not only upon validity of initial commitment but also upon continuing status of the patient. *D. A. Dixon v. L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, 138 U.S. App. D.C. 319).

#### Burden of proof

Mental patient who seeks complete release from confinement by writ of habeas corpus need only establish, by the preponderance of the evidence, that he is no longer likely to injure himself or other persons because of mental illness. *D. A. Dixon v. L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, 138 U.S. App. D.C. 319).

Since habeas corpus proceeding on petition of mental patient for complete release from confinement is not strictly adversary in nature, conventional rules regarding the burden of coming forward with evidence do not apply, and the hearing court and the parties bear equal responsibility to see that decision is had upon all the relevant evidence. *Id.*

Burden of proof, in habeas corpus proceeding by one committed to mental hospital after being found not guilty by reason of insanity, is the same as that for civilly committed patients. *G. C. Bolton v. D. W. Harris, Acting Superintendent etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

Rule that habeas corpus petitioner must prove that his detention is illegal by preponderance of evidence applies in habeas corpus proceeding by one committed to mental hospital after being found not guilty of offense by reason of insanity, and thus court must find, by preponderance of evidence, that patient's commitment is no longer valid, that is, that he is no longer likely to injure himself or other persons due to illness. *Id.*



Burden rests with party seeking commitment of accused to mental institution to prove that accused is then of unsound mind. *F. C. Lynch v. W. Overholser, Sup't etc.* (1962, 307 U.S. 618, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

Where there is evidence that accused was of unsound mind when offenses occurred, prosecution is under necessity of establishing to satisfaction of jury beyond reasonable doubt that offenses were not result of accused's insanity. *Douglas v. United States* (1956, 239 F. 2d 52, 99 U.S. App. D.C. 232).

In order to justify conviction, where there is evidence that accused was of unsound mind when offenses occurred, proof, considered with presumption of sanity, must exclude beyond reasonable doubt the hypothesis that conduct indicted was product of a diseased mind or mental defect. *Id.*

When lack of mental capacity is raised as a defense to a charge of crime, the law presumes that the defendant is sane, but as soon as some evidence of mental disorder is introduced, sanity must be proved beyond a reasonable doubt as part of prosecution's case. *Durham v. United States* (1954, 214 F. 2d 862, 94 U.S. App. D.C. 228, 45 A.L.R. 2d 1430).

In forgery prosecution, testimony of two psychiatrists and a lay witness to effect that defendant was, in their opinion, suffering from mental illness when he committed the crimes charged satisfied requirement that defendant produce some evidence, and shifted burden of proving sanity to government. *United States v. Amburgey* (D.C.D.C. 1960, 189 F. Supp. 687).

#### — After commitment

One who seeks release, without statutory certification by superintendent of hospital, from commitment to hospital after being found not guilty of crime by reason of insanity must show that he has recovered his sanity and that such recovery has reached point where he has no abnormal mental condition which in reasonably foreseeable future would give rise to danger to patient or to public in event of his release. *United States v. M. Charnizon* (D.C. App. 1967, 232 A. 2d 586).

Where, at hearing to revoke patient's conditional release from state hospital following commitment after having been found not guilty of crime by reason of insanity, positive expert medical opinion was presented that patient had not recovered and would be danger to himself and others if released, order directing unconditional release of patient did not meet standards set forth by statute and thus, without certificate recommending either conditional or unconditional release and in absence of evidence on his behalf, patient was not entitled to be released. *Id.*

Person who sought release from hospital to which he had been committed after having been found not guilty of housebreaking and larceny on ground of insanity had burden of proving by a preponderance of evidence that he had recovered his sanity, and would not in reasonably foreseeable future be dangerous to himself or others by reason of mental disease or defect, and that failure of superintendent of hospital to certify him for release was arbitrary or capricious. *S. V. Robertson v. D. C. Cameron* (D.C.D.C. 1963, 224 F. Supp. 60).

Once a man has been committed to a hospital after verdict of not guilty by reason in insanity, government need not thereafter be forced to prove his insanity as price of continuing treatment. *W. Overholser, Sup't etc. v. F. C. Lynch* (1961, 288 F. 2d 388, 109 U.S. App. D.C. 404; reversed on other grounds 1962, 82 S. Ct. 1063).

Petitioner maintaining proceeding for writ of habeas corpus to secure release from mental institution in which he has been confined upon his acquittal of criminal charge by reason of insanity has heavy burden of proof that he is not dangerous or potentially dangerous to himself or others, exceeding a standard of proof by a preponderance of evidence, and in a close case, even where preponderance of evidence favors the petitioner, the doubt, if reasonable doubt exists about danger to public or patient, cannot be resolved so as to risk danger to public or individual. *Ragsdale v. Overholser, Supt. etc.* (C.A.D.C. 1960, 281 F. 2d 943).

In habeas corpus proceeding brought by petitioner claiming right to be released from hospital for the mentally ill, it was necessary for petitioner to show not only that he had recovered his sanity but also that superin-

tendent of hospital was arbitrarily and capriciously withholding certificate of recovered sanity; and, on record presented, such burden was not sustained. *O'Beirne v. Overholser, Superintendent etc.* (D.C.D.C. 1960, 180 F. Supp. 572).

#### — On petition for release

Petitioner seeking release from hospital by writ of habeas corpus after commitment pursuant to statute after being found not guilty of crime by reason of insanity has burden of showing his eligibility for relief and must establish freedom from such abnormal mental condition as would make individual dangerous to himself or community in reasonably foreseeable future. *L. W. Collins v. D. C. Cameron, Sup't etc.* (1967, 377 F. 2d 945, 126 U.S. App. D.C. 306).

Evidence that petitioner was suffering from mental illness of psychotic proportions and that petitioner was daily administered tranquilizing drug and that if medicine were discontinued petitioner would resort to alcohol supported finding that petitioner would be dangerous to himself or others if released. *Id.*

#### Certification of sanity

The letter from hospital superintendent stating conclusion that accused was considered competent to stand trial, without supporting information and reasons, would not come within meaning of terms "report" or "certificate" as used in District of Columbia statute authorizing admission of hospital reports or certificates on mental competency. *P. Holloway v. United States* (1964, 343 F. 2d 265, 119 U.S. App. D.C. 396).

On remand for new hearing on defendant's competency to stand trial after erroneous denial of pre-trial motion for mental examination, the judicial determination of defendant's present competency must be an informed one and could not likely be made from superintendent's letter stating, without supporting information and reasons, that accused was considered competent to stand trial. *Id.*

To be "arbitrary" or "capricious", refusal of superintendent of hospital to certify that person committed to hospital after being found not guilty of criminal charge on ground of insanity has recovered his sanity and is entitled to unconditional release must be without a reasonable or rational basis, but it need not be made in bad faith. *S. V. Robertson v. D. C. Cameron* (D.C.D.C. 1963, 224 F. Supp. 60).

Superintendent of hospital to which person is committed after having been found not guilty of a crime on ground of insanity may not act according to his personal notion or whim, no matter how well intentioned or bona fide his action may be, in determining whether person committed has recovered his sanity and is entitled to an unconditional release. *Id.*

Refusal of superintendent of hospital to which person had been committed after being found not guilty of crime on ground of insanity to make certificate as basis for committed person's release was arbitrary and capricious, in view of showing of grounds for release. *Id.*

Mental hospital superintendent's return in habeas corpus proceeding by inmate, asserting generally that inmate had not recovered from "abnormal mental condition" and required further treatment, without explaining quoted phrase or describing past or future treatment, was insufficient on its face. *H. T. O'Beirne v. W. Overholser* (D.C.D.C. 1961, 193 F. Supp. 652; reversed on other grounds 302 F. 2d 852).

One who had been found not guilty by reason of insanity and committed to mental hospital could not be detained in hospital beyond period of maximum sentence possible for the offense charged, because of "sociopathic personality" which was not sufficient basis for a civil adjudication of mental incompetency, even if such condition tended to make him an habitual petty criminal. *Id.*

Fact that a person is an habitual petty criminal could not subject him to permanent incarceration in criminal ward of mental institution, and such disposition may not be used as a substitute for laws dealing expressly with habitual criminals. *Id.*

Court may not authorize release of person confined in hospital for mentally ill unless hospital superintendent certifies that he has recovered his sanity. *O'Beirne v.*



*Overholser, Superintendent etc.* (D.C.D.C. 1960, 180 F. Supp. 572).

Purpose of requirement of this section that superintendent of hospital certify that person seeking release has recovered his sanity is to safeguard public against release of insane criminals who might possibly repeat their depredations. *Id.*

#### Commitment after acquittal

The moment that defendant in criminal case is found not guilty, whether on the ground of insanity or any other ground, criminal court ceases to have any control over him and presiding judge no longer has authority to hold a hearing under statute dealing with commitment of defendants in criminal cases for mental examination or treatment and cannot commit defendant to a mental institution thereunder. *C. Mullen v. D. C. Cameron* (D.C.D.C. 1966, 255 F. Supp. 326).

Under District of Columbia statute relating to commitment for mental examination or treatment of defendants in criminal cases who may appear to be incompetent to stand trial, commitment may be made at any time prior to imposition of sentence or prior to expiration of any period of probation, since during those periods the criminal court still has control over defendant. *Id.*

Commitment of habeas corpus petitioner to mental institution under statute dealing with commitment of defendant in criminal case for mental examination or treatment after petitioner had been found not guilty of charge of assault on ground of insanity, a defense which she had not interposed, was invalid but court would stay its order sustaining writ of habeas corpus for 30 days to enable government to institute civil commitment proceedings if it was deemed advisable. *Id.*

#### Commitment after acquittal by reason of insanity

One who is committed to a mental hospital upon hearing following acquittal by reason of insanity is entitled not only to treatment but to treatment in least restrictive alternative consistent with legitimate purposes of commitment. *W. Ashe v. L. D. Robinson* (1971, 450 F. 2d 681, 146 U.S. App. D.C. 220).

Statute to effect that when, prior to imposition of sentence or prior to expiration of any period of probation, it shall appear to court that accused is of unsound mind or mentally incompetent so as to be unable to understand proceedings against him or to properly assist in his own defense, court may order accused committed for observation and treatment, if necessary, does not authorize commitment after verdict of not guilty by reason of insanity. *D. C. Cameron Sup't etc. v. C. Mullen etc.* (1967, 387 F. 2d 193, 128 U.S. App. D.C. 235).

Under statute to effect that when it appears to court that accused is of unsound mind or mentally incompetent so as to be unable to stand trial, court may confine him for observation and treatment, if necessary, and that, if hospital reports that person is of unsound mind or mentally incompetent, court may commit him to mental hospital unless he or government objects in which event court must hold hearing to determine competency of accused to stand trial, court is empowered to hold a hearing only to determine competency. *Id.*

#### Commitment procedure

Commission of criminal acts does not give rise to a presumption of dangerousness which, standing alone, justifies substantial difference in commitment procedures and confinement conditions for mentally ill, and that, while prior criminal conduct is relevant to the determination whether person is mentally ill or dangerous, it cannot justify denial of procedural safeguards for such determination, and that while prior criminal conduct is a relevant consideration, it does not provide automatic basis for allowing significant and arbitrary differences in such conditions where defendant is acquitted on his own plea of insanity. *G. C. Bolton v. D. W. Harris, Acting Superintendent etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

There is no reasonable basis for distinction for commitment purposes between those who plead insanity and those who have defense thrust upon them, and neither may be automatically deprived of type of protection afforded by 1964 Hospitalization of Mentally Ill Act. *Id.*

Fact that persons acquitted by reason of insanity have committed criminal acts and that such fact may tend to show they meet requirements for commitment does not

remove such requirements nor justify total abandonment of procedures used in civil commitment proceedings to determine whether such requirements have been satisfied. *Id.*

Persons found not guilty by reason of insanity must be given judicial hearing with procedures substantially similar to those in civil commitment proceedings. *Id.*

Where feasible, requirements of Hospitalization of Mentally Ill Act as to notice, counsel, and jury trial should be followed in connection with judicial hearing afforded persons found not guilty by reason of insanity. *Id.*

Rule that persons found not guilty by reason of insanity must be given judicial hearing with procedures substantially similar to those in civil commitment proceedings is applicable prospectively only. *Id.*

In event of an acquittal of accused by reason of insanity following his affirmative refusal to rely on such ground as a defense the automatic commitment procedures of District of Columbia statute would not apply. *T. W. Whalem v. United States* (1965, 346 F. 2d 812, 120 U.S. App. D.C. 331).

Supreme Court granted certiorari, where important questions were raised as to procedure for confining criminally insane in District of Columbia and as to possible constitutional infirmities in statute under which commitment was made as applied to circumstances in case. *F. C. Lynch v. W. Overholser, Sup't etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

Although inmate of mental hospital had not been informed that possible alternative to commitment, pursuant to this section requiring confinement in mental hospital of those acquitted solely on ground of insanity, was to ask for new trial, inmate whose only possible defense was insanity and whose chances for acquittal on a second trial were minuscule was properly committed to hospital after being acquitted. *Curry v. Overholser, Sup't etc.* (C.A.D.C. 1960, 287 F. 2d 137).

When person suspected of insanity is also accused of crime, trial court is not to be permitted to commit such person to a mental hospital without benefit of a jury or of the Mental Health Commission, even though the person is competent to stand trial, but there must be a report and recommendation by the commission, a jury's verdict if demanded, and a district court order. *Williams v. Overholser, Sup't, etc.* (1958, 259 F. 2d 175, 104 U.S. App. D.C. 18).

#### Commitment without hearing

Objective of prehearing commitment following acquittal on the ground of insanity is observation and examination to ascertain current mental condition, and the commitment is temporary and of limited duration; procedure contemplates judicial hearing and determination on present mental condition promptly after completion of examination, and, if need be, another commitment with view to course of treatment that might lead to patient's eventual recovery and release. *W. Ashe v. L. D. Robinson* (1971, 450 F. 2d 681, 146 U.S. App. D.C. 220).

Commitment, without hearing, of one found not guilty by reason of insanity is permissible for period required to determine present mental condition. *G. C. Bolton v. D. W. Harris, Acting Superintendent etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

#### Committing magistrates' authority

Committing magistrate, including judge of District of Columbia Court of General Sessions when sitting as committing magistrate, does not have power to make finding that person charged with felony is mentally incompetent to stand trial and thereby preclude action on that important question by district court for the District of Columbia. *J. C. Mauce v. D. C. Cameron* (1966, 260 F. Supp. 851).

Where petitioner was arrested on felony charge, he was found by judge of District of Columbia Court of General Sessions, sitting as committing magistrate, to be incompetent to stand trial and he was committed to mental institution, he was entitled to habeas corpus relief but only relief that could be granted was that report of District of Columbia General Hospital to effect that petitioner was not competent to stand trial be referred to District Court for District of Columbia and that hearing be set



in that court on basis of the report on question of mental competency. *Id.*

#### Competency examination

When a trial court has reasonable grounds to suspect a criminal defendant of being an addict, trial court should exercise his discretion and order competency examination of defendant. *T. Grennett v. United States* (1968, 403 F. 2d 928, 131 U.S. App. D.C. 203).

#### Competency hearing

Competency hearing must be of record and both parties must be given opportunity to examine all witnesses who testify or report on accused's competence. *T. E. Blunt v. United States* (1967, 389 F. 2d 545, 128 U.S. App. D.C. 375).

Judicial determination of competency must be an informed one. *Id.*

Careful evaluation of accused's condition is required of court during competency hearing. *Id.*

Where, in competency hearing, court blocked attempts to ask hospital's staff psychiatrist about basis for hospital superintendent's conclusion that accused was competent and foreclosed meaningful inquiry when counsel sought to identify area of differences between that conclusion and contrary conclusion of hospital's clinical psychologist, there was no possibility of full and scrupulous evaluation of defendant's competency, precluding informed judicial determination of competency. *Id.*

Where finding as to competency was based on hearing held almost 30 months before it was determined that there had not been a properly informed judicial determination, a new trial rather than remand for nunc pro tunc proceedings was required. *Id.*

#### Competency to stand trial

For purposes of determining one's competence to stand trial, that is, whether he is able to understand proceedings against him or properly assist in his defense, inquiry is focused on present mental condition, namely, at time of trial. *G. C. Bolton v. D. W. Harris, Acting Superintendent etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

For purposes of determining criminal responsibility, that is, whether act charged, if committed, was product of mental disease or defect, inquiry is focused on past mental condition, namely at time of offense. *Id.*

If accused is not presently insane or potentially dangerous to himself or others, it is illegal to commit him under statute providing that if court, after competency hearing, shall find accused to be then of unsound mind or mentally incompetent to stand trial, court shall order accused confined to hospital for mentally ill. *United States v. R. Wilson* (1966, 263 F. Supp. 528).

Defendant's testimony wherein he admitted that he had been using narcotics throughout the trial and even during lunch recess that very day and testimony of court-appointed psychiatrist that defendant's use of narcotics had previously produced "acute brain syndrome", a mental disorder, raised substantial doubt as to his competency, and therefore imposed on trial court, which had initially found defendant competent to stand trial, a duty to inquire anew into competency. *D. L. Hansford v. United States* (1966, 365 F. 2d 920, 124 U.S. App. D.C. 387).

To be competent to stand trial, defendant's memory and intellectual abilities must not be substantially impaired by mental disorder. *Id.*

Competency to stand trial depends on whether defendant understands nature of proceedings against him and is properly able to assist in his own defense. *United States v. H. L. Womack* (D.C.D.C. 1962, 211 F. Supp. 578).

Under District of Columbia law pertaining to insane criminals, any hearing must be on issue of defendant's competency to stand trial, and nothing more. *Williams v. District of Columbia* (D.C. Mun. App. 1959, 147 A. 2d 773).

#### Conditional release

Under this section governing conditional release of persons who have been committed to mental hospital after acquittal of crime by reason of insanity, to order conditional release upon a challenged certification court must conclude individual has recovered sufficiently so that under proposed conditions, or under conditions which this section empowers court to impose, such person will not in the reasonable future be dangerous to himself

or others. *Hough v. United States* (1959, 271 F. 2d 458, 106 U.S. App. D.C. 192).

#### Consent of defense of insanity

Finding that petitioner himself sought introduction of insanity defense at his trial was clearly erroneous in view of evidence, including evidence, that new counsel retained by petitioner's mother did not confer with petitioner prior to filing motion for pretrial mental examination and that petitioner did not even know new counsel's identity when he saw him at hearing on the motion and thought that he was still being represented by assigned counsel. *C. C. Rouse v. D. C. Cameron, Sup't etc.* (1967, 387 F. 2d 241, 128 U.S. App. D.C. 283).

Finding that petitioner evidenced his acquiescence in insanity defense by waiting almost four years to attack validity of his mandatory commitment to hospital for the mentally ill was not warranted in light of petitioner's apparent disabilities, including his lack of financial means and learning in the law and the likelihood that he had been suffering from some mental illness. *Id.*

#### Constitutionality

Mental hospital inmate who had been committed, under statute, on acquittal of charge of indecent exposure was entitled, in habeas corpus proceeding, to question constitutionality of mandatory commitment statute, as applied to inmate, on ground that he was not receiving treatments. *B. Darnell v. D. C. Cameron, Supt. etc.* (1965, 348 F. 2d 64, 121 U.S. App. D.C. 58).

District of Columbia statute requiring mandatory confinement of persons found not guilty by reason of insanity is constitutional. *J. L. Foller v. W. Overholser, Sup't etc.* (1961, 292 F. 2d 732, 110 U.S. App. D.C. 239).

Provision requiring commitment to mental institution of persons acquitted of crimes by reason of insanity did not deprive one committed pursuant thereto of liberty without due process of law, as there was rational connection between known evidence of the person's mental disease and mandatory commitment provision, and as statute authorizes one so confined to test legality of confinement by habeas corpus proceeding which provides de novo hearing to examine into mental condition. *Ragsdale v. Overholser, Supt. etc.* (C.A.D.C. 1960, 281 F. 2d 943).

"There can be no reasonable objection to the validity of the provision of this section. It makes ample provision for the inquiry which is conducted with due regard to the protection of the defendant." *Wagner v. White* (1912, 38 App. D.C. 554.)

This section is constitutional and valid. *Ormsby v. United States* (C.C.A. 6, 1921, 273 F. 977).

#### Construction

Mental hospital's examination of defendant properly extended to issues of mental responsibility even though, in terms, this section and order referred only to competency to stand trial. *United States v. W. E. Ashe* (1970, 427 F. 2d 626, 138 U.S. App. D.C. 356).

Where an offense was committed less than one year before hearing on the government's motion for a mental examination and defendant had requested bifurcated trial and had filed notice of insanity defense, the court was justified in invoking provisions relating to mental examination of accused. *P. W. Marcey v. D. W. Harris* (1968, 400 F. 2d 772, 130 U.S. App. D.C. 301; remanding 287 F. Supp. 73).

Pretrial commitment pursuant to provisions relating to mental examination of accused is for purposes of pretrial mental examination and is not ground for denial of bail otherwise contemplated by Bail Reform Act. *Id.*

Purpose of statute providing for mandatory commitment of person acquitted on ground that he was insane at time of commission of offense and prescribing release standards was to achieve balance of interest between public and person charged with crime by insuring that in every case where person committed crime as result of mental disease or defect, such person should be given period of hospitalization to guard against imminent recurrence of some criminal act. *G. C. Bolton v. D. W. Harris, Acting Superintendent etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

Purpose of subsection of District of Columbia Code prohibiting defense of insanity unless accused or his at-



torney files notice of intention to rely on such defense was to prevent defense being interposed unexpectedly at trial when government was not prepared with evidence to meet it. *P. W. Marcey v. D. W. Harris, Acting Superintendent, etc.* (1968, 287 F. Supp. 73; remanded 400 F. 2d 772).

District of Columbia Code section authorizing commitment to mental institution for mental examination as to defendants charged with criminal offenses should be broadly construed and it authorizes commitment for examination as to mental capacity to commit crime at time offense was committed. *Id.*

Only those hospitalized pursuant to Hospitalization of Mentally Ill Act are guaranteed by the act civil rights to dispose of property, execute instruments, make purchases, enter into contractual relationships, vote, or hold driver's license. *D. C. Cameron, Sup't etc. v. C. Mullen etc.* (1967, 387 F. 2d 193, 128 U.S. App. D.C. 235).

Statute to effect that when it appears to court that accused is of unsound mind or is mentally incompetent so as to be unable to understand proceedings against him court may order accused committed for observation and treatment if necessary did not authorize trial judge's affording hearing to determine for commitment purposes mental condition of accused found not guilty by reason of insanity, applying release standards of 1964 Hospitalization of the Mentally Ill Act or extending to accused rights which the 1964 Act guaranteed only to those civilly committed. *Id.*

Amendments of statute relating to judicial determination of competency or incompetency were enacted to overrule that much of prior opinion holding that accused could not be ordered to trial on basis of certification of accused's competency to stand trial by superintendent of mental institution wherein accused had been examined. *T. W. Whalem v. United States* (1965, 346 F. 2d 812, 120 U.S. App. D.C. 331).

Statute to effect that person acquitted solely on ground that he was insane at time of commission of offense shall be ordered by court to be confined in hospital for mentally ill forecloses trial judge from exercising any discretion and does not require finding by trial judge, jury, or medical board as to accused's mental health on date of judgment of acquittal. *F. C. Lynch v. W. Overholser, Sup't, etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

Statute to effect that person acquitted solely on ground that he was insane at time of commission of offense shall be confined in hospital for mentally ill is applicable only to defendant who affirmatively relies upon defense of insanity in any way and such defense need not be asserted by formal plea, but statute does not apply to one who has maintained that he was mentally responsible when alleged offense was committed. *Id.*

Accused, who did not claim that he had been insane when offenses were committed and who presented no evidence to support an acquittal by reason of insanity, was not properly confined in hospital for mentally ill upon finding of trial judge that he was not guilty on ground that he was insane at time of commission of offenses. *Id.*

Statutory construction confining itself to bare words of statute is dangerous in that literalness may strangle meaning. *Id.*

Statute should be interpreted, if fairly possible, in such way as to free it from not insubstantial constitutional doubts. *Id.*

#### Continuance for mental examination

Continuance should be allowed on clear showing of need for mental examination or for appointment of independent psychiatrist. *R. T. Brown v. United States* (D.C. App. 1968, 244 A. 2d 487).

Where defense counsel failed or refused to present to court factual basis for his conclusion that defendant possibly suffered from mental disease or defect at time of alleged crime, trial court's denial of request for continuance was not an abuse of discretion even if such request should have been treated as motion for mental examination and for appointment of independent expert. *Id.*

#### Court's findings

Court's findings concerning mental illness and dangerous propensities are not to be disturbed unless they lack

support in record or rest on an erroneous legal principle. *C. C. Rouse v. D. C. Cameron, Sup't etc.* (1967, 373 F. 2d 451, 125 U.S. App. D.C. 366).

#### Criminal responsibility

In determining issue whether or not indicted conduct was product of mental disease or mental defect, or whether accused acted because of mental disorder, there need be only reasonable doubt about it to entitle accused to an acquittal. *Douglas v. United States* (1956, 239 F. 2d 52, 99 U.S. App. D.C. 232).

While issue of criminal responsibility of defendant suffering from mental disease is not an issue of fact in same sense as the commission of the offense, it still is an issue of fact. *Id.*

The court-formulated test of insanity that accused is not criminally responsible if his unlawful act was product of mental disease or mental defect could not be applied retrospectively but only prospectively. *Watson, Jr. v. United States* (1956, 234 F. 2d 42, 98 U.S. App. D.C. 221).

Term "disease", as used in rule that an accused is not criminally responsible if his unlawful act was product of mental disease or mental defect, means condition which is considered capable of either improving or deteriorating, and term "defect" as so used means condition which is not considered capable of improving or deteriorating and which may be either congenital, or traumatic, or the residual effect of physical or mental disease. *Durham v. United States* (1954, 214 F. 2d 862, 94 U.S. App. D.C. 228, 45 A.L.R. 2d 1430).

In District of Columbia, formulation of tests of criminal responsibility is entrusted to the courts, and they may adopt changes in such tests retroactively. *Id.*

Whenever there is some evidence that the accused suffered from a diseased or defective mental condition at the time the unlawful act was committed, trial court must provide jury with guides for determining whether accused can be held criminally responsible. *Id.*

An accused is not criminally responsible if his unlawful act was product of mental disease or mental defect. *Id.*

A defendant is entitled to verdict of not guilty on ground of insanity, if jury finds that offense charged was insane act by application of any one of three tests as to whether defendant was able to distinguish between right and wrong, able to adhere to right and refrain from doing wrong, or suffered from mental disease or defect which caused criminal act. *United States v. Fielding* (1956, 148 F. Supp. 46, reversed on other grounds 251 F. 2d 878, 102 U.S. App. D.C. 167).

#### Defense of insanity

Defendant who was denied pretrial mental examination and thus lacked opportunity to establish basis of insanity defense could not be charged with acquiescing in subsequently appointed counsel's failure to assert defense. *Cannady v. United States* (1965, 351 F. 2d 817, 122 U.S. App. D.C. 120).

On adequate averment, defendant has right to assistance of court in developing basis for his insanity defense, and such assistance may take form of commitment for mental examination, examination through Mental Health Commission or Legal Psychiatric Service, or appointment of private experts. *A. J. Brown v. United States* (1964, 331 F. 2d 822, 118 U.S. App. D.C. 76).

Where indigent defendant in attempting to utilize defense of insanity based on drug addiction was denied even minimal assistance of free subpoena through averments in his motions were not inherently incredible on their face and there was no evidence that averments were untrue or that request was otherwise frivolous, defendant was entitled to new trial after fair opportunity to prepare defense of insanity. *Id.*

#### Directed verdict

Where a trial court, in a criminal prosecution, should have directed a judgment of acquittal by reason of insanity, notwithstanding the verdict, judgment of conviction would be vacated on appeal and case remanded with directions. *Isaac v. United States* (C.A.D.C. 1960, 284 F. 2d 168).

On record presented, in robbery prosecution, it was error to deny defendant's motion for directed verdict on



ground of insanity. *Satterwhite v. United States* (1959, 267 F. 2d 675, 105 U.S. App. D.C. 398).

#### Discretion of court

Decision to proceed to trial in absence of objection to hospital report that defendant was competent to stand trial was decision calling for exercise of discretion by court. *B. T. Wider v. United States* (1965, 348 F. 2d 358, 121 U.S. App. D.C. 129).

Hospital report that defendant was mentally competent to stand trial was not binding on court. *Id.*

Though hospital report stated that defendant was mentally competent to stand trial, facts of case required exercise of discretion by court by way of further investigation into competency of defendant to stand trial. *Id.*

Record failed to establish that district court abused its discretion in denying application for conditional release, under statute governing release of one committed to mental institution after being found not guilty of crime by reason of insanity, based on certificate of superintendent of hospital in which applicant was confined. *M. W. Durnham v. United States* (1962, 308 F. 2d 332, 113 U.S. App. D.C. 377).

Under statute requiring appropriate certificate of superintendent of mental hospital as a condition precedent to release of person committed, court may not substitute its own judgment for that of superintendent and may not try the matter de novo in habeas corpus proceeding, but superintendent's action or failure to act may not be deemed final or conclusive for all purposes. *H. T. O'Bierne v. W. Overholser* (D.C.D.C. 1961, 193 F. Supp. 652, reversed on other grounds 302 F. 2d 852).

Court may step in to determine whether action or failure to act on part of superintendent of mental hospital is arbitrary and capricious. *Id.*

In proceeding brought by one who was confined to mental institution following his acquittal of criminal charge by reason of insanity, to secure his release from institution, District Court, in denying writ, made permissible choice between expert evidence that he was dangerous and other evidence, including testimony of laymen, tending to suggest that he was not. *Ragsdale v. Overholser, Supt. etc.* (C.A.D.C. 1960, 281 F. 2d 943).

Under this section authorizing persons confined to mental institution by reason of having been acquitted of crime on ground of insanity to test legality of their commitments by habeas corpus, certificate of superintendent of mental institution, in form of conclusion, may be disregarded by the district judge if it is not supported by medical recitals which satisfy or persuade him that the conclusion is correct. *Id.*

"Whether a prima facie case has been made by the petitioner requiring submission of the issue (of insanity) to a jury is a question submitted to the sound discretion of the trial judge." *Gonzales v. United States* (1913, 40 App. D.C. 450). See, also, *Neely v. United States* (1945, 150 F. 2d 977, 80 U.S. App. D.C. 187, certiorari denied 66 S. Ct. 166, 326 U.S. 768, 90 L. Ed. 463).

Refusal of trial court to submit to a jury the question of defendant's mental responsibility was not an abuse of its discretion, where there had never been any suggestion that he should be restrained of his liberty because of insanity, and where at his trial it did not appear and was not suggested that he was not fully and entirely responsible from a mental standpoint. *Jackson v. United States* (1928, 25 F. 2d 549, 58 App. D.C. 125).

#### Due process

To require defendant to assume burden of proof on issue of insanity does not violate due process. *United States v. J. A. Naples* (D.C.D.C. 1961, 192 F. Supp. 23, reversed on other grounds 307 F. 2d 618).

#### Hospital procedures

The court in this case specified the minimal protective procedures required by due process before St. Elizabeths Hospital can determine that a patient had committed a crime that would require his transfer to maximum security facilities. *A. A. Jones, Jr. v. L. D. Robinson, M.D.* (1971, 440 F. 2d 249, 142 U.S. App. D.C. 221).

#### Effect of commitment

Commitment to St. Elizabeth's hospital does not automatically render person incompetent for most purposes.

*D. C. Cameron, Supt. etc. v. C. Mullen etc.* (1967, 387 F. 2d 193, 128 U.S. App. D.C. 235).

#### Eligibility for release

To establish eligibility for release on habeas corpus, patient committed to mental hospital after being found not guilty of offense by reason of insanity must prove freedom from such abnormal mental condition as would make individual dangerous to himself or community in reasonably foreseeable future. *G. C. Bolton v. D. W. Harris, Acting Superintendent etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

Patients committed to mental hospital after being found not guilty by reason of insanity may establish their eligibility for release by writ of habeas corpus. *Id.*

#### Estoppel

Inmate who had elected to seek verdict of not guilty by reason of insanity could not be heard to complain of commitment to mental hospital pursuant to this section requiring confinement in mental hospital of those acquitted solely on ground of insanity. *Curry v. Overholser, Supt. etc.* (C.A.D.C. 1960, 287 F. 2d 137).

#### Evidence

Evidence in habeas corpus proceeding by person committed to hospital for mentally ill after being found not guilty of crime on ground of insanity established that person committed had recovered his sanity and was not likely in reasonably foreseeable future to be dangerous to himself or others by reason of any mental disease or defect. *S. V. Robertson v. D. C. Cameron* (D.C.D.C. 1963, 224 F. Supp. 60).

Evidence supported finding that inmate, who was seeking release from confinement in mental hospital as insane criminal, was at time of the habeas corpus proceeding suffering from abnormal mental condition and would be dangerous to himself and others if released. *Curry v. Overholser, Supt. etc.* (C.A.D.C. 1960, 287 F. 2d 137).

In habeas corpus proceeding by one who had been committed to mental hospital after being found not guilty of robbery by reason of insanity, where superintendent of hospital had refused to certify that petitioner had recovered sanity and would not in reasonable future be dangerous to himself or others, evidence did not warrant release of petitioner despite opinion of two psychiatrists denying present mental disease, where seven psychiatrists agreed that petitioner was a sociopathic personality with dyssocial outlook and would be dangerous to community if released. *Overholser etc. v. Leach* (1958, 257 F. 2d 667, 103 U.S. App. D.C. 289, certiorari denied 79 S. Ct. 1152, 359 U.S. 1013, 3 L. Ed. 2d 1038).

When issue of insanity is raised by introduction of "some evidence" so that presumption of sanity is no longer absolute, trier of fact must weigh the whole evidence, including that supplied by the presumption of sanity, on the issue of capacity in law of accused to commit the crime, and failure so to weigh the whole evidence on such issue is reversible error. *Durham v. United States* (1954, 214 F. 2d 862, 94 U.S. App. D.C. 228, 45 A.L.R. 2d 1430).

Evidence concerning events of defendant's youth, none of them more recent than 15 years prior to time of hearing on petition for sanity inquisition after conviction of murder, and indicating that defendant as a youth had been reckless, imprudent, and brutal, was of no value to establish insanity. *Neely v. United States* (1945, 150 F. 2d 977, 80 U.S. App. D.C. 187, certiorari denied 66 S. Ct. 166, 326 U.S. 768, 90 L. Ed. 463).

Opinion evidence by lay witness that a defendant convicted of murder was insane, was valueless to establish prima facie that defendant was insane so as to authorize granting of a petition for sanity inquisition. *Id.*

Denial of motion of one of the two defendants jointly indicted on charge of killing another in perpetrating robbery for a mental examination was not error, where moving defendant did not make prima facie showing of mental incapacity. *Wheeler v. United States* (1948, 165 F. 2d 225, 82 U.S. App. D.C. 363, certiorari denied 68 S. Ct. 448, 830 U.S. 333, 92 L. Ed. 1115.) See, also, *Wheeler v. Reid* (1949, 175 F. 2d 829, 84 U.S. App. D.C. 180).

In prosecution for drunkenness, evidence which was taken in prior proceeding to determine competency of



defendant to stand trial could not be used to sustain a finding of not guilty by reason of insanity. *In re Williams* (D.C.D.C. 1958, 165 F. Supp. 879).

In prosecution for intoxication, evidence was insufficient to support trial judge's finding that defendant was not guilty because of insanity. *Williams v. District of Columbia* (D.C. Mun. App. 1959, 147 A. 2d 773).

In prosecution for intoxication, trial judge, in determining issue of defendant's competency under District of Columbia law to stand trial, could not use evidence introduced in previous hearing as to defendant's sanity where hearing was held after defendant entered plea of guilty on same charge. *Id.*

#### —Competence at trial

Full and scrupulous attention must be given to any evidence concerning competency at trial, whether or not there has been a competency hearing. *T. E. Blunt v. United States* (1967, 389 F. 2d 545, 128 U.S. App. D.C. 375).

#### —Sufficiency

In this case in light of the evidence on issue of whether offense was product of mental illness, conviction for robbery of property belonging to United States, assault with a dangerous weapon and carrying dangerous weapon would be affirmed. *T. H. Adams v. United States* (1969, 413 F. 2d 411, 134 U.S. App. D.C. 137).

#### Exhaustion of administrative remedy

The administrative remedy for mental patient that must be exhausted prior to petition for habeas corpus is the medical examination, rather than request for examination, and if the examination has been conducted within six months prior to habeas corpus petition, the administrative remedy is exhausted. *D. A. Dixon v. L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, 138 U.S. App. D.C. 319).

Only if the required medical examination is in progress when the mental patient's habeas corpus petition is filed has the patient failed to exhaust his administrative remedy to complete medical examination. *Id.*

If the mental hospital has ignored its duty to the patient in its care, its misconduct may not be imputed to the patient and thereby prejudice patient's right to judicial review of his custody. *Id.*

If a mental patient is undergoing medical examination at the time his petition for habeas corpus is filed, the district court should defer action on the petition pending mental hospital's completion of the examination and if, after completion, the patient desires to continue with his petition, the district court should proceed to determination of the issues. *Id.*

#### Expense of support

Where disability compensation due incompetent veteran was discontinued by Veterans' Administration because veteran was being cared for by government, government retained money for care of veteran, and veteran was not liable for board and maintenance at government hospital. *Silverstein v. United States* (1954, 210 F. 2d 19, 93 U.S. App. D.C. 174).

#### Findings

Absence of findings relating reason for denial of habeas corpus petitioned for by one committed to mental hospital to mental hospital following acquittal by reason of insanity required reviewing court to retain jurisdiction and remand to give District Court opportunity to amplify record to set forth such reasons. *J. A. Whittaker v. W. Overholser, Sup't etc.* (1962, 299 F. 2d 447, 112 U.S. App. D.C. 66).

#### Grounds for commitment

Commitment to Saint Elizabeth's Hospital for observation may be ordered for determination of questions other than the competency to understand the proceedings. *Leach v. United States* (1965, 353 F. 2d 451, 122 U.S. App. D.C. 280).

Only those who need treatment and may be dangerous may be confined to hospital for mentally ill. *F. C. Lynch v. W. Overholser, Sup't etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

#### Habeas corpus

Where, because the district court held no hearing on habeas corpus petition, reviewing court had no facts before it on which to determine whether the petitioner,

who had been committed to mental hospital following acquittal on ground of insanity and recommitted following Bolton-type hearing, was receiving treatment in least restrictive alternative consistent with legitimate purposes of commitment, order denying habeas corpus relief will be vacated and case remanded. *W. Ashe v. L. D. Robinson* (1971, 450 F. 2d 681, 146 U.S. App. D.C. 220).

Where the petitioner was in custody in hospital pursuant to commitment as sexual psychopath when he filed his habeas corpus petition, federal habeas corpus court did not lose jurisdiction to decide legality of commitments when the hospital thereafter unconditionally released petitioner. *R. Justin v. L. Jacobs* (1971, 449 F. 2d 1017, 145 U.S. App. D.C. 355).

Inasmuch as habeas corpus petitioner would continue to suffer adverse consequences as result of commitment under the Sexual Psychopath Act § 22-3503 et seq., issue of validity of the commitment was not moot even though petitioner had been released. *Id.*

Petitioner involuntarily committed to mental hospital on being acquitted of an offense by reason of insanity had right to treatment that was cognizable in habeas corpus, and law and justice required remand for hearing and findings on whether petitioner had received adequate treatment and, if not, the details and circumstances underlying the reason why he had not. *C. C. Rouse v. D. C. Cameron, Sup't etc.* (1967, 373 F. 2d 451, 125 U.S. App. D.C. 366).

Conclusion that petitioner who had been committed to hospital under statute following directed verdict of not guilty by reason of insanity failed to sustain burden of showing entitlement to unconditional release from hospital the superintendent of which had stated both at time of trial and on habeas corpus that he was without mental disorder was not without evidentiary support, in view of conflicting psychiatric testimony. *F. A. Miller v. D. C. Cameron, Sup't etc.* (1964, 335 F. 2d 986, 118 U.S. App. D.C. 323).

Affirmance of judgment denying writ of habeas corpus to one who had been committed to hospital pursuant to statute following verdict of not guilty by reason of insanity was without prejudice to filing of new petition for writ. *Id.*

Evidence disclosed that petitioner seeking habeas corpus was receiving psychiatric treatment during his confinement in hospital following acquittal by reason of insanity. *J. L. Foller v. Overholser, Sup't etc.* (1961, 292 F. 2d 732, 110 U.S. App. D.C. 239).

Evidence disclosed that director of hospital, to which petitioner had been committed following his acquittal by reason of insanity, was not arbitrary in refusing discharge. *Id.*

All indigent inmates who petition for habeas corpus for release from confinement in a hospital, including those committed as insane prisoners, may demand expert testimony of members of Commission on Mental Health, or court on its own motion may require it. *Curry v. Overholser, Sup't etc.* (C.A.D.C. 1960, 287 F. 2d 137).

Habeas corpus jurisdiction of District Court was properly invoked for release from hospital to which petitioner was committed by Municipal Court on being found not guilty of crime by reason of insanity. *O'Beirne v. Overholser* (C.A.D.C. 1960, 287 F. 2d 133).

In habeas corpus proceeding brought by one who had been committed to mental institution upon acquittal of criminal charges on ground of insanity, brought to secure release from institution, finding that petitioner was no longer mentally ill was clearly erroneous. *Overholser, Sup't etc. v. Russell* (1960, 283 F. 2d 195, 108 U.S. App. D.C. 400).

Under statutory provisions authorizing one confined to mental institution because of his acquittal of crime by reason of insanity to maintain habeas corpus proceeding to test legality of his confinement, habeas corpus hearing is de novo proceeding to examine into petitioner's existing mental condition, and at such hearing he is free to put in evidence, both lay and expert, to demonstrate that he has recovered to the point where he will not be dangerous to himself or others. *Ragsdale v. Overholser, Sup't etc.* (C.A.D.C. 1960, 281 F. 2d 943).

Where accused who had been adjudged insane pursuant to verdict of jury appointed to inquire into his sanity



and who had been ordered confined to hospital subsequently filed petition for writ of habeas corpus which contained crucial statement that he was of sound mind and acting superintendent of hospital in response to rule to show cause why writ should not issue alleged that accused was of unsound mind, giving details of asserted malady and opinion that accused was not mentally competent to stand trial, an issue of fact as to whether accused had regained his sanity was presented, he was entitled to hearing thereon and court erred in dismissing petition without hearing. *Lewis v. Overholser, Sup't etc.* (1960, 274 F. 2d 592, 107 U.S. App. D.C. 83).

Where petitioner was committed to hospital after acquittal by reason of insanity and his petition for habeas corpus failed to allege that he would not in the reasonable future be dangerous to himself or others and the hospital superintendent stated that he could not certify that the petitioner had recovered and petitioner failed to put in issue the superintendent's conclusion, district judge properly concluded that a hearing was not necessary. *Fielding v. Overholser, Superintendent, etc.* (1959, 268 F. 2d 898, 106 U.S. App. D.C. 23).

Where, after setting aside accused's plea of guilty to charge of public drunkenness, and committing accused to hospital for examination and observation, the municipal court found accused of unsound mind and ordered him confined to another hospital but did not determine whether accused was competent to stand trial, accused would be entitled to release on writ of habeas corpus unless the municipal court determined that he was mentally incompetent to stand trial and ordered him confined on that ground or unless proper lunacy proceedings were instituted. *Williams v. Overholser, Sup't, etc.* (1958, 259 F. 2d 175, 104 U.S. App. D.C. 18).

In habeas corpus proceeding brought by petitioner who had been committed to St. Elizabeths Hospital after being found not guilty of criminal charge by reason of insanity and who alleged that he was receiving no individual psychotherapy at hospital and that no further institutional care was necessary, petitioner was not, on facts disclosed, entitled to independent examination by member of mental health commission. *Hayward v. Overholser, Sup't etc.* (D.C.D.C. 1960, 191 F. Supp. 464).

Records of Municipal Court imported verity, and in habeas corpus proceeding brought by patient of hospital for the mentally ill, court would not go behind record to determine whether patient had had opportunity to present his defense in Municipal Court prosecution in which he had been found not guilty by reason of insanity at time offense was committed. *O'Beirne v. Overholser, Superintendent, etc.* (D.C.D.C. 1960, 180 F. Supp. 572).

Use of writ of habeas corpus may not be limited by statute, and person who claims to be deprived of his liberty illegally may always resort to writ. *Id.*

In habeas corpus proceeding brought by petitioner claiming right to be released from hospital for the mentally ill, court could not try de novo issue as to whether petitioner had ever been insane, or whether he had recovered his sanity. *Id.*

Where municipal court found accused charged with being drunk or intoxicated on a public street to be of unsound mind and committed him to mental hospital, but made no judicial determination on competency to stand trial, such failure constituted an illegal detention cognizable under writ of habeas corpus since such failure resulted in denial of a right given him by statute as well as his right, if competent, to speedy trial under the constitution. *Williams v. Overholser* (D.C.D.C. 1958, 162 F. Supp. 514, modified on other grounds 259 F. 2d 175, 104 U.S. App. D.C. 18).

It is not the function of the district court to determine in habeas corpus proceeding, the mental competency of an accused to stand trial on a charge pending against him in the municipal court, but the only court that may determine that fact is the court having jurisdiction of such charge. *Id.*

#### Hearing

If District Court were to find that habeas corpus petition filed by one committed to mental hospital following acquittal by reason of insanity, which, together with return, presented factual issue, was not procedurally pre-

mature, court was to grant hearing on question of eligibility for release under statute. *J. A. Whittaker v. Overholser, Sup't etc.* (1962, 299 F. 2d 447, 112 U.S. App. D.C. 66).

Habeas corpus petition filed by one who was confined to hospital following acquittal by reason of insanity, alleging that he was free from named mental conditions, of sound mind and not dangerous to himself or society, together with return, presented question of fact requiring resolution, assuming it was not raised in untimely fashion. *Id.*

#### Hearing and findings

Since the court decision denying hospital's application to grant a conditional release to patient, committed after acquittal by reason of insanity, was not accompanied by findings of facts and conclusions of law, and lower court did not have before it all of the evidence which the parties considered relevant to its decision, case was not an apt one for summary reversal, but neither was state of record adequate to permit appellate review under proper standards, and case would be remanded for taking of such additional evidence as the parties might see fit to introduce, and such further proceedings as might be appropriate. *United States v. C. McNeil* (1970, 434 F. 2d 502, 140 U.S. App. D.C. 228).

Patient, who had been committed to hospital under statute after having been acquitted on criminal charge solely on ground that he was insane, who had received little or no treatment at hospital, and who brought habeas corpus proceeding in federal District Court, was entitled to hearing and findings as to whether he was receiving adequate treatment, and, if he was not, District Court could allow hospital reasonable opportunity to initiate treatment, and unconditional or conditional release might be in order if it should appear that opportunity for treatment had been exhausted or treatment was otherwise inappropriate. *W. G. Tribby v. D. Cameron, Superintendent etc.* (1967, 379 F. 2d 104, 126 U.S. App. D.C. 327).

#### Independent examination

Denial of independent medical examination by patient who opposed his requested release from mental hospital to prison was error, where there had been no psychiatric inquiry as to his fitness for release, but inasmuch as it appeared that later he had been sent to hospital for psychiatric treatment, case would be remanded for further proceedings to clarify situation and to enable patient to make representations or file pleadings as would express his interest. *L. W. Green v. United States* (1965, 349 F. 2d 203, 121 U.S. App. D.C. 226).

Patient in mental hospital has right to independent psychiatric assistance where psychiatric inquiry undertaken by state may be slanted to state's interest and patient should be afforded such assistance in suitable cases even though no such risk appears. *Id.*

Inmate who had been confined for more than one year without an independent examination as to his mental health by an expert appointed by the district court was entitled, in connection with his petition for release, as a matter of right, to such independent examination to test findings and conclusions of the hospital staff where he was confined. *J. Watson v. D. C. Cameron, Sup't, etc.* (1962, 312 F. 2d 878, 114 U.S. App. D.C. 151).

#### Indeterminate commitment

That accused has pleaded guilty or that government has established that he committed criminal act constitutes only strong evidence that his continued liberty would imperil preservation of public peace and does not justify indeterminate commitment to mental institution on bare reasonable doubt as to past sanity. *F. C. Lynch v. W. Overholser, Sup't etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

#### Inquiry after acquittal

Under statute giving court authority to conduct hearing whenever a person is arrested, indicted, or charged by information and to commit person to mental hospital, trial court had jurisdiction to conduct hearing to determine competency of defendant after his acquittal on grounds of insanity, despite his refusal to raise issue in criminal trial. *United States v. C. L. Limber* (D.C. App. 1963, 192 A. 2d 530).



After jury returns verdict of not guilty by reason of insanity, inquiry as to whether accused is presently committable as person of unsound mind may be undertaken. *F. C. Lynch v. W. Overholser, Sup't etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

Defendant does not have absolute right to have his guilty plea accepted and trial judge may enter plea of not guilty in behalf of accused, but, if that is done, and defendant, despite his own assertions of sanity, is found not guilty by reason of insanity, commitment to hospital for mentally ill must be either under statute providing procedure for confining accused who, though found competent to stand trial, is nevertheless committable as person of unsound mind, or civil commitment provisions. *Id.*

#### Insanity defense

Where record unequivocally established that, after three years of representing defendant, defense counsel concurred with conclusions reached by psychiatrist and judge that defendant was a malingerer and expressed opinion that it was tactically unwise to raise an insanity defense unless he felt he had a chance, defendant was not entitled to reversal of conviction of armed robbery assault with a deadly weapon and carrying a pistol without a license on ground of judicial interference with his defense counsel's attempt to pursue insanity issue. *United States v. F. L. Simms* (1972, 463 F. 2d 1273, 150 U.S. App. D.C. 182).

Trial judge's decision not to interpose an insanity defense sua sponte was not an abuse of discretion constituting reversible error, especially in view of finding that defendant was malingering. *Id.*

A decision of the trial court to sua sponte interpose an insanity defense, especially when taken against the wishes of the accused, necessitates the utmost care in judgment and requires consideration of many factors. *United States v. P. Bradley* (1972, 463 F. 2d 808, 149 U.S. App. D.C. 505).

Trial court did not abuse its discretion in failing to further pursue insanity issue, allegedly with a view to raising insanity defense, sua sponte, where defendant indicated that he did not want to raise such defense, defense counsel expressed their views that defendant was competent to stand trial and trial judge received commitment report disclaiming any opinion on productivity and diagnosing defendant's illness as "Nonpsychotic Organic Brain Syndrome With Epilepsy (Alcoholic Factors)" and trial judge had a lengthy opportunity to observe defendant in court. *Id.*

#### Instructions

In prosecution for murder, instruction that if verdict of not guilty by reason of insanity was returned defendant would be committed to mental hospital until such time as it was established that he was no longer insane, was not objectionable for failure to add that he would be kept in hospital until he would not in reasonable future be dangerous to himself or others. *Starr, Jr. v. United States* (1959, 264 F. 2d 377, 105 U.S. App. D.C. 91, certiorari denied 79 S. Ct. 652, 359 U.S. 936, 3 L. Ed. 2d 639).

If it affirmatively appears on record that defendant, who pleaded not guilty by reason of insanity, did not want instruction as to effect of verdict of not guilty by reason of insanity, Court of Appeals will not regard failure of trial court to give such instruction as grounds for reversal. *Lyles v. United States* (1958, 254 F. 2d 725, 103 U.S. App. D.C. 22, certiorari denied 78 S. Ct. 997, 356 U.S. 961, 2 L. Ed. 2d 1067).

When instruction is given jury as to effect of verdict of not guilty by reason of insanity, jury should simply be informed that such verdict means that accused will be confined in hospital for mentally ill until superintendent has certified, and court is satisfied, that accused has recovered his sanity and will not in reasonable future be dangerous to himself or to others, in which event and at which time court shall order his release either unconditionally or under such conditions as court may see fit. *Id.*

Where defendant pleads not guilty by reason of insanity, jury has right to know meaning of verdict of not guilty by reason of insanity as accurately as it knows by common knowledge the meaning of verdict of guilty and verdict of not guilty. *Id.*

Evidence of mental condition at a given time is relevant to determination of mental condition at another time not unreasonably far removed, and it might be proper to inquire as to probability that as of time of act charged, an accused's mental condition was the same as it was found to be somewhat earlier, or somewhat later, but such rule does not justify judge in warning jury that if they acquit accused who has pleaded insanity they will be releasing a dangerous man to prey upon society. *Blunt v. United States* (1957, 244 F. 2d 355, 100 U.S. App. D.C. 266).

In prosecution for housebreaking, wherein judge told jury that hospital Acting Superintendent had advised court that accused was found competent to stand trial and assist in his own defense, and after stating that court would commit accused to hospital if he were found not guilty by reason of insanity, judge added that accused would remain there until determined to be "of sound mind" by hospital authorities and that "if the authorities adhered to their last opinion on this point, he will be released very shortly", latter statement was highly prejudicial since it implied a warning that dire consequences might result from finding that accused was not guilty by reason of insanity. *Durham v. United States* (1956, 237 F. 2d 760, 99 U.S. App. D.C. 132).

When accused person has pleaded insanity, counsel may and judge should inform jury that if he is acquitted by reason of insanity he will be presumed to be insane and may be confined in hospital for insane as long as public safety and welfare require. *Taylor v. United States* (1955, 222 F. 2d 398, 95 U.S. App. D.C. 373).

Instructions to jury relative to criminal responsibility must in substance advise jury that they may find defendant guilty only if they find, beyond reasonable doubt, from evidence and from facts fairly deducible, (1) that defendant was not suffering from diseased or defective mental condition at time of the act, or (2) that the act was not the result of such condition. *Durham v. United States* (1954, 214 F. 2d 862, 94 U.S. App. D.C. 228, 45 A.L.R. 2d 1430).

#### Judge's comments on evidence

If trial judge submits to jury question of probable release of defendant at some future date from mental hospital, submits evidence to jury on that point, or comments to jury respecting speculative possibilities in that regard, trial judge commits error. *A. Lyles v. United States* (1958, 254 F. 2d 725, 103 U.S. App. D.C. 22, certiorari denied 78 S. Ct. 997, 356 U.S. 961, 2 L. Ed. 1067).

Statement by trial judge that doctor testified that on prior occasion he found no mental disorder whatever in defendant, and that defendant was a man of average intelligence, was not reversible error, though made in connection with statement to jury that if defendant should be acquitted by reason of insanity, he would be committed to a mental institution, where statement as to testimony of doctor was a remark in single sentence in middle of long charge, and trial judge did not relate testimony of doctor to time of trial or to any possible future time. *Id.*

#### Judicial determination

Federal district court which had been asked to reimpose complete restriction on patient who had been conditionally released from hospital to which he had been committed after being found not guilty of robbery by reason of insanity was required to make independent judicial determination. *F. W. Friend v. United States* (1967, 388 F. 2d 579, 128 U.S. App. D.C. 323).

Manslaughter sentences were not void because of absence of judicial adjudication that defendant was competent to stand trial, though he had previously been found to be insane, where certificate of superintendent of hospital stating that defendant had recovered his reason and was then of sound mind was filed in court before defendant pleaded guilty, and court ordered examination by two independent psychiatrists who reported that defendant was of sound mind at the time. *J. W. Hunter v. United States* (1963, 323 F. 2d 625, 116 U.S. App. D.C. 323).

If accused denies that he is mentally ill, he is entitled to judicial determination of his mental state despite hospital board's certification that he is of unsound mind.



*F. C. Lynch v. W. Overholser, Sup't etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F.2d 388).

Under this section trial court may or may not make a finding on whether accused is of unsound mind, but must determine whether he is mentally competent to stand trial, when objection is made to the report from hospital and a hearing is held, and if accused is found to be of unsound mind this section requires court to commit defendant to a mental hospital, and if court also determines him to be incompetent to stand trial statute requires the same commitment, but section requires a judicial determination in the latter type of mental condition, but does not require a determination in the former. *Williams v. Overholser* (D.C.D.C. 1958, 162 F. Supp. 514, modified on other grounds 259 F.2d 175, 104 U.S. App. D.C. 18).

#### Jurisdiction of court

1963 robbery conviction was not invalid on ground that, since defendant had been committed to hospital following his 1961 acquittal by reason of insanity, district court was without jurisdiction to try him, in absence of hearing to determine his competency to stand trial in 1963, where prior to both 1961 and 1963 trials defendant was referred to hospital for mental examination resulting, in both instances, in certification by hospital that he was competent to stand trial, and 1963 certification was not objected to by either defendant or government. *Green v. United States* (1965, 351 F.2d 198, 122 U.S. App. D.C. 33).

#### Jurisdiction to commit

Municipal court did not have jurisdiction under D.C. Code 1961 § 24-301(a) to commit person to mental hospital where court had found accused not guilty by reason of insanity but had finally disposed of the criminal charges against accused more than a year before such commitment and had erroneously committed accused under D.C. Code 1961 § 24-301(d). *Dr. D. C. Cameron v. W. V. Fisher* (1963, 320 F.2d 731, 116 U.S. App. D.C. 9).

#### Jury trial

This section providing for commitment of accused found incompetent to stand trial to a mental hospital is not unconstitutional for absence of provision for jury trial since all that is required is due process which is satisfied by judicial hearing which is provided for. *Williams v. Overholser* (D.C.D.C. 1958, 162 F. Supp. 514, modified on other grounds 259 F.2d 175, 104 U.S. App. D.C. 18).

#### Law governing

Where doctor, who had examined defendant for purpose of determining his mental competency to stand trial, did not testify to any statement made by defendant on issue of guilt and judge's finding of mental competency to stand trial was not brought to notice of jury, it was immaterial whether commitment to mental institution for determination of mental competency to stand trial was made under federal statute or under District of Columbia statute; and neither statute barred doctor's testimony expressing his opinion that defendant was sane when he committed act. *Edmonds v. United States* (1959, 273 F.2d 108, 106 U.S. App. D.C. 373, certiorari denied 80 S. Ct. 1062, 362 U.S. 977, 4 L. Ed. 2d 1012).

If this section stating procedure to be followed by federal District Court for District of Columbia in determining an accused person's mental competence to stand trial requires a jury, it has been superseded in that respect by 18 U.S.C. § 4244 which does not require a jury and which has general application in Federal Court throughout nation, and federal District Court for District of Columbia did not err in proceeding under later statute without intervention of jury in determining mental competency of an accused to stand trial on murder charge. *Jordan v. United States* (1953, 207 F.2d 28, 93 U.S. App. D.C. 65).

#### Legally competent

Conceptual range of expression "legally incompetent" only embraces deficiencies in accused which actually prevents his fair trial, and mere deficiency, standing alone, is outside limits of the concept. *United States v. R. Wilson* (1966, 263 F. Supp. 528).

#### Mandamus

Without a full record of the trial even if petitioner was constitutionally entitled to further protection of his rights during hospital staff conference held in connection with a pre-indictment mental examination requested by petitioner, it could not be said that presence of petitioner's counsel, as opposed to some alternative device such as recording some or all parts of conference, was an appropriate remedy, so that mandamus to compel an order against hospital to permit presence of petitioner's counsel was not available. *R. N. Thornton v. Hon. H. F. Corcoran* (1969, 407 F.2d 695, 132 U.S. App. D.C. 232).

#### Mandatory commitment

Mandatory commitment under statute providing that any person acquitted solely on ground that he was insane at time of commission of crime shall be confined in a hospital for the mentally ill is permissible only if defendant affirmatively relied on defense of insanity. *C. C. Rouse v. D. C. Cameron, Sup't etc.* (1967, 387 F.2d 241, 128 U.S. App. D.C. 283).

Under statute providing that any person acquitted solely on ground that he was insane at time of commission of crime shall be confined in hospital for mentally ill, Congress did not intend to allow automatic commitment when the defense of insanity was thrust upon a defendant who objected to it. *Id.*

#### Mental examination before verdict

The decision to commit is a matter of discretion with the court and the exercise of that discretion will not lightly be disturbed.

The evidence did not show a need for a mental examination. *F. E. Wesley v. United States* (D.C. App. 1967, 233 A.2d 514).

#### Mentally ill person

A person is "mentally ill" if he suffers from an abnormal condition of mind that substantially affects mental or emotional processes, and substantially impairs behavioral control. *D. A. Dixon v. L. Jacobs, Sup't etc.* (1970, 427 F.2d 589, 138 U.S. App. D.C. 319).

#### Motion for leave to appeal

Where defendant's motion to vacate sentences was denied without hearing and district judge also denied defendant's application for leave to appeal in forma pauperis, defendant's motion in the Court of Appeals for leave to so appeal and for appointment of counsel would be granted in view of fact that trial judge denied such motion without hearing on erroneous grounds that competency to stand trial was not subject to collateral attack but was waived if not advanced at trial, and that defendant did not allege he was in fact mentally incompetent when tried, and that an amendment to this section abrogated requirement for a judicial determination of restored competency before trial. *Blunt v. United States* (1957, 244 F.2d 355, 100 U.S. App. D.C. 266).

#### New trial

An inadequate determination by court of question whether defendant is mentally competent to stand trial is not curable by nunc pro tunc hearing, and defendant is entitled to new trial. *B. T. Wider v. United States* (1965, 348 F.2d 358, 121 U.S. App. D.C. 129).

#### Nunc pro tunc hearing

Even if district court erred in not conducting hearing on issue of competency at time of entry of plea of guilty, petitioner could thereafter demand no more than nunc pro tunc hearing. *Mordecai v. United States* (D.C.D.C. 1966, 252 F. Supp. 694).

#### Periodic examinations

Statute governing release of persons acquitted by reason of insanity entitles patient to periodic examinations by hospital staff and right to be examined by outside psychiatrist and, if one of examining physicians believes he should no longer be hospitalized, he is entitled to court hearing. *G. C. Bolton v. D. W. Harris, Acting Superintendent etc.* (1968, 395 F.2d 642, 130 U.S. App. D.C. 1).

Rule that patient committed to mental hospital after being found not guilty of offense by reason of insanity is entitled to periodic examinations by hospital staff and right to be examined by outside psychiatrist, and that



if one of examining physicians believes he should no longer be hospitalized, he is entitled to court hearing applies to all cases including those previously committed under statute providing for mandatory commitment of persons acquitted by reason of insanity. *Id.*

#### Petition for release

When a mental hospital patient's habeas corpus petition for release from mental hospital is based on his mental health at time petition was filed, the petition is not subject to dismissal on grounds that the merits of his claim had been determined in prior proceedings or that failure to present the issues in prior proceedings amounted to inexcusable neglect. *D. A. Dixon v. L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, 138 U.S. App. D.C. 319).

Since ten months had elapsed between denial of previous petition for habeas corpus and mental patient's subsequent petition, sufficient time had passed for patient to raise issue that his condition at time of petition warranted his release from confinement in mental institution. *Id.*

#### Policy of statute

Underlying policy of statute government commitment and release of persons found not guilty of crime by reason of insanity is to provide treatment and cure for individual in manner which affords reasonable assurance of public safety. *United States v. M. Charnizon* (D.C. App. 1967, 232 A. 2d 586).

#### Potentially dangerous

Mere fact that person committed under statute to mental institution following acquittal of criminal charge by reason of insanity has some dangerous propensity does not, standing alone, warrant his continued confinement but dangerous propensities must be related to or arise out of abnormal mental condition, whether such condition was that which constituted basis for acquittal. *W. Overholser v. H. T. O'Bierne* (1962, 302 F. 2d 852, 112 U.S. App. D.C. 267).

That one confined to mental institution because of his acquittal of criminal charges for insanity would no longer be committable under civil procedure could constitute no ground for his release where there was no showing that he had recovered to point where he was free from abnormal mental condition or that his release would not expose himself or public to danger in reasonably foreseeable future. *Id.*

Under rule that to be eligible for release from mental hospital, inmate must be free from such "abnormal mental conditions" as would make him dangerous to himself or community in reasonably foreseeable future, quoted words refer to a mental disease or mental defect, and not just any condition that is outside of the ordinary norm. *H. T. O'Bierne v. W. Overholser* (D.C.D.C. 1961, 193 F. Supp. 652; reversed on other grounds 302 F. 2d 852).

Under this section concerning commitment of insane criminals to hospital, a sane person cannot be confined in a mental hospital simply because he is thought to be potentially dangerous if released and his dangerous tendencies must be attributable to an abnormal mental condition if he is to be retained in confinement. *Starr, Jr. v. United States* (1959, 264 F. 2d 377, 105 U.S. App. D.C. 91, certiorari denied 79 S. Ct. 652, 359 U.S. 936, 3 L. Ed. 2d 639).

Under this section relating to commitment of insane criminals to hospital, a defendant, acquitted because of insanity and committed to mental hospital because of the verdict, may not be released if, despite some recovery, doctors certify and in the exercise of its own function the court finds he is, and in the reasonably foreseeable future will be, dangerous because of mental disease or defect. *Id.*

#### Prejudicial cross-examination

In murder prosecution wherein sole defense was insanity, and defendant's gibberish testimony was such as to raise issues as to whether defendant feigned such testimony and whether at time of the third trial his mental condition represented his condition at time of act charged, cross-examination disclosing defendant's failure to take stand at two previous trials which resulted in convictions was erroneous and was not harmless but was sufficiently prejudicial to warrant the granting of a mistrial even though defense made no request for cautionary

instructions. *W. L. Stewart v. United States* (1961, 366 U.S. 1, 81 S. Ct. 941; reversed on other grounds 275 F. 2d 617).

#### Presence of counsel at hospital staff conference

Defendant is not entitled to presence of counsel and psychiatrist at mental examination staff conference despite contention that their presence is required to protect defendant's constitutional rights against self-incrimination and to counsel. *United States v. H. A. Fletcher* (1971, 329 F. Supp. 160).

#### Presentence examination

A diagnosis of a state prison, as part of a pre-sentence report, that defendant was a psychopathic personality, unstable, recidivistic and antisocial might have been a sufficient prima facie case for ordering a mental examination of the defendant before sentence, but even if it was not, there was enough basis to make clear the usefulness of a psychological evaluation in determining sentence. *W. R. Leach v. United States* (1964, 334 F. 2d 945, 118 U.S. App. D.C. 197).

Psychiatric evaluation of a prisoner through the Legal Psychiatric Services or through the Prison Bureau program, like a pre-sentence report, is a useful tool for rehabilitative rather than retributive sentencing, and it has a crucial place in the sentencing process. *Id.*

#### Presumption of sanity

In prosecution for housebreaking, psychiatrist's opinion that defendant had been of unsound mind on date when crime was committed was sufficient to satisfy "some evidence" test and thereby to shift to prosecution the burden of proving defendant's sanity, though psychiatrist could not state categorically that defendant had not known right from wrong. *Durham v. United States* (1954, 214 F. 2d 862, 94 U.S. App. D.C. 228, 45 A.L.R. 2d 1430).

Trial court's erroneous holding that there was no evidence of alleged housebreaker's mental state as of date when crime was committed, and that presumption of sanity therefore prevailed, was prejudicial and required reversal. *Id.*

#### Pretrial mental examination

Decision of trial judge to proceed with trial on the merits without ordering a commitment of defendant for competency observation was not abuse of discretion in absence of any objection or motion from defense counsel and in view of simultaneous expression of willingness to try, through bifurcation, any insanity defense that might subsequently appear appropriate. *United States v. P. Bradley* (1972, 463 F. 2d 808, 149 U.S. App. D.C. 405).

Since the defendant who allegedly had history of drug addiction was opposed to pretrial motion for mental examination and, on interrogation by the court with questions designed to elicit degree of his understanding of his legal circumstances as well as his position on the motion, his responses to former were clear and his opposition to commitment was steadfast, the trial court did not err in denying motion. *United States v. M. W. Collins* (1970, 433 F. 2d 550, 139 U.S. App. D.C. 392).

Although five months before trial it had been determined that defendant was suffering from drug addiction which was in remission, where defendant did not testify, there was no expert testimony as to any abnormal mental condition, defendant did not seek hearing and there was no evidence of long record of disturbed behavior, failure of trial judge sua sponte to grant hearing on issue of mental competence to stand trial was not basis for reversal. *R. R. Powell v. United States* (1966, 373 F. 2d 225, 125 U.S. App. D.C. 364).

There must be facts which create a substantial doubt of defendant's mental competence before due process requires the trial judge to order hearing thereon sua sponte. *Id.*

Where accused raised defense of insanity so that it was necessary to conduct an examination of his person, there was nothing arbitrary or unconstitutional in committing him for reasonable length of time as provided by statute to mental hospital in order that examination might be conducted and accused was not thereby deprived of his right to bail. *P. A. Battle v. D. C. Cameron, Superintendent etc.* (1966, 260 F. Supp. 804).



Affidavit of defense counsel, in support of motion for pretrial mental examination, reciting that counsel had serious doubts as to defendant's mental capacity to assist him intelligently and as to his mental health, believing that crime may have resulted from distorted mind, based, inter alia, on unspecified personal observations, oddities in defendant's behavior and beliefs and fact that defendant had relatives who were afflicted with mental disorder, raised sufficient possibility that crimes were product of mental disease or defect to require granting of motion, and its denial was reversible error. *Cannady v. United States* (1965, 351 F. 2d 817, 122 U.S. App. D.C. 120).

Notwithstanding that about two weeks after trial and seven months after defendant's erroneously denied pretrial motion for mental examination psychiatrist examined defendant in cell block and reported that defendant was then competent and presumably had been at trial but that he was unable to reach conclusion as to dates of alleged offenses, at least time and facilities normally available for pretrial examinations were to be made available following reversal of conviction, and prospective hearing was required. *Id.*

The erroneous denial of defendant's pre-trial motion for a mental examination required the remanding of case for a new hearing to ascertain defendant's present competency to stand trial and for a new trial on forgery charge if defendant were found competent, rather than a nunc pro tunc hearing for judicial determination of defendant's competency at time of his original trial. *P. Holloway v. United States* (1964, 343 F. 2d 265, 119 U.S. App. D.C. 396).

Although a trial judge has some discretion in denying a motion for a mental examination as not timely, if counsel learns of defendant's alleged symptoms on day the trial is scheduled to begin, a motion submitted at that time cannot be denied as late. *L. P. Mitchell v. United States* (1963, 316 F. 2d 354, 114 U.S. App. D.C. 353).

A written motion on morning of trial for a mental examination of defendant based on allegations that defendant had displayed to counsel certain letters which raised inquiry with respect to his mental situation, and based on allegation that counsel had learned that defendant was an epileptic and exhibited unexplained and repeated criminal activities was, under the circumstances, adequate and timely, and denial thereof was prejudicial error. *Id.*

On a motion for an order directing a mental examination, defendant is not required to produce, in order to get the examination, enough evidence to prove that he is incompetent or irresponsible. *Id.*

Nature of crime of sodomy, with which accused was charged, was not sufficient alone, to require the District Court, before accepting guilty plea, to order a mental examination of accused, although court could properly consider nature of crime in that connection, and where there was no indication by prosecuting attorney, that accused might be a sexual psychopath, and no request for a mental examination was made by prosecution or accused, convictions could not be set aside in collateral proceeding, such as coram nobis, because of court's failure to order examination on its own motion. *Carter v. United States* (1960, 283 F. 2d 200, 108 U.S. App. D.C. 405).

A prosecutor who knows that the accused's mental state at the time of the crime will be the critical issue at trial has an obligation to see that any pretrial mental examination of the accused that may be ordered be broad enough to cast light on that issue, and such course is required not only to protect the rights of the accused, but also to protect society's interest in hospitalizing the accused, if his violent acts sprang from mental disorder, so that he will not be released, as he would be after completion of a prison sentence, without medical assurance that he is not likely to be dangerous to himself or others in the reasonably foreseeable future. *Winn v. United States* (1959, 270 F. 2d 326, 106 U.S. App. D.C. 133).

There is a vast difference between that mental state which permits an accused to be tried and that which permits him to be held responsible for a crime, and in view of fact that an examination made for the purpose of determining competency to stand trial requires less than an examination designed to determine sanity for

the purpose of criminal responsibility, it is not to be assumed that a psychiatrist who has been ordered to prepare an opinion as to man's trial competency will conduct a type of examination which is necessary to provide the trier of facts with information essential for a proper determination of criminal responsibility. *Id.*

Where the prosecuting attorney moved for a complete and thorough mental examination of the accused, but district court's order upon the motion required only such examination as was necessary to permit formulation of an opinion as to whether defendant was presently of unsound mind or mentally incompetent so as to be unable to understand the proceeding against him or properly to assist in his own defense, the complete and thorough type of examination required for a proper determination of the issue of responsibility would be deemed never made because it was not ordered as requested in the prosecutor's pretrial motion, and therefore defendant's conviction would be reversed and he would be granted a new trial. *Id.*

#### Procedure

Where doctors who testified at habeas corpus proceeding for release of inmate who had been committed after acquittal by reason of insanity were among those whom he had called as witnesses in his own behalf at criminal trial and were thoroughly familiar with his history and behavior at hospital, and inmate did not request testimony of members of Commission on Mental Health, although private psychiatrists were not available to testify as to inmate's mental condition at time of proceeding, inmate received due process of law. *Curry v. Overholser, Sup't etc.* (C.A.D.C. 1960, 287 F. 2d 137).

Under statutes relating to insane criminals, a reasonable doubt about insanity of accused required acquittal and authorized hospital confinement. *Ragsdale v. Overholser, Sup't etc.* (C.A.D.C. 1960, 281 F. 2d 943).

Procedure which governs lunacy inquisition in case of person charged with criminal offense is different from that governing ordinary lunacy inquisition. *Evans v. United States* (D.C. Mun. App. 1951, 83 A. 2d 876).

#### Procedure after certification

Whenever court receives a certification of incompetency or a certification of restoration of competency and there is no objection by either the accused or the government, court may, in former case, forthwith commit the accused to a mental hospital and, in the latter case, immediately proceed with trial. *T. W. Whalen v. United States* (1965, 346 F. 2d 812, 120 U.S. App. D.C. 331).

Where the two hospitals to which accused was referred for mental examination certified him as competent to stand trial, in absence of objection either from the accused or the government court could, in its discretion, proceed with trial without holding a hearing to determine competence. *Id.*

#### Proof of need for mental examination

Motion for mental examination is made on adequate averment, not on counsel's belief, however sincere, that certain undisclosed facts lead him, or a psychiatrist, or a social psychologist, to suspect examination is required. *R. T. Brown v. United States* (D.C. App. 1968, 244 A. 2d 487).

Counsel may in his motion for continuance offer to make ex parte proffer of facts showing need for mental examination and for appointment of independent psychiatrist. *Id.*

Where motion for continuance was supported by counsel's statement that certain undisclosed facts lead him to believe that defendant suffered from mental disease at time of trial but did not state facts on which such belief was based, denial of continuance did not deprive defendant of substantial rights or fair trial. *Id.*

#### Psychiatric assistance

As to assertion of a claim, on appeal from denial of habeas corpus relief, that the petitioner had not had such court-appointed psychiatric assistance to which interests of justice entitled him for the preparation and presentation of his habeas corpus case, the court would take judicial notice that over a dozen years or more the medical views of government psychiatrists, as a whole, generally turned out to be more favorable to defendants than to the prosecutors in verdicts of not guilty by reason



of insanity. *A. Proctor v. D. W. Harris* (1969, 413 F. 2d 383, 134 U.S. App. D.C. 109).

The petitioner, who sought release from a mental hospital to which he was confined pursuant to commitment following a verdict of not guilty of criminal charges by reason of insanity, and on whose application an independent psychiatric examination was ordered, was granted full and meaningful habeas corpus hearing without being denied any relevant or other legitimate assistance from government employed psychiatrist and was not entitled to relief on the theory that he had not had court-appointed psychiatric assistance to which interests of justice entitled him for preparation and presentation of his habeas corpus case. *Id.*

#### Psychiatrist's report

Psychiatrist's reports on whether defendant was mentally competent to stand trial properly included evaluation of defendant's mental condition at time crimes were committed. *W. Overholser, Sup't, etc. v. F. C. Lynch* (1961, 288 F. 2d 388, 109 U.S. App. D.C. 404; reversed on other grounds 1962, 82 S. Ct. 1063).

#### Psychologist's qualifications

Court which rather than evaluating psychologist's qualifications in competency hearing turned hearing into inquiry into any psychologist's competency, without medical training, to make informed observations about accused was erroneous. *T. E. Blunt v. United States* (1967, 389 F. 2d 545, 128 U.S. App. D.C. 375).

Lack of general medical background may affect weight given to psychologist's testimony in incompetency hearing. *Id.*

#### Public policy

However strong and pervasive public policy to bring the morally responsible to bar, it cannot subvert constitutional right to fair trial which is not afforded to accused who is prosecuted while legally incompetent. *United States v. R. Wilson* (1966, 263 F. Supp. 528).

That personal liberty should depend on such an arbitrary circumstance as mental hospital's change of "administrative policy" in determining whether sociopathic personality should be treated as a mental disease, as affecting release of committed person, would be contrary to basic principles of freedom. *H. T. O'Bierne v. W. Overholser* (D.C.D.C. 1961, 193 F. Supp. 652; reversed on other grounds 302 F. 2d 852).

The community is not without means of protecting itself if at time that a prisoner's sentence ends he is found to be a sexual psychopath, or to be insane or mentally incompetent. *Carter v. United States* (1960, 283 F. 2d 200, 108 U.S. App. D.C. 405).

The existence of possibilities to protect society from, and to treat, prisoner convicted of sodomy, or other sexual crimes, in the event he is found to be a sexual psychopath, or insane, of unsound mind or otherwise defective during imprisonment or at time his sentence ends, does not relieve bench and bar of responsibility of endeavoring to reach at the earliest possible stage, ideally prior to trial and sentence, the approach to a particular case which appears to be most just and appropriate, having regard to the individual's mental condition, his history, and the possibility of rehabilitating him and restoring him to usefulness in the community. *Id.*

Policies underlying distinction in treatment between mentally responsible law breakers, who are sent to prison, and mentally irresponsible law breakers, who are sent to hospitals, are (1) that it is both wrong and foolish to punish where there is no blame and where punishment cannot correct, and (2) that community's security may be better protected by hospitalization than by imprisonment. *Williams v. United States* (1958, 250 F. 2d 19, 102 U.S. App. D.C. 51).

#### Purpose

Purpose of detention under statute providing for commitment of person acquitted of crime by reason of insanity is not punitive but serves to protect the public and the subject and to afford place and procedure to treat and, if possible, to rehabilitate the subject. *L. W. Collins v. D. C. Cameron, Sup't etc.* (1967, 377 F. 2d 945, 126 U.S. App. D.C. 306).

Purpose of involuntary hospitalization is treatment, not punishment. *C. C. Rouse v. D. C. Cameron, Sup't etc.* (1967, 373 F. 2d 451, 125 U.S. App. D.C. 366).

Purpose of ordering a mental examination for a defendant is to get evidence on whether he is or is not competent to stand trial, and another purpose is to get evidence on whether, if there is a trial, the jury should be instructed on insanity and criminal responsibility. *L. P. Mitchell v. United States* (1963, 316 F. 2d 354, 114 U.S. App. D.C. 353).

Although this section respecting release of persons committed to mental hospitals after acquittal by reason of insanity does not speak of temporary release from hospital, its purpose is to assure that members of exceptional class be kept under hospital restraint until District Court, in exercise of a discretion reviewable by Court of Appeals, approves relaxation of that restraint. *Hough v. United States* (1959, 271 F. 2d 458, 106 U.S. App. D.C. 192).

Purpose of this section pertaining to commitment to hospital of an accused who is mentally incompetent to stand trial is to prescribe procedure for determining whether an accused can understand the proceedings against him and properly assist in his defense and, in event he cannot, to provide for his confinement in a hospital instead of a jail until he can. *Williams v. Overholser, Sup't, etc.* (1958, 259 F. 2d 175, 104 U.S. App. D.C. 18).

The purpose of this section providing that whenever prima facie evidence is submitted that accused is insane, the court may cause a jury to be impaneled to inquire into the sanity of accused, is to prevent the infliction of punishment upon a person so lacking in mental capacity as to be unable to understand the nature and purpose of the punishment. *Neely v. United States* (1945, 150 F. 2d 977, 80 U.S. App. D.C. 187, certiorari denied 66 S. Ct. 166, 326 U.S. 768, 90 L. Ed. 463).

Purpose of this section making it mandatory for court to commit to a mental hospital any defendant in a criminal case who is found not guilty on ground of insanity, and placing certain safeguards against release of such person from mental hospital after his commitment thereto, is to protect public and discourage unfounded pleas of insanity and statute must be construed in a manner to best effectuate those objectives. *In re Milton T. Rosenfield* (D.C.D.C. 1958, 157 F. Supp. 18, remanded on other grounds 262 F. 2d 34, 104 U.S. App. D.C. 322).

Purpose of this section providing for mental examination of person charged with crime before trial is to determine whether prisoner is then capable of understanding the nature and object of the proceedings so as to properly conduct his defense at a trial of the charge against him. *Evans v. United States* (D. C. Mun. App. 1951, 83 A. 2d 876).

#### Questions of fact

The presence of an abnormal mental condition, and the extent to which it impairs mental or emotional processes and controls, are questions of fact; how substantial such an impairment must be to be considered a mental illness is a matter of law. *D. A. Dixon v. L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, 138 U.S. App. D.C. 319).

The likelihood of future misconduct of the mental patient who seeks release from confinement, the type of misconduct to be expected, and its probable frequency are questions of fact; whether the expected harm, and its apparent likelihood, are sufficiently great to warrant coercive intervention are questions of law. *Id.*

#### Reason for continued confinement

That person involuntarily committed and confined has some dangerous propensities does not, standing alone, warrant his continued confinement in a government mental institution; the dangerous propensities must be related to or arise out of an abnormal mental condition. *C. C. Rouse v. D. C. Cameron, Sup't etc.* (1967, 373 F. 2d 451, 125 U.S. App. D.C. 366).

Continued confinement of one involuntarily committed on being acquitted of an offense by reason of insanity depends not upon fact that he committed the acts, but upon his present mental condition. *Id.*



**Reasonable opportunity to initiate treatment**

If court finds that a mandatorily committed patient is in custody in violation of Constitution and laws, for failure to receive treatment, it may allow hospital a reasonable opportunity to initiate treatment, but if opportunity for treatment has been exhausted or is otherwise inappropriate, conditional or unconditional release may be in order. *C. C. Rouse v. D. C. Cameron, Sup't etc.* (1967, 373 F. 2d 451, 125 U.S. App. D.C. 366).

**Record of determination of competency**

Where defendant's motion for mental examination has been granted, determination of competency should be noted of record. *Watson v. United States* (1956, 234 F. 2d 42, 98 U.S. App. D.C. 221).

**Release**

Release provisions of statute governing commitment to mental hospital of one found not guilty by reason of insanity are valid even though they differ from civil commitment procedures by authorizing court review of hospital's decision to release patient. *G. C. Bolton v. D. W. Harris, Acting Superintendent etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

Equal protection is not offended by allowing government or court opportunity to insure that standards for release of civilly committed patients are faithfully applied to patients committed after having been found not guilty by reason of insanity. *Id.*

Principal concern of statute governing release of persons committed after being found not guilty by reason of insanity is for procedures to protect public from premature release of dangerous persons. *L. W. Green v. United States* (1965, 349 F. 2d 203, 121 U.S. App. D.C. 226).

That patient has fears that his release from mental institution will endanger himself or community to which he is being released may be considered on issue of release and determination is reviewable on appeal. *Id.*

Person found not guilty of criminal offense on ground of insanity may not be released unless superintendent of hospital to which he has been committed certifies that person committed has recovered his sanity, and that, in superintendent's opinion, the person will not in reasonably foreseeable future be dangerous to himself or others and is entitled to an unconditional release. *S. V. Robertson v. D. C. Cameron* (D.C.D.C. 1963, 224 F. Supp. 60).

Under this section providing that a person committed to hospital for mentally ill because he was acquitted for criminal offense solely on ground that he was insane at time of commission may be unconditionally released by District Court if superintendent of hospital certifies, *inter alia*, that in his opinion such person will not in reasonable future be dangerous to himself or others, the danger to the public need not be possible physical violence or crime of violence but it is enough to preclude release if there is competent evidence that he may commit any criminal act. *Overholser Sup't etc. v. Russell* (1960, 283 F. 2d 195, 108 U.S. App. D.C. 400).

In view of this section providing that person who has been committed to hospital for mentally ill because he was acquitted of criminal offense solely on ground of insanity at time of commission may be released unconditionally by District Court if superintendent certifies that he has recovered, that he will not in reasonable future be dangerous to himself or others, and that, in opinion of superintendent, he is entitled to unconditional release, to demonstrate at habeas corpus hearing that he is entitled to unconditional release, the patient must show that he has recovered, that he will not in reasonable future be dangerous to others and that superintendent acted arbitrarily and capriciously in refusing to certify him and recommend him for unconditional release. *Id.*

This section governing release of one committed to mental institution after being found not guilty of crime by reason of insanity, based upon certificate that such person has recovered sanity and will not in a reasonable future be dangerous to himself or others, does not, by phrase "establishing his eligibility for release", establish the test of whether particular individual, engaged in ordinary pursuits of life, is committable to mental institution under the law governing civil commitments, but

requires freedom from such abnormal mental condition as would make the individual dangerous to himself or the community in the reasonably foreseeable future. *Overholser etc. v. Leach* (1958, 257 F. 2d 667, 103 U.S. App. D.C. 289, certiorari denied 79 S. Ct. 1152, 359 U.S. 1013, 3 L. Ed. 2d 1038).

Insane person, found not guilty of homicide by reason of insanity, and committed to asylum, must prove sanity and that he is no longer a menace, to obtain release. *Barry v. White* (1933, 64 F. 2d 707, 62 App. D.C. 69).

In habeas corpus proceeding seeking unconditional release from mental institution to which petitioner had been committed after acquittal on ground of insanity, return to writ of habeas corpus filed on behalf of superintendent of mental hospital stating that psychosis from which petitioner was suffering was in remission since his readmission to hospital on a certain date did not warrant granting of petitioner's unconditional release from hospital. *In re Milton T. Rosenfield* (D.C.D.C. 1958, 157 F. Supp. 18, remanded on other grounds 262 F. 2d 34, 104 U.S. App. D.C. 322).

**Report of commission**

Where the examination of accused as to his insanity was made by the Commission of Health at accused's request, and in support of his attempt to make a *prima facie* showing so as to authorize granting of petition for sanity inquisition after conviction of murder, the court was not required to disregard the Commission's report on theory that to permit its consideration would have the effect of a waiver of privilege upon part of accused. *Neely v. United States* (1945, 150 F. 2d 977, 80 U.S. App. D.C. 187, certiorari denied 66 S. Ct. 166, 326 U.S. 768, 90 L. Ed. 463).

**Resolution of reasonable doubt**

Although patient committed to hospital after having been found not guilty of crime by reason of insanity may have improved materially and appears to be a good prospect for restoration as useful member of society, if abnormal mental condition renders him potentially dangerous, reasonable medical doubts or reasonable judicial doubts are to be resolved in favor of public and in favor of subject's safety. *United States v. M. Charnizon* (D.C. App. 1967, 232 A. 2d 586).

In ordering conditional release of patient committed to hospital after having been found not guilty of crime by reason of insanity, court must conclude that individual has recovered sufficiently so that under proposed conditions person will not in reasonable future be dangerous to himself or others. *Id.*

**Restored competency**

Determination of accused's eligibility to stand trial may be established by a finding of "restored competency" or a finding that he never was incompetent, and hence assuming that a proceeding to set aside original adjudication of incompetency is required, substance of such proceeding was provided by hearing in which hospital psychiatrist testified that accused was not a mental defective and that there was no indication of organic brain injury or mental illness. *V. E. Jenkins v. United States* (1962, 307 F. 2d 637, 113 U.S. App. D.C. 300).

**Review**

Review of order revoking conditional release from hospital to which patient had been committed after being found not guilty of robbery by reason of insanity was not precluded by mootness on ground that another conditional release order had been issued, in view of fact that his complete hospital detentions would usually be for relatively brief time, not likely long enough to finish appellate review. *F. W. Friend v. United States* (1967, 388 F. 2d 579, 128 U.S. App. D.C. 323).

**Revocation of conditional release**

Noncompliance with conditions of release from hospital by patient who had been committed there after having been found not guilty of robbery by reason of insanity was significant but was not the sole or ultimate consideration in determining whether to revoke conditional release; findings as to his mental condition and dangerousness were required. *F. W. Friend v. United States* (1967, 388 F. 2d 579, 128 U.S. App. D.C. 323).



Order for conditional release of defendant who had been committed to mental hospital on acquittal of offense by reason of insanity could be revoked only by court which granted conditional release and only after full hearing. *B. Darnell v. D. C. Cameron, Sup't etc.* (1965, 348 F. 2d 64, 121 U.S. App. D.C. 58).

#### Right to counsel

Though due process does not absolutely require appointment of counsel in all cases where person is deprived of his liberty because of unsound mind, where person charged with criminal offense of assault was subjected to lunacy inquisition prior to trial, due process required that defendant be represented by counsel in spite of ostensible waiver of that right or privilege. *Evans v. United States* (D. C. Mun. App. 1951, 83 A. 2d 876).

A lunacy inquisition, held before trial to determine if accused is capable of going to trial, is not a criminal proceeding and does not fall within ambit of the Sixth Amendment. *Id.*

#### Right to treatment

One involuntarily committed to mental hospital on being acquitted of an offense by reason of insanity has a right to treatment. *C. C. Rouse v. D. C. Cameron, Sup't etc.* (1967, 373 F. 2d 451, 125 U.S. App. D.C. 366).

On issue of right to treatment of one involuntarily committed on being acquitted of an offense by reason of insanity, hospital need not show that treatment will cure or improve him but only that there is bona fide effort to do so, and this requires hospital to show that initial and periodic inquiries are made into needs and conditions of patient with view to providing suitable treatment for him, and that the program provided is suited to his particular needs. *Id.*

On issue of right to treatment of one involuntarily committed to mental hospital on being acquitted of an offense by reason of insanity, effort should be to provide treatment which is adequate in light of present knowledge. *Id.*

Continuing failure to provide suitable and adequate treatment of one involuntarily committed to mental hospital on being acquitted of an offense by reason of insanity cannot be justified by lack of staff or facilities. *Id.*

#### Scope of mandatory commitment

Notwithstanding fact that appeal of denial of petition for writ of habeas corpus by person, who was acquitted by reason of insanity and summarily committed to mental hospital pursuant to mandatory provisions of District of Columbia statute raised substantial questions concerning scope of mandatory commitment and its relationship to the Hospitalization of the Mentally Ill Act, in view of petitioner's unconditional release from hospital while appeal was pending, appeal was dismissed as moot. *S. I. Solomon v. D. C. Cameron, Sup't etc.* (1967, 377 F. 2d 170, 126 U.S. App. D.C. 285).

#### Scope of review

When the mental patient is seeking complete release from confinement, the scope of judicial review of hospital administrator's decision is broader and the function of the hearing court is not simply to review the hospital's decision for unreasonableness, but rather itself to decide ultimate the question of whether the present status of the patient is such that continued confinement is justifiable. *D. A. Dixon v. L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, 138 U.S. App. D.C. 319).

That petitioner eloped from hospital, to which she had been committed, after district court had stayed its order of release in habeas corpus proceeding did not render moot government's appeal, inasmuch as district court had jurisdiction over petitioner at time of its order. *D. C. Cameron, Sup't etc. v. C. Mullen etc.* (1967, 387 F. 2d 193, 128 U.S. App. D.C. 235).

Appellate function of Court of Appeals was to act upon propriety of decision of district court issuing writ of habeas corpus and ordering release of petitioner committed to hospital, even though petitioner had eloped from hospital after district court had stayed its order of release. *Id.*

As long as there was outstanding an order of restraint on liberty of petitioner and as long as her custodians were within jurisdiction of Court of Appeals, habeas corpus case involving propriety of committing petitioner to hos-

pital was not moot, and could not be dismissed on ground that petitioner who had eloped from hospital was not in custody for habeas corpus purposes. *Id.*

The scope of Court of Appeals' review of process by which criminal sentence is determined is at least broad enough to insure the use of necessary sentencing aids to obtain relevant information. *Leach v. United States* (1965, 353 F. 2d 451, 122 U.S. App. D.C. 280).

Notwithstanding the plainly unsatisfactory nature of reports concerning mental condition of defendant, because of defendant's refusal to cooperate in any further psychiatric examinations it would be unfair to defendant and perhaps a futile exercise to remand case for a third time, and Court of Appeals affirmed the maximum sentence imposed by trial judge following robbery conviction. *Id.*

#### Sentencing procedure

In imposing a statutorily permissible sentence, a sentencing judge has wide discretion which will not ordinarily be disturbed on appeal. *Leach v. United States* (1965, 353 F. 2d 451, 122 U.S. App. D.C. 280).

Although generally an appellate court will not review sentences that are within the statutory maximum, a sentencing judge should use some of the resources which the Congress has provided in regard to psychiatric evaluation of a prisoner, and should not arbitrarily ignore the data properly obtained thereby in fixing a sentence. *W. R. Leach v. United States* (1964, 334 F. 2d 945, 118 U.S. App. D.C. 197).

#### Setting aside verdict

In appropriate case there is duty to set aside verdict of guilty and to direct verdict of not guilty by reason of insanity; though this duty is to be performed with caution because of deference due jury in resolving factual issues. *Douglas v. United States* (1956, 239 F. 2d 52, 99 U.S. App. D.C. 232).

#### Speedy trial

Under circumstances, defendant, whose first trial resulted in hung jury and whose judgment of conviction on second trial was vacated, was denied constitutional right to speedy trial where he was not finally tried until 43 months after indictment. *C. C. Marshall v. United States* (1964, 337 F. 2d 119, 119 U.S. App. D.C. 83).

#### Sufficiency of return to petition for release

In this case, the court held that the mental hospital's return to habeas corpus petition filed by mental hospital was not sufficient to warrant trial court in denying plenary hearing on patient's mental condition at time of filing of petition. *D. A. Dixon v. L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, 138 U.S. App. D.C. 319).

#### Suspension of proceedings

The sole effect of section 301 et seq. of this title governing procedure in case of insanity of person charged with crime is to suspend the criminal proceedings during the period of insanity but jurisdiction of court continues and when sanity is restored, the case may proceed as if the interregnum had not occurred. *Haislip v. United States* (1942, 129 F. 2d 53, 76 U.S. App. D.C. 91).

Sole effect of this section providing for mental examination of person charged with criminal offense before trial is, in proper case, to suspend criminal proceedings during period of insanity. *Evans v. United States* (D.C. Mun. App. 1951, 83 A. 2d 876).

#### Temporary leave

Where hospital authorities have decided that a patient committed to the hospital after acquittal by reason of insanity has reached stage where temporary leave from hospital is necessary and proper, authorities should certify that fact to District Court and obtain an appropriate order. *Hough v. United States* (1959, 271 F. 2d 458, 106 U.S. App. D.C. 192).

#### Unconstitutional punishment

Defendant committed to hospital pursuant to statute after being found not guilty by reason of insanity on charge of second-degree murder who was not being detained solely for administration of tranquilizing drug which might have been administered outside hospital and who was receiving other forms of therapy was not being unconstitutionally punished. *L. W. Collins v. D. C.*



*Cameron, Sup't etc.* (1967, 377 F. 2d 945, 126 U.S. App. D.C. 306).

#### Verdict

Under this section providing for commitment to mental institution of persons acquitted of criminal charges by reason of insanity, it is contemplated that a person acquitted on a charge calling for a maximum sentence of 18 months may be confined to mental institution for two, five or ten years or beyond that, and nothing less will fulfill protective and rehabilitative purposes of this section. *Ragsdale v. Overholser, Sup't. etc.* (C.A.D.C. 1960, 281 F. 2d 943).

A general verdict of not guilty by reason of insanity carried with it a finding that, except for the question as to his sanity, defendant was guilty as charged. *Rucker v. United States* (1960, 280 F. 2d 623, 108 U.S. App. D.C. 75).

In prosecution for assault with intent to kill and possession of a rifle with intent to use it unlawfully against another, where the court found the defendant not guilty by reason of insanity and it did not appear that defendant actually understood and acquiesced that the question of his guilt was being tried in that it did not appear that he understood and acquiesced in what was being accomplished without witnesses or evidence and he protested promptly a few days after the verdict, the defendant was entitled to a new trial. *Id.*

It is common knowledge that verdict of not guilty means that prisoner goes free and that verdict of guilty means that he is subject to such punishment as court may impose, but it is not common knowledge that verdict of not guilty by reason of insanity means that he will be confined in hospital for mentally ill until superintendent of hospital certifies, and court is satisfied, that he has recovered his sanity. *Lyles v. United States* (1958, 254 F. 2d 725, 103 U.S. App. D.C. 22, certiorari denied 78 S. Ct. 997, 356 U.S. 961, 2 L. Ed. 2d 1067).

Verdict of not guilty by reason of insanity means that defendant will be confined in hospital for mentally ill until superintendent of hospital certifies, and court is satisfied, that defendant has recovered his sanity and will not in reasonable future be dangerous to himself or others. *Id.*

Instruction that if defendant is found not guilty on ground of insanity, it then becomes duty of court to commit him to hospital, where he will remain until he is cured, and it is deemed safe to release him, and that when such time arrives, he will be released and will suffer no further consequences from his offense, was not reversibly erroneous. *Id.*

Whenever defense of insanity is fairly raised, trial judge should instruct jury as to legal meaning of verdict of not guilty by reason of insanity. *Id.*

Where accused was found to be of unsound mind and was committed to hospital, the verdict of insanity spoke as of the date thereof and was a legal determination that accused was not then mentally qualified to stand trial but when he was restored to sanity, certificate of hospital superintendent to that effect removed the previous bar. *Haislip v. United States* (1942, 129 F. 2d 53, 76 U.S. App. D.C. 91).

Verdict of insanity of accused given as result of lunacy inquisition spoke as of that date and was legal determination that defendant was not then mentally qualified to stand trial. *Evans v. United States* (D. C. Mun. App. 1951, 83 A. 2d 876).

#### Waiver of competency hearing

Where conviction was reversed because of error relating to issue of insanity, although newly appointed counsel at second competency hearing agreed to finding of defendant's competency, in view of nature of testimony adduced at prior hearing, defendant's previous history with respect to competency to stand trial and insanity and fact that his counsel apparently did not have benefit of transcript of first hearing, a full hearing was required. *T. E. Blunt v. United States* (1967, 389 F. 2d 545, 128 U.S. App. D.C. 375).

Fact that neither defendant nor government objected at trial to court's acceptance of hospital certification of competency without holding a hearing could not be viewed as waiver by defendant of his rights, but it did

authorize trial court in its discretion to proceed with trial without a competency hearing. *C. Heard, Jr. v. United States* (1967, 263 F. Supp. 613).

#### § 24-302. Commitment of mentally ill person while serving sentence.

Any person while serving sentence of any court of the District of Columbia for crime, in a District of Columbia penal institution, and who, in the opinion of the Director of the Department of Corrections of the District of Columbia, is mentally ill, shall be referred by such Director to the psychiatrist functioning under section 24-106, and if such psychiatrist certifies that the person is mentally ill, this shall be sufficient to authorize the Director to transfer such person to a hospital for the mentally ill to receive care and treatment during the continuance of his mental illness. (Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 928; Aug. 9, 1955, 69 Stat. 611, ch. 673, § 2.)

#### AMENDMENT

1955—Act Aug. 9, 1955, amended section generally. Prior to amendment, section read as follows: "Any person becoming insane while undergoing a sentence of any court of the District of Columbia for crime may, in like manner, be committed to said hospital for the insane, by order of the Secretary of the Interior, to receive the same treatment as other patients during the continuance of his disorder."

#### NOTES TO DECISIONS

##### In general

The fact that conviction is affirmed does not foreclose possibility of further inquiry whether sentence should be served in penitentiary or in mental hospital, since any prisoner found to be mentally ill may be transferred to such a hospital. *D. O. Williams v. United States* (1963, 312 F. 2d 862, 114 U.S. App. D.C. 135).

If accused who pleads guilty is found to be in need of psychiatric assistance, he may be transferred to hospital for mentally ill following sentence. *F. C. Lynch v. W. Overholser, Sup't etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

The community is not without means of protecting itself if at time that a prisoner's sentence ends he is found to be a sexual psychopath, or to be insane or mentally incompetent. *Carter v. United States* (1960, 283 F. 2d 200, 108 U.S. App. D.C. 405).

The existence of possibilities to protect society from, and to treat, prisoner convicted of sodomy, or other sexual crimes, in the event he is found to be a sexual psychopath, or insane, of unsound mind or otherwise defective during imprisonment or at time his sentence ends, does not relieve bench and bar of responsibility of endeavoring to reach at the earliest possible stage, ideally prior to trial and sentence, the approach to a particular case which appears to be most just and appropriate, having regard to the individual's mental condition, his history, and the possibility of rehabilitating him and restoring him to usefulness in the community. *Id.*

If prisoner serving sentence on conviction of crime is presently insane or of unsound mind or otherwise defective, prison authorities may and presumably should transfer him to an appropriate institution, so that he may be given treatment for his condition. *Id.*

##### Evidence

Where several psychiatrists testified that defendant was a psychopath or sociopath on day of killings and some thought condition a mental disease, evidence was sufficient to raise issue of insanity and require government to disprove beyond a reasonable doubt the claim that crimes were product of mental disease or defect. *D. O. Williams v. United States* (1963, 312 F. 2d 862, 114 U.S. App. D.C. 135).

Exclusion of conclusory portions of report by psychologist that tests indicated that defendant was suffering from effects of organic damage to central nervous system, even if error, was harmless where report was cumulative, psychologists had been permitted to testify to results of



tests, and some of the psychiatrists who testified based their findings on report. *Id.*

In murder prosecution, where only three of eleven psychiatrists could say that killings in question were product of defendant's mental disease or defect, evidence was insufficient to raise, as a matter of law, reasonable doubt as to defendant's sanity and conflict in medical testimony became issue for jury. *Id.*

#### Motion after sentence

Motion of defendant, made after his entry of plea of guilty to narcotics charge in open court and his sentence therefor, to set aside plea of guilty and to have himself committed to mental hospital to determine his mental competence to understand proceedings against him or to properly assist in his own defense, and affidavit of defendant's wife were insufficient to require court to allow withdrawal of plea of guilty. *D. Hopkins v. United States* (1963, 318 F. 2d 186, 115 U.S. App. D.C. 215).

#### Procedural safeguards

Transfer of prisoners to mental hospital requires protective procedures at least similar to those provided in 1964 Civil Commitment Act (now title 21, section 501 et seq., D.C. Code) providing full system of procedural safeguards before finding of mental illness can be made. *R. E. Mathews, Jr. v. K. L. Hardy et al.* (1969, 420 F. 2d 607, 137 U.S. App. D.C. 39).

Under section 24-302 providing that if director of department of corrections believes prisoner is mentally ill, he can refer prisoner to psychiatrist and, if psychiatrist concurs in that belief, director can then transfer prisoner to mental hospital, before prisoner may be involuntarily transferred he is entitled to judicial hearing, jury trial, and same rights of notice, counsel and cross-examination as are provided for in title 21, section 501 et seq., and same procedures for release from hospital as are embodied in those sections. *Id.*

#### Validity of prison officials' policy

The simple fact that the prisoner was back in prison at time case was heard did not relieve court of obligation to appraise validity of prison officials' continuing policy of commitments without hearing to mental institutions, inasmuch as prisoner was still subject to that policy. *R. E. Mathews, Jr. v. K. L. Hardy et al.* (1969, 420 F. 2d 607, 137 U.S. App. D.C. 39).

### § 24-303. Restoration to sanity—Delivery of person to court—Delivery of person to Director of Department of Corrections.

(a) When any person confined in a hospital for the mentally ill, charged with crime and subject to be tried therefor, shall be found competent to stand trial in the opinion of the superintendent of such hospital, the superintendent shall certify such fact to the clerk of the court in which the indictment, information, or charge is pending, in accordance with the procedure specified in section 24-301, and deliver such person to the court according to its proper precept.

(b) When any person confined in a hospital for the mentally ill while serving sentence shall be restored to mental health within the opinion of the superintendent of the hospital, the superintendent shall certify such fact to the Director of the Department of Corrections of the District of Columbia and such certification shall be sufficient to deliver such person to such Director according to his request. (Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 929; Aug. 9, 1955, 69 Stat. 611, ch. 673, § 3.)

#### AMENDMENT

1955—Act Aug. 9, 1955, amended section generally. Prior to amendment, section read as follows: "When any person confined in the hospital for the insane, charged with crime and subject to be tried therefor or undergoing sentence therefor, shall be restored to sanity the superintendent of the hospital shall give notice thereof

to the justice holding the criminal court and deliver him to the court according to its proper precept."

#### NOTES TO DECISIONS

##### Certification of sanity

Where accused charged with incest was found by jury to be of unsound mind and was committed to hospital, upon discharge of accused from hospital as cured and in absence of anything showing invalidity of certificate of hospital superintendent, court was required to proceed with trial on the suspended criminal indictment and no further proceedings on the question of sanity was necessary. *Haislip v. United States* (1942, 129 F. 2d 53, 76 U.S. App. D.C. 91).

Where accused was found to be of unsound mind and was committed to hospital, the verdict of insanity spoke as of the date thereof and was a legal determination that accused was not then mentally qualified to stand trial but when he was restored to sanity, certificate of hospital superintendent to that effect removed the previous bar. *Id.*

##### Construction with other laws

Where accused was charged with incest, found to be of unsound mind and committed to hospital and thereafter hospital superintendent certified that accused was not insane, in determining whether trial court had duty to ascertain judicially if superintendent's certificate correctly fixed accused's mental condition, § 21-320 [now repealed] relating to method of inquisition in case of persons believed to be of unsound mind was inapplicable. *Haislip v. United States* (1942, 129 F. 2d 53, 76 U.S. App. D.C. 91).

##### Habeas corpus

"But we find in this section nothing that precludes the right of the prisoner to have a judicial inquiry made into the fact of restoration to sanity," and he may apply for a habeas corpus in the event that the superintendent refuses to certify to his restoration to sanity. *Wagner v. White* (1912, 38 App. D.C. 554).

In habeas corpus proceeding by petitioner, who had been committed as an insane person pursuant to verdict, in murder prosecution, of not guilty by reason of insanity, evidence sustained determination that petitioner had not been restored to mental health and justified discharge of writ. *Orencia v. Overholser* (1947, 163 F. 2d 763, 82 U.S. App. D.C. 285).

##### Jurisdiction of court

1963 robbery conviction was not invalid on ground that, since defendant had been committed to hospital following his 1961 acquittal by reason of insanity, district court was without jurisdiction to try him, in absence of hearing to determine his competency to stand trial in 1963, where prior to both 1961 and 1963 trials defendant was referred to hospital for mental examination resulting, in both instances, in certification by hospital that he was competent to stand trial, and 1963 certification was not objected to by either defendant or government. *L.W. Green v. United States* (1965, 351 F. 2d 198, 122 U.S. App. D.C. 33).

The sole effect of § 24-301 et seq. is to suspend the criminal proceedings during the period of insanity but jurisdiction of court continues and when sanity is restored, the case may proceed as if the interregnum had not occurred. *Haislip v. United States* (1942, 129 F. 2d 53, 76 U.S. App. D.C. 91).

##### Prisoner convicted but not sentenced

This section includes one convicted of crime but not yet sentenced. *Ormsby v. United States* (C.C.A. 6, 1921, 273 F. 977).

##### Procedural safeguards

Transfer of prisoners to mental hospital requires protective procedures at least similar to those provided in 1964 Civil Commitment Act (now title 21, section 501 et seq., D.C. Code) providing full system of procedural safeguards before finding of mental illness can be made. *R. E. Mathews, Jr. v. K. L. Hardy et al.* (1969, 420 F. 2d 607, 137 U.S. App. D.C. 39).

Under section 24-302 providing that if director of department of corrections believes prisoner is mentally ill, he can refer prisoner to psychiatrist and, if psychiatrist



concur in that belief, director can then transfer prisoner to mental hospital, before prisoner may be involuntarily transferred he is entitled to judicial hearing, jury trial, and same rights of notice, counsel and cross-examination as are provided for in title 21, section 501 et seq., and same procedures for release from hospital as are embodied in those sections. *Id.*

## Chapter 4.—PRISONS AND PRISONERS

### SUBCHAPTER I.—PRISONS

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Sec.

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### SUBCHAPTER I.—PRISONS

- § 24-401. Repealed. Dec. 23, 1963, 77 Stat. 623, Pub. L. 88-241, § 21, effective Jan. 1, 1964.

Section of act Mar. 3, 1901, 31 Stat. 1341, ch. 854, § 934, designated places of imprisonment, according to length of maximum sentence imposed by the court, with special provisions for cumulative sentences, and designated in which court, as between the District Court and the Municipal Court (now the Superior Court), criminal prosecutions should or might be brought, according to the maximum punishment prescribed for the offense. The provisions are now covered by §§ 11-923 and 24-425. See, also, § 11-502 and 18 U.S.C. § 4082 et seq.

- § 24-402. Sentence of prisoners to jail, reformatory, or penitentiary for more than one year—Jurisdiction of Commissioner over prisoners in reformatory—Transfer of prisoners from penitentiary to reformatory.

Whenever any person has been convicted of crime in any court in the District of Columbia and sentenced to imprisonment for more than one year by the court, the imprisonment during the term for which he may have been sentenced or during the residue of said term may be in some suitable jail or penitentiary or in the reformatory of the District of Columbia; and it shall be sufficient for the court to sentence the defendant to imprisonment in the penitentiary without specifying the particular prison or the reformatory of the District of Columbia and the imprisonment shall be in such penitentiary, jail, or the reformatory of the District of Columbia as the Attorney-General shall from time to time designate: *Provided*, That the Commissioner of the District of Columbia is vested with jurisdiction over such male and female prisoners as may be designated by the Attorney-General for confinement in the reformatory of the District of Columbia from the time they are delivered into his custody or into the custody of



his authorized superintendent, deputy, or deputies, and until such prisoners are released or discharged under due process of law: *And provided further*, That the residue of the term of imprisonment of any person who has prior to July 1, 1916, been convicted of crime in any court in the District of Columbia and sentenced to imprisonment for more than one year by the court may be in the reformatory of the District of Columbia instead of the penitentiary where such persons may be confined on July 1, 1916, and the Attorney-General, when so requested by the Commissioner of the District of Columbia, is authorized to, and he shall, deliver into the custody of the superintendent of said reformatory or his deputy or deputies any such person confined in any penitentiary in pursuance of any judgment of conviction in and sentence by any court in the District of Columbia, and the Commissioner of the District of Columbia is vested with jurisdiction over such prisoners from the time they are delivered into the custody of said superintendent or his duly authorized deputy or deputies, including the time when they are in transit between such penitentiary and the reformatory of the District of Columbia, and during the period they are in such reformatory or until they are released or discharged under due process of law. The Attorney-General shall pay the cost of the maintenance of said prisoners so transferred, said payment to be from appropriations for support of convicts, District of Columbia, in like manner as payments are made for the support of District convicts in federal penitentiaries. Nothing herein contained shall be construed as applying to the National Training School for Boys or the National Training School for Girls. (Sept. 1, 1916, 39 Stat. 711, ch. 433.)

#### EFFECTIVE DATE

Act Sept. 1, 1916, provided in part that: "The provisions of this paragraph shall take effect on and after July first, nineteen hundred and sixteen."

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CROSS REFERENCE

Place of imprisonment to be designated by Attorney General, see § 24-425.

#### NOTES TO DECISIONS

##### Constitutional law

Act giving Attorney General power to designate places of confinement for Federal prisoners does not violate Fifth Amendment. *Stewart v. Johnston* (C.C.A. 9, 1938, 97 F. 2d 548).

##### Federal institutions

This section impliedly recognizes the fact that District of Columbia prisoners may be incarcerated in Federal institutions. *Story v. Rives* (1938, 97 F. 2d 182, 68 App. D.C. 325).

Prisoner released on parole by Federal parole board as a matter of discretion but Congress adopted a new procedure of conditional release because it realized that society would be better served if prisoners were subjected to the same supervision as parolees. *Id.*

##### Penal or correctional institutions

A sentence to serve a term in a penal institution could not be served in a correctional institution, except under authority given to the Attorney General to transfer prisoners. *Wilson v. Aderhold* (C.C.A. 5, 1936, 84 F. 2d 806).

##### Place of confinement

The Attorney General of the United States had the authority to designate an institution located outside of the District of Columbia and beyond the control of local penal officials for service of sentence by one who was convicted in the District of Columbia of a violation of § 22-1504, since the offense punished thereby was an "offense against the United States" within meaning of this section. *Beard v. Bennett* (1940, 114 F. 2d 578, 72 App. D.C. 269).

Attorney General was duly authorized to designate the prison where a defendant was sentenced in the courts of the District of Columbia to imprisonment exceeding one year, and his designation was in proper form. (Decided under D.C. 1901, § 925). *Myers v. Morgan* (C.C.A. 8, 1915, 224 F. 413).

Attorney General, under the broad powers conferred upon him, had authority to cause appellee to be placed and held in the Atlanta penitentiary under any general sentence of imprisonment for more than a year, the court could have imposed. *Aderhold v. Edwards* (C.C.A. 5, 1934, 71 F. 2d 297).

##### Religious services

Allowing some religious groups to hold religious services at reformatory and jail at public expense while denying that right to another discriminated against prisoner of the other faith in violation of orders of Commissioners of District of Columbia requiring prison officials to make facilities available without regard to race or religion. *Wm. T. X. Fulwood v. Clemmer, Director, etc. and Anderson, Acting Supt. etc.* (D.C.D.C. 1962, 206 F. Supp. 370).

Regulation and discipline of prisoners convicted of offenses against United States has been committed to prison authorities. *Id.*

##### Transfer of prisoners

Transfer of inmates of Atlanta penitentiary who are eligible to parole, to an institution in District of Columbia, can not be required by the courts. *Aderhold v. Lee* (C.C.A. 5, 1934, 68 F. 2d 824, certiorari denied 54 S. Ct. 718, 292 U.S. 633, 78 L. Ed. 1486).

Attorney General has authority to change the place of confinement from a Federal penitentiary to a local jail, when it is proper to do so, in the exercise of his discretion, and it is not necessary that a prisoner be remanded to the trial court merely for the purpose of having the designation of the jail changed. *Cox v. McConnell* (C.C.A. 5, 1936, 80 F. 2d 258).

In imposing sentences, courts are restricted to specifying the type of institution in which the prisoner is to be confined and he is committed to the custody of the Attorney General, who designates the place of confinement. and the Attorney General may transfer any prisoner from one institution to another for any reason sufficient to himself. *Zerbst v. Kidwell* (C.C.A. 5, 1938, 92 F. 2d 756).

Title 18 U.S.C. § 753f (now §§ 4082, 4083) if in any respect inconsistent with this section, is so only to the extent that it broadens the Attorney General's authority so that he may designate a place of confinement other than one of the District of Columbia. *Beard v. Bennett* (1940, 114 F. 2d 578, 72 App. D.C. 269).

#### § 24-403. Transfer of prisoners from jail to workhouse.

The United States District Court for the District of Columbia, Superior Court of the District of Columbia, the Attorney-General, and the superintendent of the Washington Asylum and Jail, when so requested by the Commissioner of the District of Columbia, shall deliver into the custody of the superintendent or the authorized deputy or deputies of said superintendent of the workhouse, male and female prisoners sentenced to confinement in said jail for offenses against the common law or against statutes or ordinances relating to the District of Columbia, and, in the discretion of the United States District Court for the District of Columbia, Superior Court of the District of Columbia, and the Attorney-General, male and female prisoners serving sentence



in said jail for offenses against the United States, for such work or services as may be necessary, in the discretion of the Commissioner of said District, in connection with the construction, maintenance, and operation of said workhouse, or the prosecution of any other public work at said institution or in the District of Columbia: *Provided*, That, on the direction of said Commissioner, male and female prisoners confined in any existing workhouse existing on March 2, 1911, or in the Washington Asylum and Jail of the District of Columbia shall be delivered into the custody of said superintendent or the authorized deputy or deputies of said superintendent aforesaid, to perform similar work or services to those hereinbefore required of male and female prisoners serving sentences in the District of Columbia Jail: *Provided further*, That the Commissioner of the District of Columbia is hereby vested with jurisdiction over such male and female prisoners from the time they are so delivered into the custody of said superintendent or the duly authorized deputy or deputies of said superintendent, including the time when such prisoners are in transit between the District of Columbia and the site acquired for such workhouse, and during the period such prisoners are on such site or in the District of Columbia until they are released or discharged under due process of law. (Mar. 2, 1911, 36 Stat. 1002, ch. 192; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91-358, title I, § 171, 84 Stat. 590.)

#### AMENDMENT

1970—Section 171 of Act July 29, 1970, Public Law 91-358, amended section by inserting after "United States District Court for the District of Columbia" each time it appears ", Superior Court of the District of Columbia,".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### NOTES TO DECISIONS

##### Habeas corpus

District Court had jurisdiction to issue habeas corpus writ, for petitioner was committed by a court of the District to a jail of the District under the control of an official of the District who in turn was personally within the District and within the jurisdiction of the court *Sanders v. Allen* (1939, 100 F. 2d 717, 69 App. D.C. 307).

##### Transfer to workhouse

Provision of this section authorizing transfer to the workhouse by direction of the commissioners was attached by law to the sentence, and had the same effect as if the court, under statutory authority, had expressed in the sentence that the convict might be transferred to the workhouse under order of the commissioners. *Whittaker v. Brannan* (C.C.A. 4, 1918, 252 F. 556).

#### § 24-404. Commutation of fine.

In all cases in the District of Columbia where a defendant is sent to jail or to the workhouse in

default of the payment of a fine he shall be released upon the payment of the balance of the fine due by him after crediting thereon as paid an amount equal to the proportion the time thus served by him in the jail or workhouse bears to the whole time he was to serve under the sentence. (Mar. 3, 1901, 31 Stat. 1341, ch. 854, § 936.)

#### § 24-405. Deduction for good conduct—Discharge.

All persons sentenced to and imprisoned in the jail or in the workhouse of the District of Columbia, and confined there for a term of one month or longer who conduct themselves so that no charge of misconduct shall be sustained against them shall have a deduction upon a sentence of not more than one year of five days for each month; upon a sentence of more than one year and less than three years, six days for each month; upon a sentence of not less than three years and less than five years, seven days for each month; upon a sentence of not less than five years and less than ten years, eight days for each month; and upon a sentence of ten years or more, ten days for each month, and shall be entitled to their discharge so much the earlier upon the certificate of the superintendent of the Washington Asylum and Jail for those confined in the jail, and upon the certificate of the superintendent of the workhouse for those confined in the workhouse, of their good conduct during their imprisonment. When a prisoner has two or more sentences the aggregate of his several sentences shall be the basis upon which his deduction shall be estimated. (Mar. 3, 1901, 31 Stat. 1341, ch. 854, § 937; Mar. 2, 1911, 36 Stat. 1003, ch. 192; June 6, 1940, 54 Stat. 245, ch. 254, § 10.)

#### CODIFICATION

Act Mar. 2, 1911, combined as one institution, known as the Washington Asylum and Jail, the jail of the District of Columbia and the Washington Asylum, and created the position of Superintendent of the Washington Asylum and Jail and vested in him the powers theretofore vested in and exercised by the warden of the former jail and the superintendent of the former Washington Asylum.

#### AMENDMENT

1940—Act June 6, 1940, among other changes, substituted provisions prescribing the maximum deduction for good behavior for persons confined under particular sentences for provisions which authorized a deduction of 5 days for each month, inserted provisions requiring the aggregate of several sentences to be the basis for deduction, and eliminated provisions which required the judge to make a docket entry of the discharge.

#### NOTES TO DECISIONS

##### Good conduct allowance

The good conduct deduction under the District of Columbia Code does not apply to those sentenced to a penitentiary. *Johnson v. Ward, U.S. Marshal* (1960, 278 F. 2d 245, 107 U.S. App. D.C. 365).

An allowance on a sentence for good conduct is a privilege and not a vested right. It may be denied as to all cumulative sentences for an infraction of the rules occurring during the service of any of the sentences *Aderhold v. Hudson* (C.C.A. 5, 1939, 84 F. 2d 559).

#### § 24-406. Prisoners in workhouse and reformatory to be returned to and released in District of Columbia.

All inmates of the workhouse and reformatory for the District of Columbia shall be returned to and released in said District on the day of the expiration of sentence. (June 10, 1910, 36 Stat. 464, ch. 282.)



### § 24-407. Jail and Washington Asylum combined.

The jail of the District of Columbia and the Washington Asylum of said District shall be combined as one institution, known as the Washington Asylum and Jail. (Mar. 2, 1911, 36 Stat. 1003, ch. 192.)

### § 24-408. Commitments to Washington Asylum and Jail.

Whenever and wherever authority of law exists to sentence, commit, order committed, or confine any person to or in the jail of the District of Columbia or the Washington Asylum of said District, said authority shall be exercised by sentence, commitment, order of commitment, or confinement to or in said Washington Asylum and Jail. (Mar. 2, 1911, 36 Stat. 1003, ch. 192.)

### § 24-409. Omitted.

#### CODIFICATION

Section, which consisted of that part of § 6 of act Mar. 16, 1926, 44 Stat. 209, ch. 58, which vested in the Board of Public Welfare (now Department of Human Resources) complete and exclusive management and control of the workhouse at Occoquan, Virginia, the reformatory at Lorton, Virginia, and the Washington Asylum and Jail, has been omitted from this Code as obsolete and superseded by § 24-441 et seq., and Reorganization Order No. 34 of the Board of Commissioners, dated May 28, 1953, as amended, set out in Appendix to title 1, which established a Department of Corrections and placed the administration and control of the above-mentioned institutions under the Department of Corrections. Reorganization Order No. 34 was replaced by Organization Order No. 154, dated Feb. 7, 1967, which was amended and redesignated as Organization Order No. 7, dated Dec. 26, 1967. Organization Orders Nos. 154 and 7 are set out in the Appendix to title 1. See, also, notes under §§ 3-106 and 24-441.

### § 24-410. Detention of United States prisoners in Washington Asylum and Jail.

The Board of Public Welfare is hereby authorized and directed to receive and keep in the Washington Asylum and Jail all prisoners committed thereto for offenses against the United States. (Mar. 2, 1911, 36 Stat. 1003, ch. 192.)

#### TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and functions transferred, see note under section 3-102.

### § 24-411. Superintendent and all other employees—Appointment—Discharge—Supervision of Board of Public Welfare.

The superintendents and all other employees engaged on March 16, 1926 in the operation of the workhouse at Occoquan in the State of Virginia, the reformatory at Lorton in the State of Virginia, and the Washington Asylum and Jail shall after March 16, 1926 be subject to the supervision of the Board. Each superintendent shall have the management and control of the institution to which he is appointed and shall be subordinate to the director of public welfare. The superintendent and all other employees of each of the institutions enumerated in this section shall be appointed by the Commissioner of the District of Columbia upon nomination by the Board and shall be subject to discharge by the Commissioner upon recommendation of the Board. (Mar. 16, 1926, 44 Stat. 209, ch. 58, § 7.)

#### CODIFICATION

The provisions of this section, § 7 of act Mar. 16, 1926, are also set out as § 3-107 of this Code. As set out here, the reference to the two penal institutions in Virginia

and the Washington Asylum and Jail, and the reference to "this section", have been substituted for "the institutions enumerated in section 6" and "section 6", respectively. Section 6 of act Mar. 16, 1926, which is set out as § 3-106 of this Code, enumerates a number of nonpenal institutions in addition to the workhouse at Occoquan, Va., the reformatory at Lorton, Va., and the Washington Asylum and Jail. Formerly, § 6 was also set out in this chapter as § 24-409, but only in part, the enumeration being restricted to the three penal institutions mentioned, to conform with the subject matter of this chapter. Section 24-409 has been omitted from this Code as superseded by § 24-441 et seq. and Reorganization Order No. 34, dated May 28, 1953, as amended. Those sections and order also affected said § 3-106, insofar as the latter includes the said three penal institutions in its enumeration of institutions. See, also, notes under § 3-106, former § 24-409, and § 24-441.

Act. Mar. 2, 1911, 36 Stat. 1003, ch. 192, established the office of superintendent of the Washington Asylum and Jail, provided for the appointment of such superintendent by the Commissioners of the District, and provided further that the superintendent should give bond to the District of Columbia for the faithful performance of the duties of his office, "as are now or may hereafter be prescribed", in the penal sum of \$5,000, with surety or sureties to be approved by the Commissioners (D.C. Code, 1929 ed., title 6, § 411). Such provisions have been omitted from this section and from this Code as apparently obsolete and superseded by later enactments, such as the provisions of the act of Mar. 16, 1926, set out as this section, of which § 15 repealed acts inconsistent therewith (see note below), and the provisions of act June 28, 1935, 69 Stat. 281, ch. 332, §§ 1-3, as amended (§§ 1-213 to 1-213b of this Code), relating to bonds of officers and employees of the District of Columbia.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and functions transferred, see note under section 3-106.

Act Mar. 2, 1911, 36 Stat. 1003, ch. 192, transferred the functions, powers and duties of the warden of the jail and of the superintendent of the Washington Asylum to the superintendent of the Washington Asylum and Jail.

#### REPEAL OF INCONSISTENT ACTS

Section 15 of act Mar. 16, 1926, repealed all acts or parts of acts inconsistent therewith.

#### NOTES TO DECISIONS

##### Superintendent of District jail

Superintendent of District of Columbia Jail, in so far as he was custodian of federal prisoner, was an "officer or employee of the United States", within 28 U.S.C. § 1252 authorizing direct appeal to Supreme Court from interlocutory or final judgment, decree or order of any court of the United States holding act of Congress unconstitutional in any civil action, suit or proceeding to which United States or any of its agencies, or any officer or employee thereof, as such officer or employee, is a party. *Reid, Superintendent v. Covert* (1956, 76 S. Ct. 880, 351 U.S. 487, 100 L. Ed. 1352, rehearing denied 77 S. Ct. 23, 352 U.S. 813, reversed on other grounds 77 S. Ct. 1222, 354 U.S. 1, 1 L. Ed. 2d 1148).

### § 24-412. Employment of prisoners.

Persons sentenced to imprisonment in the jail may be employed at such labor and under such regulations as may be prescribed by the District of Columbia Council and the proceeds thereof applied to defray the expenses of the trial and conviction of any such person. (Mar. 3, 1901, 31 Stat. 1379, ch. 854, § 1192; Mar. 16, 1926, 44 Stat. 209, ch. 58, § 6.)

#### AMENDMENT

1926—Act Mar. 16, 1926, substituted "Board of Public Welfare" for "Supreme Court of the District."



## TRANSFER OF FUNCTIONS

The Board of Public Welfare was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorg. Plan No. 5 of 1952. Section 402(211) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of prescribing regulations under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24-413, 24-421.

## § 24-413. Commitment by marshal.

Nothing in sections 24-412 and 24-415 shall be construed to impair or interfere with the authority of the marshal of the District to commit persons to the jail or to produce them in open court or before any judicial officer when thereto required. (Mar. 3, 1901, 31 Stat. 1379, ch. 854, § 1193.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24-414, 24-421.

## § 24-414. Delivery of prisoners to marshal.

It shall be the duty of the superintendent of the Washington Asylum and Jail to receive such prisoners and to deliver them to the marshal or his duly authorized deputy, on the written request of either, for the purpose of taking them before any court or judicial officer, as provided in section 24-413. (Mar. 3, 1901, 31 Stat. 1379, ch. 854, § 1194; Mar. 2, 1911, 36 Stat. 1003, ch. 192.)

## TRANSFER OF FUNCTIONS

Powers and duties of the warden of the jail were transferred to the superintendent of the Washington Asylum and Jail by act Mar 2, 1911. See note under section 24-411.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 24-421.

## NOTES TO DECISIONS

## Police custody

Where defendant had been duly committed to jail upon other charges and was being legally detained, and defendant was delivered to custody of policemen by jail officials for purpose of going to police headquarters to take a lie detector test, to which defendant had agreed to submit, though jailer exceeded his authority in surrendering defendant, fact that defendant was in temporary care of police at time of making written confession to murder charge did not render confession inadmissible at his trial. *Tyler v. United States* (1952, 193 F. 2d 24, 90 U.S. App. D.C. 2, certiorari denied 72 S. Ct. 639, 343 U.S. 908, 96 L. Ed. 1326).

## § 24-415. Superintendent of Washington Asylum and Jail accountable for safe-keeping of prisoners.

The superintendent of the Washington Asylum and Jail shall be accountable for the safe-keeping of all prisoners legally committed thereto. (Mar. 3, 1901, 31 Stat. 1379, ch. 854, § 1191; Mar. 2, 1911, 36 Stat. 1003, ch. 192; Mar. 16, 1926, 44 Stat. 209, ch. 58, § 6.)

## CODIFICATION

Provisions relating to the warden's exclusive supervision and control of the jail have been deleted in view of act Mar. 16, 1926, which vested complete and exclusive management of the Washington Asylum and Jail in the Board of Public Welfare. The Board of Public Welfare has been abolished and the functions thereof transferred, see note under § 3-106. See, also, § 24-442.

## TRANSFER OF FUNCTIONS

Powers and duties of the warden of the jail were transferred to the superintendent of the Washington Asylum and Jail by act Mar 2, 1911. See note under section 24-411.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24-413, 24-421.

## NOTES TO DECISIONS

## Appointment

Defendant is superintendent by virtue of an appointment from the Commissioners of the District, and under his direction and control are the jail building itself and all other buildings used in connection with it, including the hospital building, where the plaintiff was received. All the subordinates of the superintendent receive their appointments from the Commissioners themselves, and are not subject to discharge by the superintendent. *Zinkhan v. District of Columbia* (1921, 271 F. 542, 50 App. D.C. 312).

## Bond

Office of warden was abolished and a new office created, viz the office of Superintendent of the Washington Asylum and Jail, under appointment by the Commissioners of the District, and such officer's bond was required to be given to the District. Touching this bond there is no statutory provision that allows action thereon to be brought by a third party. *District of Columbia to Use of Langellotti v. Fidelity & Deposit Co.* (1921, 271 F. 383, 50 App. D.C. 309).

## § 24-416. Annual report by Superintendent of Washington Asylum and Jail.

The superintendent of the Washington Asylum and Jail shall annually, in the month of November, make a detailed report to the Attorney-General. (Mar. 3, 1901, 31 Stat. 1379, ch. 854, § 1197; Mar. 2, 1911, 36 Stat. 1003, ch. 192.)

## TRANSFER OF FUNCTIONS

Powers and duties of the warden of the jail were transferred to the superintendent of the Washington Asylum and Jail by act Mar 2, 1911. See note under section 24-411.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 24-421.

## § 24-417. Superintendent required to execute judgments in capital cases—Failure of Congress to make specific appropriation not abolition of position or repeal of authority.

The Superintendent of the Washington Asylum and Jail appointed by the Commissioner of the District of Columbia is hereby directed, authorized, and required to execute the judgments of the law prior to March 4, 1923, pronounced and thereafter to be pronounced in the District of Columbia by the courts thereof in all capital cases, and the power prior to March 4, 1923, given to and now vested in such Commissioner to appoint such superintendent and all appointments to the position of such superintendent made by such Commissioner are hereby ratified and confirmed; and any failure on the part of Congress, either prior to or after March 4, 1923, to make a specific appropriation for the salary or compensation of such superintendent shall not be construed either as an abolition of such position of Superintendent of the Washington Asylum and Jail or as a repeal of the power and authority of such Commissioner to appoint such superintendent. (Mar. 4, 1923, 42 Stat. 1533, ch. 292.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## CROSS REFERENCE

Method of capital punishment, duty to provide death chamber and apparatus, death sentence to be in writing, persons present at electrocution, see §§ 23-1701 to 23-1705.



#### § 24-418. Sale of products of workhouse and reformatory.

The Commissioner of the District of Columbia is authorized, under such regulations as the District of Columbia Council may prescribe, to sell the surplus products of the workhouse and the reformatory. All moneys derived from such sales shall be paid into the treasury of the United States to the credit of the general fund of the District of Columbia. All moneys received at the reformatory as income thereof from the sale of brooms to the various branches of the government of the District of Columbia shall remain available for the purchase of material for the manufacture of additional brooms to be similarly disposed of. (June 5, 1920, 41 Stat. 869, ch. 234; Feb. 28, 1923, 42 Stat. 1357, ch. 148, § 1; June 28, 1944, ch. 300, § 18, 58 Stat. 533.)

#### CODIFICATION

This section is a composite of credits cited in the history line.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(212) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of prescribing regulations under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### CROSS REFERENCES

Annual payment by United States, appropriations, see §§ 47-2501a and 47-2501b.

#### § 24-418a. Sale of gun mountings to States of the Union and their political subdivisions.

Any State of the United States or any political subdivision of any such State is authorized to purchase from the District of Columbia Reformatory located at Lorton, Virginia, at fair market prices determined by the Commissioner of the District of Columbia, gun mountings and carriages for guns for use at historic sites and for museum display purposes. Receipts from sales authorized under this section shall be deposited to the credit of the working capital fund established for the industrial enterprises at the workhouse and reformatory of the District of Columbia to the same extent and in the same manner as provided for receipts from the sale of products and services of such industrial enterprises in section 47-131. (June 1, 1957, 71 Stat. 45, Pub. L. 85-45, § 1.)

#### REFERENCES IN TEXT

Section 47-131, referred to in text, was repealed by act Oct. 3, 1964, Pub. L. 88-622, § 6, and is now covered by sections 24-451 to 24-455.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 24-419. Omitted.

#### CODIFICATION

Section, act Mar. 16, 1926, 44 Stat. 209, ch. 58, § 7, which was previously classified to this section and section 24-411, is omitted since the sections are identical and there is no reason to duplicate the provisions in this Code.

#### § 24-420. Grounds of jail increased.

The buildings and grounds adjoining the Washington Asylum in the District of Columbia, used prior to June 16, 1880, as a Naval and Army magazine are added to the grounds of the Washington Asylum and Jail and subjected to the control of the Commissioner of the District of Columbia as part of the asylum until otherwise ordered. (June 16, 1880, 21 Stat. 270, ch. 235; Mar. 2, 1911, 36 Stat. 1003, ch. 192.)

#### CONSOLIDATION OF JAIL AND WASHINGTON ASYLUM

"Washington Asylum and Jail" was substituted for "asylum" to conform to act Mar. 2, 1911, which combined the jail of the District of Columbia and the Washington Asylum into one institution. See section 24-407.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 24-421. Subsistence of prisoners—Payment by Attorney-General.

There shall be allowed and paid by the Attorney-General for the subsistence of prisoners in the custody of any marshal of the United States and the Superintendent of the Washington Asylum and Jail in the District of Columbia such sum as it reasonably and actually costs to subsist them. And it shall be the duty of the Attorney-General to prescribe such regulations for the government of the marshals and the Superintendent of the Washington Asylum and Jail in the District of Columbia in relation to their duties under sections 24-412 to 24-416 and 24-421 as will enable him to determine the actual and reasonable expenses incurred. (Mar. 3, 1901, 31 Stat. 1380, ch. 854, § 1204; Mar. 2, 1911, 36 Stat. 1003, ch. 192.)

#### CONSOLIDATION OF JAIL AND WASHINGTON ASYLUM

"Washington Asylum and Jail" was substituted for "jail" to conform to act Mar. 2, 1911, which combined the jail of the District of Columbia and the Washington Asylum. See section 24-407.

#### § 24-422. Maintenance of jail—Support of prisoners—Estimates of expenses.

All expenses incurred for maintenance of the jail of the District of Columbia and for support of prisoners therein shall be paid out of the revenues of the District of Columbia, and estimates for such expenses shall each year be submitted in the annual estimates for the expenses of the government of the District of Columbia. (Aug. 18, 1894, 28 Stat. 417, ch. 301; June 29, 1922, 42 Stat. 668, ch. 249.)

#### CODIFICATION

Provisions which related to apportionment of expenses were omitted in view of act May 16, 1938, 52 Stat. 375, ch. 223, § 8.

#### TRANSFER OF FUNCTIONS

For transfer of functions with respect to budgetary matters, see § 403 of Reorg. Plan No. 3 of 1967, set out in the Appendix to title 1.

#### § 24-423. Cost of care of District of Columbia convicts charged against District—United States reimbursed—Miscellaneous receipts.

The United States shall be reimbursed, as heretofore, for the maintenance of District of Columbia inmates, and all sums paid by such District for such maintenance for the service of the fiscal year 1927 and subsequent fiscal years shall be covered into the treasury as "Miscellaneous receipts." (Apr. 29, 1926, 44 Stat. 347, ch. 195, title II.)



**§ 24-424. Cost of care of District of Columbia convicts charged against District—Accounts.**

The cost of the care and custody of District of Columbia convicts in any federal penitentiary shall be charged against the District of Columbia in quarterly accounts to be rendered by the disbursing officer of said penitentiary; and the amount to be charged against the District of Columbia shall be ascertained by multiplying the average daily number of District of Columbia convicts confined in the penitentiary during the quarter by the per capita cost for all prisoners in such penitentiary for the same quarter but excluding expenses of construction or extraordinary repair of buildings. (Mar. 3, 1915, 38 Stat. 869, ch. 75, § 1.)

**§ 24-425. Place of imprisonment—Designation by Attorney General—Transfer.**

All prisoners convicted in the District of Columbia for any offense, including violations of municipal regulations and ordinances and Acts of Congress in the nature of municipal regulations and ordinances, shall be committed, for their terms of imprisonment, and to such types of institutions as the court may direct, to the custody of the Attorney General of the United States or his authorized representative, who shall designate the places of confinements where the sentences of all such persons shall be served. The Attorney General may designate any available, suitable, and appropriate institutions, whether maintained by the District of Columbia Government, the federal government, or otherwise, or whether within or without the District of Columbia. The Attorney General is also authorized to order the transfer of any such person from one institution to another if, in his judgment, it shall be for the well-being of the prisoner or relieve overcrowding or unhealthful conditions in the institution where such prisoner is confined, or for other reasons. (July 15, 1932, ch. 492, § 11, as added June 6, 1940, 54 Stat. 244, ch. 254, § 8.)

**CROSS REFERENCE**

Authority of Attorney General to designate Commissioners to perform functions vested under this section, see § 24-468.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 24-203, 24-207, 24-468, 24-506.

**NOTES TO DECISIONS**

**Escape from custody of Attorney General**

Transfer of physical custody of defendant to a mental hospital from a District of Columbia jail pursuant to statute authorizing director of the Department of Corrections to make such a transfer was not inconsistent with nor exclusive of the legal custody of the Attorney General, and therefore defendant's escape from such hospital was an escape from the "custody of the Attorney General," within the Federal Escape Act. *L. A. Frazier v. United States* (1964, 339 F. 2d 745, 119 U.S. App. D.C. 246).

**Transfer of prisoners**

Habeas corpus proceeding by defendant, who alleged that he had been transferred from confinement in Virginia to jail in District of Columbia while petition for appeal in forma pauperis from denial of previous petition for habeas corpus was pending in Court of Appeals for Fourth Circuit in order to hamper such previous habeas corpus proceeding, did not present moot question, and defendant was entitled to hearing at least as to legality of his transfer in view of failure of District of Columbia to controvert defendant's allegations. *J. A. Bolden, Jr. v. D. C. Clemmer et al.* (1961, 298 F. 2d 306, 111 U.S. App. D.C. 392).

**SUBCHAPTER II.—DEPARTMENT OF CORRECTIONS**

**§ 24-441. Department of Corrections created—Director.**

There is created in and for the District of Columbia a Department of Corrections to be in charge of a Director who shall be appointed by the Commissioner of the District of Columbia. (June 27, 1946, 60 Stat. 320, ch. 507, § 1.)

**ABOLITION OF DEPARTMENT AND TRANSFER OF FUNCTIONS**

The Department of Corrections was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorg. Plan No. 5 of 1952. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorg. Plan No. 3 of 1967.

Reorganization Order No. 34 of the Board of Commissioners dated May 28, 1953, and effective June 21, 1953, established under the direction and control of a Commissioner, a Department of Corrections headed by a director. The Department was established to provide for the custody, care, discipline, and instruction of all persons committed to the Workhouse, Lorton Reformatory, Women's Reformatory, and the D.C. Jail. All positions under the previously existing Department of Corrections including the duties, powers, and authorities of all officers and employees were assigned to the new Department of Corrections and the previously existing Department was abolished. Reorganization Order No. 34 was replaced by Organization Order No. 154, dated Feb. 7, 1967, which was amended and redesignated as Organization Order No. 7, dated Dec. 26, 1967.

The Plans and Orders are set out in the Appendix to title 1.

**CROSS REFERENCE**

Director of Department of Corrections to designate officers of the Department to whom services of a psychiatrist and a psychologist are available, see § 24-106.

**§ 24-442. Powers of Department over institutions—Rules and regulations.**

Said Department of Corrections under the general direction and supervision of the Commissioner of the District of Columbia shall have charge of the management and regulation of the Workhouse at Occoquan in the State of Virginia, the Reformatory at Lorton in the State of Virginia, and the Washington Asylum and Jail, and be responsible for the safekeeping, care, protection, instruction, and discipline of all persons committed to such institutions. The District of Columbia Council shall have power to promulgate rules and regulations for the government of such institutions and the Department of Corrections with the approval of the Commissioner shall have power to establish and conduct industries, farms, and other activities, to classify the inmates, and to provide for their proper treatment, care, rehabilitation, and reformation. (June 27, 1946, 60 Stat. 320, ch. 507, § 2.)

**ABOLITION OF DEPARTMENT AND TRANSFER OF FUNCTIONS**

The Department of Corrections was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorg. Plan No. 5 of 1952. Section 402(213) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to rules and regulations for the government of institutions, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia. See, also, note to § 24-441.



## CROSS REFERENCE

Prior management and control, see § 3-106 and note under § 24-415.

## NOTES TO DECISIONS

## Admissibility of statements made to jail employee

Statement defendant gave jail employee, who was questioning defendant for purpose relating to jail's classification and treatment of inmates, was inadmissible, although defendant signed it and had not been advised that it would not be used against him, where, had defendant made inquiry, he would have received promise that his answers would not be used against him. *J. W. Killough v. United States* (1964, 336 F. 2d 929, 119 U.S. App. D.C. 10).

## Discipline of prisoners

Allowing some religious groups to hold religious services at reformatory and jail at public expense while denying that right to another discriminated against prisoner of the other faith in violation of orders of Commissioners of District of Columbia requiring prison officials to make facilities available without regard to race or religion. *Wm. T. X. Fulwood v. Clemmer, Director etc. and Anderson, Acting Sup't. etc.* (D.C.D.C. 1962, 206 F. Supp. 370).

Regulation and discipline of prisoners convicted of offenses against United States has been committed to prison authorities. *Id.*

## Review of administrator's actions

Actions of prison authorities, including granting or withdrawal of claimed privileges of prisoners, are not reviewable by the court in "mandamus proceeding" in the absence of specific allegations particularly showing a clear breach of duty by prison administrators. *White and Childs v. D. L. Clemmer, Director, District of Columbia Department of Corrections et al.* (1961, 295 F. 2d 132, 111 U.S. App. D.C. 145).

Federal prisoners' pleadings seeking relief in nature of mandamus because of claimed deprivation of civil rights on account of their religion failed to allege with sufficient particularity a basis for redress by court where prison administration had been committed by statute to prison authorities and no breach of their statutory duty had been shown. *Id.*

## § 24-443. Board of Public Welfare powers transferred to Department—Officers and employees.

With respect to the said institutions, the Commissioner of the District of Columbia shall succeed to all the powers and authority, and to all the duties and obligations vested in or imposed by law upon the Board of Public Welfare of the District of Columbia. Where powers are vested in or duties are imposed by existing law upon the Director of Public Welfare of the District of Columbia with respect to said institutions, such powers and duties are transferred to and shall be exercised by the Director of the Department of Corrections. The officers and employees and all plant and equipment, official records, furniture, and supplies of the said institutions are hereby transferred to the Department of Corrections. (June 27, 1946, 60 Stat. 321, ch. 507, § 3.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and functions transferred, see note under section 3-102.

## § 24-444. Rules and regulations of Board of Public Welfare in effect.

All rules and regulations promulgated by the Board of Public Welfare with respect to said institutions shall continue in force and effect until amended or repealed by the District of Columbia Council. (June 27, 1946, 60 Stat. 321, ch. 507, § 4.)

## CODIFICATION

Reference to the District of Columbia Council was substituted for "the Department of Corrections with the approval of the Commissioners" on authority of § 24-442 of this chapter and § 402(213) of Reorg. Plan No. 3 of 1967, under which the regulations are promulgated by the Council.

## TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and functions transferred, see note under section 3-102.

## § 24-445. Contracts of Board of Public Welfare not invalidated—Appropriations available.

No contract for services or supplies made by the Board pursuant to authority granted to it by law shall be invalidated by this enactment and the unexpended balances of all appropriations heretofore or hereafter made for the Board with respect to said institutions shall become available for use by the Department of Corrections under the direction of the Commissioner of the District of Columbia. (June 27, 1946, 60 Stat. 321, ch. 507, § 5.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and functions transferred, see note under section 3-102.

## § 24-446. Cost of care and custody of persons confined in institutions.

The cost of the care and custody of persons confined in the said institutions charged with or convicted of offenses under any law of the United States not applicable exclusively to the District of Columbia shall be charged against the department or agency of the United States primarily responsible for the care and custody of such persons in quarterly accounts to be rendered by the Disbursing Officer of the District of Columbia. The amount to be charged for such care and custody shall be ascertained by multiplying the average daily number of such persons so confined during the quarter by the per capita cost for the same quarter for all prisoners in the institution where confined, excluding expenses of construction or extraordinary repair of buildings. The sum so derived shall be credited to the current appropriation for the maintenance and operation of such institutions. (June 27, 1946, 60 Stat. 321, ch. 507, § 6.)

## TRANSFER OF FUNCTIONS

For abolition of Disbursing Office and transfer of functions, see note to § 47-112.

## § 24-447. Omitted.

## CODIFICATION

Section, acts July 5, 1955, 69 Stat. 262, ch. 272, § 9; Act July 31, 1953, 67 Stat. 295, ch. 299, § 11; Act July 5, 1952, 66 Stat. 391, ch. 576, § 11; Act Aug. 3, 1951, 65 Stat. 172, ch. 292, § 11; July 13, 1950, 64 Stat. 347, ch. 467, § 1, which authorized advancements to the Director of the Department of Correction, is omitted as superseded by section 1-263.

## SUBCHAPTER III.—CORRECTIONAL INDUSTRIES FUND

## SUBCHAPTER REFERRED TO IN U.S. CODE

This subchapter is referred to in title 18, section 4122, U.S. Code.

## § 24-451. Establishment of fund.

There is hereby established in the Treasury a revolving fund for the government of the District of Columbia to be known as the correctional indus-



tries fund (hereinafter referred to as the "fund") to replace the working capital fund created by section 47-131. (Oct. 3, 1964, 78 Stat. 1000, Pub. L. 88-622, § 1.)

#### COMMISSIONERS AUTHORITY—DELEGATION OF FUNCTIONS

Section 7 of act Oct. 3, 1964, provided: "Nothing in this Act shall be construed so as to affect the authority vested in the Commissioners by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act in the Commissioners or in any office or agency under the jurisdiction and control of said Commissioners may be performed by the Commissioners or may be delegated by said Commissioners in accordance with section 3 of such plan."

#### EFFECTIVE DATE

Section 8 of act Oct. 3, 1964, provided: "This Act [Sections 24-451 to 24-455, repeal of section 47-131 and notes to section 24-451] shall take effect July 1, 1963."

#### CROSS REFERENCE

Applicability of U.S. Laws to District, see 18 U.S.C. 4122. Rehabilitation of youth offenders in District, see 18 U.S.C. 5025.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 24-455.

#### § 24-452. Availability of fund for performance of services and production of commodities for rehabilitation of inmates—Accounting for the fund.

The fund shall be available without fiscal-year limitation and shall be used for the performance of such services and the production of such commodities as, in the judgment of the Commissioner of the District of Columbia (hereinafter referred to as "Commissioner"), will contribute to the rehabilitation, knowledge, and skill in trades and occupations of inmates of the institutions in the Department of Corrections of the District of Columbia, thereby equipping them with a means of livelihood upon release. The accounting for the fund shall be maintained on the accrual basis, including provision for employees' accrued annual leave and depreciation of fixed assets, and financial reports shall be prepared on the basis of such accounting. (Oct. 3, 1964, 78 Stat. 1000, Pub. L. 88-622, § 2.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 24-453. Sale of products and services to District, Federal and State governments—Receipts from sales to be deposited in fund—Use of funds.

Products and services produced by utilization of the fund may be purchased, at fair market prices as determined by the Commissioner, by any department or agency of the District of Columbia government, the Federal Government, any State or subdivision of a State or any Commonwealth, territory, or possession of the United States. Receipts from the sales of products and services shall be deposited to the credit of the fund. The fund shall be used for all necessary expenses directly related to the fund, including personal services; payments to inmates, or payments to their dependents, of such pecuniary earnings as the Commissioner deems proper; purchase, repair, and maintenance of equipment; purchase of raw materials and supplies; payment of dues and expenses of attendance at meetings and conventions, as approved by the Commissioner; maintenance and repair of buildings used for fund purposes; alteration of existing facilities used for fund purposes where the total project cost does not

exceed \$10,000; and, within the limits of amounts provided in annual appropriation Acts, acquisition and improvement of real property. (Oct. 3, 1964, 78 Stat. 1000, Pub. L. 88-622, § 3.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 24-454. Reports of financial condition and results of operations to be made by Director of the Department of Corrections to Commissioner—Disposition of realized profits—Net worth of fund not to be increased beyond \$2,500,000—Payments to inmates and their dependents—Excess profits to be deposited to general funds of the district.

Not later than six months' after the end of each fiscal year, the Director of the Department of Corrections of the District of Columbia shall submit to the Commissioner a report of the financial condition of the fund and the results of operations for such fiscal year. The Commissioner shall review such report and determine the disposition to be made of realized profits. The Commissioner is empowered to authorize retention of accumulated profits for the purpose of acquiring or improving personal property, or to increase working capital to planned operating levels. In no case, however, shall such profits retained for these purposes increase the net worth of the fund beyond \$2,500,000. The Commissioner is also empowered to authorize retention of accumulated profits for payments to inmates other than those employed in industrial operations, or for payments to their dependents, of such amounts as the Commissioner deems proper. Accumulated profits not retained or used for the aforementioned purposes, or which exceed the limitation imposed, shall be deposited to the credit of the general revenues of the District of Columbia. (Oct. 3, 1964, 78 Stat. 1000, Pub. L. 88-622, § 4.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 24-455. Transfer of assets from prior working capital fund.

All assets except buildings and all liabilities or other obligations which at the time of enactment of this Act are components of the working capital fund, Workhouse and Reformatory, as created by Public Law 493, Seventy-ninth Congress, approved July 9, 1946 (60 Stat. 514, ch. 544, sec. 1), [section 47-131] shall be transferred to the fund created by section 24-451. (Oct. 3, 1964, 78 Stat. 1001, Pub. L. 88-622, § 5.)

#### REFERENCES IN TEXT

"This Act" referred to in this section consists of section 24-451 to 24-455, the repeal of section 47-131 and the notes to section 24-451.

#### SUBCHAPTER IV.—WORK RELEASE PROGRAM

##### SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 46-309.

#### § 24-461. Authority to establish program for minor offenders—Grant of privilege in special circumstances.

There is hereby authorized to be established in the District of Columbia a work release program under which any person who is (1) convicted of a misdemeanor or of violating a municipal regulation or an Act of Congress in the nature of a municipal reg-



ulation, and is sentenced to serve in a penal institution a term of one year or less, (2) imprisoned for nonpayment of a fine, or for contempt of court, or (3) committed to jail after revocation of probation pursuant to section 16-2350, may, whenever the judge of the sentencing court is satisfied that the ends of justice and the best interests of society as well as of such person would be subserved thereby, be granted the privilege of a work release for the purpose of working at his employment or seeking employment. Such a work release privilege may also be granted, in the discretion of the sentencing court, whenever there exist such special circumstances as merit the granting of the privilege. As used in this subchapter, the word "sentence" and its derivatives shall be construed to include sentencing, imprisonment, and commitment as referred to in this section. (Nov. 10, 1966, 80 Stat. 1519, Pub. L. 89-803, § 2.)

#### REFERENCE IN TEXT

Section 16-2350, referred to in clause (3), was eliminated from chapter 23 of title 16 by the amendment of that chapter by section 121(a) of Act July 29, 1970, Pub. L. 91-358, 84 Stat. 522.

#### EFFECTIVE DATE

Section 13 of act Nov. 10, 1966, 80 Stat. 1521, Pub. L. 89-803, provided: "This Act [this subchapter and amendment to § 46-309] shall take effect on the first day of the first month which follows its approval by at least ninety days."

#### SHORT TITLE

Section 1 of act Nov. 10, 1966, 80 Stat. 1519, Pub. L. 89-803, provided: "That this Act [this subchapter and amendment to § 46-309] may be cited as the 'District of Columbia Work Release Act'."

#### CROSS REFERENCE

Unemployment compensation, ineligibility of prisoner who was employed in free community under authority of this subchapter to receive, see § 46-309(f).

#### § 24-462. Recommendations—Requests for privilege—Necessity for order of sentencing court.

At the time of imposition of sentence, or at any time subsequent thereto, the probation officers of the courts or the Director, Department of Corrections of the District of Columbia, may recommend to, or the person sentenced may request, the sentencing court that such person be granted the privilege of a work release. No person shall be given work release privileges except by order of the sentencing court. (Nov. 10, 1966, 80 Stat. 1519, Pub. L. 89-803, § 3.)

#### § 24-463. Terms and conditions for release to be provided in court order.

The sentencing court shall provide in its original order of commitment or in a modification thereof the terms and conditions under which a person granted work release privileges may be released from actual custody during the time necessary to proceed to his place of employment or other authorized places, perform specified activities, and return to a place of confinement designated by the Director, Department of Corrections. (Nov. 10, 1966, 80 Stat. 1519, Pub. L. 89-803, § 4.)

#### § 24-464. Rules and regulations—Individual plans for each prisoner granted privilege.

The District of Columbia Council is authorized to promulgate from time to time such rules and regulations as it deems necessary for the administration by the Department of Corrections of the work re-

lease program. Subject to the terms and conditions prescribed in the order of the sentencing court, the Commissioner of the District of Columbia is authorized to prepare an individual plan to meet the specific needs of each prisoner granted the privilege of a work release. (Nov. 10, 1966, 80 Stat. 1519, Pub. L. 89-803, § 5.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(426) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of promulgating rules and regulations under this section, to the District of Columbia Council, to the extent prescribed in par. 426, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### § 24-465. Punishment of prisoner for failure to comply with plan—Prosecution by Corporation Counsel.

(a) The Director, Department of Corrections, may suspend the work release privilege of a prisoner for not to exceed five successive days for any breach of discipline or infraction of institution regulations. The court may revoke the work release privilege at any time, either upon its own motion or upon recommendation of the Director, Department of Corrections.

(b) Any prisoner who willfully fails to return at the time and to the place of confinement designated in his work release plan shall be fined not more than \$300 or imprisoned not more than ninety days, or both, such sentence of imprisonment to run consecutively with the remainder of previously imposed sentences. All prosecutions for violation of this subsection shall be in the Superior Court of the District of Columbia upon information filed by the Corporation Counsel of the District of Columbia or any of his assistants. (Nov. 10, 1966, 80 Stat. 1519, Pub. L. 89-803, § 6; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended subsec. (b) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### § 24-466. Collection of earnings—Deposit in trust fund—Immunity from attachment—Disbursements—Payment of balance.

The Commissioner is authorized to include in individual work release plans provisions for the collection of the wages, salary, earnings, and other income of each gainfully employed prisoner when paid, or require that the same be surrendered when received, less payroll deductions required or authorized by law, and to deposit the amount so received in a trust fund account in the Treasury of the United States. Such wages, salary, or earnings in the hands of either the employer or the Commissioner during such prisoner's terms shall not be subject to garnishment or attachment. The Commissioner is further authorized in individual work release plans to provide for disbursements from the trust fund account established under this section for any or all of the following purposes: (a) the payment of an



amount not to exceed the lesser of 20 per centum of the prisoner's earnings, or \$4 per day, as the cost of his room and board; (b) necessary travel expenses to and from work or other business and incidental expenses of the prisoner; (c) support of the prisoner's dependents, if any; (d) support of minor children pursuant to court order; (e) payment of court fines or forfeitures; or (f) payment, either in full or ratably, of the prisoner's debts which have been acknowledged by him in writing or have been reduced to judgment. The balance of such earnings, if any there be after payments therefrom for the foregoing purposes, shall be paid to the prisoner upon the completion of the period during which he is subject to confinement. (Nov. 10, 1966, 80 Stat. 1520, Pub. L. 89-803, § 7.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 24-467.

#### § 24-467. Method of payments for support of dependents.

Payments for support pursuant to section 24-466 shall be made through the clerks of the respective courts. In cases where there is no outstanding court order of support or judgment against the prisoner, the Director, Department of Public Welfare, or his designated agent, shall, after investigation, report to the Commissioner the amounts deemed necessary for support of the prisoner's dependents. (Nov. 10, 1966, 80 Stat. 1520, Pub. L. 89-803, § 8.)

#### § 24-468. Authority of Attorney General to designate Commissioner to perform functions vested under section 24-425, for purposes of this subchapter.

The Attorney General of the United States may, in order carry out the purposes of this subchapter, designate the Commissioner as his authorized representative to perform the functions vested in him by section 24-425. (Nov. 10, 1966, 80 Stat. 1520, Pub. L. 89-803, § 9.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 24-469. Authority under Reorganization Plan not affected—Delegation of functions.

(a) As used in this subchapter the term "Commissioner" means the Commissioner of the District of Columbia or his designated agents.

(b) Nothing in this subchapter shall be construed so as to affect the authority vested in the Commissioners by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this subchapter in the Commissioners or in any office or agency under the jurisdiction and control of said Commissioners may be performed by the Commissioners or may be delegated by said Commissioners in accordance with section 3 of such plan. (Nov. 10, 1966, 80 Stat. 1520, Pub. L. 89-803, § 10.)

#### REFERENCES IN TEXT

Reorganization Plan No. 5 of 1952 (66 Stat. 824), referred to in subsec. (b) of this section, is set out in the Appendix to Title 1.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CROSS REFERENCE

Authority of District Commissioner and Council to delegate functions vested in them by Reorg. Plan No. 3 of 1967, see §§ 205 and 305 of the Plan set forth in the Appendix to Title 1.

#### § 24-470. Status of prisoner employed in free community under this subchapter.

Except when employed and paid by the District of Columbia for the performance of work for the District of Columbia government, no prisoner employed in the free community under the provisions of this subchapter shall, while working in such employment in the free community or going to or from such employment, be deemed to be an agent, employee, or servant of the District of Columbia government. (Nov. 10, 1966, 80 Stat. 1521, Pub. L. 89-803, § 12.)

### Chapter 5.—REHABILITATION OF ALCOHOLICS

#### Sec.

24-501 to 24-513. Omitted.

24-514. Repealed.

24-521. Purpose.

24-522. Definitions.

24-523. Public health program for intoxicated persons and chronic alcoholics—Detoxification centers and other facilities—Delegation of functions by Commissioner.

24-524. Procedures for dealing with persons who are found intoxicated in public—Filing of criminal charges against chronic alcoholics—Dealing with intoxicated persons who violate certain laws—Records of detoxification center to be confidential.

24-525. Voluntary admission to inpatient centers—Medical officer in charge to determine who shall be admitted as a patient—Program for patients who are not chronic alcoholics—Involuntary detention not permitted, except by Court order.

24-526. Outpatient treatment of chronic alcoholics—Medical director to determine who shall be admitted for outpatient treatment—Care of chronic alcoholics for whom recovery is unlikely—Compulsory participation not permitted, except by Court order.

24-527. Commitment of chronic alcoholics by Court order for treatment—Hearing and findings required before commitment—Writ of habeas corpus—Right to counsel—Term of Commitment.

24-528. Applicability of chapter to chronic alcoholics who have not been determined to be mentally ill.

24-529. Commissioner may contract with appropriate public or private organizations to carry out purposes of this chapter.

24-530. Programs for the prevention and treatment of alcoholism and rehabilitation of alcoholics among District employees and in private industry.

24-531. Program for the prevention and treatment of alcoholism and rehabilitation of alcoholics in correctional institutions.

24-532. Program for the prevention of alcoholism and the treatment and rehabilitation of incipient alcoholics among juveniles and young adults.

24-533. Evaluation of programs for treatment of chronic alcoholics—Recommendations to Congress by Commissioner—Publication of data and statistics—Implementation of objectives of this chapter—Use of Federal funds, programs and facilities.



## Sec.

- 24-534. Liability for cost of treatment—Procedures for determining liability and ability to pay—Waiver of liability by Commissioner, in certain cases—Actions to recover cost of treatment—Deposit into United States Treasury of sums collected.
- 24-535. Donations of services and gifts—Deposit of gifts in a trust fund account in the Treasury of the United States—Use of gifts, by Commissioner, to carry out purposes of this chapter.

## CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 25-111a.

## §§ 24-501 to 24-513. Omitted.

These sections dealing with rehabilitation of alcoholics being sections 1 to 13 of the act of Aug. 4, 1947, 61 Stat. 744, ch. 742 are omitted for the reason that section 3(a) of the act of Aug. 3, 1968, Pub. L. 90-452, amended these sections by striking them out and inserting in lieu thereof new sections 1 to 15, classified herein as sections 24-521 to 24-535. For provisions of the omitted sections see the 1967 edition of the code. Section 14 of the act of Aug. 4, 1947 was renumbered as section 16 by section 3(b) of Pub. L. 90-452 and former section 15 was repealed by section 3(c) of the same act.

## § 24-514. Repealed. Aug. 3, 1968, Pub. L. 90-452, 82 Stat. 624, § 3(c).

Section 15, act Aug. 4, 1947, 61 Stat. 747, ch. 472, dealt with the appointment of an advisory committee, by former District Commissioners.

## EFFECTIVE DATE OF REPEAL

Section 4 of the act of Aug. 3, 1968, Pub. L. 90-452, provided: "The amendments made by section 3 of this Act [classified to sections 24-521 to 24-535, 25-111a and repealing this section] shall take effect on the ninetieth day following the date of its enactment." [Aug. 3, 1968.]

## § 24-521. Purpose.

The purpose of this chapter is to establish a comprehensive program in the District of Columbia for the prevention of alcoholism and the rehabilitation of alcoholics, discourage abuse of alcoholic beverages, and provide for medical, psychiatric, and other scientific treatment of chronic alcoholics; to minimize the deleterious effects of excessive drinking; to reduce the financial burden imposed upon the people of the District of Columbia by the abusive use of alcoholic beverages, as is reflected in accidents, inefficiency of personnel, and absenteeism; and to establish methods of handling intoxication and alcoholism that will benefit the individual involved and more fully protect the public. In order to accomplish this purpose and alleviate intoxication and chronic alcoholism, all public officials in the District of Columbia shall take cognizance of the fact that public intoxication shall be handled as a public health problem rather than as a criminal offense, and that a chronic alcoholic is a sick person who needs, is entitled to, and shall be provided appropriate medical, psychiatric, institutional, advisory, and rehabilitative treatment services of the highest caliber for his illness. (Aug. 4, 1947, 61 Stat. 744, ch. 472, § 1; Aug. 3, 1968, Pub. L. 90-452, § 3(a), 82 Stat. 618.)

## AMENDMENT

1968—Section 3(a) of the act of Aug. 3, 1968, Pub. L. 90-452 amended the act of Aug. 4, 1947, by striking out sections 1 through 13 and inserting in place thereof new sections 1 to 15. The act of Aug. 4, 1947 contained

15 sections, the first thirteen of which were classified to sections 24-501 to 24-513, section 14 was classified to 25-111a, and section 15 to 24-514. Section 3(b) of the Pub. L. 90-452 amended former section 14 by striking out "Sec. 14" and inserted in lieu thereof "Sec. 16" and section 3(c) of the same public law repealed former section 15. Section 1 of the act of Aug. 4, 1947 as amended by Pub. L. 90-452, is set out above. Former section 1 classified to section 24-501 also stated the objectives but in substantially different language. For its provisions see section 24-501 in the 1967 edition of the code.

## EFFECTIVE DATE OF 1968 AMENDMENT

Section 4 of act Aug. 3, 1968, Pub. L. 90-452, provided: "The amendments made by section 3 of this Act [classified to sections 24-521 to 24-535, 25-111a and repealing section 25-514] shall take effect on the ninetieth day following the date of its enactment." [Aug. 3, 1968.]

## SHORT TITLE

Section 1, act Aug. 3, 1968, Pub. L. 90-452, provided: "That this Act [amending sections 4-143, 25-128, renumbering section 14 of the Act of Aug. 4, 1947, ch. 472, as section 16, classified as section 25-111a, repealing section 24-514, striking out sections 1 to 13 of the Act of Aug. 4, 1947 and inserting new sections 1 to 15, classified as sections 24-521 to 24-535] may be cited as the "District of Columbia Alcoholic Rehabilitation Act of 1967".

## NOTES TO DECISIONS

## Judicial notice

Federal District Court would take judicial notice of congressional finding that a chronic alcoholic is a sick person in need of proper medical, institutional, and rehabilitative treatment. *J. B. Driver v. A. Hinnant, Sup't* etc. (D.C.D.C. 1965, 243 F. Supp. 95).

## § 24-522. Definitions.

For purposes of this chapter—

(1) The term "chronic alcoholic" means any person who chronically and habitually uses alcoholic beverages to the extent that (A) they injure his health or interfere with his social or economic functioning, or (B) he has lost the power of self-control with respect to the use of such beverages.

(2) The term "Court" means the Superior Court of the District of Columbia.

(3) The term "Commissioner" means the Commissioner of the District of Columbia. (Aug. 4, 1947, 61 Stat. 744, ch. 472, § 2; Aug. 3, 1968, Pub. L. 90-452, § 3(a), 82 Stat. 618; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

## AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended par. (2) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

1968—Section 3(a) of the act of Aug. 3, 1968, inserted a new section as above set out. Former section 2 of the act of Aug. 4, 1947, was classified to section 24-502, set out in the 1967 edition of code and contained a substantially different definition of the term "chronic alcoholic." See amendment note under section 24-521.

## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

## EFFECTIVE DATE OF 1968 AMENDMENT

See note under section 24-521.

## NOTES TO DECISIONS

## Evidence

Expert medical and psychiatric evidence established that defendant charged with public intoxication was chronic alcoholic who had lost control over his use of alcoholic beverages. *DeW. Easter v. District of Columbia* (1966, 361 F.2d 50, 124 U.S. App. D.C. 33).



§ 24-523. Public health program for intoxicated persons and chronic alcoholics—Detoxification centers and other facilities—Delegation of functions by Commissioner.

(a) The Commissioner shall establish and maintain an effective public health program in the District of Columbia to provide a continuum of appropriate services to intoxicated persons and chronic alcoholics. Such program shall coordinate all District of Columbia services for intoxicated persons and chronic alcoholics and shall include at least the following facilities which shall be available to both males and females:

(1) One or more detoxification centers, which shall be located within the District of Columbia, which shall have a total capacity of not more than 150 beds, and which shall provide appropriate medical services for intoxicated persons, including initial examination, diagnosis, and classification.

(2) An inpatient extended care facility which shall have a capacity of not more than 800 beds and which shall provide intensive study, treatment, and rehabilitation of chronic alcoholics. Such facility shall not admit intoxicated persons.

(3) Outpatient aftercare facilities which may include clinics, social centers, vocational rehabilitation services, and supportive residential facilities and which shall have a total capacity of not more than 600 beds.

(b) The Commissioner may—

(1) establish or designate an agency of the District of Columbia government, and

(2) designate any officer or employee of the District of Columbia government,

to carry out any of his functions, powers, and duties under this chapter. (Aug. 4, 1947, 61 Stat. 744, ch. 472, § 3; Aug. 3, 1968, Pub. L. 90-452, § 3(a), 82 Stat. 619.)

#### AMENDMENT

1968—Section 3(a) of the act of Aug. 3, 1968, inserted a new section 3, as above set out. Former section 3 of the act of Aug. 4, 1967 was classified to section 24-503, set out in the 1967 edition of the Code and contained provisions relating to the establishment and use of an alcoholic clinic. See amendment note under section 24-521.

#### EFFECTIVE DATE OF 1968 AMENDMENT

See note under section 24-521.

#### DELEGATION OF FUNCTIONS

Under Parts III-F and V-I of Org. Ord. No. 141, dated Feb. 11, 1964, as amended, the Director of Public Health was vested with functions relating to development of a program for the prevention etc., of alcoholism, and the Department of Public Health was designated the agency of the District of Columbia to prepare and execute a comprehensive program to provide a continuum of appropriate services to intoxicated persons and chronic alcoholics etc. Functions set forth in Org. Ord. No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order (Org. Action) No. 69-96, dated Mar. 7, 1969, as amended by Commissioner's Order No. 70-83, dated Mar. 6, 1970. The Orders are set out in the Appendix to title 1, Administration.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24-524, 24-525, 24-526.

#### NOTES TO DECISIONS

##### Availability of facilities

That facilities contemplated by Act of Congress pertaining to rehabilitation of alcoholics had not been made available did not detract from legal effect of provisions

of 1947 Act defining nature of sickness. *DeW. Easter v. District of Columbia* (1966, 361 F. 2d 50, 124 U.S. App. D.C. 33).

§ 24-524. Procedures for dealing with persons who are found intoxicated in public—Filing of criminal charges against chronic alcoholics—Dealing with intoxicated persons who violate certain laws—Records of detoxification center to be confidential.

(a) Except as otherwise provided in subsection (b) of this section, any person who is intoxicated in public—

(1) may be taken or sent to his home or to a public or private health facility, or

(2) if not taken or sent to his home or such facility under paragraph (1), shall be taken to a detoxification center,

by the Commissioner. Reasonable measures may be taken to ascertain that public transportation used for such purposes shall be paid for by such person in advance. Any intoxicated person may voluntarily come to a detoxification center for medical attention. The medical officer in charge of a detoxification center shall have the authority to determine whether a person shall be admitted to such center as a patient, or whether he should be referred to another health facility. The medical officer in charge of such center shall have the authority to require any person admitted as a patient under this subsection to remain at such center until he is sober and no longer incapacitated, but in any event no longer than 72 hours after his admission as a patient. If the medical officer concludes that such person should receive treatment at a different facility, he shall arrange for such treatment and for transportation to that facility. A detoxification center may provide medical services to a person who is not admitted as a patient. A patient in a detoxification center shall be encouraged to consent to an intensive diagnosis for alcoholism and to treatment at the inpatient and outpatient facilities authorized in section 24-523(a).

(b) (1) Any person who is taken into custody for violating section 25-128 shall be brought to a detoxification center where he shall either be admitted as a patient or transported by the Commissioner to another appropriate medical facility for treatment. The police officer who took such person into custody for violating such section shall leave a violation notice for such person with the medical officer in charge of the detoxification center. After such person is sober and no longer incapacitated, the medical officer in charge of the detoxification center shall detain him as long as is reasonably necessary to conduct a diagnosis for alcoholism. If such person is diagnosed as a chronic alcoholic the medical officer shall, after a review of such person's record, recommend to the Corporation Counsel whether a criminal charge should be filed against such person for violating such section in order to institute civil commitment proceedings under section 24-527. If such a criminal charge is not filed, no entry relating to such person's arrest for violating such section shall be made on any arrest or other criminal record. If the Corporation Counsel concludes that a criminal charge should be filed, the medical officer in charge of the detoxification center shall deliver to such person the violation notice that had been left with him. If such person is not diagnosed as a chronic alcoholic the medical



officer in charge of the detoxification center shall deliver to him the violation notice that had been left with the medical officer and such person shall, after he is released by the center, be handled as in any other criminal case.

(2) Any person who is taken into custody in the District of Columbia for violating any criminal provision applicable in the District of Columbia (other than such section 25-128) and who appears to be intoxicated may be taken by the police to a detoxification center where he may be admitted as a patient for an immediate medical evaluation of his condition. As soon as it is determined that he is not in medical danger he shall be handled by the police as in any other criminal case. If his health is in danger, he may be detained either at the detoxification center or at some other appropriate medical facility until the danger has passed, and he shall then be handled as in any other criminal case. Such security conditions shall be maintained as are commensurate with the seriousness of the offense. In appropriate cases where there is no danger to the safety of any person, the police may leave with the medical officer in charge of the detoxification center a violation notice which shall be delivered to such person when he is released from the detoxification center.

(c) The registration and other records of a detoxification center shall remain confidential, and may be disclosed only to medical personnel for purposes of diagnosis, treatment, and court testimony, to police personnel for purposes of investigation of criminal offenses and complaints against police action, and to authorized personnel for purposes of presentence reports.

(d) The Commissioner shall promptly develop, in cooperation with the police, procedures for taking or sending an intoxicated person to a detoxification center, his residence, or a public or private health facility if no criminal charge is brought against such person. (Aug. 4, 1947, 61 Stat. 745, ch. 472, § 4; Aug. 3, 1968, Pub. L. 90-452, § 3(a), 82 Stat. 619.)

#### AMENDMENT

1968—Section 3(a) of the act of Aug. 3, 1968, inserted a new section 4, as above set out. Former section 4 of the act of Aug. 4, 1947, was classified to section 24-504, set out in the 1967 edition of the code and contained provisions relating to suspension of criminal proceeding in the case of chronic alcoholics after hearing and commitment to the clinic. See amendment note under section 24-521.

#### EFFECTIVE DATE OF 1968 AMENDMENT

See note under section 24-521.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4-143, 25-128.

**§ 24-525. Voluntary admission to inpatient centers—**Medical officer in charge to determine who shall be admitted as a patient—Program for patients who are not chronic alcoholics—Involuntary detention not permitted, except by Court order.

(a) Any person may voluntarily request admission to the inpatient center authorized in section 24-523 (a), and no person committed under section 24-527 shall take precedence for purposes of admission over a person who voluntarily requests admission unless the person so committed is found by the Court to endanger the public safety. The medical officer in charge of the inpatient center is authorized to deter-

mine who shall be admitted as a patient. A complete medical, social, occupational, and family history shall be obtained as part of the diagnosis and classification at the inpatient center, and an effort shall also be made to obtain copies of all pertinent records from other agencies, institutions, and medical facilities in order to develop a complete and permanent history on each patient.

(b) A program shall be developed for patients of the inpatient center who are diagnosed not to be chronic alcoholics which program shall be designed to inform them of the dangers of alcoholism.

(c) In the case of a patient of the inpatient center who is diagnosed as a chronic alcoholic, he shall be given immediate, intensive treatment for chronic alcoholism at the inpatient center.

(d) No patient may be detained at the inpatient center without his consent, except under an order of the Court issued under section 24-527. Reasonable regulations for checking out of the inpatient center and for providing transportation may be adopted. If a patient checks out of the center against medical advice, he may be readmitted at the discretion of the medical officer in charge of the center. (Aug. 4, 1947, 61 Stat. 745, ch. 472, § 5, Aug. 3, 1968, Pub. L. 90-452, § 3(a), 82 Stat. 620.)

#### AMENDMENT

1968—Section 3(a) of the act of Aug. 3, 1968, inserted a new section 5, as above set out. Former section 5 of the act of Aug. 4, 1947 was classified to section 24-505, set out in the 1967 edition of the code and contained provisions relating to establishment of a classification and diagnostic center and provisions for classification and diagnosis of persons committed to the clinic. See amendment note under section 24-521.

#### EFFECTIVE DATE OF 1968 AMENDMENT

See note under section 24-521.

**§ 24-526. Outpatient treatment of chronic alcoholics—**Medical director to determine who shall be admitted for outpatient treatment—Care of chronic alcoholics for whom recovery is unlikely—Compulsory participation not permitted, except by Court order.

(a) A chronic alcoholic shall be encouraged to consent to outpatient and aftercare treatment for his illness at the types of facilities authorized in section 24-523(a). Any person may voluntarily request admission to outpatient treatment. The medical officer in charge of the outpatient treatment is authorized to determine who shall be admitted to such treatment. There shall be one central outpatient treatment office which shall coordinate the operation of all outpatient facilities, and particularly shall be responsible for locating residential facilities for indigent intoxicated persons and alcoholics.

(b) For chronic alcoholics for whom recovery is unlikely, supporting services and residential facilities shall be provided.

(c) The Commissioner shall be responsible, through the outpatient treatment programs, for coordinating all public and private community efforts, including welfare services, vocational rehabilitation, and job placement, to integrate chronic alcoholics back into society as productive citizens.

(d) No person shall be required to participate in outpatient treatment without his consent unless required under an order of the Court issued under



section 24-527. Reasonable requirements may be placed upon such a person as conditions for his participation in such treatment. If a patient withdraws from outpatient treatment against medical advice, he may be readmitted at the discretion of the medical officer in charge of outpatient treatment. (Aug. 4, 1947, 61 Stat. 745, ch. 472, § 6; Aug. 3, 1968, Pub. L. 90-452, § 3(a), 82 Stat. 621.)

#### AMENDMENT

1968—Section 3(a) of the act of Aug. 3, 1968, inserted a new section 6, as above set out. Former section 6, of the act of Aug. 4, 1947 was classified to section 24-506, set out in the 1967 edition of the code and contained provisions relating to recommendations by the director to the committing judge for dealing with committed persons, issuance of orders by the court and providing for the designation by the Attorney General of the United States of the director as his authorized representative. See amendment note under section 24-521.

#### EFFECTIVE DATE OF 1968 AMENDMENT

See note under section 24-521.

§ 24-527. Commitment of chronic alcoholics by Court order for treatment—Hearing and findings required before commitment—Writ of habeas corpus—Right to counsel—Term of commitment.

(a) The Court may, on a petition of the Corporation Counsel on behalf of the Commissioner, filed and heard before the period of detention for detoxification and diagnosis expires, order a person to be committed to the custody of the Commissioner for inpatient treatment and care if (1) the Court determines that the person is a chronic alcoholic and that as a result of chronic or acute intoxication such person is in immediate danger of substantial physical harm, and (2) such person received notice of the filing of such petition within a reasonable time before the hearing held by the Court. The period of such commitment, computed from the date of admission to a detoxification center, shall not exceed (1) 30 days in the case of the first or second such commitment within any 24-month period, or (2) 90 days in the case of the third or subsequent such commitment within any 24-month period.

(b) (1) The Court may, after making the findings prescribed in paragraph (2) of this subsection, commit to the custody of the Commissioner for treatment and care for up to a specified period of time a chronic alcoholic who—

(A) is charged with any misdemeanor and who, prior to trial for such misdemeanor, voluntarily requests such treatment in lieu of criminal prosecution for such misdemeanor;

(B) is charged with a violation of section 25-128 and is acquitted on the ground of chronic alcoholism; or

(C) is convicted of a violation of such section 25-128.

The term of commitment of a chronic alcoholic ordered by the Court under this subsection may not exceed the maximum term of imprisonment authorized for the misdemeanor for which the chronic alcoholic was charged.

(2) Before any person may be committed under this subsection, the Court shall, after a medical diagnosis and a civil hearing, find that—

(A) the person is a chronic alcoholic;

(B) adequate and appropriate treatment provided by the Commissioner is available for the person; and

(C) in the case of a person described in subparagraph (C) of paragraph (1) of this subsection, he constitutes a continuing danger to the safety of himself or of other persons.

The Court shall give reasonable notice of such hearing to the person sought to be committed and his attorney. In the case of a person described in subparagraph (C) of paragraph (1) of this subsection, if the Court does not make the finding described in subparagraph (B) of this paragraph, the Court may sentence the person to a penal institution pending the availability of such treatment, but for a period not to exceed the maximum term of imprisonment authorized for a violation of such section 25-128.

(c) A committed person may challenge by a petition for a writ of habeas corpus the applicability of such findings, except that no more than one such petition may be filed in any six-month period. The limitation prescribed in the preceding sentence shall not apply in the case of petitions based on newly discovered evidence.

(d) The Commissioner may transfer a committed person who has been adjudged a continuing danger to the safety of himself or of other persons from inpatient to outpatient status only with permission of the Court. The Commissioner may transfer any other committed person from inpatient to outpatient status, and any committed person from outpatient to inpatient status, without permission of the Court, but may not release a committed person without permission of the Court.

(e) If any person subject to a commitment proceeding initiated under this section does not have an attorney and cannot afford one, the Court shall appoint one to represent him. (Aug. 4, 1947, 61 Stat. 745, ch. 472, § 7; Aug. 3, 1968, Pub. L. 90-452, § 3(a), 82 Stat. 621.)

#### AMENDMENT

1968—Section 3(a) of the act of Aug. 3, 1968, inserted a new section 7, as above set. Former section 7 of the act of Aug. 4, 1947 was classified to section 24-507, set out in the 1967 edition of the code and contained provisions relating to discharge of alcoholics at expiration of term of commitment and recommitment for further treatment after hearing on recommendation of the director. See amendment note under section 24-521.

#### EFFECTIVE DATE OF 1968 AMENDMENT

See note under section 24-521

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-2222, 24-524, 24-525, 24-526, 24-534.

#### NOTES TO DECISIONS

##### Congressional problem

Defendant's argument that district commissioners had not complied with statute by certifying to court that proper and adequate treatment facilities and personnel were available to carry out alcoholic rehabilitation program was improperly addressed to attention of court, which was wholly without means of solving problem, redress and correction, if need be, lying with Congress for enlargement and improvements of program for rehabilitation of alcoholics. *D. Easter v. District of Columbia* (D.C. App. 1965, 209 A. 2d 625; rev'd on other grounds 361 F. 2d 50, 124 U.S. App. D.C. 23).



**Discretion of court**

Defendant who is determined to be chronic alcoholic may in judge's discretion be committed for treatment or he may be released, but he may not be punished. *DeW. Easter v. District of Columbia* (1966, 361 F. 2d 50, 124 U.S. App. D.C. 33).

This section which provides that the court may order the defendant committed to a clinic clearly indicates that such commitment is generally a matter of discretion of the court. *Peeples v. District of Columbia* (D. C. Mun. App. 1950, 75 A. 2d 845).

**§ 24-528. Applicability of chapter to chronic alcoholics who have not been determined to be mentally ill.**

The provisions of this chapter shall apply to chronic alcoholics who have not been determined to be mentally ill. The handling of a chronic alcoholic who has been determined to be mentally ill shall be governed by the provisions of chapter 5 title 21. (Aug. 4, 1947, 61 Stat. 745, ch. 472, § 8; Aug. 3, 1968, Pub. L. 90-452, § 3(a), 82 Stat. 622.)

**AMENDMENT**

1968—Section 3(a) of the act of Aug. 3, 1968, inserted a new section 8, as above set out. Former section 8 of the act of Aug. 4, 1947 was classified to section 24-508, set out in the 1967 edition of the code and contained provisions for supervision of the alcoholic permitted to remain at liberty or on conditional release. See amendment note under section 24-521.

**EFFECTIVE DATE OF 1968 AMENDMENT**

See note under section 24-521.

**§ 24-529. Commissioner may contract with appropriate public or private organizations to carry out purposes of this chapter.**

The Commissioner may contract with any appropriate public or private agency, organization, or institution that has proper and adequate treatment facilities, programs, and personnel, in order to carry out the purposes of this chapter. (Aug. 4, 1947, 61 Stat. 745, ch. 472, § 9; Aug. 3, 1968 Pub. L. 90-452, § 3(a), 82 Stat. 622.)

**AMENDMENT**

1968—Section 3(a) of the act of Aug. 3, 1968, inserted a new section 9, as above set out. Former section 9 of the act of Aug. 4, 1947, was classified to section 24-509, set out in the 1967 edition of the code and provided for certification of the adequacy of the facilities, to the court by the Commissioners, prior to commitment therein of alcoholics. See amendment note under section 24-521.

**EFFECTIVE DATE OF 1968 AMENDMENT**

See note under section 24-521.

**§ 24-530. Programs for the prevention and treatment of alcoholism and rehabilitation of alcoholics among District employees and in private industry.**

(a) The Commissioner shall be responsible for developing and maintaining, in cooperation with other District of Columbia agencies and departments, programs for the prevention and treatment of alcoholism and the rehabilitation of alcoholics among District of Columbia employees consistent with the intent of this chapter.

(b) The Commissioner shall also be responsible for fostering alcoholism rehabilitation programs in private industry in the District of Columbia. (Aug. 4, 1947, 61 Stat. 746, ch. 472, § 10; Aug. 3, 1968, Pub. L. 90-452, § 3(a), 82 Stat. 622.)

**AMENDMENT**

1968—Section 3(a) of the act of Aug. 3, 1968, inserted a new section 10, as above set out. Former section 10 of the act of Aug. 4, 1947, was classified to section 24-510, set out

in the 1967 edition of the code and dealt with voluntary submissions for treatment, payment of costs, adoption of rules and regulations by Commissioners, nonforfeiture of rights of citizenship and confidentiality of records. See amendment note under section 24-521.

**EFFECTIVE DATE OF 1968 AMENDMENT**

See note under section 24-521.

**CROSS REFERENCE**

Program for federal civilian employees, see 42 U.S.C. § 4561.

**§ 24-531. Program for the prevention and treatment of alcoholism and rehabilitation of alcoholics in correctional institutions.**

The Commissioner shall be responsible for establishing and maintaining a program for the prevention and treatment of alcoholism and the rehabilitation of alcoholics in correctional institutions in the District of Columbia. (Aug. 4, 1947, 61 Stat. 746, ch. 472, § 11; Aug. 3, 1968, Pub. L. 90-452, § 3(a), 82 Stat. 622.)

**AMENDMENT**

1968—Section 3(a) of the act of Aug. 3, 1968, inserted a new section 11, as above set out. Former section 11, of the act of Aug. 4, 1947, was classified to section 24-511, set out in the 1967 edition of the code and contained provisions authorizing the Commissioners to contract with other agencies to provide facilities for treatment of alcoholics. See amendment note under section 24-521.

**EFFECTIVE DATE OF 1968 AMENDMENT**

See note under section 24-521.

**§ 24-532. Program for the prevention of alcoholism and the treatment and rehabilitation of incipient alcoholics among juveniles and young adults.**

The Commissioner shall be responsible for establishing and maintaining, in cooperation with the schools, the police, the courts, and other public agencies in the District of Columbia, an effective program for the prevention of intemperance and alcoholism, and the treatment and rehabilitation of incipient alcoholics, among juveniles and young adults. (Aug. 4, 1947, 61 Stat. 746, ch. 472, § 12; Aug. 3, 1968, Pub. L. 90-452, § 3(a), 82 Stat. 622.)

**AMENDMENT**

1968—Section 3(a) of the act of Aug. 3, 1968, inserted a new section 12, as above set out. Former section 12, of the act of Aug. 4, 1947, was classified to section 24-512, set out in the 1967 edition of the code and contained provisions authorizing the Commissioners to appoint a director of the clinic and other personnel. See amendment note under section 24-521.

**EFFECTIVE DATE OF 1968 AMENDMENT**

See note under section 24-521.

**§ 24-533. Evaluation of programs for treatment of chronic alcoholics—Recommendations to Congress by Commissioner—Publication of data and statistics—Implementation of objectives of this chapter—Use of Federal funds, programs and facilities.**

(a) The Commissioner shall maintain a continuing evaluation of his programs and shall conduct pilot and demonstration projects to improve his programs, shall from time to time submit to the Congress such recommendations for programs for the District of Columbia to further the rehabilitation of chronic alcoholics, prevent the excessive and abusive use of alcoholic beverages, and promote moderation in the use of such beverages.

(b) The Commissioner shall prepare and publish materials, data, information, and statistics that relate to the problems of intoxication and alcoholism



in the District of Columbia and that may be used in a program of public education directed toward the prevention of the excessive and abusive use of alcoholic beverages.

(c) The Commissioner shall develop a comprehensive plan to implement the objectives and policies of this chapter, and in so doing shall consult and collaborate with appropriate public and private agencies, institutions, and organizations in the District of Columbia, and with the Secretary of Health, Education, and Welfare. In developing such plan, the Commissioner shall make every effort to utilize funds, programs, and facilities authorized under Federal legislation. (Aug. 4, 1947, 61 Stat. 746, ch. 472, § 13; Aug. 3, 1968, Pub. L. 90-452, § 3(a), 82 Stat. 623.)

#### AMENDMENT

1968—Section 3(a) of the act of Aug. 3, 1968, inserted a new section 13, as above set out. Former section 13, of the act of Aug. 4, 1947, was classified to section 24-513, set out in the 1967 edition of the code and provided that the director submit, from time to time, to the Commissioners, his recommendations for furthering the rehabilitation of chronic alcoholics and requiring him to gather and publish data in relation thereto. See amendment note under section 24-521.

#### EFFECTIVE DATE OF 1968 AMENDMENT

See note under section 24-521.

§ 24-534. Liability for cost of treatment—Procedures for determining liability and ability to pay—Waiver of liability, by Commissioner, in certain cases—Actions to recover cost of treatment—Deposit into United States Treasury of sums collected.

(a) (1) Except as otherwise provided in paragraph (2), if a person receives care, treatment, or any other services under this chapter—

(A) such person (or his estate), and

(B) such person's father, mother, spouse, or adult children,

shall be liable (each according to his ability, as determined by the Commissioner, and in the order listed above) to reimburse the District of Columbia, for all or such part of the actual cost of providing such services, as the Commissioner may require. The liability of any person described in subparagraph (B) of this paragraph shall be determined by the Commissioner after notice to such person that services have been or will be rendered under this chapter and the Commissioner has found that such person is able to reimburse the District of Columbia for all or a part of the cost of providing such services. Such person may not be held liable for the cost of any services rendered more than ninety days prior to the date of issue of such notice. The Commissioner shall determine the ability of the person who received services under this chapter (or his estate) or his father, mother, spouse, or adult children, as the case may be, to reimburse the District of Columbia, by an examination conducted under oath. In any one case the Commissioner may conduct as many examinations as he determines are necessary to ascertain the ability of such person (or his estate) or his relatives to so reimburse the District of Columbia. In the case of a person committed under section 24-527(a), the Commissioner may conduct such examination at any time after a petition for such person's commitment is filed under such

section; and in the case of a person committed under section 24-527(b), such examination may be conducted by the Commissioner at any time after the court serves notice of the hearing to be conducted under paragraph (2) of such section. In all other cases the Commissioner may conduct an examination at any time.

(2) Any person described in subparagraph (B) of paragraph (1) who is liable to the District of Columbia under this section may apply to the Commissioner to have such liability waived. The Commissioner may waive such liability if he determines that it would be unreasonable to impose such liability because of the desertion or neglect of such person by the recipient of services under this chapter or because of other factors similarly affecting the relationship between such person and such recipient. The Commissioner shall prescribe procedures for the filing and hearing of such application under this paragraph.

(b) The Commissioner may bring an action against a person made liable under subsection (a) for all or any part of the cost of services provided under this chapter to require such person to satisfy such liability. In such an action the court may issue an order requiring any such person who is a party to such action to satisfy such liability in accordance with such terms as the court may prescribe. Such order may be enforced in the same manner as orders for alimony.

(c) Sums collected by the Commissioner under this section shall be deposited in the Treasury of the United States to the credit of the District of Columbia. (Aug. 4, 1947, ch. 472, § 14; Aug. 3, 1968, Pub. L. 90-452, § 3(a), 82 Stat. 623.)

#### AMENDMENT

1968—Section 3(a) of the act of Aug. 3, 1968, inserted a new section 14, as above set out. Former section 14 of the act of Aug. 4, 1967, was classified to section 25-111a and has been renumbered as section 16 by section 3(b) of the act of Aug. 3, 1968. This former section 14, now section 16 dealt with appropriation of a portion of license fees derived from alcoholic beverages. See amendment note under section 24-521.

#### EFFECTIVE DATE OF 1968 AMENDMENT

See note under section 24-521.

§ 24-535. Donations of services and gifts—Deposit of gifts in a trust fund account in the Treasury of the United States—Use of gifts, by Commissioner, to carry out purposes of this chapter.

The Commissioner may accept on behalf of the District of Columbia donations of services or gifts of real or personal property, tangible or intangible, which are made for the purpose of carrying out his functions under this chapter. Gifts of money and the proceeds from the liquidation of any other gift shall be deposited in the Treasury of the United States to the credit of a trust fund account, which is hereby authorized, and may be invested and reinvested as trust funds of the District of Columbia. The Commissioner shall use such donations and gifts to carry out the purposes of this chapter. (Aug. 4, 1947, ch. 472, § 15; Aug. 3, 1968, Pub. L. 90-452, § 3(a), 82 Stat. 624.)

#### AMENDMENT

1968—Section 3(a) of the act of Aug. 3, 1968, inserted a new section 15, as above set out. Former section 15 of the act of Aug. 4, 1967, which was classified to section



24-514 was repealed by section 3(c) of the act of Aug. 3, 1968. This former section dealt with the appointment of an advisory committee by the commissioners. See amendment note under section 24-521.

#### EFFECTIVE DATE OF 1968 AMENDMENT

See note under section 24-521.

### Chapter 6.—REHABILITATION OF USERS OF NARCOTICS

#### Sec.

- 24-601. Purpose.
- 24-602. Definitions.
- 24-603. Order of examination.
- 24-604. Right to counsel.
- 24-605. Examinations by physicians.
- 24-606. When hearing is required.
- 24-607. Hearing.
- 24-608. Confinement of patient.
- 24-609. Release of patient.
- 24-610. Periodic examination of released patients.
- 24-611. Patient not deemed a criminal.
- 24-612. Patient not deemed a criminal.
- 24-613. Care and treatment of drug users—Authority of the Surgeon General.
- 24-614. Admittance into Public Health Service hospitals—Narcotics users from District of Columbia.
- 24-615. Release of patients.

#### § 24-601. Purpose.

The purpose of sections 24-601 to 24-611 is to protect the health and safety of the people of the District of Columbia from the menace of drug addiction and to afford an opportunity to the drug user for rehabilitation. The Congress intends that Federal criminal laws shall be enforced against drug users as well as other persons, and sections 24-601 to 24-611 shall not be used to substitute treatment for punishment in cases of crime committed by drug users. (June 24, 1953, 67 Stat. 77, ch. 149, § 2; July 24, 1956, 70 Stat. 609, ch. 676, title I, § 101.)

#### CODIFICATION

Provisions of this section were contained in section 1 of act June 24, 1953, prior to the general amendment of act June 24, 1953, by act July 24, 1956.

#### EFFECTIVE DATE OF 1956 AMENDMENT

Section 102 of act July 24, 1956, provided that: "This title [amending and renumbering §§ 24-601 to 24-611] shall take effect thirty days after the date of its enactment [July 24, 1956]."

#### SHORT TITLE

Section 1 of act July 24, 1956, provided: "That this Act [amending and renumbering §§ 24-601, to 24-611, adding §§ 33-701 to 33-712, amending §§ 24-613, 33-401, 33-402, 33-405, 33-408 to 33-412, 33-414, 33-416a, 33-417, 33-423, and enacted provisions set out as a note under § 24-613] may be cited as the 'Dangerous Drug Control Act for the District of Columbia'."

Section 1 of act June 24, 1953, as added by section 101 of act July 24, 1956, provided that: "This Act [§§ 24-601 to 24-611] may be cited as the 'Hospital Treatment for Drug Addicts Act for the District of Columbia.'"

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-2222, 11-921, 24-602, 24-604, 24-607, 24-609 to 24-611, 24-614, 33-416a.

### NOTES TO DECISIONS

#### Construction

This chapter is not a criminal statute and when it places a juvenile under jurisdiction of Juvenile Court in an institution for treatment, it does no more than change custody of juvenile under commitment and does not impair Juvenile Court jurisdiction. *In re Whisaker* (D.C. D.C. 1955, 134 F. Supp. 864).

This chapter providing for commitment of all narcotics addicts to institutions for treatment, except persons

charged with a criminal offense, does not impliedly repeal Juvenile Court Act, § 11-901 et seq. [now §§ 11-1501 et seq., 16-2301 et seq.], insofar as jurisdiction over juveniles who are addicted to narcotics is concerned. *Id*

#### Juveniles

The intention of Congress was to include juveniles within the operation of this chapter. *In re Whisaker* (D.C.D.C. 1955, 134 F. Supp. 864).

Under this chapter, court had authority to examine juvenile for purpose of determining whether she should be committed for treatment as a narcotics user, even though juvenile had been previously committed to the Department of Public Welfare by the Juvenile Court. *Id*.

#### § 24-602. Definitions.

For the purpose of sections 24-601 to 24-611—

(a) The term "drug user" means any person, including a person under eighteen years of age, notwithstanding the provisions of chapter 23 of title 16, who uses any habit-forming narcotic drugs so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of such habit-forming narcotic drugs as to have lost the power of self-control with reference to his addiction.

(b) The term "narcotic drugs" shall have the same meaning as that given to such term by section 4731 of the Internal Revenue Code of 1954.

(c) The term "patient" means any person ordered to appear before the Commissioner, pursuant to the provisions of section 24-603.

(d) The term "Commissioner" means the Commissioner of the District of Columbia, sitting as a Board, or his designated agent or agents. (June 24, 1953, 67 Stat. 77, ch. 149, § 3; July 24, 1956, 70 Stat. 609, ch. 676, title I, § 101; July 29, 1970, Pub. L. 91-358, title I, § 170, 84 Stat. 590.)

#### REFERENCES IN TEXT

Section 4731 of the Internal Revenue Code of 1954, referred to in subsection (b), was repealed by section 1101(b)(3)(A) of Pub. L. 91-513, 84 Stat. 1292. For current definition of "narcotic drugs", see section 102(16) of the Controlled Substances Act, Pub. L. 91-513, 84 Stat. 1244 (21 U.S.C. 802(16)).

#### CODIFICATION

Provisions of this section were contained in section 2 of act June 24, 1953, prior to the general amendment of act June 24, 1953, by act July 24, 1956.

#### AMENDMENTS

1970—Section 170 of Act July 29, 1970, Public Law 91-358 amended par. (a) by striking out "Juvenile Court Act of the District of Columbia, as amended" and inserting in lieu thereof "chapter 23 of title 16 of the District of Columbia Code".

1956—Act July 24, 1956, amended section generally, and among other changes, inserted provisions relating to persons under eighteen years of age in the definition of "drug user", and added the definitions of "narcotic drugs" and "Commissioners."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### EFFECTIVE DATE OF 1956 AMENDMENT

See note under § 24-601.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-2222, 11-921, 24-601, 24-604, 24-607, 24-609 to 24-611, 24-614, 33-416a.



## NOTES TO DECISIONS

**Addict**

Defendant, who had used heroin for about 15 years, who ordinarily took three or four shots a day, whose usual dose was three or four capsules, who did not steal to obtain money to buy narcotics, and who did not suffer any serious withdrawal symptoms when committed to hospital after his arrest, was an "addict" within meaning of both the Federal and the D.C. Narcotic Rehabilitation Acts even though he had not gone so far in his drug habits as to lack free will. *A. L. Wheeler v. United States* (D.C. App. 1971, 276 A. 2d 722).

**Juveniles**

The intention of Congress was to include juveniles within the operation of this chapter. *In re Whisaker* (D.C.D.C. 1955, 134 F. Supp. 864).

Under this chapter, court had authority to examine juvenile for purpose of determining whether she should be committed for treatment as a narcotics user, even though juvenile had been previously committed to the Department of Public Welfare by the Juvenile Court. *Id.*

This chapter is not a criminal statute and when it places a juvenile under jurisdiction of Juvenile Court in an institution for treatment, it does no more than change custody of juvenile under commitment and does not impair Juvenile Court jurisdiction. *Id.*

This chapter providing for commitment of all narcotics addicts to institutions for treatment, except persons charged with a criminal offense, does not impliedly repeal Juvenile Court Act [now §§ 11-1501 et seq., 16-2301 et seq.], insofar as jurisdiction over juveniles who are addicted to narcotics is concerned. *Id.*

**§ 24-603. Order of examination.**

(a) Whenever the Commissioner has probable cause to believe that any person within the District of Columbia, other than a person referred to in subsection (b) hereof, is a drug user, he forthwith shall order any law enforcement officer of the District of Columbia to bring that person before him, to conduct a preliminary examination, and if he finds sufficient evidence of addiction, as hereinbefore defined, he shall cause that person to be placed in an institution to be designated by him for an examination by physicians pursuant to section 24-605.

(b) The Commissioner shall not order any person brought before him if the said person is charged with a criminal offense, whether by indictment, information, or otherwise, or if the said person is under sentence for a criminal offense, whether he is serving the sentence, or is on probation or parole, or has been released on bond pending appeal. (June 24, 1953, 67 Stat. 77, ch. 149, § 4; July 24, 1956, 70 Stat. 609, ch. 676, title I, § 101.)

**CODIFICATION**

Provisions of this section were contained in sections 3 and 4 of act June 24, 1953, prior to the general amendment of act June 24, 1953, by act July 24, 1956.

**AMENDMENT**

1956—Act July 24, 1956, amended section generally, and among other changes, substituted "Commissioners" for "United States attorney" wherever appearing, inserted references to the institutionalizing of drug users for examination, and deleted references to filing a statement with the United States District Court stating facts tending to show that a person was a drug user.

**EFFECTIVE DATE OF 1956 AMENDMENT**

See note under § 24-601.

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 2-2222, 11-921, 24-601, 24-602, 24-604, 24-605, 24-607, 24-609 to 24-611, 24-614, 33-416a.

**§ 24-604. Right to counsel.**

(a) A patient shall have the right to the assistance of counsel at every stage of the judicial proceeding under sections 24-601 to 24-611, and the court shall assign counsel to represent him if the patient is unable to obtain counsel.

(b) The counsel for a patient may inspect the reports of the examination made pursuant to the authority contained in section 24-605. No such report and no evidence resulting from such personal examination or evidence offered by the patient shall be admissible against him in any judicial proceeding except a proceeding under sections 24-601 to 24-611.

(c) The patient may, prior to the examination made pursuant to the provisions of section 24-605 or prior to the hearing provided for by section 24-607, waive his rights to an examination, to counsel, or to such hearing, and voluntarily submit himself to commitment pursuant to the provisions of sections 24-601 to 24-611. (June 24, 1953, 67 Stat. 78, ch. 149, § 7; July 24, 1956, 70 Stat. 610, ch. 676, title I, § 101.)

**CODIFICATION**

Provisions of this section were contained in section 5 of act June 24, 1953, prior to the general amendment of act June 24, 1953, by act July 24, 1956.

**AMENDMENT**

1956—Act July 24, 1956, designated existing provisions as subsec. (a), deleted references therefrom relating to the advising of the patient of his right to counsel, and added subsecs. (b) and (c).

**EFFECTIVE DATE OF 1956 AMENDMENT**

See note under § 24-601.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 2-2222, 11-921, 24-601, 24-602, 24-607, 24-609 to 24-611, 24-614, 33-416a.

**§ 24-605. Examinations by physicians.**

(a) Whenever the Commissioner orders a patient into an institution pursuant to the provisions of section 24-603, he shall immediately appoint two qualified physicians, one of whom shall be a psychiatrist, to examine the said patient, and within five days after such appointment, each physician shall file with the United States Attorney for the District of Columbia, a written report of such examination, which shall include a statement of his conclusion as to whether the patient is a drug user.

(b) The United States Attorney for the District of Columbia shall review the facts and circumstances of each case submitted to him and present by petition those in which he feels justification exists in the public interest to the Superior Court of the District of Columbia for determination and disposition, or dismiss the patient from custody. A copy of such petition shall be served on the patient in open court, at which time the court shall set a hearing date and advise the patient of his right to counsel and his right to demand within five days a trial by jury. (June 24, 1953, 67 Stat. 78, ch. 149, § 5; July 24, 1956, 70 Stat. 610, ch. 676, title I, § 101; July 29, 1970, Pub. L. 91-358, title I, § 155(c) (31), 84 Stat. 572.)



## CODIFICATION

Provisions of this section were contained in section 6 of act June 24, 1953, prior to the general amendment of act June 24, 1953, by act July 24, 1956.

## AMENDMENTS

1970—Section 155(c) (31) of Act July 29, 1970, Public Law 91-358, amended subsec. (b) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

1956—Act July 24, 1956, amended section generally, and among other changes, provided that the commissioners are to appoint the physicians, that said physicians are to file a report within five days with the United States Attorney who is to examine the facts and either dismiss the patient, or petition the District Court for determination and disposition of the case.

## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

## EFFECTIVE DATE OF 1956 AMENDMENT

See note under § 24-601.

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-2222, 11-921, 24-601 to 24-604, 24-606, 24-607, 24-609 to 24-611, 24-614, 33-416a.

## § 24-606. When hearing is required.

If, in a report filed pursuant to section 24-605, either of the examining physicians states that the patient is a drug user, or that he is unable to reach any conclusion by reason of the refusal of the patient to submit to thorough examination, the court shall conduct a hearing upon petition of the United States Attorney in the manner provided in section 24-607. (June 24, 1953, 67 Stat. 78, ch. 149, § 6; July 24, 1956, 70 Stat. 610, ch. 676, title I, § 101.)

## CODIFICATION

Provisions of this section were contained in section 7 of act June 24, 1953, prior to the general amendment of act June 24, 1953, by act July 24, 1956.

## AMENDMENT

1956—Act July 24, 1956, inserted the reference to the petition of the United States Attorney, and deleted provisions relating to an order dismissing the proceeding on the basis of the report, or when a hearing was deemed necessary, for personal service of notice upon the patient.

## EFFECTIVE DATE OF 1956 AMENDMENT

See note under § 24-601.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-2222, 11-921, 24-601, 24-602, 24-604, 24-607, 24-609 to 24-611, 24-614, 33-416a.

## § 24-607. Hearing.

(a) Upon the evidence introduced at a hearing held for that purpose the court shall determine whether the patient is a drug user. The hearing shall be conducted without a jury unless, before such hearing and within five days after the date on which the petition is filed pursuant to section 24-605, a jury is demanded by the patient or by the United States Attorney for the District of Columbia. Each patient concerning whom a report is filed shall be detained at such place as the Commissioner may designate until the completion of such hearing or until released as provided in section 24-605 (b).

(b) The rules of evidence applicable in civil judicial proceedings shall be applicable to hearings pursuant to this section, including the right of the patient to present evidence in his own behalf and to subpoena and cross-examine witnesses. However, no patient examined pursuant to the provisions of sections 24-601 to 24-611, shall be permitted at any hearing ordered pursuant to this section to object to the submission of testimony concerning such examination on the ground of privilege. (June 24, 1953, 67 Stat. 78, ch. 149, § 8; July 24, 1956, 70 Stat. 610, ch. 676, title I, § 101.)

## CODIFICATION

Provisions of this section were contained in section 8 of act June 24, 1953, prior to the general amendment of act June 24, 1953, by act July 24, 1956.

## AMENDMENT

1956—Act July 24, 1956, substituted "five days" for "fifteen days", and "petition" for "second report", permitted the Commissioners to detain the patient until the end of the hearing, or until his release, denied the patient any objection for privilege to the submission of testimony concerning his examination, and deleted references to the patient waiving his hearing and to his subsequent direct commitment by the Commissioners.

## EFFECTIVE DATE OF 1956 AMENDMENT

See note under § 24-601.

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-2222, 11-921, 24-601, 24-602, 24-604, 24-606, 24-609 to 24-611, 24-614, 33-416a.

## § 24-608. Confinement of patient.

If the court finds the patient to be a drug user, it may commit him to a hospital designated by the patient or the Commissioner and approved by the court, to be confined there for rehabilitation until released in accordance with section 24-609. In the event a patient elects to designate a hospital to which he wishes to be committed, he shall be required to satisfy the court that such hospital has medical, rehabilitation, and security facilities comparable to the institutions designated by the Commissioner and, in addition, the cost of such hospitalization shall be borne by the patient. The head of the hospital shall submit written reports within such periods as the court may direct, but no longer than six months after the commitment and for successive intervals of time thereafter, and state reasons why the patient has not been released. (June 24, 1953, 67 Stat. 79, ch. 149, § 9; July 24, 1956, 70 Stat. 611, ch. 676, title I, § 101.)

## AMENDMENT

1956—Act July 24, 1956, added provisions relating to the patient's designation of a hospital, and deleted "of the District of Columbia, or their designated agent," following "patient or the Commissioners."

## EFFECTIVE DATE OF 1956 AMENDMENT

See note under § 24-601.

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.



## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-2222, 11-921, 24-601, 24-602, 24-604, 24-607, 24-609 to 24-611, 24-614, 33-416a.

## § 24-609. Release of patient.

(a) When the head of the hospital to which the patient is committed finds that the patient appears to be no longer in need of confinement for treatment purposes, or has received maximum benefits, he shall give notice to the judge of the committing court, and said patient shall be delivered to the said court for such further action as the court may deem necessary and proper under the provisions of sections 24-601 to 24-611.

(b) The court, upon petition of the patient after confinement for one year, shall inquire into the refusal or failure of the head of the hospital to release him. If the court finds that the patient is no longer in need of care, treatment, guidance, or rehabilitation, or has received maximum benefits, it shall order the patient released, in accordance with the provisions of section 24-610. (June 24, 1953, 67 Stat. 79, ch. 149, § 10; July 24, 1956, 70 Stat. 611, ch. 676, title I, § 101.)

## AMENDMENT

1956—Act July 24, 1956, substituted "confinement for treatment purposes" for "rehabilitation" and "he shall give notice" for "they shall give notice."

## EFFECTIVE DATE OF 1956 AMENDMENT

See note under § 24-601.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-2222, 11-921, 24-601, 24-602, 24-604, 24-607, 24-608, 24-610, 24-611, 24-614, 33-416a.

## § 24-610. Periodic examination of released patients.

(a) For two years after his release, the patient shall report to the Commissioner at such times and places as required, for a physical examination to determine whether the patient has again become a drug user. If the Commissioner determines that the person examined is a drug user, he shall then order the patient into an institution in accordance with the provisions of sections 24-601 to 24-611.

(b) Upon the failure of any patient to report in accordance with the provisions of subsection (a) hereof, the United States attorney for the District of Columbia shall be notified of such failure, and a statement of such failure to report shall be filed with the court. The court shall issue an attachment for the patient and order him confined forthwith for examination and such further action as the court may deem necessary and proper under the provisions of sections 24-601 to 24-611. (June 24, 1953, 67 Stat. 79, ch. 149, § 11; July 24, 1956, 70 Stat. 611, ch. 676, title I, § 101.)

## AMENDMENT

1956—Act July 24, 1956, redesignated existing provisions as subsec. (a), and amended such subsection to permit the Commissioners to order the patient into an institution, and to delete references to the Commissioners designated agent, and added subsec. (b).

## EFFECTIVE DATE OF 1956 AMENDMENT

See note under § 24-601.

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-2222, 11-921, 20-601, 24-602, 24-604, 24-607, 24-609 to 24-611, 24-614, 33-416a.

## § 24-611. Patient not deemed a criminal.

The patient in any proceedings under sections 24-601 to 24-611 shall not be deemed a criminal and the commitment of any such patient shall not be deemed a conviction. (June 24, 1953, 67 Stat. 79, ch. 149, § 12; July 24, 1956, 70 Stat. 612, ch. 676, title I, § 101.)

## AMENDMENT

1956—Act July 24, 1956, reenacted section without change.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-2222, 11-921, 24-601, 24-602, 24-604, 24-607, 24-609, 24-610, 24-614, 33-416a.

## NOTES TO DECISIONS

## In general

This chapter is not a criminal statute and when it places a juvenile under jurisdiction of Juvenile Court in an institution for treatment, it does no more than change custody of juvenile under commitment and does not impair Juvenile Court jurisdiction. *In re Whisaker* (D.C.D.C. 1955, 134 F. Supp. 864).

## § 24-612. Patient not deemed a criminal.

## CODIFICATION

Section, act June 24, 1953, 67 Stat. 79, ch. 149, § 12, is now classified to section 24-611.

## § 24-613. Care and treatment of drug users—Authority of the Surgeon General.

(a) The Surgeon General is authorized to provide for the confinement, care, protection, treatment, and discipline of persons addicted to the use of habit-forming narcotic drugs who are civilly committed to treatment or convicted of offenses against the United States and sentenced to treatment under the Narcotic Addict Rehabilitation Act of 1966, addicts who are committed to the custody of the Attorney General pursuant to the provisions of the Federal Youth Corrections Act, addicts who voluntarily submit themselves for treatment, and addicts and other persons with drug abuse and drug dependence problems convicted of offenses against the United States and who are not sentenced to treatment under the Narcotic Addict Rehabilitation Act of 1966, including persons convicted by general courts-martial and consular courts. Such care and treatment shall be provided at hospitals of the Service especially equipped for the accommodation of such patients or elsewhere where authorized under other provisions of law, and shall be designed to rehabilitate such persons, to restore them to health, and, where necessary, to train them to be self-supporting and self-reliant; but nothing in this section or in sections 257—261a of title 42, United States Code, shall be construed to limit the authority of the Surgeon General under other provisions of law to provide for the conditional release of patients and for aftercare under supervision. In carrying out this subsection, the Secretary shall establish in each hospital and other appropriate medical facility of the Service a treatment and rehabilitation program for drug addicts and other persons with drug abuse and drug dependence problems who are in the area served by such hospital or other facility; except that the re-



quirement of this sentence shall not apply in the case of any such hospital or other facility with respect to which the Secretary determines that there is not sufficient need for such a program in such hospital or other facility.

(b) Upon the admittance to, and departure from, a hospital of the Service of a person who voluntarily submitted himself for treatment pursuant to the provisions of this section, and who at the time of his admittance to such hospital was a resident of the District of Columbia, the Surgeon General shall furnish to the Commissioner of the District of Columbia or his designated agent, the name, address, and such other pertinent information as may be useful in the rehabilitation to society of such person.

(c) The Secretary may enter into agreements with the Administrator of Veterans' Affairs, the Secretary of Defense, and the head of any other department or agency of the Government under which agreements hospitals and other appropriate medical facilities of the Service may be used in treatment and rehabilitation programs provided by such department or agency for drug addicts and other persons with drug abuse and other drug dependence problems who are in areas served by such hospitals or other facilities. (July 1, 1944, 58 Stat. 698, ch. 373, title III, § 341; May 8, 1954, 68 Stat. 80, ch. 195 § 3; July 24, 1956, 70 Stat. 622, ch. 676, title III, § 302(a); Nov. 8, 1966, Pub. L. 89-793, title VI, § 601, 80 Stat. 1449; Oct. 27, 1970, Pub. L. 91-513, title I, § 2(a)(1), 84 Stat. 1240; Mar. 21, 1972, Pub. L. 92-255, § 402, 86 Stat. 77.)

#### REFERENCES IN TEXT

The Narcotic Addict Rehabilitation Act of 1966, referred to in subsec. (a), is classified to 42 U.S.C. 3411 et seq. and 3441 et seq., 18 U.S.C. 4251 et seq., and 28 U.S.C. 2901 et seq.

The Federal Youth Corrections Act, referred to in subsec. (a), is classified to 18 U.S.C. 5005 et seq.

#### CODIFICATION

Section is also classified to 42 U.S.C. § 257.

#### AMENDMENTS

1972—Section 402 of act Mar. 21, 1972, Pub. L. 92-255, added the last sentence of subsec. (a) and added subsec. (c).

1970—Section 2(a)(1) of act Oct. 27, 1970, Pub. L. 91-513, added immediately after "addicts" the second time it appears the following: "and other persons with drug abuse and drug dependence problems".

1966—Subsection (a). Pub. L. 89-793 designated existing provisions as subsec. (a), substituted care and treatment provisions for persons who are civilly committed to treatment or convicted of Federal offenses and sentenced to treatment under the Narcotic Addict Rehabilitation Act of 1966, addicts who are committed to custody of Attorney General pursuant to provisions of Federal Youth Corrections Act, and addicts convicted of Federal offenses and who are not sentenced to treatment under such Act of 1966 for prior care and treatment provisions for addicts who have been or are hereafter convicted of Federal offenses, deleted language for care and treatment for addicts who are committed to the Service or to a hospital thereof pursuant to section 24-614, and provided for care and treatment at places other than hospitals of the Service where authorized by other provisions of law and for conditional release of patients and aftercare under supervision.

Subsection (b). Pub. L. 89-793 designated existing last sentence as subsec. (b).

1956—Act July 24, 1956, required the Surgeon General to furnish to the Commissioners or their designated agent, the name, address, and any other useful informa-

tion relating to persons who voluntarily submit themselves for treatment and who, at the time of submission, are residents of the District of Columbia.

1954—Act May 8, 1954, added the reference to addicts committed pursuant to section 24-614.

#### STATEMENT OF PURPOSE

Act May 8, 1954, § 1, as amended by act July 24, 1956, § 303, provides that:

"In order to afford the District of Columbia the facilities required to carry out the Act of June 24, 1953 (Public Law 76, Eighty-third Congress), as amended, and to help it meet its responsibility for the detention, care, and treatment of noncriminal narcotic addicts, it is hereby declared to be the purpose of this Act [§§ 24-613 to 24-615] to authorize the limited use of suitable Public Health Service facilities at the expense of the District of Columbia for such detention, care, and treatment."

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### TRANSFER OF FUNCTIONS

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out as a note under 42 U.S.C. 202.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 24-615.

§ 24-614. Admittance into Public Health Service hospitals—Narcotics users from District of Columbia.

(a) The Surgeon General is authorized to admit for care and treatment in any hospital of the Service suitably equipped therefor, and thereafter to transfer between hospitals of the Service in accordance with section 248(b) of title 42, U.S. Code, any addict who is committed, under the provisions of sections 24-601 to 24-611, to the Service or to a hospital thereof for care and treatment and who the Surgeon General determines is a proper subject for such care and treatment. No such addict shall be admitted unless (1) he is committed prior to July 1, 1958; and (2) at the time of his commitment, the number of persons in hospitals of the Service who have been admitted pursuant to this subsection is less than one hundred; and (3) suitable accommodations are available after all eligible addicts convicted of offenses against the United States have been admitted.

(b) Any person admitted to a hospital of the Service pursuant to subsection (a) shall be discharged therefrom (1) upon order of the Superior Court of the District of Columbia, or (2) when he is found by the Surgeon General to be cured and rehabilitated. When any such person is so discharged, the Surgeon General shall give notice thereof to the Superior Court of the District of Columbia and shall deliver such person to such court for such further action as such court may deem necessary and proper under the provisions of sections 24-601 to 24-611.

(c) With respect to the detention, transfer, parole, or discharge of any person committed to a hospital of the Service in accordance with subsection (a), the Surgeon General and the officer in charge of the hospital, in addition to authority otherwise vested in them, shall have such authority as may be



conferred upon them, respectively, by the order of the committing court.

(d) The cost of providing care and treatment for persons admitted to a hospital of the Service pursuant to subsection (a) shall be a charge upon the District of Columbia and shall be paid by the District of Columbia to the Public Health Service, either in advance or otherwise, as may be determined by the Surgeon General. Such cost may be determined for each addict or on the basis of rates established for all or particular classes of patients, and shall include the cost of transportation to and from facilities or the Public Health Service. Moneys so paid to the Public Health Service shall be covered into the Treasury of the United States as miscellaneous receipts. Appropriations available for the care and treatment of addicts admitted to a hospital of the Service under this section shall be available, subject to regulations, for paying the cost of transportation to the District of Columbia, including subsistence allowance while traveling, for any such addict who is discharged. (July 1, 1944, ch. 373, title III, § 345, as added May 8, 1954, 68 Stat. 80, ch. 195, § 2 and amended July 24, 1956, ch. 676, title III, § 302(c), 70 Stat. 622; July 29, 1970, Pub. L. 91-358, title I, § 155(c) (32), 84 Stat. 572.)

#### CODIFICATION

Section is also classified to 42 U.S.C. § 260a.

#### AMENDMENTS

1970—Section 155(c) (32) of Act July 29, 1970, Public Law 91-358, amended subsec. (b) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

1956—Act July 24, 1956, substituted "July 1, 1958" for "July 1, 1956", and "one hundred" for "fifty."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### TRANSFER OF FUNCTIONS

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out as a note under 42 U.S.C. 202.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24-613, 24-615.

### § 24-615. Release of patients.

For purposes of sections 24-613 to 24-615, an individual shall be deemed cured of his addiction, drug abuse, or drug dependence and rehabilitated if the Surgeon General determines that he has received the maximum benefits of treatment and care by the Service for his addiction, drug abuse, or drug dependence or if the Surgeon General determines that his further treatment and care for such purpose would be detrimental to the interests of the Service. (July 1, 1944, ch. 373, title III, § 347, as added May 8, 1954, 68 Stat. 81, ch. 195, § 4; and amended Oct. 27, 1970, Pub. L. 91-513, title I, § 2(a) (4), 84 Stat. 1240.)

#### CODIFICATION

Section is also classified to 42 U.S.C. § 261a.

#### AMENDMENT

1970—Section 2(a) (4) of Act Oct. 27, 1970, Pub. L. 91-513, inserted "drug abuse, or drug dependence" immediately after "addiction" each place it appeared.

#### TRANSFER OF FUNCTIONS

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out as a note under 42 U.S.C. 202.

### Chapter 7.—INTERSTATE AGREEMENT ON DETAINERS

#### Sec.

- 24-701. Enactment of Interstate Agreement on Detainers on behalf of the United States and the District of Columbia.
- 24-702. Definitions.
- 24-703. Enforcement of Agreement—Cooperation with party States.
- 24-704. Regulations.
- 24-705. Congressional authority.

### § 24-701. Enactment of Interstate Agreement on Detainers on behalf of the United States and the District of Columbia.

The Interstate Agreement on Detainers is hereby enacted into law and entered into by the United States on its own behalf and on behalf of the District of Columbia with all jurisdictions legally joining in substantially the form set forth below. (Dec. 9, 1970, Pub. L. 91-538, § 2, 84 Stat. 1397.)

"The contracting States solemnly agree that:

#### "ARTICLE I

"The party States find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party States and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints. The party States also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

#### "ARTICLE II

"As used in this agreement:

"(a) 'State' shall mean a State of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

"(b) 'Sending State' shall mean a State in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to article III hereof or at the time that a request for custody or availability is initiated pursuant to article IV hereof.

"(c) 'Receiving State' shall mean the State in which trial is to be had on an indictment, information, or complaint pursuant to article III or article IV hereof.

#### "ARTICLE III

"(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party State, and whenever during the continuance of the term of imprisonment there is pending in any other party State any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred and eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint: *Provided*, That,



for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decision of the State parole agency relating to the prisoner.

"(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

"(c) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

"(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations, or complaints on the basis of which detainees have been lodged against the prisoner from the State to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections, or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the State to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

"(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving State to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending State. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

"(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

#### "ARTICLE IV

"(a) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party State made available in accordance with article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the State in which the prisoner is incarcerated: *Provided*, That the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded, and transmitted the request: *And provided further*, That there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the Governor of the sending

State may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

"(b) Upon request of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the State parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving State who has lodged detainees against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

"(c) In respect of any proceeding made possible by this article, trial shall be commenced within one hundred and twenty days of the arrival of the prisoner in the receiving State, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

"(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending State has not affirmatively consented to or ordered such delivery.

"(e) If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V(e) hereof, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

#### "ARTICLE V

"(a) In response to a request made under article III or article IV hereof, the appropriate authority in a sending State shall offer to deliver temporary custody of such prisoner to the appropriate authority in the State where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in article III of this agreement. In the case of a Federal prisoner, the appropriate authority in the receiving State shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in Federal custody at the place of trial, whichever custodial arrangement may be approved by the custodian.

"(b) The officer or other representative of a State accepting an offer of temporary custody shall present the following upon demand:

"(1) Proper identification and evidence of his authority to act for the State into whose temporary custody this prisoner is to be given.

"(2) A duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

"(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in article III or article IV hereof, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

"(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainees or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at



court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

"(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending State.

"(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

"(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending State and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

"(h) From the time that a party State receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending State, the State in which the one or more untried indictments, informations, or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping, and returning the prisoner. The provisions of this paragraph shall govern unless the States concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party State, or between a party State and its subdivisions, as to the payment of costs, or responsibilities therefor.

#### "ARTICLE VI

"(a) In determining the duration and expiration dates of the time periods provided in articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

"(b) No provision of this agreement, and no remedy made available by this agreement shall apply to any person who is adjudged to be mentally ill.

#### "ARTICLE VII

"Each State party to this agreement shall designate an officer who, acting jointly with like officers of other party States, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the State, information necessary to the effective operation of this agreement.

#### "ARTICLE VIII

"This agreement shall enter into full force and effect as to a party State when such State has enacted the same into law. A State party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any State shall not affect the status of any proceedings already initiated by inmates or by State officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

#### "ARTICLE IX

"This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any party State or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution

of any State party hereto, the agreement shall remain in full force and effect as to the remaining States and in full force and effect as to the State affected as to all severable matters."

#### CODIFICATION

The words "the form set forth below" are substituted for "the following form" in the interests of clarity.

This section is also classified to title 18 App., U.S.C.

#### EFFECTIVE DATE

Section 8 of act Dec. 9, 1970, Pub. L. 91-538, provided: "This Act [enacting this chapter] shall take effect on the ninetieth day after the date of its enactment."

#### SHORT TITLE

The first section of act Dec. 9, 1970, Pub. L. 91-538, provided: "this Act [enacting this chapter] may be cited as the 'Interstate Agreement on Detainers Act'."

#### § 24-702. Definitions.

(a) The term "Governor" as used in the agreement on detainers shall mean with respect to the United States, the Attorney General, and with respect to the District of Columbia, the Commissioner of the District of Columbia.

(b) The term "appropriate court" as used in the agreement on detainers shall mean with respect to the United States, the courts of the United States, and with respect to the District of Columbia, the courts of the District of Columbia, in which indictments, informations, or complaints, for which disposition is sought, are pending. (Dec. 9, 1970, Pub. L. 91-538, §§ 3, 4, 84 Stat. 1402.)

#### CODIFICATION

This section is also classified to title 18 App., U.S.C.

#### CROSS REFERENCE

For listing of courts of the District of Columbia, see § 11-101.

#### § 24-703. Enforcement of Agreement—Cooperation with party States.

All courts, departments, agencies, officers, and employees of the United States and of the District of Columbia are hereby directed to enforce the agreement on detainers and to cooperate with one another and with all party States in enforcing the agreement and effectuating its purpose. (Dec. 9, 1970, Pub. L. 91-538, § 5, 84 Stat. 1402.)

#### CODIFICATION

This section is also classified to title 18 App., U.S.C.

#### CROSS REFERENCE

For listing of courts in which the judicial power in the District of Columbia is vested, see § 11-101.

#### § 24-704. Regulations.

For the United States, the Attorney General, and for the District of Columbia, the Commissioner of the District of Columbia, shall establish such regulations, prescribe such forms, issue such instructions, and perform such other acts as he deems necessary for carrying out the provisions of this chapter. (Dec. 9, 1970, Pub. L. 91-538, § 6, 84 Stat. 1403.)

#### CODIFICATION

This section is also classified to title 18 App., U.S.C.

#### § 24-705. Congressional authority.

The right to alter, amend, or repeal this chapter is expressly reserved. (Dec. 9, 1970, Pub. L. 91-538, § 7, 84 Stat. 1403.)

#### CODIFICATION

This section is also classified to title 18 App., U.S.C.



## PART V

### GENERAL STATUTES

TITLE 25—ALCOHOLIC BEVERAGES.  
 TITLE 26—BANKS AND OTHER FINANCIAL INSTITUTIONS.  
 TITLE 27—CEMETERIES AND CREMATORIES.  
 TITLE 28—COMMERCIAL INSTRUMENTS AND TRANSACTIONS.  
 TITLE 29—CORPORATIONS.  
 TITLE 30—DOMESTIC RELATIONS.  
 TITLE 31—EDUCATION AND CULTURAL INSTITUTIONS.  
 TITLE 32—ELEEMOSYNARY, CURATIVE, CORRECTIONAL, AND PENAL INSTITUTIONS.  
 TITLE 33—FOOD AND DRUGS.  
 TITLE 34—HOTELS AND LODGING-HOUSES.  
 TITLE 35—INSURANCE.  
 TITLE 36—LABOR.

TITLE 37—LIBRARIES.  
 TITLE 38—LIENS.  
 TITLE 39—MILITARY.  
 TITLE 40—MOTOR VEHICLES.  
 TITLE 41—PARTNERSHIPS.  
 TITLE 42—PERSONAL PROPERTY.  
 TITLE 43—PUBLIC UTILITIES.  
 TITLE 44—RAILROADS AND OTHER CARRIERS.  
 TITLE 45—REAL PROPERTY.  
 TITLE 46—SOCIAL SECURITY.  
 TITLE 47—TAXATION AND FISCAL AFFAIRS.  
 TITLE 48—TRADE-MARKS AND TRADE NAMES.  
 TITLE 49—COMPILATION AND CONSTRUCTION OF CODE.

#### TITLE 25.—ALCOHOLIC BEVERAGES

Chap.	Sec.	Sec.	
1. Alcoholic Beverage Control.....	25-101	25-117.	Transfer of license—Fee—Conditions imposed.
Chapter 1.—ALCOHOLIC BEVERAGE CONTROL		25-118.	Revocation of license—Causes—Hearing—Discretionary closing for one year.
Sec.		25-119.	Revocation of license when manufacturer interested—Manufacturer forbidden to loan money or furnish equipment for wholesaler or retailer—Extending credit permitted—"Manufacturer" defined.
25-101. Partial repeal of National Prohibition Act.		25-120.	Revocation of license when wholesaler interested—Wholesaler forbidden to loan money or furnish equipment to retailer—Extending credit not prohibited—"Wholesaler" defined.
25-102. Short title—Application.		25-121.	Sale to minors or intoxicated persons—Liability of licensee.
25-103. Definitions.		25-122.	License forfeited on licensee becoming bail.
25-104. Alcoholic Beverage Control Board—Appointment—Term—Employees.		25-123.	Monthly reports of sales and purchases.
25-104a. Classification of positions of members of Board.		25-124.	Beverage taxes—Method of collection—Class C or D licensees—Reports.
25-105. Interest of Board member or employee in manufacture, transporting, or storing of alcoholic beverages forbidden.		25-125.	Sale, distribution, furnishing of beverages by convicted persons and minors.
25-106. Jurisdiction of Board over licenses—Appeal from revocation—Duties.		25-126.	Power of Board to compel testimony—Witness fees—Perjury.
25-107. Powers of Council—Rules and regulations—Licenses.		25-127.	Intoxicated person not to operate locomotive, streetcar, elevator, watercraft, or horse-drawn vehicle—Penalty—Traffic acts not affected.
25-108. Alcohol for nonbeverage purposes not affected—Penalty for unlawful sales.		25-128.	Drinking of alcoholic beverage in street, alley, park, parking, or unlicensed public place forbidden—Intoxication in street, alley, park, or parking forbidden—Penalty.
25-109. Sale without license prohibited—Exceptions.		25-129.	Search warrants for illegal alcoholic beverages—Penalty for resisting officer—Disposition of illegal beverages—Payment of bona fide liens.
25-110. Licenses—Applications for—To whom granted—Records.		25-130.	Minor misrepresenting age to procure beverage—Penalty.
25-111. License classifications—Fees.		25-131.	Issuance of new permits under Beverage License Act of 1933 forbidden—Surrender of permit and refund of fees—Repeal.
25-111a. Appropriation of portion of license fees for rehabilitation of alcoholics.		25-132.	Penalty for violation where no specific penalty provided—Prosecutions.
25-112. Authority of Council to forbid transportation of liquor into District—Permit may be granted.		25-133.	Sale by retailer of beverages on credit prohibited—Exceptions.
25-113. Holding of license of more than one class forbidden—Definition of "licensee."		25-134.	Containers to be labeled—Content
25-114. Description in license of premises—Sale limited to premises—Storage not on premises—Expiration of licenses—Monthly licenses—Proportionate fees.		25-135.	Offenses under National Prohibition Act to be prosecuted.
25-115. Applications for licenses—Qualification of applicants—Moral character—Citizenship—Prior convictions—Ownership—Interest of manufacturer in retail business—Character of premises—Advertising application—Hearing of protests—Objection of property owners—Removal of bonded liquor from Government warehouses—Penalty.		25-136.	Separability of provisions.
25-116. Issuing licenses in certain districts restricted			



Sec.

25-137. Unlawful transportation—Penalty.

25-138. Tax on beer.

25-139. Building or place of violation declared a nuisance—Procedure to enjoin or abate.

### § 25-101. Partial repeal of National Prohibition Act.

The National Prohibition Act, as amended and supplemented, insofar as it affects the manufacture, sale, and possession in the District of Columbia, and the transportation in, into, and from the District of Columbia, of alcoholic beverages, is hereby repealed, with the exception of title III, and section 4 of title II insofar as it affects denatured alcohol. (Jan. 24, 1934, 48 Stat. 319, ch. 4, § 1.)

#### REFERENCES IN TEXT

The National Prohibition Act, as amended and supplemented, referred to in the text, is act Oct. 28, 1919, 41 Stat. 305, ch. 85, which was formerly classified to U.S. Code, title 27.

#### CROSS REFERENCE

Previous violation or seizures under National Prohibition Act not affected, see § 25-135.

#### NOTES TO DECISIONS

##### In general

This act did not repeal the Liquor Taxing Act of 1934. *Sims v. Rives* (1936, 84 F. 2d 871, 66 App. D.C. 24, certiorari denied 56 S. Ct. 960, 298 U.S. 682, 80 L. Ed. 1402).

### § 25-102. Short title—Application.

This chapter may be cited as the "District of Columbia Alcoholic Beverage Control Act." It shall apply only to the District of Columbia and shall not authorize the delivery of alcoholic beverages outside of the District of Columbia in violation of the law of the place of delivery. (Jan. 24, 1934, 48 Stat. 319, ch. 4, § 2.)

#### CROSS REFERENCE

Application and exemptions from chapter, see §§ 25-108, 25-109, 25-115, 25-127, 25-137.

### § 25-103. Definitions.

In the interpretation of this chapter, unless the context indicates a different meaning:

(a) The word "alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, from whatever source or by whatever processes produced.

(b) The word "spirits" means any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances in solution, including brandy, rum, whisky, cordials, and gin.

(c) The word "wine" means the product of the normal alcoholic fermentation of the juice of fresh, sound, ripe grapes, with the usual cellar treatment and necessary additions to correct defects due to climatic, saccharine and seasonal conditions, including champagne, sparkling, artificially carbonated and fortified wine. No other product obtained by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar shall be called "wine" unless designated by appropriate prefix descriptions of the fruit or other product from which the same was predominantly produced, or as artificial or imitation wine. Light wines shall mean wines containing 14 per centum or less of alcohol by volume.

(d) The word "beer" means any fermented beverages of any name or description manufactured

from malt, wholly or in part, or from any substitute therefor.

(e) The words "alcoholic beverage" or "beverage" include the four varieties of liquor above defined (alcohol, spirits, wine, and beer) and every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed by a human being. Any liquid or solid containing more than one of the four varieties above defined is considered as belonging to that variety which has the higher percentage of alcohol, according to the order in which they are above defined, except as provided in subsection (c) hereof. The provisions of this section and of this chapter shall not apply to any liquid or solid containing less than one half of 1 per centum of alcohol by volume, nor shall anything contained in this chapter be construed as affecting the manufacture of apple cider or the sale thereof.

(f) The word "Board" shall mean the Alcoholic Beverage Control Board created by this chapter.

(g) The word "club" means a corporation for the promotion of some common object (not including corporations organized for any commercial or business purpose, the object of which is money profit), owning, hiring, or leasing a building or space in a building of such extent and character as in the judgment of the Board may be suitable and adequate for the reasonable and comfortable use and accommodations of its members and their guests, and including such space outside of the building and adjoining it as may be approved by the Board, and provided with such suitable and adequate kitchen and dining-room space and equipment, implements, and facilities, and employing such a sufficient number of employees for cooking, preparing, and serving meals for its members and their guests, as shall satisfy the Board that the sale of beverages intended is not more than an incident to and is not the prime source of revenue from such space; and the affairs and management of such corporation are conducted by a board of directors, executive committee, or similar body chosen by the members at least once each calendar year and no officer, agent, or employee of the club is paid directly or indirectly, or receives in the form of salary or other compensation, any profit from the disposition or sale of beverages to the club or to the members of the club or guests introduced by members beyond the amount of such salary as may be fixed and voted by the members, or by its directors, or other governing body.

(h) The word "Commissioner" shall mean the Commissioner of the District of Columbia.

(i) The word "District" shall mean the District of Columbia.

(j) The word "hotel" means a suitable building or other structure, approved by the Board, including such suitable space outside of the building and adjoining it as may be approved by the Board, kept, used, maintained, advertised, or held out to the public to be a place where meals are served and sleeping accommodations offered for pay to transient guests; in which thirty or more rooms are used for the sleeping accommodations of such transient guests, and having one or more dining rooms where meals are served to such transient guests, such sleeping accommodations and dining rooms being conducted in



the same building or in connecting buildings, and such building or buildings, structure or structures being provided with such adequate kitchen and dining-room equipment and capacity and having employed therein such number and kinds of employees for preparing, cooking, and serving meals for its guests as shall satisfy the Board that such dining room is intended for use primarily as a place for preparing, cooking, and serving meals and that the chief source of revenue to be derived from the operation of such dining room shall be from the preparation, cooking, and serving of meals and not from the sale of beverages. No such dining room shall be considered suitable if any business is conducted therein other than the preparation, cooking, and serving of meals, except such a business as is incidental to a bona fide dining room.

(k) The word "manufacture" shall include rectification.

(l) The word "meals" means the usual assortment of foods commonly ordered at various hours of the day; and such food and victuals as sandwiches and salads shall not be regarded as a "meal."

(m) The word "person" includes an individual, partnership, corporation, and association.

(n) The word "restaurant" means a suitable space in a suitable building, approved by the Board, including such suitable space outside of the building and adjoining it as may be approved by the Board, kept, used, maintained, advertised, or held out to the public to be a place where meals are served, such space being provided with such adequate kitchen and dining-room equipment and capacity, and having employed therein such number and kinds of employees for preparing, cooking, and serving meals for its guests as shall satisfy the Board that such space is intended for use primarily as a place for preparing, cooking, and serving meals, and that the chief source of revenue to be derived from the operation of such place shall be from the preparation, cooking, and serving of meals and not from the sale of beverages. No such space shall be considered suitable if any business is conducted therein other than the preparation, cooking, and serving of meals, except such a business as is incidental to a bona fide restaurant.

(o) The word "sell" or "sale" shall include offering for sale, keeping for sale, trafficking in, bartering, delivering for value, exchanging for goods, or in any way other than purely gratuitously, and every delivery of any alcoholic beverage made otherwise than by purely gratuitous title shall constitute a sale.

(p) The word "table" shall not include a counter, bar, or similar contrivance.

(q) The word "tavern" means a suitable space in a suitable building approved by the Board, including such suitable space outside the building and adjoining it, as may be approved by the Board, kept, used, maintained, advertised, or held out to the public to be a place where sandwiches or light lunches are prepared and served for consumption on the premises in such quantities as to satisfy the Board that the sale of beer and light wines intended is no more than an incident to and not the prime source of revenue of such "tavern." (Jan. 24, 1934, 48 Stat.

319, ch. 4, § 3; Aug. 27, 1935, 49 Stat. 897, ch. 756, § 1; Dec. 8, 1970, Pub. L. 91-535, § 1, 84 Stat. 1393.)

#### AMENDMENTS

1970—Section 1 of act Dec. 8, 1970, Pub. L. 91-535, amended the last sentence of subsec. (c) by striking out "other than champagne".

1935—Subsection (q) amended by act Aug. 27, 1935, to include "light wines."

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

#### CROSS REFERENCES

Licensee defined, see § 25-113.

Manufacturer defined, see § 25-119.

Wholesaler defined, see § 25-120.

#### NOTES TO DECISIONS

##### Barroom

A barroom is a place in which intoxicating liquors are sold to be drunk on the premises. *Army & Navy Club v. District of Columbia* (1896, 8 App. D.C. 544).

##### Evidence

In prosecution for keeping for sale and selling alcoholic beverages without license, testimony of officers that from their experience in tasting and smelling liquor, it was their conclusion that liquid purchased at club was liquor, and that they tasted liquid and it contained whiskey, was sufficient proof of corpus delicti, notwithstanding failure to prove alcoholic content by chemical analysis. *Stagecrafters Club v. District of Columbia* (D. C. Mun. App. 1952, 89 A. 2d 876).

##### Judicial notice

From testimony that officers, from their experience in tasting and smelling liquor, concluded that liquid purchased was liquor, and that they tasted liquid and that it contained whiskey, courts may take judicial notice of alcoholic content of whiskey. *Stagecrafters Club v. District of Columbia* (D. C. Mun. App. 1952, 89 A. 2d 876).

##### Hotel

Requirement in District of Columbia licensing regulations that a building must have at least 30 bedrooms in order to be licensed as a hotel was within licensing authority of Commissioners of the District of Columbia. *Courembis v. District of Columbia et al.* (1951, 193 F. 2d 18, 89 U.S. App. D.C. 372).

Requirement of District of Columbia licensing regulations that a building must have at least 30 bedrooms in order to be licensed as a hotel was not arbitrary. *Id.*

Where plaintiff's application for building permit showed that he wished to operate a hotel but two weeks before plaintiff got his permit Commissioners of District of Columbia had given public notice of a hearing with regard to proposed new licensing regulations, and a month after he got permit and several months before he completed his alterations, new licensing regulations were adopted providing that a building must have at least 30 bedrooms to be licensed as a hotel, and it did not appear that plaintiff was prevented from continuing to use his 18 bedroom property as before, there was no basis for estoppel against refusal to grant license to operate a hotel. *Id.*

##### Regulations, validity of

Under District of Columbia statute imposing a tax on all beer sold and prescribing monthly reports of beer "sold by him during the preceding calendar month", regulations of the Commissioners taxing beer in warehouse and before it is sold were not authorized. *American Sales Co. v. District of Columbia* (1961, 292 F. 2d 751, 110 U.S. App. D.C. 258).

##### Review

The question of an association's standing to obtain judicial review of a claim that Alcoholic Beverage Control Board improperly reissued retail liquor license depended



primarily upon existence of logical and adequately direct nexus between association's interest and adverse action of opposing party or parties. *The Citizens Association of Georgetown v. J. E. Simonson et al.* (1968, 403 F. 2d 175, 131 U.S. App. D.C. 152).

In directing Alcoholic Beverage Control Board to consider wishes of persons residing or owning property in neighborhood in issuing licenses, Congress recognized that operation of liquor establishment may trouble its neighbors. *Id.*

Residents and owners of property within neighborhood of licensed establishment have required nexus to seek judicial review of reissuance of license. *Id.*

An association which was the authorized spokesman organized to promote interest of its individual members, many of whom resided or owned property within neighborhood of licensed liquor establishment, had standing to seek judicial review of reissuance of license. *Id.*

#### § 25-104. Alcoholic Beverage Control Board—Appointment—Term—Employees.

The Commissioner of the District of Columbia shall appoint a Board of three persons, subject to removal by the Commissioner, to be called the "Alcoholic Beverage Control Board," each of the members of which shall be a citizen of the United States and a resident of the District of Columbia for at least three years immediately preceding his appointment and have during that period claimed residence nowhere else. Of the three persons first appointed as members of said Board, one shall be appointed for two years, one for three years and one for four years, and thereafter all appointments shall be for the term of four years, except such appointments as may be made for the remainder of unexpired terms. Vacancies caused by death, resignation, or otherwise shall be filled by the Commissioner only for the unexpired terms. Members shall be eligible for reappointment. The Commissioner shall designate one of the members of the Board to be chairman thereof. The Commissioner is authorized to employ such other personal services, including three additional assistant corporation counsel, as may be necessary to carry out the provisions of this chapter, and to provide for the expenses of the Board. The salaries of employees, other than members of the Board, shall be fixed in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]. The Commissioner shall include in his annual estimates such amounts as may be required for the salaries and expenses herein authorized. (Jan. 24, 1934, 48 Stat. 321, ch. 4, § 4; Apr. 20, 1948, 62 Stat. 176, ch. 217, § 2; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a).)

#### CODIFICATION

The reference in this section to "chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89-554, set out in note under § 1-251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

#### AMENDMENTS

1949—Act Oct. 28, 1949, § 1106(a), which was a part of the Classification Act of 1949, and which has since been repealed, substituted "Classification Act of 1949" for "Classification Act of 1923". See codification note above.

1948—Act Apr. 20, 1948, eliminated sentence reading "The salary of each of the members of the Board shall be five thousand dollars per annum" following provision for designation of a chairman.

#### EFFECTIVE DATE OF 1948 AMENDMENT

Section 2 of act Apr. 20, 1948, provided in part that the amendment of this section shall be effective when the classifications provided for by section 25-104a shall have been effected.

#### ABOLITION OF BOARD AND TRANSFER OF FUNCTIONS

All functions of the Alcoholic Beverage Control Board, including functions of all officers and employees, were transferred to the Board of Commissioners, the Alcoholic Beverage Control Board, including the office of the chairman of the Board, was abolished effective at such time as the Board of Commissioners should specify but not later than June 30, 1953, a new office or agency was authorized to be established with such name or title as the Board of Commissioners should determine, and the Board of Commissioners was empowered to delegate the performance of any of its functions with stated exceptions, including the transferred functions, to any member of the Board of Commissioners or any other officer, employee or agency of the Government of the District of Columbia and to transfer personnel, property, records and funds by 1952 Reorg. Plan No. 5, eff. July 1, 1952, 66 Stat. 824.

All functions, duties, powers and authority vested in the Alcoholic Beverage Control Board and the chairman thereof on July 1, 1952, the effective date of 1952 Reorg. Plan No. 5, and transferred to the Board of Commissioners were delegated to and continued to be vested in the Alcoholic Beverage Control Board and the chairman thereof, until otherwise ordered, by Reorg. Order No. 1 of the Board of Commissioners, dated July 1, 1952.

Reorg. Order No. 35 of the Board of Commissioners dated and effective June 16, 1953, established under the direction and control of a Commissioner, an Alcoholic Beverage Control Board consisting of three members appointed by the Board of Commissioners. The order provided that all powers and authorities authorized by statute or by the Board of Commissioners to be exercised by the previously existing Alcoholic Beverage Control Board would thereafter be vested in the new Alcoholic Beverage Control Board, and the members of the previous board were reappointed to the new board. The order abolished the previously existing Alcoholic Beverage Control Board. This order was issued pursuant to 1952 Reorg. Order No. 5.

The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorg. Plan No. 3 of 1967.

Commissioner's Order [Organization Action] No. 69-96, dated Mar. 7, 1969, provided in part that the Director of Economic Development is responsible for providing an immediate supervisory channel for the Alcohol Beverage Control Board.

Commissioner's Order [Organization Action] No. 72-206, dated Aug. 8, 1972, abolished the existing Alcoholic Beverage Control Board and rescinded Reorg. Ord. No. 35. The Order established, in the Department of Economic Development, under the direction and control of the Commissioner, a new Alcoholic Beverage Control Board, consisting of three members appointed by the Commissioner; and prescribed the purpose, functions, powers, and duties of the Board and related matters.

The Orders and Plans are set out in the Appendix to title 1, Administration.

#### CROSS REFERENCE

Federal Alcohol Administration Act, see 27 U.S.C. § 201 et seq.

#### NOTES TO DECISIONS

##### Injunction

Where there was no genuine issue of material fact as to whether alcoholic beverage control board had discriminated against liquor licensee in deciding not to renew his license, suit to enjoin board from putting such decision into effect was properly resolved by summary judgment procedure. *Minkoff v. Payne et al.* (1954, 210 F. 2d 689, 93 U.S. App. D.C. 123).



### § 25-104a. Classification of positions of members of Board.

The positions of members of the Alcoholic Beverage Control Board for the District of Columbia shall be classified in accordance with chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]. (April 20, 1948, 62 Stat. 176, ch. 217, § 1; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a).)

#### CODIFICATION

The reference in this section to "chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89-554, set out in note under § 1-251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

#### AMENDMENT

1949—Act Oct. 28, 1949, § 1106(a), which was a part of the Classification Act of 1949, and which has since been repealed, substituted "Classification Act of 1949" for "Classification Act of 1923". See codification note above.

#### TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

### § 25-105. Interest of Board member or employee in manufacture, transporting, or storing of alcoholic beverages forbidden.

No member or employee of the Board, directly or indirectly, individually, or as a member of a partnership or association, or stockholder in a corporation shall have any interest whatsoever in dealing in, manufacturing, transporting, or storing alcoholic beverages, nor receive any commission or profit whatsoever from any person authorized by virtue of this chapter to manufacture or sell alcoholic beverages. No provision of this section, however, shall prevent any such member or such employee from purchasing, transporting, and keeping in his possession any alcoholic beverage for the personal use of himself or members of his family or guests. (Jan. 24, 1934, 48 Stat. 322, ch. 4, § 5.)

#### TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

#### CROSS REFERENCE

Business interests forbidden, see §§ 25-113, 25-115, 25-119, 25-120.

### § 25-106. Jurisdiction of Board over licenses—Appeal from revocation—Duties.

The right, power, and jurisdiction to issue, transfer, revoke, and suspend all licenses under this chapter shall be vested solely in the Board, and the action of the Board on any question of fact shall be final and conclusive; except that, in case a license is revoked or is suspended for a period of more than thirty days by the Board, the licensee may, within ten days after the order of revocation, or the order of suspension for a period of more than thirty days is entered, appeal in writing to the Commissioner to review said action of the Board, the hearings on said appeal to be submitted either orally or in writing at the dis-

cretion of the Commissioner, and the Commissioner shall not be required to take evidence, either oral, written, or documentary. The decision of the Commissioner on any question of fact involved in such appeal shall be final and conclusive. Pending such appeal, the license shall stand suspended unless the Commissioner shall otherwise order.

The right and power shall be vested in the Board, for good cause shown, to issue permits for the sales of stocks of beverages located in the District of Columbia by individuals, corporations or associations, partnerships, executors, administrators, being owners thereof, receivers or other representatives of a court, to persons licensed under this chapter.

Said Board shall have such other authority and perform such other duties as the District of Columbia Council may, by regulation, prescribe. (Jan. 24, 1934, 48 Stat. 322, ch. 4, § 6; Aug. 27, 1935, 49 Stat. 897, ch. 756, § 2.)

#### AMENDMENT

1935—Act Aug. 27, 1935, inserted provisions relating to suspension of licenses, and added the entire second paragraph.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(214) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory function of the Board of Commissioners of prescribing other authority under the last sentence of this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

#### CROSS REFERENCES

Administrative procedure, see § 1-1501 et seq.  
Causes for revocation or suspension of licenses, see §§ 25-115, 25-118 to 25-120, 25-122.  
General license provisions for regulation, modification or elimination of license requirements and promulgation of regulations, see §§ 47-2344, 47-2345.  
Judicial review, see §§ 1-1501, 11-722.  
Other provisions concerning rules and regulations, see § 25-107.  
Permits under Beverage License Law, see § 25-131.  
Refund of fees when license is refused, see § 47-1017.  
Rules and regulations in general, see § 1-226.  
Suspension or revocation of license for violation of the Uniform Narcotic Drug Act, see § 33-418.

#### NOTES TO DECISIONS

##### Examination of witnesses

In hearing on application for renewal of liquor license, which alcoholic beverage control board refused to renew on ground that applicant was not generally fit and did not have necessary good moral character, which conclusion was based in part upon alleged conspiracy with bootleggers not to make bookkeeping entries required by Internal Revenue Code, applicant's cross-examination of one of the alleged bootleggers, on question of bias, was not so restricted as to constitute lack of procedural due process. *Minkoff v. Payne et al.* (1954, 210 F. 2d 689, 93 U.S. App. D.C. 123).

##### Findings of the Board

Evidence was sufficient to support findings of Alcoholic Beverage Control Board, in revoking petitioner's class "C" retailer's license, that petitioner allowed licensed premises to be used for an unlawful purpose by permitting consumption of alcoholic beverages at a time when consumption was prohibited, failed to frame its license under glass and post same in a conspicuous place on premises,



and failed to superintend in person, or through an approved manager, business for which license was issued. *2447 Good Hope Road, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1972, 295 A. 2d 513).

Alcoholic Beverage Control Board is authorized to make finding that two liquor stores within 300 feet proximity are inappropriate for particular neighborhood, notwithstanding absence of any formal regulation promulgated by District Commissioners regarding necessary distances between liquor stores. *Pollack v. Simonson* (1965, 350 F. 2d 740, 121 U.S. App. D.C. 362).

#### Hearing

Alcoholic Beverage Control Act does not explicitly require hearing before denial of application for transfer of license. *Pollack v. Simonson* (1965, 350 F. 2d 740, 121 U.S. App. D.C. 362).

#### Injunction

Where this section provided that decision of Board of Commissioners of District of Columbia on questions of fact on appeal from Alcoholic Beverage Control Board should be final, but order revoking liquor license was upheld by a one to one vote, an injunction would be granted against enforcement of order which would terminate when appeal was reinstated, and after appeal was reinstated the license would stand suspended during time reasonably necessary for commissioners to reach a final decision. *Lambros v. Young* (1945, 145 F. 2d 341, 79 U.S. App. D.C. 247).

Under circumstances disclosed, including showing that net effect of board's failure to prescribe adequate rules and regulations had been to by-pass wishes of community, plaintiffs were entitled to preliminary injunction against operation of liquor store pending review of board's grant of application for transfer of liquor license. *Palisades Citizens Association Inc., et al. v. Weakly et al.* (1958, 166 F. Supp. 591, appeal dismissed in part, reversed in part on other grounds, 265 F. 2d 372, 105 U.S. App. D.C. 180).

#### Interim affirmance

The effect of a one to one vote of Board of Commissioners of District of Columbia upholding order of Alcoholic Beverage Control Board revoking liquor license is an interim affirmance of the Board which suspends the license until final decision of the commissioners. *Lambros v. Young* (1945, 145 F. 2d 341, 79 U.S. App. D.C. 247).

#### Mandamus

In action in the nature of a petition for writ of mandamus to require Alcoholic Beverage Control Board to issue a retailers' Class "C" license to petitioning restaurant, question before the court was whether action of the Board was based upon substantial evidence, and if it was, mandamus would not lie, whereas if it was not, next question was whether action of Board was arbitrary or capricious. *Clore Restaurant v. Payne* (D.C.D.C. 1947, 72 F. Supp. 677).

#### Mutually exclusive applicants

Where it was not suggested at separate hearings on applications to transfer liquor licenses that the two applications were mutually exclusive and no formal regulation required that liquor stores be situated more than 300 feet apart, denial of plaintiffs' application on sole ground that license of other applicant had been issued for location less than 300 feet from plaintiffs' proposed location was improper for failure of Alcoholic Beverage Control Board to give proper notice to plaintiffs that it considered applications mutually exclusive. *Pollack v. Simonson* (1965, 350 F. 2d 740, 121 U.S. App. D.C. 362).

Alcoholic Beverage Control Board may, in its discretion, hold formal comparative hearing, or follow some other procedure to inform itself in choosing between mutually exclusive applicants. *Id.*

#### Procedure for renewal of license

In application for renewal of liquor license, board properly followed procedure applicable to application for license in first instance, rather than that prescribed for revocation or suspension of license already issued. *Minkoff v. Payne et al.* (1954, 210 F. 2d 689, 93 U.S. App. D.C. 123).

#### Questions of fact

Under this section governing appeal to Board of Commissioners of District of Columbia from Alcoholic Beverage Control Board, provision that decision of commissioners on questions of fact should be final means that the Board of Commissioners must actually make a decision. *Lambros v. Young* (1945, 145 F. 2d 341, 79 U.S. App. D.C. 247).

A one to one vote of Board of Commissioners of District of Columbia upholding order of Alcoholic Beverage Control Board revoking liquor license did not constitute a "decision of fact" within this section providing that decision of commissioners on question of fact should be final. *Id.*

#### Renewal

Under regulation of Alcoholic Beverage Control Board that no license shall be issued to any person unless he is holder of a certificate of occupancy issued under authority of Zoning Act, where a temporary certificate of occupancy had been issued to license applicant under equity powers of United States District Court, not under authority of Zoning Act, issuance of temporary certificate of occupancy did not allow reissuance of retailer's class "C" liquor license for a restaurant and lounge on the property. *B. W. Boley v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1972, 292 A. 2d 807).

#### Review—Administrative

Decision of alcoholic beverage control board rejecting application for renewal of liquor license was not reviewable by commissioners of the District of Columbia. *Minkoff v. Payne et al.* (1954, 210 F. 2d 689, 93 U.S. App. D.C. 123).

#### Judicial

Notwithstanding claim of citizens association that the Alcoholic Beverage Control Board erred in not conditioning reissuance of a Class "C" liquor license to restaurant on restoration of valet parking service, findings of the Board that there were 20 parking spaces behind building which could be used by customers, that no complaints had ever been received with respect to adequacy of such facilities, and that there was not enough business to justify keeping an employee for purpose of parking customers' vehicles were supported by substantial evidence, and the Board's ultimate decision to reissue license to restaurant is within the scope of its statutory discretion. *Citizens Association of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1971, 280 A. 2d 309).

Since separate suspensions of liquor license for 21 days in the first case and 17 days in the second case were not strictly for separate acts constituting violations on separate days but for a continuous course of conduct, and investigation in both cases was completed 30 days before hearing in first case, the two cases should have been treated as one case and the licensee was entitled to review of suspension by commissioners on theory that license was suspended for period of more than 30 days. *James Bakalis & Nickie Bakalis, Inc. v. J. R. Simonson et al.* (1970, 434 F. 2d 515, 140 U.S. App. D.C. 241).

Under this section and sec. 1-1510, the findings of the Alcoholic Beverage Control Board of District of Columbia can be overturned by District of Columbia Court of Appeals upon review only if they are without substantial evidence to support them. *Sophia's Inc. v. Alcoholic Beverage Control Board* (D.C. App. 1970, 268 A. 2d 799).

Right of review in liquor license case was not restricted to owners of stores immediately adjacent to licensed premises nor to unsuccessful applicants, and property owners who had taken an active interest at hearing and had presented the "wishes of the neighborhood" were entitled to seek judicial review under District of Columbia Alcoholic Beverage Control Act. *Palisades Citizens Association Inc., et al. v. Weakly et al.* (D.C.D.C. 1958, 166 F. Supp. 591, appeal dismissed in part, reversed in part on other grounds 265 F. 2d 372, 105 U.S. App. D.C. 180).

Where the ruling of the majority of the Alcoholic Beverage Control Board denying application for a retailers' Class "C" license is based upon sound legal principles and upon substantial evidence, the federal court would not be justified in interfering, but if there is no substantial



evidence upon which to predicate a rejection, the action of the Board is subject to judicial review. *Glore Restaurant v. Payne* (D.C.D.C. 1947, 72 F. Supp. 677).

#### Suspension

While license of any person appealing from order of Board revoking license is suspended until final decision of Board of Commissioners, the commissioners have no right to cause suspension of license to continue indefinitely by arbitrarily refusing to decide issue of fact. *Lambros v. Young* (1945, 145 F. 2d 341, 79 U.S. App. D.C. 247).

#### § 25-107. Powers of Council—Rules and regulations—Licenses.

The District of Columbia Council is hereby authorized to prescribe such rules and regulations not inconsistent with this chapter as it may deem necessary to carry out the purposes thereof and to control and regulate the manufacture, sale, keeping for sale, offer for sale, solicitation of orders for sale, importation, exportation, and transportation of alcoholic beverages in the District of Columbia for the protection of the public health, comfort, safety, and morals, and the Council is further authorized to prescribe such rules and regulations not inconsistent with this chapter as it may deem necessary to properly and adequately control the consumption of alcoholic beverages on premises licensed under paragraph (1) of section 25-111, with specific authority to prescribe the hours during which alcoholic beverages may be consumed on such premises.

The District of Columbia Council shall have authority to make rules and regulations for the issuance, transfer, and revocation of licenses; to facilitate and insure the collection of taxes; to govern the operation of the business of licensees, with full power and authority to prescribe the terms and conditions under which alcoholic beverages may be sold by each class of licensees; to forbid the issuance of licenses for manufacture, sale, or storage of alcoholic beverages in such localities in, and such sections and portions of, the District of Columbia as the Council may deem proper in the public interest; to limit the number of licenses of each class to be issued in the District of Columbia and to limit the number of licenses of each class in any locality in, or sections or portions of, the District of Columbia as the Council may deem proper in the public interest; to forbid the issuance of licenses for businesses conducted on such premises as the Council, in the public interest, may deem inappropriate; to forbid the issuance of any class or classes of licenses for businesses established subsequent to January 24, 1934 near or around schools, colleges, universities, churches, or public institutions; to prescribe the hours during which alcoholic beverages may be sold; and to prohibit the sale of any or all alcoholic beverages on such days as the Council determines necessary in the public interest. Notwithstanding any other provisions of this chapter, the Commissioner shall not authorize the sale by any licensee, other than the holder of a retailer's license, class E, of any beverages on the day of the presidential election in the District of Columbia during the hours when the polls are open, and any such sales are hereby prohibited.

The powers and authorities expressly enumerated are to be construed as in addition to, and not

by way of limitation of, the general powers herein granted. Different regulations may be prescribed for the different classes of licenses, for the different classes of beverages, and for different localities in or sections or portions of the District of Columbia.

Any regulations promulgated hereunder shall become effective five days after being published in any daily newspaper of general circulation in the District of Columbia. Such regulations may be altered or amended from time to time as the Council may deem desirable. The Commissioner shall also have authority in any time of public emergency, without previous notice of advertisement, to prohibit the sale of any or all beverages during the period of such emergency. (Jan. 24, 1934, 48 Stat. 322, ch. 4, § 7; June 29, 1953, 67 Stat. 102, ch. 159, § 404(a); Oct. 4, 1961, 75 Stat. 820, Pub. L. 87-389, § 3; Aug. 2, 1968, Pub. L. 90-450, title IV, § 403, 82 Stat. 616; Sept. 22, 1970, Pub. L. 91-405, title II, § 204(f), 84 Stat. 853; Jan. 5, 1971, Pub. L. 91-650, title VII, § 706, 84 Stat. 1940.)

#### AMENDMENTS

1971—Section 706 of Act Jan. 5, 1971, Pub. L. 91-650, amended the second sentence in the second paragraph by striking out "any election" and inserting in lieu thereof "the presidential election".

1970—Section 204(f) of Act Sept. 22, 1970, Pub. L. 91-405, amended the second sentence in the second paragraph by striking out "the presidential election" and inserting in lieu thereof "any election".

1968—Section 403, Pub. L. 90-450, amended the first sentence of the second paragraph generally. The amendment transferred the authority to make rules and regulations to the District Council, eliminated the provisions relating to the sale of beverages on Sundays, and gave the Council the authority "to prohibit the sale of any or all alcoholic beverages on such days as the Council determines necessary in the public interest."

1961—Section 3, act Oct. 4, 1961, amended the second paragraph by inserting at the end of the first sentence the following new sentence: "Notwithstanding any other provision of this chapter, the Commissioners shall not authorize the sale by any licensee, other than the holder of a retailer's license, class E, of any beverages on the day of the presidential election in the District of Columbia during the hours when the polls are open, and any such sales are hereby prohibited."

1953—Act June 29, 1953, amended section by adding after the word "morals" in the first paragraph the provision authorizing the Commissioners to prescribe rules and regulations necessary to control consumption of alcoholic beverages on licensed premises.

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment of section by Pub. L. 91-405, effective Sept. 22, 1970, see section 206(b) of Pub. L. 91-405, set out as a note to sec. 1-1101.

#### SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91-650

See secs. 801-803 of act Jan. 5, 1971, Pub. L. 91-650, set out as a note under § 47-2501a.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(215) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of prescribing, making, altering, and amending rules and regulations under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.



## CROSS REFERENCES

District of Columbia Revenue Act of 1956, authority of D.C. Council to make rules and regulations under, see § 47-1595a.

Other provisions for rules and regulations under this chapter, see §§ 25-106, 25-111, 25-112, 25-115, 25-124, 25-138.

Penalties for violations of chapter or rules and regulations, see §§ 25-118, 25-132.

Rules and regulations generally, see § 1-226.

## NOTES TO DECISIONS

## Authority of Alcoholic Beverage Control Board

Alcoholic Beverage Control Board has authority to limit number of Class "C" licenses notwithstanding that the action might unintentionally and incidentally limit given area to existing licenses so long as Board exercises bona fide judgment. *Palace Restaurant, Inc. v. Alcoholic Beverage Control Board* (D.C. App. 1970, 271 A. 2d 561).

## Construction of regulations

Literal application of Alcoholic Beverage Control Board regulation precluding relicensing of any given premises for one year whenever an earlier application as to such premises has been denied would not comport with due process as to subsequent unrelated applicant, and petitioning citizens association that sought to prevent issuance of any Class C license could not rely on regulation to prevent relicensing of subject premises for one year as to any other qualified applicant. *Citizens Association of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1971, 279 A. 2d 514).

## Double jeopardy

Convictions for violations of this act and the Liquor Taxing Act of 1934, did not place defendant in double jeopardy, the evidence required in the two cases being different. *Sims v. Rives* (1936, 84 F. 2d 871, 66 App. D.C. 24, certiorari denied 56 S. Ct. 960, 298 U.S. 682, 80 L. Ed. 1402).

## Regulations, validity of

Section of the District of Columbia Code giving Commissioners authority to make regulations for issuance of liquor licenses and to forbid issuance of liquor licenses for businesses established subsequent to January 24, 1934, near or around schools, precluded promulgation of regulations forbidding liquor licenses to businesses established prior to January 24, 1934, because they are near schools, and prohibitory regulation was inapplicable to a restaurant business established in 1928. *H. S. Hensel et al. v. Alcoholic Beverage Control Board et al.* (1963, 321 F. 2d 754, 116 U.S. App. D.C. 141).

Regulation of Alcoholic Beverage Control Board prescribing the terms upon which credit may be extended to liquor retailer by wholesalers and manufacturers was valid. *Press Liquors, Inc. v. F. E. Weakley, Chairman etc.* (1963, 317 F. 2d 135, 115 U.S. App. D.C. 71).

Under District of Columbia statute imposing a tax on all beer sold and prescribing monthly reports of beer "sold by him during the preceding calendar month", regulation of the Commissioners taxing beer in warehouse and before it is sold were not authorized. *American Sales Co. v. District of Columbia* (1961, 292 F. 2d 751, 110 U.S. App. D.C. 258).

## § 25-108. Alcohol for nonbeverage purposes not affected—Penalty for unlawful sales.

No provision of this chapter shall apply to alcohol intended for use in the manufacture and sale of any of the following when they are unfit for beverage purposes, namely:

(a) Denatured alcohol produced and used pursuant to Acts of Congress and regulations promulgated thereunder;

(b) Patent, proprietary, medicinal, pharmaceutical, antiseptic, and toilet preparations;

(c) Flavoring extracts, syrups, and food products;

(d) Scientific, chemical, mechanical, and industrial products.

Any person who shall knowingly sell any of the products enumerated in paragraphs (a), (b), (c), or (d) for beverage purposes, or who shall sell any of the same under circumstances from which he might reasonably deduce the intention of the purchaser to use them for such purposes, shall be subject to the penalties provided for in section 25-132. (Jan. 24, 1934, 48 Stat. 323, ch. 4, § 8.)

## CROSS REFERENCES

Distilled spirits, wines, and beer, see 26 U.S.C. § 5001 et seq.

Exemption from taxation, see § 25-124.

## § 25-109. Sale without license prohibited—Exceptions.

(a) No individual, partnership, association, or corporation shall, within the District of Columbia, manufacture for sale, keep for sale, or sell any alcoholic beverage without having first obtained a license under this chapter for such manufacture or sale, except as provided in section 25-131.

It shall be unlawful for any person operating any premises where food, nonalcoholic beverages, or entertainment are sold or provided for compensation, and where facilities are especially provided and service is rendered for the consumption of alcoholic beverages, who does not possess a license under this chapter, to permit the consumption of such alcoholic beverages on such premises.

(b) No individual shall, within the District of Columbia, offer for sale or solicit any order for the sale of any alcoholic beverage, irrespective of whether such sale is to be made within or without the District of Columbia, unless such individual has first obtained a license of the character described in section 25-111 (k).

Nothing in this subsection shall apply to any offer for sale or solicitation made upon the premises designated in the license of the vendor.

No individual shall within the District of Columbia offer any beverage for sale to, or solicit orders for the sale of any beverage from, any person not a licensee under this chapter, irrespective of whether such sale is to be made within or without the District of Columbia.

(c) A physician may administer alcoholic beverages to a bona fide patient in cases of actual need when, in the judgment of the physician, the use of alcoholic beverages is necessary.

(d) A dentist who deems it necessary that a bona fide patient being then under treatment by him is in actual need of and should be supplied with alcoholic beverages as a stimulant or restorative, may administer to the patient alcoholic beverages.

(e) A veterinarian who deems it necessary may, in the course of his practice, administer or cause to be administered alcoholic beverages to a dumb animal.

(f) A person in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, may administer or cause to be administered alcoholic beverages to any bona fide patient or inmate of the institution who is in need of the same, either by way of external application or otherwise for emergency medicinal purposes, and may charge for the alcoholic



beverages so administered. (Jan. 24, 1934, 48 Stat. 323, ch. 4, § 9; June 29, 1953, 67 Stat. 102, ch. 159, § 404(b).)

#### CODIFICATION

As originally enacted, the exception set forth included section 32 of act Jan. 24, 1934, which dealt with manufacturer's permits under the National Prohibition Act, and has been omitted as obsolete.

#### AMENDMENT

1953—Subsection (a) amended by act June 29, 1953, which added paragraph making unlawful the consumption of alcoholic beverages on unlicensed premises as therein described.

#### EFFECTIVE DATE OF 1953 AMENDMENT

Section 404(k) of act of June 29, 1953, provided that "Subsections (b) and (h) of this section [amending this section and section 25-128] shall take effect sixty days after the enactment of the Act [June 29, 1953]."

#### CROSS REFERENCE

Presence or employment in illegal establishments, see § 22-1515.

#### NOTES TO DECISIONS

##### Affidavits of juror

Affidavit in present case does not present facts justifying an exception to the rule that jurors in the federal courts will not be heard for the purpose of impeaching the verdict returned where the facts sought to be shown are such that they essentially inhere in the verdict and only an extreme case will bring about an exception. *Edwards v. District of Columbia* (D. C. Mun. App. 1949, 68 A. 2d 286).

##### Argument to jury

No prejudicial error was committed by the prosecuting attorney, who, in his argument to the jury, explained the failure to introduce the marked money by saying "it had not been introduced because it could not be determined which was used for the purchase of the whiskey and which was used for other purposes" and assuming that "other purposes" referred to the purchase of lottery tickets, there was no prejudicial error since there was no testimony in respect of claim that defendants were anywhere connected with the sale of lottery tickets. *Edwards v. District of Columbia* (D. C. Mun. App. 1949, 68 A. 2d 286).

##### Arrest, search and seizure

Where police officer purchased whiskey from certain party with marked money in attempt to locate his source of supply, and as purchase was being completed, another officer appeared with warrant for party's arrest, arrested party stated he had purchased the whisky from defendant, and officers searched defendant, found part of the marked money on him, and arrested him, officers had no right to search defendant, and evidence found in such search should have been excluded in prosecution for keeping for sale and selling alcohol beverage without license to do so. *Smallwood v. District of Columbia* (D.C. Mun. App. 1955, 116 A. 2d 599).

Right to search person incident to lawful arrest is beyond question, but search of body is illegal when purpose of search is to discover grounds as yet unknown for arrest or accusation. *Id.*

Where defendants were charged with violating statute in the sale of alcoholic beverages, the intervention of Sunday did not prevent a valid execution of the search warrant but the relevancy of the validity of the search warrant was not apparent where under the ruling of the trial court, no evidence seized under the warrant was used in evidence against defendant. *Edwards v. District of Columbia* (D.C. Mun. App. 1949, 68 A. 2d 286).

##### Consecutive sentences

Imposition of consecutive 120-day sentences for the keeping of whiskey for sale and selling of whiskey without a license was improper as constituting double punishment for a single offense where defendant had only a single bottle of whiskey which he illegally sold at time of his arrest and there was no proof of a keeping of the whiskey for sale independent of the sale itself. *W. Hicks v. District of Columbia* (D.C. App. 1967, 234 A. 2d 801).

##### Cross-examination

In prosecution for keeping and selling alcoholic beverages without license, defendant, whose counsel elicited police detective's testimony that he did not ask defendant for written statement because he knew from defendant's record that she had been around and would not have given him such a statement in answer to question on cross-examination as to whether reason why witness did not ask for statement was because defendant denied her guilt at all times, was in no position to complain of such testimony as to defendant's record on appeal from judgment on verdict of conviction. *Young v. District of Columbia* (D. C. Mun. App. 1954, 102 A. 2d 754).

##### Evidence—Admissibility

Where sole issue determined by convictions of corporate tenant and its officers was sale of liquor on leased premises in violation of statute, judgments of conviction were admissible as prima facie evidence of unlawful use of premises by tenant in subsequent civil suit by tenant. *Stagecrafters' Club v. District of Columbia Division of American Legion* (D.C.D.C. 1953, 111 F. Supp. 127).

In prosecution for keeping for sale and selling alcoholic beverages without a license, Municipal Court properly permitted police officer, who participated in arrest of defendant, to testify that, when defendant was arrested, defendant complained that the police had arrested him before for selling whiskey, since the statement by the defendant to the police officer was part of the res gestae and admissible though it tended to show the commission of an independent crime. *Jackson v. District of Columbia* (D.C. Mun. App. 1956, 125 A. 2d 50).

Where police officer under assumed name joined non-profit social club operating "after-hours bottle club" which would not have given him membership card had they known he was police officer and purpose of his mission, but membership was available to anyone who walked up to door and paid membership fee, and officer did not obtain membership card surreptitiously, there was no fraudulent entry or entry by false representation which would warrant suppression of evidence in prosecution for keeping for sale and selling alcoholic beverages without license. *Stagecrafters' Club v. District of Columbia* (D. C. Mun. App. 1952, 89 A. 2d 876).

##### — Sufficiency

Evidence sustained conviction for unlicensed keeping for sale and selling of alcoholic beverages. *R. L. Baer et al. v. District of Columbia* (D.C. Mun. App. 1962, 182 A. 2d 839).

Evidence was sufficient to sustain convictions of keeping for sale and selling alcoholic beverages without a license. *G. Williams & S. Stokes v. District of Columbia* (D.C. Mun. App. 1961, 167 A. 2d 893).

##### — Suppression

Where counsel for defendant charged with keeping and selling alcoholic beverages without a license objected to admission of bottles of liquor and marked money on ground search warrant had not been produced in evidence, without moving to suppress during more than two weeks between arraignment and trial, admission of testimony that raiding officers who came upon premises after the first group of officers had made their purchases were there pursuant to a search warrant, was not error. *Hoover v. District of Columbia* (D. C. Mun. App. 1945, 42 A. 2d 730).

##### Forfeiture of lease

Landlord's acceptance of rent after tenant's conviction for selling liquor on leased premises without license did not constitute waiver of landlord's right, under lease, to forfeit lease for breach of tenant's covenant that premises would not be used for any unlawful purpose in view of facts that landlord had specifically reserved its right to declare a forfeiture if conviction were affirmed on appeal and that no rent was accepted after affirmation of conviction. *Stagecrafters' Club, Inc. v. District of Columbia Division of American Legion* (D.C.D.C. 1953, 110 F. Supp. 481, supplemented 111 F. Supp. 127).

Evidence sustained conviction for selling and keeping for sale alcoholic beverages without a license. *Turner v. District of Columbia* (D.C. Mun. App. 1957, 132 A. 2d 149).



In prosecution for unlicensed sale of alcoholic beverages, evidence established sufficient proof of continuous possession by the Government of the bottled evidence by the Bureau of Internal Revenue so as to justify denial of directed verdict of acquittal though there was no testimony by receiving clerk as to his possession and disposition of the bottles. *Kelly v. District of Columbia* (D. C. Mun. App. 1954, 102 A. 2d 308).

In prosecution for keeping for sale and selling alcoholic beverages without license, evidence was sufficient to submit case to jury. *Stagecrafters' Club v. District of Columbia* (D. C. Mun. App. 1952, 89 A. 2d 876).

#### Instructions

In prosecution for keeping and selling alcoholic beverages without license, instructions to jury that seller's transfer of goods to buyer through means of another person in seller's presence is a sale, in answer to jury's inquiry as to whether accused must have physically delivered merchandise and physically received money therefor from consumer to be considered the seller, was not erroneous as peremptorily directing jury to find defendant guilty nor as misleading or inaccurate. *Young v. District of Columbia* (D. C. Mun. App. 1954, 102 A. 2d 754).

#### Joint trial

In prosecution for violations of the Alcoholic Beverage Control Law, defendants were properly charged and tried together since it would be assumed that average jury would not be so bereft of intelligence and discrimination that it would be unable to properly decide if any of the defendants had violated law. *Simato et al. v. District of Columbia* (D. C. Mun. App. 1954, 108 A. 2d 376).

#### Motion to quash information

On hearing on motion to quash information charging keeping for sale and selling alcoholic beverages without license, testimony of officers that they bought drinks of whiskey at club was sufficient to warrant denial of motion, apart from allegedly improperly obtained evidence under warrant. *Stagecrafters' Club v. District of Columbia* (D. C. Mun. App. 1952, 89 A. 2d 876).

#### Place of committing offense

Failure of government in prosecution for keeping and selling alcoholic beverages without a license, to offer specific proof offenses were committed in District of Columbia, but merely giving location of house by its street number, was not ground for reversal. *Hoover v. District of Columbia* (D. C. Mun. App. 1945, 42 A. 2d 730).

#### Separate offenses

In prosecution for keeping and selling alcoholic beverages without a license, the admission of evidence that defendant, who had been identified as person who paid rent for house and one by whose bedside whiskey and marked money were found, had come from an adjoining bedroom into room where liquor was being sold and consumed, and joined in a crap game, was not erroneous as allowing proof of separate offense. *Hoover v. District of Columbia* (D. C. Mun. App. 1945, 42 A. 2d 730).

#### Several offenses committed by single act

Usual test to determine if one or two offenses have been committed by a single act is whether each offense requires proof of an additional fact which the other does not. *W. Hicks v. District of Columbia* (D.C. App. 1967, 234 A. 2d 801).

#### Witnesses, competency of

On hearing on motion to quash information charging keeping for sale and selling alcoholic beverages without license, fact that officers who testified that they bought drinks at club were unable to recall from unprompted memory, and that parts of testimony gave conclusions of law, would not justify calling officers legally incompetent. *Stagecrafters' Club v. District of Columbia* (D. C. Mun. App. 1952, 89 A. 2d 876).

#### § 25-110. Licenses—Applications for—To whom granted—Records.

The Board is authorized to issue licenses to individuals, partnerships, or corporations, but not to unincorporated associations, on application duly

made therefor, for the manufacture, sale, offer for sale, consumption on premises of clubs where food, nonalcoholic beverages, or entertainment are sold or provided for compensation, or solicitation of orders for sale of alcoholic beverages within the District of Columbia. The Board shall keep a full record of all applications for licenses, and of all recommendations for and remonstrances against the granting of licenses and of the action taken thereon. (Jan. 24, 1934, 48 Stat. 324, ch. 4, § 10; June 29, 1953, 67 Stat. 103, ch. 159, § 404(c).)

#### AMENDMENT

1953—Act June 29, 1953, amended section to empower the Board to issue licenses to permit the consumption of alcoholic beverages on premises of clubs where food, non-alcoholic beverages or entertainment are sold or provided for compensation.

#### TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

#### NOTES TO DECISIONS

##### Mandamus

Rejection by the Alcoholic Beverage Control Board, of application for a retailers' Class "C" license on ground that area was adequately serviced, was arbitrary and capricious, in absence of any evidence on the point. *Clore Restaurant v. Payne* (D.C.D.C. 1947, 72 F. Supp. 677).

In action in the nature of a petition for writ of mandamus to require Alcoholic Beverage Control Board to issue a retailers' Class "C" license to petitioning restaurant, question before the court was whether action of the Board was based upon substantial evidence, and if it was, mandamus would not lie, whereas if it was not, next question was whether action of Board was arbitrary or capricious. *Id.*

#### § 25-111. License classifications—Fees.

Licenses issued under authority of this chapter shall be of twelve kinds:

(a) *Manufacturer's license, class A.*—To operate a rectifying plant, a distillery, or a winery. Such a license shall authorize the holder thereof to operate a rectifying plant for the manufacture of the products of rectification by purifying or combining alcohol, spirits, wine, or beer; a distillery for the manufacture of alcohol or spirits by distillation or redistillation; or a winery for the manufacture of wine; at the place therein described, but such license shall not authorize more than one of said activities, namely, that of a rectifying plant, a distillery, or a winery, and a separate license shall be required for each such plant. Such a license shall also authorize the sale from the licensed place of the products manufactured under such license by the licensee to another license holder under this chapter for resale or to a dealer licensed under the laws of any State or Territory of the United States for resale. It shall not authorize the sale of beverages to any other person except as may be provided by regulations promulgated by the District of Columbia Council under this chapter. The annual fee for such license for a rectifying plant shall be \$5,775; for a distillery shall be \$5,775; and for a winery shall be \$825: *Provided, however*, That if a manufacturer shall operate a distillery only for the manufacture of alcohol and more than 50 per centum of such alcohol is sold for nonbeverage purposes, the annual fee shall be \$1,650. If said manufacturer holding a license issued at the rate last men-



tioned shall sell during any license period 50 per centum or more of said alcohol for beverage purposes, he shall pay to the Collector of Taxes the difference between the license fee paid and the license fee for a distiller of spirits.

(b) *Manufacturer's license, class B.*—To operate a brewery. Such a license shall authorize the holder thereof to operate a brewery for the manufacture of beer at the place therein described. It shall also authorize the sale from the licensed place of the beer manufactured under such license to another license holder under this chapter for resale or to a dealer licensed under the laws of any State or Territory of the United States for resale, or to a consumer. Said manufacturer may sell beer to the consumer only in barrels, kegs, and sealed bottles and said barrels, kegs, and bottles shall not be opened after sale, nor the contents consumed, on the premises where sold. The annual fee for such license shall be \$4,125.

(c) *Wholesaler's license, class A.*—Such a license shall authorize the holder thereof to sell beverages from the place therein described to another license holder under this chapter for resale or to a dealer licensed under the laws of any State or Territory of the United States for resale, and, in addition, in the case of beer or light wines, to a consumer, said beverages to be sold only in barrels, kegs, sealed bottles, and other closed containers, which said barrels, kegs, sealed bottles, and other closed containers shall not be opened after sale, nor the contents consumed, on the premises where sold. It shall not authorize the sale of beverages to any other person except as may be provided by regulations promulgated by the District of Columbia Council under this chapter.

No holder of such a license except a wholesale druggist or a wholesale grocer shall be engaged in any business on the premises for which the license is issued other than the sale of alcoholic and non-alcoholic beverages.

The annual fee for such license shall be \$2,475.

(d) *Wholesaler's license, class B.*—Such a license shall authorize the holder thereof to sell beer and light wines from the place therein described to another license holder for resale or to a dealer licensed under the laws of any State or Territory of the United States for resale, or to a consumer in barrels, kegs, sealed bottles, and other closed containers, which said barrels, kegs, sealed bottles, and other closed containers shall not be opened after sale nor the contents consumed on the premises where sold.

The annual fee for such license shall be \$1,250.

(e) *Retailer's license, class A.*—Such a license shall authorize the holder thereof to sell beverages from the place therein described and to deliver the same in the barrel, keg, sealed bottle, or other closed container in which the same was received by the licensee, which said barrel, keg, sealed bottle, or other closed container shall not be opened nor the contents consumed on the premises where sold. Such license shall not authorize the licensee to sell to other licensees for resale.

The annual fee for such license shall be \$1,250.

(f) *Retailer's license, class B.*—Such a license shall authorize the holder thereof to sell beer and

light wines from the place therein described and to deliver the same in the barrel, keg, sealed bottle, or other closed container in which the same was received by the licensee, which said barrel, keg, sealed bottle, or other closed container shall not be opened nor the contents consumed on the premises where sold. Such license shall not authorize the licensee to sell to other licensees for resale.

The annual fee for such license shall be \$165.

(g) *Retailer's license, class C.*—Such a license shall be issued only for a bona fide restaurant, hotel, or club, or a passenger-carrying marine vessel serving meals, or a club car or a dining car on a railroad. It shall authorize the holder thereof to keep for sale and to sell spirits, wine, and beer at the place therein described for consumption only in said place. Except in the case of clubs, hotels, and passenger-carrying marine vessels serving meals in interstate commerce of one hundred miles or more, no beverage shall be sold or served to a customer in any closed container. In the case of passenger-carrying marine vessels and club cars or dining cars on a railroad, said spirits and wine, except light wines, shall be sold or served only to persons seated at public tables, and beer and light wine shall be sold and served only to persons seated at public tables or at bona fide lunch counters, except that spirits, wine, and beer may be sold or served to assemblages of more than six individuals in a private room when such room has been previously approved by the Board. In the case of restaurants and hotels, alcoholic beverages may be sold or served only to (1) persons seated at counters or tables, (2) persons in an enclosed or screened-off area set aside for the accommodation of persons waiting to be seated at tables, or (3) assemblages of more than six persons in a private room if such room has been previously approved by the Board. A restaurant operating on the premises of a theater, symphony hall, opera house, or other facility which has as its principal purpose the presentation of live drama, music, opera, or other performing arts, may sell and serve alcoholic beverages to seated or standing persons at locations within the facility approved by the Board. In the case of hotels, alcoholic beverages may also be sold and served in the private room of a registered guest. In the case of clubs, alcoholic beverages may be sold and served in any room or area available only to bona fide members of such club or their bona fide guests, or both. No license shall be issued to a club which has not been established for at least three months immediately prior to the making of the application for such license. All alcoholic beverages offered for sale or sold by the holder of such licenses may be displayed and dispensed in full sight of the purchaser.

The fee for such a license shall be for a restaurant, \$825 per annum; for a hotel, under one hundred rooms, \$825 per annum; for a hotel of one hundred or more rooms, \$1,650 per annum; for a club, \$425 per annum; for a marine vessel serving meals in interstate commerce of one hundred miles or more and for each railroad dining car or club car, \$3 per month or \$20 per annum: *Provided*, That such a license may be issued to any company engaged in interstate commerce covering all dining, club, and



lounge cars operated by such company on railroads within the District of Columbia upon the payment of an annual fee of \$100; for all other passenger-carrying marine vessels serving meals, \$75 per month or \$825 per annum.

(h) *Retailer's license, class D.*—Such a license shall be issued only for bona fide restaurant, tavern, hotel, or club, or a passenger-carrying marine vessel serving meals, light lunches, or sandwiches, or a club car or a dining car on a railroad. Such a license shall authorize the holder thereof to sell beer and light wines at the place therein described for consumption only in said place. Except in the case of clubs and hotels, no beer or light wines shall be sold or served to a customer in any closed container. In the case of restaurants, taverns, and passenger-carrying marine vessels and club cars or dining cars on a railroad, said beer and light wines shall be sold or served only to persons seated at public tables or at bona fide lunch counters, except that beer and light wines may be sold or served to assemblages of more than six individuals in a private room when such room has been previously approved by the Board. In the case of hotels, beer and light wines may be sold and served only in the private room of a registered guest or to persons seated at public tables or at bona fide lunch counters or to assemblages of more than six individuals in a private room when such room has been previously approved by the Board. And in the case of clubs, beer and light wines may be sold and served in the private room of a member, or guest of a member, or to persons seated at tables. No license shall be issued to a club which has not been established for at least three months immediately prior to the making of the application for such license.

The annual fee for such a license shall be \$330 except that in the case of a marine vessel the fee shall be \$30 per month or \$330 per annum, and in the case of each railroad dining car or club car \$1.50 per month or \$15 per annum: *Provided*, That such a license may be issued to any company engaged in interstate commerce covering all dining, club, and lounge cars operated by such company on railroads within the District of Columbia upon the payment of an annual fee of \$50.

(i) *Retailer's license, class E.*—Such a license shall authorize a person entitled to retail, compound, and dispense medicines and poisons, to sell from the place therein described, beverages in sealed packages, not to exceed one quart each, for medical purposes, and only upon prescription of a duly-licensed practicing physician for liquors as defined by the United States Pharmacopoeia. Such package shall not be opened after sale, nor its contents consumed, on the premises where sold. Such prescription, when filled, shall be canceled by writing across its face the word "Canceled" together with the date on which it is presented and filled, and such prescriptions shall be numbered consecutively as filled and kept on file in consecutive order. No such prescription shall be refilled. The annual fee for such license shall be \$40.

(j) *Retailer's license, class F.*—Such license shall authorize the holder thereof temporarily to sell beer and light wines on the premises therein described for consumption on the premises where sold. Such per-

mits may be issued for a banquet, picnic, bazaar, fair, or similar public or private gathering, where food is served for consumption on the premises. No beer or light wines shall be sold or served to a customer in any unopened container. The issuance of such a permit shall be solely in the discretion of the Board. The fee for each such license shall be \$7.50 per day.

(k) *Solicitor's licenses.*—Such a license shall authorize the licensee to offer for sale to or solicit orders from licensees for the sale of any beverage on behalf of the vendor whose name appears upon such license and whom the solicitor represents. The name of only one vendor shall appear upon the license but if solicitor represents more than one vendor a license may be issued such solicitor for each vendor such solicitor represents.

The annual fee for such license shall be \$100.

(l) *Consumption License for a Club.*—Such a license shall be issued only for a club. The word "club" within the meaning of this paragraph is a corporation for the promotion of some common object (not including corporations organized or conducted for any commercial or business purpose, or for money profit), owning, hiring, or leasing a building or space in a building of such extent and character as in the judgment of the Board may be suitable and adequate for the reasonable and comfortable use and accommodations of its members and their guests; and the affairs and management of such corporation are conducted by a board of directors, executive committee, or similar body chosen by the members at least once each calendar year, and no officer, agent, or employee of the club is paid, directly or indirectly, or receives in the form of salary or other compensation, any profit from the conduct and operation of the club beyond the amount of such salary as may be fixed and voted by the members or by its directors or other governing body. No license shall be issued to a club which has not been established for at least three months immediately prior to the making of the application for such license. Such a license shall authorize the holder thereof to permit consumption of alcoholic beverages on such parts of the licensed premises as may be approved by the Board. The annual fee for such a license shall be \$100.

Nothing in this chapter shall be construed as repealing any portion of chapters 21 and 23 of title 47. (Jan. 24, 1934, 48 Stat. 324, ch. 4, § 11; Apr. 30, 1934, 48 Stat. 654, ch. 181, § 1; June 18, 1934, 48 Stat. 997, ch. 588; July 2, 1935, 49 Stat. 444, ch. 359; Aug. 27, 1935, 49 Stat. 898, 899, ch. 756, § 3-7; June 15, 1938, 52 Stat. 691, ch. 396, § 1, 2; May 27, 1949, 63 Stat. 133, ch. 146, title V, § 501; June 29, 1953, 67 Stat. 103, ch. 159, § 404(d); May 31, 1962, 76 Stat. 89, Pub. L. 87-470, § 1; Dec. 8, 1970, Pub. L. 91-535, § 2, 84 Stat. 1393.)

#### CODIFICATION

In subsec. (a), reference to the District of Columbia Council was substituted for "Commissioners" on authority of § 25-107 of this chapter and § 402(215) of Reorg. Plan No. 3 of 1967, under which the regulations are prescribed by the Council.

In the last paragraph, reference to "chapters 21 and 23 of title 47" was substituted for "section 7 of the District of Columbia Appropriation Act for the fiscal year ending



June 30, 1903, approved July 1, 1902, as amended (32 Stat. 622, ch. 1352, § 7)".

#### AMENDMENTS

1970—Section 2 of act Dec. 8, 1970, Pub. L. 91-535, amended the fifth, sixth, seventh, and eighth sentences of subsec. (g) generally.

1962—Act May 31, 1962, amended subsection (g) by striking out the words "restaurants and" in the fourth sentence and adding thereto the matter above set out in the fifth sentence.

1953—Introductory sentence amended by act June 29, 1953, which substituted "twelve" for "eleven".

Subsec. (i) added by Act June 29, 1953.

1949—Subsec. (a) amended by act May 27, 1949, § 501(a), which increased the annual license fee for rectifying plant from \$3,500 to \$5,775, distillery from \$3,500 to \$5,775, winery from \$500 to \$825, and distillery for manufacture of alcohol more than fifty per centum of which is sold for nonbeverage purposes from \$1,000 to \$1,650.

Subsec. (b) amended by act May 27, 1949, § 501(b), which increased the annual license fee for a brewery from \$2,500 to \$4,125.

Subsec. (c) amended by act May 27, 1949, § 501(c), which increased the annual license fee for wholesaler's license, class A, from \$1,500 to \$2,475.

Subsec. (d) amended by act May 27, 1949, § 501(d), which increased the annual license fee for wholesaler's license, class B, from \$750 to \$1,250.

Subsec. (e) amended by act May 27, 1949, § 501(e), which increased the annual license fee for retailer's license, class A, from \$750 to \$1,250.

Subsec. (f) amended by act May 27, 1949, § 501(f), which increased the annual license fee for retailer's license, class B, from \$100 to \$165.

Subsec. (g) amended by act May 27, 1949, § 501(g), which increased the annual license fee for restaurant from \$500 to \$825, hotel with less than 100 rooms from \$500 to \$825, hotel with 100 or more rooms from \$1,000 to \$1,650, and club from \$250 to \$425, the monthly and annual license fee for certain marine vessels, railroad dining cars or club cars from \$2 to \$3 per month and \$10 to \$20 per annum, and the annual license fee for company in interstate commerce covering cars operated on railroads within the District of Columbia from \$60 to \$100 and added "for all other passenger-carrying marine vessels serving meals, \$75 per month or \$825 per annum" following the proviso in the second par.

Subsec. (h) amended by act May 27, 1949, § 501(h), which increased the annual license fee for retailer's license, class D, from \$200 to \$330, marine vessel from \$20 per month or \$200 per annum to \$30 per month or \$330 per annum, railroad dining car or club car from \$1 per month or \$10 per annum to \$1.50 per month or \$15 per annum and the annual license fee for company in interstate commerce covering cars operated on railroads within the District of Columbia from \$30 to \$50.

Subsec. (i) amended by act May 27, 1949, § 501(i), which increased the annual license fee for retailer's license, class E, from \$25 to \$40.

Subsec. (j) amended by act May 27, 1949, § 501(j), which increased the annual license fee for retailer's license, class F, from \$5 to \$7.50.

Subsec. (k) amended by act May 27, 1949, § 501(k), which added at the end of the first par. "on behalf of the vendor whose name appears upon such license and whom the solicitor represents. The name of only one vendor shall appear upon the license but if a solicitor represents more than one vendor a license may be issued such solicitor for each vendor such solicitor represents" and deleted former second par. which read: "A solicitor's license shall set forth the name of the vendor whom the solicitor represents and such solicitor shall not represent any vendor whose name does not appear upon such license."

1938—Subsec. (g) amended by act June 15, 1938, § 1, which decreased the annual license fee for certain marine vessels, railroad dining cars or club cars from \$20 to \$10 and added the proviso in the second par.

Subsec. (h) amended by act June 15, 1938, § 2, which added the proviso in the second par.

1935—Subsec. (a) amended by act Aug. 27, 1935, § 3, which inserted "under this chapter" following "license holder" and substituted "dealer licensed under the laws

of any State or Territory of the United States" for "dealer outside of the District of Columbia."

Subsec. (b) amended by act Aug. 27, 1935, § 4, which inserted "under this chapter" following "license holder" and substituted "dealer licensed under the laws of any State or Territory of the United States" for "dealer outside of the District of Columbia."

Subsec. (c) amended by act Aug. 27, 1935, § 5, which inserted "under this chapter" following "license holder", substituted "dealer licensed under the laws of any State or Territory of the United States" for "dealer outside of the District of Columbia" and prohibited the sale of beverages to certain other persons except as may be provided by regulations promulgated by the Commissioners under this chapter.

Subsec. (c) amended by act Aug. 27, 1935, § 6, which inserted "under this chapter" following "license holder" and substituted "dealer licensed under the laws of any State or Territory of the United States" for "dealer outside of the District of Columbia."

Subsec. (g) amended by act July 2, 1935, which added to the first paragraph the sentence "All alcoholic beverages offered for sale or sold by the holder of such licenses may be displayed and dispensed in full sight of the purchaser."

Subsec. (h) amended by acts Aug. 27, 1935, § 7 and July 2, 1935. Act Aug. 27, 1935, inserted "and light wines" in the expressions "In the case of restaurants, taverns, and passenger-carrying marine vessels and club cars or dining cars on a railroad, said beer and light wines" and "In the case of hotels, beer and light wines" and failed to repeat at the end of the first paragraph the sentence "All alcoholic beverages offered for sale or sold by the holder of such licenses may be displayed and dispensed in full sight of the purchaser." Act July 2, 1935, had previously added such sentence to the first paragraph.

1934—Subsec. (c) amended by act Apr. 30, 1934, which added at the end of the first par. the sentence reading: "It shall not authorize the sale of beverages to any other person except as may be provided by regulations promulgated by the Commissioners under this chapter."

Subsec. (g) amended by act June 18, 1934, which substituted "Except in the case of clubs, hotels, and passenger-carrying marine vessels serving meals in interstate commerce of one hundred miles or more" for "Except in the case of clubs and hotels" in the first par. and "for a marine vessel serving meals in interstate commerce of one hundred miles or more and for each railroad dining car or club car, \$2 per month or \$20 per annum; for all other passenger-carrying marine vessels serving meals, \$50 per month or \$500 per annum" for "for a marine vessel serving meals, \$50 per month or \$500 per annum; and for each railroad dining car or club car, \$2 per month or \$20 per annum" in the second par.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Section 2 of act May 31, 1962, made clause (2) in the fifth sentence of subsection (g), effective "on the thirtieth day after the date of enactment."

#### EFFECTIVE DATE OF 1949 AMENDMENT

Section 509 of act May 27, 1949, provided that: "The provisions of this title [amendment of sections 25-111, 25-111a, 25-117, 25-124, and 25-138 and notes under sections 25-111 and 25-124] shall become effective on the first day of the first month succeeding the sixtieth day after the approval of this Act [May 27, 1949]."

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(216) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of promulgating regulations under subsection. (c), to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other non-regulatory functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under section 25-104.



The Office of the Collector of Taxes was abolished and the functions thereof transferred, see note under § 47-301.

#### SOLICITOR'S LICENSE

Section 502 of act May 27, 1949, provided that: "Notwithstanding the provisions of this Act [May 27, 1949], where prior to the effective date of this Act a solicitor's license has been issued which sets forth the name of more than one vendor the solicitor may continue to offer for sale or to solicit orders from licensees for the sale of any beverage on behalf of any vendor named in such license until the expiration of such license."

#### CROSS REFERENCES

No refund of fees when license revoked, see § 25-118.  
Refund of fees under Beverage License Act, see § 25-131.  
Refund of fees when license refused, see § 47-1017.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 25-107, 25-109, 25-111a, 25-115, 25-121, 25-128.

#### NOTES TO DECISIONS

##### Remand

Where statement of chairman of Alcoholic Beverage Control Board indicated that the Board, or some of its members, obtained and considered, and may have relied upon, information from staff investigative reports not made a matter of record in proceeding that culminated in granting of retail class C liquor license, case would be remanded to the Board for further proceedings in which it would be required to enter into the record all information in reports that was relevant and material to statutory criteria for issuance or denial of license and that would be relied upon in any degree by the Board. *Citizens Association of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1972, 288 A. 2d 666).

##### Standing

Citizens organization has standing to contest issuance of liquor license and could properly contest Alcoholic Beverage Control Board's actions in matter of meeting its statutory obligations procedurally and substantively, notwithstanding that the association's opposition to license is based fundamentally on its position that area of city is already saturated with establishments having liquor licenses, with attendant problems flowing from that condition. *Citizens Association of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1972, 288 A. 2d 666).

The question of an association's standing to obtain judicial review of a claim that Alcoholic Beverage Control Board improperly reissued retail liquor license depended primarily upon existence of logical and adequately direct nexus between association's interest and adverse action of opposing party or parties. *The Citizens Association of Georgetown v. J. E. Simonson et al.* (1968, 403 F. 2d 175, 131 U.S. App. D.C. 152).

In directing Alcoholic Beverage Control Board to consider wishes of persons residing or owning property in neighborhood in issuing licenses, Congress recognized that operation of liquor establishment may trouble its neighbors. *Id.*

Residents and owners of property within neighborhood of licensed establishment have required nexus to seek judicial review of reissuance of license. *Id.*

An association which was the authorized spokesman organized to promote interest of its individual members, many of whom resided or owned property within neighborhood of licensed liquor establishment, had standing to seek judicial review of reissuance of license. *Id.*

#### § 25-111a. Appropriation of portion of license fees for rehabilitation of alcoholics.

Six per centum of the annual fees for licenses for the manufacture or sale of alcoholic beverages, except for retailer's license, class E, imposed by section 25-111, is hereby permanently appropriated to carry out the purposes of chapter 5 of Title 24. (Aug. 4, 1947, 61 Stat. 746, ch. 472, § 16, formerly § 14; May 27,

1949, 63 Stat. 135, ch. 146, title V, § 504; Aug. 3, 1968, Pub. L. 90-452, § 3(b), 82 Stat. 624.)

#### CODIFICATION

Section was not enacted as part of the District of Columbia Alcoholic Beverage Control Act, which comprises this chapter.

#### AMENDMENTS

1968—Section 3(b), act Aug. 3, 1968, Pub. L. 90-452, amended the source statute, act Aug. 4, 1947, by striking "sec. 14" and inserting in lieu thereof "sec. 16".

1949—Act May 27, 1949, substituted the present language for the previous 10 per centum tax by which license fees, except retailer's license, class E, were increased to carry out the provisions of chapter 5 of title 24.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Section 4 of the act of Aug. 3, 1968, Pub. L. 90-452, provided: "The amendments made by section 3 of this act [classified to sections 24-521 to 24-535, repealing section 24-514, and renumbering this section: from 14 to 16] shall take effect on the ninetieth day following the date of its enactment." [Aug. 3, 1968.]

#### EFFECTIVE DATE OF 1949 AMENDMENT

See note under section 25-111.

#### § 25-112. Authority of Council to forbid transportation of liquor into District—Permit may be granted.

The District of Columbia Council is hereby authorized in its discretion to require by regulation that no licensee holding a retailer's license, class A, B, C, D, or E, as provided in this chapter, shall transport, or cause to be transported, in any manner whatsoever into the District of Columbia any alcoholic beverage (except the regular stock on hand in a licensed railroad club or dining car or passenger-carrying marine vessel); and said Council is also authorized to permit such importation under a special permit or permits, to be issued by the Alcoholic Beverage Control Board, upon application by licensee and upon such terms and conditions and in such manner as may be prescribed by the said Council. Any such regulation, permit, or system of permits may be suspended, amended, revoked, or abolished at any time by the said Council. (Aug. 27, 1935, 49 Stat. 903, ch. 756, § 18.)

#### CODIFICATION

Section was not enacted as part of the District of Columbia Alcoholic Beverage Control Act, which comprises this chapter.

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(217) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the functions of the Board of Commissioners of requiring by regulation that no licensee holding a retailer's license, Class A, B, C, D, or E shall transport any alcoholic beverage into the District of Columbia, permitting such importation under a special permit or permits, prescribing the terms, conditions, and manner of issuance of such permit or permits, and suspending, amending, revoking, or abolishing any such regulations, permit, or system of permits under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

#### TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

#### CROSS REFERENCES

Other provisions concerning rules and regulations, see § 25-107.



Other provisions concerning transportation, see §§ 25-137, 25-138.

**§ 25-113. Holding of license of more than one class forbidden—Definition of "licensee."**

(a) The holder of a manufacturer's or wholesaler's license issued hereunder shall not be entitled to hold any other class of license. A person, not licensed hereunder, owning an establishment for the manufacture of beverages located outside the District of Columbia may hold one wholesale license, and shall not be entitled to hold any other license.

(b) No licensee holding a retailer's license, class C or class D, shall, by direct ownership, stock ownership, or interlocking directors, hold, directly or indirectly, any license other than retailer's licenses class C, class D, or class E. No licensee holding a retailer's license class A or class B shall, by direct ownership, stock ownership, or interlocking directors, hold, directly or indirectly, more than one license except retailer's licenses class E. When used in this subsection the word "licensee" shall include any stockholder holding directly or indirectly twenty-five per centum or more of the common stock or any officer of such licensee if such licensee is a corporation. (Jan. 24, 1934, 48 Stat. 327, ch. 4, § 12.)

**CROSS REFERENCE**

Business interests forbidden, see §§ 25-105, 25-115, 25-119, 25-120.

**§ 25-114. Description in license of premises—Sale limited to premises—Storage not on premises—Expiration of licenses—Monthly licenses—Proportionate fees.**

Every license shall particularly describe the place where the rights thereunder are to be exercised, and beverages shall not be manufactured or kept for sale or sold by any licensee except at the place so described in his license: *Provided, however,* That the holder of a manufacturer's or wholesaler's license, the holder of a retailer's license, class A, or the holder of a retailer's license, class C, and class D, issued for a passenger-carrying marine vessel or club car or a dining car on a railroad, may store beverages, with the consent of the Board, upon premises other than the premises designated in the license. Every annual license shall date from the 1st day of February in each year and expire on the 31st day of January next after its issuance, except as hereinafter provided. Licenses issued at any time after the beginning of the license year shall date from the first day of the month in which the license was issued and end on the last day of the license year above described, and payments shall be made of the proportionate amount of the annual license fee. Every monthly license shall date from the first day of the month in which it is issued and expire on the last day of the month named in the license. Monthly licenses shall not be issued for periods exceeding six months. (Jan. 24, 1934, 48 Stat. 327, ch. 4, § 13; Aug. 27, 1935, 49 Stat. 900, ch. 756, § 8; Dec. 8, 1970, Pub. L. 91-535, § 5, 84 Stat. 1394.)

**AMENDMENTS**

1970—Section 5 of act Dec. 8, 1970, Pub. L. 91-535, amended the proviso in the first sentence by inserting "the holder of a retailer's license, class A," immediately after "wholesaler's license", and by inserting a comma immediately before "may store beverages".

1935—Act Aug. 27, 1935, inserted "or the holder of a retailer's license, class C, and class D, issued for a passenger-carrying marine vessel or club car or a dining car on a railroad" in the proviso.

**TRANSFER OF FUNCTIONS**

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

**§ 25-115. Applications for licenses—Qualification of applicants—Moral character—Citizenship—Prior convictions—Ownership—Interest of manufacturer in retail business—Character of premises—Advertising application—Hearing of protests—Objection of property owners—Removal of bonded liquor from Government warehouses—Penalty.**

(a) Any individual, partnership, or corporation desiring a license under this chapter shall file with the Board an application in such form as the Commissioner may prescribe, and such application shall contain such additional information as the Board may require, and (except in the case of an application for a manufacturer's license, retailers license, class E, or solicitor's license) shall contain a statement setting forth the name and address of the true and actual owner of the premises upon which the business to be licensed is to be conducted. Before a license is issued the Board shall satisfy itself:

1. That the applicant, if an individual, or, if a partnership, each of the members of the partnership, or, if a corporation, each of its principal officers and directors, is of good moral character and generally fit for the trust to be in him reposed.

2. That the applicant, if an individual, or, if a partnership, each of the members of the partnership, or, if a corporation, each of its principal officers, is not less than twenty-one years of age, and has not, within five years prior to the filing of such application, been convicted of a misdemeanor under the National Prohibition Act, as amended and supplemented, or, within ten years prior to such filing, been convicted of any felony.

3. That (A) each individual, each member of a partnership, and each principal officer of a corporation (other than a club) is a citizen of the United States, and (B) a majority of the principal officers of a club are citizens of the United States.

4. Except in the case of an application for a solicitor's license, that the applicant is the true and actual owner of the business for which the license is desired, and that he intends to carry on the business authorized by the license for himself and not as the agent of any individual, partnership, association, or corporation, and that he intends to superintend in person the management of the business licensed, or intends to have some other person, to be approved by the Board, manage the business for him, which said manager must possess all of the qualifications required of a licensee hereunder.

5. That in the case of an applicant for a wholesaler's license or a retailer's license (except a retailer's license class E), no manufacturer or wholesaler of beverages other than the applicant (including a stockholder holding 25 per centum or more of the common stock, or an officer of any manufacturer or wholesaler of beverages, if such manufacturer or wholesaler is a corporation), has such a substantial interest, direct or indirect, in the business for which the license is requested, or in the premises in respect of which such license is



to be issued, as in the judgment of the Board may tend to influence such licensee to purchase beverages from such manufacturer or wholesaler, and that such business will not be conducted with any money, equipment, furniture, fixtures, or property rented from or loaned or given by any such manufacturer or wholesaler (including such stockholder or officer) or sold by such manufacturer or wholesaler (including such stockholder or officer) to any such licensee for less than the fair market value or upon a conditional sale agreement or chattel trust.

6. That the place for which the license is to be issued is an appropriate one considering the character of the premises, its surroundings, and the wishes of the persons residing or owning property in the neighborhood of the premises for which the license is desired.

(b) Before granting a license under section 25-111(l) or a retailer's license, except a retailer's license class E or class F, the Board shall give notice by advertisement published once a week and for at least two weeks in some newspaper of general circulation published in the District of Columbia. The advertisement so published shall contain the name of the applicant and a description by street and number, or other plain designation, of the particular location for which the license is requested and the class of license desired. Such notice shall state that remonstrants are entitled to be heard before the granting of such licenses and shall name the time and place of such hearing. There shall also be posted by the Board a notice, in a conspicuous place, on the outside of the premises. This notice shall state that remonstrants are entitled to be heard before the granting of such license and shall name the same time and place for such hearing as set out in the public advertisement; and, if remonstrance against the granting of such license is filed, no final action shall be taken by the Board until the remonstrant shall have had an opportunity to be heard, under rules and regulations prescribed by said Board. Any person wilfully removing, obliterating, marring, or defacing said notice shall be deemed guilty of a violation of this chapter. The provisions of this subsection relating to notice by advertisement in some newspaper of general circulation shall not apply to the issuance of a license to a retailer for any place of business if such retailer is the holder of a license of the same class for the same place and if said last-mentioned license is in effect on the date the application for the new license is filed.

(c) Except in the case of a retailer's license class C or class D or a license issued under section 25-111(l) to be issued for a hotel or club or a retailer's license class B or class E, no place for which a license under this chapter has not been issued and in effect on the date the written objections hereinafter provided for are filed, shall be deemed appropriate if the owners of a majority of the real property within a radius of six hundred feet of the boundary lines of the lot or parcel of ground upon which is situated the place for which the license is desired, shall, on a form to be prescribed by the Commissioner filed with the Board, object to the

granting of such license. In determining the sufficiency of such objections the owners of all such property not lying within a residential use district as defined in the zoning regulations and shown in the official atlases of the Zoning Commission shall be taken as consenting to the granting of such license, except that the Commissioner shall have power to file objections on behalf of any property lying within such radius owned by the United States or the District of Columbia. This subsection shall be construed as a limitation upon the discretion of the Board in granting a license and not as a limitation upon the discretion of the Board in refusing a license: *Provided, however*, That none of the provisions of this chapter shall prevent the District of Columbia Council from promulgating regulations to permit the lawful bona fide owners of warehouse receipts for bonded liquors stored in Government warehouses either in the District of Columbia or elsewhere from withdrawing such bonded liquors for personal use on payment to the Collector of Taxes for the District of Columbia, taxes at such rates as provided in this chapter: *Provided*, That such bona fide holder of such warehouse receipts held legal title to such warehouse receipts prior to the passage of this chapter.

(d) A separate application shall be filed with respect to each place of business, except that a company engaged in interstate commerce may file one application for a license for the operation thereunder of all of its dining, club, and lounge cars operated on railroads within the District of Columbia. The required license fee shall be paid to the collector of taxes and his duplicate receipt shall accompany the application for license. In the event the license is denied the fee shall be returned. Every such application shall be verified by the affidavit of the applicant, if an individual, or by all of the members of a partnership, or by the president or vice president of a corporation. If any false statement is knowingly made in such application, or in any accompanying statement under oath which may be required by the Commissioner or the Board, the person making the same shall be deemed guilty of perjury. The making of a false statement in any such application, or in any such accompanying statement, whether made with or without the knowledge or consent of the applicant, shall, in the discretion of the Board, constitute sufficient cause for the revocation of the license. (Jan. 24, 1934, 48 Stat. 327, ch. 4, § 14; Aug. 25, 1937, 50 Stat. 802, 803, ch. 766, §§ 1, 2; June 15, 1938, 52 Stat. 691, ch. 396, § 3; June 29, 1953, 67 Stat. 103, ch. 159, § 404(e), (f); Aug. 2, 1968, Pub. L. 90-450, title IV, § 404, 82 Stat. 616.)

#### REFERENCES IN TEXT

The National Prohibition Act, as amended and supplemented, referred to in the text, is act Oct. 28, 1919, 41 Stat. 305, ch. 85, which was formerly classified to U. S. Code, title 27.

#### AMENDMENTS

1968—Section 404, Pub. L. 90-450, amended subsection (a) by: (a) striking out in paragraph 2 "a citizen of the United States," (b) adding immediately after paragraph 2 a new paragraph 3 as above set out, and (c) redesignating former paragraphs 3, 4, and 5, as paragraphs 4, 5 and 6.



1953—Subsecs. (b) and (c) amended by act June 29, 1953, § 404 (e), (f), respectively, to refer to licenses granted under subsec. (l) of section 25-111.

1938—Subsec. (c) amended by act June 15, 1938, which added the rest of the sentence following the comma after the word "business."

1937—Subsec. (b) amended by act Aug. 25, 1937, § 1, which added the last sentence.

Subsec. (d) amended by act Aug. 25, 1937, § 2, which deleted provision for requirement of bond.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(218) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the functions of the Board of Commissioners, under subsection (c) relating to the promulgation of regulations to permit owners of warehouse receipts to withdraw bonded liquors, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

The Office of the Collector of Taxes was abolished and the functions thereof transferred, see note under § 47-301.

#### CROSS REFERENCES

Business interests forbidden, see §§ 25-105, 25-113, 25-119, 25-120.

Other provisions concerning rules and regulations, see § 25-107.

#### NOTES TO DECISIONS

##### In general

Rejection by the Alcoholic Beverage Control Board, of application for a retailers' Class "C" license on ground that area was adequately serviced, was arbitrary and capricious, in absence of any evidence on the point. *Glore Restaurant v. Payne* (D.C.D.C. 1947, 72 F. Supp. 677).

##### Administrative procedure

Procedure for entry into record by Alcoholic Beverage Control Board of information in investigative reports that is relevant and material to statutory criteria for issuance or denial of license and that will be relied upon in any degree by Board should be fashioned in recognition of requirement that participants must have an opportunity to rebut and of relative procedural informality of administrative proceeding as contrasted with technical rules of evidence in civil litigation. *Citizens Association of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1972, 288 A. 2d 666).

It is permissible for the Board to conduct an inspection of area and premises involved in license application, but it should be done before a hearing terminates and counsel are entitled to be present at the viewing. *Id.*

Facts acquired by personal inspection by the Board should be revealed at hearing so that opportunity may be afforded to meet them by evidence or argument, and knowledge gained from an inspection cannot be made the basis, in whole or in part, for decision unless there appears in the record facts respecting the physical situation disclosed by the inspection. *Id.*

The Board's inspection of premises of license applicant after conclusion of hearing and in absence of counsel was improper; at reopened hearing upon remand, Board should set forth facts it considers to have been revealed as result of the inspection and should give applicant and citizens association challenging issuance of license the opportunity to address themselves to those facts by evidence or argument. *Id.*

##### Authority of Board

Alcoholic Beverage Control Board has authority to limit number of class "C" licenses notwithstanding that the action might unintentionally and incidentally limit given area to existing licenses so long as Board exercises bona fide judgment. *Palace Restaurant, Inc. v. Alcoholic Beverage Control Board* (D.C. App. 1970, 271 A. 2d 561).

##### Competing applicants

Under statute providing that Alcoholic Beverage Control Board may consider character of premises, its surroundings and wishes of persons residing or owning property in neighborhood in reviewing application for transfer of license, Board, if it finds that two liquor stores within 300 feet proximity are inappropriate for particular neighborhood and must necessarily choose between competing applicants each applicant must be given opportunity to show that his application should be favored so that specific public standards, not unbridled discretion, will control Board's consideration of license application. *Pollack v. Simonson* (1965, 350 F. 2d 740, 121 U.S. App. D.C. 362).

##### Construction

Term "satisfy itself" in this section requiring Alcoholic Beverage Control Board to satisfy itself that applicant for license is of good moral character and generally fit, carries with it the requirement that such satisfaction result from substantial, probative evidence of record. *Citizens Association of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1972, 288 A. 2d 666).

##### Due process

Fact that the Alcoholic Beverage Control Board based its decision to grant renewal licenses to corporations subject to suspension of the petitioner from any means of actively managing the corporations on a finding that petitioner was not generally fit for the trust in him reposed, rather than that he lacked good moral character as charged, did not deny petitioner due process since the record showed that petitioner contemplated and directed his defense in relation to the unfitness element as well as the moral character element. *E. E. Byrd v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1972, 289 A. 2d 877; cert. denied 93 S. Ct. 677, 409 U.S. 1075).

##### Evidence—Substantial

Under statutory requirement that Alcoholic Beverage Control Board satisfy itself that applicant for license is of good moral character and generally fit, the application for license is not substantial evidence on that question. *Citizens Association of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1972, 288 A. 2d 666).

##### — Sufficiency

In view of express wishes of neighborhood residents and property owners against granting of liquor license, the court held that the evidence supported the finding of Alcoholic Beverage Control Board that proposed restaurant which could accommodate up to 480 persons, which had indefinite arrangements for off-street parking and which would be located in area containing 6,000 existing liquor service seats was an inappropriate place for issuance of liquor license. *Sophia's Inc. v. Alcoholic Beverage Control Board* (D.C. App. 1970, 268 A. 2d 799).

In this case, the evidence supported finding of Alcoholic Beverage Control Board that granting of liquor license to sixty-one seat restaurant that was already in operation, that had lease not contingent upon granting of liquor license, that had provisions for parking and that was operated by owner of another successful restaurant was unlikely to contribute significantly to problems of area. *Citizens Association of Georgetown, Inc. v. Alcoholic Beverage Control Board* (D.C. App. 1970, 268 A. 2d 801).

##### Factors considered in grant of license

Granting application to transfer liquor license to new location almost immediately around corner from another licensee was not improper on the theory that Board's failure to make finding concerning adequacy of existing liquor retail services in the neighborhood violated Administrative Procedure Act [§ 1-1501 et seq.] or deprived other licensee of equal protection because in other cases the Board had made finding of "adequate service" ground for rejecting license applications, where notice of hearing invited all interested parties to present their views upon criteria enumerated in this section and the Board, under such criteria, found that premises in question qualified as "appropriate." *Clark's Liquors, Inc. v. Alcoholic Beverage Control Board* (D.C. App. 1971, 274 A. 2d 414).



Since no notice was given that uniqueness of premises would be an issue of fact at hearing for determination of application for retailer's class "C" license by Alcoholic Beverage Control Board or that such criterion was to be applied to the application, denial of application could not stand and matter required remand for further proceedings. *Palace Restaurant, Inc. v. Alcoholic Beverage Control Board* (D.C. App. 1970, 271 A. 2d 561).

In license transfer case, question is whether wishes of neighborhood and character of premises warrant granting of liquor license for locality; and previous location and history of store are beside the point. *Palisades Citizens Association Inc. et al. v. Weakly et al.* (D.C.D.C. 1958, 166 F. Supp. 591, appeal dismissed in part, reversed in part on other grounds 265 F. 2d 372, 105 U.S. App. D.C. 180).

#### Findings of fact

Not only an Alcoholic Beverage Control Board finding of moral character and fitness, but any finding required by licensing statute, must be based only on evidence in the public record of the proceeding, and participants in the proceeding must have an opportunity to address themselves to that evidence, otherwise fundamentals of due process are denied. *Citizens Association of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1972, 288 A. 2d 666).

#### Good moral character

Under statutory provision that liquor license may be granted only to persons of good moral character or good reputation, an applicant must satisfy the licensing authorities as to his fitness. *Citizens Association of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1972, 288 A. 2d 666).

#### Injunction

Under circumstances disclosed, including showing that net effect of board's failure to prescribe adequate rules and regulations had been to by-pass wishes of community, plaintiffs were entitled to preliminary injunction against operation of liquor store pending review of board's grant of application for transfer of liquor license. *Palisades Citizens Association Inc. et al. v. Weakly et al.* (D.C.D.C. 1958, 166 F. Supp. 591, appeal dismissed in part, reversed in part on other grounds 265 F. 2d 372, 105 U.S. App. D.C. 180).

#### Mandamus

In action in the nature of a petition for writ of mandamus to require Alcoholic Beverage Control Board to issue a retailers' Class "C" license to petitioning restaurant, question before the court was whether action of the Board was based upon substantial evidence, and if it was, mandamus would not lie, whereas if it was not, next question was whether action of Board was arbitrary or capricious. *Clore Restaurant v. Payne* (D.C.D.C. 1947, 72 F. Supp. 677).

#### Order

Order of the Alcoholic Beverage Control Board granting renewal licenses to five corporations subject to petitioner's suspension from any means of actively managing the corporations pending final disposition of criminal charges against petitioner is sufficiently definite to apprise him of the particular conduct proscribed and is not too vague to be enforceable. *E. E. Byrd v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1972, 289 A. 2d 877; cert. denied 93 S. Ct. 677, 409 U.S. 1075).

#### Parties

Under statute forbidding alcoholic beverage control board of District of Columbia to issue license for new location to operate liquor store if the owners of a majority of the real property within a radius of 600 feet of the place for which the license is desired object to the granting of such license, individuals who own property within 600-foot radius of new location and an association having members who own property within such 600-foot radius had standing to bring action against licensee and members of the board to set aside license for new location. *MacArthur Liquors Inc. v. Palisades Citizens Ass'n Inc. et al.* (1959, 265 F. 2d 372, 105 U.S. App. D.C. 180).

#### Procedural errors

Where owners within 600-foot radius of proposed new location of retail liquor store, objected to granting license

for the new location on District of Columbia alcoholic beverage control board's form meant for use in connection with statute requiring board, before granting license, to consider wishes of persons residing or owning property in neighborhood of premises rather than on board's form meant for use in connection with statute forbidding board to issue license for new location if owners of majority of real property within 600-foot radius of new location object, the board should not have refused to correct the owners signing such form but should have either ignored the formal error or allowed it to be corrected. *MacArthur Liquors, Inc. v. Palisades Citizens Ass'n Inc et al.* (1959, 265 F. 2d 372, 105 U.S. App. D.C. 180).

#### Record

Where there was no indication of reliance by licensing authority on any investigative report, there was statement by one of the members of the authority that it would rely only on the public record, and in summary statement of facts accompanying decision to grant license, the authority made reference only to the evidence produced at the hearing, it could not be assumed that the authority improperly considered matters not of record. *Citizens Association of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1972, 287 A. 2d 87).

If investigative reports are officially noticed by licensing authority or relied on in consideration of application, such reports should be placed in the record and made available to all parties. *Id.*

#### Review

The fact that Alcoholic Beverage Control Board granted a liquor license to a restaurant adjacent to location of much larger proposed restaurant did not render denial of a license to the latter arbitrary since qualifications of applicants and character of restaurants were different. *Sophia's Inc. v. Alcoholic Beverage Control Board* (D.C. App. 1970, 268 A. 2d 799).

The question of an association's standing to obtain judicial review of a claim that Alcoholic Beverage Control Board improperly reissued retail liquor license depended primarily upon existence of logical and adequately direct nexus between association's interest and adverse action of opposing party or parties. *The Citizens Association of Georgetown v. J. E. Simonson et al.* (1968, 403 F. 2d 175, 131 U.S. App. D.C. 152).

In directing Alcoholic Beverage Control Board to consider wishes of persons residing or owning property in neighborhood in issuing licenses, Congress recognized that operation of liquor establishment may trouble its neighbors. *Id.*

Residents and owners of property within neighborhood of licensed establishment have required nexus to seek judicial review of reissuance of license. *Id.*

An association which was the authorized spokesman organized to promote interest of its individual members, many of whom resided or owned property within neighborhood of licensed liquor establishment, had standing to seek judicial review of reissuance of license. *Id.*

Right of review in liquor license case was not restricted to owners of stores immediately adjacent to licensed premises nor to unsuccessful applicants, and property owners who had taken an active interest at hearing and had presented the "wishes of the neighborhood" were entitled to seek judicial review under District of Columbia Alcoholic Beverage Control Act. *Palisades Citizens Association Inc. et al. v. Weakly et al.* (D.C.D.C. 1958, 166 F. Supp. 591, appeal dismissed in part, reversed in part on other grounds 265 F. 2d 372, 105 U.S. App. D.C. 180).

#### Standing

Citizens organization has standing to contest issuance of liquor license and could properly contest Alcoholic Beverage Control Board's actions in matter of meeting its statutory obligations procedurally and substantively, notwithstanding that the association's opposition to license is based fundamentally on its position that area of city is already saturated with establishments having liquor licenses, with attendant problems flowing from that condition. *Citizens Association of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1972, 288 A. 2d 666).



**Substantial error**

Reference in licensing authority's findings to "token" opposition does not constitute substantial error where citizens association petitioning for review of grant of license offered no evidence and individual objectors did nothing more than note their objections. *Citizens Association of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1972, 287 A. 2d 87).

**§ 25-116. Issuing licenses in certain districts restricted.**

(a) No retailer's licenses except of classes B or E shall be issued for any business conducted in a residential-use district as defined in the zoning regulations and shown in the official atlases of the Zoning Commission, except for a restaurant or tavern conducted in a hotel, apartment house, or club, and then only when the entrance to such restaurant or tavern is entirely inside of the hotel, apartment house, or club and no sign or display is visible from the outside of the building.

(b) No wholesaler's license shall be issued for any establishment conducted in such residential-use district and no manufacturer's license shall be issued for any establishment conducted in a residential or first commercial-use district as defined in the zoning regulations and shown in the official atlases of the Zoning Commission. Nothing herein contained shall be construed as permitting the establishment of a bottling works in violation of said zoning regulations.

(c) The provisions of subsection (a) of this section shall not apply in any case where an application is made for the issuance or transfer of a retailer's license for a place of business conducted in a residential-use district as defined in the zoning regulations and shown in the official atlases of the Zoning Commission if the zoning of such place of business was changed from a less restricted use to such residential use during a period when a license of the same class for which application is made was in effect at such place of business: *Provided*, That a license of the same class at such place of business is in effect on the date the application for the new license, or transfer, is filed.

(d) The provisions of subsection (b) of this section shall not apply in any case where an application is made for the issuance or transfer of a wholesaler's or manufacturer's license for a place of business conducted in a residential- or first commercial-use district as defined in the zoning regulations and shown in the official atlases of the Zoning Commission if the zoning of such place of business was changed from a less restricted use to such residential- or first commercial-use during a period when a license of the same class for which application is made was in effect at such place of business: *Provided*, That a license of the same class at such place of business is in effect on the date the application for the new license, or transfer, is filed.

(e) Nothing contained in this section shall be construed as entitling a licensee to any preferential treatment or be construed as making inapplicable any provision in any other section of this chapter, in any case where an application is made pursuant to this section for the issuance or transfer of a retailer's license for a place of business conducted in a residential-use district, or for the issuance or transfer of a wholesaler's or manufacturer's license

for a place of business conducted in a residential- or first commercial-use district, as such districts are defined in the zoning regulations and shown in the official atlases of the Zoning Commission, and the applicant for the issuance or transfer of any of the said licenses is the holder of a similar license for any of the said places of business in effect on the date the application for the new license, or transfer, is filed. (Jan. 24, 1934, 48 Stat. 328, ch. 4, § 15; June 16, 1934, 48 Stat. 974, ch. 552; May 22, 1958, 72 Stat. 132, Pub. L. 85-423, § 1.)

**AMENDMENTS**

1958—Act May 22, 1958, designated existing provisions as subsecs. (a) and (b) and added subsecs. (c)–(e).

1934—Act June 16, 1934, added class B to the exception.

**§ 25-117. Transfer of license—Fee—Conditions imposed.**

No license shall be transferred by the licensee to any other person or to any other place, except with the written consent of the Board, upon a regular application therefor in writing and after notice and hearing, as herein provided for an original application for license, and the fee to be paid by the party applying for such transfer shall be \$100, which shall be paid to the Collector of Taxes for the District of Columbia before such transfer is made: *Provided*, That the Board shall not allow the transfer of the license of any person against whom there is pending in the courts or before the Board any charge of keeping a disorderly house, or of violating this chapter or the laws against gambling in the District of Columbia. (Jan. 24, 1934, 48 Stat. 330, ch. 4, § 16; May 27, 1949, 63 Stat. 135, ch. 146, title V, § 503.)

**AMENDMENT**

1949—Act May 27, 1949, increased the fee for transfer of a license from \$25 to \$100.

**EFFECTIVE DATE OF 1949 AMENDMENT**

See note under section 25-111.

**TRANSFER OF FUNCTIONS**

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

The Office of the Collector of Taxes was abolished and the functions thereof transferred, see note under § 47-301.

**§ 25-118. Revocation of license—Causes—Hearing—Discretionary closing for one year.**

If during the period for which any license was issued the licensee shall be convicted of any felony, or if any licensee violates any of the provisions of this chapter or any of the rules or regulations promulgated pursuant thereto or fails to superintend in person, or through a manager approved by the Board, the business for which the license was issued, or allows the premises with respect to which the license of such licensee was issued, to be used for any unlawful, disorderly, or immoral purpose, or such licensee otherwise fails to carry out in good faith the provisions of this chapter, the license of said licensee may be revoked or suspended by the Board after the licensee has been given an opportunity to be heard in his defense, subject to review by the Commissioner in case of revocation or in case of suspension for a period of more than thirty days, as herein provided. In case a license issued hereunder shall be revoked or suspended, no part of the license fee shall



be returned, and the Board may, in its discretion, subject to review by the Commissioner, as a part of the order of revocation provide that no license shall be granted for the same place for the period of one year next after such revocation, and in case such order shall be made no license shall, during said year, be issued for said place or to a person or persons whose license is so revoked for any other location.

In the event the Board at any time shall order the suspension of any license a notice may be posted by the Board, in a conspicuous place, on the outside of the licensed premises, at or near the main street entrance thereto; which notice shall state that the license theretofore issued to the licensee has been suspended and shall state the time for which said license is suspended, and state that the suspension is ordered because of a violation of this chapter, or of the District of Columbia Council's regulations adopted under authority of this chapter. (Jan. 24, 1934, 48 Stat. 330, ch. 4, § 17; Aug. 27, 1935, 49 Stat. 900, ch. 756, § 9; Aug. 25, 1937, 50 Stat. 803, ch. 766, § 3; Apr. 26, 1950, 64 Stat. 88, ch. 106; Dec. 8, 1970, Pub. L. 91-535, § 3(a), 84 Stat. 1393.)

#### CODIFICATION

In the last paragraph, reference to the District of Columbia Council was substituted for "Commissioners" on authority of section 25-107 and various other sections of this chapter and section 402(214)-(222) of Reorg. Plan No. 3 of 1967, under which the regulations are prescribed by the Council.

#### AMENDMENTS

1970—Section 3(a) of act Dec. 8, 1970, Pub. L. 91-535, amended the first sentence by striking out "or knowingly employs in the sale or distribution of beverages any person who has, within five years prior thereto, been convicted of a misdemeanor under the National Prohibition Act, as amended and supplemented, or, within ten years prior thereto, been convicted of any felony."

1950—Act Apr. 26, 1950, inserted the words "during the period for which any license was issued the licensee shall be convicted of any felony, or if" after the word "If" at the beginning of the first sentence of the first paragraph.

1937—Act Aug. 25, 1937, substituted "may" for "shall" in the second par.

1935—Act Aug. 27, 1935, added the words "or suspended" both times they appear and the words "in case of revocation or in case of suspension for a period of more than thirty days" in the first paragraph, and added the second paragraph.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

#### CROSS REFERENCES

Administrative procedure, see § 1-1501 et seq.  
General penalties for violations of chapter or rules and regulations, see § 25-132.

Judicial review, see §§ 1-1510, 11-722.

Refund of fees when license refused, see § 47-1017.

#### NOTES TO DECISIONS

##### Construction

Word "period," within this section authorizing revocation or suspension of a liquor license if, during period for which license was issued, licensee fails to superintend in person, or through an approved manager, business for which license is issued, means duration of license and not lawful day-to-day business hours. *2447 Good Hope Road, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1972, 295 A. 2d 513).

##### Defenses

Licensee could not plead a violation of regulation prohibiting sales after 2:00 A.M. as a defense to statutory violation of failure to superintend business, and since business was ongoing, albeit illegally after hours, without an approved manager in charge, statutory violation was established. *2447 Good Hope Road, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1972, 295 A. 2d 513).

##### Delinquent retailer

The Alcoholic Beverage Control Board does not have authority to prohibit further purchases by a liquor retailer who is delinquent in the payment of his account to wholesalers but can only revoke or suspend license of retailer for violating rules or regulations concerning credit. *Press Liquors, Inc. v. F. E. Weakley, Chairman etc.* (1963, 317 F. 2d 135, 115 U.S. App. D.C. 71).

##### Discretion of Board

Where evidence relied on by Alcoholic Beverage Control Board to find that licensee failed to superintend in person, or through an approved manager, business for which class "C" retailer's license was issued satisfied statutory test of substantial evidence, ultimate conclusion of Board, to revoke license was within scope of its statutory discretion, notwithstanding claim that outright revocation of license amounted to "economic execution" and was so harsh as to deny licensee due process of law. *2447 Good Hope Road, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1972, 295 A. 2d 513).

##### Due process

Some mixing of prosecutorial and adjudicative functions by the Alcoholic Beverage Control Board is a necessary part of the administrative scheme and does not per se violate due process. *James Bakalis & Nickie Bakalis, Inc. v. J. R. Simonson et al.* (1970, 434 F. 2d 515, 140 U.S. App. D.C. 241).

##### Evidence—Sufficiency

Evidence was sufficient to support findings of Alcoholic Beverage Control Board, in revoking petitioner's class "C" retailer's license, that petitioner allowed licensed premises to be used for an unlawful purpose by permitting consumption of alcoholic beverages at a time when consumption was prohibited, failed to frame its license under glass and post same in a conspicuous place on premises, and failed to superintend in person, or through an approved manager, business for which license was issued. *2447 Good Hope Road, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1972, 295 A. 2d 513).

Testimony as to numerous and open violations by officers was sufficient to support charges of violation of Alcoholic Beverage Control Act and regulations by more than substantial evidence. *James Bakalis & Nickie Bakalis, Inc. v. J. R. Simonson et al.* (1970, 434 F. 2d 515, 140 U.S. App. D.C. 241).

##### Grounds for suspension

Fourteen-day suspension of liquor license was warranted where licensee permitted "B-girl" operation on its premises and female employee made solicitation for act of prostitution on premises. *Am-Chi Restaurant, Inc. v. J. R. Simonson et al., etc.* (1968, 396 F. 2d 686, 130 U.S. App. D.C. 37).

Mere fact that "B-girl" operation was not illegal per se on licensed premises was not defense by licensee in proceeding to suspend license on ground that female employee of licensee had made solicitation for prostitution on premises. *Id.*

##### Injunction

An injunction against enforcement of order of Alcoholic Beverage Control Board revoking liquor license should not issue for any period while failure of Board of Commissioners of District of Columbia to reach a decision on appeal is caused by unavoidable circumstances such as absence of a commissioner or necessary delay in considering and deciding the case. *Lambros v. Young* (1945, 145 F. 2d 341, 79 U. S. App. D. C. 247).

##### Review

Since separate suspensions of liquor license for 21 days in the first case and 17 days in the second case were not,



strictly for separate acts constituting violations on separate days but for a continuous course of conduct, and investigation in both cases was completed 30 days before hearing in first case, the two cases should have been treated as one case and the licensee was entitled to review of suspension by commissioners on theory that license was suspended for period of more than 30 days. *James Bakalis & Nickie Bakalis, Inc. v. J. R. Simonson et al.* (1970, 434 F. 2d 515, 140 U.S. App. D.C. 241).

#### Standards for suspension

Alcoholic Beverage Control Board should articulate its standards for suspension of liquor licenses in its order of suspension. *Am-Chi Restaurant Inc. v. J. R. Simonson et al.* (1968, 396 F. 2d 686, 130 U.S. App. D.C. 37).

#### Validity of findings

Findings of the Alcoholic Beverage Control Board are presumptively valid. *James Bakalis & Nickie Bakalis, Inc. v. J. R. Simonson et al.* (1970, 434 F. 2d 515, 140 U.S. App. D.C. 241).

**§ 25-119. Revocation of license when manufacturer interested—Manufacturer forbidden to loan money or furnish equipment for wholesaler or retailer—Extending credit permitted—"Manufacturer" defined.**

If any manufacturer of beverages, whether licensed hereunder or not, by direct ownership, stock ownership, interlocking directors, mortgage, or lien, or by any other means shall have such a substantial interest, whether direct or indirect, in the business of any wholesale or retail licensee or in the premises on which said business is conducted as in the judgment of the Board may tend to influence such licensee to purchase beverages from such manufacturer, the Board may, in its discretion, revoke the license issued in respect of the business in which such manufacturer is interested, subject to review by the Commissioner as herein provided. No such manufacturer of beverages shall loan or give any money to any wholesale or retail licensee, or sell, rent, loan, or give to such licensee any equipment, furniture, fixtures, or property, or give or sell any service to such licensee: *Provided, however,* That with the prior approval of the Board, a manufacturer may sell, give, rent, or loan to a wholesale or retail licensee any service or article of property costing such manufacturer not more than \$10. No wholesale or retail licensee shall receive or accept any loan or gift of money from any such manufacturer or purchase from, rent from, borrow or receive by gift from such manufacturer any equipment, furniture, fixtures, or property, or accept or receive any service from such manufacturer: *Provided, however,* That, with the prior approval of the Board, a wholesale or retail licensee may purchase from, rent from, borrow, or receive by gift from such manufacturer any service or article of property costing such manufacturer not more than \$10. Nothing herein contained, however, shall prohibit the sale of alcoholic and nonalcoholic beverages and the reasonable extension of credit therefor by a manufacturer to a wholesale or retail licensee. When used in this section the word "manufacturer" shall include any stockholder holding directly or indirectly 25 per centum or more of the common stock or any officer of a manufacturer of beverages, if a corporation, whether licensed hereunder or not. This section shall not apply to retail licenses, class E, or to the wholesale license held by a person not licensed as a manufacturer hereunder owning an establishment for the manu-

facture of beverages outside of the District of Columbia. (Jan. 24, 1934, 48 Stat. 330, ch. 4, § 18; Aug. 27, 1935, 49 Stat. 902, ch. 756, § 15.)

#### AMENDMENT

1935—Act Aug. 27, 1935, deleted the words "to such licensee for less than the fair market value or upon a conditional sale agreement or chattel trust, or rent, loan or give to such licensee any equipment, furniture, fixtures or property, or give or sell any service to such licensee for less than the fair market value thereof," and inserted in lieu thereof the remainder of the second sentence after the word "sell" the first time it is used; inserted the words "rent from, borrow, or receive by gift from" in the third sentence; deleted from the third sentence the words "for less than the fair market value or upon a conditional sale agreement or chattel trust, or rent from, borrow or receive by gift from such manufacturer" following the word "manufacturer" the second time it is used in said sentence; deleted in the third sentence the words "for less than the fair market value thereof" and inserted in lieu thereof the proviso in such sentence; deleted from the last sentence the words "hereunder owning an establishment for the manufacture of beverages" and inserted in lieu thereof the concluding words of the last sentence following the word "licensed."

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

#### CROSS REFERENCES

Administrative procedure, see § 1-1501 et seq.

Business interests forbidden, see §§ 25-105, 25-113, 25-115, 25-120.

Judicial review, see § 1-1510, 11-722.

Other provisions concerning sale of beverages on credit, see §§ 25-120, 25-133.

#### NOTES TO DECISIONS

##### Construction

Sections of Alcoholic Beverage Control Act prohibiting a manufacturer or wholesaler of alcoholic beverages from lending money or property to a retailer apply only to a manufacturer or wholesaler who has such a substantial interest in the business of its customer, or in his premises, as in the judgment of the Board may tend to influence the customer to purchase beverages from him. *Press Liquors, Inc. v. F. E. Weakley, Chairman et al.* (1963, 317 F. 2d 135, 115 U.S. App. D.C. 71).

**§ 25-120. Revocation of license when wholesaler interested—Wholesaler forbidden to loan money or furnish equipment to retailer—Extending credit not prohibited—"Wholesaler" defined.**

If any wholesaler of beverages, whether licensed hereunder or not, by direct ownership, stock ownership, interlocking directors, mortgage or lien or by any other means shall have such a substantial interest either direct or indirect in the business of any retail licensee or in the premises on which said business is conducted as in the judgment of the Board may tend to influence such licensee to purchase beverages from such wholesaler, the Board may in its discretion revoke the license issued in respect of the business in which such wholesaler is interested, subject to review by the Commissioner as herein provided. No such wholesaler of beverages shall lend or give any money to any retail licensee or sell to such licensee, any equipment, furniture, fixtures, or property, except merchandise sold at the fair market value for resale by such licensee, or rent, loan, or give to such licensee any equipment, furniture, fixtures, or property, or



give or sell any service to such licensee: *Provided, however, That*, with the prior approval of the Board, a wholesaler may sell, give, rent, or loan to such licensee any service or article of property costing such wholesaler not more than \$10. No retail licensee shall receive or accept any loan or gift of money from any such wholesaler or purchase from any such wholesaler any equipment, furniture, fixtures, or property, except merchandise purchased at the fair market value for resale, or rent from, borrow, or receive by gift from such wholesaler any equipment, furniture, fixtures, or property, or receive any service from such wholesaler: *Provided, however, That* with the prior approval of the Board, a retail licensee may purchase from, rent from, borrow or receive by gift from such wholesaler any service or article of property costing such wholesaler not more than \$10. Nothing herein contained, however, shall prohibit the reasonable extension of credit by a wholesaler for merchandise sold to a retail licensee for resale as herein permitted. When used in this section the word "wholesaler" shall include any stockholder holding directly or indirectly 25 per centum or more of the common stock or any officer of a wholesaler of beverages, if a corporation, whether licensed hereunder or not. This section shall not apply to retail licenses, class E. (Jan. 24, 1934, 48 Stat. 331, ch. 4, § 19; Aug. 27, 1935, 49 Stat. 903, ch. 756, § 16.)

#### AMENDMENT

1935—Act Aug. 27, 1935, deleted from the second sentence the words "for less than the fair market value or upon a conditional sale agreement or chattel trust, or rent, loan or give to such licensee" following the word "licensee" the first time it is used in said sentence; added the words "except merchandise sold at the fair market value for resale by such licensee, or rent, loan or give to such licensee any equipment, furniture, fixtures, or property" in the second sentence; added the proviso in the second sentence; deleted from the third sentence the words "for less than the fair market value or upon a conditional sale agreement or chattel trust, or rent from, borrow or receive by gift from such wholesaler" following the word "wholesaler" the second time it is used in said sentence; added the proviso in the third sentence; added the last five words in the fourth sentence.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### TRANSFER OF FUNCTIONS

Statute of Alcoholic Beverage Board, see notes under section 25-104.

#### CROSS REFERENCES

Judicial review, see §§ 1-1510, 11-722.

Business interests forbidden, see §§ 25-105, 25-113, 25-115, 25-119.

Administrative procedure, see § 1-1501 et seq.

Other provisions concerning sale of beverages on credit. see §§ 25-119, 25-133.

#### NOTES TO DECISIONS

##### Construction

Sections of Alcoholic Beverage Control Act prohibiting a manufacturer or wholesaler of alcoholic beverages from lending money or property to a retailer apply only to a manufacturer or wholesaler who has such a substantial interest in the business of its customer, or in his premises, as in the judgment of the Board may tend to influence the customer to purchase beverages from him. *Press Liquors, Inc. v. F. E. Weakley, Chairman etc.* (1963, 317 F. 2d 135, 115 U.S. App. D.C. 71).

#### § 25-121. Sale to minors or intoxicated persons—Liability of licensee.

Licenses issued hereunder shall not authorize the sale or delivery of beverages, with the exception of beer and light wines, to any person under the age of twenty-one years, or beer or light wines to any person under the age of eighteen years, either for his own use or for the use of any other person; or the sale, service, or delivery of beverages to any intoxicated person, or to any person of notoriously intemperate habits, or to any person who appears to be intoxicated; and ignorance of the age of such minor shall not be a defense to any action instituted under this section. No licensee shall be liable to any person for damages claimed to arise from refusal to sell such alcoholic beverages.

No person being the holder of a license issued under section 25-111 (l) shall permit on the licensed premises the consumption of alcoholic beverages, with the exception of beer and light wines, by any person under the age of twenty-one years, or permit the consumption of beer and light wines by any person under the age of eighteen years, or the consumption of any beverage by any intoxicated person, or any person of notoriously intemperate habits, or any person who appears to be intoxicated; and ignorance of the age of any such minor shall not be a defense to any action instituted under this section. No licensee shall be liable to any person for damages claimed to arise from refusal to permit the consumption of any beverage on any premise licensed under section 25-111 (l). (Jan. 24, 1934, 48 Stat. 331, ch. 4, § 20; Aug. 27, 1935, 49 Stat. 901, ch. 756, § 10; June 29, 1953, 67 Stat. 104, ch. 159, § 404(g).)

#### AMENDMENTS

1953—Act June 29, 1953, added paragraph extending existing restrictions to licenses issued under subsec. (l) of section 25-111.

1935—Act Aug. 27, 1935, inserted the words "service or delivery" following the word "sale" following the first semicolon in first paragraph.

#### § 25-122. License forfeited on licensee becoming bail.

If any person holding a license under this chapter shall become bail for any person complained of for the violation of any provisions of this chapter, his license shall become void as of the date of becoming such bail. (Jan. 24, 1934, 48 Stat. 331, ch. 4, § 21.)

#### § 25-123. Monthly reports of sales and purchases.

(a) Each holder of a manufacturer's license shall, on or before the 10th day of each month, furnish to the Board on a form to be prescribed by the Commissioner, a statement under oath, showing the quantity of each kind of beverages, except beer, manufactured during the preceding calendar month. Beverages shall not be considered as manufactured within the meaning of this section and section 25-124 until they are ready for sale.

(b) Each holder of a wholesaler's or retailer's license shall, on or before the 10th day of each month, furnish to the Board on a form to be prescribed by the Commissioner, a statement under oath, showing the quantity of each kind of beverages, except beer, purchased by him during the preceding calendar month, and also showing the date of each such purchase, the name of the person from whom purchased, giving the license number of the vendor, if licensed



hereunder, and the quantity and kind of beverages in each such purchase.

(c) The District of Columbia Council may at any time suspend or revoke in whole or in part the requirements of this section. (Jan. 24, 1934, 48 Stat. 332, ch. 4, § 22; Apr. 30, 1934, 48 Stat. 654, ch. 181, § 2.)

#### AMENDMENT

1934—Subsec. (c) added by act Apr. 30, 1934.

**TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL**  
Section 402(219) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of suspending or revoking in whole or in part the requirements of this section, under subsection (c), to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

#### CROSS REFERENCE

Report of sales of beer, see § 25-138.

### § 25-124. Beverage taxes—Method of collection—Class C or D licensees—Reports.

(a) There shall be levied, collected, and paid on all of the following-named beverages manufactured by a holder of a manufacturer's license and on all of the said beverages imported or brought into the District by a holder of a wholesaler's license, except beverages as may be sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under this chapter, and on all beverages imported or brought into the District by a holder of a retailer's license, a tax at the following rates to be paid by the licensee in the manner hereinafter provided: (1) a tax of 15 cents on every wine-gallon of wine containing 14 per centum or less of alcohol by volume, other than champagne, sparkling wine, and any wine artificially carbonated, and a proportionate tax at a like rate on all fractional parts of such gallon; (2) a tax of 33 cents on every wine-gallon of wine containing more than 14 per centum of alcohol by volume, other than champagne, sparkling wine, and any wine artificially carbonated, and a proportionate tax at a like rate on all fractional parts of such gallon; (3) a tax of 45 cents on every wine-gallon of champagne, sparkling wine, and any wine artificially carbonated, and a proportionate tax at a like rate on all fractional parts of such gallon; (4) a tax of \$2.00 on every wine-gallon of spirits and a proportionate tax at a like rate on all fractional parts of such gallon; (5) and a tax of \$2.00 on every wine-gallon of alcohol and a proportionate tax at a like rate on all fractional parts of such gallon.

(b) Said taxes shall be collected by and paid to the Collector of Taxes of the District of Columbia and shall be deposited in the Treasury of the United States to the credit of the District of Columbia.

(c) Said taxes shall be collected and paid in the following manner:

(1) Each holder of a manufacturer's or wholesaler's license shall, on or before the fifteenth day

of each month, furnish to the Commissioner or his designated agent on a form to be prescribed by the Commissioner, a statement under oath showing the quantity of beverage subject to taxation hereunder sold by him during the preceding calendar month and shall, on or before the fifteenth day of each month, pay to the Commissioner or his designated agent the tax hereby imposed upon the quantity of beverages subject to taxation hereunder sold by him during the preceding calendar month.

(2) No licensee holding a retailer's license shall transport or cause to be transported into the District of Columbia any beverages subject to taxation hereunder other than the regular stock on hand in a passenger carrying marine vessel operating in and beyond the District of Columbia, or a club car or a dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or D, has been issued under this chapter, unless such licensee has first obtained a permit so to do from the Alcoholic Beverage Control Board. No such permit shall issue until the tax imposed by this section shall have been paid for the beverages for which the permit is requested. Such permit shall specifically set forth the quantity, character, and brand or trade name of the beverage to be transported and the names and addresses of the seller and of the purchaser. Such permit shall accompany such beverages during transportation in the District of Columbia to the licensed premises of such retail licensee and shall be exhibited upon the demand of any police officer or duly authorized inspector of the Board. Such permit shall, immediately upon receipt of the beverage by the retail licensee, be marked "canceled" and retained by him.

(3) The District of Columbia Council is authorized and empowered to prescribe by regulation such other methods or devices or both for the assessment, evidencing of payment, and collection of the taxes imposed by this section in addition to or in lieu of the method hereinbefore set forth whenever in its judgment such action is necessary to prevent frauds or evasions.

(d) No tax shall be levied and collected on any alcohol exempt from tax under the laws of the United States, or on any alcohol sold for nonbeverage purposes by the holder of a manufacturer's or wholesaler's license, in accordance with the regulations promulgated by the Commissioners.

(e) If any Act of Congress shall hereafter prescribe for a Federal volume tax on alcoholic beverages under which a portion of said tax shall be returned to the District of Columbia, the taxes levied under this section shall not be collected after the effective date, January 24, 1934.

(f) No taxing provision of this section shall apply in the case of a passenger-carrying marine vessel operating in and beyond the District of Columbia, or a club car or a dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or D, has been issued under this chapter, except as set forth in this subsection.



The tax as specified in subsection (a) of this section shall be paid on all such beverages as are sold and served by said licensee while passing through or when at rest in the District of Columbia, in the following manner: A record shall be made and kept by the licensee for each passenger-carrying marine vessel operating in and beyond the District of Columbia, and for each club car or dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or class D, has been issued under this chapter, of all alcoholic beverages sold and served in the District of Columbia, which record shall be subject to inspection by the board. Each holder of such a license shall, on or before the tenth day of each month, forward to the Board on a form to be prescribed by the Commissioner, a statement under oath, showing the quantity of each kind of beverage, except beer and wines, sold under such license in the District of Columbia during the preceding calendar month and such statement shall be accompanied by payment of any tax imposed under this chapter upon any such beverages set forth in said report.

(g) The Council is authorized to require that the immediate container of each beverage subject to tax under this chapter contain the license number of each licensee who sells or offers for sale such beverage. Such license number must be affixed at the time of display or sale of said spirits by the retailer. This subsection shall not apply to spirit containers of less than two ounces. (Jan. 24, 1934, 48 Stat. 332, ch. 4, § 23; Apr. 30, 1934, 48 Stat. 654, ch. 181, § 3; June 18, 1934, 48 Stat. 1014, 1015, ch. 600, §§ 1, 2; Aug. 27, 1935, 49 Stat. 901, 903, ch. 756, §§ 11, 17; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; May 27, 1949, 63 Stat. 135, ch. 146, title V, § 505; May 18, 1954, 68 Stat. 113, ch. 218, title VIII, § 801; Mar. 31, 1956, 70 Stat. 81, 82, ch. 154, title III, §§ 301, 302(a); July 25, 1958, 72 Stat. 418, 419, Pub. L. 85-558, §§ 1-5; Sept. 14, 1961, 75 Stat. 510, 511, Pub. L. 87-238, §§ 1-5; Mar. 2, 1962, 76 Stat. 17, Pub. L. 87-408, § 401; Sept. 30, 1966, 80 Stat. 855, Pub. L. 89-610, title I, § 101(a); Oct. 31, 1969, Pub. L. 91-106, title V, 501(a) (b), 83 Stat. 175.)

#### AMENDMENTS

1969—Act Oct. 31, 1969, Pub. L. 91-106, title V, § 501, amended subsection (a) clauses (4) and (5) by changing \$1.75 to \$2.00; amended subsection (c) (1) by striking "tenth" and inserting "fifteenth".

1966—Section 101(a) of act Sept. 30, 1966, amended clauses (4) and (5) of subsec. (a) by increasing the tax from \$1.50 to \$1.75.

1962—Section 401 act Mar. 2, 1962, amended clauses (4) and (5) of subsection (a) by increasing the tax from \$1.25 to \$1.50.

1961—Subsection (c) repealed by act Sept. 14, 1961, § 1. For provisions of subsection see act July 25, 1958, 72 Stat. 418, 419, Pub. L. 85-558, §§ 1-7.

Subsection (d) renumbered as (c) by section 2 of same act, and amended to read as above set out.

Subsections (e), (f), (i), and (j) were repealed [see 1961 edition for provisions of these subsections] and subsections (g) and (h) were renumbered as (d) and (e) by section 3 of the same act.

Subsection (k) was renumbered as (f) and amended to read as above set out, by section 4 of the same act.

Subsection (g) was added by section 5 of the act. Sections 6, 7, 8, and 9 of the act are set out as notes hereunder.

1958—Subsec. (c) amended by act July 25, 1958, § 1, which inserted "on spirits or alcohol" following "Said taxes", substituted "Commissioners or their designated agent denoting" for "Collector of Taxes of the District of Columbia denoting" and added the provision requiring the Commissioners or their designated agent to furnish stamps and to cause the taxes to be collected.

Subsec. (d) amended by act July 25, 1958, § 2, which substituted the provisions for the collection and payment of taxes in the prescribed manner on the described wines for former provision requiring the Collector of Taxes of the District of Columbia to furnish stamps and cause the taxes to be collected, now incorporated in subsec. (c).

Subsecs. (e), (i) amended by act July 25, 1958, §§ 3, 4, which substituted "spirits or alcohol" for "beverage" and "beverages", wherever appearing.

Subsec. (k) amended by act July 25, 1958, § 5, which substituted "except beer and wine (wine containing 14 per centum or less of alcoholic content, wine containing more than 14 per centum of alcoholic content, champagne, sparkling wine and any wine artificially carbonated)" for "except beer," and added the words "and such statement shall be accompanied by payment of any tax imposed under this chapter upon any such wines as set forth in said report."

1956—Subsec. (a) amended by act Mar. 31, 1956, § 301, to add clause (1) and to redesignate former clauses (1)—(4) as (2)—(5), increasing in the clauses as amended the tax rate on a wine-gallon in clause (2) from 20 to 33 cents, on a wine-gallon of champagne in clause (3) from 30 to 45 cents and on a wine-gallon of spirits in clause (4) from \$1 to \$1.25.

Subsec. (e) amended by act Mar. 31, 1956, § 302(a), which substituted "Upon taxable beverage" for "Upon taxable beverages except taxable light wines" in the second sentence and deleted therefrom "; upon taxable light wines imported or brought into the District of Columbia by any wholesaler licensed under this chapter, the said stamps shall be affixed within twenty-four hours (excluding Sunday from the count) after the wines are received at the licensed premises of the wholesaler and before said wines are sold by such wholesaler".

Subsec. (k) amended by act Mar. 31, 1956, § 302(b), which deleted "and nontaxable light wines" following "except beer".

1954—Subsec. (a) amended by act May 18, 1954, to increase the tax rate on a wine-gallon in clause (1) from 15 to 20 cents, on a wine-gallon of champagne in clause (2) from 22½ to 30 cents, and on a wine-gallon of spirits in clause (3) from 75 cents to \$1 and to make minor changes in phraseology and punctuation.

1949—Subsec. (a) amended by act May 27, 1949, to increase the tax rate on a wine-gallon in clause (1) from 10 to 15 cents, on a wine-gallon of champagne in clause (2) from 15 to 22½ cents, on a wine-gallon of spirits in clause (3) from 50 to 75 cents, and on a wine-gallon of alcohol in clause (4) from \$1.10 to \$1.25.

1935—Subsec. (a) amended by act Aug. 27, 1935, § 17 to decrease the tax rate on a wine-gallon in clause (1) from 35 to 10 cents and on a wine-gallon of champagne in clause (2) from 50 to 15 cents.

Subsec. (k) added by act Aug. 27, 1935, § 11.

1934—Subsec. (a) amended by acts June 18, 1934, § 1, and Apr. 30, 1934. Act June 18, 1934, substituted "by a holder of a wholesaler's license, except beverages as may be sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under this chapter, and on all beverages imported or brought into the District of Columbia by a holder of a retailer's license" for "by a holder of a wholesaler's or retailer's license." Act Apr. 30, 1934, substantially reenacted the provisions of the first sentence as subsec. (a) substituting "manufactured by a holder of a manufacturer's license, and on all of the said beverages imported or brought into the District of Columbia by a holder of a manufacturer's license and on all beverages, except beer, purchased by the holder of a wholesaler's or retailer's license, except such beverages as may have been purchased from a licensee under this chapter."

Subsec. (b) so designated by act Apr. 30, 1934, which substantially incorporated therein the provisions of the second sentence, deleting provision for payment on or



before the fifteenth day of each month for beverages manufactured by the holders of manufacturers' licenses or purchased by the holders of wholesalers' or retailers' licenses during the preceding calendar month.

Subsecs. (c), (d) added by act Apr. 30, 1934.

Subsec. (e) amended by act June 18, 1934, § 2, which inserted "taxable" following "Upon" in the beginning of the first and second sentences, and previously added by act Apr. 30, 1934.

Subsec. (f) added by act Apr. 30, 1934.

Subsec. (g) so designated by act Apr. 30, 1934, which reenacted the provisions of the third sentence, inserting therein "by the holder of a manufacturer's or wholesaler's license."

Subsec. (h) so designated by act Apr. 30, 1934, which reenacted the provisions of the fourth sentence.

Subsecs. (i), (j) added by act Apr. 30, 1934.

**EFFECTIVE DATE OF 1969 AMENDMENTS; APPLICABILITY TO STOCK HELD PRIOR TO EFFECTIVE DATE; STATEMENTS; RECORDS OF INVENTORIES; PUNISHMENT FOR VIOLATIONS**

"SEC. 502. (a) Except as otherwise provided in this title, (section 501 and this section of Pub. L. 91-106) the amendments made by section 501 (this section and 25-138) shall apply with respect to—

"(1) alcohol, spirits, and wines imported or brought into the District of Columbia or manufactured, and

"(2) beer sold or purchased for resale,

on and after the effective date of this title, which shall be the first day of the first month which begins on or after the thirtieth day after the date of the enactment of this Act. [Oct. 31, 1969]

"(b) In the case of alcohol, spirits, and beer which have been purchased prior to the effective date of this title and which on such date are held by a holder of a retailer's license, issued under the District of Columbia Alcoholic Beverage Control Act, such licensee shall pay to the Commissioner (in accordance with subsection (c)) an amount equal to the difference between the amount of tax imposed by such Act immediately prior to the effective date of this title on the amount of alcohol, spirits, and beer so held by him, and the amount of tax which would be imposed by the District of Columbia Alcoholic Beverage Control Act on such effective date on an equivalent amount of alcohol, spirits, and beer.

"(c) Within twenty days after the effective date of this title, each such licensee (1) shall file with the Commissioner a sworn statement (on a form to be prescribed by the Commissioner) showing the quantity of alcohol, spirits, and beer held by him as of the beginning of the day on which this title becomes effective or, if such day is a Sunday, as of the beginning of the following day, and (2) shall pay to the Commissioner the amount specified in subsection (b).

"(d) Each such licensee shall keep and preserve for the twelve-month period immediately following the effective date of this title the inventories and other records made which form the basis for the information furnished to the Commissioner on the sworn statement required to be filed under this section.

"(e) For purposes of this section, alcohol, spirits, and beer shall be considered as held by a holder of a retailer's license if title thereto has passed to such holder (whether or not delivery to him has been made) and if title has not at any time been transferred to any person other than such holder.

"(f) A violation of the provisions of subsection (b), (c), or (d) of this section shall be punishable as provided in section 33 of the District of Columbia Alcoholic Beverage Control Act (D.C. Code, sec. 25-132)."

**EFFECTIVE DATE OF 1966 AMENDMENTS; APPLICABILITY TO STOCK HELD PRIOR TO EFFECTIVE DATE; STATEMENTS; RECORDS OF INVENTORIES; PUNISHMENT FOR VIOLATIONS**

Section 102 of act Sept. 30, 1966, 80 Stat. 855, Pub. L. 89-610, title I, provided:

"(a) Except as otherwise provided in this title [§ 101 and this section § 102 of the act] the amendments made by section 101 [to this section and § 25-138] shall apply with respect to—

"(1) alcohol and spirits imported or brought into the District of Columbia or manufactured, and

"(2) beer sold or purchased for resale,

on and after the effective date of this title which shall be the first day of the first month which begins on or after the thirtieth day after the date of the enactment of this Act [Sept. 30, 1966].

"(b) In the case of alcohol, spirits, and beer which have been purchased prior to the effective date of this title and which on such date are held by a holder of a retailer's license, issued under the District of Columbia Alcoholic Beverage Control Act [§ 25-102 et seq.], such licensee shall pay to the Commissioners (in accordance with subsection (c)) an amount equal to the difference between the amount of tax imposed by such Act immediately prior to the effective date of this Act on the amount of alcohol, spirits, and beer so held by him, and the amount of tax which would be imposed by the District of Columbia Alcoholic Beverage Control Act on such effective date on an equivalent amount of alcohol, spirits, and beer.

"(c) Within twenty days after the effective date of this title, each such licensee shall (1) file with the Commissioners a sworn statement (on a form to be prescribed by the Commissioners) showing the quantity of alcohol, spirits, and beer held by him as of the beginning of the day on which this title becomes effective or, if such day is a Sunday, as of the beginning of the following day, and (2) within twenty days after the effective date of this title, pay to the Commissioners the amount specified in subsection (b).

"(d) Each such licensee shall keep and preserve for the period of twelve months immediately following the effective date of this title the inventories and other records made which form the basis for the information furnished to the Commissioners on the sworn statement required to be filed under this section.

"(e) For purposes of this section, alcohol, spirits, and beer shall be considered as held by a holder of a retailer's license if title thereto has passed to such holder (whether or not delivery to him has been made) and if title has not at any time been transferred to any person other than such holder.

"(f) A violation of the provisions of subsections (b), (c), or (d) of this section shall be punishable as provided in section 33 of the District of Columbia Alcoholic Beverage Control Act (D.C. Code, sec. 25-132)."

**EFFECTIVE DATE OF 1962 AMENDMENTS**

Section 402, act Mar. 2, 1962, provided that the amendments made by section 401 "shall take effect on the first day of the first month which begins on or after the thirtieth day after the date of enactment of this Act." [Mar. 2, 1962]

**EFFECTIVE DATE OF 1961 AMENDMENT**

Section 9 of act Sept. 14, 1961, provided that: "This Act [making amendments, repeals, and changes set out under 1961 Amendment note] shall take effect on the first day of the calendar month beginning not less than sixty days after the date of approval of this Act [Sept. 14, 1961]."

**EFFECTIVE DATE OF 1958 AMENDMENT**

Section 7 of act July 25, 1958, provided that: "This Act [amending subsecs. (c)—(e), (i) and (k) of this section and enacting provisions set out as a note under this section] shall take effect on the first day of the calendar month beginning not less than sixty days after the date of approval of this Act [July 25, 1958]."

**EFFECTIVE DATE OF 1956 AMENDMENT**

Section 308 of act Mar. 31, 1956, provided that: "The provisions of this title [amending this section and section 25-138 and enacting provisions set out as notes under this section] shall take effect on the first day of the first month which begins on or after the thirtieth day after the date of enactment of this Act [Mar. 31, 1956]."

**EFFECTIVE DATE OF 1954 AMENDMENT**

Section 806 of act May 18, 1954, provided that: "The provisions of this title [amending this section and section 25-138 and enacting provisions set out as notes under this section] shall become effective on the day following the approval of this Act [May 18, 1954]."



## EFFECTIVE DATE OF 1949 AMENDMENT

Amendment of section by act May 27, 1949, effective on the first day of first month succeeding sixtieth day after May 27, 1949, see section 509 of act May 27, 1949, set out as a note under section 25-111.

## CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

## TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402 (220, 221 and 424) of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, transferred the functions of the Board of Commissioners of prescribing by regulation methods or devices or both for the assessment, evidencing of payment, and collection of taxes under subsec. (c) (3); requiring that the immediate container of each beverage contain the license number of each licensee who sells or offers for sale such beverages under subsec. (g); and making rules and regulations to carry out the Act of Sept. 30, 1966, Pub. L. 89-610, under § 1005 thereof, set out as a note hereunder; to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

## TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

The Office of the Collector of Taxes was abolished and the functions thereof transferred, see note under § 47-301.

## DESIGNATION OF AGENT BY COMMISSIONER

See Org. Ord. No. 3, Part IVC, par. 2b(10), and Commissioner's Order No. 69-96, dated Mar. 7, 1969, set out as an Organization Action, in the appendix to title 1.

## AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91-106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91-106, set out as a note under § 47-2501a.

## SHORT TITLE

Section 1 of act Sept. 30, 1966, 80 Stat. 855, Pub. L. 89-610, provided that such act amending §§ 7-133(a), 9-220(b), subsec. (a) of this section 1 and §§ 25-138(a), 40-603(j), 43-1541(a), 47-1551c, 47-1567b(a), 47-1901, 47-1912, 47-2501a, 47-2501b, 47-2602, 47-2604(c), 47-2605, 47-2802(a), repealing § 47-134, and enacting §§ 1-1401a and 47-314 and provisions set out as notes under this section and § 47-2802, provided that such act may be cited as the "District of Columbia Revenue Act of 1966".

## DEFINITION; CONSTRUCTION; SEVERABILITY; RULES AND REGULATIONS PROVISIONS OF ACT SEPT. 30, 1966

Act Sept. 30, 1966, 80 Stat. 859 (amending §§ 7-133(a), 9-220(b), subsec. (a) of this section, and §§ 25-138(a), 40-603(j), 43-1541(a), 47-1551c, 47-1567b(a), 47-1901, 47-1912, 47-2501a and 47-314 and provisions set out as notes under this section and §§ 40-603, 47-1551c, 47-1567b, 47-1901 and 47-2605(q)), Pub. L. 89-610, title X, §§ 1002-1005, provided:

"SEC. 1002. As used in this Act, unless the context requires otherwise, the word "Commissioners" shall mean the Board of Commissioners of the District of Columbia, or its designated agent.

"SEC. 1003. Any word or term used in any title of this Act, unless the context requires otherwise, shall have the same meaning as that applicable to such word or term in the Act to which such title applies.

"SEC. 1004. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

"SEC. 1005. The District of Columbia Council is authorized to make rules and regulations to carry out the provisions of this Act."

## CONSTRUCTION OF ACT SEPT. 14, 1961, AND DECLARATION OF AUTHORITY

Section 6 of act Sept. 14, 1961, provided that:

"Nothing in this Act [repealing subsection (c) renumbering subsection (d) as subsection (c) and amending same to read as above set out; repealing subsections (e), (f), (i), and (j); renumbering (g) and (h) as (d) and (e) and renumbering (k) as (f) and amending same to read as above set out and adding subsection (g)] shall be construed as requiring the payment of any further tax on beverages to which stamps have been lawfully affixed under provisions of prior law."

Section 8 of said act provided that:

"Nothing in this Act [making the repeals, amendments and renumberings above set out] shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan."

## SHORT TITLE, DEFINITIONS, CONSTRUCTION, SEPARABILITY, AND REGULATIONS PROVISIONS OF ACT MAY 18, 1954

See notes under § 43-1601, and § 43-1618 and note thereunder.

## CONSTRUCTION OF ACT JULY 25, 1958, AND DELEGATION OF AUTHORITY

Section 6 of act July 25, 1958, provided that:

"Nothing in this Act [amending subsecs. (c)—(e), (i) and (k) of this section] shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act [amending subsecs. (c)—(e), (i) and (k) of this section] in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan."

## REDEMPTION OF UNUSED STAMPS

Section 7 of act Sept. 14, 1961, provided that:

"The Commissioners or their designated agent are authorized to redeem any unused stamps issued under the provisions of prior law or to accept same in payment of tax shown due on a monthly return."

## OFFICERS AND AGENCIES OF DISTRICT

Officer or agency of the District, other than the Commissioners, referred to in act Mar. 31, 1956, deemed to be the officer or agency so mentioned or officer, officers, agency, agencies succeeding to functions of officer or agency so mentioned, pursuant to Reorg. Plan No. 5 of 1952, see section 603 of act Mar. 31, 1956, set out as a note under section 47-1551c.

## TRANSITORY PROVISIONS OF ACT MAR. 31, 1956

"SEC. 303. Within ten days after the effective date of this title [see Effective Date of 1956 Amendment note hereunder], every holder of a retailer's license under said District of Columbia Alcoholic Beverage Control Act shall file with the Alcoholic Beverage Control Board a sworn statement on a form to be prescribed by the Commissioners showing the number of each kind and denomination of stamps denoting the payment of beverage taxes held or possessed by such licensee or anyone for him on the day on which this title becomes effective, or on the following day if the effective date be a Sunday, other than stamps affixed to the containers of beverages manufactured in or imported into the District prior to the effective date of this title, and shall, within fifteen days after the effective date of this title, pay to the Collector of Taxes, the difference between the amount of tax represented by such stamps at the time of purchase from the Collector of Taxes and the amount of tax imposed by the Alcoholic Beverage Control Act as amended by this title [amend-



ing this section and section 25-138 and enacting sections 303, 304, 306, 307 of act Mar. 31, 1956], represented by such stamps.

"Sec. 304. Within ten days after the effective date of this title [see Effective Date of 1956 Amendment note hereunder], every holder of a manufacturer's license, class A, and every holder of a wholesaler's license under the District of Columbia Alcoholic Beverage Control Act shall file with the Alcoholic Beverage Control Board a sworn statement on a form prescribed by the Commissioners showing the amount and kind of all beverages, except (1) beer, (2) wine containing 14 per centum or less of alcohol by volume other than champagne, sparkling wine and wine artificially carbonated, and (3) beverages upon which required stamps have been affixed, held, or possessed by him in the District at the beginning of the day this title becomes effective and shall state the number of each kind and denomination of stamps necessary for the stamping of such beverages so held or possessed. Every such licensee, within ten days after the effective date of this title, shall also file with the Alcoholic Beverage Control Board a sworn statement on a form to be prescribed by the Commissioners showing the number of each kind and denomination of stamps denoting the payment of beverage taxes (other than stamps denoting the payment of beverage taxes on alcohol and other than stamps affixed to the containers of beverages manufactured in or imported into the District prior to the effective date of this title) held or possessed by such licensee or anyone for him at the beginning of the day on which title becomes effective. Every such licensee shall within fifteen days after the effective date of this title pay to the Collector of Taxes for all stamps not necessary for the stamping of beverages shown on the sworn statement hereinbefore required to be filed with the Alcoholic Beverage Control Board the difference between the amount of tax represented by such stamps at the time of purchase from the Collector of Taxes and the amount of tax imposed by the Alcoholic Beverage Control Act, as amended by this title [amending this section and section 25-138 and enacting sections 303, 304, 306, 307 of act Mar. 31, 1956], represented by such stamps. Should the number of any kind or denomination of stamps so held by a licensee be less than the number necessary for the stamping of the beverages shown on said sworn statement, the Collector of Taxes is authorized and directed to sell to such licensee, at the rates prescribed for such stamps prior to the effective date of this title, such stamps as may be necessary for the stamping of such beverages. In the event any of the beverages shown on said sworn statement are sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under the Alcoholic Beverage Control Act, such sale shall, within ten days thereafter, be reported to the Alcoholic Beverage Control Board and within said ten days such licensee shall pay to the Collector of Taxes on all stamps held by him for the stamping of such beverages the difference between the amount of tax represented by such stamps at the time of purchase from the Collector of Taxes and the amount of tax imposed by the Alcoholic Beverage Control Act, as amended by this title, represented by such stamps.

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"Sec. 306. Every holder of a manufacturer's, wholesaler's, or retailer's license under said District of Columbia Alcoholic Beverage Control Act shall keep and preserve for a period of six months after the effective date of this title [see Effective Date of 1956 Amendment note hereunder] the inventories or other records made which form the basis for the information furnished on the sworn statements required to be filed under this title [amending this section and section 25-138 and enacting sections 303, 304, 306, 307 of act Mar. 31, 1956].

"Sec. 307. Any violation of the provisions of this title [amending this section and section 25-138 and enacting sections 303, 304, 306, 307 of act Mar. 31, 1956] shall constitute a violation under the District of Columbia Alcoholic Beverage Control Act and regulations promulgated pursuant thereto."

#### TRANSITORY PROVISIONS OF ACT MAY 18, 1954

"Sec. 802. Within ten days after the effective date of this title [May 19, 1954], every holder of a retailer's

license under said District of Columbia Alcoholic Beverage Control Act [this chapter] shall file with the Alcoholic Beverage Control Board a sworn statement on a form to be prescribed by the Commissioners showing the number of each kind and denomination of stamps denoting the payment of beverage taxes held or possessed by such licensee or anyone for him on the day on which this title becomes effective [May 19, 1954], or on the following day if the effective date be a Sunday, other than stamps affixed to the containers of beverages manufactured in or imported into the District prior to the effective date of this title [May 19, 1954], and shall, within fifteen days after the effective date of his title, [May 19, 1954] pay to the Collector of Taxes, the difference between the amount of tax represented by such stamps at the time of purchase from the Collector of Taxes and the amount of tax imposed by the Alcoholic Beverage Control Act as amended by this title [this chapter], represented by such stamps.

"Sec. 803. Within ten days after the effective date of this title [May 19, 1954], every holder of a manufacturer's license, class A, and every holder of a wholesaler's license under the District of Columbia Alcoholic Beverage Control Act [this chapter] shall file with the Alcoholic Beverage Control Board a sworn statement on a form prescribed by the Commissioners showing the amount and kind of all beverages, except (1) beer, (2) wine containing 14 per centum or less of alcohol by volume other than champagne and wine artificially carbonated, and (3) beverages upon which required stamps have been affixed, held, or possessed by him in the District at the beginning of the day this title becomes effective [May 19, 1954] and shall state the number of each kind and denomination of stamps necessary for the stamping of such beverages so held or possessed. Every such licensee, within ten days after the effective date of this title [May 19, 1954], shall also file with the Alcoholic Beverage Control Board a sworn statement on a form to be prescribed by the Commissioners showing the number of each kind and denomination of stamps denoting the payment of beverage taxes (other than stamps denoting the payment of beverage taxes on alcohol and other than stamps affixed to the containers of beverages manufactured in or imported into the District prior to the effective date of this title [May 19, 1954]) held or possessed by such licensee or anyone for him at the beginning of the day on which title becomes effective. Every such licensee shall within fifteen days after the effective date of this title [May 19, 1954], pay to the Collector of Taxes for all stamps not necessary for the stamping of beverages shown on the sworn statement hereinbefore required to be filed with the Alcoholic Beverage Control Board the difference between the amount of tax represented by such stamps at the time of purchase from the Collector of Taxes and the amount of tax imposed by the Alcoholic Beverage Control Act, as amended by this title [this chapter], represented by such stamps. Should the number of any kind or denomination of stamps so held by a licensee be less than the number necessary for the stamping of the beverages shown on said sworn statement, the Collector of Taxes is authorized and directed to sell to such licensee, at the rates prescribed for such stamps prior to the effective date of this title, [May 19, 1954] such stamps as may be necessary for the stamping of such beverages. In the event any of the beverages shown on said sworn statement are sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under the Alcoholic Beverage Control Act [this chapter], such sale shall, within ten days thereafter, be reported to the Alcoholic Beverage Control Board and within said ten days such licensee shall pay to the Collector of Taxes on all stamps held by him for the stamping of such beverages the difference between the amount of tax represented by such stamps at the time of purchase from the Collector of Taxes and the amount of tax imposed by the Alcoholic Beverage Control Act, as amended by this title [this chapter], represented by such stamps.

\* \* \* \* \*

"Sec. 805. Any violation of the provisions of this title [amending this section and section 25-138 and enacting



sections 802, 803, 805 of act May 18, 1954] shall constitute a violation under the Alcoholic Beverage Control Act and regulations promulgated pursuant thereto."

#### TRANSITORY PROVISIONS OF ACT MAY 27, 1949

Sections 506 and 507 of act May 27, 1949, provided respectively as follows:

"SEC. 506. Within ten days after the effective date of this title [see Effective Date of 1949 Amendment note hereunder], every holder of a retailer's license under said District of Columbia Alcoholic Beverage Control Act [this chapter] shall file with the Alcoholic Beverage Control Board a sworn statement on a form to be prescribed by the Commissioners of the District of Columbia showing the number of each kind and denomination of stamps denoting the payment of beverage taxes held or possessed by such licensee or anyone for him on the day on which this title becomes effective, or on the following day if the effective date be a Sunday, other than stamps affixed to the containers of beverages manufactured in or imported into the District of Columbia prior to the effective date of this title, and shall, within fifteen days after the effective date of this title, pay to the Collector of Taxes the difference between the amount of tax represented by such stamps at the time of purchase from the Collector of Taxes and the amount of tax imposed by the Alcoholic Beverage Control Act as amended by the title, represented by such stamps.

"SEC. 507. Within ten days after the effective date of this title [see Effective Date of 1949 Amendment note hereunder], every holder of a manufacturer's license, class A, and every holder of a wholesaler's license under the District of Columbia Alcoholic Beverage Control Act [this chapter] shall file with the Alcoholic Beverage Control Board a sworn statement on a form to be prescribed by the Commissioners showing the amount and kind of all beverages, except (1) beer, (2) wine containing 14 per centum or less of alcohol by volume other than champagne and wine artificially carbonated, and (3) beverages upon which required stamps have been affixed, held, or possessed by him in the District of Columbia at the beginning of the day this title becomes effective and shall state the number of each kind and denomination of stamps necessary for the stamping of such beverages so held or possessed. Every such licensee, within ten days after the effective date of this title, shall also file with the Alcoholic Beverage Control Board a sworn statement on a form to be prescribed by the Commissioners of the District of Columbia showing the number of each kind and denomination of stamps denoting the payment of beverage taxes held or possessed by such licensee or anyone for him at the beginning of the day on which this title becomes effective, other than stamps affixed to the containers of beverages manufactured in or imported into the District of Columbia prior to the effective date of this title. Every such licensee shall within fifteen days after the effective date of this title pay to the Collector of Taxes for all stamps not necessary for the stamping of beverages shown on the sworn statement hereinbefore required to be filed with the Alcoholic Beverage Control Board the difference between the amount of tax represented by such stamps at the time of purchase from the Collector of Taxes and the amount of tax imposed by the Alcoholic Beverage Control Act, as amended by this title [amendment of sections 25-111, 25-111a, 25-117, 25-124, 25-138], represented by such stamps. Should the number of any kind or denomination of stamps so held by a licensee be less than the number necessary for the stamping of the beverages shown on said sworn statement, the Collector of Taxes is authorized and directed to sell to such licensee, at the rates prescribed for such stamps prior to the effective date of this title, such stamps as may be necessary for the stamping of such beverages. In the event any of the beverages shown on said sworn statement are sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under the Alcoholic Beverage Control Act, such sale shall, within ten days thereafter, be reported to the Alcoholic Beverage Control Board and within said ten days such licensee shall pay

to the Collector of Taxes on all stamps held by him for the stamping of such beverages the difference between the amount of tax represented by such stamps at the time of purchase from the Collector of Taxes and the amount of tax imposed by the Alcoholic Beverage Control Act, as amended by this title, represented by such stamps."

#### CROSS REFERENCES

Authority of D.C. Council to make rules and regulations relating to act Mar. 31, 1956, see § 47-1595a.

Manufactured beverage defined, see § 25-123.

Redemption of cigarette or alcoholic-beverage tax stamps, see § 47-2811.

Tax on beer, see § 25-138.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 25-123.

#### NOTES TO DECISIONS

##### Affixation of tax stamps

Alcoholic spirits remaining on retail liquor dealer's premises for more than 24 hours without having District of Columbia tax stamps affixed were properly condemned and forfeited, even though dealer had the necessary stamps on his premises. *Apex Liquors Inc. v. District of Columbia* (1962, 303 F. 2d 206, 112 U.S. App. D.C. 346).

##### Collector's control of goods in warehouse

Although goods in bonded warehouse are in joint custody of warehouse owner and collector of customs, they are subject to control of collector as to release of goods from warehouse. *District of Columbia v. International Distributing Corp.* (1964, 331 F. 2d 817, 118 U.S. App. D.C. 71).

##### Tax on sales to embassies and international organizations

Wholesaler of imported alcoholic beverages stored in private bonded warehouse under charge of customs official was not liable for District of Columbia excise taxes on sale of such beverages to foreign embassies and international organizations. *District of Columbia v. International Distributing Corp.* (1964, 331 F. 2d 817, 118 U.S. App. D.C. 71).

#### § 25-125. Sale, distribution, furnishing of beverages by convicted persons and minors.

No licensee under this chapter shall allow any minor under the age of twenty-one years of age to sell, give, furnish, or distribute any beverage, except beer and light wines, or any minor under the age of eighteen years to sell, give, furnish, or distribute beer and light wines. (Jan. 24, 1934, 48 Stat. 333, ch. 4, § 25; Aug. 27, 1935, 49 Stat. 901, ch. 756, § 12; Dec. 8, 1970, Pub. L. 91-535, § 3(b), 84 Stat. 1393.)

#### AMENDMENTS

1970—Section 3(b) of act Dec. 8, 1970, Pub. L. 91-535, amended section by striking out "allow any person who has, within ten years prior thereto, been convicted of any felony, to sell, give, furnish, or distribute any beverage, nor".

1935—Act Aug. 27, 1935, deleted the words "within five years prior thereto, been convicted of a misdemeanor under the National Prohibition Act, as amended and supplemented or," which followed the words "convicted of," and added the words "and light wines" both times they now appear.

#### § 25-126. Power of Board to compel testimony—Witness fees—Perjury.

Said Board is hereby authorized and empowered to summon any person before it to give testimony on oath or affirmation, or to produce all books, records, papers, documents, or other legal evidence as to any matter affecting the operation of this chapter and any member of said Board shall have the power to administer all oaths and affirmations for the purposes of the administration of this chapter. Such summons may be served within the District



by any member of the Metropolitan police department. Without the District, but not more than twenty-five miles distant from the place of the hearing, such summons shall be served by a United States marshal or his deputy. If any witness having been personally summoned shall neglect or refuse to obey the summons issued as herein provided, then and in that event any member of the Board may report that fact to the Superior Court of the District of Columbia or one of the judges thereof and said court or any judge thereof hereby is empowered to compel obedience to said summons to the same extent as witnesses may be compelled to obey the subpoenas of that court. Witnesses, other than those employed by the District of Columbia or the United States Government, summoned to appear before said Board shall be entitled to the same fees as are paid witnesses for attendance before the Superior Court of the District of Columbia, but said fees need not be paid said witnesses in advance of their appearing and testifying, or producing books, records, papers, documents, or other legal evidence before said board. Any person who shall wilfully swear falsely in any proceeding, matter, or hearing before said Board shall be deemed guilty of perjury. (Jan. 24, 1934, 48 Stat. 333, ch. 4, § 26; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91-358, title I, § 155(c) (33), 84 Stat. 572; Dec. 8, 1970, Pub. L. 91-535, § 4, 84 Stat. 1393.)

#### CODIFICATION

Section 155(c) (33) of act July 29, 1970, Pub. L. 91-358, amended this section, effective Feb. 1, 1971, by striking out all references to the United States District Court for the District of Columbia and inserting in lieu thereof "Superior Court of the District of Columbia". Section 4 of act Dec. 8, 1970, Pub. L. 91-535, again amended this section by striking out references to the United States District Court for the District of Columbia and inserting in lieu thereof "District of Columbia Court of General Sessions". It would appear that as of Feb. 1, 1971, the proper reference is to the "Superior Court of the District of Columbia".

#### AMENDMENTS

1970—Section 4 of act Dec. 8, 1970, Pub. L. 91-535, amended section

(1) by inserting "within the District" immediately after "served" in the second sentence;

(2) by inserting immediately after such second sentence the following new sentence: "Without the District, but not more than twenty-five miles distant from the place of the hearing, such summons shall be served by a United States marshal or his deputy."; and

(3) by striking out "United States District Court for the District of Columbia" in the third and fourth sentences and inserting in lieu thereof "District of Columbia Court of General Sessions".

Section 155(c) (33) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91-358

See note preceding section 11-101.

#### CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia" and "judges" and "judge" for "justices" and "justice."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

#### TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

§ 25-127. Intoxicated person not to operate locomotive, streetcar, elevator, watercraft, or horse-drawn vehicle—Penalty—Traffic acts not affected.

(a) No person shall be intoxicated while in charge of or operating any locomotive or while acting as a conductor or brakeman of a car or train of cars, or while in charge of or operating any street car, elevator, watercraft, or horse-drawn vehicle in the District of Columbia.

(b) Any person violating the provisions of this section shall be punished by a fine of not more than \$300, or by imprisonment for not longer than three months, or by both such fine and imprisonment in the discretion of the court.

(c) Nothing herein contained shall be construed as repealing or modifying any provision of sections 40-301 to 40-303, 40-603, 40-605, 40-609 and 40-612. (Jan. 24, 1934, 48 Stat. 333, ch. 4, § 27.)

§ 25-128. Drinking of alcoholic beverage in street, alley, park, parking, or unlicensed public place forbidden—Intoxication in street, alley, park, or parking forbidden—Penalty.

(a) No person shall in the District of Columbia drink any alcoholic beverage in any street, alley, park, or parking; or in any vehicle in or upon the same; or in or upon any premises where food, non-alcoholic beverages, or entertainment are sold or provided for compensation not licensed under this chapter; or in any place to which the public is invited for which a license has not been issued hereunder permitting the sale and consumption of such alcoholic beverage upon such premises except premises licensed under section 25-111 (l); or in any place to which the public is invited (for which a license under this chapter has been issued) at a time when the sale of such alcoholic beverages on the premises is prohibited by this chapter or by the regulations promulgated thereunder, or in any place for which a license under section 25-111 (l) has been issued at a time when the consumption of such alcoholic beverages on the premises is prohibited by regulations promulgated under this chapter. No person in the District of Columbia, whether in or on public or private property, shall be intoxicated and endanger the safety of himself or of any other person or of property.

(b) Any person violating the provisions of subsection (a) of this section shall be punished by a fine of not more than \$100 or by imprisonment for not more than ninety days, or both.

(c) Any person in the District of Columbia who is intoxicated in public and who is not conducting himself in such manner as to endanger the safety of himself or of any other person or of property, shall be dealt with in accordance with section 24-524. (Jan. 24, 1934, 48 Stat. 333, ch. 4, § 28; Aug. 27, 1935, 49 Stat. 901, 902, ch. 756, §§ 13, 14; June 29, 1953, 67 Stat. 104, ch. 159, § 404(h); Aug. 3, 1968, Pub. L. 90-452, § 2 (a), 82 Stat. 618.)



## AMENDMENTS

1968—Section 2(a), act Aug. 3, 1968, Pub. L. 90-452, amended section as follows:

(1) Amended the second sentence of subsection (a) to read as above set out. This sentence prior to its amendment read: "No such person shall be drunk or intoxicated in any street, alley, park, or parking; or in any vehicle in or upon the same or in any place to which the public is invited, or at any public gathering and no person anywhere shall be drunk or intoxicated and disturb the peace of any person."

(2) Struck out "this section" in subsection (b) and inserted in lieu thereof "subsection (a) of this section" and

(3) Added subsection (c).

1953—Subsec. (a) amended by act June 29, 1953, which inserted the words "or in or upon any premises where food, nonalcoholic beverages, or entertainment are sold or provided for compensation not licensed under this chapter", "except premises licensed under section 25-111(l)", and "or in any place for which a license under section 25-111(l) has been issued at a time when the consumption of such alcoholic beverages on the premises is prohibited by regulations promulgated under this chapter."

Subsec. (b) amended by act June 29, 1953, which substituted punishment by fine of not more than \$100 or imprisonment for not more than ninety days or both for any offense for former punishment by "a fine of not more than \$100 or by imprisonment for not more than thirty days or by both such fine and imprisonment in the discretion of the court for the first offense, by a fine of not more than \$200 or by imprisonment for not more than sixty days or by both such fine and imprisonment in the discretion of the court for the second offense, or by a fine of not more than \$500 or by imprisonment for not more than six months or by both such fine and imprisonment in the discretion of the court for each subsequent offense."

1935—Subsec. (a) amended by act Aug. 27, 1935, § 13, which inserted "; or in any place to which the public is invited (for which a license under this chapter has been issued) at a time when the sale of such alcoholic beverage on the premises is prohibited by this chapter or by the regulations promulgated thereunder."

Subsec. (b) amended by act Aug. 27, 1935, § 14, to make the existing penalty provisions applicable for the first offense and to add the penalty provisions for the second and subsequent offenses reading "by a fine of not more than \$200 or by imprisonment for not more than sixty days or by both such fine and imprisonment in the discretion of the court for the second offense, or by a fine of not more than \$500 or by imprisonment for not more than six months or by both such fine and imprisonment in the discretion of the court for each subsequent offense."

## EFFECTIVE DATE OF 1953 AMENDMENT

Amendment of section by act June 29, 1953, effective sixty days after June 29, 1953, see section 404(k) of act June 29, 1953, set out as a note under section 25-109.

## CROSS REFERENCE

Presence in illegal establishment, see § 22-1515.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24-524, 24-527.

## NOTES TO DECISIONS

## In general

Where defendant, convicted of being drunk in a public park and unable to pay fine, was imprisoned, his argument that general authority given by sections 11-606 and 11-616 was limited by this section, was without merit where the general statute existed before the special one Congress must have been aware of the older statutes, and had it intended later to modify the earlier, would have done so. *Peeples v. District of Columbia* (D.C. Mun. App. 1950, 75 A. 2d 845).

## Arrest by narcotics officer

Local narcotics officer had authority extended by statute to police officers generally to make arrest without warrant of person committing offense in his presence of drinking alcoholic beverage in public place. *L. R. Hutcherson v. United States* (1965, 345 F. 2d 964, 120 U.S. App. D.C. 274).

## Arrest without warrant

Officer who observed man in alley drinking from bottle labeled wine had probable cause for arrest without warrant for offense of drinking alcoholic beverage in alley. *L. R. Hutcherson v. United States* (1965, 345 F. 2d 964, 120 U.S. App. D.C. 274).

## Chronic alcoholism as a crime

Chronic alcoholism is defense to charge of public intoxication and is not itself a crime. *DeW. Easter v. District of Columbia* (1966, 361 F. 2d 50, 124 U.S. App. D.C. 33).

Chronic alcoholism resulting in public intoxication cannot be held to be criminal on theory that before sickness became chronic there was in some earlier period a voluntary act or series of acts which led to chronic condition. *Id.*

## Evidence

Evidence sustained convictions for disorderly conduct and drinking in public. *J. M. Heard v. District of Columbia* (D.C. Mun. App. 1962, 179 A. 2d 723).

In prosecution for intoxication, evidence was insufficient to support trial judge's finding that defendant was not guilty because of insanity. *Williams v. District of Columbia* (D.C. Mun. App. 1959, 147 A. 2d 773).

## — Sufficiency

Evidence sustained conviction of assault, public intoxication and disorderly conduct in violation of District of Columbia Code. *W. M. Dempsey v. United States and District of Columbia* (D.C. App. 1969, 251 A. 2d 650).

## Fine

Defendant on charge of intoxication upon public street could constitutionally be subjected to fine greater than collateral he was required to post. *H. E. Coleman v. District of Columbia* (D.C. App. 1964, 203 A. 2d 918).

Imposition of fine of \$100 (statutory maximum) for intoxication on public street was not cruel and inhuman punishment, although defendant had been required to post only \$10 collateral as security for appearance for trial. *Id.*

## Issue of fact

Whether a defendant, who was charged with assault, public intoxication and disorderly conduct in violation of District of Columbia Code, had mental disease which should have excused him from criminal responsibility was issue of ultimate fact for the trier thereof. *W. M. Dempsey v. United States and District of Columbia* (D.C. App. 1969, 251 A. 2d 650).

## Search without warrant

Police officer's search of person lawfully arrested for drinking alcoholic beverage in alley wherein heroin was discovered in belt under shirt was justified by lawful arrest and by admission of person arrested that he had weapon which he seemed to be about to reach for under his clothing. *L. R. Hutcherson v. United States* (1965, 345 F. 2d 964, 120 U.S. App. D.C. 274).

## Weight of evidence

Weight to be given testimony of witnesses who related that the conduct of the defendant at time of alleged assault, public intoxication and disorderly conduct, in violation of District of Columbia Code, and shortly thereafter was bizarre and the weight to be given testimony of government witness who related that the defendant was intoxicated at the time of alleged offenses and that assault was triggered by refusal to serve him beer was for the trier of fact. *W. M. Dempsey v. United States and District of Columbia* (D.C. App. 1969, 251 A. 2d 650).

§ 25-129. Search warrants for illegal alcoholic beverages—Penalty for resisting officer—Disposition of illegal beverages—Payment of bona fide liens.

(a) A search warrant may be issued by any judge of the Superior Court of the District of Columbia or by a United States commissioner for the District of Columbia when any alcoholic beverages are manufactured for sale, kept for sale, sold, or consumed in violation of the provisions of this chapter, and any such alcoholic beverages and any other property designed for use in connection with such



unlawful manufacture for sale, keeping for sale, selling, or consumption may be seized thereunder, and shall be subject to such disposition as the court may make thereof, and such alcoholic beverages may be taken on the warrant from any house or other place in which it is concealed.

(b) A search warrant can not be issued but upon probable cause supported by affidavit particularly describing the property and the place to be searched.

(c) The judge or commissioner must, before issuing the warrant, examine on oath the complainant and any witness he may produce, and require their affidavits or take their depositions in writing and cause them to be subscribed by the parties making them.

(d) The affidavits or depositions must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

(e) If the judge or commissioner is thereupon satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence, he must issue a search warrant signed by him with his name of office to the major and superintendent of police of the District of Columbia or any member of the Metropolitan police department, stating the particular grounds or probable cause for its issue and the names of the persons whose affidavits have been taken in support thereof, and commanding him forthwith to search the place named for the property specified and to bring it before the judge or commissioner.

(f) A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

(g) The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

(h) The judge or commissioner must insert a direction in the warrant that it be served in the daytime unless the affidavit is positive that the property is in the place to be searched in which case he must insert a direction that it be served at any time in the day or night.

(i) A search warrant must be executed and returned to the judge or commissioner who issued it within ten days after its date; after the expiration of this time the warrant, unless executed, is void.

(j) When the officer takes property under the warrant, he must give a copy of the warrant together with a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or, in the absence of any person, he must leave it in the place where he found the property.

(k) The officer must forthwith return the warrant to the judge or commissioner and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory and taken be-

fore the judge or commissioner at the time, to the following effect: "I, R. S., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

(l) The judge or commissioner must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken and to the applicant for the warrant.

(m) The judge or commissioner must annex the affidavits, search warrant, return, inventory, and evidence, and at once file the same, together with a copy of the record of his proceedings, with the clerk of the municipal court.

(n) Whoever shall knowingly and wilfully obstruct, resist, or oppose any such officer or person in serving or attempting to serve or execute any such search warrant, or shall assault, beat, or wound any such officer or person, knowing him to be an officer or person so authorized, shall be fined not more than \$1,000 or imprisoned not more than two years.

(o) If the accused be discharged, the beverages and other property seized shall be returned to the person in whose possession they were found; if he be convicted, the said beverages and other property shall be forfeited, and may be destroyed by the police department or delivered for medicinal, mechanical, or scientific uses to any department or agency of the United States Government or the District of Columbia government or any hospital or other charitable institution in the District of Columbia, or sold at public auction, as the court may direct.

(p) If any of said property so seized, other than the said beverages and the containers thereof, shall be subject to a lien which is established by intervention or otherwise to the satisfaction of the court as being bona fide and as having been created without the lienor's having any notice that said property was to be used in connection with the illegal manufacture for sale, keeping for sale, or selling of alcoholic beverages, the court, upon the conviction of the accused, shall order a sale of said property at public auction and the officer making the sale, after deducting the expenses of keeping the property, the fee for the seizure and the cost of the sale, shall pay all such liens according to their priorities, and such lien or liens shall be transferred from the property to the proceeds of the sale thereof. (Jan. 24, 1934, 48 Stat. 334, ch. 4, § 29; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 29, 1953, 67 Stat. 104, ch. 159, § 404(i); July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### REFERENCE IN TEXT

The Act of Oct. 17, 1968, Pub. L. 90-578, terminated the office of United States commissioner and established in place thereof the office of United States magistrate. The Act became operative in the District of Columbia on June 27, 1969, when two United States magistrates assumed the office pursuant to appointment by order of the District Court dated June 20, 1969. See §§ 401(a) and 402(a) (b) of said Act (28 U.S.C. 631 note).

#### AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended subsec. (a) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

1953—Subsection (a) amended by act June 29, 1953, which substituted "The Municipal Court for the District



of Columbia" for "the police court of the District of Columbia" to conform to change in name effected by act Apr. 1, 1942, substituted "commissioner" for "Commissioner" and provided for the seizure of alcoholic beverages and other property designed for use in connection with unlawful consumption.

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" in subsec. (a) and "Municipal Court" for "police court" in subsec. (m) to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

#### TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under section 4-103.

#### CROSS REFERENCES

Other provisions concerning disposition of property coming into hands of police, see § 4-151 et seq.

Search warrants, generally, see § 23-521 et seq.

#### NOTES TO DECISIONS

##### Applications for search warrant

A lapse of four days between time police officers observed illegal activities on premises and time police department made application for search warrant based on policeman's affidavit describing sale of alcoholic beverages on premises without a license was not, under the circumstances, unreasonable as a matter of law. *G. Williams & S. Stokes v. District of Columbia* (D.C. Mun. App. 1961, 167 A. 2d 893).

##### Search warrant—Application for

Elapse of nine days between time police officer purchased liquor on premises and time officer made application for night search warrant based on policeman's affidavit describing sale of alcoholic beverages on premises without a license was not unreasonable under circumstances including showing that officer described the premises as having a bar and a bartender, tables enough for at least 20 persons and food and beverage service. *Underdown v. District of Columbia* (D.C. App. 1966, 217 A. 2d 659).

The test of whether too long a period of time had passed between commission of unlawful acts and issuance of a search warrant is one of reasonableness, although a less flexible standard is applied when the warrant is one that must be based on "positive" knowledge. *Id.*

Where alcoholic beverages are purchased in circumstances indicating a continuing business in sale of illicit liquor, there is a strong presumption that the liquor will be found on the premises for a reasonable time thereafter. *Id.*

##### — Execution of

Five-day delay in execution of night warrant for search of premises where alcoholic beverages were being sold without a license was not unreasonable since an after-hours liquor establishment might operate only on weekend evenings so that it was reasonable to wait until following weekend to execute the warrant. *Underdown v. District of Columbia* (D.C. App. 1966, 217 A. 2d 659).

Since the statute and warrant for search of premises for alcoholic beverages provided that it must be executed within 10 days, execution before expiration of that time limit was reasonable. *Id.*

##### Subject of search

Where, in searching defendant's premises under a valid search warrant authorizing search for alcoholic beverages or any property designed for use in connection with violation of Alcoholic Beverage Control Act, police officer looked behind a movable partition closing off a fireplace and discovered two large clean paper bags in the midst

of rubble, and, although the feel and weight of such bags indicated to him that they did not contain bottles, the officer looked into the bags and discovered therein a quantity of marihuana, the officer's action in looking into the bags did not constitute an unreasonable search, but was lawful. *United States v. White* (D.C.D.C. 1954, 122 F. Supp. 664).

#### § 25-130. Minor misrepresenting age to procure beverage—Penalty.

Any minor who falsely represents his age for the purpose of procuring any beverage shall be deemed guilty of a misdemeanor and be fined for each offense not more than \$25 and, in default in the payment of such fine, shall be imprisoned not exceeding ten days. (Jan. 24, 1934, 48 Stat. 335, ch. 4, § 30.)

#### § 25-131. Issuance of new permits under Beverage License Act of 1933 forbidden—Surrender of permit and refund of fees—Repeal.

After the date of the approval of this chapter no permit shall be issued under the Act of Congress entitled "An Act to provide revenue for the District of Columbia by the taxation of beverages and for other purposes," approved April 5, 1933, and no permits issued thereunder shall be renewed, but the Commissioners of the District of Columbia are hereby authorized to extend the expiration dates of permits issued under said act to a date designated by them not to exceed sixty days after the approval of this chapter, upon such terms and conditions, including the payment of such fees as the Commissioners may prescribe. Any permittee thereunder may make an application for a license under this chapter and, if said application is approved by the Board, such permittee shall surrender his permit and he shall be allowed a refund of the permit fee prorated as hereinafter provided. Any permittee under said Act of April 5, 1933, may surrender his permit and receive a refund of the permit fee prorated from the date of surrender of such permit to the date of expiration thereof. All such refunds shall be paid from the permanent indefinite appropriation for refunding erroneously paid taxes in the District of Columbia. All permits issued under said Act of April 5, 1933, shall remain in force and effect for the respective periods for which they were issued, unless sooner surrendered. After the approval of this chapter no taxes shall be collected under section 11 of the Act approved April 5, 1933. (Jan. 24, 1934, 48 Stat. 336, ch. 4, § 31.)

#### REFERENCES IN TEXT

The Beverage License Act of 1933 was repealed by section 31 of act Jan. 24, 1934, effective one year from Jan. 24, 1934.

#### TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under § 25-104.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 25-109.

#### § 25-132. Penalty for violation where no specific penalty provided—Prosecutions.

Whosoever violates any of the provisions of this chapter for which no specific penalty is provided, or any of the rules and regulations promulgated pursuant thereto, shall be punished by a fine of not more than \$1,000 or by imprisonment for not longer



than one year or by both such fine and imprisonment in the discretion of the court.

Prosecutions for violations of this chapter shall be on information filed in the Superior Court of the District of Columbia by the corporation counsel or any of his assistants, except for such violations as are felonies, and prosecutions for such violations as are felonies, shall be by the United States Attorney in and for the District of Columbia or any of his assistants. (Jan. 24, 1934, 48 Stat. 336, ch. 4, § 33; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

"Municipal court" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 25-108.

#### NOTES TO DECISIONS

##### Consecutive sentences

Imposition of consecutive 120-day sentences for the keeping of whiskey for sale and selling of whiskey without a license was improper as constituting double punishment for a single offense where defendant had only a single bottle of whiskey which he illegally sold at time of his arrest and there was no proof of keeping of the whiskey for sale independent of the sale itself. *W. Hicks v. District of Columbia* (D.C. App. 1967, 234 A. 2d 801).

##### Consolidation

It was not error for trial court to refuse to consolidate the counts of keeping liquor for sale where motion was made at end of government's case on ground that appellant could have asked for a bill of particulars before trial and could have pleaded a defective information. *Davenport v. District of Columbia* (D. C. Mun. App. 1949, 67 A. 2d 522).

##### Examination of witnesses

A court may not limit cross-examination upon a pertinent subject at the outset, but after a substantial exploration of the subject, a judge is within his right in limiting examination which may become needlessly protracted and where the record discloses that during a trial for the illegal sale of alcoholic beverages, appellant's counsel was permitted freely and fully to cross-examine all government witnesses, there was no undue restriction or limitation upon the right of cross-examination. *Davenport v. District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 209, appeal denied 180 F. 2d 909, 85 U.S. App. D.C. 430).

Where government witness admitted that during a recess, he had talked with another government witness who had been excluded from the court room, trial court did not abuse its discretion in permitting him to testify. *Id.*

##### Failure to report violation

It is an offense for any officer to fail to report prohibition violations to the corporation counsel. *Donnelley v. United States* (1928, 48 S. Ct. 400, 276 U.S. 505, 72 L. Ed. 767).

##### Instructions

Where judge's charge stated "I charge you it is his constitutional right not to take the stand if he [the appel-

lant] wishes not to do so," it was not prejudicial error not to have stated that the fact appellant had not taken the witness stand, should not be construed in any way to his prejudice. *Davenport v. District of Columbia* (D. C. Mun. App. 1949, 67 A. 2d 522).

Police officers who, though privately employed, are engaged in keeping law and order in a public place, are neither informers nor detectives engaged in the business of spying for hire and are not the type of witnesses whose testimony the court must instruct must be received with caution. *Davenport v. District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 209, appeal denied 180 F. 2d 909, 85 U.S. App. D.C. 430).

##### Officers of the United States

Prohibition agent appointed by the commissioner, with the approval of the Secretary of Treasury, is not an "officer of the United States"; however police captains are officers of the District but not of the United States. *Keehn v. United States* (C.C.A. 1, 1924, 300 F. 493).

##### Several offenses committed by single act

Usual test to determine if one or two offenses have been committed by a single act is whether each offense requires proof of an additional fact which the other does not. *W. Hicks v. District of Columbia* (D.C. App. 1967, 234 A. 2d 801).

#### § 25-133. Sale by retailer of beverages on credit prohibited—Exceptions.

No holder of a retailer's license, except a retailer's license, class E, shall sell on credit any beverages except beer and light wines. For purposes of this section, the extension of credit by the holder of a class A retailer's license in connection with a sale by such license holder of any beverage through a credit card or other document or device intended or adapted for the purpose of establishing credit shall be considered a sale on credit of such beverage by such license holder. This section shall not prohibit a club from extending credit to its members or the guests of members or a hotel from extending credit to its registered guests. (Jan. 24, 1934, 48 Stat. 336, ch. 4, § 35; Dec. 8, 1970, Pub. L. 91-535, § 6, 84 Stat. 1394.)

#### AMENDMENT

1970—Section 6 of act Dec. 8, 1970, Pub. L. 91-535, amended section by inserting after the first sentence a new sentence to read as above set out.

#### CROSS REFERENCE

Other provisions concerning sale of beverages on credit. see §§ 25-119, 25-120.

#### § 25-134. Containers to be labeled—Content.

No rectified or blended spirits shall be sold unless the container in which it is sold shall bear a legible label firmly affixed thereto stating the nature and percentage of each ingredient therein (except water), the age of each such ingredient, and the alcoholic content of such spirits by volume. (Jan. 24, 1934, 48 Stat. 336, ch. 4, § 36.)

#### § 25-135. Offenses under National Prohibition Act to be prosecuted.

Any offense committed, or any right accrued, or any penalty or obligation incurred, or any seizure or forfeiture made, prior to the effective date of this chapter, under the provisions of the National Prohibition Act, as amended and supplemented, or under any permit or regulation issued thereunder, or under any other provision of law repealed by this chapter, may be prosecuted or enforced in the same manner and with the same effect as if this



chapter had not been enacted. (Jan. 24, 1934, 48 Stat. 337, ch. 4, § 37.)

## REFERENCES IN TEXT

The National Prohibition Act, as amended and supplemented, referred to in the text, is act Oct. 28, 1919, 41 Stat. 305, ch. 85, which was formerly classified to U.S. Code, title 27.

## § 25-136. Separability of provisions.

If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of such provisions to other persons or circumstances, shall not be affected thereby. (Jan. 24, 1934, 48 Stat. 337, ch. 4, § 38.)

## § 25-137. Unlawful transportation—Penalty.

(a) It shall be unlawful for anyone, except a public or common carrier or the holder of a manufacturer's, wholesaler's, or retailer's license issued under this chapter, to transport, import, bring, or ship or cause to be transported, imported, brought, or shipped into the District of Columbia from without the District of Columbia any wines, spirits, or beer in a quantity in excess of one gallon at any one time.

(b) No public or common carrier shall transport or bring into the District of Columbia wine, spirits, or beer in a quantity in excess of one quart in any one calendar month for delivery to any one person in the District of Columbia other than the holder of a manufacturer's, wholesaler's, or retailer's license issued under this chapter.

(c) The provisions of this section shall not apply to bona fide possessors of old stocks who are moving into the District of Columbia nor to embassies or diplomatic representatives of foreign countries, nor to wines imported for religious or sacramental purposes, nor to wine, spirits, and beer to be delivered to the holder of a manufacturer's, wholesaler's, or retailer's license issued under this chapter.

(d) The penalty for violation of this section shall consist of the forfeiture of the beverages transported, imported, or shipped or caused to be transported, imported, brought, or shipped in violation of this section, and a fine of not more than \$500 or imprisonment for not more than six months. (Jan. 24, 1934, ch. 4, § 39, as added Aug. 25, 1937, 50 Stat. 803, ch. 766, § 4; Dec. 26, 1967, Pub. L. 90-223, § 1, 81 Stat. 728.)

## AMENDMENT

1967—Section 1, Act Dec. 26, 1967, Pub. L. 90-223, amended subsection (b) by striking out "one gallon at any one time" and inserting in lieu "one quart in any one calendar month".

## CROSS REFERENCE

Other provisions concerning transportation, see §§ 25-112, 25-138.

## § 25-138. Tax on beer.

(a) There shall be levied and collected by the District of Columbia on all beer sold by the holder of a manufacturer's or wholesaler's license, except such beer as may have been purchased from a licensee under this chapter, and except such beer as may be sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under this chapter, and on all beer

purchased for resale by the holder of a retailer's license, except such beer as may have been purchased from a licensee under this chapter, a tax of \$2.25 for every barrel containing not more than thirty-one gallons and at a like rate for any other quantity or for the fractional parts thereof. Unless the District of Columbia Council shall by regulation prescribe otherwise, the collection and payment of such tax shall be in the manner following:

(1) Each holder of a manufacturer's or wholesaler's license shall, on or before the 15th day of each month, furnish to the assessor of the District of Columbia, on a form to be prescribed by the Commissioner, a statement under oath showing the quantity of beer subject to taxation hereunder sold by him during the preceding calendar month.

(2) No licensee holding a retailer's license shall transport or cause to be transported into the District of Columbia for resale any beer, other than the regular stock on hand in a passenger-carrying marine vessel operating in and beyond the District of Columbia, or a club car or a dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or D, has been issued under this chapter, unless such licensee has first obtained a permit so to do from the Alcoholic Beverage Control Board. No such permit shall issue until the tax imposed by this section shall have been paid for the beer for which the permit is requested. Such permit shall specifically set forth the quantity, character, and brand or trade name of the beer to be transported and the names and addresses of the seller and of the purchaser. Such permit shall accompany such beer during its transportation in the District of Columbia to the licensed premises of such retail licensee and shall be exhibited upon the demand of any police officer or duly authorized inspector of the Board. Such permit shall, immediately upon receipt of the beer by the retail licensee, be marked "canceled" and retained by him.

(b) The Council is authorized and empowered to prescribe by regulation such other methods or devices or both for the assessment, evidencing of payment, and collection of the taxes imposed by this section in addition to or in lieu of the method hereinbefore set forth whenever, in its judgment, such action is necessary to prevent frauds or evasions.

(c) The taxes imposed hereby, when collected, shall be deposited in the Treasury of the United States to the credit of the District of Columbia. (Jan. 24, 1934, ch. 4, § 40, as added May 16, 1938, 52 Stat. 376, ch. 223, § 8, and amended May 27, 1949, 63 Stat. 136, ch. 146, title V, § 508; May 18, 1954, 68 Stat. 115, ch. 218, title VIII, § 804; Mar. 31, 1956, 70 Stat. 83, ch. 154, § 305; Sept. 30, 1966, 80 Stat. 855, Pub. L. 89-610, title I, § 101(b); Oct. 31, 1969, Pub. L. 91-106, title V, § 501(c), 83 Stat. 175.)

## AMENDMENTS

1969—Act Oct. 31, 1969, Pub. L. 91-106, § 501(c) amended subsection (a) by striking out \$2 and inserting \$2.25; par. 1 of the same subsection was amended by striking "10th" and inserting "15th".

1966—Subsection (a) amended by act Sept. 30, 1966, to increase the tax on a barrel of beer from \$1.50 to \$2.00.

1956—Subsec. (a) amended by act Mar. 31, 1956, to increase the tax on a barrel of beer from \$1.25 to \$1.50.



1954—Subsec. (a) amended by act May 18, 1954, to increase the tax on a barrel of beer from \$1 to \$1.25.

1949—Subsec. (a) amended by act May 27, 1949, to increase the tax on a barrel of beer from 50 cents to \$1.

#### EFFECTIVE DATE OF 1969 AMENDMENTS ETC.

See note to section 25-124.

#### EFFECTIVE DATE OF 1966 AMENDMENT; APPLICABILITY TO STOCK HELD PRIOR TO EFFECTIVE DATE; STATEMENTS; RECORDS OF INVENTORIES; PUNISHMENT FOR VIOLATIONS

Effective date of amendment of subsec. (a) of this section by § 101(a) of act Sept. 30, 1966, applicability of such amendment to stock held prior to such effective date, filing of statements, preservation of records of inventories, and punishment for violations, see § 102 of such act, set out as a note under § 25-124.

#### EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act Mar. 31, 1956, effective on the first day of the first month which begins on or after the thirtieth day after Mar. 31, 1956, see section 308 of act Mar. 31, 1956, set out as a note under section 25-124.

#### EFFECTIVE DATE OF 1954 AMENDMENT

Amendment of section by act May 18, 1954, effective May 19, 1954, see section 806 of act May 18, 1954, set out as a note under section 25-124.

#### EFFECTIVE DATE OF 1949 AMENDMENT

Amendment of section by act May 27, 1949, effective on the first day of first month succeeding sixtieth day after May 27, 1949, see section 509 of act May 27, 1949, set out as a note under section 25-111.

#### AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91-106

See secs. 804 and 805 of Act Oct. 31, 1969, Pub. L. 91-106, set out as a note under § 47-2501a.

#### CONSTRUCTION; SEVERABILITY; RULES AND REGULATIONS PROVISIONS OF ACT SEPT. 30, 1966

For construction of act Sept. 30, 1966, Pub. L. 89-610, amending this section, severability of provisions with respect thereto, and authority to make rules and regulations to carry out provisions thereof, see §§ 1003-1005 of such act, set out as a note under § 25-124.

#### SHORT TITLE, DEFINITIONS, CONSTRUCTION, SEPARABILITY, AND REGULATIONS PROVISIONS OF ACT MAY 18, 1954

See notes under § 43-1601, and § 43-1618 and note thereunder.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(222) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of prescribing the manner of collection and payment of tax on beer under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

#### CROSS REFERENCES

Authority of D.C. Council to make rules and regulations under acts May 18, 1954, and Mar. 31, 1956, see §§ 43-1618, 47-1595a.

Beverage taxes generally, see § 25-124.

Other provisions concerning rules and regulations, see § 25-107.

Other provisions concerning transportation, see §§ 25-112, 25-137.

#### NOTES TO DECISIONS

##### Regulations, validity of

Under District of Columbia statute imposing a tax on all beer sold and prescribing monthly reports of beer

"sold by him during the preceding calendar month", regulation of the Commissioners taxing beer in warehouse and before it is sold were not authorized. *American Sales Co. v. District of Columbia* (1961, 292 F. 2d 751, 110 U.S. App. D.C. 258).

#### § 25-139. Building or place of violation declared a nuisance—Procedure to enjoin or abate.

(a) Any building, ground, premises, or place where any intoxicating beverage is manufactured, sold, kept for sale, or permitted to be consumed in violation of this chapter is hereby declared to be a nuisance, and may be enjoined and abated as hereinafter provided.

(b) An action to enjoin any nuisance defined in subsection (a) of this section may be brought in the name of the District of Columbia by the corporation counsel of the District of Columbia or any of his assistants, in the civil branch of the Superior Court of the District of Columbia against any person conducting or maintaining such nuisance or knowingly permitting such nuisance to be conducted or maintained. The rules of the Superior Court of the District of Columbia relating to the granting of an injunction or restraining order shall be applicable with respect to actions brought under this subsection, except that the District as complaining party shall not be required to furnish bond or security. It shall not be necessary for the court to find the building, ground, premises, or place was being unlawfully used as aforesaid at the time of the hearing, but on finding that the material allegations of the complaint are true, the court shall enter an order restraining the defendant from manufacturing, selling, keeping for sale, or permitting to be consumed any alcoholic beverage in violation of this chapter. When an injunction, either temporary or permanent, has been granted it shall be binding on the defendant throughout the District of Columbia. Upon final judgment of the court ordering such nuisance to be abated, the court may order that the defendant, or any one claiming under him, shall not occupy or use, for a period of one year thereafter, the building, ground, premises, or place upon which the nuisance existed, but the court may, in its discretion, permit the defendant to occupy or use the said building, ground, premises, or place, if the defendant shall give bond with sufficient security to be approved by the court, in the penal and liquidated sum of not less than \$500 nor more than \$1,000, payable to the District of Columbia, and conditioned that intoxicating beverages will not thereafter be manufactured, sold, kept for sale, or permitted to be consumed in or upon the building, grounds, premises, or place in violation of this chapter.

(c) In the case of the violation of any injunction, temporary or permanent, rendered pursuant to the provisions of this section, proceedings for punishment for contempt may be commenced by the corporation counsel or any of his assistants, by filing with the court in the same case in which the injunction was issued a petition under oath setting out the alleged offense constituting the violation and serving a copy of said petition upon the defendant requiring him to appear and answer the same within ten days



from the service thereof. The trial shall be promptly held and may be upon affidavits or either party may demand the production and oral examination of the witnesses. Any person found guilty of contempt under the provisions of this section shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than twelve months, or by both such fine and imprisonment. (Jan. 24, 1934, ch. 4, § 41, as added June 29, 1953, 67 Stat. 104, ch. 159, § 404 (j); July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

## AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended subsec. (b) by striking out "District of Columbia Court of General Sessions" and "Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

## CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded Act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.



## TITLE 26.—BANKS AND OTHER FINANCIAL INSTITUTIONS

Chap.		Sec.
1.	Banking Institutions in General.....	26-101
2.	Joint Accounts—Adverse Claimants—Trust Accounts .....	26-201
3.	Trust, Loan, Mortgage, Safe Deposit and Title Corporations.....	26-301
4.	Building Associations.....	26-401
5.	Credit Unions.....	26-501
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### Chapter 1.—BANKING INSTITUTIONS IN GENERAL

Sec.	
26-101.	Banking institutions to be under supervision of Comptroller of Currency—Sections 161, 163, and 164 of title 12, U.S. Code, applicable.
26-102.	Examination by Comptroller of the Currency—Section 84 of title 12, U.S. Code, extended to banks and trust companies—Reserves.
26-103.	Banking—Foreign corporations not to engage in—Approval of Comptroller of the Currency—“Branches” defined—Building associations—Dissolution of solvent banking corporations—Penalties.
26-104.	Liability of stockholders of bank or savings company—“Entered into or incurred” defined—Certain provisions of U.S. Code extended to District of Columbia.
26-105.	Shareholders’ liability terminated after July 1, 1937—Conditions.
26-106.	Dividends—Payment—Restrictions.
26-107.	Restriction on use of words “bank” and “trust company”—Penalty.
26-108.	False statements against banking institutions—Penalty—Defense.
26-109.	Certain limitations on member banks of Federal Reserve System extended to nonmembers.
26-110.	Authority of notaries public employed by bank or trust company

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 29-843.

#### § 26-101. Banking institutions to be under supervision of Comptroller of Currency—Sections 161, 163, and 164 of title 12, U.S. Code, applicable.

All savings banks, or savings companies, or trust companies, or other banking institutions, organized under authority of any act of Congress to do business in the District of Columbia, or organized by virtue of the laws of any of the States of this Union, and having an office or banking house located within the District of Columbia where deposits or savings are received, shall be, and are hereby, required to make to the Comptroller of the Currency and to publish all the reports which national banking associations are required to make and publish under the provisions of sections 161, 163, and 164 of title 12, U.S. Code, and shall be subject to the same penalties for failure to make such reports as are therein provided, which penalties may be collected by suit before the United States District Court for the District of Columbia. And the Comptroller shall have power, when in his opinion it is necessary, to take possession of any

such bank or company, for the reasons and in the manner and to the same extent as are provided in the laws of the United States with respect to national banks: *Provided, however,* That banking institutions having offices or banking houses in foreign countries as well as in the District of Columbia shall only be required to make and publish the reports provided for in this section semiannually: *And provided further,* That all publications authorized or required by section 161 of title 12, U.S. Code, and all other publications authorized or required by existing law to be made in the District of Columbia, shall be printed in one or more daily newspapers of general circulation, published in the city of Washington. (Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 713; June 30, 1902, 32 Stat. 534, ch. 1329; June 25, 1906, 34 Stat. 458, ch. 3533; Mar. 4, 1933, 47 Stat. 1566, ch. 274, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646 § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

#### REFERENCES IN TEXT

Title 12 U.S.C. § 163, referred to in the text, was repealed by act Sept. 8, 1959, 73 Stat. 466, Pub. L. 86-230, § 22(a) and is now covered by section 161 of title 12.

#### AMENDMENTS

1933—Act March 4, 1933, changed the requirement as to publication from “two or more daily newspapers” to “one or more daily newspapers” and omitted the requirement that one of them should be a morning newspaper.

1906—Act June 25, 1906, inserted in the first sentence the words “or organized by virtue of the laws of any of the States of this Union, and having an office or banking house located within the District of Columbia where deposits or savings are received,” and added the second sentence.

1902—Act June 30, 1902, omitted a second paragraph of this which read as follows: “And all savings or other banks now organized, or which shall hereafter be organized, in the District of Columbia, under any act of Congress, which shall have capital stock paid up in whole or in part, shall be subject to all the provisions of the Revised Statutes and of all acts of Congress applicable to national banking associations, so far as the same may be applicable to such savings or other banks: *Provided,* That any savings banks established before 1874 shall not be required to have a paid-up capital exceeding one hundred thousand dollars.”

#### CHANGE OF NAME

Act June 25, 1936, substituted “District Court of the United States for the District of Columbia” for “Supreme Court of the District of Columbia.”

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted “United States District Court for the District of Columbia” for “District Court of the United States for the District of Columbia.”

#### CROSS REFERENCES

Charter, amendment of, see § 29-238.

Credit unions, see § 26-519 et seq.

Excise and license taxes, see § 47-1701 et seq.

Extortionate credit transactions, see 18 U.S.C. 891 et seq.

Forwarding agent, liability of, see § 28:4-202.

Mistake or error in paying instruments, damages, see § 28:4-402.



Money Lenders Law, exemption from operation of, see § 26-610.

Payment of checks or other instruments more than a year after date, see §§ 28:3-503, 28:4-404.

Payment of forged or altered instruments, see § 28:4-406.

Real estate conveyances, formal requisites, see § 45-302. Suits, see § 26-104.

#### Trust companies—

General provisions, see § 26-301 et seq.

Required to obtain certificate from Comptroller showing capital stock paid and deposit of securities with Comptroller, see § 26-307.

Trust or joint deposits, accounts, or safety deposit boxes, see § 26-201 et seq.

Truth in Lending Act, see 15 U.S.C. 1601 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26-102, 26-104, 29-105.

#### NOTES TO DECISIONS

##### Authority to take possession

Comptroller's authority and power to take possession was precisely the power given him by statute to take possession of a national bank; and, if we are correct in this position, then it follows equally that under the powers vested in him by law he was authorized to investigate the condition of the bank and declare it insolvent, and to appoint a receiver and make an assessment against the stockholders. *Dunn v. O'Connor* (1937, 89 F. 2d 820, 67 App. D. C. 76).

##### Constitutionality

This act is constitutional. *Lyons v. Bank of Discount* (C.C. N.Y. 1907, 154 F. 391).

##### Construction

This act incorporates all the United States Bank Acts which have to do with administration in the case of insolvent banks and gives to the Comptroller the same control and management as in the case of national banks. *Hamilton v. Offutt* (1935, 78 F. 2d 735, 64 App. D. C. 385).

Determination of Comptroller of Currency as to necessity for assessments is conclusive. *Harper v. Moran* (1935, 76 F. 2d 980, 64 App. D. C. 210, certiorari denied 56 S. Ct. 104, 296 U.S. 592, 80 L. Ed. 419).

##### Foreign bank

Where foreign bank establishes house in District of Columbia, it submitted itself to the provisions of this act. *Washington Loan & Trust Co. v. Allman* (1934, 70 F. 2d 282, 63 App. D. C. 116).

The liquidation of bank organized under West Virginia law and doing business solely in District of Columbia was governed by this chapter, and not by law of West Virginia. *Parsons v. Barry* (D.C.D.C. 1945, 59 F. Supp. 221, affirmed 148 F. 2d 21, 80 U.S. App. D.C. 409, certiorari denied 66 S. Ct. 32, 326 U.S. 726, 90 L. Ed. 431, rehearing denied 66 S. Ct. 136, 326 U.S. 808, 90 L. Ed. 492).

##### Insolvency

Where the Comptroller of the Currency has held a bank to be insolvent and has appointed a receiver for it, the court will not substitute its judgment for the judgment of the Comptroller, unless it appears by convincing proof that the Comptroller's action is plainly arbitrary, and made in bad faith. *United States Sav. Bank v. Morgenthau* (1936, 85 F. 2d 811, 66 App. D. C. 234).

##### Liability of stockholders

This section does not impose double liability on stockholders where State laws impose none. *Hamilton v. Offutt* (1935, 78 F. 2d 735, 64 App. D. C. 385, certiorari denied 56 S. Ct. 121, 296 U.S. 592, 80 L. Ed. 419). See, also, *Hamilton v. Bergling* (1936, 85 F. 2d 249, 66 App. D. C. 83).

Though bank stockholders' liability under state law may be enforced in the District of Columbia by a receiver appointed by the Comptroller of the Currency, both the existence and the duration of the liability must be determined by the law of the state of the bank's incorporation. *Moran v. Cobb* (1941, 120 F. 2d 16, 73 App. D. C. 200, certiorari dismissed 62 S. Ct. 134, 314 U. S. 703, 86 L. Ed. 562).

##### National Savings Bank

The National Savings Bank of the District of Columbia was organized by the act of May 24, 1870, to accept deposits from depositors, to invest such funds for their benefit, and disburse revenues to the depositors and the corporators have no shares and receive no profits, and have not such interest as will warrant an action for an account and distribution of the profits. *Huntington v. National Sav. Bank* (1877, 96 U. S. 388, 6 Otto 388, 24 L. Ed. 777).

##### Payment of interest in liquidation

When assets of insolvent bank being liquidated under Comptroller of the Currency are sufficient to pay more than 100 percent of principal amount of depositors' claims, depositors are entitled to interest on their claims from date of suspension until paid, computed at statutory or legal rate of jurisdiction in which the liquidation is had. *Parsons v. Barry* (D.C.D.C. 1945, 59 F. Supp. 221, affirmed 148 F. 2d 21, 80 U.S. App. D.C. 409, certiorari denied 66 S. Ct. 32, 326 U.S. 726, 90 L. Ed. 431, rehearing denied 66 S. Ct. 136, 326 U. S. 808, 90 L. Ed. 492).

Interest on time and savings deposits should be computed to date of bank's closing at contract rate, and after closing, deposits, whether savings or demand, should bear interest at local statutory rate on judgments. *Id.*

A judgment of United States Court of Appeals for District of Columbia that no part of assets of closed bank organized under state authority and doing business in District of Columbia could be turned over by receiver to stockholders until after principal and interest on debts were paid was res judicata of depositors' right to interest on their deposits. *Id.*

##### Personal liability of directors

Directors of bank not liable personally for deposits made after expiration of charter, where bank continued business. *Thompson v. Park Sav. Bank* (1935, 77 F. 2d 955, 64 App. D. C. 308, certiorari denied 56 S. Ct. 104, 296 U. S. 592, 80 L. Ed. 419).

##### Receiver

Receiver is the mere instrument of the Comptroller, and the declaration of the Comptroller, rather than the receiver, is the essential factor in determining the necessity for the assessment and where the Comptroller has made the decision, his conclusion is not subject to attack or open to review except for fraud. *Harper v. Moran* (1935, 76 F. 2d 980, 64 App. D. C. 210).

Plaintiff was appointed and qualified as receiver of the bank by the Comptroller of the Currency. *Moran v. Schlossberg* (1937, 90 F. 2d 408, 67 App. D. C. 163).

##### Reorganization plan

Comptroller of the Currency was acting within his statutory authority in holding that the plan of reorganization proposed by appellant was not fair and equitable as to the depositors and other creditors of the bank, and is not in the public interest, and that the Comptroller was right in refusing to adopt appellant's proposed plan, and consequently that his action in this behalf was not arbitrary or capricious. *Cooper v. Woodin* (1934, 72 F. 2d 179, 63 App. D. C. 311).

#### § 26-102. Examination by Comptroller of the Currency—Section 84 of title 12, U.S. Code, extended to banks and trust companies—Reserves.

(a) The Comptroller of the Currency, in addition to the powers now conferred upon him by law for the examination of national banks, is hereby further authorized, whenever he may deem it advisable, to cause examination to be made into the condition of any bank mentioned in section 26-101. The expense of such examination shall be paid in the manner provided by section 482 of title 12, U. S. Code, relating to the examination of national banks.

(b) The provisions of section 84 of title 12, U.S. Code, are hereby extended to apply to all banks and trust companies doing business in the District of Columbia.

(c) Each bank and trust company doing business in the District of Columbia and not a member of the



Federal Reserve System shall within six months from March 4, 1933, establish and maintain reserves on the same basis and subject to the same conditions as may by law on March 4, 1933, or thereafter be prescribed for national banks located in the District of Columbia, except that such reserves shall be established and maintained at such agency or agencies which shall have the approval of the Comptroller of the Currency: *Provided, however*, (1) That the required reserves carried by such bank or trust company with an agency or agencies may, under the regulations and subject to such penalties as may be prescribed by the Comptroller of the Currency, be checked against and withdrawn by such bank or trust company for the purpose of meeting existing liabilities, and (2) that no such bank or trust company shall at any time make new loans or shall pay any dividends unless and until the total reserves required by law shall be fully restored. (Mar. 3, 1901, 31 Stat. 1303, ch. 854, § 714; June 25, 1906, ch. 3533, 34 Stat. 458; Mar. 4, 1933, 47 Stat. 1566, ch. 274, § 3.)

#### AMENDMENTS

1933—Act Mar. 4, 1933, substituted the word "advisable" for the word "useful" in the first sentence of subsec. (a) and added subssecs. (b) and (c).

1906—Act June 25, 1906, substituted the reference to § 26-101 for "in the District of Columbia organized under Act of Congress," deleted a former second sentence: "The Comptroller, at his discretion may report to Congress the results of such examination", and substituted the reference to § 482 of title 12, U.S. Code, for "out of any appropriation made by Congress for special bank examinations".

#### ALTERATION, AMENDMENT OR REPEAL

Section 9 of act Mar. 4, 1933, provided that: "The right to alter, amend, or repeal this Act is hereby expressly reserved. If any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered."

#### CROSS REFERENCES

Credit unions, see § 26-519 et seq.

Examination of building and homestead associations, see § 26-404.

General provisions concerning trust companies, see § 26-301 et seq.

Suits, see § 26-104.

#### NOTES TO DECISIONS

##### Bank established in another state

When Alabama bank established a banking house in Washington, D. C., and all its officers and directors and substantially all of its stockholders resided in the District; and when all meetings of its stockholders and directors and all assets and records were kept here, the bank was governed by this section. *Thompson v. Park Sav. Bank* (1935, 77 F. 2d 955, 64 App. D.C. 308, certiorari denied 56 S. Ct. 104, 296 U.S. 592, 80 L. Ed. 419).

Alabama corporation doing business in Washington, D. C., paying dividends and making reports to Comptroller of Currency, was examined by Comptroller under this section. *Thompson v. Park Sav. Bank* (1938, 96 F. 2d 544, 68 App. D. C. 272).

##### Personal liability of directors

Continuance of bank in business after expiration of charter, liability of directors personally for deposits, see *Thompson v. Park Sav. Bank* (1935, 77 F. 2d 955, 64 App. D.C. 308, certiorari denied 56 S. Ct. 104, 296 U.S. 592, 80 L. Ed. 419, certiorari denied 59 S. Ct. 72, 305 U.S. 606, 83 L. Ed. 391).

##### Plan of reorganization

Comptroller of Currency was acting within his statutory authority in holding that the plan of reorganization proposed by appellant was not fair and equitable as to the depositors and other creditors of the bank, and is not in the public interest, and that the Comptroller was right in refusing to adopt appellant's proposed plan, and consequently that his action in this behalf was not arbitrary or capricious. *Cooper v. Woodin* (1934, 72 F. 2d 179, 63 App. D. C. 311).

#### § 26-103. Banking—Foreign corporations not to engage in—Approval of Comptroller of the Currency—"Branches" defined—Building associations—Dissolution of solvent banking corporations—Penalties.

(a) No banking business shall be done in the District of Columbia except by corporations organized in accordance with the provisions of this Code, as amended, or by national banking associations organized in accordance with the laws of the United States, except that this paragraph shall not apply to (1) corporations engaged in and doing a banking business on March 4, 1933. (2) individuals, partnerships, associations, or corporations primarily engaged as brokers in buying, selling, exchanging, and/or otherwise dealing in stocks, bonds, and/or other securities, for the account of others, and incidentally thereto conducts banking transactions, (3) individuals, partnerships, associations, or corporations not doing a bank-of-deposit business.

(b) No corporation shall engage in or do the business of a bank of deposit or a fiduciary business in the District of Columbia nor shall any branch be established to carry on any phase of such banking or fiduciary business in the District of Columbia until the approval and consent of the Comptroller of the Currency is secured. The term "branch" as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any place of business located in the District of Columbia, at which deposits are received, or checks paid, or money lent, or at which the public is served or any phase of business conducted by the parent institution.

(c) No building association, incorporated or unincorporated, shall do a building-association business or maintain any office in the District of Columbia until it shall have secured the approval and consent of the Federal Home Loan Bank Board; and the Federal Home Loan Bank Board shall not give consent or approval to any building association to maintain any office or place of business in the District of Columbia, other than a foreign association which qualifies for a certificate of authority under section 26-405, where such association is not incorporated under the laws of the District of Columbia in accordance with chapter 4 of this title, except that this paragraph shall not apply to associations, incorporated or unincorporated, engaged in and doing a building-association business on March 4, 1933.

(d) Any solvent financial institution in the District of Columbia under the supervision of the Comptroller of the Currency may go into liquidation and discontinue business by the vote of its shareholders owning two-thirds of its stock. Whenever a vote is taken to go into liquidation it shall be the duty of the board of directors to cause notice of this fact to be certified, under the seal of the institution, by its president, secretary, or cashier to the Comptroller of



the Currency, and publication thereof to be made for a period of two weeks in a newspaper published in the District of Columbia, that the institution has discontinued business and is winding up its affairs, and notifying its creditors to present claims against the institution for payment. The shareholders shall at the time of going into liquidation elect a committee or liquidating agent who shall liquidate the institution. No institution which has gone into voluntary liquidation shall be permitted to resume business but until its liquidation is complete shall remain a legal corporation or association for the purpose of suing or being sued. The liquidating agent shall give satisfactory surety bond to the board of directors of the institution and shall annually, on request of the Comptroller of the Currency, render such reports to the Comptroller as he shall require. Any such institution in liquidation may be examined by the Comptroller of the Currency who, if he finds such institution insolvent, may appoint a receiver and wind up its affairs in the same manner as provided by law for national banking associations.

(e) If any financial institution under the supervision of the Comptroller of the Currency, which has not gone into liquidation and for which a receiver has not already been appointed for other lawful cause, shall discontinue its operations for a period of sixty days, the Comptroller of the Currency may, if he deems it advisable, appoint a receiver for such institution.

(f) Any financial institution over which the Comptroller of the Currency has or had supervision which prior to March 4, 1933, had in any manner ceased to do a banking business shall not resume such banking business and shall advise the Comptroller of the Currency when its business has been fully liquidated, whereupon by operation of this section its charter is terminated. Such financial institution may in the discretion of the Comptroller of the Currency be subject to all the provisions of paragraph (d) of this section.

(g) Each person, copartnership, each director, liquidating committee or liquidating agent, and each one of the officers and employees of an association or corporation violating any of the provisions of this section shall be punished by a fine not exceeding \$1,000, or imprisonment not exceeding one year, or by both fine and imprisonment, in the discretion of the court. (Apr. 26, 1922, 42 Stat. 500, ch. 147; Mar. 4, 1933, 47 Stat. 1564, ch. 274, § 1; Sept. 15, 1951, 65 Stat. 324, ch. 404, § 3.)

#### AMENDMENTS

1951—Subsec. (c) amended by act Sept. 15, 1951, substituting "Home Loan Bank Board" for "Comptroller of the Currency", and adding the words "other than a foreign association which qualifies for a certificate of authority under § 26-405."

1933—Act Mar. 4, 1933, amended section to read as set forth in the text. Prior to the amendment, this section provided: "That no corporation that is not now engaged in the business of banking in the District of Columbia shall, after the passage of this act, be permitted to enter upon said business in the said District, nor shall any corporation now or hereafter engaged in the business of banking be permitted to establish branch banks in said District, until after it shall have secured the approval and consent of the Comptroller of the Currency; and each one of the officers of such cor-

poration so offending shall be punished by a fine not exceeding \$1,000 or imprisonment not exceeding one year, or by both fine and imprisonment, in the discretion of the court."

#### CHANGE OF NAME

The Home Loan Bank Board, referred to in subsec. (c), was changed to "Federal Home Loan Bank Board" by § 109(a)(3) of Act Aug. 11, 1955, 69 Stat. 640, 12 U.S.C. 1437(b).

#### CROSS REFERENCES

General provision concerning trust companies, see § 26-301 et seq.

Suits, see § 26-104.

#### NOTES TO DECISIONS

##### Banks operating prior to statute

Bank incorporated under a state law operating a bank in the District of Columbia prior to April 26, 1922, was entitled to continue (33 O. A. G. 395).

##### State law determining liability

In absence of words creating liability claimed, or finding by necessary implication that the section plainly and convincingly adopts the national banking law of double liability, the law of Virginia as the place where bank was created would govern in measuring liability of appellees as stockholders. *Hamilton v. Offutt* (1935, 78 F. 2d 735, 64 App. D. C. 385).

§ 26-104. Liability of stockholders of bank or savings company—"Entered into or incurred" defined—Certain provisions of U.S. Code extended to District of Columbia.

(a) Repealed. Feb. 16, 1934, 48 Stat. 352, ch. 14, § 1.

(b) The shareholders, on March 4, 1933, of every savings bank or savings company other than building associations organized under authority of any Act of Congress to do business in the District of Columbia, and of every banking institution organized by virtue of the laws of any of the states of this Union to do or doing a banking business in the District of Columbia, shall be held individually responsible, equally and ratably, and not one for another for all contracts, debts, and engagements of such savings bank, savings company, or banking institution, entered into or incurred subsequent to March 4, 1933, to the extent of the amount of their stock therein at the par value thereof, in addition to the amount invested in such shares. The words "entered into or incurred" as used in this section, shall be held to include any extension or renewal of any contracts, debt, and engagement renewed or extended after March 4, 1933.

(c) The provisions of sections 55, 62, 65, 67, 191-194, 197, and 198-200 of title 12, U.S. Code, are extended to apply to any bank, savings bank, or trust company organized, hereafter organized, or doing a banking business in the District of Columbia and to the shareholders of such institutions, except as limited by the provisions of paragraph (b) of this section: *Provided, however*, That the provisions of section 26-101 shall not be construed to be repealed by this section but shall have application to the banks, savings banks, savings companies, other than building associations, and trust companies embraced within this section.

(d) That portion of section 24 of the Judicial Code, as amended, applying to suits against national-banking associations shall be extended and shall apply to all actions arising under the provisions of this



section. (Mar. 4, 1933, 47 Stat. 1566, ch. 274, § 4; Feb. 16, 1934, 48 Stat. 352, ch. 14, § 1.)

#### REFERENCES IN TEXT

Section 65 of title 12, U.S. Code, referred to in subsec. (c), which related to enforcement of shareholders' individual liability by creditors on liquidation, was repealed by act Sept. 8, 1959, 73 Stat. 457, Pub. L. 86-230, § 8. For limitation on liability of shareholders, see § 64a of title 12, U.S.C. See, also, § 26-105 of this Code.

Section 24 of the Judicial Code, as amended, applying to suits against national-banking associations, referred to in subsec. (d), was repealed by act June 25, 1948, 62 Stat. 992, ch. 646, § 39, eff. Sept. 1, 1948, and is now covered by 28 U.S.C. § 1348.

#### AMENDMENT

1934—Subsec. (a) repealed by act Feb. 16, 1934.

Prior to such amendment, section provided that: "The shareholders of every savings bank or savings company other than building associations now or hereafter organized under authority of any Act of Congress to do business in the District of Columbia and of every banking institution organized by virtue of the laws of any of the States of the Union to do or doing a banking business in the District of Columbia, who acquire in any manner the shares of any such savings bank or savings company or such banking institutions other than building associations after the enactment of this Act, shall be held individually responsible equally and ratably, and not one for another, for all contracts, debts, and engagements of such bank or company, to the extent of the amount of their stock so acquired therein, at the par value thereof in addition to the amount invested in such shares."

#### SHAREHOLDERS' LIABILITY NOT APPLICABLE TO SHARES ISSUED AFTER FEB. 16, 1934

Section 2 of act Feb. 16, 1934, provided that: "The additional liability imposed by subsection (b) of section 4 of such Act [subsec. (b) of this section] upon the shareholders of the savings banks, savings companies, and banking institutions specified in such subsection (b) [subsec. (b) of this section], shall not apply with respect to shares in any such savings bank, savings company, or banking institution issued after the date of enactment of this Act [Feb. 16, 1934]".

#### CROSS REFERENCE

Stockholder's liability in trust, loan, mortgage, safe deposit, and title corporations, see § 26-322.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 26-105.

#### NOTES TO DECISIONS

##### Foreign bank doing business in District

When there was, at the time, no statute in the District creating double liability in the case of a stockholder of a foreign bank doing business exclusively in the District, the liability of the stockholder is determined by the charter of incorporation and laws of the State in which incorporation is had. *Hamilton v. Bergling* (1936, 85 F. 2d 249, 66 App. D.C. 83).

#### § 26-105. Shareholders' liability terminated after July 1, 1937—Conditions.

The additional liability imposed by section 26-104 upon the shareholders of savings banks, savings companies, and banking institutions and the additional liability imposed by section 26-322 upon the shareholders of trust companies, shall cease to apply on July 1, 1937, with respect to such savings banks, savings companies, banking institutions, and trust companies which shall be transacting business on such date: *Provided*, That not less than six months prior to such date, the savings bank, savings company, banking institution or trust company, desiring to take advantage hereof, shall have caused notice of such prospective termination of liability to

be published in a newspaper published in the District of Columbia and having general circulation therein. In the event of failure to give such notice as and when above provided, a termination of such additional liability may thereafter be accomplished as of the date six months subsequent to publication in the manner above provided. (Aug. 23, 1935, 49 Stat. 720, ch. 614, § 337.)

#### CROSS REFERENCE

General provisions concerning trust companies, see § 26-301 et seq.

#### § 26-106. Dividends—Payment—Restrictions.

Each such savings bank, savings company, banking institution, and trust company shall, before the declaration of a dividend on its shares of common stock, carry not less than one-tenth part of its net profits of the preceding half year to its surplus fund until the same shall equal the amount of its common stock: *Provided*, That for the purposes of this section, any amounts paid into a fund for the retirement of any preferred stock or debentures of any such savings bank, savings company, banking institution, or trust company, out of its net earnings for such half-year period shall be deemed to be an addition to its surplus if, upon the retirement of such preferred stock or debentures, the amount so paid into such retirement fund for such period may then properly be carried to surplus. In any such case the savings bank, savings company, banking institution, or trust company shall be obligated to transfer to surplus the amount so paid into such retirement fund for such period, on account of the preferred stock or debentures as such stock or debentures are retired. (Aug. 23, 1935, 49 Stat. 720, ch. 614, § 337.)

#### CROSS REFERENCE

General provisions for trust companies, see § 26-301 et seq.

#### § 26-107. Restriction on use of words "bank" and "trust company"—Penalty.

No corporation, association, partnership, or individual shall carry on any business in the District of Columbia under any name or title containing the word "bank" or the words "trust company" unless (1) the business is being carried on under the name or title on March 4, 1933, or (2) the business is carried on under the supervision of the Comptroller of the Currency and the name or title is approved by the Comptroller of the Currency. Any individual who, or corporation, association, or partnership which, violates any of the provisions of this section, and any officer of any such corporation or association and any officer or member of any such partnership, who assents to any such violation, shall, upon conviction thereof, be fined not more than \$5,000. (Mar. 4, 1933, 47 Stat. 1567, ch. 274, § 6.)

#### CROSS REFERENCES

General provisions concerning trust companies, see § 26-301 et seq.

Suits, see § 26-104.

#### § 26-108. False statements against banking institutions—Penalty—Defense.

Any person who maliciously makes or repeats to, or in the hearing of, or under such circumstances that it becomes known to, any other person any false



statement imputing insolvency or unsound financial condition to any bank, trust company, or building and loan association in the District of Columbia, or tending to cause a general withdrawal of deposits or funds from any such institution, shall, upon conviction thereof, be fined not more than \$5,000 or imprisoned not more than five years, or both: *Provided*, That the truth of said statement, established by the maker thereof, shall be a complete defense in any prosecution under the provisions of this section. (Mar. 4, 1933, 47 Stat. 1567, ch. 274, § 7.)

## CROSS REFERENCES

General provisions concerning trust companies, see § 26-301 et seq.

Suits, see § 26-104.

### § 26-109. Certain limitations on member banks of Federal Reserve System extended to nonmembers.

All acts prohibited by the provisions of sections 5208 and 5209 of the Revised Statutes, as amended, and section 22 of the Federal Reserve Act, as amended, in the case of Federal Reserve Banks or member banks thereof, or of directors, officers, or employees of such banks, are likewise prohibited, respectively, in the case of banks in the District of Columbia which are not members of a Federal reserve bank, or of directors, officers, or employees of such banks, and shall be punishable by the respective penalties provided in such section. (Mar. 4, 1933, 47 Stat. 1568, ch. 274, § 8.)

## REFERENCES IN TEXT

Part of section 5208 of the Revised Statutes, referred to in the text, is classified to 12 U.S.C. § 501. Part of such section 5208 which was formerly classified to 12 U.S.C. § 591, was repealed in 1948 and is now covered by 18 U.S.C. § 1004.

Section 5209 of the Revised Statutes, referred to in the text, which was formerly classified to 12 U.S.C. § 592, was repealed in 1948 and is now covered by 18 U.S.C. §§ 334, 656, 1005.

Section 22 of the Federal Reserve Act, as amended, referred to in the text, consisted of subsecs. (a)—(k), which may be accounted for as follows:

Section 22(a), formerly classified to 12 U.S.C. § 593, was repealed in 1948 and is now covered by 18 U.S.C. §§ 212, 213, 655.

Section 22(b), formerly classified to 12 U.S.C. § 594, was repealed in 1948 and is now covered by 18 U.S.C. §§ 1906, 1909.

Section 22(c), formerly classified to 12 U.S.C. § 595, was repealed in 1948 and is now covered by 18 U.S.C. § 215.

Section 22(d)—(g) is classified 12 U.S.C. §§ 375, 376, 503, 375a respectively.

Section 22(h), formerly classified to 12 U.S.C. § 596, was repealed in 1948 and is now covered by 18 U.S.C. § 1014.

Section 22(i), formerly classified to 12 U.S.C. § 597, was repealed in 1948 and is now covered by 18 U.S.C. §§ 655, 1005.

Section 22(j), was formerly classified 12 U.S.C. § 598.

Section 22(k), formerly classified to 12 U.S.C. § 599, was repealed in 1948 and is now covered by 18 U.S.C. § 214.

The repeal of part of section 5208 and section 5209 of the Revised Statutes and the described subsections of section 22 of the Federal Reserve Act, as amended, was effected by act June 25, 1948, 62 Stat. 862, ch. 645, § 21, eff. Sept. 1, 1948.

## CROSS REFERENCE

Suits, see § 26-104.

### § 26-110. Authority of notaries public employed by banks or trust company.

It shall be lawful for any notary public who is a stockholder, director, officer, or employee of a bank, trust company, or other corporation to take the acknowledgment of any party to any written instrument executed to or by such corporation, or to administer an oath to any other stockholder, director, officer, employee, or agent of such corporation, or to protest for nonacceptance or nonpayment drafts, checks, notes, acceptances, or other negotiable instruments which may be owned or held for collection by such corporation: *Provided*, That it shall be unlawful for any notary public to take the acknowledgment of an instrument executed by or to a bank or corporation of which he is a stockholder, director, officer, or employee, where such notary is a party to such instrument, either individually or as a representative of such corporation, or to protest any negotiable instrument owned or held for collection by such corporation, where such notary is individually a party to such instrument: *Provided further*, That it shall be unlawful for any notary public to take the oath of an officer or director of any bank or trust company of which he is an officer, or to take an oath of any person verifying a report of such bank or trust company to the Comptroller of the Currency. (Apr. 5, 1939, 53 Stat. 567, ch. 37, § 5.)

## CROSS REFERENCE

General provisions concerning trust companies, see § 26-301 et seq.

## NOTES TO DECISIONS

## In general

Although a notary is a stockholder of a bank and its president, protest of notes by him is not invalid. *Roberts v. International Bank* (1928, 25 F. 2d 214, 58 App. D.C. 87).

### Chapter 2.—JOINT ACCOUNTS—ADVERSE CLAIMANTS—TRUST ACCOUNTS

## Sec.

- 26-201. Deposits or shares of stock in names of two or more persons—Payments—Liability of bank.
- 26-202. Safe deposit boxes in names of two or more persons—Right of access—Liability of bank.
- 26-203. Notice of adverse claim to deposit.
- 26-204. Payment of trust accounts on death of trustee.

### § 26-201. Deposits or shares of stock in names of two or more persons—Payments—Liability of bank.

When a deposit shall have been made in, or shall after May 15, 1928, be made in, or any collection item shall have been placed or shall after May 15, 1928, be placed with, any bank, trust company, savings bank, building association, or other banking institution, including national banks, transacting business in the District of Columbia, or when any shares of stock shall have been issued or shall after May 15, 1928, be issued by any building association, transacting business in the District of Columbia, in the names of two or more persons, including husband and wife, payable to either, or payable to either or the survivor or survivors, such deposit, or in any part thereof, or any interest or dividend thereon, and such collection item or its proceeds, or any interest or dividend thereon, or such shares of stock issued by a building association or any interest or dividend thereon, may be paid or delivered to either of said persons whether the other or others be living or not; and the receipt or acquittance of the person to



whom such payment or delivery is made shall be a valid, sufficient, and complete release and discharge of the bank, trust company, savings bank, building association, or other banking institution, including national banks, for any payment or delivery so made. (May 15, 1928, 45 Stat. 533, ch. 568, § 1.)

## CROSS REFERENCE

Uniform Fiduciary Act, see § 21-1701 et seq.

## NOTES TO DECISIONS

## Gift causa mortis

Where depositor, not in contemplation of impending death, had brother's name added to bank account, but did not pass a present interest therein to brother, and retained control of account, there was no "gift causa mortis". *Gibson v. Industrial Bank of Washington* (D. C. Mun. App. 1944, 36 A. 2d 62).

## Gift inter vivos

Where depositor had brother's name appended to bank account but passed no present interest thereto and retained control of account and passbook, there was no "gift inter vivos" to brother. *Gibson v. Industrial Bank of Washington* (D. C. Mun. App. 1944, 36 A. 2d 62).

## Joint account

Statute providing that no disposition of realty or personalty of married woman under 21 years of age or any portions thereof, by deed, mortgage, bill of sale, or other conveyance shall be valid if made by married woman under 21 years of age is modified by statute dealing with joint account of husband and wife in bank or other institutions such as building and loan association. *C. M. Williams v. R. P. Williams, et al.* (1965, 346 F. 2d 808, 120 U.S. App. D.C. 327).

Where substantial sums earned by minor wife were allegedly turned over by her to husband and were deposited with building and loan association in joint account in names of husband and wife, and on estrangement of husband and wife, husband withdrew balance in joint account and deposited it in new joint account in names of himself and his mother, association was not liable to wife on ground that association could not permit funds to be withdrawn by husband due to status of wife as minor. *Id.*

In action by husband's executors against widow to impress constructive trust on proceeds of bank account, for which printed bank cards which recited a right of survivorship had been signed by both husband and widow, and from which widow, after husband's death, withdrew all the funds for deposit elsewhere in her own name, evidence failed to rebut presumption, based on fact that funds for such account had been provided only by husband, that widow did not have a survivorship interest. *Imirie v. Imirie and Bogley etc.* (1957, 246 F. 2d 652, 100 U.S. App. D.C. 371).

A showing that name of depositor's brother was merely appended to bank account, without more, is insufficient to establish intention of depositor to establish a joint account with right of survivorship. *Gibson v. Industrial Bank of Washington* (D. C. Mun. App. 1944, 36 A. 2d 62).

## § 26-202. Safe deposit boxes in names of two or more persons—Right of access—Liability of bank.

When a safety deposit box or vault shall have been hired from any bank, trust company, savings bank, building association, or other banking institution, including national banks, or any other corporation, transacting business in the District of Columbia, in the names of two or more persons, including husband and wife, with the right of access being given to either, or with access to either or the survivor or survivors of said persons, or property is held for safe-keeping by any such bank, trust company, savings bank, building association, or other corporation or banking institution, including national banks, for two or more persons, including husband and wife, with the

right of delivery being given to either, or with the right of delivery to either or the survivor or survivors of said persons, any one or more of such persons, whether the other or others be living or not, shall have the right of access to such safety deposit box or vault and to remove the contents thereof, or any part of such contents, or to have delivered to him or them, the property so held for safe-keeping, or any part thereof, and in case of such removal or delivery the said bank, trust company, savings bank, building association, or other corporation or banking institution, including national banks, shall be exempt from any liability for permitting such access or removal or for the delivery to such person or persons. (May 15, 1928, 45 Stat. 534, ch. 568, § 2.)

## § 26-203. Notice of adverse claim to deposit.

Notice to any bank or trust company doing business in the District of Columbia of an adverse claim to a deposit standing on its books to the credit of any person shall not be effectual to cause said bank or trust company to recognize said adverse claimant unless said adverse claimant shall also either (1) procure a restraining order, injunction, or other appropriate process against said bank or trust company from a court of competent jurisdiction in a cause therein instituted by him wherein the person to whose credit the deposit stands is made a party and served with summons; or (2) execute to such bank or trust company, in form and with sureties acceptable to it, a bond indemnifying said bank or trust company from any and all liability, loss, damage, costs, and expenses, for and on account of the payment of such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of said bank or trust company: *Provided*, That this section shall not apply to any instance where the person to whose credit the deposit stands is a fiduciary for such adverse claimant, and the facts constituting such relationship, together with the facts showing reasonable cause of belief on the part of the said claimant that the said fiduciary is about to misappropriate said deposit, are made to appear by the affidavit of such claimant. (Apr. 5, 1939, 53 Stat. 566, ch. 37, § 2.)

## NOTES TO DECISIONS

## Applicability

This section providing that bank shall recognize adverse claim to deposit "where the person to whose credit a deposit stands is a fiduciary for such adverse claimant" and where facts constituting such relation and showing reasonable cause for belief that fiduciary is about to misappropriate the deposit are made to appear by affidavit of the claimant is applicable regardless of whether account appears on its face as a fiduciary account. *R. S. Goldstein v. The Riggs National Bank* (1972, 459 F. 2d 1161, 148 U.S. App. D.C. 137).

## Construction

This section, designed to protect banks where adverse claims are made to account, is to be broadly construed. *R. S. Goldstein v. The Riggs National Bank* (1972, 459 F. 2d 1161, 148 U.S. App. D.C. 137).

## Liability—Dishonor of check

Where bank received notice from corporation that money in account belonged to the corporation, that individual in whose name account appeared was trustee of such funds, and that corporation believed the money would be misappropriated, and where bank took prompt action to secure adjudication of the conflicting claims



by filing interpleader action, bank was not liable for refusing to honor checks drawn by the depositor on the account. *R. S. Goldstein v. The Riggs National Bank* (1972, 459 F. 2d 1161, 148 U.S. App. D.C. 137).

#### § 26-204. Payment of trust accounts on death of trustee.

Whenever a deposit, savings account, or share account, which is in form in trust for another, shall be made or held by any person in any bank, trust company, savings and loan association, building association, building and loan association, or Federal savings and loan association, doing business in the District of Columbia, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to such bank, trust company, or other association, such deposit, savings account, or share account, or any part thereof, together with the dividends, or interest thereon, may, in the event of the death of the trustee, be paid to the person for whom such deposit, savings account, or share account was made or held, or to his legal representative. (Apr. 5, 1939, 53 Stat. 567, ch. 37, § 4; July 19, 1954, 68 Stat. 494, ch. 545, § 1.)

#### AMENDMENT

1954—Act July 19, 1954, made the section applicable to savings account and share account and savings and loan association, building association, building and loan association, and Federal savings and loan association.

### Chapter 3.—TRUST, LOAN, MORTGAGE, SAFE DEPOSIT AND TITLE CORPORATIONS

#### Sec.

- 26-301. Purposes for which formed.
- 26-302. Title insurance companies may become perpetual.
- 26-303. Trust companies to have perpetual succession.
- 26-304. Organization certificate—Content.
- 26-305. District of Columbia Council may grant or refuse charter.
- 26-306. Notice of application to Council.
- 26-307. Recording charter—Certificate to be secured from Comptroller of Currency.
- 26-308. Reports to Comptroller—Powers of Comptroller.
- 26-309. Powers of companies—Liability as trustee.
- 26-310. May be appointed trustee, receiver, administrator, collector, guardian, or committee.
- 26-311. Oath as fiduciary.
- 26-312. Stock to be security when fiduciary.
- 26-313. Existing companies.
- 26-314. Real estate which may be owned.
- 26-315. Duration of charter.
- 26-316. Capital stock—Deposit with Comptroller required.
- 26-317. Shares, par value—Calls—Sale of stock upon failure to pay call.
- 26-318. Annual reports to Comptroller.
- 26-319. Liability of directors or trustees—Exception.
- 26-320. False swearing—Misappropriation made larceny.
- 26-321. Stock deemed personal estate of holder—Transfer—Face to show par value, amount paid.
- 26-322. Liability of stockholders.
- 26-323. Stock to be paid up in money only—Exception—Companies doing business prior to January 1, 1902.
- 26-324. Number of directors or trustees—Election—Tenure.
- 26-325. Officers—Bond.
- 26-326. By-laws.
- 26-327. Directors or trustees liable for debts if dividends are declared whereby corporation is rendered insolvent or debt is created thereby.
- 26-328. Directors or trustees objecting to such dividends and filing certificate, exempt.
- 26-329. Directors or trustees personally liable when liabilities exceed assets.

#### Sec.

- 26-330. Executors, administrators, guardians, or trustees not liable as stockholder—Estate liable.
- 26-331. Increase or decrease of capital stock—Approval by Comptroller—Distribution of assets.
- 26-332. Copy of certificate to be evidence.
- 26-333. No bond to be required when company appointed fiduciary—Capital stock and property to be considered as security for performance of duties.
- 26-334. Bond as fiduciary may be required—Examination for cause.
- 26-335. Compliance required of corporations organized under State laws—Penalty.
- 26-336. Right to amend or repeal reserved to Congress.

#### § 26-301. Purposes for which formed.

Corporations may be formed within the District of Columbia for the purposes hereinafter mentioned in the following manner:

Any number of natural persons, citizens of the United States, not less than twenty-five, may associate themselves together to form a company for the purpose of carrying on, in the District of Columbia, any one of the three classes of business herein specified, to wit:

First. A safe deposit, trust, loan, and mortgage business.

Second. A title insurance, loan, and mortgage business.

Third. A security, guarantee, indemnity, loan, and mortgage business: *Provided*, That the capital stock of any of said companies shall not be less than one million dollars except as otherwise provided in section 35-1316, and that any of said companies may also do a storage business when their capital stock amounts to the sum of not less than one million two hundred thousand dollars. (Mar. 3, 1901, 31 Stat. 1303, ch. 854, § 715; Apr. 16, 1966, 80 Stat. 121, Pub. L. 89-399, § 1(b).)

#### AMENDMENT

1966—Act Apr. 16, 1966, inserted exception clause, "except as provided in section 35-1316, in the proviso in par. "Third".

#### CROSS REFERENCES

- Amendment of charter, see § 29-238.
- Excise and license taxes, see § 47-1701 et seq.
- Existing corporation availing itself of the provisions of this chapter, see § 26-313.
- Extortionate credit transactions, see 18 U.S.C. 891 et seq.
- Money Lenders Law, exemption from operation of, see § 26-610.
- Provisions applicable to trust and fiduciary companies, see §§ 26-101 to 26-110.
- Special powers of companies organized hereunder, see § 26-309.
- Title insurance excepted from operation of Fire and Casualty Act, see § 35-1302.
- Truth in Lending Act, see 15 U.S.C. 1601 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26-304, 26-309, 26-310, 26-313.

#### NOTES TO DECISIONS

##### In general

Language of the act of incorporation "liable to the creditors" does not create an independent and direct property right of creditors enforceable only by them in an equity suit, but it is a right which, though created for their benefit, accrues to the Comptroller and through him to his receiver, by whom alone it is enforceable in the administration of the trust estate. *Dunn v. O'Connor* (1937, 89 F. 2d 820, 67 App. D.C. 76).



### § 26-302. Title insurance companies may become perpetual.

Any company formed prior to January 1, 1902, agreeably to law, for the purpose of insuring titles to real estate may become perpetual by filing, in the office of the recorder of deeds, a certificate to that effect, in like manner as is provided by law for the filing of the original certificate of incorporation. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 641.)

#### CODIFICATION

Section comprises the first paragraph of section 641 of act Mar. 3, 1901. Second paragraph of such section 641 is classified to section 26-303.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29-101, 29-209, 29-211, 29-215, 29-223, 29-229, 29-233, 29-234, 29-236, 29-238 to 29-240.

### § 26-303. Trust companies to have perpetual succession.

Any company transacting the business of a trust company and heretofore or hereafter organized or operating under the provisions of this chapter shall have perpetual succession from the date of its organization, or until such time as it be dissolved, or until its franchise shall become forfeited by reason of violation of law, or until terminated by either a general or special Act of Congress or until its affairs be placed in the hands of a receiver and finally wound up by him. (Mar. 3, 1901, ch. 854, § 641, as added June 24, 1936, 49 Stat. 1898, ch. 743.)

#### REFERENCES IN TEXT

In the original, "this chapter" refers to chapter 18 of act Mar. 3, 1901, ch. 854, which includes sections 574-797. For distribution of such sections 574-797 in the Code, see Tables.

#### CODIFICATION

Section comprises the second paragraph of section 641 of act Mar. 3, 1901. First paragraph of such section 641 is classified to section 26-302.

#### CROSS REFERENCE

Voluntary liquidation and discontinuance of business, see § 26-103.

### § 26-304. Organization certificate—Content.

The persons referred to in section 26-301 shall, under their hands and seals, execute before some officer in said District competent to take the acknowledgment of deeds, an organization certificate, which shall specifically state—

First. The name of the corporation.

Second. The purposes for which it is formed.

Third. The term for which it is to exist, which shall not exceed the term of fifty years, and be subject to alteration, amendment, or repeal by Congress at any time.

Fourth. The number of its directors and the names and residences of the officers who for the first year are to manage the affairs of the company.

Fifth. The amount of its capital stock and its subdivision into shares. (Mar. 3, 1901, 31 Stat. 1303, ch. 854, § 716.)

#### CROSS REFERENCE

Prohibition against use of words "trust company" unless operated under supervision of Comptroller of the Currency, see § 26-107.

### § 26-305. District of Columbia Council may grant or refuse charter.

This certificate shall be presented to the District of Columbia Council, which shall have power and

discretion to grant or refuse to said persons a charter of incorporation upon the terms set forth in the said certificate and the provisions of this chapter. (Mar. 3, 1901, 31 Stat. 1303, ch. 854, § 717.)

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(223) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of granting or refusing a charter of incorporation, under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

#### CROSS REFERENCE

Power of Comptroller of the Currency over trust companies, see § 26-101 et seq.

### § 26-306. Notice of application to Council.

Previous to the presentation of the said certificate to the said District of Columbia Council, notice of the intention to apply for such charter shall be inserted in two newspapers of general circulation, printed in the District of Columbia, at least four times a week for three weeks, setting forth briefly the name of the proposed company, its character and object, the names of the proposed incorporators, and the intention to make application for a charter on a specified day; and the proof of such publication shall be presented with said certificate when presentation thereof is made to said Council. (Mar. 3, 1901, 31 Stat. 1303, ch. 854, § 718.)

#### CODIFICATION

Reference to the District of Columbia Council was substituted for "Commissioners" on authority of § 26-305 of this chapter and § 402(223) of Reorg. Plan No. 3 of 1967, under which the Council grants or refuses a charter of incorporation.

### § 26-307. Recording charter—Certificate to be secured from Comptroller of Currency.

If the charter be granted as aforesaid, it, together with the certificate of the District of Columbia Council granting the same indorsed thereon, shall be filed for record in the office of the recorder of deeds for the District of Columbia, and shall be recorded by him. On the filing of the said certificate with the said recorder of deeds as herein provided, approved as aforesaid by the said Council, the persons named therein and their successors shall thereupon and thereby be and become a body corporate and politic, and as such shall be vested with all the powers and charged with all the liabilities conferred upon and imposed by this chapter upon companies organized under the provisions hereof: *Provided, however,* That no corporation created and organized under the provisions hereof, or availing itself of the provisions hereof as contained in section 26-313, shall be authorized to transact the business of a trust company, or any business of a fiduciary character, until it shall have filed with the Comptroller of the Currency a copy of its certificate of organization and charter, and shall have obtained from him and filed the same for record with the said recorder of deeds, a certificate that the said capital stock of said company has been paid in and the deposit of securities made with said comptroller in the manner and to the extent required by this title. (Mar. 3, 1901, 31 Stat. 1304, ch. 854, § 719.)



## CODIFICATION

Reference to the District of Columbia Council was substituted for "Commissioners" on authority of § 26-305 of this chapter and § 402(223) of Reorg. Plan No. 3 of 1967, under which the Council grants or refuses a charter of incorporation.

## CROSS REFERENCE

Power of Comptroller over trust companies, see § 26-101 et seq.

## § 26-308. Reports to Comptroller—Powers of Comptroller.

All companies organized under this chapter, or which shall, under the provisions of this chapter, become entitled to transact the business of a trust company, shall report to the Comptroller of the Currency in the manner prescribed by sections 161, 163, and 164 of title 12, U.S. Code, in the case of national banks, and all acts amendatory thereof or supplementary thereto, and with similar provisions for compensating examiners, and shall be subject to like penalties for failure to do so. The comptroller shall have and exercise the same visitatorial powers over the affairs of the said corporations as is conferred upon him by sections 481-485 of title 12, U.S. Code, in the case of national banks. He shall also have power, when in his opinion it is necessary, to take possession of any such company for the reasons and in the manner and to the same extent as are provided in the laws of the United States with respect to national banks. (Mar. 3, 1901, 31 Stat. 1304, ch. 854, § 720.)

## REFERENCES IN TEXT

Title 12 U.S.C. § 163, referred to in the text, was repealed by act Sept. 8, 1959, 73 Stat. 466, Pub. L. 86-230, § 22(a) and is now covered by section 161 of title 12.

## CROSS REFERENCE

Other provisions concerning powers of Comptroller over trust companies, see § 26-101 et seq.

## NOTES TO DECISIONS

## In general

Purpose of this section is to make trust companies and State incorporated banks doing business in the District subject to the authority of the Comptroller both in operation and insolvency. *Dunn v. O'Connor* (1937, 89 F. 2d 820, 67 App. D.C. 76).

## Real estate

Virginia real estate owned by insolvent trust company of the District, being administered by the Comptroller of the Currency is subject to attachment in Virginia court by Virginia creditors. *Loudoun Nat. Bank of Leesburg v. Continental Trust Co.* (1935, 180 S.E. 548, 164 Va. 536).

## § 26-309. Powers of companies—Liability as trustee.

All companies organized under this chapter are hereby declared to be corporations possessed of the powers and functions of corporations generally, and shall have power—

First. To make contracts.

Second. To sue and be sued, plead and be impleaded, in any court as fully as natural persons.

Third. To make and use a common seal and alter the same at pleasure.

Fourth. To loan money.

Fifth. When organized under subdivision 1 of section 26-301, to accept and execute trusts of any and every description which may be committed or transferred to them, and to accept the office and perform the duties of receiver, assignee, executor, administrator, collector of estate or property of any

decendent, guardian of the estate of minors with the consent of the guardian of the person of such minor, and committee of the estates of lunatics and idiots whenever any trusteeship or any such office or appointment is committed or transferred to them, with their consent, by any person, body politic or corporate, or by any court in the District of Columbia; and all such companies organized under the first subdivision of section 26-301 are further authorized to accept deposits of money for the purposes designated herein, upon such terms as may be agreed upon from time to time with depositors, and to act as agent for the purpose of issuing or countersigning the bonds or obligations of any corporation, association, municipality, or state, or other public authority, and to receive and manage any sinking fund on any such terms as may be agreed upon, and shall have power to issue its debenture bonds upon deeds of trust or mortgages of real estate to a sum not exceeding the face value of said deeds of trust or mortgages, and which shall not exceed fifty per centum of the fair cash value of the real estate covered by said deeds or mortgages, to be ascertained by the Comptroller of the Currency; but no debenture bonds shall be issued until the securities on which the same are based have been placed in the actual possession of the trustee named in the debenture bonds, who shall hold said securities until all of said bonds are paid; and when organized under the second subdivision of section 26-301 said company is authorized to insure titles to real estate and to transact generally the business mentioned in said subdivision; and when organized under the third subdivision of section 26-301 said company is hereby authorized, in addition to the loan and mortgage business therein mentioned, to secure, guarantee, and insure individuals, bodies politic, associations, and corporations against loss by or through trustees, agents, servants, or employees, and to guarantee the faithful performance of contracts and obligations of whatever kind entered into by or on the part of any person or persons, association, corporation, or corporations, and against loss of every kind: *Provided*, That any corporations formed under the provisions of this chapter when acting as trustee shall be liable to account for the amounts actually earned by the moneys held by it in trust in addition to the principal so held; but such corporation may be allowed a reasonable compensation for services performed in the care of the trust estate. (Mar. 3, 1901, 31 Stat. 1304, ch. 854, § 721.)

## CROSS REFERENCES

Bylaws, see § 26-326.

Conveyances of real estate, formal requisites, see § 45-302.

False statements against trust companies, see § 26-108. Insurance companies authorized to write title insurance, see § 35-1103.

Liability as forwarding agent, see § 28:4-202.

Mistake or error in paying instruments, damages, see § 28:4-402.

Number and powers of trustees or directors, see § 26-324.

Other provisions concerning power of Comptroller over trust companies, see § 26-101 et seq.

Payment of checks or other instruments more than a year after date, see §§ 28:3-503, 28:4-404.



Payment of forged or altered instrument, see § 28:4-406.  
Trust or joint deposits, accounts, or safety deposit boxes, see § 26-201 et seq.

§ 26-310. May be appointed trustee, receiver, administrator, collector, guardian, or committee.

In all cases in which application shall be made to any court in the District of Columbia, or wherever it becomes necessary or proper for said court to appoint a trustee, receiver, administrator, collector, guardian of the estate of a minor, or committee of the estate of a lunatic, it shall and may be lawful for said court (but without prejudice to any preference in the order of any such appointments required by law) to appoint any such company organized under the first subdivision of section 26-301, with its assent, such trustee, receiver, administrator, collector, committee, or guardian, with the consent of the guardian of the person of such minor: *Provided, however*, That no court or judge who is an owner of or in any manner financially interested in the stock or business of such corporation shall commit by order or decree to any such corporation any trust or fiduciary duty. (Mar. 3, 1901, 31 Stat. 1305, ch. 854, § 722.)

§ 26-311. Oath as fiduciary.

Whenever any corporation operating under this Code shall be appointed such trustee, executor, administrator, collector, receiver, assignee, guardian, or committee, as aforesaid, the president, vice-president, secretary, or treasurer of said company shall take the oath or affirmation required by law to be made by any trustee, executor, administrator, collector, receiver, assignee, guardian, or committee. (Mar. 3, 1901, 31 Stat. 1305, ch. 854, § 723.)

§ 26-312. Stock to be security when fiduciary.

When any court shall appoint the said company a trustee, receiver, administrator, collector, or such guardian or committee, or shall order the deposit of money or other valuable with said company, or where any individual or corporation shall appoint any of said companies a trustee, executor, assignee, or such guardian, the capital stock of said company subscribed for or taken, and all property owned by said company, together with the liability of the stockholders and officers as herein provided, shall be taken and considered as the security required by law for the faithful performance of its duties, and shall be absolutely liable in case of any default whatever. (Mar. 3, 1901, 31 Stat. 1305, ch. 854, § 724.)

§ 26-313. Existing companies.

Any safe-deposit company, trust company, surety or guaranty company, or title insurance company incorporated on or before January 1, 1902, and operating under the laws of the United States in the District of Columbia or of any of the States, and doing business in said District on or before January 1, 1902, may avail itself of the provisions of this chapter on filing in the office of the recorder of deeds of the District of Columbia, or with the Comptroller of the Currency, a certificate of its intention to do so, which certificate shall specify which one of the three classes of business set out in section 26-301 it will carry on, and shall be verified by the oath of its president to the effect that it has in every respect

complied with the requirements of existing law, especially with the provisions of this chapter, that its capital stock is paid in as provided in section 26-323 and is not impaired; and thereafter such company may exercise all powers and perform all duties authorized by any one of the subdivisions of section 26-301 in addition to the powers lawfully exercised by such company on January 1, 1902. (Mar. 3, 1901, 31 Stat. 1306, ch. 854, § 725.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26-307, 26-322.

#### NOTES TO DECISIONS

##### State bank operating in District

Comptroller has the same control and management of an insolvent State bank operating in the District as in the case of national banks and it likewise includes all provisions for the collection of debts and the distribution of assets, and as well the enforcement of the liability of stockholders. *Hamilton v. Offutt* (1935, 78 F. 2d 735, 64 App. D.C. 385).

§ 26-314. Real estate which may be owned.

Any company operating under this chapter may lease, purchase, hold, and convey real property in which the offices of the company are located not to exceed in value the capital and surplus of the company, and such in addition as it may acquire in satisfaction of debts due the corporation under sales, decrees, judgments, and mortgages. But no such association shall hold the possession of any real estate under foreclosure of mortgage, or the title and possession of any real estate purchased to secure any debts due to it, for a longer period than five years. (Mar. 3, 1901, 31 Stat. 1306, ch. 854, § 726; Apr. 19, 1920, 41 Stat. 566, ch. 153.)

#### AMENDMENT

1920—Act Apr. 19, 1920, substituted "real property in which the offices of the company are located not to exceed in value the capital and surplus of the company" for "real estate, not exceeding in value five hundred thousand dollars".

§ 26-315. Duration of charter.

The charters for incorporations named in this chapter may be made perpetual, or may be limited in time by their provisions, subject to the approval of Congress. (Mar. 3, 1901, 31 Stat. 1306, ch. 854, § 727.)

#### CROSS REFERENCES

Title insurance companies perpetual, see § 26-302.  
Trust companies perpetual, see § 26-303.

§ 26-316. Capital stock—Deposit with Comptroller required.

The capital stock of every such company shall be at least one million dollars, and at least fifty per centum thereof must have been paid in, in cash or by the transfer of assets as hereinafter provided in section 26-323, before any such company shall be entitled to transact business as a corporation, except with its own members, and before any company organized hereunder shall be entitled to transact the business of a trust company, or to become and act as an administrator, executor, guardian of the estate of a minor, or undertake any other kindred fiduciary duty, it shall deposit, either in money or in bonds, mortgages, deeds of trust, or other securities equal in actual value to one-fourth of the



capital stock paid in, with the Comptroller of the Currency, to be kept by him upon the trust and for the purposes hereinafter provided; and the said comptroller may from time to time require an additional deposit from any such company, to be held upon and for the same trust and purposes, not exceeding, however, in value one-half the paid-in capital stock; and the said comptroller shall not issue to any corporation the certificate heretofore provided for until said deposit with him of securities required by this section. Within one year after the organization of any corporation under the provisions of this chapter, or after any corporation existing prior to January 1, 1902, shall have availed itself of the powers and rights given by this chapter in the manner herein provided for, its entire capital stock shall have been paid in. (Mar. 3, 1901, 31 Stat. 1306, ch. 854, § 728.)

#### CROSS REFERENCE

Increase or decrease of capital stock, see § 26-331.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 26-317.

### § 26-317. Shares, par value—Calls—Sale of stock upon failure to pay call.

The capital stock of every such company shall be divided into shares of one hundred dollars each, or into shares of such less amount as may be provided in the certificate of incorporation or amendment thereof. It shall be lawful for such company to call for and demand from the stockholders, respectively, all sums of money by them subscribed, at such time and in such proportions as its board of directors shall deem proper, within the time specified in section 26-316, and it may enforce payment by all remedies provided by law; and if any stockholder shall refuse or neglect to pay any instalment, as required by a resolution of the board of directors, after thirty days' notice of the same, the said board of directors may sell at public auction to the highest bidder so many shares of said stock as shall pay said instalment, under such general regulations as may be adopted in the by-laws of said company, and the highest bidder shall be taken to be the person who offers to purchase the least number of shares for the assessment due. (Mar. 3, 1901, 31 Stat. 1306, ch. 854, § 729; June 20, 1938, 52 Stat. 780, ch. 527.)

#### AMENDMENT

1938—Act June 20, 1938, added to the first sentence the words "or into shares of such less amount as may be provided in the certificate of incorporation or amendment thereof."

#### NOTES TO DECISIONS

##### Late payment for subscribed stock

Where stock subscription had been accepted by organizers of national bank prior to bank's actual existence and after bank came into being it notified subscriber that payment for his shares was due on or before certain date, buyer who mailed check which was not received by bank until day after specified date forfeited his rights under subscription agreement. *S. J. Brown v. United Community National Bank* (1968, 282 F. Supp 781).

### § 26-318. Annual reports to Comptroller.

Every such company shall annually, within twenty days after the 1st of January of each year, make a report to the Comptroller of the Currency, which shall be published in a newspaper in the District,

which shall state the amount of capital and of the proportion actually paid, the amount of debts, and the gross earnings for the year ending December 31st then next previous, together with their expenses, which report shall be signed by the president and a majority of the directors or trustees, and shall be verified by the oath of the president, secretary, and at least three of the directors or trustees: *Provided, however*, That trust companies which are required to file and to publish reports under the provisions of section 161 of title 12, U.S. Code, as amended, shall not be required to make or publish the annual report required under this section. (Mar. 3, 1901, 31 Stat. 1307, ch. 854, § 730; July 1, 1902, 32 Stat. 619, ch. 1352, § 6, par. 5; Nov. 30, 1945, 59 Stat. 588, ch. 499.)

#### CODIFICATION

In view of the concluding sentence of par. 5 of § 6 of act July 1, 1902, the following words, contained in the original enactment after the present last word "trustees," were deleted: "and said company shall pay to the District of Columbia, in lieu of personal taxes for each next ensuing year, one and one-half per centum of its gross earnings for the preceding year, shown by said verified statement, which amount shall be payable to the collector of taxes at the times and in the manner that other taxes are payable."

#### AMENDMENT

1945—Act Nov. 30, 1945, inserted proviso in the second par.

#### CROSS REFERENCE

Other provisions concerning powers and duties of Comptroller, see § 26-101 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 26-319.

### § 26-319. Liability of directors or trustees—Exception.

If any company fails to comply with the provisions of section 26-318, all the directors or trustees of such company shall be jointly and severally liable for the debts of the company then existing and for all that shall be contracted before such report shall be made: *Provided*, That in case of failure of the company in any year to comply with the provisions of section 26-318, and any of the directors shall, on or before January 15th of such year, file his written request for such compliance with the secretary of the company, the Comptroller of the Currency, and the recorder of deeds of the District of Columbia, such director shall be exempt from the liability prescribed in this section. (Mar. 3, 1901, 31 Stat. 1307, ch. 854, § 731.)

### § 26-320. False swearing—Misappropriation made larceny.

Any wilful false swearing in regard to any certificate or report or public notice required by the provisions of this chapter shall be perjury and shall be punished as such according to the laws of the District of Columbia. Any misappropriation of any of the money of any corporation or company formed under this chapter, or of any money, funds, or property intrusted to it, shall be held to be larceny, and shall be punished as such under the laws of said District. (Mar. 3, 1901, 31 Stat. 1307, ch. 354, § 732.)

### § 26-321. Stock deemed personal estate of holder—Transfer—Face to show par value, amount paid.

The stock of such company shall be deemed personal estate, and shall be transferable only on the



books of such company in such manner as shall be prescribed by the by-laws of the company; but no shares shall be transferable until all previous calls thereon shall have been fully paid. All certificates of the stock of any company organized under this chapter shall show upon their face the par value of each share and the amount paid thereon. (Mar. 3, 1901, 31 Stat. 1307, ch. 854, § 733; July 1, 1902, 32 Stat. 619, ch. 1352, § 6, par. 5.)

#### CODIFICATION

As enacted, the first sentence of this section was continued as follows: "and the said stock shall not be taxable in the hands of individual owners, the tax on the gross earnings of the company hereinbefore provided being in lieu of other personal tax." This has been deleted as repealed in view of paragraph 5 of § 6 of the act July 1, 1902. See also amendment note to § 26-318 for deletion of provision for tax on gross earnings as provided by act Mar. 3, 1901.

#### § 26-322. Liability of stockholders.

All stockholders of every company incorporated under this chapter, or availing itself of its provisions under section 26-313 shall be severally and individually liable to the creditors of such company to an amount equal to and in addition to the amount of stock held by them respectively for all debts and contracts made by such company. (Mar. 3, 1901, 31 Stat. 1307, ch. 854, § 734.)

#### CROSS REFERENCES

Other provisions concerning liabilities of stockholders, see §§ 26-104 to 26-106.

Suits, see § 26-104.

Termination of liability, see § 26-105.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 26-105.

#### NOTES TO DECISIONS

##### Determination of liability

Liability of a stockholder is determined by the charter of incorporation and the laws of the State in which incorporation is had, and no liability will be read into statute where none exists. *Hamilton v. Offutt* (1935, 78 F. 2d 735, 64 App. D. C. 385, certiorari denied 56 S. Ct. 121, 296 U. S. 592, 80 L. Ed. 419).

##### Double liability

Taking possession of District bank by Comptroller does not impose double liability on stockholders unless State does. *Hamilton v. Offutt* (1935, 78 F. 2d 735, 64 App. D.C. 385, certiorari denied 56 S. Ct. 121, 296 U.S. 592, 80 L. Ed. 419).

Double liability is no more the asset of the corporation than the double liability created by the District statute with relation to trust companies and in either case it is an asset of creditors and not of the corporation. *Dunn v. O'Connor* (1937, 89 F. 2d 820, 67 App. D. C. 76).

#### § 26-323. Stock to be paid up in money only—Exception—Companies doing business prior to January 1, 1902.

Nothing but money shall be considered as payment of any part of the capital stock, except that in the case of any company doing business on January 1, 1902, in the District of Columbia in any of the classes herein provided for, or under any act of Congress, or by virtue of the laws of any of the States, and which company had on that date actually received full payment in money of at least fifty per centum of the capital stock required by this chapter, and which company desires to obtain a charter under this chapter, all the assets or property may be re-

ceived and considered as money at a value to be appraised and fixed by the Comptroller of the Currency: *Provided*, That all such assets and property are also transferred to and are thereafter owned by the company organized under this chapter. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 735.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26-313, 26-316.

#### § 26-324. Number of directors or trustees—Election—Tenure.

The stock, property, and concerns of such company shall be managed by not less than nine nor more than thirty directors or trustees, who shall, respectively, be stockholders, and citizens of the United States, and at least two-thirds of whom shall reside in the District of Columbia or within one hundred miles of the location of the principal office of the company, and shall, except the first year, be annually elected by the stockholders at such time and place and after such published notice as shall be determined by the bylaws of the company, and said directors or trustees shall hold until their successors are elected and qualified. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 736; Aug. 28, 1957, 71 Stat. 474, Pub. L. 85-199, § 1.)

#### AMENDMENT

1957—Act Aug. 28, 1957, substituted "and citizens of the United States, and at least two-thirds of whom shall reside in the District of Columbia or within one hundred miles of the location of the principal office of the company" for "and at least one-half residents and citizens of the District of Columbia."

#### § 26-325. Officers—Bond.

There shall be a president of the company, who shall be a director, also a secretary and a treasurer, all of whom shall be chosen by the directors or trustees: *Provided*, That only one of the above-named offices shall be held by the same person at the same time. Subordinate officers may be appointed by the directors or trustees, and all such officers may be required to give such security for the faithful performance of the duties of their offices as the directors or trustees may require. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 737.)

#### CROSS REFERENCE

Limitations on powers of notary public employed by trust company, see § 26-110.

#### § 26-326. By-laws.

The directors or trustees shall have power to make such by-laws as they deem proper for the management or disposal of the stock and business affairs of such company, not inconsistent with the provisions of this chapter, and prescribing the duties of officers and servants that may be employed, for the appointment of all officers, and for carrying on all kinds of business within the objects and purposes of such company. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 738.)

#### § 26-327. Directors or trustees liable for debts if dividends are declared whereby corporation is rendered insolvent or debt is created thereby.

If the directors or trustees of any company shall declare or pay any dividend the payment of which would render it insolvent, or which would create a



debt against such company, they shall be jointly and severally liable as guarantors for all the debts of the company then existing, and for all that shall be thereafter contracted while they shall, respectively, remain in office. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 739.)

#### CROSS REFERENCE

Other provisions for restrictions upon payment of dividends, see § 26-106.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 26-328.

§ 26-328. Directors or trustees objecting to such dividends and filing certificate, exempt.

If any of the directors or trustees shall object to declaring such dividends or the payment of the same, and shall at any time before the time fixed for the payment thereof file a certificate of their objection in writing with the secretary of the company and with the recorder of deeds of the District, they shall be exempt from the liability prescribed in section 26-327. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 740.)

§ 26-329. Directors or trustees personally liable when liabilities exceed assets.

If the liabilities of any company shall at any time exceed the amount of the fair cash value of the assets, the directors or trustees of such company assenting thereto shall be personally and individually liable for such excess to the creditors of the company, after the additional liability of the stockholders has been enforced. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 741.)

§ 26-330. Executors, administrators, guardians, or trustees not liable as stockholder—Estate liable.

No person holding stock in such company as executor, administrator, guardian, or trustee shall be personally subject to any liability as stockholder of such company, but the estate and funds in the hands of such executor, administrator, guardian, or trustee shall be liable in like manner and to the same extent as the testator or intestate or the ward or the person interested in such trust fund would have been if he had been living and competent to act and hold the stock in his own name. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 742.)

§ 26-331. Increase or decrease of capital stock—Approval by Comptroller—Distribution of assets.

Any corporation which may be formed under this chapter may increase its capital stock by complying with the provisions of this chapter to any amount which may be deemed sufficient and proper for the purposes of the corporation.

Any company transacting the business of a trust company heretofore or hereafter organized or operating under the provisions of this chapter may by the vote of shareholders owning two-thirds of its capital stock reduce its capital to any sum not below the amount required by this chapter; but no such reduction shall be made until the amount of the proposed reduction has been reported to the Comptroller of the Currency and such reduction has been approved by said Comptroller of the Currency, and no shareholder shall be entitled to any distribution of cash or other assets by reason of any reduc-

tion of the common capital of any such corporation unless such distribution shall have been approved by the Comptroller of the Currency and by the affirmative vote of at least two-thirds of the shares of stock outstanding. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 743; June 20, 1938, 52 Stat. 780, ch. 527.)

#### AMENDMENT

1938—Act June 30, 1938, added the second par.

#### CROSS REFERENCES

Capital stock, see § 26-316.

Other provisions concerning trust companies, see § 26-101 et seq.

§ 26-332. Copy of certificate to be evidence.

A copy of any certificate of incorporation filed in pursuance of this chapter, certified by the recorder of deeds to be a true copy and the whole of such certificate, shall be received in all courts and places as presumptive legal evidence of the facts therein stated. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 744.)

§ 26-333. No bond to be required when company appointed fiduciary—Capital stock and property to be considered as security for performance of duties.

No bond or other collateral security, except as hereinafter stated, shall be required from any trust company incorporated under this chapter for and in respect to any trust, nor when appointed trustee, guardian, receiver, executor, or administrator with or without the will annexed, collector, committee of the estate of a lunatic or idiot, or other fiduciary appointment; but the capital stock subscribed for or taken, and all property owned by said company and the amount for which said stockholders shall be liable in excess of their stock, shall be taken and considered as the security required by law for the faithful performance of its duties, and shall be absolutely liable in case of any default whatever; and in case of the insolvency or dissolution of said company, the debts due from the said company as trustee, guardian, receiver, executor, administrator, collector, or committee of the estate of lunatics, idiots, or any other fiduciary appointment shall have a preference. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 745.)

§ 26-334. Bond as fiduciary may be required—Examination for cause.

The court having probate jurisdiction, or any judge thereof, shall have power to make orders respecting such company whenever it shall have been appointed trustee, guardian, receiver, executor, administrator with or without the will annexed, collector, committee of the estate of a lunatic, idiot, or any other fiduciary, and require the said company to render all accounts which might lawfully be made or required by any court or any judge thereof if such trustee, guardian, receiver, executor, administrator with or without the will annexed, collector, committee of the estate of a lunatic or idiot, or fiduciary were a natural person. And said court, or any judge thereof, at any time, on application of any person interested, may appoint some suitable person to examine into the affairs and standing of such companies, who shall make a full report thereof to the court, and said court, or any judge thereof, may at



any time, in its discretion, require of said company a bond with sureties or other security for the faithful performance of its obligations, and such sureties or other security shall be liable to the same extent and in the same manner as if given or pledged by a natural person. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 746; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91-358, title I, § 158(c) (4), 84 Stat. 576.)

#### AMENDMENT

1970—Section 158(c) (4) of Act July 29, 1970, Public Law 91-358 amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court having probate jurisdiction."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia" and "judge" for "justice" whenever appearing.

#### CROSS REFERENCE

Court having probate jurisdiction, see §§ 11-501, 11-921.

#### § 26-335. Compliance required of corporations organized under State laws—Penalty.

No corporation or company organized by virtue of the laws of any of the States of this Union shall carry on in the District of Columbia any of the kinds of business named in this chapter without strict compliance in all particulars with the provisions of this chapter for the government of such corporations formed under it, and each one of the officers of the corporation or company so offending shall be punished by a fine not exceeding \$1,000 or imprisonment not exceeding one year, or by both fine and imprisonment, in the discretion of the court. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 747; Mar. 4, 1933, 47 Stat. 1567, ch. 274, § 5.)

#### AMENDMENT

1933—Act Mar. 4, 1933, omitted the words "and having its principal place of business within the District of Columbia" following "States of this Union" in the first sentence.

#### CROSS REFERENCES

Semiannual publication of financial statement, see § 29-105.

Suits, see § 26-104.

#### § 26-336. Right to amend or repeal reserved to Congress.

Congress may at any time alter, amend, or repeal this chapter, but any such amendment or repeal shall not, nor shall the dissolution of any company formed under this chapter, take away or impair any remedy given against such corporation, its stockholders, or officers for any liability or penalty which shall have been previously incurred. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 748.)

### Chapter 4.—BUILDING ASSOCIATIONS

#### Sec.

26-401. Organization—Certificate—Created body politic and corporate—Powers.

26-402. Powers as to stock.

#### Sec.

26-403. Bonus to be paid by late subscribers.

26-404. Object—Powers of Federal Home Loan Bank Board—Examination—Reports—Liquidation—Strict compliance required—Associations in business before March 4, 1909—Penalties—Misappropriation of funds made larceny.

26-404a. Remainder of powers, duties and functions of Comptroller of the Currency relating to building associations and building and loan associations transferred to the Federal Home Loan Bank Board.

26-405. Associations existing under laws of other States doing business in District of Columbia must comply—Provisions requisite—Penalty.

26-406. Advancements.

26-407. Security for advancement.

26-408. Profits.

26-409. Redemption of shares.

26-410. Withdrawal by shareholder.

26-411. Repayment of advances.

26-412. Forfeiture.

26-413. Foreclosure.

26-414. Investment of funds in real estate.

26-415. Purchase of Home Owners' Loan Corporation bonds authorized.

26-416. Exchange of real estate and debts and liens secured by real estate for Home Owners' Loan Corporation bonds authorized.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 26-103.

#### § 26-401. Organization—Certificate—Created body politic and corporate—Powers.

Any five or more persons who desire to form an incorporated building or homestead association, all being citizens of the United States, and a majority of them residents of the District of Columbia, may make, sign, seal, and acknowledge, before some officer authorized to take the acknowledgment of deeds, and file for record in the office of the recorder of deeds, a certificate, in writing, to the same effect as that required in chapter 2 of title 29 for the formation of the corporations therein mentioned.

When such certificate shall have been filed for record as aforesaid, the persons who have signed and acknowledged the same, and their successors, shall become and be a body politic and corporate, in fact and in law, by the name stated in the certificate, and by that name have succession and be capable of suing and being sued in the courts of the District, and of purchasing, holding, and conveying such real estate as may be necessary to the conduct of its business, and to make reasonable by-laws not inconsistent herewith. (Mar. 3, 1901, 31 Stat. 1298, 1299, ch. 854, §§ 687, 688.)

#### PROVISIONS OF HOME OWNERS' LOAN ACT 1933 RELATING TO BUILDING ASSOCIATIONS AND SIMILAR INSTITUTIONS IN THE DISTRICT OF COLUMBIA

Section 8 of the above Act [as added Dec. 31, 1970, Pub. L. 91-609, 84 Stat. 1815; 12 U.S.C. 1466a] provided:

(a) Without regard to any provision of law other than this section, and without limitation on any other power or function now or hereafter vested in or exercisable by the Federal Home Loan Bank Board by or under this Act [Home Owners' Loan Act of 1933; 12 U.S.C. 1461 et seq.] or otherwise, the Board shall, with respect to all incorporated or unincorporated building, building or loan, building and loan, or homestead associations, and similar institutions, of or transacting or doing business in the District of Columbia, or maintaining any office in the District of Columbia (other than Federal savings and loan associations), have the same powers and functions as to examination, operation, and regulation as are now or hereafter vested in or exercisable by it with respect to Federal savings and loan associations by or under sec-



tion 5 of this Act [12 U.S.C. 1464] or otherwise, and all of the provisions of subsection (d) of section 5 of this Act [12 U.S.C. 1464(d)] as now or hereafter in force shall be applicable with respect to such associations or institutions.

(b) Any such association or institution incorporated under the laws of, or organized in, the District of Columbia shall have in addition to any existing statutory authority such statutory authority as is from time to time vested in Federal savings and loan associations.

(c) Charters, certificates of incorporation, articles of incorporation, constitutions, bylaws, or other organic documents of associations or institutions referred to in subsection (b) of this section may, without regard to anything contained therein or otherwise, hereafter be amended in such manner and to such extent and upon such vote or votes if any as the Federal Home Loan Bank Board may by regulation or otherwise provide.

(d) Nothing herein shall cause, or permit the Federal Home Loan Bank Board to cause, District of Columbia associations to be or become Federal savings and loan associations, or require the Board to impose on District of Columbia associations the same regulations as are imposed on Federal savings and loan associations.

#### CROSS REFERENCES

Approval of Home Loan Bank Board required, see § 26-103.

Extortionate credit transactions, 18 U.S.C. 891 et seq.

Money Lenders Law, exemption from operation of, see § 26-610.

Real estate conveyances, formal requisites, see § 45-302.

Truth in Lending Act, see 15 U.S.C. 1601 et seq.

#### NOTES TO DECISIONS

##### Construction

District of Columbia statutes governing organization and powers of building and loan association, object of Home Loan Bank Board, objects of building and loan association and licensing of agents and brokers for hazard insurance do not preclude building and loan association from obtaining license for and conducting business of, insurance agent or broker with respect to insurance on property securing loans, as incident to its primary business. *L. S. Goodman et al. v. Perpetual Building Association et al.* (1970, 320 F. Supp. 20).

##### Directors fiduciary duty

Directors of building and loan association breached fiduciary duty owed to association through usurpation of corporate opportunity since under District of Columbia law, association could have acted as insurance agent or broker for hazard insurance on property securing loans and since they, and their predecessors, had organized and operated insurance agency through which they directed insurance business and diverted to themselves as partners insurance business generated by association. *L. S. Goodman et al. v. Perpetual Building Association et al.* (1970, 320 F. Supp. 20).

#### § 26-402. Powers as to stock.

Such corporation shall have power, in its certificate of incorporation or in its by-laws, to provide that its shares of stock may be issued in series; to limit the number of shares which each stockholder may be allowed to hold; to prescribe the entrance fee to be paid by each stockholder at the time of subscribing, and to regulate the instalments to be paid on each share and the times at which they shall be payable. It shall also have power to enforce the payment of all instalments and other dues by such fines and forfeitures as its by-laws may from time to time provide. (Mar. 3, 1901, 31 Stat. 1299, ch. 854, § 689.)

#### § 26-403. Bonus to be paid by late subscribers.

Any person applying for membership or stock after a month from the time of the incorporation may be required to pay on subscribing such bonus or assess-

ment as may be fixed by said by-laws in order to place said new members or stockholders on a footing with the original members and others holding stock at the time of such application. (Mar. 3, 1901, 31 Stat. 1299, ch. 854, § 690.)

#### § 26-404. Object—Powers of Federal Home Loan Bank Board — Examination — Reports — Liquidation—Strict compliance required—Associations in business before March 4, 1909—Penalties—Misappropriation of funds made larceny.

The object of such corporation shall be the accumulation of a capital in money to be derived from the savings and accumulations by the members thereof, to be paid into said corporation in such sums and at such times as may be designated by the by-laws of said corporation, from which the members thereof may obtain advances upon their shares of stock: *Provided*, That the Federal Home Loan Bank Board is authorized, whenever such Board may deem it useful; to cause examination to be made into the condition of any building association incorporated under the provisions of this chapter, as well as any other building or loan association located or doing business in the District of Columbia. The expenses necessarily incurred in making any such examination shall be paid by such association to the Federal Home Loan Bank Board at the time of the making of such examination: *And provided further*, That every building or loan association located and doing business in the District of Columbia shall make to the Federal Home Loan Bank Board at least one report during each year, according to the form which may be prescribed by such Board, verified by the oath or affirmation of the president or secretary of such association and attested by the signature of at least three of the directors. The Federal Home Loan Bank Board shall also have power to take possession of any company or association whenever in the Board's judgment any such company or association is insolvent or is knowingly violating the laws under which it is operated and to liquidate the same in the manner provided in rules and regulations which said Board is hereby authorized to adopt, and said Board may also provide in such rules and regulations a procedure for the voluntary liquidation of any such company or association; and if any such company or association which has not gone into liquidation and for which a receiver has not already been appointed for other lawful cause shall discontinue its operations for a period of sixty days, the Federal Home Loan Bank Board may, if such Board deems it advisable, appoint a receiver for such company or association:

*Provided further*, That from and after the first day of July, 1909, no person, company, association, copartnership, or corporation shall conduct or carry on in the District of Columbia the kind of business named in this section and section 26-405, without strict compliance in all particulars with the provisions of this section and section 26-405: *Provided*, That building associations organized and in actual operation before March 4, 1909, need not be incorporated. Any person, officer, or agent of any company, firm, or corporation who shall wilfully violate any of the provisions of this section shall be



deemed guilty of a misdemeanor, and shall on conviction thereof be punished by a fine of not more than one thousand dollars or by imprisonment not longer than two years, or by both said punishments, in the discretion of the court. That any wilful false swearing in regard to any certificate, or report, or public notice required by the provisions of this section and section 26-405 shall be perjury, and shall be punished as such according to the laws of the District of Columbia. And any misappropriation of any of the money of any corporation or company, formed under or availing itself of the privileges of this section and section 26-405, or of any building or loan association located or doing business in the District of Columbia, or any money, funds, or property intrusted to any such corporation, company, or association, shall be held to be larceny and shall be punished as such under the laws of said District. (Mar. 3, 1901, 31 Stat. 1299, ch. 854, § 691; Mar. 4, 1909, 35 Stat. 1058, ch. 303, § 1; Sept. 15, 1951, 65 Stat. 323, ch. 404, § 1.)

#### REFERENCES IN TEXT

In the original, "this chapter" refers to chapter 18 of act Mar. 3, 1901, ch. 854, which includes sections 574—797. For distribution of such sections 574—797 in the Code, see Tables.

#### AMENDMENTS

1951—Act Sept. 15, 1951, amended the section generally by transferring functions of the Comptroller of the Currency to the Home Loan Bank Board, by striking monetary limits on the cost of examination of building associations, and by authorizing the Board to adopt rules and regulations relating to voluntary and involuntary liquidation and appointment of receivers.

1909—Act Mar. 4, 1909, amended section generally. Prior to such amendment, section read as follows: "The object of such corporation shall be the accumulation of a capital in money, to be derived from the savings and accumulation by the members thereof, to be paid into said corporation in periodical instalments, in fixed and certain sums, and in such amount as shall be designated by the by-laws, until the value of all the shares of stock in said corporation, and every series thereof, shall be equal to the nominal or par value thereof or of some multiple thereof, at which time said corporation shall cease to exist, and in the meantime to enable the members thereof, by obtaining advances upon their shares of stock, to purchase or erect homes for themselves."

#### CHANGE OF NAME

The name "Home Loan Bank Board" was changed to "Federal Home Loan Bank Board" by sec. 109(a)(3) of Act Aug. 11, 1955, 69 Stat. 640.

#### CROSS REFERENCES

Powers and duties of comptroller concerning financial institutions, see § 26-101 et seq.

Voluntary liquidation and dissolution of solvent financial corporations, see § 26-103.

#### NOTES TO DECISIONS

##### Construction

District of Columbia statutes governing organization and powers of building and loan association, object of Home Loan Bank Board, objects of building and loan association and licensing of agents and brokers for hazard insurance do not preclude building and loan association from obtaining license for and conducting business of, insurance agent or broker with respect to insurance on property securing loans, as incident to its primary business. *L. S. Goodman et al. v. Perpetual Building Association et al.* (1970, 320 F. Supp. 20).

##### Directors fiduciary duty

Directors of building and loan association breached fiduciary duty owed to association through usurpation

of corporate opportunity since under District of Columbia law, association could have acted as insurance agent or broker for hazard insurance on property securing loans and since they, and their predecessors, had organized and operated insurance agency through which they directed insurance business and diverted to themselves as partners insurance business generated by association. *L. S. Goodman et al. v. Perpetual Building Association et al.* (1970, 320 F. Supp. 20).

§ 26-404a. Remainder of powers, duties and functions of Comptroller of the Currency relating to building associations and building and loan associations transferred to the Federal Home Loan Bank Board.

Any powers, duties, and functions of the Comptroller of the Currency with respect to building associations and building and loan associations operating in the District of Columbia which are not transferred to the Federal Home Loan Bank Board by the specific statutory amendments herein contained are also hereby transferred from the Comptroller of the Currency to the Federal Home Loan Bank Board. (Sept. 15, 1951, 65 Stat. 324, ch. 404, § 4.)

#### REFERENCES IN TEXT

Specific statutory amendments herein contained, referred to in the text, means the amendments by sections 1-3 of act Sept. 15, 1951, to sections 26-404, 26-405 and 26-103, respectively.

#### CHANGE OF NAME

The name "Home Loan Bank Board" was changed to "Federal Home Loan Bank Board" by sec. 109(a)(3) of Act Aug. 11, 1955, 69 Stat. 640.

§ 26-405. Associations existing under laws of other States doing business in District of Columbia must comply—Provisions requisite—Penalty.

No foreign association shall make loans of any kind or transact any building and loan business within the District of Columbia or maintain an office in the District of Columbia for the purpose of transacting such business until it procures from the Federal Home Loan Bank Board a certificate of authority to do such business in said District, after complying with the following provisions:

(a) It shall deposit with the Treasurer of the United States \$50,000 in cash or bonds of the United States or bonds which the United States guarantees the payment of both principal and interest. A foreign association may collect and use the interest on securities deposited with the Treasurer of the United States, as hereinabove provided, so long as it fulfills its obligations and complies with the laws of the District of Columbia. It may also exchange them for other securities of the United States or for cash. The deposit made by a foreign association with the Treasury of the United States shall be held as security for all claims of residents of the District of Columbia against such association, and be liable for all judgments or decrees thereon, and subjected to the payment thereof in the same manner as the property of other nonresidents. Should an association cease to do business in said District, the Treasurer of the United States, upon a certificate from the Federal Home Loan Bank Board, may release securities in his discretion, retaining sufficient to satisfy all outstanding liabilities;

(b) It shall file with the Federal Home Loan Bank Board a certified copy of its charter, constitution,



and bylaws, and other rules and regulations showing its manner of conducting business, together with a statement such as is required semiannually from all associations;

(c) It shall file with the Federal Home Loan Bank Board a power of attorney appointing a citizen of the District of Columbia, resident within said District, the agent or attorney for such foreign association upon whom process of law can be served. There must also be filed a certified copy of the vote or resolution of the directors appointing such agent or attorney, which appointment shall continue until another agent or attorney is substituted, and said writing or power of attorney shall stipulate and agree on the part of such foreign association making the same that any lawful process against said association, which is served on such agent or attorney, shall be of the same legal force and validity as if served on such association within the District of Columbia; and, also, that in the case of the death or absence of the agent or attorney so appointed, service or process may be made upon the Federal Home Loan Bank Board, and such power of attorney cannot be revoked or modified (except that a new one may be substituted) so long as any liability remains outstanding against such foreign association in the District of Columbia. The term "process," used above, shall be held and deemed to include any writ, summons, or order whereby any action, suit, or proceeding shall be commenced, or which shall be issued in or upon any action, suit, or proceeding by any court, officer, or magistrate.

(d) It shall pay to the collector of taxes the following fees:

For filing an application for admission to do business in the District of Columbia, \$500;

For each certificate of authority and annual renewal thereof, \$200.

(e) When a foreign association has complied with the provisions of paragraph (c) of this section, and the Federal Home Loan Bank Board is satisfied that it is doing or will do its building and loan business in the District of Columbia in accordance with the laws of the District of Columbia, such Board may issue its certificate of authority to such foreign association to do a building and loan business in the District of Columbia. Annually thereafter, if the Federal Home Loan Bank Board is satisfied as herein provided, it shall issue a renewal of such certificate.

(f) Should the Federal Home Loan Bank Board find that such foreign association does not conduct its building and loan business in accordance with law, or that the affairs of such association are in unsafe condition, or if such foreign association refuses to permit examination to be made, the Federal Home Loan Bank Board may revoke the certificate of authority granted, after ninety days' notice, to such foreign association to do a building and loan business in the District of Columbia; *Provided*, That upon revocation of such certificate of authority the Federal Home Loan Bank Board shall mail a notice thereof to the home office of such foreign association and cause a similar notice to be published in at least one daily newspaper of general circulation in the District of Columbia. After so notifying said home

office and after the publication of said notice, it shall be unlawful for any agent of such foreign association to receive any further payments from shareholders residing in the District of Columbia.

(g) Every foreign association doing a building and loan business in the District of Columbia shall be subject to the same examination as are domestic associations and such examination may include examination of all subsidiaries of such foreign associations and all business operations wherever apparent: *Provided*, That the Federal Home Loan Bank Board may accept reports of examination by other supervisory agents in lieu of making such examinations and provided that all the actual and necessary expenses of such examinations of such foreign associations shall be paid by the association examined.

(h) Whenever any taxes, fines, penalties, fees, licenses, or conditions precedent are imposed by the laws of any State upon building and loan associations organized or incorporated under the laws of the District of Columbia, and doing business in the said State, in excess of the taxes, fines, penalties, fees, licenses, or conditions precedent imposed by the laws of the District of Columbia upon foreign associations doing a building and loan business in the District of Columbia, the same taxes, fines, penalties, fees, licenses, or conditions precedent shall be imposed upon every association incorporated under the laws of such State doing, or applying to do, a building and loan business in the District of Columbia, so long as such excess taxes, fines, penalties, fees, licenses, or conditions precedent are imposed by such State; and upon the failure of any association incorporated under the laws of such State to comply therewith the Federal Home Loan Bank Board shall revoke the certificate of authority of such association to do a building and loan business in the District of Columbia or shall refuse to grant such certificate of authority in the first instance.

(i) A foreign association which does a building and loan business in the District of Columbia without first complying with the provisions of this chapter, or which willfully violates or fails to comply with the provisions of laws relating to foreign associations, shall forfeit and pay not less than \$25 or more than \$500, to be recovered by an action in the name of the United States and on collection paid into the Treasury of the United States. (Mar. 3, 1901, ch. 854, § 691a, as added Mar. 4, 1909, 35 Stat. 1059, ch. 303, § 2, and amended July 18, 1939, 53 Stat. 1060, ch. 322, § 1; Sept. 15, 1951, 65 Stat. 323, ch. 404, § 2.)

#### AMENDMENTS

1951—Act Sept. 15, 1951, amended the section by changing references to the Comptroller of the Currency to the Home Loan Bank Board.

Subsec. (g) amended by act Sept. 15, 1951, which deleted the final provision which read: "if said examination is made beyond the limits of the District of Columbia, but if made within the limits of the District of Columbia, the cost of the examination to be at the same rate and upon the same terms as provided in § 26-404."

1939—Act July 8, 1939, amended section generally. Prior to such amendment, section read as follows: "That any building association incorporated or unincorporated, organized and existing under the laws of any State or Territory, except the District of Columbia, to do or now doing, in the District of Columbia, a building association business or otherwise operating as a



building association, shall be subject to all the provisions of the foregoing section of this act in respect of the powers of the Comptroller of the Currency hereunder, and, any such association or corporation shall at all times keep on deposit with the Comptroller of the Currency in money or stocks, bonds or mortgages or other securities to be approved by said officer not less than ten per centum of its capital and surplus as security for its depositors and creditors, and as a guarantee for the faithful performance of its contracts, and may also make such further deposit of its assets as above described with the Comptroller for such purpose as it may from time to time desire so to do."

#### EFFECTIVE DATE OF 1939 AMENDMENT

Section 2 of act July 18, 1939, provided in part that "This Act [amending this section] shall take effect on the date of its enactment [July 18, 1939]."

#### CHANGE OF NAME

The name "Home Loan Bank Board" was changed to "Federal Home Loan Bank Board" by sec. 109(a)(3) of Act Aug. 11, 1955, 69 Stat. 640.

#### TRANSFER OF FUNCTIONS

The Office of the Collector of Taxes was abolished and the functions thereof transferred, see note under § 47-301.

#### CROSS REFERENCES

Other powers and duties of Comptroller concerning financial institutions, see § 26-101 et seq.

Other provisions concerning admission of foreign associations, see § 26-103.

Semiannual publication of financial statements, see § 29-105.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 26-404.

#### NOTES TO DECISIONS

##### Compliance with statutory requirements

The "Union Home Builders" and similar organizations must comply with statutory provisions as to examination and control by Comptroller of the Currency. (33 O. A. G. 418).

#### § 26-406. Advancements.

The moneys accumulated from time to time shall be offered to such shareholder or shareholders as shall bid the highest premium for preference or priority of right to an advancement of the ultimate value of one or more of his or their respective shares. The said premium shall consist of a percentage on the amount of the advance and shall be deemed to be a consideration or bonus paid by the shareholder for the present and immediate use and possession of the future or ultimate value of the share so advanced, and shall not be deemed usurious. The said premium may either be deducted in advance from the amount to be advanced to the shareholder or be made payable in monthly installments, in addition to legal interest on the sum advanced, as the by-laws may provide. (Mar. 3, 1901, 31 Stat. 1299, ch. 854, § 692.)

#### NOTES TO DECISIONS

##### Status of contract after insolvency

Where contract between borrowing member of a building association by the giving of a bond and a deed of trust to secure the bond, is that in consideration of sum advanced he will pay to the association monthly payments, the insolvency of the association and appointment of a receiver will not abrogate the contract between it and one of its members and the substitution for that contract of some other arrangement which a court may deem equitable. *Armstrong v. United States Bldg. & Loan Assn.* (1899, 15 App. D.C. 1).

##### Surrender of stock

Where building association advanced money to one of its members and received therefor an assignment of stock held by him, and a deed of trust upon his real estate to secure his notes, a suit by a person who purchased the property was entitled to a release of the deed of trust upon payment of remaining notes, and the association could not enforce payment of accruing dues after the payment of the last note. *Eastern Bldg. & Loan Assn. v. Olmsted* (1900, 16 App. D.C. 387).

When borrower from building association surrenders his stock to the association upon mortgage loan being made to him, he becomes a creditor of the association and when accounting is made he is to be charged with amount actually received by him on account of loan, with interest, whether by way of premium, dues or interest. *Croissant v. Empire State Realty Co.* (1907, 29 App. D.C. 538).

##### Usurious premiums

A provision of building association mortgage that the borrower instead of paying the usual premium is to pay monthly during continuance of the mortgage, a specified sum called premium, in addition to legal rate of interest, is void as usurious payment. *Middle States Loan v. Baker* (1901, 19 App. D.C. 1).

The provision that premiums to be charged by building associations shall not be deemed usurious, is not retroactive, and it does not affect borrower's right to redeem mortgaged property from building association, when such right existed before the Code went into effect. *Washington Nat. Bldg. & Loan Assn. v. Fiske* (1902, 20 App. D.C. 514, certiorari denied 23 S. Ct. 848, 188 U.S. 740, 47 L. Ed. 677).

Test to determine whether building association loan is usurious is usually whether the promise to pay the sum above legal interest depends upon a contingency, and not upon the happening of a certain event. The loan is not usurious if it depends upon a contingency. *Whelpley v. Ross* (1905, 25 App. D.C. 207).

#### § 26-407. Security for advancement.

For every advance made as aforesaid a bond in a penalty equal to the ultimate value of the shares advanced may be required, secured by a first mortgage or deed of trust on real estate, and a pledge of the shares advanced upon, as additional or collateral security, which bond shall be conditioned for the payment at the stated meetings of the corporation of the monthly dues on the share so advanced upon and the interest on the sum advanced, and the instalments of premium, if made so payable, and all fines chargeable upon arrears of payments, until said shares shall reach their ultimate value aforesaid, or said advance be otherwise canceled or discharged. (Mar. 3, 1901, 31 Stat. 1299, ch. 854, § 693.)

#### § 26-408. Profits.

The shares advanced upon shall participate equally with the other shares in the profits and the amounts paid by the advanced shareholders, together with such proportion of the profits accrued or such rate of interest as said by-laws may determine, the same as allowed on shares withdrawn not advanced upon, less all fines and a proportionate part of losses and other charges incurred. (Mar. 3, 1901, 31 Stat. 1299, ch. 854, § 694.)

#### § 26-409. Redemption of shares.

Where advances from the funds on hand can not be made on satisfactory terms, the shareholders failing to bid therefor, the by-laws may provide for the redemption of shares of stock, with the consent of the shareholders, and in case that can not be done, for the involuntary withdrawal and cancelation of



shares, the said shares to be selected by lot, always from the oldest series, until exhausted, or the funds to be applied ratably among the owners of shares of the same series. (Mar. 3, 1901, 31 Stat. 1300, ch. 854, § 695.)

#### § 26-410. Withdrawal by shareholder.

A shareholder shall be entitled to withdraw at any time, by giving such notice as the by-laws may require, where no advance has been made on his shares, in which case he shall be entitled to receive the amount of dues paid in by him on each of his shares, together with such proportion of the profits accrued or such rate of interest as said by-laws may determine, less all fines due and a proportionate part of all losses and other charges incurred: *Provided*, That not more than one-half of the funds in the treasury at any time shall be applicable to the demands of the withdrawing shareholders without the consent of the board of trustees. (Mar. 3, 1901, 31 Stat. 1300, ch. 854, § 696.)

#### § 26-411. Repayment of advances.

A shareholder who has been advanced may at any time repay his advance upon application to the corporation, whereupon, on settlement of his account, he shall be charged with the full amount of the advance and of the accrued instalments of the premium, if that has been added to the advancement and made payable in instalments, together with all monthly dues, interest, and fines accrued and charged, and shall receive credit for all monthly dues paid on his shares and the profits thereon the same as are allowed under the by-laws on shares withdrawn not advanced upon, and, if the premium has been deducted in advance, with such proportion of the premium as the by-laws may direct, and the balance remaining due, over and above such credits, shall be received by said corporation in satisfaction and discharge of said advance: *Provided*, That in case of the insolvency of the association, he shall not be entitled to credit for the full amount of dues paid by him, but shall only be entitled to a dividend upon said amount, in common with the nonadvanced shareholders. (Mar. 3, 1901, 31 Stat. 1300, ch. 854, § 697.)

#### § 26-412. Forfeiture.

Any nonadvanced shareholder failing to pay the instalments due on his share and the fines due from him for such time as the by-laws shall determine, shall forfeit his stock, but may, on application, receive a return of the amount paid in on account of his stock, less the accrued fines. (Mar. 3, 1901, 31 Stat. 1300, ch. 854, § 698.)

#### § 26-413. Foreclosure.

In case any advanced shareholder shall fail to pay all dues, interest, or premiums and shall be in arrears for any part of the same for the period of two months, the payment of the same and of the principal of the advance may be enforced by a foreclosure of the securities given for the same, and if upon a statement of account, as in case of a voluntary settlement of said advance, as hereinbefore authorized, there shall be any surplus of the proceeds of sale of the property given as security over the amount found

due from such advanced shareholder, together with all costs incurred by the corporation, such surplus shall be paid to said defaulting shareholder, or his assigns, and his shares of stock so advanced upon shall be the property of the corporation. (Mar. 3, 1901, 31 Stat. 1300, ch. 854, § 699.)

#### § 26-414. Investment of funds in real estate.

Such corporation shall not invest its fund in any real estate except what is necessary for the conduct of its business, but may purchase such property at sales made upon foreclosure of mortgages or in satisfaction of judgments or other liens held by it: *Provided*, That such property so purchased be sold within a reasonable time thereafter. (Mar. 3, 1901, 31 Stat. 1300, ch. 854, § 700.)

#### CROSS REFERENCE

Conveyances of real estate, formal requisites, see § 45-302.

Investment in obligations of Washington Metropolitan Area Transit authority, see § 1-1449.

Investment in veterans' loans, see § 45-1701.

#### § 26-415. Purchase of Home Owners' Loan Corporation bonds authorized.

The board of directors of any building association incorporated or unincorporated, organized and existing under the laws of the District of Columbia to do or now doing in the District of Columbia a building association business, in their discretion, may purchase the bonds of the Home Owners' Loan Corporation created pursuant to the authority of the Home Owners' Loan Act of 1933, approved June 13, 1933 (and said association is hereby permitted to carry said bonds as an asset at the par value of said bonds) or may subscribe and pay for shares of any Federal corporation created or authorized by law to lend money to building and loan associations. (Mar. 3, 1901, ch. 854, § 55 (probably should be § 700a), as added Mar. 27, 1934, 48 Stat. 506, ch. 96.)

#### REFERENCES IN TEXT

The Home Owners' Loan Act of 1933, approved June 13, 1933, referred to in the text, is classified to 12 U.S.C. ch. 12.

#### CODIFICATION

The Act of Mar. 27, 1934, provided in part that "the Code of the District of Columbia (31 Stat. 1300; D.C. Code, title 5, ch. 3) is amended by adding at the end of title 5, chapter 3, thereof, the following new sections [sections 55 and 56]". The last section of the subchapter relating to Building Associations in the 1901 Code (31 Stat. 1300) was 700, which was classified to title 5, chapter 3, 1929 ed. of the D.C. Code, as section 54. Inasmuch as the 1929 ed. of the D.C. Code had not been enacted, the sections of the 1901 Code added by the 1934 Act should have been numbered 700a and 700b, rather than 55 and 56.

#### HOME OWNERS' LOAN CORPORATION

The Home Owners' Loan Corporation was dissolved by act June 30, 1953, 67 Stat. 126, ch. 170, § 21. See Historical Note under 12 U.S.C. § 1463.

#### § 26-416. Exchange of real estate and debts and liens secured by real estate for Home Owners' Loan Corporation bonds authorized.

Any building association incorporated or unincorporated, organized and existing under the laws of the District of Columbia, to do or now doing, in the District of Columbia, a building association business, is authorized and empowered to exchange mortgages or deeds of trust or the notes or bonds secured there-



by or other obligations and liens secured on real estate or any real estate which it may have or hold, for the bonds of the Home Owners' Loan Corporation created pursuant to the authority of the Home Owners' Loan Act of 1933, approved June 13, 1933 and said association is hereby authorized to carry said bonds as an asset at the par value of said bonds. (Mar. 3, 1901, ch. 854, § 56 (probably should be § 700b), as added Mar. 27, 1934, 48 Stat. 506, ch. 96.)

#### REFERENCES IN TEXT

The Home Owners' Loan Act of 1933, approved June 13, 1933, referred to in the text, is classified to 12 U.S.C. ch. 12.

#### CODIFICATION

The Act of Mar. 27, 1934, provided in part that "the Code of the District of Columbia (31 Stat. 1300; D.C. Code, title 5, ch. 3) is amended by adding at the end of title 5, chapter 3, thereof, the following new sections [sections 55 and 56]". The last section of the subchapter relating to Building Associations in the 1901 Code (31 Stat. 1300) was 700, which was classified to title 5, chapter 3, 1929 ed. of the D.C. Code, as section 54. Inasmuch as the 1929 ed. of the D.C. Code had not been enacted, the sections of the 1901 Code added by the 1934 Act should have been numbered 700a and 700b, rather than 55 and 56.

#### HOME OWNERS' LOAN CORPORATION

The Home Owners' Loan Corporation was dissolved by act June 30, 1953, 67 Stat. 126, ch. 170, § 21. See Historical Note under 12 U.S.C. § 1463.

### Chapter 5.—CREDIT UNIONS

Sec.

26-501 to 26-518. Repealed.

26-519. Conversion of District of Columbia credit unions into Federal credit unions—Procedure.

26-520. Approval of organization certificate by Administrator of the National Credit Union Administration—Effect of approval of certificate.

26-521. Converted credit union to be subject to provisions of Federal Credit Union Act—Fee not to be charged upon conversion—Liquidation of loans of converting union—New bylaws—Bylaws inconsistent with provisions of Federal Credit Union Act.

26-522. Repeal of sections 26-501 to 26-518—Effective date.

§§ 26-501 to 26-518. Repealed. Aug. 1, 1964, 78 Stat. 377, Pub. L. 88-395, § 4, effective 30 days after Aug. 1, 1964.

Sections 26-501 to 26-518, being the act of June 23, 1932, 47 Stat. 326, ch. 272, as amended, dealt with the formation, operation and management of credit unions in the District of Columbia. These sections were repealed by the act of Aug. 1, 1964, 78 Stat. 377, Pub. L. 88-395, § 4, effective 30 days after Aug. 1, 1964. However the same act authorized the conversion of District of Columbia Credit Unions to Federal Credit Unions. See sections 26-519 to 26-521.

#### SECTIONS REFERRED TO IN OTHER SECTIONS

Sections 26-502 to 26-518 are referred to in sections 26-519, 26-521, 26-522.

#### SECTION REFERRED TO IN U.S. CODE

Section 26-516 is referred to in title 26, section 3113, U.S. Code.

§ 26-519. Conversion of District of Columbia credit unions into Federal credit unions—Procedure.

Any credit union organized under the District of Columbia Credit Unions Act (47 Stat. 326), as amended [sections 26-501 to 26-518], may apply for conversion into a Federal credit union by filing with the Administrator of the National Credit Union Administration (hereinafter referred to as the Administrator), pursuant to a resolution adopted by a

majority of its directors, an organization certificate meeting the requirements of section 4 of the Federal Credit Union Act (12 U.S.C. 1753), as amended. (Aug. 1, 1964, 78 Stat. 377, Pub. L. 88-395, § 1.)

#### CODIFICATION

Section is also classified to 12 U.S.C. 1773.

#### CHANGE OF NAME

The name "Director of the Bureau of Federal Credit Unions" was changed to "Administrator of the National Credit Union Administration" by sections 1-3 of Act Mar. 10, 1970, 84 Stat. 49; 12 U.S.C. 1752, 1752a.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 26-521.

§ 26-520. Approval of organization certificate by Administrator of the National Credit Union Administration—Effect of approval of certificate.

The Administrator shall approve any such organization certificate meeting such requirements. Upon such approval, the applicant credit union shall become a Federal credit union, and shall be vested with all of the assets and shall continue responsible for all of the obligations of such applicant credit union to the same extent as though the conversion had not taken place. (Aug. 1, 1964, 78 Stat. 377, Pub. L. 88-395, § 2.)

#### CODIFICATION

Section is also classified to 12 U.S.C. 1774.

#### CHANGE OF NAME

The name "Director of the Bureau of Federal Credit Unions" was changed to "Administrator of the National Credit Union Administration" by sections 1-3 of Act Mar. 10, 1970, 84 Stat. 49; 12 U.S.C. 1752, 1752a.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 26-521.

§ 26-521. Converted credit union to be subject to provisions of Federal Credit Union Act—Fee not to be charged upon conversion—Liquidation of loans of converting union—New bylaws—Bylaws inconsistent with provisions of Federal Credit Union Act.

Any District of Columbia credit union converting into a Federal credit union in accordance with sections 26-519 to 26-522 shall thereupon be subject to the limitations, vested with the powers, and charged with the liabilities conferred and imposed by the Federal Credit Union Act (12 U.S.C. 1751 et seq.) upon credit unions organized thereunder, except that—

(1) no fee shall be imposed upon a credit union converting pursuant to sections 26-519 to 26-522 as an incident to its conversion;

(2) any loan or investment made by a credit union converting pursuant to sections 26-519 to 26-522 in conformity with the District of Columbia Credit Unions Act [sections 26-501 to 26-518] prior to its conversion, which does not conform to the requirements of the Federal Credit Union Act and is still outstanding at the time of conversion, shall be liquidated at or before its maturity or, if it has no maturity date, in a prudent manner and within a reasonable period of time; and

(3) a credit union converting pursuant to sections 26-519 to 26-522 shall submit proposed bylaws to the Administrator for his approval after its conversion, but not later than thirty days following its next annual meeting or six months after the enactment of sections 26-519 to 26-522, whichever is later: *Provided*, That any existing bylaw



inconsistent with any other requirements of the Federal Credit Union Act shall be deemed null and void.

(Aug. 1, 1964, 78 Stat. 377, Pub. L. 88-395, § 3.)

#### CODIFICATION

Section is also classified to 12 U.S.C. 1775.

#### CHANGE OF NAME

The name of the "Director of the Bureau of Federal Credit Unions" was changed to "Administrator of the National Credit Union Administration" by sections 1-3 of Act Mar. 10, 1970, 84 Stat. 49; 12 U.S.C. 1752, 1752a.

### § 26-522. Repeal of sections 26-501 to 26-518—Effective date.

Effective thirty days after August 1, 1964, the District of Columbia Credit Unions Act (47 Stat. 326 [sections 26-502 to 26-518], as amended, is repealed and all organization certificates issued thereunder and still in force are revoked. (Aug. 1, 1964, 78 Stat. 377, Pub. L. 88-395, § 4.)

#### CODIFICATION

Section is also classified to 12 U.S.C. 1773 note.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 26-521.

## Chapter 6.—MONEY LENDERS—LICENSES

#### Sec.

- 26-601. Loaning of money on security—Rate of interest—License—Appointment of resident agent—Service on removal.
- 26-602. Application for license filed with Commissioner—Contents of application—Date and expiration of license—Notice of application posted and published—Protests—Hearings—Rejection of application.
- 26-603. Bond to accompany application—Sureties—Actions on bond—Copy of bond to be furnished upon request—Renewal of bond.
- 26-604. Register to be kept—Contents—Inspection of register—Annual statements.
- 26-605. Rate of interest—Interest to cover all fees and expenses—Not to be deducted in advance—Statement to be furnished borrower—Amount of loans—Penalties.
- 26-606. Complaints—Hearings on complaints—Record of hearings—Revoking of, or refusal to grant license.
- 26-607. Penalties—Enforcement.
- 26-608. Attorneys' fees allowed on foreclosure.
- 26-609. Contracts for liquidated or other damages prohibited.
- 26-610. Persons, associations, and corporations exempt from operation of this chapter.
- 26-611. Commissioner to enforce—Rules and regulations.
- 26-612. Loans exempt from provisions of this chapter.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 28:9-203, 29-843.

### § 26-601. Loaning of money on security—Rate of interest—License—Appointment of resident agent—Service on removal.

It shall be unlawful and illegal to engage in the District of Columbia in the business of loaning money upon which a rate of interest greater than six per centum per annum is charged on any security of any kind, direct or collateral, tangible or intangible, without procuring license; and all persons, firms, voluntary associations, joint-stock companies, incorporated societies, and corporations engaged in said business shall pay a license tax of five hundred dollars per annum to the District of Columbia. No license

shall be granted to any person, firm, or voluntary association unless such person and the members of any such firm or voluntary association shall be bona fide residents of the District of Columbia, and no license shall be granted for a period longer than one year, and no license shall be granted to any joint-stock company, incorporated society, or corporation unless and until such company, society, or corporation shall, in writing and in due form, to be first approved by and filed with the Commissioner of the District of Columbia, appoint an agent, resident in the District of Columbia, upon whom all judicial and other process or legal notice directed to such company, society, or corporation may be served. And in the case of death, removal from the District, or any legal disability or disqualification of any such agent, service of such process or notice may be made upon the Superintendent of Licenses of the District of Columbia. (Feb. 4, 1913, 37 Stat. 657, ch. 26, § 1; Mar. 3, 1917, 39 Stat. 1006, ch. 160.)

#### AMENDMENT

1917—Act Mar. 3, 1917, substituted "Superintendent of Licenses" for "assessor."

#### EFFECTIVE DATE

Section 13 of Act Feb. 4, 1913, provided: "That this Act [enacting this chapter] shall take effect at the expiration of thirty days from and after the date of its passage."

#### PARTIAL REPEAL

Section 19 of act Aug. 6, 1956, 70 Stat. 1043, ch. 970 provided that "The Act entitled 'An Act to regulate the business of loaning money on security of any kind by persons, firms, and corporations other than national banks, licensed bankers, trust companies, savings banks, building and loan associations, and real-estate brokers, in the District of Columbia', approved February 4, 1913, as amended [§§ 26-601 to 26-611] insofar as the same applies to the business of lending money on the security of the pledge and possession of tangible personal property, is hereby repealed."

#### REPEAL OF INCONSISTENT LAW

Section 12 of Act Feb. 4, 1913, provided: "That all Acts and parts of Acts inconsistent herewith are hereby repealed."

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### TRANSFER OF FUNCTIONS

License and Permit Division of Department of Licenses and Inspections to act as attorney-in-fact for licensed pawnbroker for the purpose of receiving judicial and other processes and legal notices, see par. 10, Part III-E, Reorg. Ord. No. 55, dated June 30, 1953, as amended. All functions stated in Reorg. Ord. No. 55 were transferred to the Director of the Department of Economic Development by Commissioner's Order [Org. Action] No. 69-96, dated Mar. 7, 1969, as amended. The Orders are set out in the Appendix to Title 1.

#### CROSS REFERENCES

Applicability of provisions of this chapter to transactions under article 9 of subtitle I, title 28, see § 28:9-203. Businesses exempted from provisions for money lenders, see § 26-610.

Consumer credit cost disclosure, see title 15 U.S.C. § 1601 et seq.

Extortionate credit transactions, see 18 U.S.C. 891 et seq. D.C. Council authorized to regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

Loans exempt from provisions of chapter, see § 26-612.

Provisions concerning interest and usury generally not applicable to this chapter, see § 28-3303.



Refund of fees when license refused, see § 47-1017.  
 Rules and regulations governing money lenders, see § 26-611.  
 Truth in Lending Act, see 15 U.S.C. 1601 et seq.  
 Usury defined, see § 28-3303.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28-3303.

#### NOTES TO DECISIONS

##### Amount as determining applicability

Though Loan Shark Act of 1913 was primarily intended to regulate and limit business of making small loans for security, such Act does have application to loans in excess of \$200. *In re Parkwood, Inc.* (1972, 461 F. 2d 158, 149 U.S. App. D.C. 67).

This section making it unlawful to engage in business of loaning money upon which a rate of interest greater than six percent per annum is charged on any security of any kind without procuring a license has application to a loan larger than \$200. *Hartman v. Lubar* (1943, 133 F. 2d 44, 77 U. S. App. D. C. 95, certiorari denied 63 S. Ct. 1329, 319 U. S. 767, 87 L. Ed. 1716, rehearing denied 64 S. Ct. 30, 320 U. S. 808, 88 L. Ed. 488).

##### Appeal and error

Where, at hearing on petition to expunge forged deed of release of prior deed of trust from land records, no issue was made by subsequent lender relative to failure of prior lender to produce some 99 notes, as required by subpoena duces tecum, subsequent lender, loan of which was found to be subordinate to that of prior lender, had no basis for complaint to reviewing court even if 99 notes were relevant to the issue whether prior lender could not enforce loan because of failure to comply with District of Columbia loan shark act. *General Investment Funds Real Estate Holding Company et al. v. W. Gildenhorn et al.* (Md. Ct. App. 1970, 271 A. 2d 650).

Where there was no allegation in pleadings before court that prior lender has been involved in transactions in violation of the District of Columbia loan shark act and only allegation of subsequent lender, seeking to have its subsequent deed of trust accorded priority over prior deed of trust, was inadequate consideration for note, the chancellor properly refused to permit inquiry at hearing into loan transactions prior lender might have had with others in violation of loan shark act. *Id.*

##### Burden of proof

Burden was on corporate lender, seeking to quiet title to property under deed of trust given in connection with loan, to show that prior lender, who allegedly had engaged in business of lending in the District of Columbia and was not licensed under District loan shark act, was in the business of lending money in the District and that he was lending funds at an annual interest rate of more than 6%. *General Investment Funds Real Estate Holding Company, et al. v. W. Gildenhorn et al.* (Md. Ct. App. 1970, 271 A. 2d 650).

It is well established that one who alleges usury or any contractual illegality has the burden of proving it and it was incumbent on the District to adduce evidence establishing an excessive finance payment and the fact that the plaintiff bank did not prove the amount of insurance premium did not relieve the District of its burden of proof. *District of Columbia v. Hamilton National Bank* (D. C. Mun. App. 1950, 76 A. 2d 60).

##### Choice of laws

Where all documents involved in transaction wherein loan was obtained from lender, which maintained office in District of Columbia for selling insurance, in exchange for promissory note carrying 6¼% interest and deed of trust on real estate were executed in Maryland, deed of trust was recorded in Maryland, and funds were received by borrower of Maryland corporation in Maryland, Maryland law was applicable to transaction, and thus District of Columbia Loan Shark Act was not applicable, though it was asserted that, subsequent to making of such loans, certain entity, which serviced such loans in District, was held out to represent lender in making of loans in District. *In re Parkwood, Inc.* (1972, 461 F. 2d 158, 149 U.S. App. D.C. 67).

##### Commission as constituting usury

Commission paid by a borrower to a loan broker for obtaining a loan from a third person does not constitute usury. *J. Oliver v. United Mortgage Company, Inc., et al.* (D.C. App. 1967, 230 A. 2d 722).

Borrower was not entitled to recover portion of commission retained by loan broker for arranging loan on ground that transaction was usurious in absence of showing that broker was acting solely as agent of lender. *Id.*

Even if loan broker had advanced his own funds to borrower, but had done so for convenience only and with expectation of reimbursing himself promptly from funds supplied by lender, broker who had retained commission for that service was not liable to borrower for allegedly usurious interest on ground that broker was principal on loan. *Id.*

##### Construction

District of Columbia Loan Shark Act is applicable to loans made by life insurance companies in regular course of their business and thus such companies, until 1963, were not exempt from requirement of obtaining license in order to make loans at rate of interest in excess of 6%, notwithstanding contentions that Act does not apply to insurance companies which "invest" their funds by making loans secured by real estate, that, in view of comprehensive regulation of insurance companies under certain titles of District of Columbia Code, they cannot be subject to licensing regulation of lending activities under Act, and that Act is not intended to apply to large loans made by "institutional lenders" and secured by real estate. *In re Parkwood, Inc.* (1972, 461 F. 2d 158, 149 U.S. App. D.C. 67).

Where loans were negotiated in District of Columbia, made with District of Columbia money by business firms headquartered and regularly doing loan business both in and out of District and such loans were specifically repayable in District, District of Columbia law, and, in particular, District's Loan Shark Act, was applicable to transactions. *Id.*

"Loan shark law" making it illegal to engage in business of loaning money without procuring a license is a licensing statute, unrelated to and unaffected by usury statutes. *Indian Lake Estates, Inc. v. Ten Individual Defendants, Net Limited, Inc., et al.* (1965, 350 F. 2d 435, 121 U.S. App. D.C. 305).

This chapter, the usury law, section 28-3303, and section 47-1701 et seq., regarding financial institutions are to be read together and when so read constitute a comprehensive code for business of lending money in the District of Columbia. *Hartman v. Lubar* (1943, 133 F. 2d 44, 77 U. S. App. D. C. 95, certiorari denied 63 S. Ct. 1329, 319 U. S. 767, 87 L. Ed. 1716, rehearing denied 64 S. Ct. 30, 320 U. S. 808, 88 L. Ed. 488).

##### Defenses

Defense of violation of Loan Shark Act can be used only against those unlicensed, nonexempt lenders who actually contract for or receive interest in excess of 6%. *In re Parkwood, Inc.* (1972, 461 F. 2d 158, 149 U.S. App. D.C. 67).

Defense that contract violates this chapter is available, not only against the nominal maker of the loan, but against the principal for whom he acts and against the holder of an instrument given to secure payment of loan, if the holder knew of its illegality. *Hartman v. Lubar* (1943, 133 F. 2d 44, 77 U. S. App. D. C. 95, certiorari denied 63 S. Ct. 1329, 319 U. S. 767, 87 L. Ed. 1716, rehearing denied 64 S. Ct. 30, 320 U. S. 808, 88 L. Ed. 488).

##### Discovery

Refusal to permit corporate lender to take deposition of bank for the purpose of showing that individual lender, who was not licensed under District of Columbia loan shark act, had engaged in sufficient number of loans in District to require licensing under act was correct since no notice had been given in Maryland action involving priority of loans made by corporate and individual borrowers of intent to rely on foreign law. *General Investment Funds Real Estate Holding Company et al. v. W. Gildenhorn et al.* (Md. Ct. App. 1970, 271 A. 2d 650).



**Evidence—Admissibility**

Since there was no properly admissible evidence before chancellor to identify some 99 notes allegedly made by individual lender in District of Columbia or to connect notes with lender, who allegedly engaged in lending business in the District and was not licensed under the District of Columbia loan shark act, chancellor correctly refused to admit notes into evidence in proceedings involving, *inter alia*, whether deed of trust was void under District of Columbia loan shark act. *General Investment Funds Real Estate Holding Company et al. v. W. Gildenhorn et al.* (Md. Ct. App. 1970, 271 A. 2d 650).

In action to recover for wrongful foreclosure of deed of trust, evidence was admissible to show that lender was doing business in violation of Loan Shark Law making it unlawful for person to engage in business of loaning money at interest rate greater than 6% per annum without procuring license. *Royall v. L. Yudelevit and W. H. Simons* (1959, 268 F. 2d 577, 106 U.S. App. D.C. 1).

Where lender of approximately \$900 took from borrower note for \$1,000 payable in \$20 weekly installments and secured by chattel trust deed, in replevin suit by trustee of endorsee finance company to recover the chattel, evidence that lender was principal stockholder and president of endorsee company, that trustee was officer of and counsel for the company, that loan was actually made by the company and that the company was engaged in business of lending money in District of Columbia at an interest rate greater than six percent without having procured a license was admissible to show illegality of the transaction and the resulting absence of title in trustee. *Hartman v. Lubar* (1943, 133 F. 2d 44, 77 U. S. App. D. C. 95, certiorari denied 63 S. Ct. 1329, 319 U. S. 767, 87 L. Ed. 1716, rehearing denied 64 S. Ct. 30, 320 U. S. 808, 88 L. Ed. 488).

Where borrowers contended that lender was engaged in business of loaning money within this chapter and that payee of note was but a straw party for the lender, trial court properly refused to admit in evidence against lender other notes payable to same payee, where witness testified that the payee lent money herself. *Knott v. Jackson* (D.C. Mun. App. 1943, 31 A. 2d 662).

Where there was evidence that indorsee finance company for which trustee brought replevin suit to recover chattels named in chattel trust deed securing a note was in the business of lending money rather than solely that of discounting notes in the sense of buying from a creditor an existing obligation at less than face value, proffered evidence consisting of court trials of five municipal court cases in which finance company sued to recover on notes assigned to it was material to defendant's defense that finance company was in business of lending money at rate of interest greater than 6 percent without required license and should have been admitted. *Hartman v. Lubar* (D. C. Mun. App. 1946, 49 A. 2d 553).

**— Sufficiency**

Where it was established that lending agency in two instances violated statutes making it unlawful to "engage in business" of loaning money at rate greater than 6 percent per annum on any security without procuring a license, there was sufficient showing that agency did "engage in business" within meaning of statute. *Columbia Auto Loan Inc. v. District of Columbia* (D.C. Mun. App. 1951, 78 A. 2d 857).

Evidence that lender had made five loans was not sufficient to warrant finding that lender was engaged in the "business of loaning money" within this chapter. *Knott v. Jackson* (D.C. Mun. App. 1943, 31 A. 2d 662).

**Illegal contracts**

Every consideration of "public policy" suggests that a contract made in violation of this chapter should be unenforceable. *Hartman v. Lubar* (1943, 133 F. 2d 44, 77 U. S. App. D. C. 95, certiorari denied 63 S. Ct. 1329, 319 U. S. 767, 87 L. Ed. 1716, rehearing denied 64 S. Ct. 30, 320 U. S. 808, 88 L. Ed. 488).

Where no legal insurance was obtained on automobile by lending agency when contract was executed under which charge was exacted which made the total more than 6 percent annually on amount loaned, even though part of the charge was called an "insurance premium",

the charge was for "interest", and lending agency violated this section making it unlawful to engage in business of loaning money at rate greater than 6 percent per annum on any security without procuring a license. *Columbia Auto Loan Inc. v. District of Columbia* (D. C. Mun. App. 1951, 78 A. 2d 857).

**— Rights under illegal contracts**

Borrowing corporation which entered into allegedly usurious loan contract, illegal in that lender failed to comply with licensing requirement could recover damages sustained because of illegal contract unless lender could establish an adequate affirmative defense. *Indian Lake Estates v. Ten Individual Defendants, Net Limited, Inc., et ano.* (1965, 350 F. 2d 435, 121 U.S. App. D.C. 305).

A borrower who enters into a usurious contract, void because lender violated Loan Shark Law for not having license, may recover from lender any damages sustained by reason of such void contract. *Royall v. L. Yudelevit and W. H. Simons* (1959, 268 F. 2d 577, 106 U.S. App. D.C. 1).

**Holder in due course**

Where it appeared on face of note and deed of trust that loan was made at over 6% rate of interest, loan was shown on the face to be payable in Washington, D.C., it was stated on note that lender was certain corporation "of Washington, D.C." and purchaser of note and deed of trust knew that such corporation was engaged in making such loans in District of Columbia, even if security instrument given in violation of Loan Shark Act is merely voidable rather than void, purchaser was not a holder in due course. *In re Parkwood, Inc.* (1972, 461 F. 2d 158, 149 U.S. App. D.C. 67).

**Inferences**

Where defendant had subpoenas duces tecum served upon officers of indorsee finance company for which trustee was maintaining replevin suit to compel them to produce at trial all records regarding the company for purpose of showing that company was in business of lending money at rate of interest greater than 6 percent without required license, and officers failed to produce the records, jury could infer from failure to produce subpoenaed records that contents thereof would have been unfavorable to trustee's case. *Hartman v. Lubar* (D. C. Mun. App. 1946, 49 A. 2d 553).

**Lenders act may be illegal**

Only the act of the lender and not the borrower may be illegal under this section. *I. Shulman v. M. Ritzenberg and L. N. Tauber* (1969, 47 F.R.D. 202).

**Liability—Lender**

Where lender, not licensed as required by Loan Shark Law, grants usurious loan, and makes foreclosure possible by transfer of void note and deed of trust, lender is liable in damages resulting from foreclosure by his transferee, even if transferee was innocent throughout. *Royall v. L. Yudelevit and W. H. Simons* (1959, 268 F. 2d 577, 106 U.S. App. D.C. 1).

**— Transferee**

Where one takes note and deed of trust with notice or knowledge that transferor had obtained them through usurious loan contract made in violation of Loan Shark Law requiring license of lender, a foreclosure thereunder by such person is unlawful and he is liable for damages caused thereby. *Royall v. L. Yudelevit and W. H. Simons* (1959, 268 F. 2d 577, 106 U.S. App. D.C. 1).

**Mortgage bankers**

Loan which was made by real estate broker-mortgage banker in exchange for note of 6½% interest and deed of trust on real estate did not fall within real estate broker exemption of Loan Shark Act, notwithstanding contention that integral part of real estate brokerage includes not only negotiations of loans on behalf of other investors, but also placing of loans on behalf of brokers themselves. *In re Parkwood, Inc.* (1972, 461 F. 2d 158, 149 U.S. App. D.C. 67).

Decision that Loan Shark Act applied to loans originated by mortgage bankers would not be limited to prospective application. *Id.*



**Occasional loans**

A nonresident who makes occasional loans on real estate in the District, is not engaged "in the business" of loaning money within the meaning of the Loan Shark Law. *Zirkle v. Daly* (1932, 54 F. 2d 455, 60 App. D. C. 344).

**Office outside the District**

A pawnbroker violates this law if he stores pledged goods in the city of Washington, and uses it as a collecting center, but applications for loans are made just over the line in Virginia, to which place free automobile service is maintained, and loans are there made at an excessive rate. *Horning v. District of Columbia* (1920, 41 S. Ct. 53, 254 U. S. 135, 65 L. Ed. 185).

**Pari delicto**

Under Loan Shark Law requiring license of persons engaged in business of loaning money at interest rate greater than 6% per annum, borrower is not in pari delicto with lender and his participation with him in making loan does not bar borrower from asserting illegality of loan. *Royall v. L. Yudelevit and W. H. Simons* (1959, 268 F. 2d 577, 106 U.S. App. D.C. 1).

**Persons protected by enactment**

A borrower is member of class for whose protection statute, requiring license of persons engaged in business of loaning money at interest rate greater than 6% per annum, was enacted. *Royall v. L. Yudelevit and W. H. Simons* (1959, 268 F. 2d 577, 106 U.S. App. D.C. 1).

**Remand**

Remand would be required, in proceeding on appeal from denial of objections by trustee in reorganization of corporation under Chapter X of Bankruptcy Act to allowance of certain secured claims, for purpose of determining whether effect of claim to prior agreement between borrower, which sold property to corporation subject to deed of trust securing note, and claimant, which had purchased note from lender, to reform note to provide for interest at rate of 6% was to render note, which had originally been in violation of Loan Shark Act, valid and enforceable, though interest had assertedly been paid on note at rate of 6¼% prior to claimant's purchase of note. *In re Parkwood, Inc.* (1972, 461 F. 2d 158, 149 U.S. App. D.C. 67).

**Remedies**

Borrower under usurious loan contract made in violation of statute requiring license of lender had right to elect whether to go into equity and ask that foreclosure sale, caused by transferee of void note and deed of trust, be set aside, or to let sale stand and ask for damages. *Royall v. L. Yudelevit and W. H. Simons* (1959, 268 F. 2d 577, 106 U.S. App. D.C. 1).

An action at law for damages for wrongful foreclosure is an especially appropriate remedy where an innocent purchaser buys at foreclosure, because it gives relief against guilty rather than innocent party. *Id.*

**Sales**

In suit by conditional buyer of automobile against seller and finance company, to which conditional sale agreement and note covering deferred purchase price were negotiated, to have agreement and note declared void and to recover money paid under agreement, evidence sustained finding that the transaction was a sale and not a loan of money, and that therefore the sanctions of the Loan Shark Law did not apply. *Brooks v. Auto Wholesalers* (D. C. Mun. App. 1953, 101 A. 2d 255).

**Small loans**

Loan Shark Law was intended to apply only to persons making small loans upon personal security and not to a case in which a debt of \$177,500 was secured by a first trust upon real estate. *Von Rosen v. Dean* (1920, 41 F. 2d 982, 59 App. D. C. 359).

This chapter is not a usury statute, but an act licensing, under limitations and restrictions, the lending of money in small sums on personal security, and was intended to apply only to persons making small loans on personal security. *Knott v. Jackson* (D.C. Mun. App. 1943, 31 A. 2d 662).

Loan of nearly \$700 was not a "small loan" within this chapter, which provides, under § 26-605, that person

violating the provisions of this chapter shall forfeit all interest, and in addition a sum equal to one-fourth of the principal sum. *Id.*

**Summary judgment**

Assuming original contracts and engagements were illegal and void because of violation of usury statutes and "loan shark law," claims of complaint that parties entered into agreements purporting to settle and compromise original contracts and engagements and that settlement agreements did not eliminate illegality presented complex issues of fact and law and mixed questions of law and fact not susceptible of disposition by summary judgment. *Indian Lake Estates, Inc. v. Lichtman* (1962, 311 F. 2d 776, 114 U.S. App. D.C. 90).

**Unlicensed lender**

A lender in a loan contract which is merely usurious may not be liable in damages, but if there is added the fact that the lender was not licensed as required by law, loan contract is unlawful and void, and a foreclosure thereunder is wrongful and gives rise to action for damages suffered therefrom. *Royall v. L. Yudelevit and W. H. Simons* (1959, 268 F. 2d 577, 106 U.S. App. D.C. 1).

§ 26-602. Application for license filed with Commissioner—Contents of application—Date and expiration of license—Notice of application posted and published—Protests—Hearings—Rejection of application.

Applications for license to conduct such business must be made in writing to the Commissioner of the District of Columbia, and shall contain the full names and addresses of applicants, if natural persons, and in the case of firms and voluntary associations, the full names and addresses of all the members thereof, and in the case of joint-stock companies, incorporated societies, and corporations, the full names and addresses of the officers and directors thereof and under what law or laws organized or incorporated, and the place where such business is to be conducted, and such other information as the said Commissioner may require. Every license granted shall date from the first of the month in which it is issued and expire on the 31st day of the following October, and such license shall be kept conspicuously displayed in the place of business of the licensee. Every application shall be filed not less than thirty days prior to the granting of such license, and notice of the filing of such application shall be posted in the office of the Superintendent of Licenses of the said District and be published twice a week for three successive weeks in a daily newspaper published in the District of Columbia. Protest may be made by any person to the issuing of such license, and when such protests are filed with the said Commissioner the latter shall give public notice of and hold a public hearing upon such protests before issuing such license. The said Commissioner shall have the power to reject any application for license after a hearing upon such protest or for failure on the part of the applicant to observe this chapter, or when such applicant shall have violated its provisions. (Feb. 4, 1913, 37 Stat. 657, ch. 26, § 2; Mar. 3, 1917, 39 Stat. 1006, ch. 160.)

**AMENDMENT**

1917—Act Mar. 3, 1917, substituted "Superintendent of Licenses" for the "assessor."

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.



## TRANSFER OF FUNCTIONS

For transfer of functions of the Superintendent of Licenses, see note to § 47-2301.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28-3303.

**§ 26-603. Bond to accompany application—Sureties—Actions on bond—Copy of bond to be furnished upon request—Renewal of bond.**

Each application shall be accompanied by a bond to the District of Columbia in the penal sum of five thousand dollars, with two or more sufficient sureties, and conditioned that the obligor will not violate any law relating to such business. The execution of any such bond by a fidelity or surety company authorized by the laws of the United States to transact business therein shall be equivalent to the execution thereof by two sureties, and such company, if excepted to, shall justify in the manner required by law of fidelity and surety companies. If any person shall be aggrieved by the misconduct of any such licensed person, firm, voluntary association, joint-stock company, incorporated society, or corporation, or by his, their, or its violation of any law relating to such business, and shall recover a judgment therefor, such person or his personal representative or heirs or distributees may, after a return unsatisfied either in whole or in part of any execution issued upon such judgment, maintain an action in his own name upon such bond herein required in any court having jurisdiction of the amount claimed. The Commissioner of the District of Columbia shall furnish to anyone applying therefor a certified copy of any such bond filed with him, upon the payment of a fee of twenty-five cents, and such certified copy shall be prima facie evidence in any court that such bond was duly executed and delivered by the person, firm, voluntary association, joint-stock company, incorporated society, or corporation whose names appear thereon. Said bond shall be renewed and refiled annually in October of each year, or the licensed person, firm, voluntary association, joint-stock company, incorporated society, or corporation shall within thirty days thereafter, cease doing business, and their license shall be revoked by the said Commissioner, but said bond until renewed and refiled as aforesaid shall be and remain in full force and effect. (Feb. 4, 1913, 37 Stat. 658, ch. 26, § 3.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28-3303.

**§ 26-604. Register to be kept—Contents—Inspection of register—Annual statements.**

Every person, firm, voluntary association, joint-stock company, incorporated society, or corporation conducting such business shall keep a register, approved by said Commissioner, showing in English, the amount of money loaned, the date when loaned and when due, the person to whom loaned, the property or thing named as security for the loan, where the same is located and in whose possession, the amount of interest, all fees, commissions, charges, and renewals charged, under whatever name. Such

register shall be open for inspection to the said Commissioner, his officers and agents, on every day, except Sundays and legal holidays, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon. Every such person, firm, voluntary association, joint-stock company, incorporated society, or corporation conducting such business shall, on or before the 20th day of January of each year, make to the said Commissioner an annual statement in the form of a trial balance of its books on the 31st day of December in each year, specifying the different kinds of its liabilities and the different kinds of its assets, stating the amount of each, together with such other information as may be called for. (Feb. 4, 1913, 37 Stat. 658, ch. 26, § 4.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28-3303.

**§ 26-605. Rate of interest—Interest to cover all fees and expenses—Not to be deducted in advance—Statement to be furnished borrower—Amount of loans—Penalties.**

No such person, firm, voluntary association, joint-stock company, incorporated society, or corporation shall charge or receive a greater rate of interest upon any loan made by him or it than one per centum per month on the actual amount of the loan, and this charge shall cover all fees, expenses, demands, and services of every character, including notarial and recording fees and charges, except upon the foreclosure of the security. The foregoing interest shall not be deducted from the principal of loan when same is made. Every such person, firm, voluntary association, joint-stock company, incorporated society, or corporation conducting such business shall furnish the borrower a written, type-written, or printed statement at the time the loan is made, showing, in English, in clear and distinct terms, the amount of the loan, the date when loaned and when due, the person to whom the loan is made, the name of the lender, the amount of interest charged, and the lender shall give the borrower a plain and complete receipt for all payments made on account of the loan at the time such payments are made. No such loan greater than two hundred dollars shall be made to any one person: *Provided*, That any person contracting, directly or indirectly, for, or receiving a greater rate of interest than that fixed in this chapter, shall forfeit all interest so contracted for or received; and in addition thereto shall forfeit to the borrower a sum of money, to be deducted from the amount due for principal, equal to one-fourth of the principal sum: *And provided further*, That any person in the employ of the Government who shall loan money in violation of the provisions of this chapter shall forfeit his office or position, and be removed from the same. (Feb. 4, 1913, 37 Stat. 659, ch. 26, § 5.)

## CROSS REFERENCES

Consumer credit cost disclosure, see title 15 U.S.C. § 1601 et seq.

Extortionate credit transactions, see title 18 U.S.C. § 891 et seq.



## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28-3303.

## NOTES TO DECISIONS

## Advance deductions

In replevin by trustee of indorsee finance company to recover chattels named in trust deed securing a note, evidence that loan was usurious, in that an amount in excess of legal rate was deducted in advance and that plaintiff knew the amount deducted in advance, was sufficient to make defense of illegality available to defendant. *Hartman v. Lubar* (D. C. Mun. App. 1946, 49 A. 2d 553).

## Commission as constituting usury

Commission paid by a borrower to a loan broker for obtaining a loan from a third person does not constitute usury. *J. Oliver v. United Mortgage Company, Inc., etc.* (D.C. App. 1967, 230 A. 2d 722).

Borrower was not entitled to recover portion of commission retained by loan broker for arranging loan on ground that transaction was usurious in absence of showing that broker was acting solely as agent of lender. *Id.*

Even if loan broker had advanced his own funds to borrower, but had done so for convenience only and with expectation of reimbursing himself promptly from funds supplied by lender, broker who had retained commission for that service was not liable to borrower for allegedly usurious interest on ground that broker was principal on loan. *Id.*

## Construction

Though Loan Shark Act of 1913 was primarily intended to regulate and limit business of making small loans for security, such Act does have application to loans in excess of \$200. *In re Parkwood, Inc.* (1972, 461 F. 2d 158, 149 U.S. App. D.C. 67).

## § 26-606. Complaints—Hearings on complaints—Record of hearings—Revoking of, or refusal to grant license.

Complaints against any licensee or applicant for a license shall be made in writing to the said Commissioner, and notice thereof of not less than three days shall be given to said licensee or applicant by serving upon him a concise statement of the facts constituting the complaint, and a hearing shall be had before the said Commissioner within ten days from the date of the filing of the complaint, and no adjournment shall be taken for longer than one week. A daily calendar shall be kept of all hearings by the said Commissioner, which shall be posted in a conspicuous place in his public office for at least three days before the date of such hearings. The said Commissioner shall render his decision within eight days from the time the matter is finally submitted to him. Said Commissioner shall keep a record of all such complaints and hearings, and may refuse to issue and shall suspend or revoke any license for any good cause shown, within the meaning and purpose of this chapter; and when it is shown to his satisfaction, whether as a result of a written complaint as aforesaid or otherwise, that any licensee or applicant under this chapter either before or after conviction, is guilty of any conduct in violation of this or any law relating to such business it shall be the duty of the said Commissioner to suspend or revoke the license of such licensee or reject the petition of the applicant, but notice of the written complaint or proposed action shall be presented to and reasonable opportunity shall be given said licensee or applicant to be heard in his defense. Whenever for any cause such license is revoked, said Commissioner shall not issue another license to said licensee until the expiration of at

least one year from the date of revocation of such license, and not at all if such licensee shall have been convicted of a violation of this chapter under the provisions of section 26-607 thereof. (Feb. 4, 1913, 37 Stat. 659, ch. 26, § 6.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## CROSS REFERENCES

Administrative procedure, see § 1-1501 et seq.

Judicial Review, see §§ 1-1510, 11-722.

Refund of fees when license refused, see § 47-1017.

Revocation or suspension of license for violation of the Uniform Narcotic Drug Act, see § 33-418.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28-3303.

## § 26-607. Penalties—Enforcement.

Any violation of this chapter shall be punished by a fine of not less than twenty-five dollars and not greater than two hundred dollars, or by imprisonment in the jail or the workhouse of the District of Columbia for not less than five nor more than thirty days, or by both such fine and imprisonment, in the discretion of the court. The said Commissioner shall cause the corporation counsel to institute criminal proceedings for the enforcement of this chapter before any court of competent jurisdiction. (Feb. 4, 1913, 37 Stat. 659, ch. 26, § 7.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26-606, 28-3303.

## § 26-608. Attorneys' fees allowed on foreclosure.

In any foreclosure on any loan made under this chapter no charges for attorneys' or agents' fees shall be made or collected which will exceed ten per centum of the amount found due in such foreclosure proceedings. (Feb. 4, 1913, 37 Stat. 660, ch. 26, § 8.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28-3303.

## § 26-609. Contracts for liquidated or other damages prohibited.

In any contract made in pursuance of the provisions of this chapter it shall be unlawful to incorporate any provision for liquidated or other damages as a penalty for any default or forfeiture thereunder. (Feb. 4, 1913, 37 Stat. 660, ch. 26, § 9.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28-3303.

## § 26-610. Persons, associations, and corporations exempt from operation of this chapter.

(a) Nothing contained in this chapter shall be held to apply to the legitimate business of national banks, licensed bankers, trust companies, savings banks, building and loan associations, small business investment companies licensed and operating under the Small Business Investment Act of 1958, or real estate brokers, as defined in the Act of Congress of July first, nineteen hundred and two, or to life insurance companies. As used in this section the term "life



insurance companies" means and includes any life insurance company authorized to do business in the District of Columbia pursuant to chapters 3-8 of title 35 and any other life insurance company which has a valid, current license to do business as such in any State of the United States.

(b) Any person or any legal entity exempted from the provisions of this Act by such subsection (a) of this section making loans secured on real or personal property in the District of Columbia who or which does not maintain an office for doing business in the District of Columbia or a residence in said District where such person or legal entity may be served with process in any suit arising out of any such transaction or in connection with such property shall appoint and maintain at all times in the District of Columbia a resident agent upon whom process may be served in any such suit, and shall register with the Commissioner of the District of Columbia or with his designee the name and address of such resident agent. Any such person or legal entity which fails to appoint and maintain at all times in the District of Columbia such resident agent shall not, while such failure continues, be entitled to the exemption provided in this section. Whenever any such person or entity does not have in the District of Columbia an agent for service of process or such agent cannot with reasonable diligence be found at his registered address, then the said Commissioner or his designee shall be the agent for the service of process for such person or entity. Service of process on the Commissioner or his designee shall be made by delivering to, and leaving with him, or with any person having charge of his office, or with his designee, duplicate copies of the process accompanied by a fee in the amount of \$2.00 and such service shall be sufficient service upon such person or entity. In the event of such service, the Commissioner, or his designee, shall immediately cause one of such copies to be forwarded by registered or certified mail, addressed to such person or entity at his or its address, as such address appears on the records of the Commissioner or his designee. Any such service shall be returnable in not less than thirty days unless the rules of the court issuing such process prescribe another period, in which case such prescribed period shall govern. Nothing contained in this section shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served on any such person or entity in any other manner now or hereafter permitted by law. (Feb. 4, 1913, 37 Stat. 660, ch. 26, § 10; June 11, 1960, 74 Stat. 196, Pub. L. 86-502, § 7; Dec. 5, 1963, 77 Stat. 344, Pub. L. 88-191, § 1.)

#### REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in text, is the act of Aug. 21, 1958, 72 Stat. 689, Pub. L. 85-699 and is set out in various sections of titles 12, 15 and 18 of the U.S. Code.

Reference in subsec. (a) to the definition contained in the Act of 1902 probably referred to Par. 15 of section 7 of that Act (32 Stat. 624), classified to § 47-2315, which required an annual license tax for real estate brokers as defined therein. Section 7 of the Act of 1902 was amended generally by the Act of July 1, 1932 (47 Stat. 550), and as so amended does not contain a definition of real estate

brokers. For definition of real estate broker in the Real Estate and Business Broker's License Law of 1937, as amended, see § 45-1402.

#### AMENDMENTS

1963—Act Dec. 5, 1963, amended the section as follows:

- (1) Inserted (a) before the first word;
- (2) Inserted at the end of subsection (a) the matter relating to life insurance companies;
- (3) Added subsection (b).

1960—Act June 11, 1960, amended the section by adding after the word "associations" the words, "small business investment companies licensed and operating under the Small Business Investment Act of 1958".

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CROSS REFERENCE

For exemption from this chapter of cooperative associations, see sec. 29-843.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28-3303.

#### NOTES TO DECISIONS

##### Life insurance companies

District of Columbia Loan Shark Act is applicable to loans made by life insurance companies in regular course of their business and thus such companies, until 1963, were not exempt from requirement of obtaining license in order to make loans at rate of interest in excess of 6%, notwithstanding contentions that Act does not apply to insurance companies which "invest" their funds by making loans secured by real estate, that, in view of comprehensive regulation of insurance companies under certain titles of District of Columbia Code, they cannot be subject to licensing regulation of lending activities under Act, and that Act is not intended to apply to large loans made by "institutional lenders" and secured by real estate. *In re Parkwood, Inc.* (1972, 461 F. 2d 158, 149 U.S. App. D.C. 67).

Where life insurance company, that made a loan to prior owners of hotel for purpose of providing funds for refinancing hotel property and for refurbishing and renovating the hotel, at all pertinent times was licensed to do business in the District of Columbia under the Life Insurance Act, the company was exempt from the licensing requirements of this chapter. *National Life Insurance Company v. J. Silverman et al.* (1971, 454 F. 2d 899, 147 U.S. App. D.C. 56).

##### Mortgage bankers

Decision that Loan Shark Act applied to loans originated by mortgage bankers would not be limited to prospective application. *In re Parkwood, Inc.* (1972, 461 F. 2d 158, 149 U.S. App. D.C. 67).

##### Real estate brokers

Loan which was made by real estate broker-mortgage banker in exchange for note of 6½% interest and deed of trust on real estate did not fall within real estate broker exemption of Loan Shark Act, notwithstanding contention that integral part of real estate brokerage includes not only negotiations of loans on behalf of other investors, but also placing of loans on behalf of brokers themselves. *In re Parkwood, Inc.* (1972, 461 F. 2d 158, 149 U.S. App. D.C. 67).

§ 26-611. Commissioner to enforce—Rules and regulations.

The enforcement of this chapter shall be intrusted to the Commissioner of the District of Columbia, and the District of Columbia Council is hereby authorized and empowered to make all rules and regulations necessary in its judgment for the conduct of such business and the enforcement of this chapter in addition hereto and not inconsistent herewith. (Feb. 4, 1913, 37 Stat. 660, ch. 26, § 11.)



**TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL**

Section 402(224) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of making rules and regulations for the conduct of business of making loans and for the enforcement of this chapter, under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

**CROSS REFERENCE**

Rules and regulations generally, see § 1-226 et seq.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 28-3303.

**§ 26-612. Loans exempt from provisions of this chapter.**

(a) No provision of this chapter shall apply with respect to any loan, or to the making of any loan—

(1) to any corporation which is unable to plead any statutes against usury in any action;

(2) at a rate of interest which does not exceed the maximum lawful rate of interest which would be applicable to such loan but for the provisions of this chapter;

(3) secured on real estate located outside of the District of Columbia;

(4) to a borrower residing, doing business, or incorporated outside of the District of Columbia; or

(5) greater than \$10,000.

(b) If any provision of this section or the application thereof to any person or circumstance, is held invalid, the remainder of the section, and the application of such provision to other persons or circumstances shall not be affected thereby. (Feb. 4, 1913, ch. 26, § 14, added Dec. 17, 1971, Pub. L. 92-200, § 9(a), 85 Stat. 679.)

**EFFECTIVE DATE**

Section 9(b) of Act Dec. 17, 1971, Pub. L. 92-200, provided:

"The amendment made by subsection (a) of this section [enacting § 26-612] shall apply with respect to any loan made, or to the making of any loan, in the District of Columbia on or after the effective date of such Act of February 4, 1913 [this chapter] (as specified in section 13 of such Act) [§ 26-601 note]; except that such amendment shall not apply with respect to any loan made, or to the making of any loan, in the District of Columbia concerning which an action under such Act of February 4, 1913, has been filed in a court of competent jurisdiction on or before November 10, 1971."

**Chapter 7.—COMMON TRUST FUNDS**

Sec.

26-701. Establishment of common trust funds.

26-702. Taxability of common trust funds.

26-703. Court accountings.

26-704. Uniformity of interpretation.

**§ 26-701. Establishment of common trust funds.**

Any bank or trust company qualified to act as fiduciary in the District of Columbia may, subject to such rules and regulations as may be promulgated from time to time by the Board of Governors of the Federal Reserve System under the provisions of section 11 (k) of the Federal Reserve Act, as amended (12 U. S. C. 248 (k)), pertaining to the collective

investment of trust funds by national banks, establish common-trust funds for the purpose of furnishing investments to itself as fiduciary, or to itself and others as co-fiduciaries; and may, as such fiduciary or co-fiduciary, invest funds which it lawfully holds for investment in interests in such common-trust funds, if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship, and if, in the case of co-fiduciaries, the bank or trust company procures the written consent of its co-fiduciaries to such investment. (Oct. 27, 1949, 63 Stat. 938, ch. 767, § 1.)

**REFERENCE IN TEXT**

Section 11(k) of the Federal Reserve Act, as amended (12 U.S.C. 248(k)), referred to in text, was repealed by § 3 of act Sept. 28, 1962, 76 Stat. 670, and is now covered by 12 U.S.C. 92a.

**EFFECTIVE DATE**

Section 8 of act Oct. 27, 1949, provided that: "This Act [this chapter] shall take effect November 1, 1949, and shall apply to fiduciary relationships then in existence or thereafter established."

**SHORT TITLE**

Section 5 of act Oct. 27, 1949, provided: "This Act [this chapter] may be cited as the 'Uniform Common-Trust Fund Act'."

**SEPARABILITY OF PROVISIONS**

Section 6 of act Oct. 27, 1949, provided: "If any provision of this Act [this chapter] or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the other provisions or applications of the Act [this chapter] which can be given effect without the invalid provision or application, and to this end the provisions of this Act [this chapter] are declared to be severable."

**REPEALS**

Section 7 of act Oct. 27, 1949, provided: "All Acts or parts of Acts which are inconsistent with the provisions of this Act [this chapter] are hereby repealed."

**§ 26-702. Taxability of common trust funds.**

(a) A common trust fund, as herein defined, shall not be subject to any tax imposed by subchapter II of chapter 15 of title 47, and for the purpose of said subchapter shall not be deemed to be a corporation.

(b) The net income of a common trust fund shall be computed in the same manner and on the same basis as in the case of an individual. Each participant in a common trust fund shall include, in computing its net income its proportionate share of the net income of such fund, whether or not distributed to it, and the amount so included in the net income of a participant shall be taxable to such participant, or its beneficiaries, in the manner and to the extent provided in title IX of subchapter II of chapter 15 of title 47, as if any amount not distributed to the participant during its taxable year actually had been so distributed.

(c) No gain or loss shall be realized by a common trust fund upon the admission or withdrawal of a participant, or upon the admission or withdrawal of any interest of a participant. The withdrawal of any participating interest by a participant shall be treated as a sale or exchange of such interest by such participant.

(d) Every bank or trust company maintaining a common trust fund shall make a return under oath for the taxable year of such fund.



(e) If the taxable year of a common trust fund is different from that of a participant therein, the proportionate share of the net income of such fund to be included in computing the net income of such participant for its taxable year shall be based upon the net income of such fund for its taxable year ending within the taxable year of such participant. (Oct. 27, 1949, 63 Stat. 938, ch. 767, § 2.)

§ 26-703. Court accountings.

Unless ordered by a court of competent jurisdiction the bank or trust company operating such common-trust funds is not required to render a court accounting with regard to such common-trust funds; but it may, by application to the Superior Court of the District of Columbia, secure approval of such accounting on such conditions as the court may establish. (Oct. 27, 1949, 63 Stat. 938, ch. 767,

§ 3; July 29, 1970, Pub. L. 91-358, title I, § 155(c) (34), 84 Stat. 572.)

AMENDMENT

1970—Section 155(c) (34) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

§ 26-704. Uniformity of interpretation.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the District of Columbia with the law of those States which enact the Uniform Common-Trust Fund Act. (Oct. 27, 1949, 63 Stat. 939, ch. 767, § 4.)



## TITLE 27.—CEMETERIES AND CREMATORIES

Chap.		Sec.
1. Cemetery Associations—Regulatory Provisions.....		27-101

### Chapter 1.—CEMETERY ASSOCIATIONS — REGULATORY PROVISIONS

Sec.	
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#### § 27-101. Incorporation—Powers.

When five or more persons shall associate themselves together for the purpose of forming a cemetery association in the District, such persons shall have the power to adopt a corporate name, and by that name shall be known as a body corporate, and by that name shall have perpetual succession and be invested with all powers, rights, privileges, liabilities, and immunities incident to corporations, and may have a common seal, and may alter or change the same at their pleasure. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 658.)

#### CROSS REFERENCES

Locations permitted, see § 27-114.  
Public crematory, see §§ 27-129 to 27-131.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27-106 to 27-108, 27-126, 27-128.

#### § 27-102. Powers to acquire and sell land.

Such persons so associated shall have power to acquire by gift, grant, or purchase any lot or lots of land not exceeding fifty acres, and lay out the same for a burial place for the dead, with convenient aisles, and to sell the same for such purpose and for no other purposes, reserving a sufficient portion thereof for the burial of the stranger and indigent. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 659.)

#### CROSS REFERENCE

Conveyances by corporations, formal requisites, see § 45-302.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27-106, 27-107, 27-126, 27-128.

#### § 27-103. Land to be platted and surveyed.

They shall cause the land designed as a burial ground to be surveyed and platted, and a plat of the ground so surveyed shall be recorded in the office of the surveyor of the District. Each lot shall be duly numbered by the surveyor and such number shall be marked on the plat and recorded. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 660.)

#### CROSS REFERENCES

Commissioners to obtain right-of-way through burial grounds for streets, see § 1-615.

Duties of surveyor concerning plats and recording thereof, see § 1-605 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27-106, 27-107, 27-126, 27-128.

#### § 27-104. Inclosure and ornamentation of land—Purchase of equipment.

Such association shall have power to inclose and ornament their burial ground, to build and erect a hearse house, and keep the same in proper repair; to purchase a hearse or hearses, and to do all other necessary acts to the end that all the appliances, conveniences, and benefits of a public and private cemetery may be obtained. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 661.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27-106, 27-107, 27-126, 27-128.

#### § 27-105. Duty to inclose and underdrain.

It shall be the duty of the owner or owners of any cemetery or cemeteries in said District to inclose such cemetery or cemeteries with good and sufficient walls or fences to prevent entrance thereto or exit therefrom except by gates provided for that purpose. Such cemetery or cemeteries shall, if required by the Commissioner of said District, be underdrained to such a depth as will prevent water remaining in any grave or vault therein. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 671.)



## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27-106, 27-107, 27-126, 27-128.

## § 27-106. Application of proceeds of sales of lots.

The proceeds arising from the sale of lots, after deducting all expenses of purchasing and laying out the same, shall be applied, appropriated, and used in improving and ornamenting the burial ground, or for other purposes named in sections 27-101 to 27-114, 27-115 to 27-117, 27-119a to 27-128. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 662.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27-107, 27-126, 27-128.

## NOTES TO DECISIONS

## Incidental business activity

District of Columbia statutes granting cemetery associations power to inclose and ornament their burial ground authorized tax-exempt religious organization operating public cemetery as part of its religious activity to sell in competition with private enterprise monuments, markers, etc., for use in the cemetery only, proceeds of the sales being used solely for maintenance of cemetery grounds. *L. P. Clagett, t/a The Arlington Memorial etc. v. Vestry of Rock Creek Parish etc.* (D.C.D.C. 1965, 241 F. Supp. 950).

## § 27-107. Officers.

The officers of any such corporation shall be a president, a treasurer (who shall act as a secretary), and not less than three directors, who shall be severally chosen annually by ballot, and shall hold office until their successors are chosen. Any neglect to choose officers on the day fixed upon for that purpose shall not operate as a forfeiture of the act of incorporation, in accordance with the provisions of sections 27-101 to 27-114, 27-115 to 27-117, 27-119a to 27-128. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 663.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27-106, 27-126, 27-128.

## § 27-108. Election of officers.

The first election of officers by the persons associating, according to and for the purpose specified in section 27-101, shall be at the time and place designated and agreed upon by a majority of the persons so associating themselves together, and no other than such persons shall vote at such election. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 664.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27-106, 27-107, 27-126, 27-128.

## § 27-109. Voters—Members of the corporation.

At each subsequent election of officers of any such corporation the owner of a lot in said burial ground shall be entitled to one vote in the election of officers of the corporation and no more, and shall, by virtue of such membership, be a member of the corporation. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 665.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27-106, 27-107, 27-126, 27-128.

## § 27-110. By-laws.

Each corporation shall have power to establish and change by-laws and prescribe rules and regulations for its government and the duties of its officers and the management of its property. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 666.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27-106, 27-107, 27-126, 27-128.

## § 27-111. Exemption from taxation and sale on execution.

The property of any such corporation, its grounds, lots, and appliances, shall be exempt from taxation and shall not be liable to sale on execution. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 667.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27-106, 27-107, 27-126, 27-128.

## § 27-112. Dedication of land—Title vested in perpetuity.

Any person desiring to dedicate any lot of land, not exceeding five acres, as a burial place for the interment of the dead for the use of any society, association, or neighborhood may, by deed duly executed and recorded, convey such land to the District of Columbia, by the corporate name of said District of Columbia, specifying in such deed the society, association, or neighborhood for the use of which the dedication is desired to be made, and thereby (provided such conveyance shall be accepted by the Commissioner of the District of Columbia) vest the title to such land in perpetuity, for the uses stated in the deed, and such land shall be thereafter exempt from taxes for all purposes whatever. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 668.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27-106, 27-107, 27-126, 27-128.

## § 27-113. Grants and bequests for care of lots.

It shall be lawful for such association to take and hold any grant, donation, or bequest upon trust to apply the income thereof, under the direction of the board of managers, for the embellishment, preservation, renewal, or repair of any tomb, monument, gravestone, or other structure, fence, railing, or other inclosure in or around any cemetery lot, or for the planting and cultivation of any trees, shrubs, flowers, or plants in or around any cemetery lot, according to the terms of such grant, donation, or bequest; and the court having probate jurisdiction shall have full power and jurisdiction to compel the due performance of such trusts, or any of them, upon a bill filed by the proprietor of any lot in such cemetery for that purpose. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 669; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91-358, title I, § 158(c)(3), 84 Stat. 576.)

## AMENDMENT

1970—Section 158(c)(3) of Act July 29, 1970, Public Law 91-358 amended section by striking out "United



States District Court for the District of Columbia" and inserting in lieu thereof "court having probate jurisdiction".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27-106, 27-107, 27-126, 27-128.

#### NOTES TO DECISIONS

##### Trusts for perpetual maintenance

This section permits trusts for the perpetual maintenance of cemetery lots and monuments or other structures erected thereon, and is not in conflict with the rule against perpetuities (§ 45-102). Such a trust was held valid where it was to be carried out by a New York corporation in the State of New York. *Iglehart v. Iglehart* (1907, 27 S. Ct. 329, 204 U.S. 478, 51 L. Ed. 575).

#### § 27-114. Distance from city and from dwellings.

No person or persons or cemetery association shall lay out any new cemetery, or part of any cemetery, within the city of Washington, in the District of Columbia, nor in said District, within one mile and a half from the boundaries of said city; no person or cemetery association shall, in said District, lay out any cemetery, or part of any cemetery, within less than two hundred yards of any dwelling-house, except with the written consent of the owner, lessee, and occupant of such house, nor without a permit to do so from the Commissioner of said District. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 670.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27-106, 27-107, 27-114a, 27-126, 27-128.

#### § 27-114a. Commissioner authorized to license certain lands for cemetery purposes.

Without regard to the provisions of section 27-114, the Commissioner of the District of Columbia is hereby authorized to license for cemetery purposes any parcel of land in the District of Columbia which does not exceed one acre in size, and which, except for a one-side frontage of less than 100 feet on a public street or highway, is otherwise completely bounded by land dedicated to cemetery purposes. (July 14, 1956, 70 Stat. 538, ch. 594, § 1.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 27-115. Lots to be conspicuously marked—Plat to be recorded—Size and depth of graves.

It shall be the duty of the owner or owners of any cemetery or cemeteries in said District to divide the area to be used for graves into lots of reasonable size, to be permanently designated by conspicuous marks, so that the position of each may be readily

determined, each lot to be duly numbered. A plat of such cemetery showing the area so divided, the division into lots, and the number of each such lot shall be filed in the office of the surveyor of said District; the grave spaces hereafter laid out for the burial of persons above ten years of age to be at least eight feet by three feet, and those for the burial of children under ten years of age at least six feet by two feet, or, if preferred by said owner or owners, one-half the measurement of the adult grave space, namely, four feet by three feet. No coffin shall be buried in said District so that any part thereof is within less than four feet of the ordinary level of the ground, unless it contains the body of a child under twelve years of age, when it shall not be less than three feet below that level. (Mar. 3, 1901, 31 Stat. 1295, 1297, ch. 854, §§ 672, 681.)

#### CROSS REFERENCE

Powers and duties of surveyor concerning plats and recording thereof, see § 1-605 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27-106, 27-107, 27-126, 27-128.

#### § 27-116. Register—Contents.

It shall be the duty of the owner or owners of any cemetery or cemeteries in said District to cause to be kept in the office of the superintendent or person in charge of such cemetery or cemeteries a register showing the number of each lot, the name, age, cause of death, and date of burial of each person or persons buried in any such lot or grave space, and the number of the burial permit authorizing such burial. In cases of disinterment said register shall show the date of such disinterment and the number of the official permit therefor opposite the name of the person whose remains are disinterred. Such register shall be at all times open to inspection by duly authorized representatives of the health department and of the police department of said District. (Mar. 3, 1901, 31 Stat. 1296, ch. 854, § 673.)

#### TRANSFER OF FUNCTIONS

Health Department abolished and functions transferred, see note to § 6-101.

#### CROSS REFERENCE

Anatomical board for disposition of human bodies for scientific purposes, see §§ 2-201 to 2-209.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27-106, 27-107, 27-126, 27-128.

#### § 27-117. Superintendent to register at health department.

It shall be the duty of the superintendent or person in charge of any cemetery or other place for the disposal of dead bodies of human beings in the District of Columbia to register his or her name at the office of the health department of said District, giving full name, residence, and place of business, and in case of removal from one place to another in said District to make change in such register accordingly. (Mar. 3, 1901, 31 Stat. 1296, ch. 854, § 674.)

#### TRANSFER OF FUNCTIONS

Health Department abolished and functions transferred, see note to § 6-101.

#### CROSS REFERENCE

Anatomical board for disposition of indigent dead, see § 2-201 et seq.



## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27-106, 27-107, 27-126, 27-128.

§§ 27-118 to 27-119. Repealed. Sept. 22, 1950, 64 Stat. 904, ch. 985, § 1.

Section 27-118, acts Mar. 3, 1901, 31 Stat. 1296, ch. 854, § 675; Dec. 16, 1944, 58 Stat. 809, ch. 596, § 1, related to the removal of dead bodies and to the necessary permit and procedures attendant thereto, and is now covered by § 27-119a.

Section 27-118a, act Mar. 3, 1901, 31 Stat. 1296, ch. 854, § 675a, as added Dec. 16, 1944, 58 Stat. 809, ch. 596, § 1, related to the appointment of deputies to issue removal permits.

Section 27-119, acts Mar. 3, 1901, 31 Stat. 1296, ch. 854, § 676; Dec. 16, 1944, 58 Stat. 810, ch. 596, § 1, related to the conveyance through the District of Columbia of dead bodies, and is now covered by section 27-119a.

## EFFECTIVE DATE OF REPEAL

Section 2 of act Sept. 22, 1950, provided that: "This Act [adding § 27-119a, and repealing §§ 27-118, 27-118a, and 27-119] shall take effect sixty days after enactment [Sept. 22, 1950]."

§ 27-119a. Disposal of dead bodies—Permits required—Movement and disposition of tissue by tissue banks—Violations.

It shall be unlawful to inter, disinter, or otherwise dispose of the dead body, or any part thereof, of any human being, except upon a permit, duly issued by the Director of Public Health of the District of Columbia, or such other person or persons as the Commissioner of the District of Columbia shall designate, or to remove from place to place, or transport, the dead body, or any part thereof, of a human being, except, upon such terms and conditions as the Commissioner may specify. Notwithstanding the provisions of the preceding sentence, the District of Columbia Council may, in its discretion, by regulation authorize (a) tissue banks operating pursuant to chapter 2A of title 2 or (b) other persons subject to regulations made pursuant to chapter 2A or 2B of title 2, or both, to remove, transport, and dispose of tissue taken from such dead body without such permit. Any violation hereof shall be subject to the penalties contained in section 27-126. (Mar. 3, 1901, 31 Stat. 1296, ch. 854, §§ 675, 676, as added Sept. 22, 1950, 64 Stat. 904, ch. 985, § 1; Sept. 10, 1962, 76 Stat. 536, Pub. L. 87-656, § 10; May 26, 1970, Pub. L. 91-268, § 9(f), 84 Stat. 270.)

## CODIFICATION

Act Sept. 22, 1950, repealed former sections 675 and 676 of act Mar. 3, 1901.

References to "chapter 2A of title 2" and "chapter 2B of title 2" were substituted for "the District of Columbia Tissue Bank Act" and "the District of Columbia Anatomical Gift Act", respectively.

## AMENDMENTS

1970—Section 9(f) of act May 26, 1970, Pub. L. 91-268, inserted in clause (b) reference to chapter 2B of title 2.

1962—Section 10 of act Sept. 10, 1962, amended this section by striking, in the first sentence the words, "remove, transport" and by inserting immediately after "designate" the words, "or to remove from place to place, or transport, the dead body, or any part thereof, of a human being, except" and by the addition of the second sentence as above set out beginning with the word "Notwithstanding" and ending with the word "permit".

1950—Section 1 of act Sept. 22, 1950, repealed former sections 675 and 676 of act Mar. 3, 1901, and substituted new sections therefor.

## EFFECTIVE DATE OF 1962 AMENDMENT

See note to section 2-251.

## EFFECTIVE DATE OF 1950 AMENDMENT

Section 2 of act Sept. 22, 1950, provided: "This Act [enacting this section] shall take effect sixty days after enactment."

## CHANGE OF NAME

"Director of Public Health" substituted for "Health Officer" to conform to act Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1. See note set out under section 6-101.

## TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(225) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the functions of the Board of Commissioners of, by regulations, authorizing tissue banks and others to remove etc., dead bodies of human beings without permit under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

## TRANSFER OF FUNCTIONS

Functions of Director of Public Health transferred, see note to § 6-101.

## CROSS REFERENCE

See other penalty provisions, § 2-254.

Unlawful traffic in dead bodies, grave robbery, penalties, see §§ 2-206, 2-2103.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-251, 2-252, 2-253, 2-254, 2-259, 2-260, 27-106, 27-107, 27-126, 27-128.

## NOTES TO DECISIONS

## Post-mortem examinations

In a prosecution for homicide, it is not error to admit testimony relative to the disinterment and post-mortem examination of the body of the deceased, notwithstanding the fact that the Government gave no notice of its intention to make such an examination; "nor is it material whether or not there was full compliance with the provisions of section 686 of the District of Columbia Code (§ 27-128)." *Laney v. United States* (1924, 294 F. 412, 54 App. D.C. 56).

§ 27-120. Reports of death—Keeping of dead bodies—Exhibition of dead bodies.

It shall be the duty of any person or persons having custody or control of the dead body of any human being or any part of such body to report in writing or cause to be reported in writing, to the director of public health of said District, within forty-eight hours after the death of the deceased, the name of said deceased and the location of the body or part thereof. No such body or part thereof shall be kept in said District in such manner as to give rise to any offensive odors to the annoyance of any person or persons in the neighborhood or to the public, nor so as to be exposed to the public view; nor shall any such body or part thereof be permitted by the person or persons having custody or control of it to remain unburied for a longer period than one week after death without permission of the director of public health, unless it has been cremated or deposited in the vault of some cemetery; nor shall any person publicly exhibit in said District, for pay or otherwise, any dead body of any human being or any part of such body without a permit from the director of public health of said District so to do, except such exhibition be in connection with some government museum or with some institution of



learning permanently located in said District. (Mar. 3, 1901, 31 Stat. 1297, ch. 854, § 677; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

#### CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27-106, 27-107, 27-126, 27-128.

#### NOTES TO DECISIONS

Evidence, admissibility of

This section forbidding exposure of dead bodies or their exhibition in public did not preclude admission in evidence in murder prosecution of a section of skull of the deceased. *Hart v. United States* (1942, 130 F. 2d 456, 76 U.S. App. D.C. 193).

#### § 27-121. Place of burial.

No person shall bury or cause to be buried within said District the body or part of the body of any deceased person, except in such grounds as were known and used as public or private burial grounds on January 1, 1902, or such as shall thereafter be designated by the Commissioner of said District and authorized by him to be used as such. (Mar. 3, 1901, 31 Stat. 1297, ch. 854, § 678.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CONFEDERATE VETERANS DYING IN DISTRICT OF COLUMBIA—BURIAL IN ARLINGTON

Hereafter persons dying in the District of Columbia or in the immediate vicinity thereof who have served in the Confederate Armies during the Civil War may be buried in the Confederate section of the Arlington National Cemetery without additional expense to the United States upon the certificate of Camp Numbered 171, United Confederate Veterans of the District of Columbia, that such persons are entitled to burial under the authority herein given: *Provided*, That all such interments shall be under the supervision and subject to the approval of the Secretary of War. (Aug. 24, 1912, 37 Stat. 417, ch. 355.)

#### WHITE'S TABERNACLE CEMETERY—INTERMENTS PROHIBITED

From and after the date of the passage of this act (December 16, 1921) it shall be unlawful to inter the body of any person in the cemetery known as the cemetery of White's Tabernacle Numbered 39 of the Ancient United Order of Sons and Daughters, Brethren and Sisters of Moses, in the District of Columbia and situate in the District of Columbia, to wit: Part of a tract called "Chappell's Vacancy," contained within the following metes and bounds, namely: Beginning for the same at the southeast corner of the land conveyed to Frederick Bangerter by deed recorded in Liber Numbered 785, folio 474, of the land records of the District of Columbia, and running thence north 15¼ degrees east, 20.44 perches; thence south 89 degrees east, 3.9 perches; thence south 15¼ degrees west, 20.44 perches; thence north 89 degrees west, 3.9 perches to the point of beginning; and any person or persons violating the provisions of this act, or aiding or abetting its violation, shall be subject to a fine of not less than \$100, nor more than \$500 for each offense, to be collected as other fines are collected in the District of Columbia. (Dec. 16, 1921, 42 Stat. 348, ch. 7, § 1.)

#### REMOVAL OF BODIES AND TOMBSTONES

The board of officers of White's Tabernacle Numbered 39 of the Ancient United Order of Sons and Daughters, Brethren and Sisters of Moses, in the District of Columbia, are hereby authorized and empowered, under such regulations as the Commissioners of the District of Co-

lumbia may prescribe, to disinter and remove all the bodies now buried in said cemetery lot, and to transfer and reinter the same in some other suitable cemetery or cemeteries selected by the said board of officers of White's Tabernacle Numbered 39 of the Ancient United Order of Sons and Daughters, Brethren and Sisters of Moses, and at the cost and expense of said order: *Provided*, That each monument, tombstone, or marker marking any grave or graves in said described burial ground shall be transferred to mark the grave or graves in which such body or bodies are to be interred, and shall be there placed in position as soon as can be done without danger of settling. (Dec. 16, 1921, 42 Stat. 349, ch. 7, § 2.)

#### RESTRICTIONS ON REMOVAL OF BODIES SUSPENDED

Insofar as the same shall be inconsistent with the provisions of this act as to the cemetery lot herein described, sections 675 and 680 (§§ 27-118, 27-123) shall be, and the same are hereby, declared inoperative, otherwise said sections 675 and 680 (§§ 27-118, 27-123) to remain unqualified and in full force and effect. (Dec. 16, 1921, 42 Stat. 349, ch. 7, § 3.)

#### PERMITTING CERTAIN BURIALS IN SCOTTISH RITE TEMPLE

"The Supreme Council (Mother Council of the World) of the Inspectors General Knights Commanders of the House of the Temple of Solomon of the Thirty-third Degree of the Ancient and Accepted Scottish Rite of Freemasonry of the Southern Jurisdiction of the United States of America, is hereby authorized to permit the burial of the remains of not to exceed two persons in vaults built for that purpose in its temple, situated on lot numbered 800, in square 192, at the southeast corner of S and Sixteenth Streets Northwest, in the District of Columbia, under such sanitary regulations as shall be prescribed for such burials by the Commissioners of the District of Columbia." (July 13, 1943, 57 Stat. 563, ch. 237.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27-106, 27-107, 27-126, 27-128.

#### § 27-122. Mode of burial.

No body shall be buried in said District in any vault unless the coffin be separately entombed in properly cemented stone or brick work, so as to render such vault airtight; such vault, after having been sealed, shall not be opened within ten years; no body shall be temporarily deposited in any vault for a longer period than one month, unless such body is in an hermetically sealed metallic case, nor in any instance for a longer period than one year. (Mar. 3, 1901, 31 Stat. 1297, ch. 854, § 679.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27-106, 27-107, 27-126, 27-128.

#### § 27-123. Reopening graves—Death from pestilential diseases.

No grave in said District shall be reopened, except for the purpose of disinterment, within ten years after burial of a person above twelve years of age, or within eight years after the burial of a child under twelve years of age, unless the grave has been, in the first instance, of sufficient depth to permit subsequent interments, in which case a layer of earth of not less than one foot thick shall be left undisturbed over the previously buried coffin, unless such coffin has been separately entombed in properly cemented stone or brick work; but if on reopening any grave the soil be found to be offensive, such soil shall not be disturbed. In no case shall a grave be opened in which has been buried the body of any



person who has died of Asiatic cholera, yellow fever, typhus fever, smallpox (including varioloid), leprosy, the plague, tetanus, diphtheria, or scarlet fever: *Provided*, that the director of public health of the District of Columbia may, in his discretion, authorize the opening, under sanitary precautions, of any such grave, and the disinterment and reinterment in the same grave or other suitable burial ground, of the dead body of any person who has died of any of the contagious diseases enumerated above. (Mar. 3, 1901, 31 Stat. 1297, ch. 854, § 680; Jan. 20, 1936, 49 Stat. 1095, ch. 12; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

#### AMENDMENT

1936—Act Jan. 20, 1936, added the proviso.

#### CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

#### CROSS REFERENCE

Unlawful traffic in dead bodies, grave robbery, penalties. see §§ 2-206, 22-3103.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27-106, 27-107, 27-126, 27-128.

### § 27-124. Crematories—Consent of property owners—Permit.

No person shall, in the District of Columbia, build or maintain a crematory or other device for destroying human bodies, except within the limits of some duly-established cemetery in said District unless such person or persons has in writing the consent of the owners of more than one-half of the property within a radius of two hundred feet from the place where such crematory is to be erected and maintained and a permit from the Commissioner of said District for the erection and maintenance of such crematory or other device; such permit to be for a term of years, not exceeding five, to be specified therein: *Provided*, That this section shall not apply to such crematories or other devices for destroying human bodies as may have been erected and were in operation on March 3, 1901. (Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 682.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27-106, 27-107, 27-126, 27-128.

### § 27-125. Permit to cremate—Embalming—Removal of tissue immediately after death.

It shall be unlawful for any person or persons to cremate or otherwise to destroy the dead body, or part of the dead body, of any human being in said District before the issue of the burial permit by the director of public health of said District, and then only when said permit is countersigned by the Chief Medical Examiner, authorizing such cremation or destruction. It shall be unlawful for any person or persons to embalm, inject, or by any similar method preserve the dead body, or part of the dead

body, of any human being in said District within four hours after death or before the issue of the death certificate; and in case the death is believed to be due to other than natural causes, or the cause thereof is unknown, such embalming, injecting, or preserving shall at no time be done unless such death certificate has been signed or approved by the Chief Medical Examiner. Notwithstanding the provisions of this section, whenever any person is pronounced dead by a physician duly licensed or duly registered under subchapter I of chapter 1 of title 2, tissue donated in accordance with the provisions of chapter 2A or 2B of title 2 may be removed by or under the supervision of a person licensed under the authority of section 2-253 for preservation in a tissue bank operating pursuant to chapter 2A of title 2, or for use in accordance with the provisions of chapter 2B of title 2, without regard for any time limitation, or for any permit or certificate requirement, established by this section: *Provided*, That with respect to a dead human body in the custody of the Chief Medical Examiner or under his jurisdiction, no tissue shall be removed therefrom for preservation except with the specific approval of the Chief Medical Examiner in each case. (Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 683; Aug. 1, 1950, 64 Stat. 393, ch. 153, § 1; Sept. 10, 1962, 76 Stat. 537, Pub. L. 87-656, § 11; May 26, 1970, Pub. L. 91-268, § 9(e), 84 Stat. 270; July 29, 1970, Pub. L. 91-358, § 160(a)(1), title I, 84 Stat. 578.)

#### CODIFICATION

References to "subchapter I of chapter 1 of title 2", "chapter 2A of title 2", and "chapter 2B of title 2" were substituted for "the Healing Arts Practice Act of the District of Columbia", "the District of Columbia Tissue Bank Act", and "the District of Columbia Anatomical Gift Act", respectively.

#### AMENDMENTS

1970—Section 160(a)(1) of Act July 29, 1970, Public Law 91-358 amended section (A) by striking out "coroner of said District" each place it appears and inserting in lieu thereof "Chief Medical Examiner", and (B) by striking out "Coroner" each place it appears and inserting in lieu thereof "Chief Medical Examiner".

Section 9(e) of Act May 26, 1970, Pub. L. 91-268, amended the last sentence by inserting reference to "the District of Columbia Anatomical Gift Act".

1962—Section 11 of act Sept. 10, 1962, amended section by the addition of the matter above set out and beginning with the word "Notwithstanding" and ending with the word "case."

#### EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91-358

See note preceding section 11-101.

#### EFFECTIVE DATE OF 1962 AMENDMENT

See note to section 2-251.

#### CROSS REFERENCE

For other provisions of the Tissue Bank Act, see title 2, ch. 2A and sec. 27-119a.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-251 to 2-254, 2-259, 2-260, 27-106, 27-107, 27-126, 27-128.

### § 27-126. Penalty.

Any person who shall violate or aid and abet in violating any of the provisions of sections 27-101 to 27-114, 27-115 to 27-117, 27-119a to 27-128 shall, upon conviction thereof by competent judicial



authority, be punished, for each offense, by a fine of not more than two hundred dollars, or by imprisonment for not more than ninety days, or both. (Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 684.)

#### CROSS REFERENCES

For other penalty provisions, see § 2-254.

Unlawful traffic in dead bodies, grave robbery, penalty, see §§ 2-206, 22-3103.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27-106, 27-107, 27-119a, 27-128.

#### § 27-127. Prosecutions.

Prosecutions hereunder shall be in the Superior Court of the District of Columbia, in the name of said District: *Provided*, That any person or persons so tried shall have the privilege, when demanded, of a trial by jury, as in other jury cases in said Superior Court of the District of Columbia. (Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 685; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27-106, 27-107, 27-126, 27-128.

#### § 27-128. Disinterment by order of court.

Sections 27-101 to 27-114, 27-115 to 27-117, 27-119a to 27-128 shall not be construed to (1) interfere with or prevent the disinterment of any body in accordance with section 11-2311 of the District of Columbia Code, or (2) interfere with the disposal of the ashes of bodies which have been cremated. (Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 686; June 30, 1902, 32 Stat. 534, ch. 1329, § 686; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91-358, § 160 (a) (2), title I, 84 Stat. 578.)

#### AMENDMENTS

1970—Section 160(a)(2) of Act July 29, 1970, Public Law 91-358, amended section generally. For provisions of this section prior to this amendment, see 1967 edition of the code.

1902—Act June 30, 1902, substituted "after due notice to the Commissioners of the District of Columbia for "for judicial purposes."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia", and "judges" for "justices."

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27-106, 27-107, 27-126.

#### NOTES TO DECISIONS

##### Post-mortem examinations

It was not error to admit testimony relative to the disinterment and post-mortem examination of the body of the deceased, and it was unnecessary that notice should be given the defendant of the intention on the part of the government to make the investigation. Nor is it material whether or not there was full compliance with this section. *Laney v. United States* (1924, 294 F. 412, 54 App. D.C. 56).

#### § 27-129. Public crematory—Cremation required in certain cases.

Whenever the dead body of any person who has died from smallpox, Asiatic cholera, typhus fever, the plague, leprosy, glanders, scarlet fever, diphtheria, or epidemic cerebro-spinal meningitis comes into the custody of any officer, employee, or agent of the District of Columbia to be disposed of at public expense, the said officer, employee, or agent shall cause said body to be incinerated. (Apr. 20, 1906, 34 Stat. 123, ch. 1641, § 1.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 27-131.

#### § 27-130. Establishment of crematory—Rules and regulations.

The Commissioner of the District of Columbia is authorized and directed to operate on reservation thirteen, commonly known as the Washington Asylum grounds, in the city of Washington, in said District, a crematorium of size sufficient for the incineration of all bodies that can not, except at public expense, be disposed of within a reasonable time after death. The District of Columbia Council is hereby authorized to make, and the Commissioner is hereby authorized to enforce, all rules necessary for the proper maintenance and operation of said crematorium. (Apr. 20, 1906, 34 Stat. 123, ch. 1641, § 2; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; June 28, 1944, ch. 300, § 18, 58 Stat. 533; Dec. 4, 1967, Pub. L. 90-173, § 1, 81 Stat. 532.)

#### REFERENCES IN TEXT

The Washington Asylum was consolidated with the Jail by section 24-407, and is now known as the Washington Asylum and Jail.

#### AMENDMENT

1967—Act Dec. 4, 1967, Pub. L. 90-173, amended section (1) by deleting from the first sentence "and for the incineration of such other bodies as may be presented for that purpose by the persons having custody thereof"; (2) by striking from the second sentence the comma immediately after "crematorium" and inserting in lieu thereof a period, and striking the remainder of the sentence; and (3) by striking the third sentence.



## TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(226) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of making rules for the proper maintenance and operation of a public crematorium under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

## CROSS REFERENCE

Annual payment by United States, appropriations, see §§ 47-2501a and 47-2501b.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 27-131.

§ 27-131. Act for promotion of anatomical science not affected by crematory law.

Nothing in sections 27-129 to 27-131 shall be construed as repealing or in any way modifying any of the provisions of chapter 2 of title 2. (Apr. 20, 1906, 34 Stat. 124, ch. 1641, § 3.)



## TITLE 28.—COMMERCIAL INSTRUMENTS AND TRANSACTIONS

*Uniform Commercial Code set out herein as subtitle I, was enacted into law on Dec. 30, 1963, by Pub. L. 88-243, 77 Stat. 630, § 1, effective Jan. 1, 1965*

### SUBTITLE I.—UNIFORM COMMERCIAL CODE

Art.	Sec.
1. General Provisions.....	28:1-101
2. Sales .....	28:2-101
3. Commercial Paper.....	28:3-101
4. Bank Deposits and Collections.....	28:4-101
5. Letters of Credit.....	28:5-101
6. Bulk Transfers.....	28:6-101
7. Warehouse Receipts, Bills of Lading and Other Documents of Title.....	28:7-101
8. Investment Securities.....	28:8-101
9. Secured Transactions; Sales of Accounts, Contract Rights and Chattel Paper .....	28:9-101
10. Construction With Other Laws.....	28:10-101

#### ENACTING CLAUSE

Enacting clause of act Dec. 30, 1963, Pub. L. 88-243, provided as follows: "That the Uniform Commercial Code is enacted as Subtitle I of Title 28 of the District of Columbia Code, in which it shall be designated 'Subtitle I—Uniform Commercial Code', and may be cited as 'D.C. Code, § —', as follows:"

#### EFFECTIVE DATE

Section 16 of act Dec. 30, 1963, 77 Stat. 775, Pub. L. 88-243, provided as follows: "This Act [enacting this subtitle, amending §§ 12-201 (now 12-301, 12-302), 22-1209, 28-616 (now 28:3-503, 28-2701), 29-908g(b), 38-205, 40-701, 40-702, 40-704, 40-708, 40-910(9) (11), 42-102, 42-104, 42-106, 42-107, and 45-701, repealing many sections formerly distributed throughout this title, including § 28-3004 (formerly classified to § 12-304), and repealing §§ 22-1406, 42-101, 42-103, and 42-105] shall become effective on Jan. 1, 1965. Laws enacted after the approval of this Act, that are inconsistent with this Act, supersede it to the extent of the inconsistency."

#### SAVINGS AND CONTINUATION PROVISIONS

Section 15 (b) and (c) of act Dec. 30, 1963, Pub. L. 88-243, set out as subtitle I of title 28 and other parts of the Code [see distribution tables] provided as follows: "(b) Except as provided by subsection (c) of this section, transactions validly entered into before the effective date specified in section 16 of this Act [Pub. L. 88-243, effective Jan. 1, 1965] and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this Act as though such repeal or amendment had not occurred.

"(c) The perfection of a security interest, as defined in section 28:1-201 of the District of Columbia Code, and however denominated in any law repealed by this Act, which was perfected when this Act takes effect by a filing, refileing or recording under a law repealed by this Act and requiring a further filing, refileing or recording to continue its perfection, continue until and will lapse on the date provided by the law so repealed for such further filing, refileing or recording, unless in such case, a continuation statement is filed, in the office of the Recorder of Deeds of the District, by the secured party within twelve months before the perfection of the security inter-

est would otherwise lapse. Any such continuation statement must be signed by the secured party, identifying the original security agreement, however denominated, state the date of the last filing, refileing or recording and the filing number, and further state that the original security agreement is still effective. Except as herein specified, the provisions of section 28:9-403(3) of the Code apply to such a continuation statement."

#### DISTRIBUTION TABLES

For table showing where subject matter dealt with in certain sections of the D.C. Code repealed by Pub. L. 88-243, will be found in the Uniform Commercial Code, see distribution tables following title 49.

### Article 1.—GENERAL PROVISIONS

#### PART 1.—SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER

Sec.
28:1-101. Short title.
28:1-102. Purposes; rules of construction; variation by agreement.
28:1-103. Supplementary general principles of law applicable.
28:1-104. Construction against implicit repeal.
28:1-105. Territorial application of this subtitle; parties' power to choose applicable law.
28:1-106. Remedies to be liberally administered.
28:1-107. Waiver or renunciation of claim or right after breach.
28:1-108. Severability.
28:1-109. Section captions.

#### PART 2.—GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

28:1-201. General definitions.
28:1-202. Prima facie evidence by third party documents.
28:1-203. Obligation of good faith.
28:1-204. Time; reasonable time; "seasonably".
28:1-205. Course of dealing and usage of trade.
28:1-206. Statute of frauds for kinds of personal property not otherwise covered.
28:1-207. Performance or acceptance under reservation of rights.
28:1-208. Option to accelerate at will.

#### ARTICLE REFERRED TO IN OTHER SECTIONS

This article is referred to in sections 28:2-103, 28:3-102, 28:4-104, 28:5-103, 28:7-102, 28:8-102, 28:9-105.

#### PART 1.—SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER

##### § 28:1-101. Short title

This subtitle shall be known and may be cited as Uniform Commercial Code. (Dec. 30, 1963, 77 Stat. 631, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

##### § 28:1-102. Purposes; rules of construction; variation by agreement

(1) This subtitle shall be liberally construed and applied to promote its underlying purposes and policies.



(2) Underlying purposes and policies of this subtitle are:

(a) to simplify, clarify and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) to make uniform the law among the various jurisdictions.

(3) The effect of provisions of this subtitle may be varied by agreement, except as otherwise provided in this subtitle and except that the obligations of good faith, diligence, reasonableness and care prescribed by this subtitle may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

(4) The presence in certain provisions of this subtitle of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3).

(5) In this subtitle unless the context otherwise requires:

(a) words in the singular number include the plural, and in the plural include the singular;

(b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.

(Dec. 30, 1963, 77 Stat. 631, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:1-201.

#### NOTES TO DECISIONS

##### Applicability of Uniform Commercial Code

The issues in a law suit by a buyer of automobile against chattel mortgagee, which held the mortgage created by the seller and which repossessed automobile, were governed by the provisions of Uniform Commercial Code, so that the determination of issues in accordance with theory of estoppel constituted error; however, where judgment of trial judge was correct, such error did not require reversal. *Franklin Investment Co., Inc. v. E. P. Homburg* (D.C. App. 1969, 252 A. 2d 95).

##### Impracticability of performance

The concept of impracticability assumes that performance was physically possible, a rule making nonperformance a condition precedent to recovery would unjustifiably encourage disappointment of expectations, and there is nothing necessarily inconsistent in claiming commercial impracticability for method of performance actually adopted and, accordingly, impossibility issue may be raised in suit to recover cost of alternative method of performance. *Transatlantic Financing Corporation v. United States* (1966, 363 F. 2d 312, 124 U.S. App. D.C. 183).

In some cases, even an express expectation may not, for purposes of doctrine of impossibility of performance, amount to a condition of performance. *Id.*

#### § 28:1-103. Supplementary general principles of law applicable

Unless displaced by the particular provisions of this subtitle, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause

shall supplement its provisions. (Dec. 30, 1963, 77 Stat. 631, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:1-201.

#### § 28:1-104. Construction against implicit repeal

This subtitle being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided. (Dec. 30, 1963, 77 Stat. 631, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:1-105. Territorial application of this subtitle; parties' power to choose applicable law

(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to the District and also to a state or nation the parties may agree that the law either of the District or of such state or nation shall govern their rights and duties. Failing such agreement this subtitle applies to transactions bearing an appropriate relation to the District.

(2) Where one of the following provisions of this subtitle specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 28:2-402.

Applicability of the article on bank deposits and collections. Section 28:4-102.

Bulk transfers subject to the article on bulk transfers. Section 28:6-102.

Applicability of the article on investment securities. Section 28:8-106.

Policy and scope of the article on secured transactions. Sections 28:9-102 and 28:9-103.

(Dec. 30, 1963, 77 Stat. 631, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:1-106. Remedies to be liberally administered

(1) The remedies provided by this subtitle shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this subtitle or by other rule of law.

(2) Any right or obligation declared by this subtitle is enforceable by action unless the provision declaring it specifies a different and limited effect. (Dec. 30, 1963, 77 Stat. 632, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:1-107. Waiver or renunciation of claim or right after breach

Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party. (Dec. 30, 1963, 77 Stat. 632, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:1-108. Severability

If any provision or clause of this subtitle or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provi-



sions or applications of this subtitle which can be given effect without the invalid provision or application, and to this end the provisions of this subtitle are declared to be severable. (Dec. 30, 1963, 77 Stat. 632, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:1-109. Section captions

Section captions are parts of this subtitle. (Dec. 30, 1963, 77 Stat. 632, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

### PART 2.—GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

#### § 28:1-201. General definitions

Subject to additional definitions contained in the subsequent articles of this subtitle which are applicable to specific articles or parts thereof, and unless the context otherwise requires, in this subtitle:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this subtitle (sections 28:1-205 and 2-208). Whether an agreement has legal consequences is determined by the provisions of this subtitle, if applicable; otherwise by the law of contracts (section 28:1-103). (Compare "Contract".)

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this subtitle and any other applicable rules of law. (Compare "Agreement".)

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper or securities means voluntary transfer of possession.

(14a) "District" means the District of Columbia; and "state" includes the District.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this subtitle to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" means a person who is in possession of a document of title or an instrument or an investment security drawn, issued or indorsed to him or to his order or to bearer or in blank.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business



or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

(25) A person has "notice" of a fact when:

(a) he has actual knowledge of it; or

(b) he has received a notice or notification of it; or

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this subtitle.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when:

(a) it comes to his attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within this subtitle.

(30) "Person" includes an individual or an organization see section 28:1-102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 28:2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts, chattel paper, or contract rights which is subject to article 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under section 28:2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with article 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales (section 28:2-326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature or indorsement means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (sections 28:3-303, 28:4-208 and 28:4-209) a person gives "value" for rights if he acquires them:

(a) in return for a binding commitment to extend credit or for the extension of immediately



available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a pre-existing claim; or

(c) by accepting delivery pursuant to a pre-existing contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form. (Dec. 30, 1963, 77 Stat. 632, Pub. L. 88-243, § 1, eff. Jan. 1, 1965; Aug. 30, 1964, 78 Stat. 679, Pub. L. 88-509, § 4.)

#### AMENDMENT

1964—Section 4 of act Aug. 30, 1964, effective Jan. 1, 1965, amended the last sentence of clause 27 by changing "such information" to read "the communication".

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-1209, 28:7-102, 28:9-105, 28:9-204, 28:9-307, 28:10-104, 38-205, 40-701, 40-901.

#### § 28:1-202. Prima facie evidence by third party documents

A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party. (Dec. 30, 1963, 77 Stat. 636, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:1-203. Obligation of good faith

Every contract or duty within this subtitle imposes an obligation of good faith in its performance or enforcement. (Dec. 30, 1963, 77 Stat. 636, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### NOTES TO DECISIONS

##### Impracticability of performance

The concept of impracticability assumes that performance was physically possible, a law making nonperformance a condition precedent to recovery would unjustifiably encourage disappointment of expectations, and there is nothing necessarily inconsistent in claiming commercial impracticability for method of performance actually adopted and, accordingly, impossibility issue may be raised in suit to recover cost of alternative method of performance. *Transatlantic Financing Corporation v. United States* (1966, 363 F.2d 312, 124 U.S. App. D.C. 183).

In some cases, even an express expectation may not, for purposes of doctrine of impossibility of performance, amount to a condition of performance. *Id.*

#### § 28:1-204. Time; reasonable time; "seasonably"

(1) Whenever this subtitle requires any action to be taken within a reasonable time, any time which is not manifested unreasonable may be fixed by agreement.

(2) What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(3) An action is taken, "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time. (Dec. 30, 1963, 77 Stat. 636, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### NOTES TO DECISIONS

##### Finding

Finding that notification of rejection of goods by buyer to seller some six months after delivery was not seasonable notification within meaning of Uniform Commercial Code is not clearly erroneous. *H. J. Robinson v. Jonathan Logan Financial* (D.C. App. 1971, 277 A.2d 115).

#### § 28:1-205. Course of dealing and usage of trade

(1) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(2) A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

(3) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

(4) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

(5) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

(6) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter. (Dec. 30, 1963, 77 Stat. 636, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:1-201, 28:2-202, 28:2-208.

#### § 28:1-206. Statute of frauds for kinds of personal property not otherwise covered

(1) Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.



(2) Subsection (1) of this section does not apply to contracts for the sale of goods (section 28:2-201) nor of securities (section 28:8-319) nor to security agreements (section 28:9-203). (Dec. 30, 1963, 77 Stat. 636, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:1-207. Performance or acceptance under reservation of rights

A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest" or the like are sufficient. (Dec. 30, 1963, 77 Stat. 637, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:1-208. Option to accelerate at will

A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised. (Dec. 30, 1963, 77 Stat. 637, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

### Article 2.—SALES

#### PART 1.—SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

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- 28:2-101. Short title.
- 28:2-102. Scope; certain security and other transactions excluded from this article.
- 28:2-103. Definitions and index of definitions.
- 28:2-104. Definitions: "merchant"; "between merchants"; "financing agency".
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#### PART 2.—FORM, FORMATION AND READJUSTMENT OF CONTRACT

- 28:2-201. Formal requirements; statute of frauds.
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- 28:2-319. F.O.B. and F.A.S. terms.
- 28:2-320. C.I.F. and C. & F. terms.
- 28:2-321. C.I.F. or C. & F.: "net landed weights"; "payment on arrival"; warranty of condition on arrival.
- 28:2-322. Delivery "ex-ship".
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#### PART 4.—TITLE, CREDITORS AND GOOD FAITH PURCHASERS

- 28:2-401. Passing of title; reservation for security; limited application of this section.
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- 28:2-501. Insurable interest in goods; manner of identification of goods.
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- 28:2-608. Revocation of acceptance in whole or in part.

<sup>1</sup> Analysis does not conform to section catchline.



Sec.

- 28:2-609. Right to adequate assurance of performance.
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- 28:2-701. Remedies for breach of collateral contracts not impaired.
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- 28:2-721. Remedies for fraud.
- 28:2-722. Who can sue third parties for injury to goods.
- 28:2-723. Proof of market price: time and place.
- 28:2-724. Admissibility of market quotations.
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#### ARTICLE REFERRED TO IN OTHER SECTIONS

This article is referred to in sections 28:7-509, 28:9-113, 28:9-206.

#### CROSS REFERENCES

Consumer credit cost disclosure, see title 15 U.S.C. § 1601 et seq.

Extortionate credit transactions, see title 18 U.S.C. § 891 et seq.

#### PART 1.—SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

##### § 28:2-101. Short title

This article shall be known and may be cited as Uniform Commercial Code—Sales. (Dec. 30, 1963, 77 Stat. 639, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

##### § 28:2-102. Scope; certain security and other transactions excluded from this article

Unless the context otherwise requires, this article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this article impair or repeal any statute regulating sales to consumers, farmers or other spec-

ified classes of buyers. (Dec. 30, 1963, 77 Stat. 639, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

##### § 28:2-103. Definitions and index of definitions

(1) In this article unless the context otherwise requires:

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:

"Acceptance". Section 28:2-606.

"Banker's credit". Section 28:2-325.

"Between merchants". Section 28:2-104.

"Cancellation". Section 28:2-106(4).

"Commercial unit". Section 28:2-105.

"Confirmed credit". Section 28:2-325.

"Conforming to contract". Section 28:2-106.

"Contract for sale". Section 28:2-106.

"Cover". Section 28:2-712.

"Entrusting". Section 28:2-403.

"Financing agency". Section 28:2-104.

"Future goods". Section 28:2-105.

"Goods". Section 28:2-105.

"Identification". Section 28:2-501.

"Installment contract". Section 28:2-612.

"Letter of Credit". Section 28:2-325.

"Lot". 28:2-105.

"Merchant". Section 28:2-104.

"Overseas". Section 28:2-323.

"Person in position of seller". Section 28:2-707.

"Present sale". Section 28:2-106.

"Sale". Section 28:2-106.

"Sale on approval". Section 28:2-326.

"Sale or return". Section 28:2-326.

"Termination". Section 28:2-106.

(3) The following definitions in other articles apply to this article:

"Check". Section 28:3-104.

"Consignee". Section 28:7-102.

"Consignor". Section 28:7-102.

"Consumer goods". Section 28:9-109.

"Dishonor". Section 28:3-507.

"Draft". Section 28:3-104.

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article. (Dec. 30, 1963, 77 Stat. 639, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:7-102.

##### § 28:2-104. Definitions: "merchant"; "between merchants"; "financing agency"

(1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the

<sup>1</sup> Analysis does not conform to section catchline.



transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (section 28: 2-707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants. (Dec. 30, 1963, 77 Stat. 640, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2-103.

§ 28:2-105. Definitions: transferability; "goods"; "future" goods; "lot"; "commercial unit"

(1) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (article 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (section 28: 2-107).

(2) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(3) There may be a sale of a part interest in existing identified goods.

(4) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

(5) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

(6) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit

treated in use or in the relevant market as a single whole. (Dec. 30, 1963, 77 Stat. 640, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2-103.

§ 28:2-106. Definitions: "contract"; "agreement"; "contract for sale"; "sale"; "present sale"; "conforming" to contract; "termination"; "cancellation"

(1) In this article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (section 28: 2-401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance. (Dec. 30, 1963, 77 Stat. 641, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2-103, 28:5-103, 28:7-102, 28:9-105.

#### NOTES TO DECISIONS

##### Cancellation

Where buyer, although indicating rejection of goods, refused to return goods because of fear of violence at his warehouse in area of city affected by rioting, fact that the seller was at first willing to take back goods and, in effect, cancel the contract rather than file an action for the price does not bar subsequent action for price following buyer's inaction. *H. J. Robinson v. Jonathan Logan Financial* (D.C. App. 1971, 277 A. 2d 115).

§ 28:2-107. Goods to be severed from realty; recording

(1) A contract for the sale of timber, minerals or the like or a structure or its materials to be removed from realty is a contract for the sale of goods within this article if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) is a contract for the sale of goods within this article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.



(3) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale. (Dec. 30, 1963, 77 Stat. 641, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2-105.

PART 2.—FORM, FORMATION AND READJUSTMENT OF CONTRACT

§ 28:2-201. Formal requirements; statute of frauds

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within ten days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable:

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (section 28:2-606).

(Dec. 30, 1963, 77 Stat. 642, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:1-206, 28:2-209, 28:2-326

§ 28:2-202. Final written expression: parol or extrinsic evidence

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties

as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) by course of dealing or usage of trade (section 28:1-205) or by course of performance (section 28:2-208); and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

(Dec. 30, 1963, 77 Stat. 642, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2-316, 28:2-326.

§ 28:2-203. Seals inoperative

The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer. (Dec. 30, 1963, 77 Stat. 642, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:2-204. Formation in general

(1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy. (Dec. 30, 1963, 77 Stat. 643, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2-311.

§ 28:2-205. Firm offers

An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror. (Dec. 30, 1963, 77 Stat. 643, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:2-206. Offer and acceptance in formation of contract

(1) Unless otherwise unambiguously indicated by the language or circumstances:

(a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

(b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or non-conforming goods, but such



a shipment of non-conforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(2) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance. (Dec. 30, 1963, 77 Stat. 643, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:2-207. Additional terms in acceptance or confirmation

(1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

- (a) the offer expressly limits acceptance to the terms of the offer;
- (b) they materially alter it; or
- (c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this subtitle. (Dec. 30, 1963, 77 Stat. 643, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:2-208. Course of performance or practical construction

(1) Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.

(2) The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other, but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (section 28:1-205).

(3) Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance. (Dec. 30, 1963, 77 Stat. 644, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:1-201, 28:2-202.

#### § 28:2-209. Modification, rescission and waiver

(1) An agreement modifying a contract within this article needs no consideration to be binding.

(2) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

(3) The requirements of the statute of frauds section of this article (section 28:2-201) must be satisfied if the contract as modified is within its provisions.

(4) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) or (3), it can operate as a waiver.

(5) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required by any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver. (Dec. 30, 1963, 77 Stat. 644, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:2-210. Delegation of performance; assignment of rights

(1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

(3) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(4) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(5) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (section 28:2-609). (Dec. 30, 1963, 77 Stat. 644, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)



### PART 3.—GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

#### § 28:2-301. General obligations of parties

The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract. (Dec. 30, 1963, 77 Stat. 645, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:2-302. Unconscionable contract or clause

(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination. (Dec. 30, 1963, 77 Stat. 645, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### NOTES TO DECISIONS

##### Discovery

Interrogatories may be used to develop evidence of the commercial setting, purpose and effect of a contract at the time it was made for purpose of determining whether contract is unconscionable. *B. Patterson v. Walker-Thomas Furniture Co., Inc.* (D.C. App. 1971, 277 A.2d 111).

The two elements of which unconscionability is comprised; namely, an absence of meaningful choice and contract terms unreasonably favorable to the other party, must be particularized in some detail before a merchant is required to divulge his pricing policies through interrogatories and through the production of records in court, and an answer asserting affirmative defense of unconscionability only on basis of a stated conclusion that price is excessive is insufficient. *Id.*

##### Evidence—Sufficiency

Evidence that the buyer had been free to indulge in comparative shopping at the time she purchased household effects sustained findings that conditional sale contract under which buyer was obligated to pay \$832 including \$219.30 credit charge over two-year period for purchase of goods which cost seller only \$234.35 was not unconscionable. *M. C. Morris v. Capitol Furniture & Appliance Co., Inc.* (D.C. App. 1971, 280 A.2d 775).

##### Impracticability of performance

The concept of impracticability assumes that performance was physically possible, a rule making nonperformance a condition precedent to recovery would unjustifiably encourage disappointment of expectations, and there is nothing necessarily inconsistent in claiming commercial impracticability for the method of performance actually adopted and, accordingly, impossibility issue may be raised in suit to recover cost of alternative method of performance. *Transatlantic Financing Corporation v. United States* (1966, 363 F.2d 312, 124 U.S. App. D.C. 183).

In some cases, even an express expectation may not, for purposes of doctrine of impossibility of performance, amount to a condition of performance. *Id.*

##### Unconscionable contract

In a proper case, gross overpricing may be raised in defense to action on sales contract as an element of unconscionability; however, price as an unreasonable contract term is only one of the elements that underpin proof of unconscionability. *B. Patterson v. Walker-Thomas Furniture Co., Inc.* (D.C. App. 1971, 277 A.2d 111).

That Congress enacted Uniform Commercial Code specifically providing that court may refuse to enforce contract

which it finds to be unconscionable at time it was made does not mean that common law of District of Columbia was otherwise at time of enactment nor preclude court from adopting similar rule in exercise of its powers to develop common law for District of Columbia. *Williams v. Walker-Thomas Furniture Co.* (1965, 350 F.2d 445, 121 U.S. App. D.C. 315).

#### § 28:2-303. Allocation or division of risks

Where this article allocates a risk or a burden as between the parties "unless otherwise agreed", the agreement may not only shift the allocation but may also divide the risk or burden. (Dec. 30, 1963, 77 Stat. 645, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:2-304. Price payable in money, goods, realty, or otherwise

(1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

(2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this article, but not the transfer of the interest in realty or the transferor's obligations in connection therewith. (Dec. 30, 1963, 77 Stat. 645, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:2-305. Open price term

(1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if:

(a) nothing is said as to price; or

(b) the price is left to be agreed by the parties and they fail to agree; or

(c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(2) A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as cancelled or himself fix a reasonable price.

(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account. (Dec. 30, 1963, 77 Stat. 645, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:2-306. Output, requirements and exclusive dealings

(1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.



(2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale. (Dec. 30, 1963, 77 Stat. 646, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:2-307. Delivery in single lot or several lots.

Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot. (Dec. 30, 1963, 77 Stat. 646, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:2-308. Absence of specified place for delivery

Unless otherwise agreed:

(a) the place for delivery of goods is the seller's place of business or if he has none his residence; but

(b) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(c) documents of title may be delivered through customary banking channels.

(Dec. 30, 1963, 77 Stat. 646, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:2-309. Absence of specific time provisions; notice of termination

(1) The time for shipment or delivery or any other action under a contract if not provided in this article or agreed upon shall be a reasonable time.

(2) Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

(3) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable. (Dec. 30, 1963, 77 Stat. 646, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:2-310. Open time for payment or running of credit; authority to ship under reservation

Unless otherwise agreed:

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (section 28:2-513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due at the time and place at which the buyer is to receive the documents re-

gardless of where the goods are to be received; and

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

(Dec. 30, 1963, 77 Stat. 646, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### NOTES TO DECISIONS

##### Buyer's remedy for breach of warranty

Rescission is not the buyer's only remedy for a breach of warranty; the buyer may also affirm the contract and seek damages for its breach. *Rubewa Products Co., Inc. v. Watson's Quality Turkey Products, Inc.* (D.C. App. 1968, 242 A. 2d 609).

##### Place of inspection

Where turkey broker's remedy for turkey producer's breach of sales contract was not limited to rescission and sales contract did not provide for inspection upon delivery to broker, trial court's finding that place of inspection was point of delivery rather than ultimate destination was reversible error in broker's action against producer for breach of contract. *Rubewa Products Co., Inc. v. Watson's Quality Turkey Products, Inc.* (D.C. App. 1968, 242 A. 2d 609).

#### § 28:2-311. Options and cooperation respecting performance

(1) An agreement for sale which is otherwise sufficiently definite (subsection (3) of section 28:2-204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(2) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (1)(c) and (3) of section 28:2-319 specifications or arrangements relating to shipment are at the seller's option.

(3) Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies:

(a) is excused for any resulting delay in his own performance; and

(b) may also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

(Dec. 30, 1963, 77 Stat. 647, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2-319.

#### § 28:2-312. Warranty of title and against infringement; buyer's obligation against infringement

(1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that:

(a) the title conveyed shall be good, and its transfer rightful; and

(b) the goods shall be delivered free from any security interest or other lien or encumbrance of



which the buyer at the time of contracting has no knowledge.

(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications. (Dec. 30, 1963, 77 Stat. 647, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2-607.

### § 28:2-313. Express warranties by affirmation, promise, description, sample

(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty. (Dec. 30, 1963, 77 Stat. 647, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### NOTES TO DECISIONS

##### Breach of warranty

In view of fact that the true strength of concrete would not be revealed until after 28-day curing period had elapsed, buyer's use of concrete originating at seller's plant, even though tests performed at jobsite indicated that concrete contained air in excess of normal bounds, did not constitute negligent or malicious act on part of the buyer so as to absolve the seller from breach of warranty. *S. S. Bevard et al. v. Howat Concrete Company, Inc.* (1970, 433 F. 2d 1202, 140 U.S. App. D.C. 96).

### § 28:2-314. Implied warranty: merchantability; usage of trade

(1) Unless excluded or modified (section 28:2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (section 28:2-316), other implied warranties may arise from course of dealing or usage of trade. (Dec. 30, 1963, 77 Stat. 648, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### NOTES TO DECISIONS

##### Breach of warranty

In view of fact that the true strength of concrete would not be revealed until after 28-day curing period had elapsed, buyer's use of concrete originating at seller's plant, even though tests performed at jobsite indicated that concrete contained air in excess of normal bounds, did not constitute negligent or malicious act on part of the buyer so as to absolve the seller from breach of warranty. *S. S. Bevard et al. v. Howat Concrete Company, Inc.* (1970, 433 F. 2d 1202, 140 U.S. App. D.C. 96).

##### Food and drink

The test in determining breach of implied warranty where there is injury caused by food or drink served in a restaurant is what should reasonably be expected by the consumer to be in the food served him rather than whether the food is wholesome, untainted, or contains a foreign substance. *P. R. Hochberg v. O'Donnell's Restaurant, Inc.* (D.C. App. 1971, 272 A. 2d 846).

##### Jury question

Question whether restaurant customer, who noticed that olive in cocktail contained hole at one end and who broke his tooth when he bit into pit, acted in a reasonable fashion in chewing olive with expectation that it contained no pit is for the jury in action against restaurant to recover for breach of implied warranty. *P. R. Hochberg v. O'Donnell's Restaurant, Inc.* (D.C. App. 1971, 272 A. 2d 846).

### § 28:2-315. Implied warranty: fitness for particular purpose

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose. (Dec. 30, 1963, 77 Stat. 648, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### NOTES TO DECISIONS

##### Breach of warranty

In view of fact that the true strength of concrete would not be revealed until after 28-day curing period had elapsed, buyer's use of concrete originating at seller's plant, even though tests performed at jobsite indicated that concrete contained air in excess of normal bounds, did not constitute negligent or malicious act on part of the buyer so as to absolve the seller from breach of warranty. *S. S. Bevard et al. v. Howat Concrete Company, Inc.* (1970, 433 F. 2d 1202, 140 U.S. App. D.C. 96).



**Seller's premises**

Under the law of sales one who manufactures or sells a commodity impliedly warrants that the commodity will be fit for its intended purpose, but such warranty does not extend to include a guaranty that the seller's premises are fit for receiving the commodity, because tort law principles adequately provide for those safeguards under the duties which a landowner owes to business invitees, such as the duty to warn against dangerous conditions on the premises. *Phoenix Assurance Company of New York v. Potomac Sand and Gravel Company* (1972, 343 F. Supp. 658).

**§ 28:2-316. Exclusion or modification of warranties**

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this article on parol or extrinsic evidence (section 28:2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2)

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of this article on liquidation or limitation of damages and on contractual modification of remedy (sections 28:2-718 and 28:2-719). (Dec. 30, 1963, 77 Stat. 648, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 28:2-314.

**§ 28:2-317. Cumulation and conflict of warranties express or implied**

Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose. (Dec. 30, 1963, 77 Stat. 649, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:2-318. Third party beneficiaries of warranties express or implied**

A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section. (Dec. 30, 1963, 77 Stat. 649, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:2-319. F.O.B. and F.A.S. terms**

(1) Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which

(a) when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this article (section 28:2-504) and bear the expense and risk of putting them into the possession of the carrier; or

(b) when the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this article (section 28:2-503);

(c) when under either (a) or (b) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this article on the form of bill of lading (section 28:8-323).

(2) Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must

(a) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(b) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(3) Unless otherwise agreed in any case falling within subsection (1) (a) or (c) or subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this



article (section 28:2-311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

(4) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents. (Dec. 30, 1963, 77 Stat. 649, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### REFERENCE IN TEXT

The reference in subsection (c) to section 28:8-323 is obviously an error, as there is no such section. In all probability it should be 28:2-323.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2-311.

### § 28:2-320. C.I.F. and C. & F. terms

(1) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C. & F. or C.F. means that the price so includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to

(a) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the buyer's rights.

(3) Unless otherwise agreed the term C. & F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(4) Under the term C.I.F. or C. & F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents. (Dec. 30, 1963, 77 Stat. 650, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:2-321. C.I.F. or C. & F.: "net landed weights"; "payment on on<sup>1</sup> arrival"; warranty of condition on arrival.

Under a contract containing a term C.I.F. or C. & F.

(1) Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

(2) An agreement described in subsection (1) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

(3) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived. (Dec. 30, 1963, 77 Stat. 650, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2-513.

### § 28:2-322. Delivery "ex-ship"

(1) Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

(2) Under such a term unless otherwise agreed

(a) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

(b) the risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded.

(Dec. 30, 1963, 77 Stat. 651, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

### § 28:2-323. Form of bill of lading required in overseas shipment; "overseas"

(1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. & F., received for shipment.

(2) Where in a case within subsection (1) a bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent

<sup>1</sup>So in original. Probably should read "payment on arrival".



from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

(a) due tender of a single part is acceptable within the provisions of this article on cure of improper delivery (subsection (1) of section 28:2-508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce. (Dec. 30, 1963, 77 Stat. 651, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2-103, 28:2-319, 28:2-503, 28:7-102.

#### § 28:2-324. "No arrival, no sale" term

Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed,

(a) the seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the non-arrival; and

(b) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (section 28:2-613).

(Dec. 30, 1963, 77 Stat. 651, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2-613.

#### § 28:2-325. "Letter of credit" term; "confirmed credit"

(1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(2) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from him.

(3) Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market. (Dec. 30, 1963, 77 Stat. 652, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2-103.

#### § 28:2-326. Sale on approval and sale or return; consignment sales and rights of creditors

(1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is

(a) a "sale on approval" if the goods are delivered primarily for use, and

(b) a "sale or return" if the goods are delivered primarily for resale.

(2) Except as provided in subsection (3), goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum". However, this subsection is not applicable if the person making delivery

(a) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign, or

(b) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others, or

(c) complies with the filing provisions of the article on secured transactions (article 9).

(4) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this article (section 28:2-201) and as contradicting the sale aspect of the contract within the provisions of this article on parol or extrinsic evidence (section 28:2-202). (Dec. 30, 1963, 77 Stat. 652, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:1-201, 28:2-103.

#### § 28:2-327. Special incidents of sale on approval and sale or return

(1) Under a sale on approval unless otherwise agreed

(a) although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

(b) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

(c) after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.



(2) Under a sale or return unless otherwise agreed (a) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

(b) the return is at the buyer's risk and expense. (Dec. 30, 1963, 77 Stat. 652, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2-509.

### § 28:2-328. Sale by auction

(1) In a sale by action if goods are put up in lots each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale. (Dec. 30, 1963, 77 Stat. 653, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### PART 4.—TITLE, CREDITORS AND GOOD FAITH PURCHASERS

### § 28:2-401. Passing of title; reservation for security; limited application of this section

Each provision of this article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (section 28:2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this subtitle. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the article on secured transactions (article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or

(b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale". (Dec. 30, 1963, 77 Stat. 653, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:1-201, 28:2-106.

### § 28:2-402. Rights of seller's creditors against sold goods

(1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this article (sections 28:2-502 and 28:2-716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing in this article shall be deemed to impair the rights of creditors of the seller

(a) under the provisions of the article on secured transactions (article 9); or

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this article constitute the transaction a fraudulent transfer or voidable preference.

(Dec. 30, 1963, 77 Stat. 654, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:1-105, 28:7-504.



**§ 28:2-403. Power to transfer; good faith purchase of goods; "entrusting"**

(1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

(a) the transferor was deceived as to the identity of the purchaser, or

(b) the delivery was in exchange for a check which is later dishonored, or

(c) it was agreed that the transaction was to be a "cash sale", or

(d) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the articles on secured transactions (article 9), bulk transfers (article 6) and documents of title (article 7). (Dec. 30, 1963, 77 Stat. 654, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 28:2-103, 28:2-702, 28:7-503.

**NOTES TO DECISIONS****Stolen goods**

Sale of stolen property does not divest person from whom property was stolen of title even though the sale is made to a bona fide purchaser for value. *M. Schrier v. Home Indemnity Company* (D.C. App. 1971, 273 A. 2d 248).

In action brought by insurer, which reimbursed former owner of stolen automobile under theft policy, against subsequent purchaser to recover the automobile or its value, purchaser's statement that he is a bona fide purchaser does not raise a material issue of fact such as would preclude summary judgment. *Id.*

**Voidable title**

Automobile dealer who sold purchaser stolen automobile is not a "person with voidable title" within this section. *M. Schrier v. Home Indemnity Company* (D.C. App. 1971, 273 A. 2d 248).

**PART 5.—PERFORMANCE****§ 28:2-501. Insurable interest in goods; manner of identification of goods**

(1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are non-conforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs

(a) when the contract is made if it is for the sale of goods already existing and identified;

(b) if the contract is for the sale of future goods other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve months after contracting or for the sale of crops to be harvested within twelve months or the next normal harvest season after contracting whichever is longer.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law. (Dec. 30, 1963, 77 Stat. 655, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 28:2-103, 28:2-401.

**§ 28:2-502. Buyer's right to goods on seller's insolvency**

(1) Subject to subsection (2) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within ten days after receipt of the first installment on their price.

(2) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale. (Dec. 30, 1963, 77 Stat. 655, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 28:2-402, 28:2-711.

**§ 28:2-503. Manner of seller's tender of delivery**

(1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this article, and in particular

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he com-



ply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a non-negotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the non-negotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

(a) he must tender all such documents in correct form except as provided in this article with respect to bills of lading in a set (subsection (2) of section 28:2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes non-acceptance or rejection.

(Dec. 30, 1963, 77 Stat. 655, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2-319, 28:2-509.

### § 28:2-504. Shipment by seller

Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must

(a) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

(b) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(c) promptly notify the buyer of the shipment. Failure to notify the buyer under paragraph (c) or to make a proper contract under paragraph (a) is a ground for rejection only if material delay or loss ensues. (Dec. 30, 1963, 77 Stat. 656, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2-319.

### § 28:2-505. Seller's shipment under reservation

(1) Where the seller has identified goods to the contract by or before shipment:

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him

a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) a non-negotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of section 28:2-507) a non-negotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document. (Dec. 30, 1963, 77 Stat. 656, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2-509.

### § 28:2-506. Rights of financing agency

(1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular on its face. (Dec. 30, 1963, 77 Stat. 657, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

### § 28:2-507. Effect of seller's tender; delivery on condition

(1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due. (Dec. 30, 1963, 77 Stat. 657, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2-505.

### § 28:2-508. Cure by seller of improper tender or delivery; replacement

(1) Where any tender or delivery by the seller is rejected because non-conforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.



(2) Where the buyer rejects a non-conforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender. (Dec. 30, 1963, 77 Stat. 657, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2-323.

#### NOTES TO DECISIONS

##### Buyer's refusal to allow correction of defect

Seller's proffered removal of television chassis for a short period in order to determine cause of color malfunction and ascertain extent of adjustment or correction needed to effect full operational efficiency presented no great inconvenience to buyer, and refusal of buyer's daughter, on buyer's behalf, to allow this precluded rescission. *W. Wilson t/a etc. v. N. Scampoli* (D.C. App. 1967, 228 A. 2d 848).

#### § 28:2-509. Risk of loss in the absence of breach

(1) Where the contract requires or authorizes the seller to ship the goods by carrier

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (section 28:2-505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(a) on his receipt of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of a non-negotiable document of title or other written direction to deliver, as provided in subsection (4) (b) of section 28:2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this article on sale on approval (section 28:2-327) and on effect of breach on risk of loss (section 28:2-510). (Dec. 30, 1963, 77 Stat. 657, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:2-510. Effect of breach on risk of loss

(1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(2) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates

or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time. (Dec. 30, 1963, 77 Stat. 658, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2-509.

#### § 28:2-511. Tender of payment by buyer; payment by check

(1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this subtitle on the effect of an instrument on an obligation (section 28:3-802), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment. (Dec. 30, 1963, 77 Stat. 658, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:2-512. Payment by buyer before inspection

(1) Where the contract requires payment before inspection non-conformity of the goods does not excuse the buyer from so making payment unless

(a) the non-conformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this subtitle (section 28:5-114).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies. (Dec. 30, 1963, 77 Stat. 658, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:2-513. Buyer's right to inspection of goods

(1) Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(3) Unless otherwise agreed and subject to the provisions of this article on C.I.F. contracts (subsection (3) of section 28:2-321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides.

(a) for delivery "C.O.D." or on other like terms; or

(b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identi-



fication or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract. (Dec. 30, 1963, 77 Stat. 658, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2-310.

#### NOTES TO DECISIONS

##### Buyer's remedy for breach of warranty

Rescission is not the buyer's only remedy for a breach of warranty; the buyer may also affirm the contract and seek damages for its breach. *Rubewa Products Co., Inc. v. Watson's Quality Turkey Products, Inc.* (D.C. App. 1968, 242 A. 2d 609).

##### Place of inspection

Where broker's remedy for turkey producer's breach of sales contract was not limited to rescission and sales contract did not provide for inspection upon delivery to broker, trial court's finding that place of inspection was point of delivery rather than ultimate destination was reversible error in broker's action against producer for breach of contract. *Rubewa Products Co., Inc. v. Watson's Quality Turkey Products, Inc.* (D.C. App. 1968, 242 A. 2d 609).

#### § 28:2-514. When documents deliverable on acceptance; when on payment

Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment. (Dec. 30, 1963, 77 Stat. 659, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:2-515. Preserving evidence of goods in dispute

In furtherance of the adjustment of any claim or dispute

(a) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

(b) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment.

(Dec. 30, 1963, 77 Stat. 659, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### PART 6.—BREACH, REPUDIATION AND EXCUSE

#### § 28:2-601. Buyer's rights on improper delivery

Subject to the provisions of this article on breach in installment contracts (section 28:2-612) and unless otherwise agreed under the sections on contractual limitations of remedy (sections 28:2-718 and 28:2-719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

(a) reject the whole; or

(b) accept the whole; or

(c) accept any commercial unit or units and reject the rest.

(Dec. 30, 1963, 77 Stat. 659, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:2-602. Manner and effect of rightful rejection

(1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the two following sections on rejected goods (sections 28:2-603 and 28:2-604),

(a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(b) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this article (subsection (3) of section 28:2-711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(c) the buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this article on Seller's remedies in general (section 28:2-703). (Dec. 30, 1963, 77 Stat. 659, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2-606.

#### NOTES TO DECISIONS

##### Finding

Finding that notification of rejection of goods by buyer to seller some six months after delivery was not seasonable notification within meaning of Uniform Commercial Code is not clearly erroneous. *H. J. Robinson v. Jonathan Logan Financial* (D.C. App. 1971, 277 A. 2d 115).

##### Notice of rejection

Notification of seller by buyer that buyer had problem with the manner of delivery of goods does not constitute seasonable notification of rejection. *H. J. Robinson v. Jonathan Logan Financial* (D.C. App. 1971, 277 A. 2d 115).

##### Return of goods

Where buyer, although indicating rejection of goods, refused to return goods because of fear of violence at his warehouse in area of city affected by rioting, fact that the seller was at first willing to take back goods and, in effect, cancel the contract rather than file an action for the price does not bar subsequent action for price following buyer's inaction. *H. J. Robinson v. Jonathan Logan Financial* (D.C. App. 1971, 277 A. 2d 115).

If buyer elects to rescind, he must within a reasonable length of time after delivery offer to return the goods. *Talley v. Campbell Music Co.* (D.C. App. 1966, 219 A. 2d 852).

##### Seasonable notice

Contractor which had supervisory employee on premises when delivery of fill was made and which did not object to delivery of fill for several days was not entitled to recover from subcontractor which supplied fill cost of removing fill which did not meet specifications. *L. J. Robinson, Inc. v. Arber Construction Company, Inc.* (D.C. App. 1972, 292 A. 2d 809).

#### § 28:2-603. Merchant buyer's duties as to rightfully rejected goods

(1) Subject to any security interest in the buyer (subsection (3) of section 28:2-711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to



follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten per cent on the gross proceeds.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages. (Dec. 30, 1963, 77 Stat. 660, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2-602.

### § 28:2-604. Buyer's options as to salvage of rightfully rejected goods

Subject to the provisions of the immediately preceding section on perishables if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion. (Dec. 30, 1963, 77 Stat. 660, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2-602.

### § 28:2-605. Waiver of buyer's objections by failure to particularize

(1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payments against documents made without reservation of rights precludes recovery of the payment for defects apparent on the face of the documents. (Dec. 30, 1963, 77 Stat. 660, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### NOTES TO DECISIONS

##### Seasonable objection

Contractor which had supervisory employee on premises when delivery of fill was made and which did not object to delivery of fill for several days was not entitled to recover from subcontractor which supplied fill cost of removing fill which did not meet specifications. *L. J. Robinson, Inc. v. Arber Construction Company, Inc.* (D.C. App. 1972, 292 A. 2d 809).

### § 28:2-606. What constitutes acceptance of goods

(1) Acceptance of goods occurs when the buyer

(a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their nonconformity; or

(b) fails to make an effective rejection (subsection (1) of section 28:2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit. (Dec. 30, 1963, 77 Stat. 660, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2-103, 28:2-201.

#### NOTES TO DECISIONS

##### Rejection

Contractor which had supervisory employee on premises when delivery of fill was made and which did not object to delivery of fill for several days was not entitled to recover from subcontractor which supplied fill cost of removing fill which did not meet specifications. *L. J. Robinson, Inc. v. Arber Construction Company, Inc.* (D.C. App. 1972, 292 A. 2d 809).

Notification of seller by buyer that buyer had problem with the manner of delivery of goods does not constitute seasonable notification of rejection. *H. J. Robinson v. Jonathan Logan Financial* (D.C. App. 1971, 277 A. 2d 115).

### § 28:2-607. Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over

(1) The buyer must pay at the contract rate for any goods accepted.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a non-conformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the non-conformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this article for non-conformity.

(3) Where a tender has been accepted

(a) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

(b) if the claim is one for infringement or the like (subsection (3) of section 28:2-312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(4) The burden is on the buyer to establish any breach with respect to the goods accepted.

(5) Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over

(a) he may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does



not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend he is so bound.

(b) if the claim is one for infringement or the like (subsection (3) of section 28:2-312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

(6) The provisions of subsection (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3) of section 28:2-312). (Dec. 30, 1963, 77 Stat. 661, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2-714.

#### NOTES TO DECISIONS

##### Buyer's remedy for breach of warranty

Rescission is not the buyer's only remedy for a breach of warranty; the buyer may also affirm the contract and seek damages for its breach. *Rubewa Products Co., Inc. v. Watson's Quality Turkey Products, Inc.* (D.C. App. 1968, 242 A. 2d 609).

##### Place of inspection

Where turkey broker's remedy for turkey producer's breach of sales contract was not limited to rescission and sales contract did not provide for inspection upon delivery to broker, trial court's finding that place of inspection was point of delivery rather than ultimate destination was reversible error in broker's action against producer for breach of contract. *Rubewa Products Co., Inc. v. Watson's Quality Turkey Products, Inc.* (D.C. App. 1968, 242 A. 2d 609).

#### § 28:2-608. Revocation of acceptance in whole or in part

(1) The buyer may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him if he has accepted it

(a) on the reasonable assumption that its non-conformity would be cured and it has not been seasonably cured; or

(b) without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them. (Dec. 30, 1963, 77 Stat. 661, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### NOTES TO DECISIONS

##### Buyer's refusal to allow correction of defect

Seller's proffered removal of television chassis for a short period in order to determine cause of color malfunction and ascertain extent of adjustment or correction needed to effect full operational efficiency presented no great inconvenience to buyer, and refusal of buyer's

daughter, on buyer's behalf, to allow this precluded rescission, D.C. Code. *W. Wilson t/a etc. v. N. Scampoli* (D.C. App. 1967, 228 A. 2d 848).

#### § 28:2-609. Right to adequate assurance of performance

(1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract. (Dec. 30, 1963, 77 Stat. 662, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2-210, 28:2-611.

#### § 28:2-610. Anticipatory repudiation

When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

(a) for a commercially reasonable time await performance by the repudiating party; or

(b) resort to any remedy for breach (section 28:2-703 or section 28:2-711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

(c) in either case suspend his own performance or proceed in accordance with the provisions of this article on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (section 28:2-704).

(Dec. 30, 1963, 77 Stat. 662, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2-709, 28:5-115.

#### § 28:2-611. Retraction of anticipatory repudiation

(1) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this article (section 28:2-609).



(3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation. (Dec. 30, 1963, 77 Stat. 662, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:2-612. "Installment contract"; breach

(1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

(2) The buyer may reject any installment which is non-conforming if the non-conformity substantially impairs the value of that installment and cannot be cured or if the non-conformity is a defect in the required documents; but if the non-conformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(3) Whenever non-conformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a non-conforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments. (Dec. 30, 1963, 77 Stat. 662, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2-103, 28:2-601, 28:2-616, 28:2-703, 28:2-711.

#### § 28:2-613. Casualty to identified goods

Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (section 28:2-324) then

(a) if the loss is total the contract is avoided; and

(b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

(Dec. 30, 1963, 77 Stat. 663, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2-324.

#### § 28:2-614. Substituted performance

(1) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental

regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory. (Dec. 30, 1963, 77 Stat. 663, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### NOTES TO DECISIONS

##### Impracticability of performance

The concept of impracticability assumes that performance was physically possible, a rule making nonperformance a condition precedent to recovery would unjustifiably encourage disappointment of expectations, and there is nothing necessarily inconsistent in claiming commercial impracticability for method of performance actually adopted and, accordingly, impossibility issue may be raised in suit to recover cost of alternative method of performance. *Transatlantic Financing Corporation v. United States* (1966, 363 F. 2d 312, 124 U.S. App. D.C. 183).

In some cases, even an express expectation may not, for purposes of doctrine of impossibility of performance, amount to a condition of performance. *Id.*

#### § 28:2-615. Excuse by failure of presupposed conditions

Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

(a) Delay in delivery or non-delivery in whole or in part by a seller who complies with paragraphs (b) and (c) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(b) Where the causes mentioned in paragraph (a) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

(c) The seller must notify the buyer seasonably that there will be delay or non-delivery and, when allocation is required under paragraph (b), of the estimated quota thus made available for the buyer.

(Dec. 30, 1963, 77 Stat. 663, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### NOTES TO DECISIONS

##### Impossibility of performance

Alleged engineering difficulties encountered by defendant electronics manufacturer did not relieve it, on ground of practical impossibility, from liability to government, pursuant to terms of contract for sale of computer, for damages for delay in delivery and ultimate nondelivery of computer. *United States v. Wegematic Corp.* (1966, 360 F. 2d 674, Second Circuit).

##### Impracticability of performance

It might be an overstatement to say that increased cost and difficulty of performance could never constitute impracticability, but to justify relief under doctrine of impossibility of performance, there would have to be more of a variation between expected cost and cost of



performance by available alternative than was present in case in which promisor could legitimately be presumed to have accepted some degree of abnormal risk and added expense above and beyond contract price of \$305,842.92 was only \$43,972. *Transatlantic Financing Corporation v. United States* (1966, 363 F. 2d 312, 124 U.S. App. D.C. 183).

The concept of impracticability assumes that performance was physically possible, a rule making nonperformance a condition precedent to recovery would unjustifiably encourage disappointment of expectations, and there is nothing necessarily inconsistent in claiming commercial impracticability for method of performance actually adopted and, accordingly, impossibility issue may be raised in suit to recover cost of alternative method of performance. *Id.*

In some cases, even an express expectation may not, for purposes of doctrine of impossibility of performance, amount to a condition of performance. *Id.*

#### § 28:2-616. Procedure on notice claiming excuse

(1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this article relating to breach of installment contracts (section 28:2-612), then also as to the whole,

(a) terminate and thereby discharge any unexecuted portion of the contract; or

(b) modify the contract by agreeing to take his available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty days the contract lapses with respect to any deliveries affected.

(3) The provisions of this section may not be negated by agreement except in so far as the seller has assumed a greater obligation under the preceding section. (Dec. 30, 1963, 77 Stat. 663, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

### PART 7.—REMEDIES

#### § 28:2-701. Remedies for breach of collateral contracts not impaired

Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this article. (Dec. 30, 1963, 77 Stat. 664, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:2-702. Seller's remedies on discovery of buyer's insolvency

(1) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this article (section 28:2-705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or

innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser or lien creditor under this article (section 28:2-403). Successful reclamation of goods excludes all other remedies with respect to them. (Dec. 30, 1963, 77 Stat. 664, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2-705.

#### § 28:2-703. Seller's remedies in general

Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (section 28:2-612), then also with respect to the whole undelivered balance, the aggrieved seller may

(a) withhold delivery of such goods;

(b) stop delivery by any bailee as hereafter provided (section 28:2-705);

(c) proceed under the next section respecting goods still unidentified to the contract;

(d) resell and recover damages as hereafter provided (section 28:2-706);

(e) recover damages for non-acceptance (section 28:2-708) or in a proper case the price (section 28:2-709);

(f) cancel.

(Dec. 30, 1963, 77 Stat. 664, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2-602, 28:2-610, 28:2-706.

#### NOTES TO DECISIONS

##### Cancellation

Where buyer, although indicating rejection of goods, refused to return goods because of fear of violence at his warehouse in area of city affected by rioting, fact that the seller was at first willing to take back goods and, in effect, cancel the contract rather than file an action for the price does not bar subsequent action for price following buyer's inaction. *H. J. Robinson v. Jonathan Logan Financial* (D.C. App. 1971, 277 A. 2d 115).

#### § 28:2-704. Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods

(1) An aggrieved seller under the preceding section may

(a) identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;

(b) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

(2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner.



(1) Subject to subsection (2) and to the provisions of this article with respect to proof of market price (section 28:2-723), the measure of damages for non-acceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this article (section 28:2-710), but less expenses saved in consequence of the buyer's breach.



(2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this article (section 28:2-710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale. (Dec. 30, 1963, 77 Stat. 666, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2-703, 28:2-723.

#### § 28:2-709. Action for the price

(1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price

(a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (section 28:2-610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for non-acceptance under the preceding section. (Dec. 30, 1963, 77 Stat. 666, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2-703.

#### NOTES TO DECISIONS

##### Cancellation

Where buyer, although indicating rejection of goods, refused to return goods because of fear of violence at his warehouse in area of city affected by rioting, fact that the seller was at first willing to take back goods and, in effect, cancel the contract rather than file an action for the price does not bar subsequent action for price following buyer's inaction. *H. J. Robinson v. Jonathan Logan Financial* (D.C. App. 1971, 277 A. 2d 115).

#### § 28:2-710. Seller's incidental damages

Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach (Dec. 30, 1963, 77 Stat. 667, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2-706 to 28:2-708, 28:5-115.

#### § 28:2-711. Buyer's remedies in general; buyer's security interest in rejected goods

(1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole of the breach goes to the whole contract (section 28:2-612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid

(a) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) recover damages for non-delivery as provided in this article (section 28:2-713).

(2) Where the seller fails to deliver or repudiates the buyer may also

(a) if the goods have been identified recover them as provided in this article (section 28:2-502); or

(b) in a proper case obtain specific performance or replevy the goods as provided in this article (section 28:2-716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (section 28:2-706). (Dec. 30, 1963, 77 Stat. 667, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2-602, 28:2-603, 28:2-610, 28:2-706.

#### NOTES TO DECISIONS

##### Breach of warranty

In case of breach of warranty, buyer need not proceed by way of rescission, but may keep merchandise and seek recoupment by way of diminution of the purchase price under the contract. *Talley v. Campbell Music Co.* (D.C. App. 1966, 219 A. 2d 852).

##### Proof of damages

Where, in suit against seller for breach of express and implied warranty in a contract for sale to buyer of a combination radio-phonograph, buyer presented no evidence upon which to determine difference between value of phonograph as received and its value as warranted, or cost of repair, but instead sought to recover, and produced evidence with reference to, purchase price of instrument, a variance occurred between buyer's theory of recovery and proof of damages, preventing buyer from establishing a prima facie case for jury. *Talley v. Campbell Music Co.* (D.C. App. 1966, 219 A. 2d 852).

#### § 28:2-712. "Cover"; buyer's procurement of substitute goods

(1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental



or consequential damages as hereinafter defined (section 28:2-715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy. (Dec. 30, 1963, 77 Stat. 667, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2-103.

### § 28:2-713. Buyer's damages for non-delivery or repudiation

(1) Subject to the provisions of this article with respect to proof of market price (section 28:2-723), the measure of damages for non-delivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this article (section 28:2-715), but less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival. (Dec. 30, 1963, 77 Stat. 668, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2-711, 28:2-723.

### § 28:2-714. Buyer's damages for breach in regard to accepted goods

(1) Where the buyer has accepted goods and given notification (subsection (3) of section 28:2-607) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered. (Dec. 30, 1963, 77 Stat. 668, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### NOTES TO DECISIONS

##### Breach of warranty

In view of fact that the true strength of concrete would not be revealed until after 28-day curing period had elapsed, buyer's use of concrete originating at seller's plant, even though tests performed at jobsite indicated that concrete contained air in excess of normal bounds, did not constitute negligent or malicious act on part of the buyer so as to absolve the seller from breach of warranty. *S. S. Bevard et al. v. Howat Concrete Company, Inc.* (1970, 433 F. 2d 1202, 140 U.S. App. D.C. 96).

##### Damages for breach of contract

Under breach of contract, whether a warranty or otherwise, defendant is liable for those damages which are a natural consequence and proximate result of his conduct. *Rubewa Products Co., Inc. v. Watson's Quality Turkey Products, Inc.* (D.C. App. 1968, 242 A. 2d 609).

If buyer affirms sale, his recovery is limited to difference in value of goods as delivered and value they would have had if they had met the warranty. *Talley v. Campbell Music Co.* (D.C. App. 1966, 219 A. 2d 852).

In case of breach of warranty, buyer need not proceed by way of rescission, but may keep merchandise and seek recoupment by way of diminution of the purchase price under the contract. *Id.*

##### Determination of damages

Even though there had been a loss in value of turkey products between time of their purchase by broker from producer and time of their ultimate sale, where broker, in action against producer, did not present evidence as to number of cartons of turkey that were mismarked or number of turkeys that were seasoned, both of which acts were in breach of contract between broker and producer, and did not present evidence as to extent of decrease in value of turkeys because of rancidity which was not chargeable to producer, broker failed to carry burden of proof on damages. *Rubewa Products Co., Inc. v. Watson's Quality Turkey Products, Inc.* (D.C. App. 1972, 294 A. 2d 378).

In action by turkey broker against turkey producer for damage suffered because of mismarking of turkey products and for delivering seasoned turkeys in breach of contract, where not all of the cartons of turkeys were mismarked and not all of the turkeys were salted, rule allowing random sampling to determine damage to whole was inapplicable. *Id.*

##### Loss of profits

Trial court, at retrial on issue of damages only in breach of contract action, did not abuse discretion in denying motion to amend complaint to include a claim for loss of profits. *Rubewa Products Co., Inc. v. Watson's Quality Turkey Products, Inc.* (D.C. App. 1972, 294 A. 2d 378).

##### Measure of damages

Under breach of contract, whether a warranty or otherwise, defendant is liable for those damages which are a natural consequence and proximate result of his conduct. *J. A. Meyers et ano. v. G. Antone et ano.* (D.C. App. 1967, 227 A. 2d 56).

##### Proof of damages

Where, in a suit against seller for breach of express and implied warranty in a contract for sale to buyer of a combination radio-phonograph, buyer presented no evidence upon which to determine difference between value of phonograph as received and its value as warranted, or cost of repair, but instead sought to recover, and produced evidence with reference to, purchase price of instrument, a variance occurred between buyer's theory of recovery and proof of damages, preventing buyer from establishing a prima facie case for jury. *Talley v. Campbell Music Co.* (D.C. App. 1966, 219 A. 2d 852).

### § 28:2-715. Buyer's incidental and consequential damages

(1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include

(a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty.

(Dec. 30, 1963, 77 Stat. 668, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2-712, 28:2-713.



## NOTES TO DECISIONS

## Breach of warranty

In view of fact that the true strength of concrete would not be revealed until after 28-day curing period had elapsed, buyer's use of concrete originating at seller's plant, even though tests performed at jobsite indicated that concrete contained air in excess of normal bounds, did not constitute negligent or malicious act on part of the buyer so as to absolve the seller from breach of warranty. *S. S. Bevard et al. v. Howat Concrete Company, Inc.* (1970, 433 F. 2d 1202, 140 U.S. App. D.C. 96).

## § 28:2-716. Buyer's right to specific performance or replevin

(1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. (Dec. 30, 1963, 77 Stat. 668, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2-402, 28:2-711.

## § 28:2-717. Deduction of damages from the price

The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract. (Dec. 30, 1963, 77 Stat. 668, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

## § 28:2-718. Liquidation or limitation of damages; deposits

(1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds

(a) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or

(b) in the absence of such terms, twenty per cent of the value of the total performance for which the buyer is obligated under the contract or \$500, whichever is smaller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes

(a) a right to recover damages under the provisions of this article other than subsection (1), and

(b) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this article on resale by an aggrieved seller (section 28:2-706). (Dec. 30, 1963, 77 Stat. 669, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2-316, 28:2-601.

## § 28:2-719. Contractual modification or limitation of remedy

(1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

(a) the agreement may provide for remedies in addition to or in substitution for those provided in this article and may limit or alter the measure of damages recoverable under this article, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of non-conforming goods or parts; and

(b) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this subtitle.

(3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not. (Dec. 30, 1963, 77 Stat. 669, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2-316, 28:2-601.

## § 28:2-720. Effect of "cancellation" or "rescission" on claims for antecedent breach

Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach. (Dec. 30, 1963, 77 Stat. 669, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

## NOTES TO DECISIONS

## Cancellation

Where buyer, although indicating rejection of goods, refused to return goods because of fear of violence at his warehouse in area of city affected by rioting, fact that the seller was at first willing to take back goods and, in effect, cancel the contract rather than file an action for the price does not bar subsequent action for price following buyer's inaction. *H. J. Robinson v. Jonathan Logan Financial* (D.C. App. 1971, 277 A. 2d 115).

## § 28:2-721. Remedies for fraud

Remedies for material misrepresentation or fraud include all remedies available under this article for nonfraudulent breach. Neither rescission or a



claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy. (Dec. 30, 1963, 77 Stat. 670, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:2-722. Who can sue third parties for injury to goods**

Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract

(a) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

(c) either party may with the consent of the other sue for the benefit of whom it may concern. (Dec. 30, 1963, 77 Stat. 670, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:2-723. Proof of market price: time and place**

(1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (section 28:2-708 or section 28:2-713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(2) If evidence of a price prevailing at the times or places described in this article is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this article offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise. (Dec. 30, 1963, 77 Stat. 670, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 28:2-708, 28:2-713.

**§ 28:2-724. Admissibility of market quotations**

Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such

a report may be shown to affect its weight but not its admissibility. (Dec. 30, 1963, 77 Stat. 670, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:2-725. Statute of limitations in contracts for sale**

(1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this subtitle becomes effective. (Dec. 30, 1963, 77 Stat. 670, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 12-301.

**NOTES TO DECISIONS**

**Construction**

This section is not to be applied to actions that accrued prior to January 1, 1965. *Sears, Roebuck and Company v. W. M. Goudie* (D.C. App. 1972, 290 A. 2d 826; cert. denied 93 S. Ct. 523, 409 U.S. 1049).

**Article 3.—COMMERCIAL PAPER**

**PART 1.—SHORT TITLE, FORM AND INTERPRETATION**

**Sec.**

- 28:3-101. Short title.
- 28:3-102. Definitions and index of definitions.
- 28:3-103. Limitations on scope of article.
- 28:3-104. Form of negotiable instruments: "draft"; "check"; "certificate of deposit"; "note".
- 28:3-105. When promise or order unconditional.
- 28:3-106. Sum certain.
- 28:3-107. Money.
- 28:3-108. Payable on demand.
- 28:3-109. Definite time.
- 28:3-110. Payable to order.
- 28:3-111. Payable to bearer.
- 28:3-112. Terms and omissions not affecting negotiability.
- 28:3-113. Seal.
- 28:3-114. Date, antedating, postdating.
- 28:3-115. Incomplete instruments.
- 28:3-116. Instruments payable to two or more persons.
- 28:3-117. Instruments payable with words of description.
- 28:3-118. Ambiguous terms and rules of construction.
- 28:3-119. Other writings affecting instrument.
- 28:3-120. Instruments "payable through" bank.
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- 28:3-122. Accrual of cause of action.



## PART 2.—TRANSFER AND NEGOTIATION

## Sec.

- 28:3-201. Transfer: right to indorsement.
- 28:3-202. Negotiation.
- 28:3-203. Wrong or misspelled name.
- 28:3-204. Special indorsement; blank indorsement.
- 28:3-205. Restrictive indorsements.
- 28:3-206. Effect of restrictive indorsement.
- 28:3-207. Negotiation effective although it may be rescinded.
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## PART 3.—RIGHTS OF A HOLDER

- 28:3-301. Rights of a holder.
- 28:3-302. Holder in due course.
- 28:3-303. Taking for value.
- 28:3-304. Notice to purchaser.
- 28:3-305. Rights of a holder in due course.
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## PART 4.—LIABILITY OF PARTIES

- 28:3-401. Signature.
- 28:3-402. Signature in ambiguous capacity.
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- 28:3-406. Negligence contributing to alteration or unauthorized signature.
- 28:3-407. Alteration.
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- 28:3-409. Draft not an assignment.
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- 28:3-411. Certification of a check.
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## PART 5.—PRESENTMENT, NOTICE OF DISHONOR AND PROTEST

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- 28:3-502. Unexcused delay; discharge.
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## PART 6.—DISCHARGE

- 28:3-601. Discharge of parties.
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- 28:3-701. Letter of advice of international sight draft.

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- 28:3-801. Drafts in a set.
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## ARTICLE REFERRED TO IN OTHER SECTIONS

This article is referred to in sections 28:4-102, 28:4-106, 28:4-203, 28:5-111, 28:9-206.

## PART 1.—SHORT TITLE, FORM AND INTERPRETATION

## § 28:3-101. Short title

This article shall be known and may be cited as Uniform Commercial Code—Commercial Paper. (Dec. 30, 1963, 77 Stat. 672, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

## § 28:3-102. Definitions and index of definitions

(1) In this article unless the context otherwise requires

(a) "Issue" means the first delivery of an instrument to a holder or a remitter.

(b) An "order" is a direction to pay and must be more than an authorization or request. It must identify the person to pay with reasonable certainty. It may be addressed to one or more such persons jointly or in the alternative but not in succession.

(c) A "promise" is an undertaking to pay and must be more than an acknowledgement of an obligation.

(d) "Secondary party" means a drawer or endorser.

(e) "Instrument" means a negotiable instrument.

(2) Other definitions applying to this article and the sections in which they appear are:

"Acceptance". Section 28:3-410.

"Accommodation party". Section 28:3-415.

"Alteration". Section 28:3-407.

"Certificate of deposit". Section 28:3-104.

"Certification". Section 28:3-411.

"Check". Section 28:3-104.

"Definite time". Section 28:3-109.

"Dishonor". Section 28:3-507.

"Draft". Section 28:3-104.

"Holder in due course". Section 28:3-302.

"Negotiation". Section 28:3-202.

"Note". Section 28:3-104.

"Notice of dishonor". Section 28:3-508.

"On demand". Section 28:3-108.

"Presentment". Section 28:3-504.

"Protest". Section 28:3-509.

"Restrictive Indorsement". Section 28:3-205.

"Signature". Section 28:3-401.

(3) The following definitions in other articles apply to this article.

"Account". Section 28:4-104.

"Banking day". Section 28:4-104.

"Clearing house". Section 28:4-104.

"Collecting bank". Section 28:4-105.

"Customer". Section 28:4-104.

"Depository bank". Section 28:4-105.

"Documentary draft". Section 28:4-104.

"Intermediary bank". Section 28:4-105.

"Item". Section 28:4-104.

"Midnight deadline". Section 28:4-104.

"Payor bank". Section 28:4-105.

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article. (Dec. 30, 1963, 77 Stat. 672, Pub. L. 243, § 1, eff. Jan. 1, 1965.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:4-104.



**§ 28:3-103. Limitations on scope of article**

(1) This article does not apply to money, documents of title or investment securities.

(2) The provisions of this article are subject to the provisions of the article on bank deposits and collections (article 4) and secured transactions (article 9). (Dec. 30, 1963, 77 Stat. 673, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:3-104. Form of negotiable instruments; "draft"; "check"; "certificate of deposit"; "note"**

(1) Any writing to be a negotiable instrument within this article must

(a) be signed by the maker or drawer; and

(b) contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by this article; and

(c) be payable on demand or at a definite time; and

(d) be payable to order or to bearer.

(2) A writing which complies with the requirements of this section is

(a) a "draft" ("bill of exchange") if it is an order;

(b) a "check" if it is a draft drawn on a bank and payable on demand;

(c) a "certificate of deposit" if it is an acknowledgment by a bank of receipt of money with an engagement to repay it;

(d) a "note" if it is a promise other than a certificate of deposit.

(3) As used in other articles of this subtitle, and as the context may require, the terms "draft", "check", "certificate of deposit" and "note" may refer to instruments which are not negotiable within this article as well as to instruments which are so negotiable. (Dec. 30, 1963, 77 Stat. 673, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 28:2-103, 28:3-102, 28:4-104, 28:5-103, 28:9-105.

**NOTES TO DECISIONS****Negotiability**

Money orders which were made "payable to" named payee and were not "payable to order or to bearer" were not negotiable. *Nation-Wide Check Corporation v. A. J. Banks et al.* (D.C. App. 1969, 260 A. 2d 367).

**§ 28:3-105. When promise or order unconditional**

(1) A promise or order otherwise unconditional is not made conditional by the fact that the instrument

(a) is subject to implied or constructive conditions; or

(b) states its consideration, whether performed or promised, or the transaction which gave rise to the instrument, or that the promise or order is made or the instrument matures in accordance with or "as per" such transaction; or

(c) refers to or states that it arises out of a separate agreement or refers to a separate agreement for rights as to prepayment or acceleration; or

(d) states that it is drawn under a letter of credit; or

(e) states that it is secured, whether by mortgage, reservation of title or otherwise; or

(f) indicates a particular account to be debited or any other fund or source from which reimbursement is expected; or

(g) is limited to payment out of a particular fund or the proceeds of a particular source, if the instrument is issued by a government or governmental agency or unit; or

(h) is limited to payment out of the entire assets of a partnership, unincorporated association, trust or estate by or on behalf of which the instrument is issued.

(2) A promise or order is not unconditional if the instrument

(a) states that it is subject to or governed by any other agreement; or

(b) states that it is to be paid only out of a particular fund or source except as provided in this section.

(Dec. 30, 1963, 77 Stat. 674, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:3-106. Sum certain**

(1) The sum payable is a sum certain even though it is to be paid

(a) with stated interest or by stated installments; or

(b) with stated different rates of interest before and after default or a specified date; or

(c) with a stated discount or addition if paid before or after the date fixed for payment; or

(d) with exchange or less exchange, whether at a fixed rate or at the current rate; or

(e) with costs of collection or an attorney's fee or both upon default.

(2) Nothing in this section shall validate any term which is otherwise illegal. (Dec. 30, 1963, 77 Stat. 674, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:3-107. Money**

(1) An instrument is payable in money if the medium of exchange in which it is payable is money at the time the instrument is made. An instrument payable in "currency" or "current funds" is payable in money.

(2) A promise or order to pay a sum stated in a foreign currency is for a sum certain in money and, unless a different medium of payment is specified in the instrument, may be satisfied by payment of that number of dollars which the stated foreign currency will purchase at the buying sight rate for that currency on the day on which the instrument is payable or, if payable on demand, on the day of demand. If such an instrument specifies a foreign currency as the medium of payment the instrument is payable in that currency. (Dec. 30, 1963, 77 Stat. 674, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:3-108. Payable on demand**

Instruments payable on demand include those payable at sight or on presentation and those in which no time for payment is stated. (Dec. 30, 1963, 77 Stat. 675, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 28:3-102.



**§ 28:3-109. Definite time**

(1) An instrument is payable at a definite time if by its terms it is payable—

(a) on or before a stated date or at a fixed period after a stated date; or

(b) at a fixed period after sight; or

(c) at a definite time subject to any acceleration; or

(d) at a definite time subject to extension at the option of the holder, or to extension to a further definite time at the option of the marker or acceptor or automatically upon or after a specified act or event.

(2) An instrument which by its terms is otherwise payable only upon an act or event uncertain as to time of occurrence is not payable at a definite time even though the act or event has occurred. (Dec. 30, 1963, 77 Stat. 675, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 28:3-102.

**§ 28:3-110. Payable to order**

(1) An instrument is payable to order when by its terms it is payable to the order or assigns of any person therein specified with reasonable certainty, or to him or his order, or when it is conspicuously designated on its face as "exchange" or the like and names a payee. It may be payable to the order of

(a) the maker or drawer; or

(b) the drawee; or

(c) a payee who is not maker, drawer, or drawee; or

(d) two or more payees together or in the alternative; or

(e) an estate, trust or fund, in which case it is payable to the order of the representative of such estate, trust or fund or his successors; or

(f) an office, or an officer by his title as such in which case it is payable to the principal but the incumbent of the office or his successors may act as if he or they were the holder; or

(g) a partnership or unincorporated association, in which case it is payable to the partnership or association and may be indorsed or transferred by any person thereto authorized.

(2) An instrument not payable to order is not made so payable by such words as "payable upon return of this instrument properly indorsed".

(3) An instrument made payable both to order and to bearer is payable to order unless the bearer words are handwritten or typewritten. (Dec. 30, 1963, 77 Stat. 675, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:3-111. Payable to bearer**

An instrument is payable to bearer when by its terms it is payable to—

(a) bearer or the order of bearer; or

(b) a specified person or bearer; or

(c) "cash" or the order of "cash", or any other indication which does not purport to designate a specific payee.

(Dec. 30, 1963, 77 Stat. 675, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:3-112. Terms and omissions not affecting negotiability**

(1) The negotiability of an instrument is not affected by—

(a) the omission of a statement of any consideration or of the place where the instrument is drawn or payable; or

(b) a statement that collateral has been given to secure obligations either on the instrument or otherwise of an obligor on the instrument or that in the case of default on those obligations the holder may realize on or dispose of the collateral; or

(c) a promise or power to maintain or protect collateral or to give additional collateral; or

(d) a term authorizing a confession of judgment on the instrument if it is not paid when due; or

(e) a term purporting to waive the benefit of any law intended for the advantage or protection of any obligor; or

(f) a term in a draft providing that the payee by indorsing or cashing it acknowledges full satisfaction of an obligation of the drawer; or

(g) a statement in a draft drawn in a set of parts (section 28:3-801) to the effect that the order is effective only if no other part has been honored.

(2) Nothing in this section shall validate any term which is otherwise illegal. (Dec. 30, 1963, 77 Stat. 676, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:3-113. Seal**

An instrument otherwise negotiable is within this article even though it is under a seal. (Dec. 30, 1963, 77 Stat. 676, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:3-114. Date, antedating, postdating**

(1) The negotiability of an instrument is not affected by the fact that it is undated, antedated, or postdated.

(2) Where an instrument is antedated or postdated the time when it is payable is determined by the stated date if the instrument is payable on demand or at a fixed period after date.

(3) Where the instrument or any signature thereon is dated, the date is presumed to be correct. (Dec. 30, 1963, 77 Stat. 676, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:3-115. Incomplete instruments**

(1) When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect it cannot be enforced until completed, but when it is completed in accordance with authority given it is effective as completed.

(2) If the completion is unauthorized the rules as to material alteration apply (section 28:3-407), even though the paper was not delivered by the maker or drawer; but the burden of establishing that any completion is unauthorized is on the party so asserting. (Dec. 30, 1963, Pub. L. 88-243, § 1, 77 Stat. 676, eff. Jan. 1, 1965.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 28:3-413.



**§ 28:3-116. Instruments payable to two or more persons**

An instrument payable to the order of two or more persons

(a) if in the alternative is payable to any one of them and may be negotiated, discharged or enforced by any of them who has possession of it;

(b) if not in the alternative is payable to all of them and may be negotiated, discharged or enforced only by all of them.

(Dec. 30, 1963, 77 Stat. 676, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:3-117. Instruments payable with words of description**

An instrument made payable to a named person with the addition of words describing him

(a) as agent or officer of a specified person is payable to his principal but the agent or officer may act as if he were the holder;

(b) as any other fiduciary for a specified person or purpose is payable to the payee and may be negotiated, discharged or enforced by him;

(c) in any other manner is payable to the payee unconditionally and the additional words are without effect on subsequent parties.

(Dec. 30, 1963, 77 Stat. 676, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:3-118. Ambiguous terms and rules of construction**

The following rules apply to every instrument:

(a) Where there is doubt whether the instrument is a draft or a note the holder may treat it as either. A draft drawn on the drawer is effective as a note.

(b) Handwritten terms control typewritten and printed terms, and typewritten control printed.

(c) Words control figures except that if the words are ambiguous figures control.

(d) Unless otherwise specified a provision for interest means interest at the judgment rate at the place of payment from the date of the instrument, or if it is undated from the date of issue.

(e) Unless the instrument otherwise specifies two or more persons who sign as maker, acceptor or drawer or indorser and as a part of the same transaction are jointly and severally liable even though the instrument contains such words as "I promise to pay".

(f) Unless otherwise specified consent to extension authorizes a single extension for not longer than the original period. A consent to extension, expressed in the instrument, is binding on secondary parties and accommodation makers. A holder may not exercise his option to extend an instrument over the objection of a maker or acceptor or other party who in accordance with section 28:3-604 tenders full payment when the instrument is due.

(Dec. 30, 1963, 77 Stat. 677, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:3-119. Other writings affecting instrument**

(1) As between the obligor and his immediate obligee or any transferee the terms of an instrument may be modified or affected by any other written agreement executed as a part of the same transaction, except that a holder in due course is not affected

by any limitation of his rights arising out of the separate written agreement if he had no notice of the limitation when he took the instrument.

(2) A separate agreement does not affect the negotiability of an instrument. (Dec. 30, 1963, 77 Stat. 677, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:3-120. Instruments "payable through" bank**

An instrument which states that it is "payable through" a bank or the like designates that bank as a collecting bank to make presentment but does not of itself authorize the bank to pay the instrument. (Dec. 30, 1963, 77 Stat. 677, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:3-121. Instruments payable at bank**

A note or acceptance which states that it is payable at a bank is the equivalent of a draft drawn on the bank payable when it falls due out of any funds of the maker or acceptor in current account or otherwise available for such payment. (Dec. 30, 1963, 77 Stat. 677, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:3-122. Accrual of cause of action**

(1) A cause of action against a maker or an acceptor accrues

(a) in the case of a time instrument on the day after maturity;

(b) in the case of a demand instrument upon its date or, if no date is stated, on the date of issue.

(2) A cause of action against the obligor of a demand or time certificate of deposit accrues upon demand, but demand on a time certificate may not be made until on or after the date of maturity.

(3) A cause of action against a drawer of a draft or an indorser of any instrument accrues upon demand following dishonor of the instrument. Notice of dishonor is a demand.

(4) Unless an instrument provides otherwise, interest runs at the rate provided by law for a judgment

(a) in the case of a maker, acceptor or other primary obligor of a demand instrument, from the date of demand;

(b) in all other cases from the date of accrual of the cause of action.

(Dec. 30, 1963, 77 Stat. 677, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**NOTES TO DECISIONS****Limitation of action**

Where prime contractor's cause of action on note of sub-contractor ripened on October 27, 1963, the day after the note matured without payment, and the prime contractor's suit against sub-subcontractor on the note was brought during 1964, action tolled running of statute on the note, but the suit on the note did not interrupt running of the statute as to the prime contractor's claim against subcontractor on the obligations assigned by subcontractor as security for the note. *Fox-Greenwald Sheet Metal Co., Inc. v. Markowitz Bros., Inc. et al.* (1971, 452 F. 2d 1346, 147 U.S. App. D.C. 14).

Running of the statute of limitations on principal debt does not itself affect a creditor's right to resort to the security. *Id.*

**PART 2.—TRANSFER AND NEGOTIATION****§ 28:3-201. Transfer: right to indorsement**

(1) Transfer of an instrument vests in the transferee such rights as the transferor has therein,



except that a transferee who has himself been a party to any fraud or illegality affecting the instrument or who as a prior holder had notice of a defense or claim against it cannot improve his position by taking from a later holder in due course.

(2) A transfer of a security interest in an instrument vests the foregoing rights in the transferee to the extent of the interest transferred.

(3) Unless otherwise agreed any transfer for value of an instrument not then payable to bearer gives the transferee the specifically enforceable right to have the unqualified indorsement of the transferor. Negotiation takes effect only when the indorsement is made and until that time there is no presumption that the transferee is the owner. (Dec. 30, 1963, 77 Stat. 678, Pub. L. 88-243, § 1, eff. Stat. 678, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:3-603.

#### NOTES TO DECISIONS

##### Bank's rights

A bank in which the payee deposited non-negotiable money orders has no greater rights than the payee. *Nation-Wide Check Corporation v. A. J. Banks et al.* (D.C. App. 1969, 260 A.2d 367).

#### § 28:3-202. Negotiation

(1) Negotiation is the transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order it is negotiated by delivery with any necessary indorsement; if payable to bearer it is negotiated by delivery.

(2) An indorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof.

(3) An indorsement is effective for negotiation only when it conveys the entire instrument or any unpaid residue. If it purports to be of less it operates only as a partial assignment.

(4) Words of assignment, condition, waiver, guaranty, limitation or disclaimer of liability and the like accompanying an indorsement do not affect its character as an indorsement. (Dec. 30, 1963, 77 Stat. 678, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:3-102.

#### § 28:3-203. Wrong or misspelled name

Where an instrument is made payable to a person under a misspelled name or one other than his own he may indorse in that name or his own or both; but signature in both names may be required by a person paying or giving value for the instrument. (Dec. 30, 1963, 77 Stat. 678, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:3-204. Special indorsement; blank indorsement

(1) A special indorsement specifies the person to whom or to whose order it makes the instrument payable. Any instrument specially indorsed becomes payable to the order of the special indorsee and may be further negotiated only by his indorsement.

(2) An indorsement in blank specifies no particular indorsee and may consist of a mere signature.

An instrument payable to order and indorsed in blank becomes payable to bearer and may be negotiated by delivery alone until specially indorsed.

(3) The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement. (Dec. 30, 1963, 77 Stat. 678, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:3-205. Restrictive indorsements

An indorsement is restrictive which either

(a) is conditional; or

(b) purports to prohibit further transfer of the instrument; or

(c) includes the words "for collection", "for deposit", "pay any bank", or like terms signifying a purpose of deposit or collection; or

(d) otherwise states that it is for the benefit or use of the indorser or of another person.

(Dec. 30, 1963, 77 Stat. 679, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:3-102, 28:3-206, 28:3-419.

#### § 28:3-206. Effect of restrictive indorsement

(1) No restrictive indorsement prevents further transfer or negotiation of the instrument.

(2) An intermediary bank, or a payor bank which is not the depository bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor or the person present for payment.

(3) Except for an intermediary bank, any transferee under an indorsement which is conditional or includes the words "for collection", "for deposit", "pay any bank", or like terms (subparagraphs (a) and (c) of section 28:3-205) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such transferee is a holder in due course if he otherwise complies with the requirements of section 28:3-302 on what constitutes a holder in due course.

(4) The first taker under an indorsement for the benefit of the indorser or another person (subparagraph (d) of section 28:3-205) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such taker is a holder in due course if he otherwise complies with the requirements of section 28:3-302 on what constitutes a holder in due course. A later holder for value is neither given notice nor otherwise affected by such restrictive indorsement unless he has knowledge that a fiduciary or other person has negotiated the instrument in any transaction for his own benefit or otherwise in breach of duty (subsection (2) of section 28:3-304). (Dec. 30, 1963, 77 Stat. 679, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:3-419.



### § 28:3-207. Negotiation effective although it may be rescinded

(1) Negotiation is effective to transfer the instrument although the negotiation is

(a) made by an infant, a corporation exceeding its powers, or any other person without capacity; or

(b) obtained by fraud, duress or mistake of any kind; or

(c) part of an illegal transaction; or

(d) made in breach of duty.

(2) Except as against a subsequent holder in due course such negotiation is in an appropriate case subject to rescission, the declaration of a constructive trust or any other remedy permitted by law. (Dec. 30, 1963, 77 Stat. 679, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

### § 28:3-208. Reacquisition

Where an instrument is returned to or reacquired by a prior party he may cancel any indorsement which is not necessary to his title and reissue or further negotiate the instrument, but any intervening party is discharged as against the reacquiring party and subsequent holders not in due course and if his indorsement has been cancelled is discharged as against subsequent holders in due course as well. (Dec. 30, 1963, 77 Stat. 679, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:3-601.

#### PART 3.—RIGHTS OF A HOLDER

### § 28:3-301. Rights of a holder

The holder of an instrument whether or not he is the owner may transfer or negotiate it and, except as otherwise provided in section 28:3-603 on payment or satisfaction, discharge it or enforce payment in his own name. (Dec. 30, 1963, 77 Stat. 680, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

### § 28:3-302. Holder in due course

(1) A holder in due course is a holder who takes the instrument

(a) for value; and

(b) in good faith; and

(c) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.

(2) A payee may be a holder in due course.

(3) A holder does not become a holder in due course of an instrument:

(a) by purchase of it at judicial sale or by taking it under legal process; or

(b) by acquiring it in taking over an estate; or

(c) by purchasing it as part of a bulk transaction not in regular course of business of the transferor.

(4) A purchaser of a limited interest can be a holder in due course only to the extent of the interest purchased. (Dec. 30, 1963, 77 Stat. 680, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:3-102, 28:3-206, 28:4-104, 28:4-209, 28:5-103, 28:5-114, 28:9-105, 28:9-309,

#### NOTES TO DECISIONS

##### Alleged fraud

Evidence established that holder of first note, which had been given for allegedly fraudulent painting, obtained note from holder in due course, so that there could be a recovery on note notwithstanding alleged fraud. *Blow v. Ammerman* (1965, 350 F. 2d 729, 121 U.S. App. D.C. 351).

##### Burden of proof

In the case, the court held that the assignee of conditional sales contract and note, that called for "time price" more than 8% greater than balance due, did not establish that transaction was not usurious, and thus did not establish that it was holder in due course, since there was no showing that "finance charge" or "carrying charge" was included to compensate seller for expense other than price of loan. *L. Fuller v. Universal Acceptance Corporation* (D.C. App. 1970, 264 A. 2d 506).

##### Forfeiture of interest

In this case the court held that the assignee of a conditional sales contract and note was not entitled to recover "finance charge" or "carrying charge" which exceeded 8% per annum since the assignee did not establish that it was holder in due course and that transaction was not usurious. *L. Fuller v. Universal Acceptance Corporation* (D.C. App. 1970, 264 A. 2d 506).

##### Notice

Where it appeared on face of note and deed of trust that loan was made at over 6% rate of interest, loan was shown on the face to be payable in Washington, D.C., it was stated on note that lender was certain corporation "of Washington, D.C." and purchaser of note and deed of trust knew that such corporation was engaged in making such loans in District of Columbia, even if security instrument given in violation of District of Columbia Loan Shark Act is merely voidable rather than void, purchaser was not a holder in due course. *In re Parkwood, Inc.* (1972, 461 F. 2d 158, 149 U.S. App. D.C. 67).

##### Summary judgment

It was error to grant summary judgment in favor of holder of second note, which had been given for allegedly fraudulent painting sold to maker by transferor of holder, where issue was sufficient to raise a jury issue as to bad faith on part of holder of note. *Blow v. Ammerman* (1965, 350 F. 2d 729, 121 U.S. App. D.C. 351).

##### Tainted transaction

The court held, that in this case the working arrangement between the conditional seller of television set and the assignee of purchasers' note was tainted such that it bore a "badge of fraud" and supported trial judge's ruling in suit by assignee on note that the note was usurious and that assignee could not be given status of holder in due course. *Universal Acceptance Corporation v. F. Marzullo et ano.* (D.C. App. 1969, 260 A. 2d 90).

### § 28:3-303. Taking for value

A holder takes the instrument for value

(a) to the extent that the agreed consideration has been performed or that he acquires a security interest in or a lien on the instrument otherwise than by legal process; or

(b) when he takes the instrument in payment of or as security for an antecedent claim against any person whether or not the claim is due; or

(c) when he gives a negotiable instrument for it or makes an irrevocable commitment to a third person.

(Dec. 30, 1963, 77 Stat. 680, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:1-201.



## § 28:3-304. Notice to purchaser

(1) The purchaser has notice of a claim or defense if

(a) the instrument is so incomplete, bears such visible evidence of forgery or alteration, or is otherwise so irregular as to call into question its validity, terms or ownership or to create an ambiguity as to the party to pay; or

(b) the purchaser has notice that the obligation of any party is voidable in whole or in part, or that all parties have been discharged.

(2) The purchaser has notice of a claim against the instrument when he has knowledge that a fiduciary has negotiated the instrument in payment of or as security for his own debt or in any transaction for his own benefit or otherwise in breach of duty.

(3) The purchaser has notice that an instrument is overdue if he has reason to know

(a) that any part of the principal amount is overdue or that there is an uncured default in payment of another instrument of the same series; or

(b) that acceleration of the instrument has been made; or

(c) that he is taking a demand instrument after demand has been made or more than a reasonable length of time after its issue. A reasonable time for a check drawn and payable within the states and territories of the United States and the District is presumed to be thirty days.

(4) Knowledge of the following facts does not of itself give the purchaser notice of a defense or claim

(a) that the instrument is antedated or postdated;

(b) that it was issued or negotiated in return for an executory promise or accompanied by a separate agreement, unless the purchaser has notice that a defense or claim has arisen from the terms thereof;

(c) that any party has signed for accommodation;

(d) that an incomplete instrument has been completed, unless the purchaser has notice of any improper completion;

(e) that any person negotiating the instrument is or was a fiduciary;

(f) that there has been default in payment of interest on the instrument or in payment of any other instrument, except one of the same series.

(5) The filing or recording of a document does not of itself constitute notice within the provisions of this article to a person who would otherwise be a holder in due course.

(6) To be effective notice must be received at such time and in such manner as to give a reasonable opportunity to act on it. (Dec. 30, 1963, 77 Stat. 680, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:3-206.

## § 28:3-305. Rights of a holder in due course

To the extent that a holder is a holder in due course he takes the instrument free from

(1) all claims to it on the part of any person; and

(2) all defenses of any party to the instrument with whom the holder has not dealt except

(a) infancy, to the extent that it is a defense to a simple contract; and

(b) such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity; and

(c) such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms; and

(d) discharge in insolvency proceedings; and

(e) any other discharge of which the holder has notice when he takes the instrument.

(Dec. 30, 1963, 77 Stat. 681, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:3-408.

## NOTES TO DECISIONS

## Alleged fraud

Evidence established that holder of first note, which had been given for allegedly fraudulent painting, obtained note from holder in due course, so that there could be a recovery on note notwithstanding alleged fraud. *Blow v. Ammerman* (1965, 350 F. 2d 729, 121 U.S. App. D.C. 351).

## Directed Verdict

In an action on a note, the court agreed with appellants contention that the evidence raised fact questions as to whether note was secured from makers by misrepresentation and without their knowing or having reasonable opportunity to know of its character or essential terms so as to preclude direction of verdict for holder. *J. L. Kearney, et al. v. The Commerce Investment Company* (D.C. App. 1970, 262 A. 2d 804).

By moving for directed verdict, proponent admits, for purposes of motion, truth of evidence for opponent, with all reasonable inferences to be derived therefrom. *Id.*

## Holder in due course

In a case where depository bank gave its customer provisional credit on a check deposited with the bank and permitted customer to withdraw a portion of the credit before bank discovered that the drawers had stopped payment, bank was a holder in due course as to amount of provisional credit withdrawn and, in absence of applicable defenses as provided in section 28:3-305, could recover from drawers. *Falls Church Bank etc. v. Wesley Heights, Inc.* (D.C. App. 1969, 256 A. 2d 915).

## Summary judgment

It was error to grant summary judgment in favor of holder of second note, which had been given for allegedly fraudulent painting sold to maker by transferor of holder, where issue was sufficient to raise a jury issue as to bad faith on part of holder of note. *Blow v. Ammerman* (1965, 350 F. 2d 729, 121 U.S. App. D.C. 351).

## § 28:3-306. Rights of one not holder in due course

Unless he has the rights of a holder in due course any person takes the instrument subject to

(a) valid claims to it on the part of any person; and

(b) all defenses of any party which would be available in an action on a simple contract; and

(c) the defenses of want or failure of consideration, nonperformance of any condition precedent, nondelivery, or delivery for a special purpose (section 28:3-408); and

(d) the defense that he or a person through whom he holds the instrument acquired it by theft, or that payment or satisfaction to such holder would be inconsistent with the terms of a restrictive indorsement. The claim of any third person to the instrument is not otherwise available as a defense to any party liable thereon unless



the third person himself defends the action for such party.

(Dec. 30, 1963, 77 Stat. 681, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### NOTES TO DECISIONS

##### Alleged fraud

Evidence established that holder of first note, which had been given for allegedly fraudulent painting, obtained note from holder in due course, so that there could be a recovery on note notwithstanding alleged fraud. *Blow v. Ammerman* (1965, 350 F. 2d 729, 121 U.S. App. D.C. 351).

##### Burden of proof

In a case where payee transferred nonnegotiable money orders, the transferee, although not holder in due course, could establish a case against the payor, which had stopped payment on the money orders, by production of instruments and burden of proving want of consideration or any other defense was upon the payor. *Nation-Wide Check Corporation v. A. J. Banks et ano.* (D.C. App. 1969, 260 A. 2d 367).

##### Summary judgment

It was error to grant summary judgment in favor of holder of second note, which had been given for allegedly fraudulent painting sold to maker by transferor of holder, where issue was sufficient to raise a jury issue as to bad faith on part of holder of note. *Blow v. Ammerman* (1965, 350 F. 2d 729, 121 U.S. App. D.C. 351).

#### § 28:3-307. Burden of establishing signatures, defenses and due course

(1) Unless specifically denied in the pleadings each signature on an instrument is admitted. When the effectiveness of a signature is put in issue

(a) the burden of establishing it is on the party claiming under the signature; but

(b) the signature is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become incompetent before proof is required.

(2) When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense.

(3) After it is shown that a defense exists a person claiming the rights of a holder in due course has the burden of establishing that he or some person under whom he claims is in all respects a holder in due course. (Dec. 30, 1963, 77 Stat. 681, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### NOTES TO DECISIONS

##### Alleged fraud

Evidence established that holder of first note, which had been given for allegedly fraudulent painting, obtained note from holder in due course, so that there could be a recovery on note notwithstanding alleged fraud. *Blow v. Ammerman* (1965, 350 F. 2d 729, 121 U.S. App. D.C. 351).

##### Applicable law

Under Uniform Commercial Code, burden of a holder to prove himself a holder in due course applied to case in which trial occurred after Code's effective date, even though entire transaction occurred prior to such effective date. *United Securities Corp v. Bruton* (D.C. App. 1965, 213 A. 2d 892).

##### Bad faith

Knowledge of collateral fraudulent transactions of negotiator of note is circumstance bearing on whether particular note was taken in bad faith. *Blow v. Ammerman* (1965, 350 F. 2d 729, 121 U.S. App. D.C. 351).

##### Burden of proof

In the case, the court held that the assignee of conditional sale contract and note, that called for "time price"

more than 8% greater than balance due, did not establish that transaction was not usurious, and thus did not establish that it was holder in due course, since there was no showing that "finance charge" or "carrying charge" was included to compensate seller for expense other than price of loan. *L. Fuller v. Universal Acceptance Corporation* (D.C. App. 1970, 264 A. 2d 506).

In a case where payee transferred nonnegotiable money orders, the transferee, although not holder in due course, could establish a case against the payor, which had stopped payment on the money orders, by production of instruments and burden of proving want of consideration or any other defense was upon the payor. *Nation-Wide Check Corporation v. A. J. Banks et ano.* (D.C. App. 1969, 260 A. 2d 367).

Under Uniform Commercial Code the burden was on holder of purchase price note, where defense of defective workmanship in article sold was shown, to prove that it was in all respects a holder in due course, and such burden was not sustained where only evidence offered by holder to establish its status as such holder was that it purchased note on date shown on endorsement. *United Securities Corp v. Bruton* (D.C. App. 1965, 213 A. 2d 892).

##### Establishment of a defense

Without introduction of some evidence, the defenses of failure of consideration, fraud, and usury raised by the signer of note in his pleading, did not constitute "establishment of a defense" under statute providing that once signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense. *Calvert Credit Corporation v. I. J. Humble* (D.C. App. 1969, 249 A. 2d 518).

##### Forfeiture of interest

In this case the court held that the assignee of a conditional sales contract and note was not entitled to recover "finance charge" or "carrying charge" which exceeded 8% per annum since the assignee did not establish that it was holder in due course and that transaction was not usurious. *L. Fuller v. Universal Acceptance Corporation* (D.C. App. 1970, 264 A. 2d 506).

##### Question of fact

Question whether holder of second note, which had been given for allegedly fraudulent painting, was holder in due course, in these circumstances, so as to be entitled to recover on note was issue of fact. *Blow v. Ammerman* (1965, 350 F. 2d 729, 121 U.S. App. D.C. 351).

It was error to grant summary judgment in favor of holder of second note, which had been given for allegedly fraudulent painting sold to maker by transferor of holder, where issue was sufficient to raise a jury issue as to bad faith on part of holder of note. *Id.*

#### PART 4.—LIABILITY OF PARTIES

#### § 28:3-401. Signature

(1) No person is liable on an instrument unless his signature appears thereon.

(2) A signature is made by use of any name, including any trade or assumed name, upon an instrument, or by any word or mark used in lieu of a written signature. (Dec. 30, 1963, 77 Stat. 682, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:3-102.

#### § 28:3-402. Signature in ambiguous capacity

Unless the instrument clearly indicates that a signature is made in some other capacity it is an indorsement. (Dec. 30, 1963, 77 Stat. 682, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:3-403. Signature by authorized representative

(1) A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation. No



particular form of appointment is necessary to establish such authority.

(2) An authorized representative who signs his own name to an instrument

(a) is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;

(b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

(3) Except as otherwise established the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity. (Dec. 30, 1963, 77 Stat. 682, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:3-404. Unauthorized signatures

(1) Any unauthorized signature is wholly inoperative as that of the person whose name is signed unless he ratifies it or is precluded from denying it; but it operates as the signature of the unauthorized signer in favor of any person who in good faith pays the instrument or takes it for value.

(2) Any unauthorized signature may be ratified for all purposes of this article. Such ratification does not of itself affect any rights of the person ratifying against the actual signer. (Dec. 30, 1963, 77 Stat. 682, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### NOTES TO DECISIONS

##### Evidence—Sufficiency

In a depositor's action against bank for reimbursement for bank's payment of allegedly forged checks, the court held that the fact that checks charged to depositor's checking account were not reflected in depositor's own records, which checks were not produced in evidence, did not provide a basis upon which the jury could reasonably have inferred or found that the missing checks were drawn by a forger and were, therefore, improperly charged to the depositor's account. *B. G. Myrick v. National Savings & Trust Company* (D.C. App. 1970, 268 A. 2d 526).

#### § 28:3-405. Impostors; signature in name of payee

(1) An indorsement by any person in the name of a named payee is effective if

(a) an imposter by use of the mails or otherwise has induced the maker or drawer to issue the instrument to him or his confederate in the name of the payee; or

(b) a person signing as or on behalf of a maker or drawer intends the payee to have no interest in the instrument; or

(c) an agent or employee of the maker or drawer has supplied him with the name of the payee intending the latter to have no such interest.

(2) Nothing in this section shall affect the criminal or civil liability of the person so indorsing. (Dec. 30, 1963, 77 Stat. 683, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:3-406. Negligence contributing to alteration or unauthorized signature

Any person who by his negligence substantially contributes to a material alteration of the instrument or to the making of an unauthorized signature is precluded from asserting the alteration or lack of authority against a holder in due course or against a drawee or other payor who pays the instrument in good faith and in accordance with the reasonable commercial standards of the drawee's or payor's business. (Dec. 30, 1963, 77 Stat. 683, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### NOTES TO DECISIONS

##### Negligence

"In a depositor's action against bank for reimbursement for bank's payment of allegedly forged checks, the court held that the depositor was negligent as a matter of law in failing to inquire of bank as to her lack of receipt of monthly statements and cancelled checks, especially after bank informed depositor that bank's records showed she had no money in her account, and this negligence substantially contributed to the making of an unauthorized signature and depositor was precluded from asserting lack of bank's authority to pay allegedly forged checks. *B. G. Myrick v. National Savings & Trust Company* (D.C. App. 1970, 268 A. 2d 526).

#### § 28:3-407. Alteration

(1) Any alteration of an instrument is material which changes the contract of any party thereto in any respect, including any such change in

(a) the number or relations of the parties; or

(b) an incomplete instrument, by completing it otherwise than as authorized; or

(c) the writing as signed, by adding to it or by removing any part of it.

(2) As against any person other than a subsequent holder in due course

(a) alteration by the holder which is both fraudulent and material discharges any party whose contract is thereby changed unless that party assents or is precluded from asserting the defense;

(b) no other alteration discharges any party and the instrument may be enforced according to its original tenor, or as to incomplete instruments according to the authority given.

(3) A subsequent holder in due course may in all cases enforce the instrument according to its original tenor, and when an incomplete instrument has been completed, he may enforce it as completed. (Dec. 30, 1963, 77 Stat. 683, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:3-102, 28:3-115, 28:3-601.

#### § 28:3-408. Consideration

Want or failure of consideration is a defense as against any person not having the rights of a holder in due course (section 28:3-305), except that no consideration is necessary for an instrument or obligation thereon given in payment of or as security for an antecedent obligation of any kind. Nothing in this section shall be taken to displace any statute outside this subtitle under which a promise is enforceable notwithstanding lack or failure of consideration. Partial failure of consideration is a defense



pro tanto whether or not the failure is in an ascertained or liquidated amount. (Dec. 30, 1963, 77 Stat. 683, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:3-306.

§ 28:3-409. Draft not an assignment

(1) A check or other draft does not of itself operate as an assignment of any funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until he accepts it.

(2) Nothing in this section shall affect any liability in contract, tort or otherwise arising from any letter of credit or other obligation or representation which is not an acceptance. (Dec. 30, 1963, 77 Stat. 683, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-410. Definition and operation of acceptance

(1) Acceptance is the drawee's signed engagement to honor the draft as presented. It must be written on the draft, and may consist of his signature alone. It becomes operative when completed by delivery or notification.

(2) A draft may be accepted although it has not been signed by the drawer or is otherwise incomplete or is overdue or has been dishonored.

(3) Where the draft is payable at a fixed period after sight and the acceptor fails to date his acceptance the holder may complete it by supplying a date in good faith. (Dec. 30, 1963, 77 Stat. 684, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:3-102, 28:4-104, 28:5-103.

§ 28:3-411. Certification of a check

(1) Certification of a check is acceptance. Where a holder procures certification the drawer and all prior indorsers are discharged.

(2) Unless otherwise agreed a bank has no obligation to certify a check.

(3) A bank may certify a check before returning it for lack of proper indorsement. If it does so the drawer is discharged. (Dec. 30, 1963, 77 Stat. 684, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:3-102, 28:3-601, 28:4-104.

§ 28:3-412. Acceptance varying draft

(1) Where the drawee's proffered acceptance in any manner varies the draft as presented the holder may refuse the acceptance and treat the draft as dishonored in which case the drawee is entitled to have his acceptance cancelled.

(2) The terms of the draft are not varied by an acceptance to pay at any particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at such bank or place.

(3) Where the holder assents to an acceptance varying the terms of the draft each drawer and indorser who does not affirmatively assent is discharged. (Dec. 30, 1963, 77 Stat. 684, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:3-601.

§ 28:3-413. Contract of maker, drawer and acceptor

(1) The maker or acceptor engages that he will pay the instrument according to its tenor at the time of his engagement or as completed pursuant to section 28:3-115 on incomplete instruments.

(2) The drawer engages that upon dishonor of the draft and any necessary notice of dishonor or protest he will pay the amount of the draft to the holder or to any indorser who takes it up. The drawer may disclaim this liability by drawing without recourse.

(3) By making, drawing or accepting the party admits as against all subsequent parties including the drawee the existence of the payee and his then capacity to indorse. (Dec. 30, 1963, 77 Stat. 684, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-414. Contract of indorser; order of liability

(1) Unless the indorsement otherwise specifies (as by such words as "without recourse") every indorser engages that upon dishonor and any necessary notice of dishonor and protest he will pay the instrument according to its tenor at the time of his indorsement to the holder or to any subsequent indorser who takes it up, even though the indorser who takes it up was not obligated to do so.

(2) Unless they otherwise agree indorsers are liable to one another in the order in which they indorse, which is presumed to be the order in which their signatures appear on the instrument. (Dec. 30, 1963, 77 Stat. 684, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-415. Contract of accommodation party

(1) An accommodation party is one who signs the instrument in any capacity for the purpose of lending his name to another party to it.

(2) When the instrument has been taken for value before it is due the accommodation party is liable in the capacity in which he has signed even though the taker knows of the accommodation.

(3) As against a holder in due course and without notice of the accommodation oral proof of the accommodation is not admissible to give the accommodation party the benefit of discharges dependent on his character as such. In other cases the accommodation character may be shown by oral proof.

(4) An indorsement which shows that it is not in the chain of title is notice of its accommodation character.

(5) An accommodation party is not liable to the party accommodated, and if he pays the instrument has a right of recourse on the instrument against such party. (Dec. 30, 1963, 77 Stat. 684, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:3-102.

§ 28:3-416. Contract of guarantor

(1) "Payment guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor without resort by the holder to any other party.



(2) "Collection guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor, but only after the holder has reduced his claim against the maker or acceptor to judgment and execution has been returned unsatisfied, or after the maker or acceptor has become insolvent or it is otherwise apparent that it is useless to proceed against him.

(3) Words of guaranty which do not otherwise specify guarantee payment.

(4) No words of guaranty added to the signature of a sole maker or acceptor affect his liability on the instrument. Such words added to the signature of one of two or more makers or acceptors create a presumption that the signature is for the accommodation of the others.

(5) When words of guaranty are used presentment, notice of dishonor and protest are not necessary to charge the user.

(6) Any guaranty written on the instrument is enforceable notwithstanding any statute of frauds. (Dec. 30, 1963, 77 Stat. 685, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:3-417. Warranties on presentment and transfer

(1) Any person who obtains payment or acceptance and any prior transferor warrants to a person who in good faith pays or accepts that

(a) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by a holder in due course acting in good faith

(i) to a maker with respect to the maker's own signature; or

(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(iii) to an acceptor of a draft if the holder in due course took the draft after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(c) the instrument has not been materially altered, except that this warranty is not given by a holder in due course acting in good faith

(i) to the maker of a note; or

(ii) to the drawer of a draft whether or not the drawer is also the drawee; or

(iii) to the acceptor of a draft with respect to an alteration made prior to the acceptance if the holder in due course took the draft after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

(iv) to the acceptor of a draft with respect to an alteration made after the acceptance.

(2) Any person who transfers an instrument and receives consideration warrants to his transferee and if the transfer is by indorsement to any subsequent holder who takes the instrument in good faith that

(a) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

(b) all signatures are genuine or authorized; and

(c) the instrument has not been materially altered; and

(d) no defense of any party is good against him; and

(e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted instrument.

(3) By transferring "without recourse" the transferor limits the obligation stated in subsection (2) (d) to a warranty that he has no knowledge of such a defense.

(4) A selling agent or broker who does not disclose the fact that he is acting only as such gives the warranties provided in this section, but if he makes such disclosure warrants only his good faith and authority. (Dec. 30, 1963, 77 Stat. 685, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:3-418. Finality of payment or acceptance

Except for recovery of bank payments as provided in the article on bank deposits and collections (article 4) and except for liability for breach of warranty on presentment under the preceding section, payment or acceptance of any instrument is final in favor of a holder in due course, or a person who has in good faith changed his position in reliance on the payment. (Dec. 30, 1963, 77 Stat. 686, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:3-419. Conversion of instrument; innocent representative

(1) An instrument is converted when

(a) a drawee to whom it is delivered for acceptance refuses to return it on demand; or

(b) any person to whom it is delivered for payment refuses on demand either to pay or to return it; or

(c) it is paid on a forged indorsement.

(2) In an action against a drawee under subsection (1) the measure of the drawee's liability is the face amount of the instrument. In any other action under subsection (1) the measure of liability is presumed to be the face amount of the instrument.

(3) Subject to the provisions of this subtitle concerning restrictive indorsements a representative, including a depository or collecting bank, who has a good faith and in accordance with the reasonable commercial standards applicable to the business of such representative dealt with an instrument or its proceeds on behalf of one who was not the true owner is not liable in conversion or otherwise to the true owner beyond the amount of any proceeds remaining in his hands.

(4) An intermediary bank or payor bank which is not a depository bank is not liable in conversion solely by reason of the fact that proceeds of an item indorsed restrictively (sections 28:3-205 and 28:3-206) are not paid or applied consistently with the



restrictive indorsement of an indorser other than its immediate transferor. (Dec. 30, 1963, 77 Stat. 686, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:4-203.

PART 5.—PRESENTMENT, NOTICE OF DISHONOR  
AND PROTEST

§ 28:3-501. When presentment, notice of dishonor, and protest necessary or permissible

(1) Unless excused (section 28:3-511) presentment is necessary to charge secondary parties as follows:

(a) presentment for acceptance is necessary to charge the drawer and indorsers of a draft where the draft so provides, or is payable elsewhere than at the residence or place of business of the drawee, or its date of payment depends upon such presentment. The holder may at his option present for acceptance any other draft payable at a stated date;

(b) presentment for payment is necessary to charge any indorser;

(c) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, presentment for payment is necessary, but failure to make presentment discharges such drawer, acceptor or maker only as stated in section 28:3-502(1)(b).

(2) Unless excused (section 28:3-511)

(a) notice of any dishonor is necessary to charge any endorser;

(b) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, notice of any dishonor is necessary, but failure to give such notice discharges such drawer, acceptor or maker only as stated in section 28:3-502(1)(b).

(3) Unless excused (section 28:3-511) protest of any dishonor is necessary to charge the drawer and indorsers of any draft which on its face appears to be drawn or payable outside of the states and territories of the United States and the District. The holder may at his option make protest of any dishonor of any other instrument and in the case of a foreign draft may on insolvency of the acceptor before maturity make protest for better security.

(4) Notwithstanding any provision of this section, neither presentment nor notice of dishonor nor protest is necessary to charge an indorser who has indorsed an instrument after maturity. (Dec. 30, 1963, 77 Stat. 687, Pub. L. 88-243, § 1, eff. Jan. 1, 1965; Aug. 30, 1964, 78 Stat. 679, Pub. L. 88-509, § 5.)

AMENDMENT

1964—Section 5 of act Aug. 30, 1964, effective Jan. 1, 1965, amended the first sentence of clause (1)(a) by changing the word "that" to "than".

§ 28:3-502. Unexcused delay; discharge

(1) Where without excuse any necessary presentment or notice of dishonor is delayed beyond the time when it is due

(a) any indorser is discharged; and

(b) any drawer or the acceptor of a draft payable at a bank or the maker of a note payable at

a bank who because the drawee or payor bank becomes insolvent during the delay is deprived of funds maintained with the drawee or payor bank to cover the instrument may discharge his liability by written assignment to the holder of his rights against the drawee or payor bank in respect of such funds, but such drawer, acceptor or maker is not otherwise discharged.

(2) Where without excuse a necessary protest is delayed beyond the time when it is due any drawer or indorser is discharged. (Dec. 30, 1963, 77 Stat. 687, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:3-501, 28:3-601.

§ 28:3-503. Time of presentment

(1) Unless a different time is expressed in the instrument the time for any presentment is determined as follows:

(a) where an instrument is payable at or a fixed period after a stated date any presentment for acceptance must be made on or before the date it is payable;

(b) where an instrument is payable after sight it must either be presented for acceptance or negotiated within a reasonable time after date or issue whichever is later;

(c) where an instrument shows the date on which it is payable presentment for payment is due on that date;

(d) where an instrument is accelerated presentment for payment is due within a reasonable time after the acceleration;

(e) with respect to the liability of any secondary party presentment for acceptance or payment of any other instrument is due within a reasonable time after such party becomes liable thereon.

(2) A reasonable time for presentment is determined by the nature of the instrument, any usage of banking or trade and the facts of the particular case. In the case of an uncertified check which is drawn and payable within the United States and which is not a draft drawn by a bank the following are presumed to be reasonable periods within which to present for payment or to initiate bank collection:

(a) with respect to the liability of the drawer, thirty days after date or issue whichever is later; and

(b) with respect to the liability of an indorser, seven days after his indorsement.

(3) Where any presentment is due on a day which is not a full business day for either the person making presentment or the party to pay or accept, presentment is due on the next following day which is a full business day for both parties.

(4) Presentment to be sufficient must be made at a reasonable hour, and if at a bank during its banking day. (Dec. 30, 1963, 77 Stat. 687, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-504. How presentment made

(1) Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder.

(2) Presentment may be made



(a) by mail, in which event the time of presentment is determined by the time of receipt of the mail; or

(b) through a clearing house; or

(c) at the place of acceptance or payment specified in the instrument or if there be none at the place of business or residence of the party to accept or pay. If neither the party to accept or pay nor anyone authorized to act for him is present or accessible at such place presentment is excused.

(3) It may be made

(a) to any one of two or more makers, acceptors, drawees or other payors; or

(b) to any person who has authority to make or refuse the acceptance or payment

(4) A draft accepted or a note made payable at a bank in the United States must be presented at such bank.

(5) In the cases described in section 28:4-210 presentment may be made in the manner and with the result stated in that section. (Dec. 30, 1963, 77 Stat. 688, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:3-102, 28:4-104.

### § 28:3-505. Rights of party to whom presentment is made

(1) The party to whom presentment is made may without dishonor require

(a) exhibition of the instrument; and

(b) reasonable identification of the person making presentment and evidence of his authority to make it if made for another; and

(c) that the instrument be produced for acceptance or payment at a place specified in it, or if there be none at any place reasonable in the circumstances; and

(d) a signed receipt on the instrument for any partial or full payment and its surrender upon full payment.

(2) Failure to comply with any such requirement invalidates the presentment but the person presenting has a reasonable time in which to comply and the time for acceptance or payment runs from the time of compliance. (Dec. 30, 1963, 77 Stat. 688, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:4-210.

### § 28:3-506. Time allowed for acceptance or payment

(1) Acceptance may be deferred without dishonor until the close of the next business day following presentment. The holder may also in good faith effort to obtain acceptance and without either dishonor of the instrument or discharge of secondary parties allow postponement of acceptance for an additional business day.

(2) Except as a longer time is allowed in the case of documentary drafts drawn under a letter of credit, and unless an earlier time is agreed to by the party to pay, payment of an instrument may be deferred without dishonor pending reasonable examination to determine whether it is properly payable, but payment must be made in any event before the close of business on the day of presentment.

(Dec. 30, 1963, 77 Stat. 689, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

### § 28:3-507. Dishonor; holder's right of recourse; term allowing re-presentment

(1) An instrument is dishonored when

(a) a necessary or optional presentment is duly made and due acceptance or payment is refused or cannot be obtained within the prescribed time or in case of bank collections the instrument is seasonably returned by the midnight deadline (section 28:4-301); or

(b) presentment is excused and the instrument is not duly accepted or paid.

(2) Subject to any necessary notice of dishonor and protest, the holder has upon dishonor an immediate right of recourse against the drawers and indorsers.

(3) Return of an instrument for lack of proper indorsement is not dishonor.

(4) A term in a draft or an indorsement thereof allowing a stated time for re-presentment in the event of any dishonor of the draft by nonacceptance if a time draft or by nonpayment if a sight draft gives the holder as against any secondary party bound by the term an option to waive the dishonor without affecting the liability of the secondary party and he may present again up to the end of the stated time. (Dec. 30, 1963, 77 Stat. 689, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2-103, 28:3-102.

### § 28:3-508. Notice of dishonor

(1) Notice of dishonor may be given to any person who may be liable on the instrument by or on behalf of the holder or any party who has himself received notice, or any other party who can be compelled to pay the instrument. In addition an agent or bank in whose hands the instrument is dishonored may give notice to his principal or customer or to another agent or bank from which the instrument was received.

(2) Any necessary notice must be given by a bank before its midnight deadline and by any other person before midnight of the third business day after dishonor or receipt of notice of dishonor.

(3) Notice may be given in any reasonable manner. It may be oral or written and in any terms which identify the instrument and state that it has been dishonored. A misdescription which does not mislead the party notified does not vitiate the notice. Sending the instrument bearing a stamp, ticket or writing stating that acceptance or payment has been refused or sending a notice of debit with respect to the instrument is sufficient.

(4) Written notice is given when sent although it is not received.

(5) Notice to one partner is notice to each although the firm has been dissolved.

(6) When any party is in insolvency proceedings instituted after the issue of the instrument notice may be given either to the party or to the representative of his estate.



(7) When any party is dead or incompetent notice may be sent to his last known address or given to his personal representative.

(8) Notice operates for the benefit of all parties who have rights on the instrument against the party notified. (Dec. 30, 1963, 77 Stat. 689, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:3-102, 28:4-104.

### § 28:3-509. Protest; noting for protest

(1) A protest is a certificate or dishonor made under the hand and seal of a United States consul or vice consul or a notary public or other person authorized to certify dishonor by the law of the place where dishonor occurs. It may be made upon information satisfactory to such person.

(2) The protest must identify the instrument and certify either that due presentment has been made or the reason why it is excused and that the instrument has been dishonored by nonacceptance or nonpayment.

(3) The protest may also certify that notice of dishonor has been given to all parties or to specified parties.

(4) Subject to subsection (5) any necessary protest is due by the time that notice of dishonor is due.

(5) If, before protest is due, an instrument has been noted for protest by the officer to make protest, the protest may be made at any time thereafter as of the date of the noting. (Dec. 30, 1963, 77 Stat. 690, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:3-102, 28:4-104.

### § 28:3-510. Evidence of dishonor and notice of dishonor

The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor therein shown:

(a) a document regular in form as provided in the preceding section which purports to be a protest;

(b) the purported stamp or writing of the drawee, payor bank or presenting bank on the instrument or accompanying it stating that acceptance or payment has been refused for reasons consistent with dishonor;

(c) any book or record of the drawee, payor bank, or any collecting bank kept in the usual course of business which shows dishonor, even though there is no evidence of who made the entry. (Dec. 30, 1963, 77 Stat. 690, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

### § 28:3-511. Waived or excused presentment, protest or notice of dishonor or delay therein

(1) Delay in presentment, protest or notice of dishonor is excused when the party is without notice that it is due or when the delay is caused by circumstances beyond his control and he exercises reasonable diligence after the cause of the delay ceases to operate.

(2) Presentment or notice or protest as the case may be is entirely excused when

(a) the party to be charged has waived it expressly or by implication either before or after it is due; or

(b) such party has himself dishonored the instrument or has countermanded payment or otherwise has no reason to expect or right to require that the instrument be accepted or paid; or

(c) by reasonable diligence the presentment or protest cannot be made or the notice given.

(3) Presentment is also entirely excused when

(a) the maker, acceptor or drawee of any instrument except a documentary draft is dead or in insolvency proceedings instituted after the issue of the instrument; or

(b) acceptance or payment is refused but not for want of proper presentment.

(4) Where a draft has been dishonored by nonacceptance a later presentment for payment and any notice of dishonor and protest for nonpayment are excused unless in the meantime the instrument has been accepted.

(5) A waiver of protest is also a waiver of presentment and of notice of dishonor even though protest is not required.

(6) Where a waiver of presentment or notice or protest is embodied in the instrument itself it is binding upon all parties; but where it is written above the signature of an indorser it binds him only. (Dec. 30, 1963, 77 Stat. 690, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:3-501.

### PART 6.—DISCHARGE

### § 28:3-601. Discharge of parties

(1) The extent of the discharge of any party from liability on an instrument is governed by the sections on

(a) payment or satisfaction (section 28:3-603); or

(b) tender of payment (section 28:3-604); or

(c) cancellation or renunciation (section 28:3-605); or

(d) impairment of right of recourse or of collateral (section 28:3-606); or

(e) reacquisition of the instrument by a prior party (section 28:3-208); or

(f) fraudulent and material alteration (section 28:3-407); or

(g) certification of a check (section 28:3-411); or

(h) acceptance varying a draft (section 28:3-412); or

(i) unexcused delay in presentment or notice of dishonor or protest (section 28:3-502).

(2) Any party is also discharged from his liability on an instrument to another party by any other act or agreement with such party which would discharge his simple contract for the payment of money.

(3) The liability of all parties is discharged when any party who has himself no right of action or recourse on the instrument

(a) reacquires the instrument in his own right; or



(b) is discharged under any provision of this article except as otherwise provided with respect to discharge for impairment of recourse or of collateral (section 28:3-606).

(Dec. 30, 1963, 77 Stat. 691, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:3-602. Effect of discharge against holder in due course

No discharge of any party provided by this article is effective against a subsequent holder in due course unless he has notice thereof when he takes the instrument. (Dec. 30, 1963, 77 Stat. 691, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:3-603. Payment or satisfaction

(1) The liability of any party is discharged to the extent of his payment or satisfaction to the holder even though it is made with knowledge of a claim of another person to the instrument unless prior to such payment or satisfaction the person making the claim either supplies indemnity deemed adequate by the party seeking the discharge or enjoins payment or satisfaction by order of a court of competent jurisdiction in an action in which the adverse claimant and the holder are parties. This subsection does not, however, result in the discharge of the liability

(a) of a party who in bad faith pays or satisfies a holder who acquired the instrument by theft or who (unless having the rights of a holder in due course) holds through one who so acquired it; or

(b) of a party (other than an intermediary bank or a payor bank which is not a depository bank) who pays or satisfies the holder of an instrument which has been restrictively indorsed in a manner not consistent with the terms of such restrictive indorsement.

(2) Payment or satisfaction may be made with the consent of the holder by any person including a stranger to the instrument. Surrender of the instrument to such a person gives him the rights of a transferee (section 28:3-201). (Dec. 30, 1963, 77 Stat. 691, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

##### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:3-301, 28:3-601.

#### § 28:3-604. Tender of payment

(1) Any party making tender of full payment to a holder when or after it is due is discharged to the extent of all subsequent liability for interest, costs, and attorney's fees.

(2) The holder's refusal of such tender wholly discharges any party who has a right of recourse against the party making the tender.

(3) Where the maker or acceptor of an instrument payable otherwise than on demand is able and ready to pay at every place of payment specified in the instrument when it is due, it is equivalent to tender. (Dec. 30, 1963, 77 Stat. 682, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

##### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:3-118, 28:3-601.

#### § 28:3-605. Cancellation and renunciation

(1) The holder of an instrument may even without consideration discharge any party.

(a) in any manner apparent on the face of the instrument or the indorsement, as by intentionally cancelling the instrument or the party's signature by destruction or mutilation, or by striking out the party's signature; or

(b) by renouncing his rights by a writing signed and delivered or by surrender of the instrument to the party to be discharged.

(2) Neither cancellation nor renunciation without surrender of the instrument affects the title thereto. (Dec. 30, 1963, 77 Stat. 692, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

##### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:3-601.

#### § 28:3-606. Impairment of recourse or of collateral

(1) The holder discharges any party to the instrument to the extent that without such party's consent the holder

(a) without express reservation of rights releases or agrees not to sue any person against whom the party has to the knowledge of the holder a right of recourse or agrees to suspend the right to enforce against such person the instrument or collateral or otherwise discharges such person, except that failure or delay in effecting any required presentment, protest or notice of dishonor with respect to any such person does not discharge any party as to whom presentment, protest or notice of dishonor is effective or unnecessary; or

(b) unjustifiably impairs any collateral for the instrument given by or on behalf of the party or any person against whom he has a right of recourse.

(2) By express reservation of rights against a party with a right of recourse the holder preserves

(a) all his rights against such party as of the time when the instrument was originally due; and

(b) the right of the party to pay the instrument as of that time; and

(c) all rights of such party to recourse against others.

(Dec. 30, 1963, 77 Stat. 692, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

##### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:3-601.

#### PART 7.—ADVICE OF INTERNATIONAL SIGHT DRAFT

#### § 28:3-701. Letter of advice of international sight draft

(1) A "letter of advice" is a drawer's communication to the drawee that a described draft has been drawn.

(2) Unless otherwise agreed when a bank receives from another bank a letter of advice of an international sight draft the drawee bank may immediately debit the drawer's account and stop the running of interest pro tanto. Such a debit and any resulting credit to any account covering outstanding drafts leaves in the drawer full power to stop payment or otherwise dispose of the amount and creates no trust or interest in favor of the holder.

(3) Unless otherwise agreed and except where a draft is drawn under a credit issued by the drawee, the drawee of an international sight draft owes the



drawer no duty to pay an unadvised draft but if it does so and the draft is genuine, may appropriately debit the drawer's account. (Dec. 30, 1963, 77 Stat. 693, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### PART 8.—MISCELLANEOUS

##### § 28:3-801. Drafts in a set

(1) Where a draft is drawn in a set of parts, each of which is numbered and expressed to be an order only if no other part has been honored, the whole of the parts constitutes one draft but a taker of any part may become a holder in due course of the draft.

(2) Any person who negotiates, indorses or accepts a single part of a draft drawn in a set thereby becomes liable to any holder in due course of that part as if it were the whole set, but as between different holders in due course to whom different parts have been negotiated the holder whose title first accrues has all rights to the draft and its proceeds.

(3) As against the drawee the first presented part of a draft drawn in a set is the part entitled to payment, or if a time draft to acceptance and payment. Acceptance of any subsequently presented part renders the drawee liable thereon under subsection (2). With respect both to a holder and to the drawer payment of a subsequently presented part of a draft payable at sight has the same effect as payment of a check notwithstanding an effective stop order (section 28:4-407).

(4) Except as otherwise provided in this section, where any part of a draft in a set is discharged by payment or otherwise the whole draft is discharged. (Dec. 30, 1963, 77 Stat. 693, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTIONS REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:3-112.

##### § 28:3-802. Effect of instrument on obligation for which it is given

(1) Unless otherwise agreed where an instrument is taken for an underlying obligation.

(a) the obligation is pro tanto discharged if a bank is drawer, maker or acceptor of the instrument and there is no recourse on the instrument against the underlying obligor; and

(b) in any other case the obligation is suspended pro tanto until the instrument is due or if it is payable on demand until its presentment. If the instrument is dishonored action may be maintained on either the instrument or the obligation; discharge of the underlying obligor on the instrument also discharges him on the obligation.

(2) The taking in good faith of a check which is not postdated does not of itself so extend the time on the original obligation as to discharge a surety. (Dec. 30, 1963, 77 Stat. 693, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2-511.

##### § 28:3-803. Notice to third party

Where a defendant is sued for breach of an obligation for which a third person is answerable over under this article he may give the third person written notice of the litigation, and the person notified

may then give similar notice to any other person who is answerable over to him under this article. If the notice states that the person notified may come in and defend and that if the person notified does not do so he will in any action against him by the person giving the notice be bound by any determination of fact common to the two litigations, then unless after reasonable receipt of the notice the person notified does come in and defend he is so bound. (Dec. 30, 1963, 77 Stat. 694, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

##### § 28:3-804. Lost, destroyed or stolen instruments

The owner of an instrument which is lost, whether by destruction, theft or otherwise, may maintain an action in his own name and recover from any party liable thereon upon due proof of his ownership, the facts which prevent his production of the instrument and its terms. The court may require security indemnifying the defendant against loss by reason of further claims on the instrument. (Dec. 30, 1963, 77 Stat. 694, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

##### § 28:3-805. Instruments not payable to order or to bearer

This article applies to any instrument whose terms do not preclude transfer and which is otherwise negotiable within this article but which is not payable to order or to bearer, except that there can be no holder in due course of such an instrument. (Dec. 30, 1963, 77 Stat. 694, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### NOTES TO DECISIONS

##### Burden of proof

In a case where payee transferred nonnegotiable money orders, the transferee, although not holder in due course, could establish a case against the payor, which had stopped payment on the money orders, by production of instruments and burden of proving want of consideration or any other defense was upon the payor. *Nation-Wide Check Corporation v. A. J. Banks et al.* (D.C. App. 1969, 260 A.2d 367).

#### Article 4.—BANK DEPOSITS AND COLLECTIONS

##### PART 1.—GENERAL PROVISIONS AND DEFINITIONS

###### Sec.

28:4-101. Short title.

28:4-102. Applicability.

28:4-103. Variation by agreement; measure of damages; certain action constituting ordinary care.

28:4-104. Definitions and index of definitions.

28:4-105. "Depository bank"; "intermediary bank"; "collecting bank"; "payor bank"; "presenting bank"; "remitting bank".

28:4-106. Separate office of a bank.

28:4-107. Time of receipt of items.

28:4-108. Delays.

28:4-109. Process of posting.

##### PART 2.—COLLECTION OF ITEMS: DEPOSITORY AND COLLECTING BANKS

28:4-201. Presumption and duration of agency status of collecting banks and provisional status of credits; applicability of article; item indorsed "pay any bank".

28:4-202. Responsibility for collection; when action reasonable.

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28:4-204. Methods of sending and presenting; sending direct to payor bank.

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Sec.

- 28:4-206. Transfer between banks.
- 28:4-207. Warranties of customer and collecting bank on transfer or presentment of items; time for claims.
- 28:4-208. Security interest of collecting bank in items, accompanying documents and proceeds.
- 28:4-209. When bank gives value for purposes of holder in due course.
- 28:4-210. Presentment by notice of item not payable by, through or at a bank; liability of secondary parties.
- 28:4-211. Media of remittance; provisional and final settlement in remittance cases.
- 28:4-212. Right of charge-back or refund.
- 28:4-213. Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal.
- 28:4-214. Insolvency and preference.

#### PART 3.—COLLECTION OF ITEMS: PAYOR BANKS

- 28:4-301. Deferred posting; recovery of payment by return of items; time of dishonor.
- 28:4-302. Payor bank's responsibility for late return of item.
- 28:4-303. When items subject to notice, stop-order, legal process or setoff; order in which items may be charged or certified.

#### PART 4.—RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

- 28:4-401. When bank may charge customer's account.
- 28:4-402. Bank's liability to customer for wrongful dishonor.
- 28:4-403. Customer's right to stop payment; burden of proof of loss.
- 28:4-404. Bank not obligated to pay check more than six months old.
- 28:4-405. Death or incompetence of customer.
- 28:4-406. Customer's duty to discover and report unauthorized signature or alteration.
- 28:4-407. Payor bank's right to subrogation on improper payment.

#### PART 5.—COLLECTION OF DOCUMENTARY DRAFTS

- 28:4-501. Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor.
- 28:4-502. Presentment of "on arrival" drafts.
- 28:4-503. Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need.
- 28:4-504. Privilege of presenting bank to deal with goods; security interest for expenses.

#### ARTICLE REFERRED TO IN OTHER SECTIONS

This article is referred to in sections 28:3-103, 28:3-418, 28:5-111.

#### PART 1.—GENERAL PROVISIONS AND DEFINITIONS

##### § 28:4-101. Short title

This article shall be known and may be cited as Uniform Commercial Code—Bank Deposits and Collections. (Dec. 30, 1963, 77 Stat. 695, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

##### § 28:4-102. Applicability

(1) To the extent that items within this article are also within the scope of articles 3 and 8, they are subject to the provisions of those articles. In the event of conflict the provisions of this article govern those of article 3 but the provisions of article 8 govern those of this article.

(2) The liability of a bank for action or non-action with respect to any item handled by it for purposes of presentment, payment or collection is

governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located. (Dec. 30, 1963, 77 Stat. 695, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:1-105.

##### § 28:4-103. Variation by agreement; measure of damages; certain action constituting ordinary care

(1) The effect of the provisions of this article may be varied by agreement except that no agreement can disclaim a bank's responsibility for its own lack of good faith or failure to exercise ordinary care or can limit the measure of damages for such lack or failure; but the parties may by agreement determine the standards by which such responsibility is to be measured if such standards are not manifestly unreasonable.

(2) Federal Reserve regulations and operating letters, clearing house rules, and the like, have the effect of agreements under subsection (1), whether or not specifically assented to by all parties interested in items handled.

(3) Action or non-action approved by this article or pursuant to Federal Reserve regulations or operating letters constitutes the exercise of ordinary care and, in the absence of special instructions, action or non-action consistent with clearing house rules and the like or with a general banking usage not disapproved by this article, prima facie constitutes the exercise of ordinary care.

(4) The specification or approval of certain procedures by this article does not constitute disapproval of other procedures which may be reasonable under the circumstances.

(5) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount which could not have been realized by the use of ordinary care, and where there is bad faith it includes other damages, if any, suffered by the party as a proximate consequence. (Dec. 30, 1963, 77 Stat. 695, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

##### § 28:4-104. Definitions and index of definitions

(1) In this article unless the context otherwise requires

(a) "Account" means any account with a bank and includes a checking, time, interest or savings account;

(b) "Afternoon" means the period of a day between noon and midnight;

(c) "Banking day" means that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions;

(d) "Clearing house" means any association of banks or other payors regularly clearing items;

(e) "Customer" means any person having an account with a bank or for whom a bank has agreed to collect items and includes a bank carrying an account with another bank;

(f) "Documentary draft" means any negotiable or nonnegotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft;



(g) "Item" means any instrument for the payment of money even though it is not negotiable but does not include money;

(h) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(i) "Properly payable" includes the availability of funds for payment at the time of decision to pay or dishonor;

(j) "Settle" means to pay in cash, by clearing house settlement, in a charge or credit or by remittance, or otherwise as instructed. A settlement may be either provisional or final;

(k) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(2) Other definitions applying to this article and the sections in which they appear are:

"Collecting bank". Section 28:4-105.

"Depository bank". Section 28:4-105.

"Intermediary bank". Section 28:4-105.

"Payor bank". Section 28:4-105.

"Presenting bank". Section 28:4-105.

"Remitting bank". Section 28:4-105.

(3) The following definitions in other articles apply to this article:

"Acceptance". Section 28:3-410.

"Certificate of deposit". Section 28:3-104.

"Certification". Section 28:3-411.

"Check". Section 28:3-104.

"Draft". Section 28:3-104.

"Holder in due course". Section 28:3-302.

"Notice of dishonor". Section 28:3-508.

"Presentment". Section 28:3-504.

"Protest". Section 28:3-509.

"Secondary party". Section 28:3-102.

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article. (Dec. 30, 1963, 77 Stat. 696, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:3-102, 28:5-103.

§ 28:4-105. "Depository bank"; "intermediary bank"; "collecting bank"; "payor bank"; "presenting bank"; "remitting bank"

In this article unless the context otherwise requires:

(a) "Depository bank" means the first bank to which an item is transferred for collection even though it is also the payor bank;

(b) "Payor bank" means a bank by which an item is payable as drawn or accepted;

(c) "Intermediary bank" means any bank to which an item is transferred in course of collection except the depository or payor bank;

(d) "Collecting bank" means any bank handling the item for collection except the payor bank;

(e) "Presenting bank" means any bank presenting an item except a payor bank;

(f) "Remitting bank" means any payor or intermediary bank remitting for an item.

(Dec. 30, 1963, 77 Stat. 697, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:3-102, 28:4-104, 28:8-102.

§ 28:4-106. Separate office of a bank

A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders shall be given under this article and under article 3. The receipt of any notice or order by or the knowledge of one branch or separate office of a bank is not actual or constructive notice to or knowledge of any other branch or office of the same bank and does not impair the right of another branch or office to be a holder in due course of an item. (Dec. 30, 1963, 77 Stat. 697, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:4-107. Time of receipt of items

(1) For the purpose of allowing time to process items, prove balances and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of two P.M. or later as a cut-off hour for the handling of money and items and the making of entries on its books.

(2) Any item or deposit of money received on any day after a cut-off hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day. (Dec. 30, 1963, 77 Stat. 697, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:4-108. Delays

(1) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment may, in the case of specific items and with or without the approval of any person involved, waive, modify or extend time limits imposed or permitted by this subtitle for a period not in excess of an additional banking day without discharge of secondary parties and without liability to its transferor or any prior party.

(2) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this subtitle or by instructions is excused if caused by interruption of communication facilities, suspension of payments by another bank, war, emergency conditions or other circumstances beyond the control of the bank provided it exercises such diligence as the circumstances require. (Dec. 30, 1963, 77 Stat. 697, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:4-109. Process of posting

The "process of posting" means the usual procedure followed by a payor bank in determining to pay an item and in recording the payment including one or more of the following or other steps as determined by the bank:

(a) verification of any signature;

(b) ascertaining that sufficient funds are available;

(c) affixing a "paid" or other stamp;



(d) entering a charge or entry to a customer's account;

(e) correcting or reversing an entry or erroneous action with respect to the item.

(Dec. 30, 1963, 77 Stat. 698, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

## PART 2.—COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS

### § 28:4-201. Presumption and duration of agency status of collecting banks and provisional status of credits; applicability of article; item indorsed "pay any bank"

(1) Unless a contrary intent clearly appears and prior to the time that a settlement given by a collecting bank for an item is or becomes final (subsection (3) of section 28:4-211 and sections 28:4-212 and 28:4-213) the bank is an agent or sub-agent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank such as those resulting from outstanding advances on the item and valid rights of setoff. When an item is handled by banks for purposes of presentment, payment and collection, the relevant provisions of this article apply even though action of parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(2) After an item has been indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder

(a) until the item has been returned to the customer initiating collection; or

(b) until the item has been specially indorsed by a bank to a person who is not a bank.

(Dec. 30, 1963, 77 Stat. 698, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

## NOTES TO DECISIONS

### Holder in due course

In a case where depositary bank gave its customer provisional credit on a check deposited with the bank and permitted customer to withdraw a portion of the credit before bank discovered that the drawers had stopped payment, bank was a holder in due course as to amount of provisional credit withdrawn and, in absence of applicable defenses as provided in section 28:3-305, could recover from drawers. *Falls Church Bank etc. v. Wesley Heights, Inc.* (D.C. App. 1969, 256 A. 2d 915).

### § 28:4-202. Responsibility for collection; when action seasonable

(1) A collecting bank must use ordinary care in

(a) presenting an item or sending it for presentment; and

(b) sending notice of dishonor or non-payment or returning an item other than a documentary draft to the bank's transferor or directly to the depositary bank under subsection (2) of section 28:4-212 after learning that the item has not been paid or accepted, as the case may be; and

(c) settling for an item when the bank receives final settlement; and

(d) making or providing for any necessary protest; and

(e) notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(2) A collecting bank taking proper action before its midnight deadline following receipt of an item, notice or payment acts seasonably; taking proper action within a reasonably longer time may be seasonable but the bank has the burden of so establishing.

(3) Subject to subsection (1) (a), a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of an item in transit or in the possession of others. (Dec. 30, 1963, 77 Stat. 698, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

### § 28:4-203. Effect of instructions

Subject to the provisions of article 3 concerning conversion of instruments (section 28:3-419) and the provisions of both article 3 and this article the bank or constitute notice to it and a collecting bank's transferor can give instructions which affect the bank or constitute notice to it and a collecting bank is not liable to prior parties for any action taken pursuant to such instructions or in accordance with any agreement with its transferor. (Dec. 30, 1963, 77 Stat. 699, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

### § 28:4-204. Methods of sending and presenting; sending direct to payor bank

(1) A collecting bank must send items by reasonably prompt method taking into consideration any relevant instructions, the nature of the item, the number of such items on hand, and the cost of collection involved and the method generally used by it or others to present such items.

(2) A collecting bank may send

(a) any item direct to the payor bank;

(b) any item to any non-bank payor if authorized by its transferor; and

(c) any item other than documentary drafts to any non-bank payor, if authorized by Federal Reserve regulation or operating letter, clearing house rule or the like.

(3) Presentment may be made by a presenting bank at a place where the payor bank has requested that presentment be made. (Dec. 30, 1963, 77 Stat. 699, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

### § 28:4-205. Supplying missing indorsement; no notice from prior indorsement

(1) A depositary bank which has taken an item for collection may supply any indorsement of the customer which is necessary to title unless the item contains the words "payee's indorsement required" or the like. In the absence of such a requirement a statement placed on the item by the depositary bank to the effect that the item was deposited by a customer or credited to his account is effective as the customer's indorsement.

(2) An intermediary bank, or payor bank which is not a depositary bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor.



(Dec. 30, 1963, 77 Stat. 699, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:4-206. Transfer between banks

Any agreed method which identifies the transferor bank is sufficient for the item's transfer to another bank. (Dec. 30, 1963, 77 Stat. 699, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:4-207. Warranties of customer and collecting bank on transfer or presentment of items; time for claims

(1) Each customer or collecting bank who obtains payment or acceptance of an item and each prior customer and collecting bank warrants to the payor bank or other payor who in good faith pays or accepts the item that

(a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith

(i) to a maker with respect to the maker's own signature; or

(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(iii) to an acceptor of an item if the holder in due course took the item after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(c) the item has not been materially altered, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith

(i) to the maker of a note; or

(ii) to the drawer of a draft whether or not the drawer is also the drawee; or

(iii) to the acceptor of an item with respect to an alteration made prior to the acceptance if the holder in due course took the item after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

(iv) to the acceptor of an item with respect to an alteration made after the acceptance.

(2) Each customer and collecting bank who transfers an item and receives a settlement or other consideration for it warrants to his transferee and to any subsequent collecting bank who takes the item in good faith that

(a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

(b) all signatures are genuine or authorized; and

(c) the item has not been materially altered; and

(d) no defense of any party is good against him; and

(e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted item.

In addition each customer and collecting bank so transferring an item and receiving a settlement or other consideration engages that upon dishonor and any necessary notice of dishonor and protest he will take up the item.

(3) The warranties and the engagement to honor set forth in the two preceding subsections arise notwithstanding the absence of indorsement of words of guaranty or warranty in the transfer or presentment and a collecting bank remains liable for their breach despite remittance to its transferor. Damages for breach of such warranties or engagement to honor shall not exceed the consideration received by the customer or collecting bank responsible plus finance charges and expenses related to the item, if any.

(4) Unless a claim for breach of warranty under this section is made within a reasonable time after the person claiming learns of the breach, the person liable is discharged to the extent of any loss caused by the delay in making claim. (Dec. 30, 1963, 77 Stat. 699, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:4-302.

#### § 28:4-208. Security interest of collecting bank in items, accompanying documents and proceeds

(1) A bank has a security interest in an item and any accompanying documents or the proceeds of either

(a) in case of an item deposited in an account to the extent to which credit given for the item has been withdrawn or applied;

(b) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon and whether or not there is a right of charge-back; or

(c) if it makes an advance on or against the item.

(2) When credit which has been given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. To the extent and so long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues and is subject to the provisions of article 9 except that

(a) no security agreement is necessary to make the security interest enforceable (subsection (1)

(b) of section 28:9-203); and

(b) no filing is required to perfect the security interest; and



(c) the security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds. (Dec. 30, 1963, 77 Stat. 700, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:1-201, 28:9-203, 28:9-302, 28:9-312.

#### NOTES TO DECISIONS

##### Holder in due course

Where bank, by debiting entire amount of dishonored check for \$149,266.44 against payee's account on receipt of notice of dishonor, found that payee was then overdrawn by \$721.48, and bank entered this figure on payee's balance statement as a deficit for that day in payee's account, and where had not payee's account been previously credited by bank with a \$2,823.33 check deposited subsequent to original receipt of dishonored check the overdraft at crucial time would have amounted to \$3,544.81, bank is a holder in due course for \$721.48, not \$3,544.81, since bank elected to apply the \$2,823.33 check to the deficit. *Security Bank v. Whiting Turner Contracting Co., Inc.* (D.C. App. 1971, 277 A. 2d 106).

In a case where depository bank gave its customer provisional credit on a check deposited with the bank and permitted customer to withdraw a portion of the credit before bank discovered that the drawers had stopped payment, bank was a holder in due course as to amount of provisional credit withdrawn and, in absence of applicable defenses as provided in section 28:3-305, could recover from drawers. *Falls Church Bank etc. v. Wesley Heights, Inc.* (D.C. App. 1969, 256 A. 2d 915).

#### § 28:4-209. When bank gives value for purposes of holder in due course

For purposes of determining its status as a holder in due course, the bank has given value to the extent that it has a security interest in an item provided that the bank otherwise complies with the requirements of section 28:3-302 on what constitutes a holder in due course. (Dec. 30, 1963, 77 Stat. 701, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:1-201.

#### NOTES TO DECISIONS

##### Holder in due course

Where bank, by debiting entire amount of dishonored check for \$149,266.44 against payee's account on receipt of notice of dishonor, found that payee was then overdrawn by \$721.48, and bank entered this figure on payee's balance statement as a deficit for that day in payee's account, and where had not payee's account been previously credited by bank with a \$2,823.33 check deposited subsequent to original receipt of dishonored check the overdraft at crucial time would have amounted to \$3,544.81, bank is a holder in due course for \$721.48, not \$3,544.81, since bank elected to apply the \$2,823.33 check to the deficit. *Security Bank v. Whiting Turner Contracting Co., Inc.* (D.C. App. 1971, 277 A. 2d 106).

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#### § 28:4-210. Presentment by notice of item not payable by, through or at a bank; liability of secondary parties

(1) Unless otherwise instructed, a collecting bank may present an item not payable by, through or at

a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet, any requirement of the party to accept or pay under section 28:3-505 by the close of the bank's next banking day after it knows of the requirement.

(2) Where presentment is made by notice and neither honor nor request for compliance with a requirement under section 28:3-505 is received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary party by sending him notice of the facts. (Dec. 30, 1963, 77 Stat. 701, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:3-504.

#### § 28:4-211. Media of remittance; provisional and final settlement in remittance cases

(1) A collecting bank may take in settlement of an item

(a) a check of the remitting bank or of another bank on any bank except the remitting bank; or

(b) a cashier's check or similar primary obligation of a remitting bank which is a member of or clears through a member of the same clearing house or group as the collecting bank; or

(c) appropriate authority to charge an account of the remitting bank or of another bank with the collecting bank; or

(d) if the item is drawn upon or payable by a person other than a bank, a cashier's check, certified check or other bank check or obligation.

(2) If before its midnight deadline the collecting bank properly dishonors a remittance check or authorization to charge on itself or presents or forwards for collection a remittance instrument of or on another bank which is of a kind approved by subsection (1) or has not been authorized by it, the collecting bank is not liable to prior parties in the event of the dishonor of such check, instrument or authorization.

(3) A settlement for an item by means of a remittance instrument or authorization to charge is or becomes a final settlement as to both the person making and the person receiving the settlement

(a) if the remittance instrument or authorization to charge is of a kind approved by subsection (1) or has not been authorized by the person receiving the settlement and in either case the person receiving the settlement acts seasonably before its midnight deadline in presenting, forwarding for collection or paying the instrument or authorization,—at the time the remittance instrument or authorization is finally paid by the payor by which it is payable;

(b) if the person receiving the settlement has authorized remittance by a non-bank check or obligation or by a cashier's check or similar primary obligation of or a check upon the payor or other remitting bank which is not of a kind approved by subsection (1) (b),—at the time of the



receipt of such remittance check or obligation; or

(c) if in a case not covered by sub-paragraphs (a) or (b) the person receiving the settlement fails to seasonably present, forward for collection, pay or return a remittance instrument or authorization to it to charge before its midnight deadline,—at such midnight deadline.

(Dec. 30, 1963, 77 Stat. 701, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:4-201, 28:4-212 to 28:4-214.

#### § 28:4-212. Right of charge-back or refund

(1) If a collecting bank has made provisional settlement with its customer for an item and itself fails by reason of dishonor, suspension of payments by a bank or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account or obtain refund from its customer whether or not it is able to return the items if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. These rights to revoke, charge-back and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final (subsection (3) of section 28:4-211 and subsections (2) and (3) of section 28:4-213).

(2) (Omitted.)

(3) A depository bank which is also the payor may charge-back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (section 28:4-301).

(4) The right to charge-back is not affected by

(a) prior use of the credit given for the item; or

(b) failure by any bank to exercise ordinary care with respect to the item but any bank so failing remains liable.

(5) A failure to charge-back or claim refund does not affect other rights of the bank against the customer or any other party.

(6) If credit is given in dollars as the equivalent of the value of an item payable in a foreign currency the dollar amount of any charge-back or refund shall be calculated on the basis of the buying sight rate for the foreign currency prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course. (Dec. 30, 1963, 77 Stat. 702, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:4-201, 28:4-202.

#### § 28:4-213. Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal

(1) An item is finally paid by a payor bank when the bank has done any of the following, whichever happens first:

(a) paid the item in cash; or

(b) settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement; or

(c) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith; or

(d) made a provisional settlement for the item and failed to revoke the settlement in the time rule or agreement.

and manner permitted by statute, clearing house Upon a final payment under subparagraphs (b), (c) or (d) the payor bank shall be accountable for the amount of the item.

(2) If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(3) If a collecting bank receives a settlement for an item which is or becomes final (subsection (3) of section 28:4-211, subsection (2) of section 28:4-213) the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(4) Subject to any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in an account with its customer becomes available for withdrawal as of right

(a) in any case where the bank has received a provisional settlement for the item,—when such settlement becomes final and the bank has had a reasonable time to learn that the settlement is final;

(b) in any case where the bank is both a depository bank and a payor bank and the item is finally paid,—at the opening of the bank's second banking day following receipt of the item.

(5) A deposit of money in a bank is final when made but, subject to any right of the bank to apply the deposit to an obligation of the customer, the deposit becomes available for withdrawal as of right at the opening of the bank's next banking day following receipt of the deposit. (Dec. 30, 1963, 77 Stat. 703, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:4-201, 28:4-212, 28:4-214, 28:4-301, 28:4-303.

#### § 28:4-214. Insolvency and preference

(1) Any item in or coming into the possession of a payor or collecting bank which suspends payment and which item is not finally paid shall be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(2) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of



the item has a preferred claim against the payor bank.

(3) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of certain time or the happening of certain events (subsection (3) of section 28:4-211, subsections (1) (d), (2) and (3) of section 28:4-213).

(4) If a collecting bank receives from subsequent parties settlement for an item which settlement is or becomes final and suspends payments without making a settlement for the item with its customer which is or becomes final, the owner of the item has a preferred claim against such collecting bank. (Dec. 30, 1963, 77 Stat. 703, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

### PART 3.—COLLECTION OF ITEMS: PAYOR BANKS

#### § 28:4-301. Deferred posting; recovery of payment by return of items; time of dishonor

(1) Where an authorized settlement for a demand item (other than a documentary draft) received by a payor bank otherwise than for immediate payment over the counter has been made before midnight of the banking day of receipt the payor bank may revoke the settlement and recover any payment if before it has made final payment (subsection (1) of section 28:4-213) and before its midnight deadline it

(a) returns the item; or

(b) sends written notice of dishonor or non-payment if the item is held for protest or is otherwise unavailable for return.

(2) If a demand item is received by a payor bank for credit on its books it may return such item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in the preceding subsection.

(3) Unless previous notice of dishonor has been sent an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(4) An item is returned:

(a) as to an item received through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with its rules; or

(b) in all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to his instructions.

(Dec. 30, 1963, 77 Stat. 704, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:3-507, 28:4-212.

#### § 28:4-302. Payor bank's responsibility for late return of item

In the absence of a valid defense such as breach of a presentment warranty (subsection (1) of section 28:4-207), settlement effected or the like, if an item is presented on and received by a payor bank the bank is accountable for the amount of

(a) a demand item other than a documentary draft whether properly payable or not if the bank, in any case where it is not also the depository bank, retains the item beyond midnight of the banking day of receipt without settling for it or, regardless of whether it is also the depository bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(b) any other properly payable item unless within the time allowed for acceptance or payment of that item the bank either accepts or pays the item or returns it and accompanying documents. (Dec. 30, 1963, 77 Stat. 704, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:4-303.

#### § 28:4-303. When items subject to notice, stop-order, legal process or setoff; order in which items may be charged or certified

(1) Any knowledge, notice or stop-order received by, legal process served upon or setoff exercised by a payor bank, whether or not effective under other rules of law to terminate, suspend or modify the bank's right or duty to pay an item or to charge its customer's account for the item, comes too late to so terminate, suspend or modify such right or duty if the knowledge, notice, stop-order or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the bank has done any of the following:

(a) accepted or certified the item;

(b) paid the item in cash;

(c) settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement;

(d) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item; or

(e) become accountable for the amount of the item under subsection (1) (d) of section 28:4-213 and section 28:4-302 dealing with the payor bank's responsibility for late return items.

(2) Subject to the provisions of subsection (1) items may be accepted, paid, certified or charged to the indicated account of its customer in any order convenient to the bank. (Dec. 30, 1963, 77 Stat. 705, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:4-403.

### PART 4.—RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

#### § 28:4-401. When bank may charge customer's account

(1) As against its customer, a bank may charge against his account any item which is otherwise properly payable from that account even though the charge creates an overdraft.

(2) A bank which in good faith makes payment to a holder may charge the indicated account of its customer according to



- (a) the original tenor of his altered item; or
- (b) the tenor of his completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

(Dec. 30, 1963, 77 Stat. 705, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:4-402. Bank's liability to customer for wrongful dishonor

A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. When the dishonor occurs through mistake liability is limited to actual damages proved. If so proximately caused and proved damages may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case. (Dec. 30, 1963, 77 Stat. 705, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:4-403. Customer's right to stop payment; burden of proof of loss

(1) A customer may by order to his bank stop payment of any item payable for his account but the order must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it prior to any action by the bank with respect to the item described in section 28:4-303. No such order shall be valid, however, unless it shall be in writing specifically describing the item to which it relates by stating the amount, date and payee thereof.

(2) Anything in this section 28:4-403 to the contrary notwithstanding, any stop payment order transmitted by telephone by a customer to an officer of a bank, while such officer is on the premises thereof, shall be accepted by such bank, upon such identification that will ensure the order has been transmitted by such customer, as an effective order for a period of twenty-four hours, after which time it shall no longer be valid unless followed by a written order as provided in this section 28:4-403. A written order is effective for only six months unless renewed in writing. The bank may, at its option and without liability, stop payment of an item after the expiration of a stop payment order or any renewal thereof relating to such item.

(3) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop payment order is on the customer. (Dec. 30, 1963, 77 Stat. 705, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:4-404.

#### § 28:4-404. Bank not obligated to pay check more than six months old

A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in the absence of an effective stop payment order in accordance with section 28:4-403. (Dec. 30, 1963, 77 Stat. 706, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:4-405. Death or incompetence of customer

(1) A payor or collecting bank's authority to accept, pay or collect an item or to account for proceeds of its collection if otherwise effective is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes such authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(2) Even with knowledge a bank may for ten days after the date of death pay or certify checks drawn on or prior to that date unless ordered to stop payment by a person claiming an interest in the account. (Dec. 30, 1963, 77 Stat. 706, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:4-406. Customer's duty to discover and report unauthorized signature or alteration

(1) When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof.

(2) If the bank establishes that the customer failed with respect to an item to comply with the duties imposed on the customer by subsection (1) the customer is precluded from asserting against the bank

(a) his unauthorized signature or any alteration on the item if the bank also establishes that it suffered a loss by reason of such failure; and

(b) an unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank after the first item and statement was available to the customer for a reasonable period not exceeding fourteen calendar days and before the bank receives notification from the customer of any such unauthorized signature or alteration.

(3) The preclusion under subsection (2) does not apply if the customer establishes lack of ordinary care on the part of the bank in paying the item(s).

(4) Without regard to care or lack of care of either the customer or the bank a customer who does not within one year from the time the statement and items are made available to the customer (subsection (1)) discover and report his unauthorized signature or any alteration on the face or back of the item or does not within three years from that time discover and report any unauthorized indorsement is precluded from asserting against the bank such unauthorized signature or indorsement or such alteration.

(5) If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails



upon request to assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim. (Dec. 30, 1963, 77 Stat. 706, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:4-407. Payor bank's right to subrogation on improper payment

If a payor bank has paid an item over the stop payment order of the drawer or maker or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank shall be subrogated to the rights

(a) of any holder in due course on the item against the drawer or maker; and

(b) of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

(c) of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

(Dec. 30, 1963, 77 Stat. 707, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:3-801.

#### PART 5.—COLLECTION OF DOCUMENTARY DRAFTS

#### § 28:4-501. Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor

A bank which takes a documentary draft for collection must present or send the draft and accompanying documents for presentment and upon learning that the draft has not been paid or accepted in due course must seasonably notify its customer of such fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right. (Dec. 30, 1963, 77 Stat. 707, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:4-502. Presentment of "on arrival" drafts

When a draft or the relevant instructions require presentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of such refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods. (Dec. 30, 1963, 77 Stat. 707, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:4-503. Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need

Unless otherwise instructed and except as provided in article 5 a bank presenting a documentary draft

(a) must deliver the documents to the drawee on acceptance of the draft if it is payable more

than three days after presentment; otherwise, only on payment; and

(b) upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or if the presenting bank does not choose to utilize his services it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor and must request instructions.

But the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for such expenses. (Dec. 30, 1963, 77 Stat. 707, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:4-504. Privilege of presenting bank to deal with goods; security interest for expenses

(1) A presenting bank which, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(2) For its reasonable expenses incurred by action under subsection (1) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien. (Dec. 30, 1963, 77 Stat. 708, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### Article 5.—LETTERS OF CREDIT

##### Sec.

- 28:5-101. Short title.
- 28:5-102. Scope.
- 28:5-103. Definitions.
- 28:5-104. Formal requirements; signing.
- 28:5-105. Consideration.
- 28:5-106. Time and effect of establishment of credit.
- 28:5-107. Advice of credit; confirmation; error in statement of terms.
- 28:5-108. "Notation credit"; exhaustion of credit.
- 28:5-109. Issuer's obligation to its customer.
- 28:5-110. Availability of credit in portions; presenter's reservation of lien or claim.
- 28:5-111. Warranties on transfer and presentment.
- 28:5-112. Time allowed for honor or rejection; withholding honor or rejection by consent; "presenter".
- 28:5-113. Indemnities.
- 28:5-114. Issuer's duty and privilege to honor; right to reimbursement.
- 28:5-115. Remedy for improper dishonor or anticipatory repudiation.
- 28:5-116. Transfer and assignment.
- 28:5-117. Insolvency of bank holding funds for documentary credit.

#### ARTICLE REFERRED TO IN OTHER SECTIONS

This article is referred to in section 28:7-509.

#### § 28:5-101. Short title

The article shall be known and may be cited as Uniform Commercial Code—Letters of Credit. (Dec. 30, 1963, 77 Stat. 708, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)



## § 28:5-102. Scope

## (1) This article applies

(a) to a credit issued by a bank if the credit requires a documentary draft or a documentary demand for payment; and

(b) to a credit issued by a person other than a bank if the credit requires that the draft or demand for payment be accompanied by a document of title; and

(c) to a credit issued by a bank or other person if the credit is not within subparagraphs (a) or (b) but conspicuously states that it is a letter of credit or is conspicuously so entitled.

(2) Unless the engagement meets the requirements of subsection (1), this article does not apply to engagements to make advances or to honor drafts or demands for payment, to authorities to pay or purchase, to guarantees or to general agreements.

(3) This article deals with some but not all of the rules and concepts of letters of credit as such rules or concepts have developed prior to this subtitle or may hereafter develop. The fact that this article states a rule does not by itself require, imply or negate application of the same or a converse rule to a situation not provided for or to a person not specified by this article. (Dec. 30, 1963, 77 Stat. 708, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:5-103, 28:5-104, 28:5-117.

## § 28:5-103. Definitions

(1) In this article unless the context otherwise requires

(a) "Credit" or "letter of credit" means an engagement by a bank or other person made at the request of a customer and of a kind within the scope of this article (section 28:5-102) that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. A credit may be either revocable or irrevocable. The engagement may be either an agreement to honor or a statement that the bank or other person is authorized to honor.

(b) A "documentary draft" or a "documentary demand for payment" is one honor of which is conditioned upon the presentation of a document or documents. "Document" means any paper including document of title, security, invoice, certificate, notice of default and the like.

(c) An "issuer" is a bank or other person issuing a credit.

(d) A "beneficiary" of a credit is a person who is entitled under its terms to draw or demand payment.

(e) An "advising bank" is a bank which gives notification of the issuance of a credit by another bank.

(f) A "confirming bank" is a bank which engages either that it will itself honor a credit already issued by another bank or that such a credit will be honored by the issuer or a third bank.

(g) A "customer" is a buyer or other person who causes an issuer to issue a credit. The term also includes a bank which procures issuance or confirmation on behalf of that bank's customer.

(2) Other definitions applying to this article and the sections in which they appear are:

"Notation of credit". Section 28:5-108.

"Presenter". Section 28:5-112(3).

(3) Definitions in other articles apply to this article and the sections in which they appear are:

"Accept" or "Acceptance". Section 28:3-410.

"Contract for sale". Section 28:2-106.

"Draft". Section 28:3-104.

"Holder in due course". Section 28:3-302.

"Midnight deadline". Section 28:4-104.

"Security". Section 28:8-102.

(4) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article. (Dec. 30, 1963, 77 Stat. 709, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

## § 28:5-104. Formal requirements; signing

(1) Except as otherwise required in subsection (1)(c) of section 28:5-102 on scope, no particular form of phrasing is required for a credit. A credit must be in writing and signed by the issuer and a confirmation must be in writing and signed by the confirming bank. A modification of the terms of a credit or confirmation must be signed by the issuer or confirming bank.

(2) A telegram may be a sufficient signed writing if it identifies its sender by an authorized authentication. The authentication may be in code and the authorized naming of the issuer in an advice of credit is a sufficient signing. (Dec. 30, 1963, 77 Stat. 709, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

## § 28:5-105. Consideration

No consideration is necessary to establish a credit or to enlarge or otherwise modify its terms. (Dec. 30, 1963, 77 Stat. 710, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

## § 28:5-106. Time and effect of establishment of credit

(1) Unless otherwise agreed a credit is established

(a) as regards the customer as soon as a letter of credit is sent to him or the letter of credit or an authorized written advice of its issuance is sent to the beneficiary; and

(b) as regards the beneficiary when he receives a letter of credit or an authorized written advice of its issuance.

(2) Unless otherwise agreed once an irrevocable credit is established as regards the customer it can be modified or revoked only with the consent of the customer and once it is established as regards the beneficiary it can be modified or revoked only with his consent.

(3) Unless otherwise agreed after a revocable credit is established it may be modified or revoked by the issuer without notice to or consent from the customer or beneficiary.

(4) Notwithstanding any modification or revocation of a revocable credit any person authorized to honor or negotiate under the terms of the original credit is entitled to reimbursement for or honor of any draft or demand for payment duly honored or negotiated before receipt of notice of the modification or revocation and the issuer in turn is entitled



to reimbursement from its customer. (Dec. 30, 1963, 77 Stat. 710, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:5-107. Advice of credit; confirmation; error in statement of terms**

(1) Unless otherwise specified an advising bank by advising a credit issued by another bank does not assume any obligation to honor drafts drawn or demands for payment made under the credit but it does assume obligation for the accuracy of its own statement.

(2) A confirming bank by confirming a credit becomes directly obligated on the credit to the extent of its confirmation as though it were its issuer and acquires the rights of an issuer.

(3) Even though an advising bank incorrectly advises the terms of a credit it has been authorized to advise the credit is established as against the issuer to the extent of its original terms.

(4) Unless otherwise specified the customer bears as against the issuer all risks of transmission and reasonable translation or interpretation of any message relating to a credit. (Dec. 30, 1963, 77 Stat. 710, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:5-108. "Notation credit"; exhaustion of credit**

(1) A credit which specifies that any person purchasing or paying drafts drawn or demands for payment made under it must note the amount of the draft or demand on the letter or advice of credit is a "notation credit".

(2) Under a notation credit

(a) a person paying the beneficiary or purchasing a draft or demand for payment from him acquires a right to honor only if the appropriate notation is made and by transferring or forwarding for honor the documents under the credit such a person warrants to the issuer that the notation has been made; and

(b) unless the credit or a signed statement that an appropriate notation has been made accompanies the draft or demand for payment the issuer may delay honor until evidence of notation has been procured which is satisfactory to it but its obligation and that of its customer continue for a reasonable time not exceeding thirty days to obtain such evidence.

(3) If the credit is not a notation credit

(a) the issuer may honor complying drafts or demands for payment presented to it in the order in which they are presented and is discharged pro tanto by honor of any such draft or demand;

(b) as between competing good faith purchasers of complying drafts or demands the person first purchasing has priority over a subsequent purchaser even though the later purchased draft or demand has been first honored.

(Dec. 30, 1963, 77 Stat. 710, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 28:5-103.

**§ 28:5-109. Issuer's obligation to its customer**

(1) An issuer's obligation to its customer includes good faith and observance of any general banking usage but unless otherwise agreed does not include liability or responsibility

(a) for performance of the underlying contract for sale or other transaction between the customer and the beneficiary; or

(b) for any act or omission of any person other than itself or its own branch or for loss or destruction of a draft, demand or document in transit or in the possession of others; or

(c) based on knowledge or lack of knowledge of any usage of any particular trade.

(2) An issuer must examine documents with care so as to ascertain that on their face they appear to comply with the terms of the credit but unless otherwise agreed assumes no liability or responsibility for the genuineness, falsification or effect of any document which appears on such examination to be regular on its face.

(3) A non-bank issuer is not bound by any banking usage of which it has no knowledge. (Dec. 30, 1963, 77 Stat. 711, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:5-110. Availability of credit in portions; presenter's reservation of lien or claim**

(1) Unless otherwise specified a credit may be used in portions in the discretion of the beneficiary.

(2) Unless otherwise specified a person by presenting a documentary draft or demand for payment under a credit relinquishes upon its honor all claims to the documents and a person by transferring such draft or demand or causing such presentment authorizes such relinquishment. An explicit reservation of claim makes the draft or demand non-complying. (Dec. 30, 1963, 77 Stat. 711, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:5-111. Warranties on transfer and presentment**

(1) Unless otherwise agreed the beneficiary by transferring or presenting a documentary draft or demand for payment warrants to all interested parties that the necessary conditions of the credit have been complied with. This is in addition to any warranties arising under articles 3, 4, 7 and 8.

(2) Unless otherwise agreed a negotiating, advising, confirming, collecting or issuing bank presenting or transferring a draft or demand for payment under a credit warrants only the matters warranted by a collecting bank under article 4 and any such bank transferring a document warrants only the matters warranted by an intermediary under articles 7 and 8. (Dec. 30, 1963, 77 Stat. 711, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:5-112. Time allowed for honor or rejection; withholding honor or rejection by consent; "presenter"**

(1) A bank to which a documentary draft or demand for payment is presented under a credit may without dishonor of the draft, demand, or credit

(a) defer honor until the close of the third banking day following receipt of the documents; and

(b) further defer honor if the presenter has expressly or impliedly consented thereto.

Failure to honor within the time here specified constitutes dishonor of the draft or demand and of the credit.



(2) Upon dishonor the bank may unless otherwise instructed fulfill its duty to return the draft or demand and the documents by holding them at the disposal of the presenter and sending him an advice to that effect.

(3) "Presenter" means any person presenting a draft or demand for payment for honor under a credit even though that person is a confirming bank or other correspondent which is acting under an issuer's authorization. (Dec. 30, 1963, 77 Stat. 711, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:5-103.

### § 28:5-113. Indemnities

(1) A bank seeking to obtain (whether for itself or another) honor, negotiation or reimbursement under a credit may give an indemnity to induce such honor, negotiation or reimbursement.

(2) An indemnity agreement inducing honor, negotiation or reimbursement

(a) unless otherwise explicitly agreed applies to defects in the documents but not in the goods; and

(b) unless a longer time is explicitly agreed expires at the end of ten business days following receipt of the documents by the ultimate customer unless notice of objection is sent before such expiration date. The ultimate customer may send notice of objection to the person from whom he received the documents and any bank receiving such notice is under a duty to send notice to its transferor before its midnight deadline.

(Dec. 30, 1963, 77 Stat. 712, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

### § 28:5-114. Issuer's duty and privilege to honor; right to reimbursement

(1) An issuer must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or demand by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

(2) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (section 28:7-507) or of a security (section 28:8-306) or is forged or fraudulent or there is fraud in the transaction

(a) the issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (section 28:3-302) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (section 28:7-502) or a bona fide purchaser of a security (section 28:8-302); and

(b) in all other cases as against its customer, an issuer acting in good faith may honor the draft or

demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor.

(3) Unless otherwise agreed an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit.

(4) (5) (Omitted.) (Dec. 30, 1963, 77 Stat. 712, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2-512.

### § 28:5-115. Remedy for improper dishonor or anticipatory repudiation

(1) When an issuer wrongfully dishonors a draft or demand for payment presented under a credit the person entitled to honor has with respect to any documents the rights of a person in the position of a seller (section 28:2-707) and may recover from the issuer the face amount of the draft or demand together with incidental damages under section 28:2-710 on seller's incidental damages and interest but less any amount realized by resale or other use or disposition of the subject matter of the transaction. In the event no resale or other utilization is made the documents, goods or other subject matter involved in the transaction must be turned over to the issuer on payment of judgment.

(2) When an issuer wrongfully cancels or otherwise repudiates a credit before presentment of a draft or demand for payment drawn under it the beneficiary has the rights of a seller after anticipatory repudiation by the buyer under section 28:2-610 if he learns of the repudiation in time reasonably to avoid procurement of the required documents. Otherwise the beneficiary has an immediate right of action for wrongful dishonor. (Dec. 30, 1963, 77 Stat. 713, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

### § 28:5-116. Transfer and assignment

(1) The right to draw under a credit can be transferred or assigned only when the credit is expressly designated as transferable or assignable.

(2) Even though the credit specifically states that it is nontransferable or nonassignable the beneficiary may before performance of the conditions of the credit assign his right to proceeds. Such an assignment is an assignment of a contract right under article 9 on secured transactions and is governed by that article except that

(a) the assignment is ineffective until the letter of credit or advice of credit is delivered to the assignee which delivery constitutes perfection of the security interest under article 9; and

(b) the issuer may honor drafts or demands for payment drawn under the credit until it receives a notification of the assignment signed by the beneficiary which reasonably identifies the credit involved in the assignment and contains a request to pay the assignee; and



(c) after what reasonably appears to be such a notification has been received the issuer may without dishonor refuse to accept or pay even to a person otherwise entitled to honor until the letter of credit or advice of credit is exhibited to the issuer.

(3) Except where the beneficiary has effectively assigned his right to draw or his right to proceeds, nothing in this section limits his right to transfer or negotiate drafts or demands drawn under the credit. (Dec. 30, 1963, 77 Stat. 713, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:9-305.

#### § 28:5-117. Insolvency of bank holding funds for documentary credit

(1) Where an issuer or an advising or confirming bank or a bank which has for a customer procured issuance of a credit by another bank becomes insolvent before final payment under the credit and the credit is one to which this article is made applicable by paragraphs (a) or (b) of section 28:5-102(1) on scope, the receipt or allocation of funds or collateral to secure or meet obligations under the credit shall have the following results:

(a) to the extent of any funds or collateral turned over after or before the insolvency as indemnity against or specifically for the purpose of payment of drafts or demands for payment drawn under the designated credit, the drafts or demands are entitled to payment in preference over depositors or other general creditors of the issuer or bank; and

(b) on expiration of the credit or surrender of the beneficiary's rights under it unused any person who has given such funds or collateral is similarly entitled to return thereof; and

(c) a charge to a general or current account with a bank if specifically consented to for the purpose of indemnity against or payment of drafts or demands for payment drawn under the designated credit falls under the same rules as if the funds had been drawn out in cash and then turned over with specific instructions.

(2) After honor or reimbursement under this section the customer or other person for whose account the insolvent bank has acted is entitled to receive the documents involved. (Dec. 30, 1963, 77 Stat. 713, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

### Article 6.—BULK TRANSFERS

Sec.

28:6-101. Short title.

28:6-102. "Bulk transfer"; transfers of equipment; enterprises subject to this article; bulk transfers subject to this article.

28:6-103. Transfers excepted from this article.

28:6-104. Schedule of property, list of creditors.

28:6-105. Notice to creditors.

28:6-106. Omitted.

28:6-107. The notice.

28:6-108. Auction sales; "auctioneer".

28:6-109. What creditors protected.

28:6-110. Subsequent transfers.

28:6-111. Limitation of actions and levies.

#### ARTICLE REFERRED TO IN OTHER SECTIONS

This article is referred to in sections 28:2-403, 28:9-111.

#### § 28:6-101. Short title

This article shall be known and may be cited as Uniform Commercial Code—Bulk Transfers. (Dec. 30, 1963, 77 Stat. 714, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:6-102. "Bulk transfer"; transfers of equipment; enterprises subject to this article; bulk transfers subject to this article

(1) A "bulk transfer" is any transfer in bulk and not in the ordinary course of the transferor's business of a major part of the materials, supplies, merchandise or other inventory (section 28:9-109) of an enterprise subject to this article.

(2) A transfer of a substantial part of the equipment (section 28:9-109) of such an enterprise is a bulk transfer if it is made in connection with a bulk transfer of inventory, but not otherwise.

(3) The enterprises subject to this article are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell.

(4) Except as limited by the following section all bulk transfers of goods located within the District are subject to this article. (Dec. 30, 1963, 77 Stat. 714, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:1-105.

#### § 28:6-103. Transfers excepted from this article

The following transfers are not subject to this article:

(1) Those made to give security for the performance of an obligation;

(2) General assignments for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

(3) Transfers in settlement or realization of a lien or other security interest;

(4) Sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process;

(5) Sales made in the course of judicial or administrative proceedings for the dissolution or reorganization of a corporation and of which notice is sent to the creditors of the corporation pursuant to order of the court or administrative agency;

(6) Transfers to a person maintaining a known place of business in the District who becomes bound to pay the debts of the transferor in full and gives public notice of that fact, and who is solvent after becoming so bound;

(7) A transfer to a new business enterprise organized to take over and continue the business, if public notice of the transaction is given and the new enterprise assumes the debts of the transferor and he receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors;

(8) Transfers of property which is exempt from execution.

Public notice under subsection (6) or subsection (7) may be given by publishing once a week for two consecutive weeks in a newspaper of general circulation where the transferor had its principal place of business in the District an advertisement including



the names and addresses of the transferor and transferee and the effective date of the transfer. (Dec. 30, 1963, 77 Stat. 714, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:9-111.

§ 28:6-104. Schedule of property, list of creditors

(1) Except as provided with respect to auction sales (section 28:6-108), a bulk transfer subject to this article is ineffective against any creditor of the transferor unless:

(a) The transferee requires the transferor to furnish a list of his existing creditors prepared as stated in this section; and

(b) The parties prepare a schedule of the property transferred sufficient to identify it; and

(c) The transferee preserves the list and schedule for six months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor, or files the list and schedule in the office of the Recorder of Deeds of the District.

(2) The list of creditors must be signed and sworn to or affirmed by the transferor or his agent. It must contain the names and business addresses of all creditors of the transferor, with the amounts when known, and also the names of all persons who are known to the transferor to assert claims against him even though such claims are disputed. If the transferor is the obligor of an outstanding issue of bonds, debentures or the like as to which there is an indenture trustee, the list of creditors need include only the name and address of the indenture trustee and the aggregate outstanding principal amount of the issue.

(3) Responsibility for the completeness and accuracy of the list of creditors rests on the transferor, and the transfer is not rendered ineffective by errors or omissions therein unless the transferee is shown to have had knowledge. (Dec. 30, 1963, 77 Stat. 715, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:6-107, 28:6-108.

§ 28:6-105. Notice to creditors

In addition to the requirements of the preceding section, any bulk transfer subject to this article except one made by auction sale (section 28:6-108) is ineffective against any creditor of the transferor unless at least ten days before he takes possession of the goods or pays for them, whichever happens first, the transferee gives notice of the transfer in the manner and to the persons hereafter provided (section 28:6-107). (Dec. 30, 1963, 77 Stat. 715, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:6-107, 28:6-109.

§ 28:6-106. Omitted

§ 28:6-107. The notice

(1) The notice to creditors (section 28:6-105) shall state:

(a) that a bulk transfer is about to be made: and

(b) the names and business addresses of the transferor and transferee, and all other business names and addresses used by the transferor within three years last past so far as known to the transferee; and

(c) whether or not all the debts of the transferor are to be paid in full as they fall due as a result of the transaction, and if so, the address to which creditors should send their bills.

(2) If the debts of the transferor are not to be paid in full as they fall due or if the transferee is in doubt on that point then the notice shall state further:

(a) the location and general description of the property to be transferred and the estimated total of the transferor's debts;

(b) the address where the schedule of property and list of creditors (section 28:6-104) may be inspected;

(c) whether the transfer is to pay existing debts and if so the amount of such debts and to whom owing;

(d) whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment.

(3) The notice in any case shall be delivered personally or sent by registered or certified mail to all the persons shown on the list of creditors furnished by the transferor (section 28:6-104) and to all other persons who are known to the transferee to hold or assert claims against the transferor. (Dec. 30, 1963, 77 Stat. 716, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:6-105, 28:6-109.

§ 28:6-108. Auction sales; "auctioneer"

(1) A bulk transfer is subject to this article even though it is by sale at auction, but only in the manner and with the results stated in this section.

(2) The transferor shall furnish a list of his creditors and assist in the preparation of a schedule of the property to be sold, both prepared as before stated (section 28:6-104).

(3) The person or persons other than the transferor who direct, control or are responsible for the auction are collectively called the "auctioneer". The auctioneer shall:

(a) receive and retain the list of creditors and prepare and retain the schedule of property for the period stated in this article (section 28:6-104);

(b) give notice of the auction personally or by registered or certified mail at least ten days before it occurs to all persons shown on the list of creditors and to all other persons who are known to him to hold or assert claims against the transferor.

(4) Failure of the auctioneer to perform any of these duties does not affect the validity of the sale or the title of the purchasers, but if the auctioneer knows that the auction constitutes a bulk transfer such failure renders the auctioneer liable to the creditors of the transferor as a class for the sums owing to them from the transferor up to but not exceeding the net proceeds of the auction. If the auctioneer consists of several persons their liability



is joint and several. (Dec. 30, 1963, 77 Stat. 716, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:6-104, 28:6-105.

#### § 28:6-109. What creditors protected

(1) The creditors of the transferor mentioned in this article are those holding claims based on transactions or events occurring before the bulk transfer, but creditors who become such after notice to creditors is given (sections 28:6-105 and 28:6-107) are not entitled to notice.

(2) (Omitted.) (Dec. 30, 1963, 77 Stat. 716, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:6-110. Subsequent transfers

When the title of a transferee to property is subject to a defect by reason of his non-compliance with the requirements of this article, then:

(1) a purchaser of any of such property from such transferee who pays no value or who takes with notice of such non-compliance takes subject to such defect, but

(2) a purchaser for value in good faith and without such notice takes free of such defect.

(Dec. 30, 1963, 77 Stat. 717, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:6-111. Limitation of actions and levies

No action under this article shall be brought nor levy made more than six months after the date on which the transferee took possession of the goods unless the transfer has been concealed. If the transfer has been concealed, actions may be brought or levies made within six months after its discovery. (Dec. 30, 1963, 77 Stat. 717, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

### Article 7.—WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

#### PART 1.—GENERAL

Sec.

- 28:7-101. Short title.
- 28:7-102. Definitions and index of definitions.
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#### ARTICLE REFERRED TO IN OTHER SECTIONS

This article is referred to in sections 28:2-403; 28:5-111, 28:10-104.

#### PART 1.—GENERAL

#### § 28:7-101. Short title

This article shall be known and may be cited as Uniform Commercial Code—Documents of Title. (Dec. 30, 1963, 77 Stat. 718, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:7-102. Definitions and index of definitions

(1) In this article, unless the context otherwise requires:

(a) "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

(b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

(c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(d) "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.



(e) "Document" means document of title as defined in the general definitions in article 1 (section 28:1-201).

(f) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

(g) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.

(h) "Warehouseman" is a person engaged in the business of storing goods for hire.

(2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:

"Duty negotiate" section 28:7-501.

"Person entitled under the document" section 28:7-403(4).

(3) Definitions in other articles applying to this article and the sections in which they appear are:

"Contract for sale" section 28:2-106.

"Overseas" section 28:2-323.

"Receipt" of goods section 28:2-103.

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article. (Dec. 30, 1963, 77 Stat. 718, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2-103.

#### § 28:7-103. Relation of article to treaty, statute, tariff, classification or regulation

To the extent that any treaty or statute of the United States, regulatory statute of the District or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this article are subject thereto. (Dec. 30, 1963, 77 Stat. 719, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:7-104. Negotiable and non-negotiable warehouse receipt, bill of lading or other document of title

(1) A warehouse receipt, bill of lading or other document of title is negotiable

(a) if by its terms the goods are to be delivered to bearer or to the order of a named person; or

(b) where recognized in overseas trade, if it runs to a named person or assigns.

(2) Any other document is non-negotiable. A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person. (Dec. 30, 1963, 77 Stat. 719, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:7-105. Construction against negative implication

The omission from either part 2 or part 3 of this article of a provision corresponding to a provision

made in the other part does not imply that a corresponding rule of law is not applicable. (Dec. 30, 1963, 77 Stat. 719, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

### PART 2.—WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

#### PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 28:7-105.

#### § 28:7-201. Who may issue a warehouse receipt; storage under government bond

(1) A warehouse receipt may be issued by any warehouseman.

(2) Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouseman. (Dec. 30, 1963, 77 Stat. 719, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:7-202. Form of warehouse receipt; essential terms; optional terms

(1) A warehouse receipt need not be in any particular form.

(2) Unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:

(a) the location of the warehouse where the goods are stored;

(b) the date of issue of the receipt;

(c) the consecutive number of the receipt;

(d) a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;

(e) the rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a non-negotiable receipt;

(f) a description of the goods or of the packages containing them;

(g) the signature of the warehouseman, which may be made by his authorized agent;

(h) if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and

(i) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (section 28:7-209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(3) A warehouseman may insert in his receipt any other terms which are not contrary to the provisions of this subtitle and do not impair his obligation of delivery (section 28:7-403) or his duty of care (section 28:7-204). Any contrary provisions shall be ineffective. (Dec. 30, 1963, 77 Stat. 719, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)



**§ 28:7-203. Liability for non-receipt or misdescription**

A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either case upon the description therein of the goods may recover from the issuer damages caused by the non-receipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity or condition, or the receipt or description is qualified by "contents, condition and quality unknown", "said to contain" or the like, if such indication be true, or the party or purchaser otherwise has notice. (Dec. 30, 1963, 77 Stat. 720, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:7-204. Duty of care; contractual limitation of warehouseman's liability**

(1) A warehouseman is liable for damages for loss of or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances but unless otherwise agreed he is not liable for damages which could not have been avoided by the exercise of such care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable: *Provided, however*, That such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff.

(4) (Omitted.) (Dec. 30, 1963, 77 Stat. 720, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 28:7-202.

**NOTES TO DECISIONS****Negligence**

In a case where warehouse was of fire resistant construction, fire alarm system was effectively operating, police and fireman service were near, warehouse was patrolled at fixed intervals by outside guard and iron bars and wire-mesh screening covered the windows on the ground warehouseman was not negligent in failing to provide 24-hour inside guard service or in failing to adequately secure windows and was not liable for damage to stored furniture from fire set by demented policeman after policeman removed wire-mesh screen, but, in any event, arson under the circumstances peculiar to this case was not a foreseeable result of any failure on part of warehouseman. *Union Storage Co., Inc. v. J. D. McIntyre, et al.* (D.C. App. 1969, 256 A.2d 787).

**§ 28:7-205. Title under warehouse receipt defeated in certain cases**

A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated. (Dec. 30, 1963, 77 Stat. 721, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 28:7-502.

**§ 28:7-206. Termination of storage at warehouseman's option**

(1) A warehouseman may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than thirty days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of the section on enforcement of a warehouseman's lien (section 28:7-210).

(2) If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his lien within the time prescribed in subsection (1) for notification, advertisement and sale, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(3) If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(4) The warehouseman must deliver the goods to any person entitled to them under this article upon due demand made at any time prior to sale or other disposition under this section.

(5) The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom he would have been bound to deliver the goods. (Dec. 30, 1963, 77 Stat. 721, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:7-207. Goods must be kept separate; fungible goods**

(1) Unless the warehouse receipt otherwise provides, a warehouseman must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled.



(2) Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is severally liable to each owner for that owner's share. Where because of overissue a mass of fungible goods is insufficient to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated. (Dec. 30, 1963, 77 Stat. 721, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:7-208. Altered warehouse receipts

Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of the want of authority, may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer according to its original tenor. (Dec. 30, 1963, 77 Stat. 721, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:7-209. Lien of warehouseman

(1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

(2) The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest. Such a security interest is governed by the article on secured transactions (article 9).

(3) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under section 28:7-503.

(4) A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver. (Dec. 30, 1963, 77 Stat. 722, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:7-202.

#### § 28:7-210. Enforcement of warehouseman's lien

(1) Except as provided in subsection (2), a warehouseman's lien may be enforced by public or private sale of the goods in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

(c) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(d) The sale must conform to the terms of the notification.

(e) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(f) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

(3) Before any sale pursuant to this section any person claiming a right in the goods may pay the



amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this article.

(4) The warehouseman may buy at any public sale pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouseman with the requirements of this section.

(6) The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(8) Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection (1) or (2).

(9) The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion. (Dec. 30, 1963, 77 Stat. 722, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:7-206, 28:7-308.

### PART 3.—BILLS OF LADING: SPECIAL PROVISIONS

#### PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 28:7-105.

#### § 28:7-301. Liability for non-receipt or misdescription; "said to contain"; "shipper's load and count"; improper handling

(1) A consignee of a non-negotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either case upon the description therein of the goods, or upon the date therein shown, may recover from the issuer damages caused by the misdating of the bill or the non-receipt or misdescription of the goods, except to the extent that the document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load and count" or the like, if such indication be true.

(2) When goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the kind and quantity if bulk freight. In such cases "shipper's weight, load and count" or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.

(3) When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for

weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

(4) The issuer may be inserting in the bill the words "shipper's weight, load and count" or other words of like purport indicate that the goods were loaded by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.

(5) The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by him; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper. (Dec. 30, 1963, 77 Stat. 723, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:7-302. Through bills of lading and similar documents

(1) The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such other persons or by a connecting carrier of its obligation under the document but to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, he is subject with respect to his own performance while the goods are in his possession to the obligation of the issuer. His obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

(3) The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required to pay to anyone entitled to recover on the document therefor, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action brought by anyone entitled to recover on the document therefor. (Dec. 30, 1963, 77 Stat. 724, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:7-303. Diversion; reconsignment; change of instructions

(1) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may



otherwise dispose of the goods on instructions from

(a) the holder of a negotiable bill; or

(b) the consignor on a non-negotiable bill notwithstanding contrary instructions from the consignee; or

(c) the consignee on a non-negotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill; or

(d) the consignee on a non-negotiable bill if he is entitled as against the consignor to dispose of them.

(2) Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can hold the bailee according to the original terms. (Dec. 30, 1963, 77 Stat. 724, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:7-403.

#### § 28:7-304. Bills of lading in a set

(1) Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(2) Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

(3) Where a bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of his part.

(4) Any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to holders of that part as if it were the whole set.

(5) The bailee is obliged to deliver in accordance with part 4 of this article against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the bailee's obligation on the whole bill. (Dec. 30, 1963, 77 Stat. 725, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:7-305. Destination bills

(1) Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.

(2) Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request. (Dec. 30, 1963, 77 Stat. 725, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:7-306. Altered bills of lading

An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable ac-

cording to its original tenor. (Dec. 30, 1963, 77 Stat. 725, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:7-307. Lien of carrier

(1) A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. But against a purchaser for value of a negotiable bill of lading a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.

(2) A lien for charges and expenses under subsection (1) on goods which the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to such charges and expenses. Any other lien under subsection (1) is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked such authority.

(3) A carrier loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver. (Dec. 30, 1963, 77 Stat. 725, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:7-308. Enforcement of carrier's lien

(1) A carrier's lien may be enforced by public or private sale of the goods, in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the carrier subject to the terms of the bill and this article.

(3) The carrier may buy at any public sale pursuant to this section.



(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.

(5) The carrier may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(6) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(7) A carrier's lien may be enforced in accordance with either subsection (1) or the procedure set forth in subsection (2) of section 28:7-210.

(8) The carrier is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion. (Dec. 30, 1963, 77 Stat. 726, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:7-309. Duty of care; contractual limitation of carrier's liability

(1) A carrier who issues a bill of lading whether negotiable or non-negotiable must exercise the degree of care in relation to the goods which a reasonably careful man would exercise under like circumstances. This subsection does not repeal or change any law or rule of law which imposes liability upon a common carrier for damages not caused by its negligence.

(2) Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the shipment may be included in a bill of lading or tariff. (Dec. 30, 1963, 77 Stat. 726, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

### PART 4.—WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

#### PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 28:7-304, 28:7-503.

#### § 28:7-401. Irregularities in issue of receipt or bill or conduct of issuer

The obligations imposed by this article on an issuer apply to a document of title regardless of the fact that

(a) the document may not comply with the requirements of this article or of any other law or regulation regarding its issue, form or content; or

(b) the issuer may have violated laws regulating the conduct of his business; or

(c) the goods covered by the document were owned by the bailee at the time the document was issued; or

(d) the person issuing the document does not come within the definition of warehouseman if it purports to be a warehouse receipt.

(Dec. 30, 1963, 77 Stat. 727, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:7-402. Duplicate receipt or bill; overissue

Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by his overissue or failure to identify a duplicate document as such by conspicuous notation on its face. (Dec. 30, 1963, 77 Stat. 727, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:7-403. Obligation of warehouseman or carrier to deliver; excuse

(1) The bailee must deliver the goods to a person entitled under the document who complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

(a) delivery of the goods to a person whose receipt was rightful as against the claimant;

(b) damage to or delay, loss or destruction of the goods for which the bailee is not liable;

(c) previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage;

(d) the exercise by a seller of his right to stop delivery pursuant to the provisions of the article on sales (section 28:2-705);

(e) a diversion, reconsignment or other disposition pursuant to the provisions of this article (section 28:7-303) or tariff regulating such right;

(f) release, satisfaction or any other fact affording a personal defense against the claimant;

(g) any other lawful excuse.

(2) A person claiming goods covered by a document of title must satisfy the bailee's lien where the bailee so requests or where the bailee is prohibited by law from delivering the goods until the charges are paid.

(3) Unless the person claiming is one against whom the document confers no right under section 28:7-503(1), he must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom the document is duly negotiated.

(4) "Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a non-negotiable document. (Dec. 30, 1963, 77 Stat. 727, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:7-102, 28:7-202, 28:7-503.

#### § 28:7-404. No liability for good faith delivery pursuant to receipt or bill

A bailee who in good faith including observance of reasonable commercial standards has received



goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this article is not liable therefor. This rule applies even though the person from whom he received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom he delivered the goods had no authority to receive them. (Dec. 30, 1963, 77 Stat. 728, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**PART 5.—WAREHOUSE RECEIPTS AND BILLS OF LADING:  
NEGOTIATION AND TRANSFER**

**§ 28:7-501. Form of negotiation and requirements of  
“due negotiation”**

(1) A negotiable document of title running to the order of a named person is negotiated by his indorsement and delivery. After his indorsement in blank or to bearer any person can negotiate it by delivery alone.

(2) (a) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer.

(b) When a document running to the order of a named person is delivered to him the effect is the same as if the document had been negotiated.

(3) Negotiation of a negotiable document of title after it has been indorsed to a specified person requires indorsement by the special indorsee as well as delivery.

(4) A negotiable document of title is “duly negotiated” when it is negotiated in the manner stated in this section to a holder who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

(5) Indorsement of a non-negotiable document neither makes it negotiable nor adds to the transferee's rights.

(6) The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods. (Dec. 30, 1963, 77 Stat. 728, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 28:7-102, 28:9-309.

**§ 28:7-502. Rights acquired by due negotiation**

(1) Subject to the following section and to the provisions of section 28:7-205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

(a) title to the document;

(b) title to the goods;

(c) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(d) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him except those arising under the terms of the docu-

ment or under this article. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(2) Subject to the following section, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person. (Dec. 30, 1963, 77 Stat. 728, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 28:5-114.

**§ 28:7-503. Document of title to goods defeated in certain cases**

(1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither

(a) delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this article (section 28:7-403) or with power of disposition under this subtitle (sections 28:2-403 and 28:9-307) or other statute or rule of law; nor

(b) acquiesced in the procurement by the bailor or his nominee of any document of title.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with part 4 of this article, pursuant to its own bill of lading discharges the carrier's obligation to deliver. (Dec. 30, 1963, 77 Stat. 729, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 28:7-209, 28:7-403.

**§ 28:7-504. Rights acquired in the absence of due negotiation; effect of diversion; seller's stoppage of delivery**

(1) A transferee of a document, whether negotiable or non-negotiable, to whom the document has been delivered but not duly negotiated, acquires the title and rights which his transferor had or had actual authority to convey.

(2) In the case of a non-negotiable document, until but not after the bailee receives notification



of the transfer, the rights of the transferee may be defeated

(a) by those creditors of the transferor who could treat the sale as void under section 28:2-402; or

(b) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of his rights; or

(c) as against the bailee by good faith dealings of the bailee with the transferor.

(3) A diversion or other change of shipping instructions by the consignor in a non-negotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if they have been delivered to a buyer in ordinary course of business and in any event defeats the consignee's rights against the bailee.

(4) Delivery pursuant to a non-negotiable document may be stopped by a seller under section 28:2-705, and subject to the requirement of due notification there provided. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense. (Dec. 30, 1963, 77 Stat. 729, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:7-505. Indorser not a guarantor for other parties

The indorsement of a document of title issued by a bailee does not make the indorser liable for any default by the bailee or by previous indorsers. (Dec. 30, 1963, 77 Stat. 730, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:7-506. Delivery without indorsement: right to compel indorsement

The transferee of a negotiable document of title has a specifically enforceable right to have his transferor supply any necessary indorsement but the transfer becomes a negotiation only as of the time the indorsement is supplied. (Dec. 30, 1963, 77 Stat. 730, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:7-507. Warranties on negotiation or transfer of receipt or bill

Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under the next following section, then unless otherwise agreed he warrants to his immediate purchaser only in addition to any warranty made in selling the goods

(a) that the document is genuine; and

(b) that he has no knowledge of any fact which would impair its validity or worth; and

(c) that his negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents.

(Dec. 30, 1963, 77 Stat. 730, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:5-114.

#### § 28:7-508. Warranties of collecting bank as to documents

A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against

delivery of documents warrants by such delivery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected. (Dec. 30, 1963, 77 Stat. 730, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:7-509. Receipt or bill: when adequate compliance with commercial contract

The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by the articles on sales (article 2) and on letters of credit (article 5). (Dec. 30, 1963, 77 Stat. 730, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

### PART 6.—WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

#### § 28:7-601. Lost and missing documents

(1) If a document has been lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of non-surrender of the document. If the document was not negotiable, such security may be required at the discretion of the court. The court may also in its discretion order payment of the bailee's reasonable costs and counsel fees.

(2) A bailee who without court order delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby, and if the delivery is not in good faith becomes liable for conversion. Delivery in good faith is not conversion if made in accordance with a filed classification or tariff or, where no classification or tariff is filed, if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery who files a notice of claim within one year after the delivery. (Dec. 30, 1963, 77 Stat. 730, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:7-602. Attachment of goods covered by a negotiable document

Except where the document was originally issued upon delivery of the goods by a person who had no power to dispose of them, no lien attaches by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless the document be first surrendered to the bailee or its negotiation enjoined, and the bailee shall not be compelled to deliver the goods pursuant to process until the document is surrendered to him or impounded by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process. (Dec. 30, 1963, 77 Stat. 731, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:7-603. Conflicting claims; interpleader

If more than one person claims title or possession of the goods, the bailee is excused from delivery until



he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for non-delivery of the goods, or by original action, which ever is appropriate. (Dec. 30, 1963, 77 Stat. 731, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

## Article 8.—INVESTMENT SECURITIES

### PART 1.—SHORT TITLE AND GENERAL MATTERS

Sec.

- 28:8-101. Short title.
- 28:8-102. Definitions and index of definitions.
- 28:8-103. Issuer's lien.
- 28:8-104. Effect of overissue; "overissue".
- 28:8-105. Securities negotiable; presumptions.
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### PART 2.—ISSUE—ISSUER

- 28:8-201. "Issuer".
- 28:8-202. Issuer's responsibility and defenses; notice of defect or defense.
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- 28:8-204. Effect of issuer's restrictions on transfer.
- 28:8-205. Effect of unauthorized signature on issue.
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### PART 3.—PURCHASE

- 28:8-301. Rights acquired by purchaser; "adverse claim"; title acquired by bona fide purchaser.
- 28:8-302. "Bona fide purchaser".
- 28:8-303. "Broker".
- 28:8-304. Notice to purchaser of adverse claims.
- 28:8-305. Staleness as notice of adverse claims.
- 28:8-306. Warranties on presentment and transfer.
- 28:8-307. Effect of delivery without indorsement; right to compel indorsement.
- 28:8-308. Indorsement, how made; special indorsement; indorser not a guarantor; partial assignment.
- 28:8-309. Effect of indorsement without delivery.
- 28:8-310. Indorsement of security in bearer form.
- 28:8-311. Effect of unauthorized indorsement.
- 28:8-312. Effect of guaranteeing signature or indorsement.
- 28:8-313. When delivery to the purchaser occurs; purchaser's broker as holder.
- 28:8-314. Duty to deliver, when completed.
- 28:8-315. Action against purchaser based upon wrongful transfer.
- 28:8-316. Purchaser's right to requisites for registration of transfer on books.
- 28:8-317. Attachment or levy upon security.
- 28:8-318. No conversion by good faith delivery.
- 28:8-319. Statute of frauds.
- 28:8-320. Transfer or pledge within a central depository system.

### PART 4.—REGISTRATION

- 28:8-401. Duty of issuer to register transfer.
- 28:8-402. Assurance that indorsements are effective.
- 28:8-403. Limited duty of inquiry.
- 28:8-404. Liability and non-liability for registration.
- 28:8-405. Lost, destroyed, and stolen securities.
- 28:8-406. Duty of authenticating trustee, transfer agent or registrar.
- 28:8-407. Limitation of actions.

### ARTICLE REFERRED TO IN OTHER SECTIONS

This article is referred to in sections 28:2-105, 28:4-102, 28:5-111, 28:10-104.

### PART 1.—SHORT TITLE AND GENERAL MATTERS

#### § 28:8-101. Short title

This article shall be known and may be cited as Uniform Commercial Code—Investment Securities. (Dec. 30, 1963, 77 Stat. 732, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:8-102. Definitions and index of definitions

(1) In this article unless the context otherwise requires

- (a) A "security" is an instrument which
  - (i) is issued in bearer or registered form; and
  - (ii) is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and
  - (iii) is either one of a class or series or by its terms is divisible into a class or series of instruments; and
  - (iv) evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

(b) A writing which is a security is governed by this article and not by Uniform Commercial Code—Commercial Paper even though it also meets the requirements of that article. This article does not apply to money.

(c) A security is in "registered form" when it specifies a person entitled to the security or to the rights it evidences and when its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer or the security so states.

(d) A security is in "bearer form" when it runs to bearer according to its terms and not by reason of any indorsement.

(2) A "subsequent purchaser" is a person who takes other than by original issue.

(3) A "clearing corporation" is a corporation all of the capital stock of which is held by or for a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934.

(4) A "custodian bank" is any bank or trust company which is supervised and examined by state or federal authority having supervision over banks and which is acting as custodian for a clearing corporation.

(5) Other definitions applying to this article or to specified parts thereof and the sections in which they appear are:

"Adverse claim". Section 28:8-301.

"Bona fide purchaser". Section 28:8-302.

"Broker". Section 28:8-303.

"Guarantee of the signature". Section 28:8-402.

"Intermediary bank". Section 28:4-105.

"Issuer". Section 28:8-201.

"Overissue". Section 28:8-104.

(6) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article. (Dec. 30, 1963, 77 Stat. 732, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)



## REFERENCE IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (3), is set out in 15 U.S.C. 78a et seq.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:5-103, 28:9-105.

## § 28:8-103. Issuer's lien

A lien upon a security in favor of an issuer thereof is valid against a purchaser only if the right of the issuer to such lien is noted conspicuously on the security. (Dec. 30, 1963, 77 Stat. 733, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

## § 28:8-104. Effect of overissue; "overissue"

(1) The provisions of this article which validate a security or compel its issue or reissue do not apply to the extent that validation, issue or reissue would result in overissue; but

(a) if an identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase and deliver such a security to him against surrender of the security, if any, which he holds; or

(b) if a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price he or the last purchaser for value paid for it with interest from the date of his demand.

(2) "Overissue" means the issue of securities in excess of the amount which the issuer has corporate power to issue. (Dec. 30, 1963, 77 Stat. 733, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:8-102, 28:8-404, 28:8-405.

## § 28:8-105. Securities negotiable; presumptions

(1) Securities governed by this article are negotiable instruments.

(2) In any action on a security

(a) unless specifically denied in the pleadings, each signature on the security or in a necessary indorsement is admitted;

(b) when the effectiveness of a signature is put in issue the burden of establishing it is on the party claiming under the signature but the signature is presumed to be genuine or authorized;

(c) when signatures are admitted or established production of the instrument entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security; and

(d) after it is shown that a defense or defect exists the plaintiff has the burden of establishing that he or some person under whom he claims is a person against whom the defense or defect is ineffective (section 28: 8-202).

(Dec. 30, 1963, 77 Stat. 733, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

## § 28:8-106. Applicability

The validity of a security and the rights and duties of the issuer with respect to registration of transfer are governed by the law (including the conflict of

laws rules) of the jurisdiction of organization of the issuer. (Dec. 30, 1963, 77 Stat. 733, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:1-105.

## § 28:8-107. Securities deliverable; action for price

(1) Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to deliver securities may deliver any security of the specified issue in bearer form or registered in the name of the transferee or indorsed to him or in blank.

(2) When the buyer fails to pay the price as it comes due under a contract of sales the seller may recover the price

(a) of securities accepted by the buyer; and

(b) of other securities if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale.

(Dec. 30, 1963, 77 Stat. 733, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

## PART 2.—ISSUE—ISSUER

## § 28:8-201. "Issuer"

(1) With respect to obligations on or defenses to a security "issuer" includes a person who

(a) places or authorizes the placing of his name on a security (otherwise than as authenticating trustee, registrar, transfer agent or the like) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty to perform an obligation evidenced by the security; or

(b) directly or indirectly creates fractional interests in his rights or property which fractional interests are evidenced by securities; or

(c) becomes responsible for or in place of any person described as an issuer in this section.

(2) With respect to obligations on or defenses to a security a guarantor is an issuer to the extent of his guaranty whether or not his obligation is noted on the security.

(3) With respect to registration of transfer (part 4 of this article) "issuer" means a person on whose behalf transfer books are maintained. (Dec. 30, 1963, 77 Stat. 734, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:8-102.

## § 28:8-202. Issuer's responsibility and defenses; notice of defect or defense

(1) Even against a purchaser for value and without notice, the terms of a security include those stated on the security and those made part of the security by reference to another instrument, indenture or document or to a constitution, statute, ordinance, rule, regulation, order or the like to the extent that the terms so referred to do not conflict with the stated terms. Such a reference does not of itself charge a purchaser for value with notice of a defect going to the validity of the security even though the security expressly states that a person accepting it admits such notice.



(2) (a) A security other than one issued by a government or governmental agency or unit even though issued with a defect going to its validity is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of constitutional provisions in which case the security is valid in the hands of a subsequent purchaser for value and without notice of the defect.

(b) The rule of subparagraph (a) applies to an issuer which is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as otherwise provided in the case of certain unauthorized signatures on issue (section 28:8-205), lack of genuineness of a security is a complete defense even against a purchaser for value and without notice.

(4) All other defenses of the issuer including nondelivery and conditional delivery of the security are ineffective against a purchaser for value who has taken without notice of the particular defense.

(5) Nothing in this section shall be construed to affect the right of a party to a "when, as and if issued" or a "when distributed" contract to cancel the contract in the event of a material change in the character of the security which is the subject of the contract or in the plan or arrangement pursuant to which such security is to be issued or distributed. (Dec. 30, 1963, 77 Stat. 734, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:8-105.

#### § 28:8-203. Staleness as notice of defects or defenses

(1) After an act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer

(a) if the act or event is one requiring the payment of money or the delivery of securities or both on presentation or surrender of the security and such funds or securities are available on the date set for payment or exchange and he takes the security more than one year after that date; and

(b) if the act or event is not covered by paragraph (a) and he takes the security more than two years after the date set for surrender or presentation or the date on which such performance became due.

(2) A call which has been revoked is not within subsection (1). (Dec. 30, 1963, 77 Stat. 735, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:8-204. Effect of issuer's restrictions on transfer

Unless noted conspicuously on the security a restriction on transfer imposed by the issuer even though otherwise lawful is ineffective except against

a person with actual knowledge of it. (Dec. 30, 1963, 77 Stat. 735, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-908g.

#### § 28:8-205. Effect of unauthorized signature on issue

An unauthorized signature placed on a security prior to or in the course of issue is ineffective that the signature is effective in favor of a purchaser for value and without notice of the lack of authority if the signing has been done by

(a) an authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security or of similar securities or their immediate preparation for signing; or

(b) an employee of the issuer or of any of the foregoing entrusted with responsible handling of the security.

(Dec. 30, 1963, 77 Stat. 735, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:8-202.

#### § 28:8-206. Completion or alteration of instrument

(1) Where a security contains the signatures necessary to its issue or transfer but is incomplete in any other respect

(a) any person may complete it by filling in the blanks as authorized; and

(b) even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of such incorrectness.

(2) A complete security which has been improperly altered even though fraudulently remains enforceable but only according to its original terms. (Dec. 30, 1963, 77 Stat. 735, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:8-207. Rights of issuer with respect to registered owners

(1) Prior to due presentment for registration of transfer of a security in registered form the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner.

(2) Nothing in this article shall be construed to affect the liability of the registered owner of a security for calls, assessments or the like. (Dec. 30, 1963, 77 Stat. 735, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:8-208. Effect of signature of authenticating trustee, registrar or transfer agent

(1) A person placing his signature upon a security as authenticating trustee, registrar, transfer agent or the like warrants to a purchaser for value without notice of the particular defect that

(a) the security is genuine; and

(b) his own participation in the issue of the security is within his capacity and within the scope of the authorization received by him from the issuer; and



(c) he has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person by so placing his signature does not assume responsibility for the validity of the security in other respects. (Dec. 30, 1963, 77 Stat. 736, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### PART 3.—PURCHASE

##### § 28:8-301. Rights acquired by purchaser; "adverse claim"; title acquired by bona fide purchaser

(1) Upon delivery of a security the purchaser acquires the rights in the security which his transferor had or had actual authority to convey except that a purchaser who has himself been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim cannot improve his position by taking from a later bona fide purchaser. "Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.

(2) A bona fide purchaser in addition to acquiring the rights of a purchaser also acquires the security free of any adverse claim.

(3) A purchaser of a limited interest acquires rights only to the extent of the interest purchased. (Dec. 30, 1963, 77 Stat. 736, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:8-102, 28:8-320, 28:9-309.

##### § 28:8-302. "Bona fide purchaser"

A "bona fide purchaser" is a purchaser for value in good faith and without notice of any adverse claim who takes delivery of a security in bearer form or of one in registered form issued to him or indorsed to him or in blank. (Dec. 30, 1963, 77 Stat. 736, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:5-114, 28:8-102.

##### § 28:8-303. "Broker"

"Broker" means a person engaged for all or part of his time in the business of buying and selling securities, who in the transaction concerned acts for, or buys a security from or sells a security to a customer. Nothing in this article determines the capacity in which a person acts for purposes of any other statute or rule to which such person is subject. (Dec. 30, 1963, 77 Stat. 736, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:8-102.

##### § 28:8-304. Notice to purchaser of adverse claims

(1) A purchaser (including a broker for the seller or buyer but excluding an intermediary bank) of a security is charged with notice of adverse claims if

(a) the security whether in bearer or registered form has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(b) the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.

(2) The fact that the purchaser (including a broker for the seller or buyer) has notice that the security is held for a third person or is registered in the name of or indorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute notice of adverse claims. If, however, the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims. (Dec. 30, 1963, 77 Stat. 736, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:8-310.

##### § 28:8-305. Staleness as notice of adverse claims

An act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange does not of itself constitute any notice of adverse claims except in the case of a purchase

(a) after one year from any date set for such presentment or surrender for redemption or exchange; or

(b) after six months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date.

(Dec. 30, 1963, 77 Stat. 737, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

##### § 28:8-306. Warranties on presentment and transfer

(1) A person who presents a security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration, payment or exchange. But a purchaser for value without notice of adverse claims who receives a new, reissued or re-registered security on registration of transfer warrants only that he has no knowledge of any unauthorized signature (section 28:8-311) in a necessary indorsement.

(2) A person by transferring a security to a purchaser for value warrants only that

(a) his transfer is effective and rightful; and

(b) the security is genuine and has not been materially altered; and

(c) he knows no fact which might impair the validity of the security.

(3) Where a security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against such delivery, the intermediary by such delivery warrants only his own good faith and authority even though he has purchased or made advances against the claim to be collected against the delivery.



(4) A pledge or other holder for security who redelivers the security received, or after payment and on order of the debtor delivers that security to a third person makes only the warranties of an intermediary under subsection (3).

(5) A broker gives to his customer and to the issuer and a purchaser the warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of his customer. (Dec. 30, 1963, 77 Stat. 737, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:5-114.

#### § 28:8-307. Effect of delivery without indorsement; right to compel indorsement

Where a security in registered form has been delivered to a purchaser without a necessary indorsement he may become a bona fide purchaser only as of the time the indorsement is supplied, but against the transferor the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied. (Dec. 30, 1963, 77 Stat. 737, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:8-308. Indorsement, how made; special indorsement; indorser not a guarantor; partial assignment

(1) An indorsement of a security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or when the signature of such person is written without more upon the back of the security.

(2) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies the person to whom the security is to be transferred, or who has power to transfer it. A holder may convert a blank indorsement into a special indorsement.

(3) "An appropriate person" in subsection (1) means

(a) the person specified by the security or by special indorsement to be entitled to the security; or

(b) where the person so specified as described as a fiduciary but is no longer serving in the described capacity,—either that person or his successor; or

(c) where the security or indorsement so specifies more than one person as fiduciaries and one or more are no longer serving in the described capacity,—the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified; or

(d) where the person so specified is an individual and is without capacity to act by virtue of death, incompetence, infancy or otherwise,—his executor, administrator, guardian or like fiduciary; or

(e) where the security or indorsement so specifies more than one person as tenants by the en-

tirety or with right of survivorship and by reason of death all cannot sign,—the survivor or survivors; or

(f) a person having power to sign under applicable law or controlling instrument; or

(g) to the extent that any of the foregoing persons may act through an agent,—his authorized agent.

(4) Unless otherwise agreed the indorser by his indorsement assumes no obligation that the security will be honored by the issuer.

(5) An indorsement purporting to be only of part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(6) Whether the person signing is appropriate is determined as of the date of signing and an indorsement by such a person does not become unauthorized for the purposes of this article by virtue of any subsequent change of circumstances.

(7) Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, does not render his indorsement unauthorized for the purposes of this article. (Dec. 30, 1963, 77 Stat. 738, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:8-312, 28:8-401, 28:8-402, 28:8-404.

#### § 28:8-309. Effect of indorsement without delivery

An indorsement of a security whether special or in blank does not constitute a transfer until delivery of the security on which it appears or if the indorsement is on a separate document until delivery of both the document and the security. (Dec. 30, 1963, 77 Stat. 738, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:8-310. Indorsement of security in bearer form

An indorsement of a security in bearer form may give notice of adverse claims (section 28:8-304) but does not otherwise affect any right to registration the holder may possess. (Dec. 30, 1963, 77 Stat. 738, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:8-311. Effect of unauthorized indorsement

Unless the owner has ratified an unauthorized indorsement or is otherwise precluded from asserting its ineffectiveness

(a) he may assert its ineffectiveness against the issuer or any purchaser other than a purchaser for value and without notice of adverse claims who has in good faith received a new, re-issued or re-registered security on registration of transfer; and

(b) an issuer who registers the transfer of a security upon the unauthorized indorsement is subject to liability for improper registration (section 28:8-404).

(Dec. 30, 1963, 77 Stat. 739, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:8-306, 28:8-315.



**§ 28:8-312. Effect of guaranteeing signature or indorsement**

(1) Any person guaranteeing a signature of an indorser of a security warrants that at the time of signing

(a) the signature was genuine; and

(b) the signer was an appropriate person to indorse (section 28:8-308); and

(c) the signer had legal capacity to sign.

But the guarantor does not otherwise warrant the rightfulness of the particular transfer.

(2) Any person may guarantee an indorsement of a security and by so doing warrants not only the signature (subsection 1) but also the rightfulness of the particular transfer in all respects. But no issuer may require a guarantee of indorsement as a condition to registration of transfer.

(3) The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to such person for any loss resulting from breach of the warranties. (Dec. 30, 1963, 77 Stat. 739, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 28:8-402.

**§ 28:8-313. When delivery to the purchaser occurs; purchaser's broker as holder**

(1) Delivery to a purchaser occurs when

(a) he or a person designated by him acquires possession of a security; or

(b) his broker acquires possession of a security specially indorsed to or issued in the name of the purchaser; or

(c) his broker sends him confirmation of the purchase and also by book entry or otherwise identifies a specific security in the broker's possession as belonging to the purchaser; or

(d) with respect to an identified security to be delivered while still in the possession of a third person when that person acknowledges that he holds for the purchaser; or

(e) appropriate entries on the books of a clearing corporation are made under section 28:8-320.

(2) The purchaser is the owner of a security held for him by his broker, but is not the holder except as specified in subparagraphs (b), (c) and (e) of subsection (1). Where a security is part of a fungible bulk the purchaser is the owner of a proportionate property interest in the fungible bulk.

(3) Notice of an adverse claim received by the broker or by the purchaser after the broker takes delivery as a holder for value is not effective either as to the broker or as to the purchaser. However, as between the broker and the purchaser the purchaser may demand delivery of an equivalent security as to which no notice of an adverse claim has been received. (Dec. 30, 1963, 77 Stat. 739, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:8-314. Duty to deliver, when completed**

(1) Unless otherwise agreed where a sale of a security is made on an exchange or otherwise through brokers

(a) the selling customer fulfills his duty to deliver when he places such a security in the possession

of the selling broker or of a person designated by the broker or if requested causes an acknowledgment to be made to the selling broker that it is held for him; and

(b) the selling broker including a correspondent broker acting for a selling customer fulfills his duty to deliver by placing the security or a like security in the possession of the buying broker or a person designated by him or by effecting clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

(2) Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to deliver a security under a contract of purchase is not fulfilled until he places the security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by him or at the purchaser's request causes an acknowledgment to be made to the purchaser that it is held for him. Unless made on an exchange a sale to a broker purchasing for his own account is within this subsection and not within subsection (1). (Dec. 30, 1963, 77 Stat. 740, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:8-315. Action against purchaser based upon wrongful transfer**

(1) Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, may against anyone except a bona fide purchaser reclaim possession of the security or obtain possession of any new security evidencing all or part of the same rights or have damages.

(2) If the transfer is wrongful because of an unauthorized indorsement, the owner may also reclaim or obtain possession of the security or new security even from a bona fide purchaser if the ineffectiveness of the purported indorsement can be asserted against him under the provisions of this article on unauthorized indorsements (section 28:8-311).

(3) The right to obtain or reclaim possession of a security may be specifically enforced and its transfer enjoined and the security impounded pending the litigation. (Dec. 30, 1963, 77 Stat. 740, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:8-316. Purchaser's right to requisites for registration of transfer on books**

Unless otherwise agreed the transferor must on due demand supply his purchaser with any proof of his authority to transfer or with any other requisite which may be necessary to obtain registration of the transfer of the security but if the transfer is not for value a transferor need not do so unless the purchaser furnishes the necessary expenses. Failure to comply with a demand made within a reasonable time gives the purchaser the right to reject or rescind the transfer. (Dec. 30, 1963, 77 Stat. 740, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:8-317. Attachment or levy upon security**

(1) No attachment or levy upon a security or any share or other interest evidenced thereby which is outstanding shall be valid until the security is actually seized by the officer making the attachment or levy but a security which has been surrendered to the issuer may be attached or levied upon at the source.



(2) A creditor whose debtor is the owner of a security shall be entitled to such aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching such security or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process. (Dec. 30, 1963, 77 Stat. 740, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:8-318. No conversion by good faith delivery

An agent or bailee who in good faith (including observance of reasonable commercial standards if he is in the business of buying, selling or otherwise dealing with securities) has received securities and sold, pledged or delivered them according to the instructions of the principal is not liable for conversion or for participation in breach of fiduciary duty although the principal had no right to dispose of them. (Dec. 30, 1963, 77 Stat. 741, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:8-319. Statute of frauds

A contract for the sale of securities is not enforceable by way of action or defense unless

(a) there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price; or

(b) delivery of the security has been accepted or payment has been made but the contract is enforceable under this provision only to the extent of such delivery or payment; or

(c) within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under paragraph (a) has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within ten days after its receipt; or

(d) the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract was made for sale of a stated quantity of described securities at a defined or stated price.

(Dec. 30, 1963, 77 Stat. 741, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:1-206.

#### § 28:8-320. Transfer or pledge within a central depository system

##### (1) If a security

(a) is in the custody of a clearing corporation or of a custodian bank or a nominee of either subject to the instructions of the clearing corporation; and

(b) is in bearer form or indorsed in blank by an appropriate person or registered in the name of the clearing corporation or custodian bank or a nominee of either; and

(c) is shown on the account of a transferor or pledgor on the books of the clearing corporation;

then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of appropriate entries on the books of the clearing corporation reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the amount of the obligation or the number of shares or rights transferred or pledged.

(2) Under this section entries may be with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.

(3) A transfer or pledge under this section has the effect of a delivery of a security in bearer form or duly indorsed in blank (section 28:8-301) representing the amount of the obligation or the number of shares or rights transferred or pledged. If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party (sections 28:9-304 and 28:9-305). A transferee or pledgee under this section is a holder.

(4) A transfer or pledge under this section does not constitute a registration of transfer under part 4 of this article.

(5) That entries made on the books of the clearing corporation as provided in subsection (1) are not appropriate does not affect the validity or effect of the entries nor the liabilities or obligations of the clearing corporation to any person adversely affected thereby. (Dec. 30, 1963, 77 Stat. 741, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:8-313.

#### PART 4.—REGISTRATION

##### PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 28:8-201, 28:8-320.

#### § 28:8-401. Duty of issuer to register transfer

(1) Where a security in registered form is presented to the issuer with a request to register transfer, the issuer is under a duty to register the transfer as requested if

(a) the security is indorsed by the appropriate person or persons (section 28:8-308); and

(b) reasonable assurance is given that those indorsements are genuine and effective (section 28:8-402); and

(c) the issuer has no duty to inquire into adverse claims or has discharged any such duty (section 28:8-403); and

(d) any applicable law relating to the collection of taxes has been complied with; and

(e) the transfer is in fact rightful or is to a bona fide purchaser.

(2) Where an issuer is under a duty to register a transfer of a security the issuer is also liable to the person presenting it for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register



the transfer. (Dec. 30, 1963, 77 Stat. 742, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:8-402. Assurance that indorsements are effective

(1) The issuer may require the following assurance that each necessary indorsement (section 28:8-308) is genuine and effective

(a) in all cases, a guarantee of the signature (subsection (1) of section 28:8-312) of the person indorsing; and

(b) where the indorsement is by an agent, appropriate assurance of authority to sign;

(c) where the indorsement is by a fiduciary, appropriate evidence of appointment or incumbency;

(d) where there is more than one fiduciary, reasonable assurance that all who are required to sign have done so;

(e) where the indorsement is by a person not covered by any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to the foregoing.

(2) A "guarantee of the signature" in subsection (1) means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible. The issuer may adopt standards with respect to responsibility provided such standards are not manifestly unreasonable.

(3) "Appropriate evidence of appointment or incumbency" in subsection (1) means

(a) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within sixty days before the date of presentation for transfer; or

(b) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the issuer to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the issuer to be appropriate. The issuer may adopt standards with respect to such evidence provided such standards are not manifestly unreasonable. The issuer is not charged with notice of the contents of any document obtained pursuant to this paragraph (b) except to the extent that the contents relate directly to the appointment or incumbency.

(4) The issuer may elect to require reasonable assurance beyond that specified in this section but if it does so and for a purpose other than that specified in subsection 3(b) both requires and obtains a copy of a will, trust, indenture, articles of co-partnership, by-laws or other controlling instrument it is charged with notice of all matters contained therein affecting the transfer. (Dec. 30, 1963, 77 Stat. 742, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:8-102, 28:8-401, 28:8-403.

§ 28:8-403. Limited duty of inquiry

(1) An issuer to whom a security is presented for registration is under a duty to inquire into adverse claims if

(a) a written notification of an adverse claim is received at a time and in a manner which affords the issuer a reasonable opportunity to act on it prior to the issuance of a new, reissued or re-registered security and the notification identifies the claimant, the registered owner and the issue of which the security is a part and provides an address for communications directed to the claimant; or

(b) the issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under subsection (4) of section 28:8-402.

(2) The issuer may discharge any duty of inquiry by any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by him or if there be no such address at his residence or regular place of business that the security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within thirty days from the date of mailing the notification, either

(a) an appropriate restraining order, injunction or other process issues from a court of competent jurisdiction; or

(b) an indemnity bond sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar or other agent of the issuer involved, from any loss which it or they may suffer by complying with the adverse claim is filed with the issuer.

(3) Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under subsection (4) of section 28:8-402 or receives notification of an adverse claim under subsection (1) of this section, where a security presented for registration is indorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims. In particular

(a) an issuer registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;

(b) an issuer registering transfer on an indorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(c) the issuer is not charged with notice of the contents of any court record or file or other recorded or unrecorded document even though the document is in its possession and even though the transfer is made on the indorsement of a fiduciary to the fiduciary himself or to his nominee.

(Dec. 30, 1963, 77 Stat. 743, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)



## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:8-401, 28:8-404.

## § 28:8-404. Liability and non-liability for registration

(1) Except as otherwise provided in any law relating to the collection of taxes, the issuer is not liable to the owner or any other person suffering loss as a result of the registration of a transfer of a security if

(a) there were on or with the security the necessary indorsements (section 28:8-308); and

(b) the issuer had no duty to inquire into adverse claims or has discharged any such duty (section 28:8-403).

(2) Where an issuer has registered a transfer of a security to a person not entitled to it the issuer on demand must deliver a like security to the true owner unless

(a) the registration was pursuant to subsection (1); or

(b) the owner is precluded from asserting any claim for registering the transfer under subsection (1) of the following section; or

(c) such delivery would result in overissue, in which case the issuer's liability is governed by section 28:8-104.

(Dec. 30, 1963, 77 Stat. 744, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:8-311.

## § 28:8-405. Lost, destroyed and stolen securities

(1) Where a security has been lost, apparently destroyed or wrongfully taken and the owner fails to notify the issuer of that fact within a reasonable time after he has notice of it and the issuer registers a transfer of the security before receiving such a notification, the owner is precluded from asserting against the issuer any claim for registering the transfer under the preceding section or any claim to a new security under this section.

(2) Where the owner of a security claims that the security has been lost, destroyed or wrongfully taken, the issuer must issue a new security in place of the original security if the owner

(a) so requests before the issuer has notice that the security has been acquired by a bona fide purchaser; and

(b) files with the issuer a sufficient indemnity bond; and

(c) satisfies any other reasonable requirements imposed by the issuer.

(3) If, after the issue of the new security, a bona fide purchaser of the original security presents it for registration of transfer, the issuer must register the transfer unless registration would result in overissue, in which event the issuer's liability is governed by section 28:8-104. In addition to any rights on the indemnity bond, the issuer may recover the new security from the person to whom it was issued or any person taking under him except a bona fide purchaser. (Dec. 30, 1963, 77 Stat. 744, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

## § 28:8-406. Duty of authenticating trustee, transfer agent or registrar

(1) Where a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities

(a) he is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and

(b) he has with regard to the particular functions he performs the same obligation to the holder or owner of the security and has the same rights and privileges as the issuer has in regard to those functions.

(2) Notice to an authenticating trustee, transfer agent, registrar or other such agent is notice to the issuer with respect to the functions performed by the agent. (Dec. 30, 1963, 77 Stat. 744, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

## § 28:8-407. Limitation of actions

(1) In the event of registration, either before or after this subtitle becomes effective, of a transfer or purported transfer of a security to a person not entitled to it, no action of any kind, legal or equitable, to compel the issue, reissue or delivery of a like security or to obtain damages or any other relief as a result of or in connection with such registration may be brought, subject to subsection (2), by the true owner or any other person against an issuer, authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its securities, more than eight years after the date on which such registration to a person not entitled has taken place.

(2) The time limitations in subsections (1) and (3) of this section may not be tolled or suspended for any reason. This section is additional to, and does not prevent or affect the application of, any other statute of limitations as a defense to any action. This section applies to claims or causes of action which have accrued before this subtitle becomes effective as well as to those which accrue after this subtitle becomes effective. This section does not apply to any action against an issuer which at the time of such registration has fewer than fifty persons registered upon books maintained for that purpose as holders of the class and series, if any, of the security so registered to the person not entitled to it.

(3) If the eight year period specified in this section expires prior to one year after the effective date of this subtitle, such period is extended to one year after such effective date. (Dec. 30, 1963, 77 Stat. 745, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

## Article 9.—SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

## PART 1.—SHORT TITLE, APPLICABILITY AND DEFINITIONS

## Sec.

28:9-101. Short title.

28:9-102. Policy and scope of article.



Sec.

- 28:9-103. Accounts, contract rights, general intangibles and equipment relating to another jurisdiction; and incoming goods already subject to a security interest.
- 28:9-104. Transactions excluded from article.
- 28:9-105. Definitions and index of definitions.
- 28:9-106. Definitions: "account"; "contract right"; "general intangibles".
- 28:9-107. Definitions: "purchase money security interest".
- 28:9-108. When after-acquired collateral not security for antecedent debt.
- 28:9-109. Classification of goods; "consumer goods"; "equipment"; "farm products"; "inventory".
- 28:9-110. Sufficiency of description.
- 28:9-111. Applicability of bulk transfer laws.
- 28:9-112. Where collateral is not owned by debtor.
- 28:9-113. Security interests arising under article on sales.

#### PART 2.—VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF PARTIES THERETO

- 28:9-201. General validity of security agreement.
- 28:9-202. Title to collateral immaterial.
- 28:9-203. Enforceability of security interest; proceeds, formal requisites.
- 28:9-204. When security interest attaches; after-acquired property; future advances.
- 28:9-205. Use or disposition of collateral without accounting permissible.
- 28:9-206. Agreement not to assert defenses against assignee; modification of sales warranties where security agreement exists.
- 28:9-207. Rights and duties when collateral is in secured party's possession.
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- 28:9-305. When possession by secured party perfects security interest without filing.
- 28:9-306. "Proceeds"; secured party's rights on disposition of collateral.
- 28:9-307. Protection of buyers of goods.
- 28:9-308. Purchase of chattel paper and non-negotiable instruments.
- 28:9-309. Protection of purchasers of instruments and documents.
- 28:9-310. Priority of certain liens arising by operation of law.
- 28:9-311. Alienability of debtor's rights: judicial process.
- 28:9-312. Priorities among conflicting security interests in the same collateral.
- 28:9-313. Priority of security interests in fixtures.
- 28:9-314. Accessions.
- 28:9-315. Priority when goods are commingled or processed.
- 28:9-316. Priority subject to subordination.
- 28:9-317. Secured party not obligated on contract of debtor.
- 28:9-318. Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment.

#### PART 4.—FILING

- 28:9-401. Place of filing; erroneous filing; removal of collateral.

Sec.

- 28:9-402. Formal requisites of financing statement; amendments.
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- 28:9-404. Termination statement.
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#### PART 5.—DEFAULT

- 28:9-501. Default; procedure when security agreement covers both real and personal property.
- 28:9-502. Collection rights of secured party.
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- 28:9-506. Debtor's right to redeem collateral.
- 28:9-507. Secured party's liability for failure to comply with this part.

#### ARTICLE REFERRED TO IN OTHER SECTIONS

This article is referred to in sections 28:1-201, 28:2-326, 28:2-401, 28:2-402, 28:3-104, 28:4-208, 28:5-116, 28:7-209, 40-702.

#### PART 1.—SHORT TITLE, APPLICABILITY AND DEFINITIONS

##### § 28:9-101. Short title

This article shall be known and may be cited as Uniform Commercial Code—Secured Transactions. (Dec. 30, 1963, 77 Stat. 746, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

##### § 28:9-102. Policy and scope of article

(1) Except as otherwise provided in section 28:9-103 on multiple state transactions and in section 28:9-104 on excluded transactions, this article applies so far as concerns any personal property and fixtures within the jurisdiction of the District

(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper, accounts or contract rights; and also

(b) to any sale of accounts, contract rights or chattel paper.

(2) This article applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This article does not apply to statutory liens except as provided in section 28:9-310.

(3) The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply. (Dec. 30, 1963, 77 Stat. 746, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:1-105.



§ 28:9-103. Accounts, contract rights, general intangibles and equipment relating to another jurisdiction; and incoming goods already subject to a security interest

(1) If the office where the assignor of accounts or contract rights keep his records concerning them is in the District, the validity and perfection of a security interest therein and the possibility and effect of proper filing is governed by this article; otherwise by the law (including the conflict of laws rules) of the jurisdiction where such office is located.

(2) If the chief place of business of a debtor is in the District, this article governs the validity and perfection of a security interest and the possibility and effect of proper filing with regard to general intangibles or with regard to goods of a type which are normally used in more than one jurisdiction (such as automotive equipment, rolling stock, airplanes, road building equipment, commercial harvesting equipment, construction machinery and the like) if such goods are classified as equipment or classified as inventory by reason of their being leased by the debtor to others. Otherwise, the law (including the conflict of laws rules) of the jurisdiction where such chief place of business is located shall govern. If the chief place of business is located in a jurisdiction which does not provide for perfection of the security interest by filing or recording in that jurisdiction, then the security interest may be perfected by filing in the District. For the purpose of determining the validity and perfection of a security interest in an airplane, the chief place of business of a debtor who is a foreign air carrier under the Federal Aviation Act of 1958, as amended, is the designated office of the agent upon whom service of process may be made on behalf of the debtor.

(3) If personal property other than that governed by subsections (1) and (2) is already subject to a security interest when it is brought into the District, the validity of the security interest in the District is to be determined by the law (including the conflict of laws rules) of the jurisdiction where the property was when the security interest attached. However, if the parties to the transaction understood at the time that the security interest attached that the property would be kept in the District and it was brought into the District within 30 days after the security interest attached for purposes other than transportation through the District, then the validity of the security interest in the District is to be determined by the law of the District. If the security interest was already perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into the District, the security interest continues perfected in the District for four months and also thereafter if within the four month period it is perfected in the District. The security interest may also be perfected in the District after the expiration of the four month period; in such case perfection dates from the time of perfection in the District. If the security interest was not perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into the District, it may be perfected

in the District; in such case perfection dates from the time of perfection in the District.

(4) Notwithstanding subsections (2) and (3), if personal property is covered by a certificate of title issued under a statute of the District or any other jurisdiction which requires indication on a certificate of title of any security interest in the property as a condition of perfection, then the perfection is governed by the law of the jurisdiction which issued the certificate.

(5) Notwithstanding subsection (1) and section 28:9-302, if the office where the assignor of accounts or contracts rights keeps his records concerning them is not located in a jurisdiction which is a part of the United States, its territories or possessions, and the accounts or contract rights are within the jurisdiction of the District or the transaction which creates the security interest otherwise bears an appropriate relation to the District, this article governs the validity and perfection of the security interest and the security interest may only be perfected by notification to the account debtor. (Dec. 30, 1963, 77 Stat. 747, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### REFERENCE IN TEXT

The Federal Aviation Act of 1958, as amended, referred to in par. (2), is classified generally to 49 U.S.C. 1301 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:1-105, 28:9-102, 28:9-401.

#### NOTES TO DECISIONS

##### Perfection of lien

Once a security interest (lien) is noted on a certificate of title in a state that requires notation of a security interest (lien) on the certificate of title as a condition of perfection, the security interest (lien) remains perfected when the vehicle is removed to another state even if the debtor has not obtained a new certificate of title with the security interest (lien) noted on the certificate of title in the other state. *T. W. Streule v. Gulf Finance Corporation* (D.C. App. 1970, 265 A. 2d 298; cert. denied 91 S. Ct. 1675, 402 U.S. 975).

#### § 28:9-104. Transactions excluded from article

This article does not apply

(a) to a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920, to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or

(b) to a landlord's lien; or

(c) to a lien given by statute or other rule of law for services or materials except as provided in section 28:9-310 on priority of such liens; or

(d) to a transfer of a claim for wages, salary or other compensation of an employee; or

(e) to an equipment trust covering railway rolling stock; or

(f) to a sale of accounts, contract rights or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts, contract rights or chattel paper which is for the purpose of collection only, or a transfer of a contract right to an assignee who is also to do the performance under the contract; or

(g) to a transfer of an interest or claim in or under any policy of insurance; or



- (h) to a right represented by a judgment; or
- (i) to any right of set-off; or

(j) except to the extent that provision is made for fixtures in section 28:9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or

(k) to a transfer in whole or in part of any of the following: any claim arising out of tort; any deposit, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization.

(Dec. 30, 1963, 77 Stat. 748, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### REFERENCE IN TEXT

The Ship Mortgage Act, 1920, referred to in par. (a), is classified to 46 U.S.C. 911 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:9-102.

### § 28:9-105. Definitions and index of definitions

(1) In this article unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper, contract right or general intangible;

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "Collateral" means the property subject to a security interest, and includes accounts, contract rights and chattel paper which have been sold;

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts, contract rights or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) "Document" means document of title as defined in the general definitions of article 1 (section 28:1-201);

(f) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (section 28:9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, contract rights and other things in action. "Goods" also include the unborn young of animals and growing crops;

(g) "Instrument" means a negotiable instrument (defined in section 28:3-104), or a security (defined in section 28:8-102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment;

(h) "Security agreement" means an agreement which creates or provides for a security interest;

(i) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts, contract rights or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party.

(2) Other definitions applying to this article and the sections in which they appear are:

"Account". Section 28:9-106.

"Consumer goods". Section 28:9-109(1).

"Contract right". Section 28:9-196.

"Equipment". Section 28:9-109(2).

"Farm products". Section 28:9-109(3).

"Filing Office". Section 28:9-401(1).

"General intangibles". Section 28:9-106.

"Inventory". Section 28:9-109(4).

"Lien creditor". Section 28:9-301(3).

"Proceeds". Section 28:9-306(1).

"Purchase money security interest". Section 28:9-107.

(3) The following definitions in other articles apply to this article:

"Check". Section 28:3-104.

"Contract for sale". Section 28:2-106.

"Holder in due course". Section 28:3-302.

"Note". Section 28:3-104.

"Sale". Section 28:2-106.

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article. (Dec. 30, 1963, 77 Stat. 748, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### REFERENCE IN TEXT

The reference in subsec. (h)(2) to section 28:9-196 is obviously an error, as there is no such section. In all probability it should be section 28:9-106.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-1209, 38-205, 40-701, 40-901.

### § 28:9-106. Definitions: "account"; "contract right"; "general intangibles"

"Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper. "Contract right" means any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper. "General intangibles" means any personal property (including things in action) other than goods, accounts, contract rights, chattel paper, documents and instruments. (Dec. 30, 1963, 77 Stat. 750, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:9-105.

### § 28:9-107. Definitions: "purchase money security interest"

A security interest is a "purchase money security interest" to the extent that it is

- (a) taken or retained by the seller of the collateral to secure all or part of its price; or



(b) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

(Dec. 30, 1963, 77 Stat. 750, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:9-105.

### § 28:9-108. When after-acquired collateral not security for antecedent debt

Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property his security interest in the after-acquired collateral shall be deemed to be taken for new value and not as security for an antecedent debt if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given. (Dec. 30, 1963, 77 Stat. 750, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

### § 28:9-109. Classification of goods; "consumer goods"; "equipment"; "farm products"; "inventory"

Goods are

(1) "consumer goods" if they are used or bought for use primarily for personal, family or household purposes;

(2) "equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a non-profit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

(3) "farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, woolclip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory;

(4) "inventory" if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment. (Dec. 30, 1963, 77 Stat. 750, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2-103, 28:6-102, 28:9-105.

#### NOTES TO DECISIONS

##### Classification of goods

Under the provisions of the Uniform Commercial Code, classification of goods is mutually exclusive. *Franklin Investment Co., Inc. v. E. P. Homburg* (D.C. App. 1969, 252 A. 2d 95).

Among the same parties and at the same point in time, a product may be classified as both "inventory" and "consumer goods." *Id.*

The manner in which a product is classified under the secured transactions provisions of the Uniform Commercial Code is determined at time of agreement between parties giving rise to security interest, and, as to them, categorization remains unaffected by later transfer of product in question. *Id.*

##### Inventory

An automobile held by a used car dealer for purpose of sale to buying public in the ordinary course of business was "inventory" and remained so despite subsequent sale of automobile, and, thus, under provision of Uniform Commercial Code a buyer of the automobile in ordinary course of business bought the same free of security interest of dealer's chattel mortgagee. *Franklin Investment Co. Inc. v. E. P. Homburg*. (D.C. App. 1969, 252 A. 2d 95).

### § 28:9-110. Sufficiency of description

For the purposes of this article any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described. (Dec. 30, 1963, 77 Stat. 750, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

### § 28:9-111. Applicability of bulk transfer laws

The creation of a security interest is not a bulk transfer under article 6 (see section 28:6-103). (Dec. 30, 1963, 77 Stat. 750, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

### § 28:9-112. Where collateral is not owned by debtor

Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under section 28:9-502(2) or under section 28:9-504(1), and is not liable for the debt or for any deficiency after resale, and he has the same right as the debtor.

(a) to receive statements under section 28:9-208;

(b) to receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under section 28:9-505;

(c) to redeem the collateral under section 28:9-506;

(d) to obtain injunctive or other relief under section 28:9-507(1); and

(e) to recover losses caused to him under section 28:9-208(2).

(Dec. 30, 1963, 77 Stat. 751, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

### § 28:9-113. Security interests arising under article on sales

A security interest arising solely under the article on sales (article 2) is subject to the provisions of this article except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods

(a) no security agreement is necessary to make the security interest enforceable; and

(b) no filing is required to perfect the security interest; and

(c) the rights of the secured party on default by the debtor are governed by the article on sales (article 2).

(Dec. 30, 1963, 77 Stat. 751, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)



## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:9-203, 28:9-302.

## PART 2.—VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF PARTIES THERETO

## § 28:9-201. General validity of security agreement

Except as otherwise provided by this title a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this article validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto. (Dec. 30, 1963, 77 Stat. 751, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

## § 28:9-202. Title to collateral immaterial

Each provision of this article with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor. (Dec. 30, 1963, 77 Stat. 751, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

## § 28:9-203. Enforceability of security interest; proceeds, formal requisites

(1) Subject to the provisions of section 28:4-208 on the security interest of a collecting bank and section 28:9-113 on a security interest arising under the article on sales, a security interest is not enforceable against the debtor or third parties unless

(a) the collateral is in the possession of the secured party; or

(b) the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops or oil, gas or minerals to be extracted or timber to be cut, a description of the land concerned. In describing collateral, the word "proceeds" is sufficient without further description to cover proceeds of any character.

(2) A transaction, although subject to this article, is also subject to chapter 20 of Title 2, relating to pawnbrokers, chapter 6 of Title 26, relating to money lenders, chapter 7 of Title 40, relating to liens on motor vehicles, and chapter 9 of Title 40, relating to installment sales of motor vehicles, and in the case of conflict between the provisions of this article and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein. (Dec. 30, 1963, 77 Stat. 751, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:1-206, 28:4-208.

## § 28:9-204. When security interest attaches; after-acquired property; future advances

(1) A security interest cannot attach until there is agreement (subsection (3) of section 28:1-201) that it attach and value is given and the debtor has rights in the collateral. It attaches as soon as all of the events in the preceding sentence have taken place unless explicit agreement postpones the time of attaching.

(2) For the purposes of this section the debtor has no rights

(a) in crops until they are planted or otherwise become growing crops, in the young of livestock until they are conceived;

(b) in fish until caught, in oil, gas or minerals until they are extracted, in timber until it is cut;

(c) in a contract right until the contract has been made;

(d) in an account until it comes into existence.

(3) Except as provided in subsection (4) a security agreement may provide that collateral, whenever acquired, shall secure all obligations covered by the security agreement.

(4) No security interest attaches under an after-acquired property clause

(a) to crops which become such more than one year after the security agreement is executed except that a security interest in crops which is given in conjunction with a lease or a land purchase or improvement transaction evidenced by a contract, mortgage or deed of trust may if so agreed attach to crops to be grown on the land concerned during the period of such real estate transaction;

(b) to consumer goods other than accessions (section 28:9-314) when given as additional security unless the debtor acquires rights in them within ten days after the secured party gives value.

(5) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment. (Dec. 30, 1963, 77 Stat. 752, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:9-312.

## § 28:9-205. Use or disposition of collateral without accounting permissible

A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts, contract rights or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee. (Dec. 30, 1963, 77 Stat. 752, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

## § 28:9-206. Agreement not to assert defenses against assignee; modification of sales warranties where security agreement exists

(1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice



of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the article on commercial paper (article 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(2) When a seller retains a purchase money security interest in goods the article on sales (article 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties. (Dec. 30, 1963, 77 Stat. 752, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:9-318.

### § 28:9-207. Rights and duties when collateral is in secured party's possession

(1) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed, when collateral is in the secured party's possession

(a) reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

(c) the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

(d) the secured party must keep the collateral identifiable but fungible collateral may be commingled;

(e) the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.

(4) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement. (Dec. 30, 1963, 77 Stat. 753, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:9-501.

### § 28:9-208. Request for statement of account or list of collateral

(1) A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any

other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(2) The secured party must comply with such a request within two weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor he may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply he is liable for any loss caused to the debtor thereby; and if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If he no longer has an interest in the obligation or collateral at the time the request is received he must A successor in interest is not subject to this section until a request is received by him.

(3) A debtor is entitled to such a statement once every six months without charge. The secured party disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor as a result of failure to disclose. may require payment of a charge not exceeding \$10 for each additional statement furnished. (Dec. 30, 1963, 77 Stat. 753, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:9-112.

### PART 3.—RIGHTS OF THIRD PARTIES; PERFECTED AND UNPERFECTED SECURITY INTERESTS; RULES OF PRIORITY

### § 28:9-301. Persons who take priority over unperfected security interests; "lien creditor"

(1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of

(a) persons entitled to priority under section 28:9-312;

(b) a person who becomes a lien creditor without knowledge of the security interest and before it is perfected;

(c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) in the case of accounts, contract rights, and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within ten days after the collateral comes into possession of the debtor, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.



(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment. Unless all the creditors represented had knowledge of the security interest such a representative of creditors is a lien creditor without knowledge even though he personally has knowledge of the security interest. (Dec. 30, 1963, 77 Stat. 754, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:9-105, 28:9-312.

§ 28:9-302. When filing is required to perfect security interest; security interests to which filing provisions of this article do not apply

(1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under section 28:9-305;

(b) a security interest temporarily perfected in instruments or documents without delivery under section 28:9-304 or in proceeds for a 10 day period under section 28:9-306;

(c) a purchase money security interest in farm equipment having a purchase price not in excess of \$2,500; but filing is required for a fixture under section 28:9-313 or for a motor vehicle required to be licensed;

(d) a purchase money security interest in consumer goods; but filing is required for a fixture under section 28:9-313 or for a motor vehicle required to be licensed;

(e) an assignment of accounts or contract rights which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts or contract rights of the assignor;

(f) a security interest of a collecting bank (section 28:4-208) or arising under the article on sales (see section 28:9-113) or covered in subsection (3) of this section.

(2) If a secured party assigns a perfected security interest, no filing under this article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing provisions of this article do not apply to a security interest properly subject to a statute

(a) of the United States which provides for a national registration or filing of all security interests in such property; or

(b) of the United States pertaining to the District which provides for central filing of security interests in a motor vehicle or trailer which is not inventory held for sale for which a certificate of title is required to be issued under the provisions of chapter 7 of Title 40.

(4) A security interest in property covered by a statute described in subsection (3) can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate

of title or a duplicate thereof by a public official. (Dec. 30, 1963, 77 Stat. 754, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:9-103, 28:9-303.

§ 28:9-303. When security interest is perfected; continuity of perfection

(1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in sections 28:9-302, 28:9-304, 28:9-305, and 28:9-306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

(2) If a security interest is originally perfected in any way permitted under this article and is subsequently perfected in some other way under this article, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this article. (Dec. 30, 1963, 77 Stat. 755, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:9-304. Perfection of security interest in instruments, documents, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession

(1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5).

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange; or

(b) delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of



presentation, collection, renewal or registration of transfer.

(6) After the 21 day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this article. (Dec. 30, 1963, 77 Stat. 755, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:8-320, 28:9-302, 28:9-303, 28:9-308, 28:9-312.

#### § 28:9-305. When possession by secured party perfects security interest without filing

A security interest in letters of credit and advices of credit (subsection (2)(a) of section 28:5-116), goods, instruments, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this article. The security interest may be otherwise perfected as provided in this article before or after the period of possession by the secured party. (Dec. 30, 1963, 77 Stat. 756, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:8-320, 28:9-302, 28:9-303.

#### § 28:9-306. "Proceeds"; secured party's rights on disposition of collateral

(1) "Proceeds" includes whatever is received when collateral or proceeds is sold, exchanged, collected or otherwise disposed of. The term also includes the account arising when the right to payment is earned under a contract right. Money, checks and the like are "cash proceeds". All other proceeds are "non-cash proceeds".

(2) Except where this article otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof by the debtor unless his action was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless

(a) a filed financing statement covering the original collateral also covers proceeds; or

(b) the security interest in the proceeds is perfected before the expiration of the ten day period.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest.

(a) in identifiable non-cash proceeds;

(b) in identifiable cash proceeds in the form of money which is not commingled with other money or deposited in a bank account prior to the insolvency proceedings;

(c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a bank account prior to the insolvency proceedings; and

(d) in all cash and bank accounts of the debtor, if other cash proceeds have been commingled or deposited in a bank account, but the perfected security interest under this paragraph (d) is

(i) subject to any right of set-off; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings and commingled or deposited in a bank account prior to the insolvency proceedings less the amount of cash proceeds received by the debtor and paid over to the secured party during the ten day period.

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under section 28:9-308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

(Dec. 30, 1963, 77 Stat. 756, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:9-105, 28:9-302, 28:9-303, 28:9-308, 28:9-312, 28:9-402, 28:9-502.

#### NOTES TO DECISIONS

##### Inventory

An automobile held by a used car dealer for purpose of sale to buying public in the ordinary course of business was "inventory" and remained so despite subsequent sale of automobile, and, thus, under provision of Uniform



Commercial Code a buyer of the automobile in ordinary course of business bought the same free of security interest of dealer's chattel mortgagee. *Franklin Investment Co., Inc. v. E. P. Homburg* (D.C. App. 1969, 252 A. 2d 95).

#### § 28:9-307. Protection of buyers of goods

(1) A buyer in ordinary course of business (subsection (9) of section 28:1-201) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

(2) In the case of consumer goods and in the case of farm equipment having an original purchase price not in excess of \$2,500 (other than fixtures, see section 28:9-313), a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes or his own farming operations unless prior to the purchase the secured party has filed a financing statement covering such goods. (Dec. 30, 1963, 77 Stat. 757, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:7-503, 28:9-312.

#### NOTES TO DECISIONS

##### Classification of goods

Under the provisions of the Uniform Commercial Code, classification of goods is mutually exclusive. *Franklin Investment Co., Inc. v. E. P. Homburg* (D.C. App. 1969, 252 A. 2d 95).

Among the same parties and at the same point in time, a product may be classified as both "inventory" and "consumer goods." *Id.*

The manner in which a product is classified under secured transactions provisions of the Uniform Commercial Code is determined at time of agreement between parties giving rise to security interest, and, as to them, categorization remains unaffected by later transfer of product in question. *Id.*

##### Inventory

An automobile held by a used car dealer for purpose of sale to buying public in the ordinary course of business was "inventory" and remained so despite subsequent sale of automobile, and, thus, under provision of Uniform Commercial Code a buyer of the automobile in ordinary course of business bought the same free of security interest of dealer's chattel mortgagee. *Franklin Investment Co., Inc. v. E. P. Homburg* (D.C. App. 1969, 252 A. 2d 95).

#### § 28:9-308. Purchase of chattel paper and non-negotiable instruments

A purchaser of chattel paper or a non-negotiable instrument who gives new value and takes possession of it in the ordinary course of his business and without knowledge that the specific paper or instrument is subject to a security interest has priority over a security interest which is perfected under section 28:9-304 (permissive filing and temporary perfection). A purchaser of chattel paper who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in chattel paper which is claimed merely as proceeds of inventory subject to a security interest (section 28:9-306), even though he knows that the specific paper is subject to the security interest. (Dec. 30, 1963, 77 Stat. 758, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:9-306, 28:9-312.

#### § 28:9-309. Protection of purchasers of instruments and documents

Nothing in this article limits the rights of a holder in due course of a negotiable instrument (section 28:3-302) or a holder to whom a negotiable document of title has been duly negotiated (section 28:7-501) or a bona fide purchaser of a security (section 28:8-301) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this article does not constitute notice of the security interest to such holders or purchasers. (Dec. 30, 1963, 77 Stat. 758, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:9-312.

#### § 28:9-310. Priority of certain liens arising by operation of law

When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise. (Dec. 30, 1963, 77 Stat. 758, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:9-102, 28:9-104, 28:9-312.

#### § 28:9-311. Alienability of debtor's rights: judicial process

The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default. (Dec. 30, 1963, 77 Stat. 758, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:9-312. Priorities among conflicting security interests in the same collateral

(1) The rules of priority stated in the following sections shall govern where applicable: section 28:4-208 with respect to the security interest of collecting banks in items being collected, accompanying documents and proceeds; section 28:9-301 on certain priorities; section 28:9-304 on goods covered by documents; section 28:9-306 on proceeds and repossessions; section 28:9-307 on buyers of goods; section 28:9-308 on possessory against non-possessory interests in chattel paper or non-negotiable instruments; section 28:9-309 on security interests in negotiable instruments, documents or securities; section 28:9-310 on priorities between perfected security interests and liens by operation of law; section 28:9-313 on security interests in fixtures as against interests in real estate; section 28:9-314 on security interests in accessions as against interest in goods; section 28:9-315 on conflicting security interests where goods lose their identity or become part of a product; and section 28:9-316 on contractual subordination.



(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A purchase money security interest in inventory collateral has priority over a conflicting security interest in the same collateral if

(a) the purchase money security interest is perfected at the time the debtor receives possession of the collateral; and

(b) any secured party whose security interest is known to the holder of the purchase money security interest or who, prior to the date of the filing made by the holder of the purchase money security interest, had filed a financing statement covering the same items or type of inventory, has received notification of the purchase money security interest before the debtor receives possession of the collateral covered by the purchase money security interest; and

(c) such notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within ten days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined as follows:

(a) in the order of filing if both are perfected by filing, regardless of which security interest attached first under section 28:9-204(1) and whether it attached before or after filing;

(b) in the order of perfection unless both are perfected by filing, regardless of which security interest attached first under section 28:9-204(1) and, in the case of a filed security interest, whether it attached before or after filing; and

(c) in the order of attachment under section 28:9-204(1) so long as neither is perfected.

(6) For the purpose of the priority rules of the immediately preceding subsection, a continuously perfected security interest shall be treated at all times as if perfected by filing if it was originally so perfected and it shall be treated at all times as if perfected otherwise than by filing if it was originally perfected otherwise than by filing. (Dec. 30, 1963, 77 Stat. 758, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:9-301.

#### § 28:9-313. Priority of security interests in fixtures

(1) The rules of this section do not apply to goods incorporated into a structure in the manner of lumber, bricks, tile, cement, glass, metal work and the like and no security interest in them exists under this article unless the structure remains personal property under applicable law. The law of the District other than this subtitle determines whether and when other goods becomes fixtures. This subtitle does not prevent creation of an encumbrance upon fixtures or real estate pursuant to the law applicable to real estate.

(2) A security interest which attaches to goods before they become fixtures takes priority as to the goods over the claims of all persons who have an interest in the real estate except as stated in subsection (4).

(3) A security interest which attaches to goods after they become fixtures is valid against all persons subsequently acquiring interests in the real estate except as stated in subsection (4) but is invalid against any person with an interest in the real estate at the time the security interest attaches to the goods who has not in writing consented to the security interests or disclaimed an interest in the goods as fixtures.

(4) The security interests described in subsections (2) and (3) do not take priority over

(a) a subsequent purchaser for value of any interest in the real estate; or

(b) a creditor with a lien on the real estate subsequently obtained by judicial proceedings; or

(c) a creditor with a prior encumbrance of record on the real estate to the extent that he makes subsequent advances

if the subsequent purchase is made, the lien by judicial proceedings is obtained, or the subsequent advance under the prior encumbrance is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the real estate at a foreclosure sale other than an encumbrancer purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(5) When under subsections (2) or (3) and (4) a secured party has priority over the claims of all persons who have interests in the real estate, he may, on default, subject to the provisions of part 5, remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation. (Dec. 30, 1963, 77 Stat. 759, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:9-104, 28:9-105, 28:9-302, 28:9-307, 28:9-312.

#### § 28:9-314. Accessions

(1) A security interest in goods which attaches before they are installed in or affixed to other goods



taxes priority as to the goods installed or affixed (called in this section "accessions") over the claims of all persons to the whole except as stated in subsection (3) and subject to section 28:9-315(1).

(2) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in subsection (3) but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) The security interests described in subsections (1) and (2) do not take priority over

(a) a subsequent purchaser for value of any interest in the whole; or

(b) a creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(c) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances

if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(4) When under subsections (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may on default subject to the provisions of part 5 remove his collateral from the whole but he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation. (Dec. 30, 1963, 77 Stat. 760, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:9-204, 28:9-312, 28:9-315.

#### § 28:9-315. Priority when goods are commingled or processed

(1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if

(a) the goods are so manufactured, processed, assembled, or commingled that their identity is lost in the product or mass; or

(b) a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled. In a case to which paragraph (b) applies, no separate security interest in that part of the original goods which has been manufactured, processed or

assembled into the product may be claimed under section 28:9-314.

(2) When under subsection (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass. (Dec. 30, 1963, 77 Stat. 761, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:9-312, 28:9-314.

#### § 28:9-316. Priority subject to subordination

Nothing in this article prevents subordination by agreement by any person entitled to priority. (Dec. 30, 1963, 77 Stat. 761, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:9-312.

#### § 28:9-317. Secured party not obligated on contract of debtor

The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions. (Dec. 30, 1963, 77 Stat. 761, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:9-318. Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment

(1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in section 28:9-206 the rights of an assignee are subject to

(a) all the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right to payment under an assigned contract right has not already become an account, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the account has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.



(4) A term in any contract between an account debtor and an assignor which prohibits assignment of an account or contract right to which they are parties is ineffective. (Dec. 30, 1963, 77 Stat. 761, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### NOTES TO DECISIONS

##### Defenses against assignee

Assignee of chose in action takes it subject to all defenses, including setoffs, existing at time of assignment. *Hudson Supply & Equipment Co., etc. v. Home Factors Corp., etc.* (D.C. App. 1965, 210 A. 2d 837).

Where asserted claims of buyer against seller existed at time seller assigned accounts receivable, credits to which buyer was entitled should have been set off against assignee's claim against buyer based on accounts. *Id.*

#### PART 4.—FILING

##### PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 42-102, 42-104, 42-106, 42-107, 45-701.

#### § 28:9-401. Place of filing; erroneous filing; removal of collateral

(1) The proper place to file in order to perfect a security interest is, in all cases, in the office of the Recorder of Deeds of the District. In this article, "filing officer" means said Recorder.

(2) A filing which is made in good faith in an improper place is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this article and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper place continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

(4) If collateral is brought into the District from another jurisdiction, the rules stated in section 28:9-103 determine whether filing is necessary in the District. (Dec. 30, 1963, 77 Stat. 762, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

##### CROSS REFERENCE

Inapplicability of filing provisions to liens on motor vehicles and trailers, see § 40-702.

##### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:9-105.

#### § 28:9-402. Formal requisites of financing statement; amendments

(1) A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned. A copy of the security agreement is sufficient as a financing statement if it con-

tains the above information and is signed by both parties.

(2) A financing statement which otherwise complies with subsection (1) is sufficient although it is signed only by the secured party when it is filed to perfect a security interest in

(a) collateral already subject to a security interest in another jurisdiction when it is brought into the District. Such a financing statement must state that the collateral was brought into the District under such circumstances.

(b) proceeds under section 28:9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral.

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor) \_\_\_\_\_

Address \_\_\_\_\_

Name of secured party (or assignee) \_\_\_\_\_

Address \_\_\_\_\_

1. This financing statement covers the following (or items) of property:

(Describe) \_\_\_\_\_

2. (If collateral is crops) The above described crops are growing or are to be grown on:

(Describe Real Estate) \_\_\_\_\_

3. (If collateral is goods which are or are to become fixtures) The above described goods are affixed or to be affixed to:

(Describe Real Estate) \_\_\_\_\_

4. (If proceeds or products of collateral are claimed) Proceeds—Products of the collateral are also covered.

Signature of Debtor (or Assignor) \_\_\_\_\_

Signature of Secured Party (or Assignee) \_\_\_\_\_

(4) The term "financing statement" as used in this article means the original financing statement and any amendments but if any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment.

(5) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading. (Dec. 30, 1963, 77 Stat. 762, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:9-403. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer

(1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this article.

(2) A filed financing statement which states a maturity date of the obligation secured of five years or less is effective until such maturity date and thereafter for a period of sixty days. Any other filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of such sixty day period after a stated maturity date or on the expiration of such five year period, as the case may be, unless a continuation statement is filed prior to the lapse. Upon such lapse the security interest becomes unperfected. A filed financing statement which states that the obligation secured



is payable on demand is effective for five years from the date of filing.

(3) A continuation statement may be filed by the secured party (i) within six months before and sixty days after a stated maturity date of five years or less, and (ii) otherwise within six months prior to the expiration of the five year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it.

(4) A filing officer shall mark each statement with a consecutive file number and with the date and hour of filing and shall hold the statement for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) The uniform fee for filing, indexing and furnishing filing data for an original or a continuation statement shall be \$2.00. (Dec. 30, 1963, 77 Stat. 763, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:9-405.

#### § 28:9-404. Termination statement

(1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor a statement that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must include or be accompanied by the assignment or a statement by the secured party of record that he has assigned the security interest to the signer of the termination statement. The uniform fee for filing and indexing such an assignment or statement thereof shall be \$2.00. If the affected secured party fails to send such a termination statement within ten days after proper demand therefor he shall be liable to the debtor for one hundred dollars, and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement he must note it in the index. The filing officer shall remove from the files, mark "terminated" and send or deliver to the secured party the financing statement and any continuation statement, statement of assignment or statement of release pertaining thereto.

(3) The uniform fee for filing and indexing a termination statement including sending or delivering the financing statement shall be \$2.00. (Dec. 30,

1963, 77 Stat. 764, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 42-104, 42-107.

#### § 28:9-405. Assignment of security interest; duties of filing officer; fees

(1) A financing statement may disclose an assignment of a security interest in the collateral described in the statement by indication in the statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. Either the original secured party or the assignee may sign this statement as the secured party. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in section 28:9-403(4). The uniform fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be \$2.00.

(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement. The uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be \$2.00.

(3) After the disclosure of filing of an assignment under this section, the assignee is the secured party of record. (Dec. 30, 1963, 77 Stat. 764, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:9-406. Release of collateral; duties of filing officer; fees

A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. Upon presentation of such a statement to the filing officer he shall attach the statement of release to the instrument to which it relates and shall enter on the released instrument and on the index record thereof the word "released", the date of filing of the statement of release, and a facsimile of his signature. The uniform fee for filing and noting such a statement of release shall be \$2.00. (Dec. 30, 1963, 77 Stat. 765, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:9-407. Information from filing officer

(1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a



copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be \$1.00 plus \$0.50 for each financing statement and for each statement of assignment reported therein. Upon request the filing officer shall furnish a copy of any filed financing, continuation or termination statement or statement of assignment or release for a uniform fee of \$3.00 for the first two pages or less, and \$1.00 for each additional page, plus \$0.50 for certification. (Dec. 30, 1963, 77 Stat. 765, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### PART 5.—DEFAULT

##### PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 28:9-313, 28:9-314.

#### § 28:9-501. Default; procedure when security agreement covers both real and personal property

(1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this part and except as limited by subsection (3) those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in section 28:9-207. The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies provided in this part, those provided in the security agreement and those provided in section 28:9-207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (subsection (1) of section 28:9-505) and with respect to redemption of collateral (section 28:9-506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

(a) subsection (2) of section 28:9-502 and subsection (2) of section 28:9-504 insofar as they require accounting for surplus proceeds of collateral;

(b) subsection (3) of section 28:9-504 and subsection (1) of section 28:9-505 which deal with disposition of collateral;

(c) subsection (2) of section 28:9-505 which

deals with acceptance of collateral as discharge of obligation;

(d) section 28:9-506 which deals with redemption of collateral; and

(e) subsection (1) of section 28:9-507 which deals with the secured party's liability for failure to comply with this part.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this part as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property in which case the provisions of this part do not apply.

(5) When a secured party has reduced his claim to judgment the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article. (Dec. 30, 1963, 77 Stat. 765, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

#### § 28:9-502. Collection rights of secured party

(1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under section 28:9-306.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts, contract rights, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides. (Dec. 30, 1963, 77 Stat. 766, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

##### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:9-112, 28:9-501.

#### § 28:9-503. Secured party's right to take possession after default

Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal



a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under section 28:9-504. (Dec. 30, 1963, 77 Stat. 766, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**§ 28:9-504. Secured party's right to dispose of collateral after default; effect of disposition**

(1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the article on sales (article 2). The proceeds of disposition shall be applied in the order following to

(a) the reasonable expenses of retaking, holding, preparing for sale, selling and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts, contract rights, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in the District or who is known by the secured party to have a security interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a

purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this Part or of any judicial proceedings

(a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this article. (Dec. 30, 1963, 77 Stat. 766, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 28:9-112, 28:9-501, 28:9-503, 28:9-505, 28:9-506.

**§ 28:9-505. Compulsory disposition of collateral; acceptance of the collateral as discharge of obligation**

(1) If the debtor has paid sixty per cent of the cash price in the case of a purchase money security interest in consumer goods or sixty per cent of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying his rights under this part a secured party who has taken possession of collateral must dispose of it under section 28:9-504 and if he fails to do so within ninety days after he takes possession the debtor at his option may recover in conversion or under section 28:9-507(1) on secured party's liability.

(2) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor and except in the case of consumer goods to any other secured party who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in the District or is known by the secured party in possession to have a security interest in it. If the debtor or other person entitled to receive notification objects in writing within thirty days from the receipt of the notification or if any other secured party objects in writing within thirty days after the secured party obtains possession the secured party must dispose of the collateral under section 28:9-504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation. (Dec. 30, 1963, 77 Stat. 768, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 28:9-112, 28:9-501, 28:9-506, 28-3812.



**§ 28:9-506. Debtor's right to redeem collateral**

At any time before the secured party has disposed of collateral or entered into a contract for its disposition under section 28:9-504 or before the obligation has been discharged under section 28:9-505(2) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by law, his reasonable attorneys' fees and legal expenses. (Dec. 30, 1963, 77 Stat. 768, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 28:9-112, 28:9-501.

**§ 28:9-507. Secured party's liability for failure to comply with this part**

(1) If it is established that the secured party is not proceeding in accordance with the provisions of this Part disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this Part. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus ten per cent of the principal amount of the debt or the time price differential plus ten per cent of the cash price.

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable. (Dec. 30, 1963, 77 Stat. 768, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 28:9-112, 28:9-501, 28:9-505.

**Article 10.—CONSTRUCTION WITH OTHER LAWS**

Sec.

28:10-101. (Omitted.)

28:10-102. (Omitted.)

28:10-103. Inconsistent laws; what law governs.

28:10-104. Laws not repealed.

§ 28:10-101. (Omitted.)

§ 28:10-102. (Omitted.)

§ 28:10-103. Inconsistent laws; what law governs

Except as provided by section 28:10-104, if any provision of law is inconsistent with this subtitle, this subtitle shall govern, unless this subtitle or the inconsistent provision of the other law specifically provides otherwise. (Dec. 30, 1963, 77 Stat. 769, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:10-104. Laws not repealed

(1) The article on documents of title (article 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (section 28:1-201).

(2) This subtitle does not supersede or modify the District of Columbia Uniform Act for Simplification of Fiduciary Security Transfers, approved July 5, 1960 (74 Stat. 322), being all of subchapter II of chapter 23 of Title 28 of the District of Columbia Code, 1961 edition, and if in any respect there is any inconsistency between that Act and article 8 of this subtitle relating to investment securities, the provisions of that Act, rather than article 8, control. (Dec. 30, 1963, 77 Stat. 769, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

**CODIFICATION**

The provisions of subchapter II of chapter 23 of Title 28 of the 1961 edition code, consisting of former sections 28-2321 to 28-2330, have been enacted into law by act Aug. 30, 1964, Pub. L. 88-509 and now are covered by sections 28-2901 to 28-2909.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 28:10-103.

**SUBTITLE II.—OTHER COMMERCIAL TRANSACTIONS**

*Subtitle II.—Other Commercial Transactions, consisting of chapters 21 to 35 inclusive, was enacted into law by Pub. L. 88-509, 78 Stat. 667, § 1, Aug. 30, 1964, effective Jan. 1, 1965*

Chap.

Sec.

21. Assignment for Benefit of Creditors..... 28-2101

23. Assignment of Choses in Action..... 28-2301

25. Bonds and Undertakings..... 28-2501

27. Business Holidays and Computation of Time..... 28-2701

29. Fiduciary Security Transfers..... 28-2901

31. Fraudulent Conveyances..... 28-3101

33. Interest and Usury..... 28-3301

35. Statute of Frauds..... 28-3501

36. Direct Motor Vehicle Installment Loans... 28-3601

37. Revolving Credit Accounts..... 28-3701

38. Consumer Protections..... 28-3801



## AMENDMENT

1971—Items 36, 37, and 38 added by section 8(b) of Act Dec. 17, 1971, Pub. L. 92-200.

## ENACTING CLAUSE

Section 1 of act Aug. 30, 1964, Pub. L. 88-509, 78 Stat. 667 provided in part: "That the general and permanent laws of the District of Columbia, relating to commercial instruments and transactions, not embraced in 'Subtitle I—Uniform Commercial Code' of title 28, District of Columbia Code, which was enacted by Public Law 88-243, are revised, codified, and enacted as 'Subtitle II—Other Commercial Transactions', of title 28, and may be cited as 'D.C. Code, § —', as follows:"

## EFFECTIVE DATE

Section 7 of act Aug. 30, 1964, Pub. L. 88-509, 78 Stat. 679, provided: "This Act takes effect on January 1, 1965."

## APPROPRIATIONS

Section 6 of act Aug. 30, 1964, Pub. L. 88-509, 78 Stat. 679, provided: "There are authorized to be appropriated such sums as may be necessary to carry out the provisions of subtitle II of title 28, District of Columbia Code, as set out in section 1 of this Act." [Chapters 21 to 35.]

## BRITISH STATUTES OMITTED

Section 8(a) of act Aug. 30, 1964, Pub. L. 88-509, 78 Stat. 679, provided: "The following British statutes, deemed to have been in force in the District of Columbia by virtue of the Act of Mar. 1, 1901, ch. 854, sec. 1, have no further force, as such, in the District:

"21 Henry III (1236), Alex. Brit. Stat., p. 36, D.C. Code, 1961 ed., § 28-2803;

"24 Geo. II, ch. 23, §§ 1, 2 (1751), Alex. Brit. Stat., pp. 768-770, D.C. Code, 1961 ed., §§ 28-2801, 28-2802."

## REPEAL AND PRESERVATION OF RIGHTS AND LIABILITIES

Section 8(b) of act Aug. 30, 1964, Pub. L. 88-509, 78 Stat. 679, provided: "The sections of the Acts or parts of Acts, enumerated in the schedule below, are repealed. Any rights or liabilities existing under the sections so repealed, and any cases or proceedings instituted under, or growing out of them, are not affected by the repeal. However, laws becoming effective after June 1, 1964, and inconsistent with this Act, supersede it to the extent of the inconsistency." [The "schedule below" referred to in text is set out as a part of Pub. L. 88-509.]

## TABLES

For tables showing where other commercial transactions and other sections of the D.C. Code will be found in subtitle II of title 28, see tables following title 49.

## Chapter 21.—ASSIGNMENT FOR BENEFIT OF CREDITORS

Sec.

- 28-2101. Form of assignment.
- 28-2102. Extent of assignment—Assets exempt.
- 28-2103. Assignee.
- 28-2104. Bond of assignee.
- 28-2105. Non-performance by assignee—Trustee.
- 28-2106. Duties of assignee.
- 28-2107. Preferences prohibited.
- 28-2108. Proceedings for benefit of all creditors.
- 28-2109. Assignment to hinder or defraud creditors.
- 28-2110. Notice to creditors.

## § 28-2101. Form of assignment

In a voluntary assignment for the benefit of creditors, the debtor shall annex to the assignment (1) an inventory, under oath or affirmation, of his estate, real and personal, according to the best of his knowledge, (2) a list of his creditors, their respective residences and places of business, if known, and (3) the amounts of their respective demands. (Aug. 30, 1964, 78 Stat. 667, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-2601 (Mar. 3, 1901, 31 Stat. 1256, ch. 854, § 435).

Section is based on first clause of section 28-2601, the balance of that section being consolidated with section 28-2610, as section 28-2102 of this revision.

Changes are made in phraseology.

## CROSS REFERENCE

Exemption generally, see § 15-501 et seq.

## NOTES TO DECISIONS UNDER PRIOR LAW

## Decisions under prior law

All parts of a deed of assignment for the benefit of creditors will be considered in arriving at the general intention of the instrument, and if consistent with the language two constructions can be given, that is to be adopted which will render it legal and operative rather than illegal and void. *Cissell v. Johnston* (1894, 4 App. D.C. 335).

An attempt to limit the benefit of the trust to such creditors only as shall release their demands if not paid in full is a preference within the meaning of act Feb. 24, 1893, 27 Stat. 474, and void, and all liabilities within the provisions of the assignment shall be paid pro rata from the assets thereof. *Id.*

Assignment by debtor to a creditor of a fund due him under a contract with District of Columbia for erection of school buildings, with directions to the assignee after paying his own claim, to distribute the residue among certain other creditors, passes the legal title to the fund and creates a trust for creditors named although at the time some of them had no knowledge of the transaction and did not assent to it. *Smith v. Herrell* (1898, 11 App. D.C. 425).

Confession of judgment by an insolvent debtor in favor of a bona fide creditor is not such a preference as is prohibited by act Feb. 24, 1893, 27 Stat. 474, § 2, declaring void preferences of one creditor over another. *Strasburger v. Dodge* (1898, 12 App. D.C. 37).

Under laws of Maryland the general words of an assignment for benefit of creditors are restricted by particular description of a schedule which is made part of it; and where such assignment executed in Washington, D.C., purports to convey a life estate of the assignor in lands in Maryland as expressed in schedule, the assignee will take only such life estate, although assignment purports to convey all of assignor's property. *Keane v. Chamberlain* (1899, 14 App. D.C. 84).

## § 28-2102. Extent of assignment—Assets exempt

An assignment vests in the assignee the title to all property, except what is legally exempt, belonging to the debtor at the time of making the assignment and comprehended within its general terms. The inventory annexed to an assignment is not conclusive as to the amount of the debtor's estate.

An assignment for the benefit of creditors does not include or cover property exempt from levy or sale on execution unless the exemption is expressly waived. The court may direct the manner in which exempt property may be ascertained and set aside before a sale by a trustee. (Aug. 30, 1964, 78 Stat. 667, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 28-2601, 28-2610 (Mar. 3, 1901, 31 Stat. 1256, 1258, ch. 854, §§ 435, 444).

Section is based on last clause of section 28-2601 and all of section 28-2610. The first clause of section 28-2601 is set out as section 28-2101 of this revision.

Changes are made in phraseology.

## § 28-2103. Assignee

Only a resident of the District of Columbia may be an assignee in an assignment for the benefit of creditors. His asset shall appear in writing in, or at



the end of, or indorsed on, the assignment. An assignment is invalid unless acknowledged and recorded within five days after its execution in the land records of the District. A trust created by an assignment shall be executed under the supervision and control of the court having probate jurisdiction. (Aug. 30, 1964, 78 Stat. 668, Pub. L. 88-509, § 1, eff. Jan. 1, 1965; July 29, 1970, Pub. L. 91-358, title I, § 151(a), 84 Stat. 569.)

#### AMENDMENT

1970—Section 151(a) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court having probate jurisdiction".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-2602 (Mar. 3, 1901, 31 Stat. 1257, ch. 854, § 436; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127).

Minor changes are made in phraseology.

#### CROSS REFERENCE

Court having probate jurisdiction, see §§ 11-501, 11-921.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28-2105.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Jurisdiction of municipal court

Where dispute between judgment creditor and garnishee involved much less than \$3,000 jurisdiction of Municipal Court for District of Columbia, Civil Division, such court had jurisdiction to decide that there were funds in garnishee's hands which should be subjected to payment of judgment, and in so deciding such court was not administering or supervising a trust which should have been under supervision and control of United States District Court and which was in an amount far in excess of such \$3,000 jurisdictional amount, notwithstanding that garnishee, in acquiring assets and funds of judgment debtor, may have acted as trustee for benefit of creditors in transactions totalling some \$35,000. *Pinkston v. Carter* (D.C. Mun. App. 1959, 150 A. 2d 629).

##### Right to maintain action

Assignment is admissible in evidence in a suit by the assignee to show his right to maintain the action. *Mazza v. Russell* (1917, 47 App. D.C. 87).

##### Validity of deed of trust

Where deed of trust conveying assets of company was not recorded within five days from date of execution as required by this section, company had its principal place of business in District of Columbia but trustee was not resident of district as required, deed reserved surplus for benefit of company's stockholders, no creditors were named therein, deed authorized trustee to operate business as far as seemed practicable to trustee and person who executed deed as secretary for company had not held that office or any other office for some eight months, deed was invalid and did not create a lien or right superior to that of attaching judgment creditor, and claim of trustee to commission must yield to claim of judgment creditor. *Pinkston v. Carter* (D.C. Mun. App. 1959, 150 A. 2d 629).

#### § 28-2104. Bond of assignee

Immediately upon the filing for record of an assignment for the benefit of creditors, the assignee shall execute and file in the clerk's office of the court having probate jurisdiction his bond to the United States, in an amount and with security to be approved by a judge thereof, conditioned for the faithful performance of his duties according to law, and the court may from time to time require the

assignee, or a trustee appointed in his place, to give additional security when required by the interests of the creditors. (Aug. 30, 1964, 78 Stat. 668, Pub. L. 88-509, § 1, eff. Jan. 1, 1965; July 29, 1970, Pub. L. 91-358, title I, § 151(a), 84 Stat. 569.)

#### AMENDMENT

1970—Section 151(a) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court having probate jurisdiction".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-2603 (Mar. 3, 1901, 31 Stat. 1257, ch. 854, § 437; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127).

The reference to "the justice holding the equity court" is changed to read "a judge thereof" inasmuch as the distinction between law and equity has been abolished.

Minor changes are made in phraseology.

#### CROSS REFERENCE

Court having probate jurisdiction, see §§ 11-501, 11-921.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28-2105.

#### § 28-2105. Nonperformance by assignee—Trustee

If an assignee named in an assignment for the benefit of creditors fails or refuses to comply with any of the requirements of sections 21-2103 and 21-2104,<sup>1</sup> a judge of the court having probate jurisdiction may, on the application of the assignor or a creditor interested in the assignment, remove the assignee and appoint a trustee in his place to execute the trusts created by the assignment, who shall give bond as the court may require. And the court may accept the resignation of an assignee or trustee, and in case of his resignation, death, or removal from the District, appoint a trustee in his place. The court, for cause shown, on the application of an interested person, may remove an assignee or trustee and appoint a trustee in his place, and make and enforce all orders necessary to put the newly appointed trustee in possession of all property covered by the assignment. Upon the death of an assignee or trustee the court may require his executor or administrator to settle his account and to deliver over to his successor all property belonging to the trust, in default of which the successor may bring suit upon the bond of the deceased assignee or trustee or upon the bond of the executor or administrator, accordingly as the assignee or trustee, executor or administrator is the party in default. (Aug. 30, 1964, 78 Stat. 668, Pub. L. 88-509, § 1, eff. Jan. 1, 1965; July 29, 1970, Pub. L. 91-358, title I, § 151(b), 84 Stat. 569.)

#### AMENDMENT

1970—Section 151(b) of Act July 29, 1970, Public Law 91-358, amended section by striking out "District Court" and inserting in lieu thereof "court having probate jurisdiction".

#### CROSS REFERENCE

Court having probate jurisdiction, see §§ 11-501, 11-921.

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

<sup>1</sup> So in original. Probably should be sections 28-2103 and 28-2104.



## REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-2604 (Mar. 3, 1901, 31 Stat. 1257, ch. 854, § 438; June 30, 1902, 32 Stat. 530, ch. 1329).

The reference to "the justice holding the equity court" has been changed to read "a judge of the District Court" inasmuch as the distinction between law and equity has been abolished. The words "moneys, books, papers and other effects" following "property" are deleted as redundant and surplusage.

Changes are made in phraseology.

## § 28-2106. Duties of assignee

An assignee or trustee, after giving bond, shall collect and take into his possession all the property covered by the assignment, and to that end he may bring suit in his own name to recover debts due or property belonging to the assignor and embraced in the assignment. The court may require the assignor to be examined under oath touching his property, and may make all orders necessary to prevent any fraudulent transfer of or change in the property of the assignor. The assignee or trustee shall return inventories of the assets coming to his hands and, upon the direction of the court, sell and dispose of them; and his conveyance of any property of the assignor, real or personal, transfers the entire title of the assignor therein to the purchaser. When the assets have been converted into money the assignee or trustee shall settle his accounts and make distribution among the creditors, under the direction of the court, according to the usual course of proceeding in creditor's suits. (Aug. 30, 1964, 78 Stat. 668, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

## REVISION NOTES

Based on D.C. Code 1961 ed., § 28-2605 (Mar. 3, 1901, 31 Stat. 1257, ch. 854, § 439).

The reference to proceedings "in equity" is deleted in the last sentence inasmuch as the distinction between law and equity has been abolished.

Changes are made in phraseology.

## § 28-2107. Preferences prohibited

A provision in a voluntary assignment made for the payment of one debt or liability in preference to another is void, and all debts and liabilities within the provisions of the assignment shall be paid pro rata from the assets. This section does not affect the priority of liens and incumbrances created bona fide and existing before the execution of the assignment. (Aug. 30, 1964, 78 Stat. 669, Pub. L. 88-509 § 1, eff. Jan. 1, 1965.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-2606 Mar. 3, 1901 31 Stat. 1258, ch. 854, § 440).

Changes are made in phraseology.

## § 28-2108. Proceedings for benefit of all creditors

A proceeding instituted under this chapter by one or more creditors is deemed to be for the equal benefit of all creditors, but the court may make such allowance to the creditor or creditors instituting the same, out of the fund to be distributed, or expenses, including counsel fees, as may be just and equitable. (Aug. 30, 1964, 78 Stat. 669, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-2607 (Mar. 3, 1901, 31 Stat. 1258, ch. 854, § 441).

## § 28-2109. Assignment to hinder or defraud creditors

This chapter does not prevent a creditor otherwise entitled from attacking an assignment as made to hinder or defraud the creditors of the assignor. When the court finds an assignment to have been made with that intent, it may enjoin any proceeding thereunder, and upon finally decreeing the assignment to be void may appoint a trustee with power to take possession of all the property of the debtor, and may make and enforce all orders necessary to put him in possession of the property. The trustee shall qualify in the same manner and perform the same duties as the trustees provided for by this chapter. (Aug. 30, 1964, 78 Stat. 669, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-2608 (Mar. 3, 1901, 31 Stat. 1258, ch. 854, § 442).

Changes are made in phraseology.

## CROSS REFERENCE

Fraudulent conveyances, generally, see § 28-3101 et seq.

## § 28-2110. Notice to creditors

The court shall require a trustee, whether named in the assignment or appointed by the court, in pursuance of this chapter, to give notice as the court may think proper to all the creditors of the assignor to produce and prove their respective claims against the assignor before the auditor of the court, to the end that they may be fairly adjudicated and the creditors may share equally the assets of the insolvent assignor, subject, however, to any legal priorities created by valid incumbrances antedating the assignment. (Aug. 30, 1964, 78 Stat. 669, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-2609 (Mar. 3, 1901, 31 Stat. 1258, ch. 854, § 443).

Changes are made in phraseology.

## Chapter 23.—ASSIGNMENT OF CHOSSES IN ACTION

Sec.

28-2301. Assignment of judgment or money decree.

28-2302. Assignment of bond or obligation.

28-2303. Assignment of nonnegotiable contract.

28-2304. General assignments including choses in action.

28-2305. Contract to assign future salary or wages.

## § 28-2301. Assignment of judgment or money decree

A judgment or money decree may be assigned in writing, and upon the assignment thereof being filed in the clerk's office the assignee may maintain an action or sue out an execution on the judgment in his own name, as the original plaintiff might have done. (Aug. 30, 1964, 78 Stat. 669, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

## REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-2501 (Mar. 3, 1901, 31 Stat. 1256, ch. 854, § 431).

The reference to "a scire facias" is deleted as obsolete under the Federal Rules of Civil Procedure.

Changes are made in phraseology.

## NOTES TO DECISIONS UNDER PRIOR LAW

## Attorneys' equitable lien

The interest in client's judgment of attorneys created by contingent fee contract was not equivalent to an assignment of a cause of action and resulting judgment, but rather attorneys' interest was like an equitable lien,



and, hence, attorneys, in seeking to enforce collection of the judgment for benefit of client and themselves upon refusal of client to do so, was not required to observe provisions of statute relating to assignment of judgments. *Falcone and Millstein v. Hall et al.* (1256, 235 F. 2d 860, 98 U.S. App. D.C. 363).

#### Decree for alimony

"A decree ordering the payment of a periodical allowance of alimony in the future is not assignable," although accrued alimony (under an order which it was beyond the power of the court in its discretion to modify or vacate) may be assigned. *Lynham v. Hufty* (1915, 44 App. D.C. 589).

#### Judgment improperly entered

Where the rules require that judgment shall not be entered for four days after verdict, a judgment improperly entered by the clerk within that time is not absolutely void, and may be assigned. *Hutchinson v. Brown* (1896, 8 App. D.C. 157).

### § 28-2302. Assignment of bond or obligation

An obligee named in a bond or obligation under seal for the payment of money may assign it in writing and the assignee may maintain an action thereon in his own name (Aug. 30, 1964, 78 Stat. 669, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-2502 (Mar. 3, 1901, 31 Stat. 1256, ch. 854, § 432).

A minor change is made in phraseology.

### § 28-2303. Assignment of nonnegotiable contract

An owner of a nonnegotiable written agreement for the payment of money, including a nonnegotiable bill of exchange and a promissory note, or for the delivery of personal property, an open account, debt, and demand of a liquidated character, except a claim against the United States or the salary of a public officer, may assign it in writing, and the assignee may maintain an action thereon in his own name. (Aug. 30, 1964, 78 Stat. 669, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-2503 (Mar. 3, 1901, 31 Stat. 1256, ch. 854, § 433).

Changes are made in phraseology.

#### CROSS REFERENCES

Assignment of motor-vehicle lien, see §§ 40-708, 40-709.

Set-off of nonnegotiable debts, see § 13-502.

Teachers' retirement annuity may not be assigned, see § 31-718.

### NOTES TO DECISIONS UNDER PRIOR LAW

#### Action by assignor after assignment

Evidence tending to prove that action was brought, not in the name of the assignee, or in the name of the assignor to the use of the assignee, but by the assignor after his assignment, was properly excluded where such defense had not been pleaded. *Pierce v. Gillet & Co.* (1935, 75 F. 2d 675, 64 App. D.C. 156).

Where corporation had sold its claim against defendant prior to commencement of its action against defendant, corporation had no right to enforce such claim. *York Blouse Corp. v. Kaplowitz Bros.* (D.C. Mun. App. 1953, 97 A. 2d 465).

In action by corporation, which had sold its claim against defendant prior to bringing of action, for purchase price of certain merchandise, allegedly sold and delivered, request of corporation for leave to add as additional parties plaintiff the stockholders of corporation was properly denied. *Id.*

Where assignors assigned claims for the purpose of permitting assignee to manager the litigation and there was no evidence of fraud or any other circumstances which

raised any questions as to assignee's legal title to the claims he was asserting, assignee had the right to maintain an action on the claims assigned in his own name. *Compton v. Atwell* (D.C. Mun. App. 1952, 86 A. 2d 623).

#### Indispensable party

When the rights of an assignee will be affected by an action, the assignee is an indispensable party. *York Blouse Corp. v. Kaplowitz Bros.* (D.C. Mun. App. 1953, 97 A. 2d 465).

#### Possessory action

Owners' agent for management of realty, who was made assignee of leases from agent for former owners, had a right to bring a possessory action against tenant in his own name under the right of an assignee of a nonnegotiable instrument to sue in his own name. *Koehne v. Harvey* (D.C. Mun. App. 1946, 45 A. 2d 780).

#### Purpose

Obvious purpose of this section was to vest in the assignee the right to sue in his own name. Since the procedural right had not been previously available to him, as the real party in interest, he is able to sue in the name of his assignor. *District of Columbia v. Hamilton National Bank* (D.C. Mun. App. 1950, 76 A. 2d 60).

#### Real party in interest

Where defendant owed four small accounts and three of his creditors made written assignment, purporting to be absolute, of their accounts to the fourth creditor, but the creditors had orally agreed that assignments were only for purpose of enabling one creditor to sue, action brought by assignee was within exception provided by Municipal Court Rules allowing a party to sue in his own name without joining party for whose benefit action was brought. *Compton v. Atwell* (1953, 207 F. 2d 139, 93 U.S. App. D.C. 99).

Where corporation had sold its claim against defendant prior to commencement of its action against defendant, assignee was the real party in interest and indispensable party. *York Blouse Corp. v. Kaplowitz Bros.* (D.C. Mun. App. 1953, 97 A. 2d 465).

When substantive law gives an assignee the right to sue in his own name and rule of court requires suit by the real party in interest, action on assigned claim must be brought by the assignee in his own name. *Id.*

#### Rights of Assignee

Assignee of conditional sales contract was merely assignee of nonnegotiable chose in action and took no greater rights than assignor had. *Ledman v. G.A.C. Finance Corp. of Baltimore* (D.C. App. 1965, 213 A. 2d 246).

#### Single cause of action

Creditor has no right to split up a single cause of action, either by the institution in his own name of separate suits upon separate fractions thereof, or by the assignment of such several parts to several persons without knowledge and consent to the debtor, so as to require the latter to respond to different actions and to incur accumulation. *Sincell v. Davis* (1904, 24 App. D.C. 218).

A single cause of action may be assigned, and the assignee may sue upon it in his own name, usually subject to all the equities existing between the assignor and the debtor; but this does not authorize the distribution of a single cause of action into fractional parts, and their assignment to several persons without the consent of the debtor. *Id.*

#### Stock certificates

It is well settled that certificates of stock are not negotiable instruments. At the same time, they are so constantly used as collateral and passed from hand to hand, when the blank transfer and power of attorney on their backs has been formally executed by the party to whom they were issued, that the general custom in the city of Washington is to regard the holder as the owner for the purpose of selling or pledging them. *National Safe Deposit Sav. & Trust Co. v. Hibbs* (1909, 32 App. D.C. 459, affirmed 33 S. Ct. 818, 229 U.S. 391, 57 L. Ed. 1241).

While indorsed certificates of stock do not become negotiable instruments in a strictly legal sense, they nevertheless so approximate them that the ordinary rules of agency and estoppel which apply in the case of chattels



are applied to them with great liberality in the behalf of an innocent purchaser. *Id.*

#### Subscriptions to capital stock of corporation

Subscriptions to the capital stock of a corporation may be assigned by the corporation, so as to give the assignee a right to sue in his own name. *Crook v. International Trust Co.* (1909, 32 App. D.C. 490).

### § 28-2304. General assignments including choses in action

In a general assignment which includes choses in action, it is not necessary to execute a separate assignment of each chose in action, but the assignee, by virtue of the general assignment, may sue in his own name on the several choses in action included therein. (Aug. 30, 1964, 78 Stat. 670, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-2504 (Mar. 3, 1901, 31 Stat. 1256, ch. 854, § 434).

The reference to the "Municipal Court" is changed to "Criminal Division of the Court of General Sessions" in view of the change in name by Public Law 88-241.

Changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Action by assignor after assignment

As defenses must be pleaded the court did not err in excluding evidence even though it might have proved that the action was not in the name of the assignee, or in the name of the assignor to the use of the assignee, as the practice was at common law, but an action by an assignor after his assignment. *Pierce v. Gillet & Co.* (1935, 75 F. 2d 675, 64 App. D.C. 156).

### § 28-2305. Contract to assign future salary or wages

(a) A contract attempting or purporting to transfer or assign salary or wages to be earned by the debtor, if made in the District of Columbia, is invalid and contrary to public policy and unenforceable, and if made outside the District of Columbia, is unenforceable in any court within the District of Columbia.

(b) Whoever, in the District of Columbia demands or receives from a debtor an assignment of salary or wages to be thereafter earned by the debtor, or notifies an employer that he holds an assignment of such salary or wages, upon conviction shall be fined not more than \$200 or imprisoned not more than sixty days. Prosecutions under this subsection shall be upon information filed in the Criminal Division of the Superior Court of the District of Columbia by the Corporation Counsel of the District of Columbia or one of his assistants. (Aug. 30, 1964, 78 Stat. 670, Pub. L. 88-509, § 1, eff. Jan. 1, 1965; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended subsec. (b) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-2505 (Mar. 3, 1901, ch. 854, § 434-A, as added Dec. 20, 1944, 58 Stat. 819, ch. 610, § 3).

The phrase "after the date of such contract" is deleted as redundant in view of the provision relating to salary

or wages "to be earned", indicating it relates to future salary and wages.

Changes are made in phraseology.

## Chapter 25.—BONDS AND UNDERTAKINGS

#### Sec.

28-2501. Definitions.

28-2502. Action on bond<sup>1</sup> in a penal sum containing an avoidance condition.

28-2503. Action on bond to United States—Interest by private person.

28-2504. Fiduciary's bond—Discharge only after accounting.

### § 28-2501. Definitions

A bond, when required by or referred to in this Code, means an obligation in a certain sum or penalty, subject to a condition, on breach of which it is to become absolute and enforceable by action.

An undertaking means an agreement entered into by a party to a suit or proceeding, with or without sureties, upon which a judgment or decree may be rendered in the same suit or proceeding against the party and his sureties, if any, the party and sureties submitting themselves to the jurisdiction of the court for that purpose. (Aug. 30, 1964, 78 Stat. 670, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 28-2401, 28-2402 (Mar. 3, 1901, 31 Stat. 1264, 1265, ch. 854, §§ 478, 479).

The definition of a bond is from section 28-2401, and the definition of an undertaking is from section 28-2402. Changes are made in phraseology.

#### CROSS REFERENCES

Attachment and garnishment bond, see § 16-501.

Replevin, undertaking in, see § 16-3704.

Sureties generally, see § 16-4101 et seq.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Judgment on bond in the same suit

A defendant in whose favor a judgment had been rendered, as an alternative to an independent action, could file a motion in the case demanding judgment against plaintiff and his surety for damages alleged to have been sustained by attachment of defendant's funds, but assertion to claim in such manner did not disable plaintiff from utilizing defensive rights available to him were an independent action filed. *G. P. Schmidt v. L. T. Smith* (1965, 344 F. 2d 168, 120 U.S. App. D.C. 74).

District Court may adopt reasonable rules and practices governing assertion of a claim by defendant for damages arising from wrongful attachment, and time within which it may be so asserted may be limited by rules so as to avoid holding original case open unduly long. *Id.*

While rule 73(f) was not available as a means of serving surety on attachment bond on defendant's motion for judgment against plaintiff and surety for damages sustained by the attachment, the ability of defendant to make service upon surety was not thereby necessarily foreclosed. *Id.*

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Automobile negligence action against nonresident

The undertaking in favor of a nonresident defendant which is required of a plaintiff who institutes automobile negligence action in District of Columbia against such nonresident by service of process on Director of Vehicles and Traffic, is such an "undertaking" as is defined as an agreement by a party to a suit upon which a judgment or decree may be rendered in same suit or proceeding in which it has been filed. *Dew v. Simon* (D.C. Mun. App. 1953, 95 A. 2d 482).

##### Bonds and undertakings distinguished

Unlike the ordinary appeal bond, which is an obligation under seal, with a fixed penalty, and a definite condition,

<sup>1</sup> Analysis does not conform to section catchline.



limited to become effective or otherwise by the determination of the appeal, an undertaking is without seal, or fixed penalty, and without condition; and is simply a promise or an assumption of liability, to perform a judgment, or to pay damages and costs. *Tenney v. Taylor* (1893, 1 App. D.C. 223).

#### Purpose and effect

While an undertaking differs in form from the bond, its essential purpose and effect are the same as those of the bond, to give the guaranty of an additional person as security for the costs that might be incurred and the damages that might result to an appellee by the prosecution of an appeal that prevents him from realizing his claim as speedily and as effectively as he might otherwise have done. *Tenney v. Taylor* (1893, 1 App. D.C. 223).

### § 28-2502. Action on bonds in a penal sum containing an avoidance condition

A bond in a penal sum, containing a condition that it shall be void on the payment of a certain sum of money, or the performance of an act or of certain duties, has the same effect for the purpose of maintaining an action upon it as if it contained a covenant to pay the money or perform the act or the duties specified in the condition. But the damages to be recovered for a breach, or successive breaches, of the condition, as against the sureties therein, may not exceed the penalty of the bond. (Aug. 30, 1964, 78 Stat. 670, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-2405 (Mar. 3, 1901, 31 Stat. 1265, ch. 854, § 480).

Changes are made in phraseology.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15-106.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Construction

In suit against sureties bond is to be strictly construed. *United States v. Maloney* (1894, 4 App. D.C. 505).

Recitals in bond, and all material traversable matter set forth in breaches assigned and which have not been traversed are to be taken as admitted and withdrawn from the province of the jury. *Id.*

##### Forgery

Surety can not plead forgery of principal's name to bond when surety executes it after its purported execution by the principal. *United States v. Boyd* (1896, 8 App. D.C. 440).

##### Sureties

By the execution of a bond and its return to the principal or his agent for delivery to the obligee the surety becomes estopped to set up any condition not known to that obligee, upon which his signature has been obtained. *United States v. Boyd* (1896, 8 App. D.C. 440).

Discontinuance of a suit as to the principal will not, in the absence of explanation, be sufficient to release the sureties on his bond who were named as codefendants. *Starr v. United States* (1896, 8 App. D.C. 552, reversed on other grounds 17 S. Ct. 223, 164 U.S. 627, 41 L. Ed. 557).

### § 28-2503. Action on bond to United States—Interest by private person

When a bond is executed to the United States by a fiduciary or public officer, conditioned for the performance of certain duties, in the performance of which private persons are interested, a person aggrieved by a breach of the condition may maintain an action thereon in his own name against the obligor and his sureties to recover damages for the injury suffered by him in consequence of the breach. The custodian of the bond shall furnish a certified copy thereof to the party for that purpose on pay-

ment of the legal fees therefor. (Aug. 30, 1964, 78 Stat. 670, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-2406 (Mar. 3, 1901, 31 Stat. 1265, ch. 854, § 481; June 30, 1902, 32 Stat. 530, ch. 1329).

Changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Action on official bond

Action on an official bond running to the District of Columbia cannot be maintained by one not a party thereto, in the absence of the consent of the District or an express statute authorizing such action. *District of Columbia to Use of Langellotti v. Fidelity & Deposit Co.* (1921, 271 F. 383, 50 App. D.C. 309).

##### Disbursing officer

Although bond required of a disbursing officer of the Government when first filed was not properly executed and it was returned to the principal who properly executed it, there is no presumption against its genuineness, in a suit by the Government against the surety, and in such transaction the relation between the Government and the disbursing officer is not that of principal and agent. *Howgate v. United States* (1894, 3 App. D.C. 277, affirmed 17 S. Ct. 682, 166 U.S. 571, 41 L. Ed. 1119).

In action by United States on the bond of an alleged delinquent disbursing officer, a duly authenticated transcript from the Treasury Department of the accounts of the disbursing officer offered in evidence by the United States is not admissible, for it does not include all transactions with the United States during term of service, but only those transactions connected with the appropriations for which such official is alleged to be in default need be shown by such transcript. *Goff v. United States* (1903, 22 App. D.C. 512).

##### Plumbing inspector

Those injured by neglect of the inspector of plumbing in the performance of his official duties may maintain an action in the name of the District of Columbia to his use on the bond given by the inspector, under a plumbing regulation requiring the inspector to give a bond of \$5,000, "conditioned for the faithful performance of the duties of his office." *District of Columbia v. Ball* (1903, 22 App. D.C. 543).

Plumbing regulations of District of Columbia requiring inspector of plumbing to give bond with sureties for benefit of persons aggrieved by his acts of neglect, is valid, although the act of Congress of April 23, 1892 (27 Stat. 21, ch. 53) authorizing appointment of inspector of plumbing does not require bond. *Id.*

One who purchases house in which plumbing is defective without knowledge of such facts existing, may maintain action on official bond of inspector of plumbing for failure to inspect plumbing when the house was in the course of construction. *Id.*

##### Questions on appeal

Where person claiming to have posted collateral under agreement for surety bond for release of certain alien did not, in suit for recovery for alleged breach of such agreement, mention this section providing cause of action for those aggrieved by breach of bond given to United States to secure performance of a duty, this section could not be relied upon on appeal. *Chong Moe Dan v. Maryland Casualty Co. of Baltimore* (D.C. Mun. App. 1953, 93 A. 2d 286).

### § 28-2504. Fiduciary's bond—Discharge only after accounting

A person appointed by order or decree of the court to a fiduciary office may not discharge his bond for the due performance of his duties, by receipts, releases, or acquittances from himself, as attorney for parties interested, to himself as fiduciary; but the funds or estate for the application whereof he is responsible shall be considered as remaining in his hands, and the bond shall continue in force as



against both principal and sureties until the funds or estate are fully accounted for and paid over or delivered to the parties interested therein, or their attorney, other than himself. (Aug. 30, 1964, 78 Stat. 671, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-2407 (Mar. 3, 1901, 31 Stat. 1265, ch. 854, § 482).

Changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Sale trustee

Bond of a trustee appointed by court in an equity cause to sell real estate which runs to the United States, can be put in suit by person injuriously affected and in such suit the United States is the nominal plaintiff only. *Morse v. United States ex rel. Hine* (1907, 29 App. D.C. 433).

When decree for sale of infant's real estate is void for want of jurisdiction, the bond of trustee appointed to make the sale is void also, and the surety may show such invalidity in a suit against him on the bond by the United States. *Id.*

This section does not apply where payment was by the sale trustee to himself as testamentary trustee. *United States Fidelity & Guar. Co. v. Klein* (1932, 54 F. 2d 828, 60 App. D.C. 354, certiorari denied 52 S. Ct. 394, 285 U.S. 544, 76 L. Ed. 936).

## Chapter 27.—BUSINESS HOLIDAYS AND COMPUTATION OF TIME

### SUBCHAPTER I.—BUSINESS HOLIDAYS

#### Sec.

28-2701. Holidays designated—Time for performing acts extended.

### SUBCHAPTER II.—COMPUTATION OF TIME

28-2711. Daylight-saving time.

### SUBCHAPTER I.—BUSINESS HOLIDAYS

§ 28-2701. Holidays designated—Time for performing acts extended

The following days in each year, namely, the first day of January, commonly called New Year's Day; the twenty-second day of February, known as Washington's Birthday; the Fourth of July; the thirtieth day of May, commonly called Decoration Day; the first Monday in September, known as Labor Day; the twenty-fifth day of December, commonly called Christmas Day; every Saturday, after twelve o'clock noon; any day appointed or recommended by the President of the United States as a day of public feasting or thanksgiving, and the day of the inauguration of the President, in every fourth year are holidays in the District for all purposes. When a day set apart as a legal holiday falls on Sunday the next succeeding day is a holiday. In such cases, and when a Sunday and a holiday fall on successive days, all commercial paper falling due on any of those days shall, for all purposes of presenting for payment or acceptance, be deemed to mature and be presentable for payment or acceptance on the next secular business day succeeding. Every Saturday is a holiday in the District for (1) every bank or banking institution having an office or banking house located within the District, (2) every Federal savings and loan association whose main office is in the District, and (3) every building association, building and loan association, or savings and loan association, incorporated or unincorporated, organized and operating

under the laws of and having an office located within the District. An act which would otherwise be required, authorized, or permitted to be performed on Saturday in the District at the office or banking house of, or by, any such bank or bank institution, Federal savings and loan association, building association, building and loan association, or savings and loan association, if Saturday were not a holiday, shall or may be so performed on the next succeeding business day, and liability or loss of rights of any kind may not result from such delay. (Aug. 30, 1964, 78 Stat. 671, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-616 (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1389; June 30, 1902, 32 Stat. 543, ch. 1329; July 13, 1946, 60 Stat. 534, ch. 576, Dec. 30, 1963, 77 Stat. 774, Pub. L. 88-243, § 15(a)(2)).

The first three sentences of section 28-616 were repealed by Public Law 88-243. The balance constitutes this section.

Changes are made in phraseology.

#### OBSERVANCE OF CERTAIN HOLIDAYS ON MONDAYS

The act of June 28, 1968, Pub. L. 90-363, provides:

(a) Section 6103(a) of title 5, United States Code, is amended to read as follows:

#### "§ 6103. Holidays

"(a) The following are legal public holidays:

"New Year's Day, January 1.

"Washington's Birthday, the third Monday in February.

"Memorial Day, the last Monday in May.

"Independence Day, July 4.

"Labor Day, the first Monday in September.

"Columbus Day, the second Monday in October.

"Veterans Day, the fourth Monday in October.

"Thanksgiving Day, the fourth Thursday in November.

"Christmas Day, December 25."

(b) Any reference in a law of the United States (in effect on the effective date of the amendment made by subsection (a) of this section) to the observance of a legal public holiday on a day other than the day prescribed for the observance of such holiday by section 6103(a) of title 5, United States Code, as amended by subsection (a), shall on and after such effective date be considered a reference to the day for the observance of such holiday prescribed in such amended section 6103(a).

SEC. 2. The amendment made by subsection (a) of the first section of this Act shall take effect on January 1, 1971.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Judicial notice

Municipal Court of Appeals for the District of Columbia took judicial notice that Criminal Division of the Municipal Court was in session on Monday, July 5, 1943, for the arraignment and trial of persons held under arrest and unable to give collateral or bond, notwithstanding that that Monday was a legal holiday. *Burns v. District of Columbia* (D.C. Mun. App. 1944, 34 A. 2d 714).

##### Saturday half-holiday

Saturday half-holiday not excluded in computing 30 days' notice required under § 1219, D.C. 1901 (§ 45-902). *Ocuppaugh v. Norton* (1904, 24 App. D.C. 296). See, also, *McCoy v. Duehay* (1922, 279 F. 1001, 51 App. D.C. 363); *Morse v. Brainerd* (1914, 42 App. D.C. 448); *Swenk v. Nicholls* (1912, 39 App. D.C. 350).

### SUBCHAPTER II.—COMPUTATION OF TIME

§ 28-2711. Daylight-saving time

The Board of Commissioners of the District of Columbia may advance the standard time applicable to the District one hour for the period commencing



not earlier than the last Sunday of April and ending not later than the last Sunday of October, of each year. Any such time established by the Commissioners under the authority of this section, during the period of the year for which it is applicable, is the standard time for the District of Columbia. (Aug. 30, 1964, 78 Stat. 672, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(227) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the functions of the Board of Commissioners of advancing the standard time applicable to the District of Columbia under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-2804 (Apr. 28, 1953, 67 Stat. 23, ch. 30; July 2, 1956, 70 Stat. 482, ch. 491). Changes are made in phraseology.

#### CROSS REFERENCE

Uniform Time Act of 1966, see 15 U.S.C. § 260 et seq.

## Chapter 29.—FIDUCIARY SECURITY TRANSFERS

### Sec.

- 28-2901. Definitions.
- 28-2902. Registration in name of fiduciary.<sup>1</sup>
- 28-2903. Assignment by fiduciary.
- 28-2904. Evidence of appointment of incumbency.
- 28-2905. Adverse claims.
- 28-2906. Nonliability of corporation and transfer agent.
- 28-2907. Nonliability of third persons.
- 28-2908. Territorial applicability.<sup>1</sup>
- 28-2909. Tax obligations.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter (formerly the District of Columbia Uniform Act for Simplification of Fiduciary Security Transfers) is referred to in section 28:10-104.

### § 28-2901. Definitions

In this chapter, unless the context otherwise requires:

(1) "assignment" includes a written stock power, bond power, bill of sale, deed, declaration of trust or other instrument of transfer;

(2) "claim of beneficial interest" includes a claim of any interest by a decedent's legatee, distributee, heir or creditor, a beneficiary under a trust, a ward, a beneficial owner of a security registered in the name of a nominee, or a minor owner of a security registered in the name of a custodian, or a claim of a similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other authorized person on his behalf, and includes a claim that the transfer would be in breach of fiduciary duties;

(3) "corporation" means a private or public corporation, association or trust issuing a security;

(4) "fiduciary" means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian, or nominee;

(5) "person" includes an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or other legal or commercial entity;

<sup>1</sup> Analysis does not conform to section catchline.

(6) "security" includes a share of stock, bond, debenture, note or other security issued by a corporation which is registered as to ownership on the books of the corporation;

(7) "transfer" means a change on the books of a corporation in the registered ownership of a security;

(8) "transfer agent" means a person employed or authorized by a corporation to transfer securities issued by the corporation.

(Aug. 30, 1964, 78 Stat. 672, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-2321 (July 5, 1960, 74 Stat. 322, Pub. L. 86-584, § 1).

Arabic numbers are substituted for lower-case letters in designating the clauses, to conform to the style of the revision. The terms defined are not capitalized in the definitions unless they are capitalized in their normal usage in the text.

Minor changes are made in phraseology.

### § 28-2902. Registration in name of a fiduciary

A corporation or transfer agent registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship, and thereafter the corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that the fiduciary is no longer acting as such with respect to the particular security. (Aug. 30, 1964, 78 Stat. 672, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

#### REVISION NOTES

Based on D.C. Code § 28-2322 (July 5, 1960, 74 Stat. 322, Pub. L. 86-584, § 2).

### § 28-2903. Assignment by fiduciary

Except as otherwise provided by this chapter, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary:

(1) may assume without inquiry that the assignment, even though to the fiduciary himself or his nominee, is within his authority and capacity and is not in breach of his fiduciary duties;

(2) may assume without inquiry that the fiduciary has complied with any controlling instrument and with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(3) is not charged with notice of and is not bound to obtain or examine any court record or recorded or unrecorded document relating to the fiduciary relationship or the assignment, even though the record or document is in its possession. (Aug. 30, 1964, 78 Stat. 673, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-2323 (July 5, 1960, 74 Stat. 322, Pub. L. 86-584, § 3).

Arabic numbers are substituted for letters in designating clauses, to conform to the style of the revision.

### § 28-2904. Evidence of appointment of incumbency

A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not



the registered owner shall require the following evidence of appointment or incumbency:

(1) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of the court or an officer thereof, and dated within sixty days before the transfer; or

(2) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the corporation or transfer agent to be appropriate. Corporations and transfer agents may adopt reasonable standards with respect to evidence of appointment or incumbency under this subsection. Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to this subsection except to the extent that the contents relate directly to the appointment or incumbency.

(Aug. 30, 1964, 78 Stat. 673, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-2324 (July 5, 1960, 74 Stat. 323, Pub. L. 86-584, § 4).

Arabic numbers are substituted for letters in designating clauses, to conform to the style of the revision.

Changes are made in phraseology.

### § 28-2905. Adverse claims

(a) A person asserting a claim of beneficial interest adverse to the transfer of a security pursuant to an assignment by a fiduciary may notify in writing the corporation or transfer agent of the claim. The corporation or transfer agent is not put on notice unless the written notice (1) identifies the claimant, the registered owner, and the issue of which the security is a part, (2) provides an address for communications directed to the claimant, and (3) is received before the transfer. This chapter does not relieve the corporation or transfer agent of any liability for making or refusing to make the transfer after it is so put on notice, unless it proceeds in the manner authorized by subsection (b).

(b) As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or certified mail to the claimant at the address given by him. If the corporation or transfer agent so mails such a notice it shall withhold the transfer for thirty days after the mailing and shall then make the transfer unless restrained by a court order. (Aug. 30, 1964, 78 Stat. 673, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-2325 (July 5, 1960, 74 Stat. 323, Pub. L. 86-584, § 5).

Changes are made in phraseology.

### § 28-2906. Nonliability of corporation and transfer agent

A corporation or transfer agent does not incur liability to any person by making a transfer or other-

wise acting in a manner authorized by this chapter. (Aug. 30, 1964, 78 Stat. 674, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-2326 (July 5, 1960, 74 Stat. 323, Pub. L. 86-584, § 6).

Minor changes are made in phraseology.

### § 28-2907. Nonliability of third persons

(a) A person who participates in the acquisition, disposition, assignment or transfer of a security by or to a fiduciary including a person who guarantees the signature of the fiduciary is not liable for participation in any breach of fiduciary duty by reason of failure to inquire whether the transaction involves such a breach unless it is shown that he acted with actual knowledge that the proceeds of the transaction were being or were to be used wrongfully for the individual benefit of the fiduciary or that the transaction was otherwise in breach of duty.

(b) When a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee to any person to whom the corporation or transfer agent by reason of this chapter incurs no liability.

(c) This section does not impose any liability upon the corporation or its transfer agent. (Aug. 30, 1964, 78 Stat. 674, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-2327 (July 5, 1960, 74 Stat. 324, Pub. L. 86-584, § 7).

Minor changes are made in phraseology.

### § 28-2908. Territorial application

(a) The rights and duties of a corporation and its transfer agents in registering a security in the name of a fiduciary or in making a transfer of a security pursuant to an assignment by a fiduciary are governed by the law of the jurisdiction under whose laws the corporation is organized.

(b) This chapter applies to the rights and duties of a person other than the corporation and its transfer agents with regard to acts and omissions in the District of Columbia in connection with the acquisition, disposition, assignment or transfer of a security by or to a fiduciary and of a person who guarantees in the District of Columbia the signature of a fiduciary in connection with such a transaction. (Aug. 30, 1964, 78 Stat. 674, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-2328 (July 5, 1960, 74 Stat. 324, Pub. L. 86-584, § 8).

### § 28-2909. Tax obligations

This chapter does not affect any obligation of a corporation or transfer agent with respect to estate, inheritance, succession, or other taxes imposed by the laws of the District of Columbia. (Aug. 30, 1964, 78 Stat. 674, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-2329 (July 5, 1960, 74 Stat. 324, Pub. L. 86-584, § 9).



## Chapter 31.—FRAUDULENT CONVEYANCES

Sec.

28-3101. Intent to defraud creditors.

28-3102. Intent to defraud purchasers.

28-3103. Fiduciaries' suit to vacate fraudulent transaction.<sup>1</sup>

### § 28-3101. Intent to defraud creditors

A conveyance or assignment, in writing or otherwise, of an estate or interest in land or its rents and profits, or in goods or things in action, and a charge upon the same, and a bond or other evidence of debt given, or judgment or decree suffered, with the intent to hinder or defraud persons having just claims or demands, of their lawful suits, damages, or demands, is void as against the persons so hindered or defrauded.

This section does not affect the title of a purchaser for value, unless it appears that he had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of the grantor. The question of fraudulent intent is a question of fact and not of law. (Aug. 30, 1964, 78 Stat. 674, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-3101 (Mar. 3, 1901, 31 Stat. 1368, ch. 854, § 1120).

The word "delay" in the phrase "hinder, delay, or defraud" is deleted as redundant.

Changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRESENT LAW

##### Tenancy by entirety

If an inter-spousal transaction happens to infringe rules imperiling conveyances that hinder, delay or defraud creditors, the transaction is open to attack by affected creditors. *In re Estate of J. S. Wall* (1971, 440 F. 2d 215, 142 U.S. App. D.C. 187).

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### In general

By the terms of the statute a final judgment at common law is made a lien, not only upon the legal, but as well upon the equitable, interests in real estate of the judgment debtor from the date when the same is rendered, and this section likewise makes every conveyance of lands with intent to defraud creditors not merely voidable, but void. *Reilly v. Sabin* (1936, 81 F. 2d 259, 65 App. D.C. 125).

Where it did not appear that anyone but plaintiff was hindered, delayed, or defrauded by transfer of property sought to be set aside as fraudulent, judgment to the extent that it avoided transfer as against other persons should be modified. *Brady v. Games* (1942, 128 F. 2d 754, 76 U.S. App. D.C. 47).

A court should not enrich a fraudulent grantee at expense of parties not responsible for original grantor's attempt to avoid creditors. *Hurwitz v. Hurwitz* (1943, 136 F. 2d 796, 78 U.S. App. D.C. 66, 148 A.L.R. 226).

Every case involving question whether debtor made fraudulent conveyances depends on its own circumstances. *Beaton Co. v. Berberich* (1943, 135 F. 2d 831, 77 U.S. App. D.C. 377).

Even if a conveyance is, on its face, presumptively fraudulent, it is susceptible of explanation. *Snider v. Kelly* (1943, 135 F. 2d 817, 77 U.S. App. D.C. 363, certiorari denied 64 S. Ct. 62, 320 U.S. 764, 88 L. Ed. 456).

##### Consideration

Where there was substantial evidence to support findings that note and deed of trust recorded on date prior to date when the United States filed notice of tax lien were without consideration and in fraud of creditors, such findings were not clearly erroneous and hence judgment based on such findings would be affirmed. *H. Milloff and S. Milloff v. United States and A. Goldkind* (1962, 306 F. 2d 783, 113 U.S. App. D.C. 176).

<sup>1</sup> Analysis does not conform to section catchline.

In action for judgment declaring plaintiff to be common-law wife of a defendant, and as such entitled to an inchoate right of dower in certain realty allegedly conveyed by him to his daughter before establishment of marriage, evidence, including undisputed testimony that defendant paid \$4,000 for property in question and conveyed it to his daughter, for \$10 which was the entire consideration, established that codefendant was not a purchaser for valuable consideration within meaning of this section. *Leonardo v. Leonardo et ano.* (1958, 251 F. 2d 22, 102 U.S. App. D.C. 119).

Words "valuable consideration" as used in portion of this section providing that such section shall not be construed to impair title of a purchaser for a "valuable consideration" means fair equivalent of the property conveyed. *Id.*

The sum of \$10, constituting the entire consideration allegedly paid for realty worth \$4,000, did not constitute "valuable consideration" within meaning of that term as used in this section providing that certain conveyances of realty made with intent of defrauding creditors shall be void except as against a purchaser for a valuable consideration, without notice. *Id.*

##### Construction

This section providing that conveyances made with intent of defrauding certain persons shall be void is entitled to liberal construction. *Leonardo v. Leonardo et ano.* (1958, 251 F. 2d 22, 102 U.S. App. D.C. 119).

##### Duty of court

Where issue regarding whether conveyance is fraudulent is presented to trial court, its duty is to determine from circumstances surrounding transaction of parties whether the intent proscribed by this section was present and in doing so, it should apply the rule that the parties intend the natural and probable consequences of their acts, and if the inevitable consequences of a conveyance are to hinder, delay or defraud creditors, the court must so hold notwithstanding denial of such intent by the parties. *Snider v. Kelly* (1943, 135 F. 2d 817, 77 U.S. App. D.C. 363, certiorari denied 64 S. Ct. 62, 320 U.S. 764, 88 L. Ed. 456).

##### Evidence

Fraud must be shown by clear and convincing evidence and by evidence which is not equivocal that is, equally consistent with either honesty or deceit, but circumstantial evidence is sufficient to prove fraud. *Wynne et al. v. Boone et al.* (1951, 191 F. 2d 220, 88 U.S. App. D.C. 363).

Evidence sustained trial court's judgment setting aside, as in fraud of creditors, conveyances of realty. *Id.*

##### Fraudulent conveyance

Where company extended credit to its customers and received promissory notes which were endorsed in blank without recourse to bank as security for credit extended to the company ranging from 60 to 65 percent of the face value of pledged notes and company acted as bank's agent for collection and remitted payments to a special account at the bank which was used to reduce debt owed by company to bank, and company submitted quarterly reports to bank indicating status of collections from consumer-debtors and company's book accounts indicated that consumer notes were pledged to the bank, the transfer of security from the company to the bank was not a fraudulent conveyance under District of Columbia law providing that transfers which are intended to hinder, delay or defraud creditors or transferor are voidable. *M. Stevan, Trustee etc. v. Union Trust Company etc., et al.* (1963, 316 F. 2d 687, 115 U.S. App. D.C. 36).

##### Good faith

In determining whether debtor's conveyances are fraudulent, the vital question is the good faith of the transactions. *Beaton Co. v. Berberich* (1943, 135 F. 2d 831, 77 U.S. App. D.C. 377).

##### Intent of parties

In suit to set aside, as fraud on creditors, conveyances of realty, where grantee was found to be in same position as grantor, so far as knowledge and intent were concerned, and conveyance was found to have been fraudulent, neither grantor nor grantee could claim to have been



injured by creditor's pursuit of one remedy rather than another. *Wynne et al. v. Boone et al.* (1951, 191 F. 2d 220, 88 U.S. App. D.C. 363).

In creditor's suit to declare void certain transfers of title and of interests by debtor to others, record sustained determination that the transactions were consistent with an honest purpose and were free from fraud and wrongdoing. *Beaton Co. v. Berberich* (1943, 135 F. 2d 831, 77 U.S. App. D.C. 377).

Where it appears from all surrounding circumstances that acts of parties are consistent with an honest purpose, it is not an inevitable consequence that conveyance will hinder, delay or defraud creditors, and the court should find accordingly. *Snider v. Kelly* (1943, 135 F. 2d 817, 77 U.S. App. D.C. 363, certiorari denied 64 S. Ct. 62, 320 U.S. 764, 88 L. Ed. 456).

#### Mortgages

A mortgage made with intent to hinder, delay, or defraud the bankrupt's creditors may be declared void. *Universal Dealers Co. v. Cromelin* (1940, 109 F. 2d 828, 71 App. D.C. 234, certiorari denied 60 S. Ct. 1088, 310 U.S. 641, 84 L. Ed. 1409).

The giving of the mortgage followed by withholding it from record pursuant to an agreement or understanding, operated to hinder, delay, and defraud the bankrupt's creditors as the parties are presumed to intend the natural and probable consequences of their own acts and whatever may have been the intention of the petitioner is immaterial. *In re Nolan Motor Co., Inc.* (D.C.D.C. 1938, 25 F. Supp. 186, affirmed 109 F. 2d 282, 711 App. D.C. 234, certiorari denied 60 S. Ct. 1088, 310 U.S. 641, 84 L. Ed. 1409).

#### Other persons

Under this section providing that every conveyance of realty made with intent to defraud creditors or "other persons" having just claims shall be void as against persons so defrauded, a wife, in regard to her property rights arising from marriage, is one of the "other persons" protected. *Leonardo v. Leonardo et ano.* (1958, 251 F. 2d 22, 102 U.S. App. D.C. 119).

#### Pleading, sufficiency of

Judgment creditor's complaint alleging fraudulent conveyances of real estate was sufficient to allege fraudulent intent on part of debtor in making conveyance. *F. S. Bowen Electric Co., Inc. v. J. D. Hedin Construction Co., Inc.* (1963, 316 F. 2d 362, 114 U.S. App. D.C. 361).

#### Presumptions

In determining whether debtor made fraudulent transfer, certain rebuttable presumptions go into balance, in creditor's favor, but if it appears from circumstances that challenged acts of parties to transfer are consistent with an honest purpose, the presumptions are overcome. *Beaton Co. v. Berberich* (1943, 135 F. 2d 831, 77 U.S. App. D.C. 377).

#### Question of fact

In District of Columbia, fraud is matter of fact, and therefore, where creditors established that conveyance had been made and recorded with intent to defraud, it would not be necessary to success of their suit to set aside conveyance that they proved that grantor was insolvent. *Wynne et al. v. Boone et al.* (1951, 191 F. 2d 220, 88 U.S. App. D.C. 363).

Under this section, the question of fraudulent intent is a "question of fact" and not a "question of law". *Snider v. Kelly* (1943, 135 F. 2d 817, 77 U.S. App. D.C. 363, certiorari denied 64 S. Ct. 62, 320 U.S. 764, 88 L. Ed. 456).

#### Quitclaim deeds

Where circumstances indicated that debtor was not owner of property or any part of it but at best had a claim which, in hands of creditor, might have had some nuisance value as a cloud on title, that real owner was debtor's brother and that deed from debtor to brother was in nature of a quitclaim to clear brother's title, evidence sustained findings and conclusion that conveyance did not violate this section regarding fraudulent conveyances. *Snider v. Kelly* (1943, 135 F. 2d 817, 77 U.S. App. D.C. 363, certiorari denied 64 S. Ct. 62, 320 U.S. 764, 88 L. Ed. 456).

#### Review

Finding that payment by insolvent corporation of its debt to its sole stockholder and managing director was made with intent to hinder or delay a creditor was not clearly erroneous and supported conclusion that transfer was void as against creditor. *Ferro Inc., and Powell Jr. v. John Thompson Beacon Windows, Ltd.* (1960, 278 F. 2d 280, 107 U.S. App. D.C. 400).

On appeal from judgment setting aside conveyance as fraud on creditors, sole function of Court of Appeals is to decide whether or not trial judge was clearly in error in being convinced by evidence presented, and it is not function of Court of Appeals to weigh evidence and it is not necessary that Court of Appeals itself find evidence on issue of fraud to be clear and convincing. *Wynne et al. v. Boone et al.* (1951, 191 F. 2d 220, 88 U.S. App. D.C. 363).

#### Summary judgment

Evidence in hearing on motion for summary judgment in action to set aside fraudulent conveyances showed existence of genuine issue of fact as to debtor's alleged fraudulent intent precluding summary judgment. *F. S. Bowen Electric Co., Inc. v. J. D. Hedin Construction Co., Inc.* (1963, 316 F. 2d 362, 114 U.S. App. D.C. 361).

#### Transfer to wife of bankrupt

Where there was a fraudulent transfer of bankrupt's property to wife, conveyance was set aside in equity. *Harding v. Aaronson* (1934, 69 F. 2d 845, 63 App. D.C. 107).

### § 28-3102. Intent to defraud purchasers

A conveyance of an estate or interest in land, or its rents and profits, and a charge upon the same, made or created with the intent to defraud prior or subsequent purchasers for a valuable consideration of the same lands, rents, or profits, are void, as against the purchasers. Such a conveyance or charge is not deemed fraudulent in favor of a subsequent purchaser who has actual or legal notice thereof at the time of his purchase, unless it appears that the grantee in the conveyance, or the person to be benefited by the charge, was privy to the fraud intended. (Aug. 30, 1964, 78 Stat. 675, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-3102 (Mar. 3, 1901, 31 Stat. 1368, ch. 854, § 1121).

Changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Question of fact

In action for breach of contract for conveyance of realty, questions of good faith and collusive intent are questions of fact requiring submission to the jury. *Buchanan v. Farmer* (D.C. Mun. App. 1948, 62 A. 2d 367).

### § 28-3103. Fiduciary's suit to vacate fraudulent transaction

An executor, administrator, receiver, assignee, or trustee of an estate, or of the property and effects of an insolvent estate, corporation, association, partnership, or individual, may, for the benefit of creditors and others interested in the estate or property so held in trust, disaffirm, treat as void, and resist all acts done, transfers, and agreements made in fraud of the rights of a creditor, including themselves and others interested in an estate or property held by or of right belonging to him or the estate. Whoever, in fraud of the rights of creditors and others receives, takes, or in any manner interferes with the estate, property, or effects of a deceased person or insolvent corporation, association, partnership, or individual is liable, in the proper action, to



the executors, administrators, receivers, or trustees of the estate or property for the same, or the value of any property or effects so received or taken, and for all damages caused by such acts to the trust estate. (Aug. 30, 1964, 78 Stat. 675, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-3103 (Mar. 3, 1901, 31 Stat. 1368, ch. 854, § 1122).

This section is rewritten in the present tense, to conform to the style of the revision.

Changes are made in phraseology.

#### CROSS REFERENCES

Attachment or garnishment because of fraudulent conveyance, see §§ 16-501, 16-529.

Fraudulent attornment, see § 45-934.

### NOTES TO DECISIONS UNDER PRIOR LAW

#### Action to avoid deed

Section authorizes executors to file suit setting aside or canceling a deed executed by testator and to collect the expenses incident thereto. *Ramsey v. Curtis* (1950, 182 F. 2d 687, 86 U.S. App. D.C. 386).

#### Increase of rights

This section is "procedural", and the person for whose benefit transfer is sought to be set aside can get no increased substantive rights because administrator is bringing the suit. *Hurwitz v. Hurwitz* (1943, 136 F. 2d 796, 78 U.S. App. D.C. 66, 148 A.L.R. 226).

Where administratrix of deceased grantor sought to set aside transfers that allegedly had illegal purpose of defeating creditors and administratrix did not seek to benefit creditors, but to set aside the transfers for benefit of grantor's heirs, the heirs obtained no additional rights because their interests were represented by administratrix. *Id.*

#### Trust, enforcement of

Administratrix of deceased grantor could enforce "re-sulting trust" and recover proceeds of realty on behalf of heirs of grantor, notwithstanding evidence that transfers which administratrix sought to set aside had illegal purpose of defeating grantor's creditors. *Hurwitz v. Hurwitz* (1943, 136 F. 2d 796, 78 U.S. App. D.C. 66, 148 A.L.R. 226).

## Chapter 33.—INTEREST AND USURY

#### Sec.

- 28-3301. Rate of interest expressed in contract.
- 28-3302. Rate of interest not expressed and on judgments.
- 28-3303. Usury defined.
- 28-3304. Action to recover usury paid.
- 28-3305. Unlawful interest credited on principal debt.
- 28-3306. Parties compelled to testify.
- 28-3307. District of Columbia Council authorized to exempt certain mortgages and loans.
- 28-3308. Finance charge on direct installment loans.

#### AMENDMENTS

1971—Item 28-3308 was added to the chapter analysis by Act Dec. 17, 1971, Pub. L. 92-200, § 8(a).

1970—Item 28-3307 was added to the chapter analysis by Act Aug. 20, 1970, Pub. L. 91-385, § 2(b).

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 29-843, 28-3602.

### § 28-3301. Rate of interest expressed in contract

Except as otherwise provided in section 28-3308, and chapter 36 of this subtitle, the parties to an instrument in writing for the payment of money at a future time may contract therein for the payment of interest on the principal amount thereof at a rate not exceeding 8 percent per annum. (Aug. 30, 1964, 78 Stat. 675, Pub. L. 88-509, § 1, eff. Jan. 1, 1965; Dec. 17, 1971, Pub. L. 92-200, § 1, 85 Stat. 665.)

#### AMENDMENT

1971—Section 1 of Act Dec. 17, 1971, Pub. L. 92-200, inserted the words "Except as otherwise provided in section 28-3308, and chapter 36 of this subtitle".

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-2702 (Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1179; Apr. 19, 1920, 41 Stat. 568, ch. 153, § 1).

The words "bond, bill, promissory note" are deleted as surplusage and covered by "instrument in writing."

Changes are made in phraseology.

#### CROSS REFERENCE

Interest and charges permitted under Money Lenders Law, see § 26-601 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-2010, 28-3303, 35-1361.

### NOTES TO DECISIONS UNDER PRESENT LAW

#### Credit charge as usury

Credit charge of \$219 for purchase over two-year period of merchandise that was available to buyer at cash price of \$594.85 plus \$17.85 sales tax does not constitute "interest" and is not usury. *M. C. Morris v. Capitol Furniture & Appliance Co., Inc.* (D.C. App. 1971, 280 A. 2d 775).

#### Overcharge of interest as usury

Receipt by deed of trust note holder of more than six but less than eight per cent interest violated note provision for six per cent interest but did not constitute "usury" within statute providing that parties to written instrument may contract for any rate not exceeding eight per cent. *J. J. Urciolo and P. M. Urciolo v. R. S. Nash* (D.C. App. 1965, 211 A. 2d 769).

#### Time-price sale

Bona fide sale of property on credit at a price that exceeds cash price by more than legal rate of interest does not constitute usury since seller is privileged to fix one price for cash and another for credit. *M. C. Morris v. Capitol Furniture & Appliance Co., Inc.* (D.C. App. 1971, 280 A. 2d 775).

Where cash sale price of sofa was \$320, installment sale contract provided for cash price of \$400, \$12 sales tax, insurance premium of \$7.03 and finance charge and fee for related services in amount of \$94.56 and seller, which assigned agreement to finance corporation, merely received its cash price plus fee of \$82.48 for transacting the loan and did not contemplate and enlarged credit price sale when the contract was executed and did not intend to protect its right of repossession, transaction was not a bona fide sale at a time price but was rather a cloak for a usurious loan. *W. Lee v. Household Finance Corporation* (D.C. App. 1970, 263 A. 2d 635).

### NOTES TO DECISIONS UNDER PRIOR LAW

#### Additional loan as usury

Usury sustained based on additional loan payable to intermediary. *Quinn v. National Mtg. & Inv. Co.* (1932, 57 F. 2d 410, 61 App. D.C. 44).

#### Bonus as usury

A commission or bonus paid to same person who is entitled to interest is to be considered as additional "interest" for purpose of usury law. *Industrial Bank Washington, Inc., et al. v. Page* (1957, 249 2d 938, 102 U.S. App. D.C. 33).

Where bank was offering to make loan at six percent with one person commission and consent to such contract was obtained when borrower signed note and in writing approved settlement sheet containing item of the one percent commission, the contract was within the eight percent provision of the usury statute, precluding borrower from recovering the amount of interest. *Id.*

"Bonus" being a sum paid to the creditor for the continued use of the money, clearly counts as interest for the purpose of the usury law; and a bonus, which, when added to the nominal interest on a 2-year extension exceeded 8 percent, was usurious. *Bowen v. Mount Vernon Sav. Bank* (1939, 105 F. 2d 796, 70 App. D.C. 273).



**Incomplete transaction**

Where transaction contemplated, with usurious rates, never took place, claim of usury could not be sustained *Rosslyn Steel & Cement Co. v. Etchison* (1932, 57 F. 2d 409, 61 App. D.C. 43).

**Usury**

Filing of certificate of withdrawal by foreign corporation did not change status previously acquired by corporation's contracts so that under statute allowing corporations to seek financing without regard to lawful interest rates its complaint for recovery of usurious interest under prior contracts was barred. *Indian Lake Estates, Inc. v. Ten Individual Defendants* (1965, 350 F. 2d 435, 121 U.S. App. D.C. 305).

**§ 28-3302. Rate of interest not expressed and on judgments**

The rate of interest in the District upon the loan or forbearance of money, goods, or things in action, and the rate to be allowed in judgments and decrees, in the absence of express contract, is 6 percent per annum. Interest, when authorized by law, on judgments against the District of Columbia, is at the rate of not exceeding 4 percent per annum. (Aug. 30, 1964, 78 Stat. 675, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 28-2701 (Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1178; July 1, 1902, 32 Stat. 610, ch. 1352).

Changes are made in phraseology.

**CROSS REFERENCE**

Interest and charges permitted under Money Lenders Law, see § 26-601 et seq.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 2-2010, 35-1361.

**NOTES TO DECISIONS UNDER PRIOR LAW****Judgments**

While act April 22, 1870, 16 Stat. 91, ch. 59, fixed the rate of interest on judgments it did not cause such judgments or decrees to bear interest which would not have borne interest previously thereto. *Washington & G. R. Co. v. Tobriner* (1893, 13 S. Ct. 557, 147 U.S. 571, 37 L. Ed. 284).

If a judgment regularly rendered in the Supreme (District) Court of the District in a common-law action of tort cannot bear interest a fortiori it should not be permitted to run upon the judgment of the court of claims. *Gray v. District of Columbia* (1893, 1 App. D.C. 20).

**Legal rates**

When debtor defaults, compensation equal to value of the money, which is legal interest upon it, will be permitted during time the party is in default, provided a claim is made in declaration for the interest. *District of Columbia v. Metropolitan R. Co.* (1896, 8 App. D.C. 322, affirmed 25 S. Ct. 28, 195 U.S. 322, 49 L. Ed. 219).

All that plaintiff was entitled to recover was the principal sum, with interest at the legal rate after the termination of the contract rate, less the credits which she admitted. *Richards v. Bippus* (1901, 18 App. D.C. 293).

**Occasional loans on real estate**

A nonresident who makes occasional loans on real estate is not engaged "in the business" of loaning money. *Zirkle v. Daly* (1932, 54 F. 2d 455, 60 App. D.C. 344).

**Usury**

Filing of certificate of withdrawal by foreign corporation did not change status previously acquired by corporation's contracts so that under statute allowing corporations to seek financing without regard to lawful interest rates its complaint for recovery of usurious interest under prior contracts was barred. *Indian Lake Estates, Inc. v. Ten Individual Defendants* (1965, 350 F. 2d 435, 121 U.S. App. D.C. 305).

"When the promise to pay a sum above the legal interest depends upon a contingency, and not upon any happening of a certain event, the loan is not usurious." *Whelpley v. Ross* (1905, 25 App. D.C. 207).

Illegality of the transaction does not affect the obligation to pay a tax, and though the accruals represented legally uncollectible usury, there was at all times a reasonable expectation that they would be paid, and this fact is enough to constitute them income to the same extent as if the several amounts were actually paid. *Barker v. Magruder* (1938, 95 F. 2d 122, 68 App. D.C. 211).

Usury law protects the maker in spite of knowledge. The same financial pressure which forced him to submit to usury in the first place may force him to renew. To permit a mere renewal or extension of the contract to purge the usury would defeat the purpose of the statute. *Bowen v. Mount Vernon Sav. Bank* (1939, 105 F. 2d 796, 70 App. D.C. 273).

**§ 28-3303. Usury defined**

If a person or corporation contracts in the District,

(1) verbally, to pay a greater rate of interest than 6 percent per annum, or

(2) in writing, to pay a greater rate than is permitted under section 28-3301 or 28-3308 or under chapter 36 of this subtitle, the creditor shall forfeit the whole of the interest so contracted to be received.

This section does not affect sections 26-601 to 26-611. (Aug. 30, 1964, 78 Stat. 675, Pub. L. 88-509, § 1, eff. Jan. 1, 1965; Dec. 17, 1971, Pub. L. 92-200, § 2, 85 Stat. 665.)

**REFERENCE IN TEXT**

Sections 26-601 to 26-611, referred to in the last sentence, refer to the Act of Feb. 4, 1913, as amended. Subsequent to the enactment of this section, the Act of Feb. 4, 1913, was amended by adding a new section 14 which has been classified to section 26-612.

**AMENDMENT**

1971—Section 2 of Act Dec. 17, 1971, Pub. L. 92-200, amended clause (2) by striking out "8 per centum per annum" and inserting "is permitted under section 28-3301 or 28-3308 or under chapter 36 of this subtitle" in lieu thereof.

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 28-2703 (Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1180; June 30, 1902, 32 Stat. 542, ch. 1329; Apr. 19, 1920, 41 Stat. 568, ch. 153, § 1).

The last sentence is substituted for the proviso.

The use of provisos is discontinued because most "provisos" are not true provisos and simply reflect the use of legalistic terminology which is being corrected in the codification bills generally.

Changes are made in phraseology.

**CROSS REFERENCES**

Authority of District of Columbia Council to exempt certain mortgages and loans, see § 28-3307.

Corporations created under Chapter 9 of Title 29 prohibited from pleading any statutes against usury in any action, see § 29-904(h).

Exemption from this chapter of cooperative associations, see § 29-843.

Exemption of institutions of higher education, see § 29-421.

Extortionate credit transactions, see 18 U.S.C. 891 et seq.

Pleading usury as a defense, see §§ 29-421, 29-904(h).

Truth in Lending Act, see 15 U.S.C. 1601 et seq.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 2-2010.

**NOTES TO DECISIONS UNDER PRESENT LAW****Burden of proof**

In the case, the court held that the assignee of conditional sale contract and note, that called for "time price" more than 8% greater than balance due, did not establish



that transaction was not usurious, and thus did not establish that it was holder in due course, since there was no showing that "finance charge" or "carrying charge" was included to compensate seller for expense other than price of loan. *L. Fuller v. Universal Acceptance Corporation* (D.C. App. 1970, 264 A. 2d 506).

#### Commission as constituting usury

Commission paid by a borrower to a loan broker for obtaining a loan from a third person does not constitute usury. *J. Oliver v. United Mortgage Company, Inc., etc.* (D.C. App. 1967, 230 A. 2d 722).

Even if loan broker had advanced his own funds to borrower, but had done so for convenience only and with expectation of reimbursing himself promptly from funds supplied by lender, broker who had retained commission for that service was not liable to borrower for allegedly usurious interest on ground that broker was principal on loan. *Id.*

Borrower was not entitled to recover portion of commission retained by loan broker for arranging loan on ground that transaction was usurious in absence of showing that broker was acting solely as agent of lender. *Id.*

#### Construction

Though Loan Shark Act of 1913 was primarily intended to regulate and limit business of making small loans for security, such Act does have application to loans in excess of \$200; and such Act is not an amendment or exception to the usury statute. *In re Parkwood, Inc.* (1972, 461 F. 2d 158, 149 U.S. App. D.C. 67).

#### Credit charge as usury

Credit charge of \$219 for purchase over two-year period of merchandise that was available to buyer at cash price of \$594.85 plus \$17.85 sales tax does not constitute "interest" and is not usury. *M. C. Morris v. Capitol Furniture & Appliance Co., Inc.* (D.C. App. 1971, 280 A. 2d 775).

#### Evidence

A showing that buyer under conditional sale contract was charged \$47.88 for use of \$300 for 12 months made a prima facie showing of usury, although total sum was labeled "time price", since credit had been prearranged through finance company to which contract was assigned. *L. Fuller v. Universal Acceptance Corporation.* (D.C. App. 1970, 264 A. 2d 506).

An usurer cannot conceal his handiwork by avoiding use of term "interest". *Id.*

#### Forfeiture

In this case the court held that the assignee of a conditional sales contract and note was not entitled to recover "finance charge" or "carrying charge" which exceeded 8% per annum since the assignee did not establish that it was holder in due course and that transaction was not usurious. *L. Fuller v. Universal Acceptance Corporation.* (D.C. App. 1970, 264 A. 2d 506).

#### Jurisdiction

The District of Columbia Court of General Sessions is without jurisdiction to render a declaratory judgment that centralized credit services' finance charges computed at annual rates of 18% and 12% exceeded interest rate which Congress has deemed lawful. *P. Simmons v. Central Charge Service, Inc.* (D.C. App. 1970, 269 A. 2d 850).

#### Nature of defense of usury

Usury as a defense attacks the original transaction as not bona fide and denies assignee of note the status of holder in due course. *Universal Acceptance Corporation v. F. Marzullo et ano.* (D.C. App. 1969, 260 A. 2d 90).

#### Placement fees

Where if the total of loan placement fee, appraisal fee and charge for credit report is deducted from face amount of loan the effective yield is 6.96 percent, the loan is not usurious. *L. L. Bettum v. Montgomery Federal Savings & Loan Association, Inc.* (Md. App. 1971, 277 A. 2d 600).

#### Pleading

A complaint against a centralized credit service, which sought to recover all interest paid by plaintiff and persons similarly situated and to which there was a statement attached showing that the defendant service charged 18% interest per annum on certain amounts and 12%

interest per annum on other sum without any assertion that the statement constituted plaintiff's account, asked, in essence, for an advisory opinion that the defendant services' finance charges were usurious and should cease, and failed to state a cause of action. *P. Simmons v. Central Charge Service, Inc.* (D.C. App. 1970, 269 A. 2d 850).

#### Tainted transaction

The court held, that in this case the working arrangement between the conditional seller of television set and the assignee of purchasers' note was tainted such that it bore a "badge of fraud" and supported trial judge's ruling in suit by assignee on note that the note was usurious and that assignee could not be given status of holder in due course. *Universal Acceptance Corporation v. F. Marzullo et ano.* (D.C. App. 1969, 260 A. 2d 90).

#### Time-price sale

Bona fide sale of property on credit at a price that exceeds cash price by more than legal rate of interest does not constitute usury since seller is privileged to fix one price for cash and another for credit. *M. C. Morris v. Capitol Furniture & Appliance Co., Inc.* (D.C. App. 1971, 280 A. 2d 775).

Where cash sale price of sofa was \$320, installment sale contract provided for cash price of \$400, \$12 sales tax, insurance premium of \$7.03 and finance charge and fee for related services in amount of \$94.56 and seller, which assigned agreement to finance corporation, merely received its cash price plus fee of \$82.48 for transacting the loan and did not contemplate an enlarged credit price sale when the contract was executed and did not intend to protect its right of repossession, transaction was not a bona fide sale at a time price but was rather a cloak for a usurious loan. *W. Lee v. Household Finance Corporation* (D.C. App. 1970, 263 A. 2d 635).

### NOTES TO DECISIONS UNDER PRIOR LAW

#### In general

Money exacted by the lender from the borrower for the use of money in excess of the legal rate allowed by this section is usury under whatever name or pretense the exaction, extension, or forbearance may be designated. *Von Rosen v. Dean* (1930, 41 F. 2d 982, 59 App. D.C. 359).

It is the agreement and not necessarily its performance which renders debit usurious. *Holcombe v. O'Sullivan* (D.C. Mun. App. 1953, 93 A. 2d 96).

#### Bonus as usury

Where face amount of promissory note was \$2,133 payable three years after date with interest at six percent per annum, but only \$1,933 was advanced to maker of note, with \$200 constituting a bonus, such note was usurious under usury statute. *Holcombe v. O'Sullivan* (D.C. Mun. App. 1953, 93 A. 2d 96).

Note or obligation is affected with usury if principal makes the loan, knowing that his agent has exacted a bonus or commission, though for his own sole benefit, which, with the interest payable to the principal, would amount to more than the rate permitted by law. *Richards v. Bippus* (1901, 18 App. D.C. 293).

#### Burden of proof

Under usury statute burden is upon borrower to show that contract was usurious. *Industrial Bank of Washington, Inc., et al. v. Page* (1957, 249 F. 2d 938, 102 U.S. App. D.C. 33).

In action on promissory note defendant had burden of proving alleged usury but defendant was not required to prove usury where usury was established by plaintiff's evidence. *Holcombe v. O'Sullivan* (D.C. Mun. App. 1953, 93 A. 2d 96).

Burden of proof is upon the borrower to show that the lender knew or was chargeable with the knowledge that his agent exacted a commission in obtaining loan for borrower in excess of the legal rate of interest. Such knowledge may be implied as well as actual. *Searl v. Earll* (D.C. Mun. App. 1948, 62 A. 2d 374).

#### Commissions

A commission or bonus paid to same person who is entitled to interest is to be considered as additional "interest" for purpose of usury law. *Industrial Bank of Washington, Inc., et al. v. Page* (1957, 249 F. 2d 938, 102 U.S. App. D.C. 33).



Where bank was offering to make loan at six percent with one percent commission and consent to such contract was obtained when borrower signed note and in writing approved settlement sheet containing item of the one percent commission, the contract was within the eight percent provision of the usury statute, precluding borrower from recovering the amount of interest, *Id.*

The usury statute may be violated by deducting a commission in advance as well as by any other means by which money in excess of legal rate is exacted. *Holcombe v. O'Sullivan* (D.C. Mun. App. 1953, 93 A. 2d 96).

Where a lender's agent with the lenders' knowledge and approval, takes the borrower's separate promissory note payable to himself for his compensation for obtaining the loan for the borrower, the agent cannot recover on the note when the interest on the principal loan plus the agent's commission exceeds the legal rate. *Searl v. Earll* (D.C. Mun. App. 1948, 62 A. 2d 374).

This section may be violated by deducting a commission in advance as well as by any other means by which money in excess of the legal rate is exacted. *Hartman v. Lubar* (D.C. Mun. App. 1946, 49 A. 2d 553).

#### Construction

The Loan Shark Law, § 26-601 et seq., the usury law, this section and § 28-2704 et seq., and the statute regarding financial institutions, § 47-1701 et seq. are to be read together and when so read constitute a comprehensive code for business of lending money in the District of Columbia. *Hartman v. Lubar* (1943, 133 F. 2d 44, 77 U.S. App. D.C. 95, certiorari denied 63 S. Ct. 1329, 319 U.S. 767, 87 L. Ed. 1716, rehearing denied 64 S. Ct. 30, 320 U.S. 808, 88 L. Ed. 488).

#### Corporate financing—interest rates

Filing of certificate of withdrawal by foreign corporation did not change status previously acquired by corporation's contracts so that under statute allowing corporations to seek financing without regard to lawful interest rates its complaint for recovery of usurious interest under prior contracts was barred. *Indian Lake Estates, Inc. v. Ten Individual Defendants* (1965, 350 F. 2d 435, 121 U.S. App. D.C. 305).

#### Defense

Usury can be invoked as a defense but not as an affirmative cause of action; that is, usury may be used as a shield but not as a sword. *Royall v. Yudelevit et al.* (D.C.D.C. 1953, 161 F. Supp. 217, reversed on other grounds 268 F. 2d 577).

Where there is a single consideration for one or more promises and any part of the transaction is illegal, the promises are wholly unenforceable. *Searl v. Earll* (D.C. Mun. App. 1948, 62 A. 2d 374).

#### Forfeiture

Under this section providing as to a usurious contract that creditor shall forfeit the whole of the interest, forfeiture applies not only to the usurious excess, but also to the lawful interest included in the contract rate, and this section forfeits all of the interest contracted for, if unpaid, or permits recovery, if paid by action within one year after payment. *Searl et ano. v. Earll* (1955, 221 F. 2d 24, 95 U.S. App. D.C. 151).

#### Holder in due course

In suit between makers of promissory notes aggregating \$10,200, secured by deeds of trust on realty, and endorsee of such notes, involving issue as to whether the loan transaction was usurious, evidence sustained finding that the endorsee was not, as he claimed, a holder in due course for value without notice, but that he had actually and knowingly lent money to makers and had used payee as an intermediary to avoid the usury statute. *Meredith et al. v. Cabell et al.* (1954, 211 F. 2d 810, 94 U.S. App. D.C. 73).

#### Judgment

In suit between makers of promissory notes aggregating \$10,200, secured by deeds of trust on realty, and endorsee of such notes who was in fact the actual lender, involving issue as to whether the loan transaction was usurious, evidence sustained finding that the endorsee had advanced to the makers, in return for the notes, only the

sum of \$7,510, of which \$5,476.10 had been repaid, and warranted judgment that, unless unpaid balance be paid within 30 days, trustees designated in deeds of trust might sell property to satisfy amount found to be due. *Meredith et al. v. Cabell et al.* (1954, 211 F. 2d 810, 94 U.S. App. D.C. 73).

#### Knowledge of holder

One who acquires promissory notes with knowledge of usury in their inception is not a bona fide holder for value. *Mollohan v. Masters* (D.C.D.C. 45 App. D.C. 414, certiorari denied 37 S. Ct. 245, 242 U.S. 652, 61 L. Ed. 546).

#### Laws applicable to contract

In absence of evidence to contrary it would be presumed that a promissory note which was dated at Washington, D.C., the place of payment being blank, was made in District of Columbia and was payable at place of making and was therefore subject to District of Columbia usury law. *Holcombe v. O'Sullivan* (D.C. Mun. App. 1953, 93 A. 2d 96).

Usurious contract examined and held to be subject to laws of District of Columbia, although expressly declared to be made pursuant to laws of Virginia. *Washington Nat. Bldg. & Loans Assn. v. Pifer* (1908, 31 App. D.C. 434, 14 Ann. Cas. 734). See also, *Croissant v. Empire State Realty Co.* (1907, 29 App. D.C. 538).

Where agreement made in Maryland between defendant and certain individuals provided that the individuals should organize a corporation to acquire land in District of Columbia, the corporation to erect buildings thereon and execute to individuals a \$19,000 mortgage thereon payable in one year, to be assigned to defendant upon payment of \$15,000 to the corporation, and mortgage note was delivered in District of Columbia, where defendant paid the \$15,000 and corporation paid the note in full one year later, as between the corporation and defendant the contract was made in District of Columbia, the laws of which permitted corporation to recover money usuriously exacted. *Plitt v. Seven Corners Realty* (1945, 149 F. 2d 832, 80 U.S. App. D.C. 134).

#### Liability of agent

An agent was personally liable for unlawful interest which he turned over to his principal with knowledge that the principal was not entitled thereto. *Searl et ano. v. Earll* (1955, 221 F. 2d 24, 95 U.S. App. D.C. 151).

In suit to recover the unpaid balance on a note given by defendants to plaintiff as commission for securing a loan from plaintiff's wife with counterclaim for usury, plaintiff was subject to separate liability and to a suit individually without joinder of his wife as principal. *Id.*

#### Limitations

In suit to recover the unpaid balance of a note with defense of usury, where concealment by plaintiff from defendants of the fact that the lender was his wife constituted fraud, bar of limitations against assertion of the defense of usury did not begin to run against the defendants until the fraud was discovered. *Searl et ano. v. Earll* (1955, 221 F. 2d 24, 95 U.S. App. D.C. 151).

#### Occasional loans on real estate

A nonresident who makes occasional loans on real estate is not engaged "in the business" of loaning money within the meaning of the Loan Shark Law. *Zirkle v. Daly* (1932, 54 F. 2d 455, 60 App. D.C. 344).

#### Prepayment charge

Even if premium charged by lender for privilege of permitting borrower to prepay entire amount of outstanding balance on note secured by deed of trust on realty could be considered as interest, transaction was not usurious where total amount of interest paid plus the premium was less than lawful maximum interest computed to date the loan was paid. *Atlantic Life Ins. Co. of Richmond, Va. v. Wolf* (D.C. Mun. App. 1947, 54 A. 2d 641).

Where neither note nor deed of trust on realty securing the note contained any provision permitting repayment by borrower before specified date of maturity, or vested any right or option of acceleration in borrower, the charge of premium to permit borrower to prepay entire amount of outstanding balance on note could not be considered as "interest", as regards usury. *Id.*



**Purchase at discount**

It is not usurious to purchase a note at a discount. *Elliott v. Schlein* (D.C. Mun. App. 1954, 104 A. 2d 418).

Where discounted notes were taken by creditor in payment of debt and not as security therefor, there was no mortgage so as to render the transaction usurious though the parties agreed that if proceeds realized exceeded amount of debt, debtors should be reimbursed accordingly and that in case of deficiency they would make it up. *Krevait v. Turover* (D.C. Mun. App. 1944, 39 A. 2d 207).

Where defendants owed plaintiffs money which they could not pay, it was not usury for defendant to give and plaintiff to receive in payment of the debt notes at a discount of 3 percent of their face value multiplied by the number of years required for the maturity of the notes. *Id.*

It is not usurious to purchase a note at a discount or to accept in payment of a debt a note at less than its face value. *Id.*

A purchase of negotiable paper in market overt "at a heavy discount below the face value" does not show usury. *Metropolitan Loan & Trust Co. v. Schafer* (1916, 44 App. D.C. 356).

**Licensing statute**

"Loan shark law" making it illegal to engage in business of loaning money without procuring a license is a licensing statute, unrelated to and unaffected by usury statutes. *Indian Lake Estates, Inc. v. Ten Individual Defendants* (1965, 350 F. 2d 435, 121 U.S. App. D.C. 305).

**Set-off**

Usurious interest cannot be set off against the principal debt. *Presbrey v. Thomas* (1893, 1 App. D.C. 171).

When usurious interest has been paid or taken, the sole and exclusive remedy for the borrower is by a suit within 12 months to recover the amount of the usury; and the usurious interest could not be made the subject of set-off or counterclaim, when after the lapse of 12 months suit is instituted for the recovery of the principal claim. *Lawrence v. Middle States Loan Bldg. & Constr. Co.* (1895, 7 App. D.C. 161).

"A defense of usury good against one obligation will not constitute a valid offset against a distinct and independent obligation, though between the same parties." *Metropolitan Loan & Trust Co. v. Schafer* (1916, 44 App. D.C. 356).

"If suit is brought on the principal debt after payment of usurious interest, such usury may be made a valid set-off against the principal debt. Usury upon obligations paid and canceled can not be used as a set-off against a subsequent obligation even between the same parties either in law or in equity." *Id.*

**Sufficiency of pleading**

In suit to recover the unpaid balance on a note, counterclaim was a sufficient pleading of the defense of usury as a vindication of the defendant's legal right or the remedying of a legal wrong. *Searl et ano. v. Earll* (1955, 221 F. 2d 24, 95 U.S. App. D.C. 151).

**Summary judgment**

Assuming original contracts and engagements were illegal and void because of violation of usury statutes and "loan shark law", claims of complaint that parties entered into agreements purporting to settle and compromise original contracts and engagements and that settlement agreements did not eliminate illegality presented complex issues of fact and law and mixed questions of law and fact not susceptible of disposition by summary judgment. *Indian Lake Estates, Inc. v. Lichtman* (1962, 311 F. 2d 776, 114 U.S. App. D.C. 90).

**§ 28-3304. Action to recover usury paid**

If a person or corporation in the District directly or indirectly takes or receives a greater amount of interest than is declared by this chapter to be lawful, whether in advance or not, the person or corporation paying the same may within one year after the date of payment sue for and recover the amount of the unlawful interest so paid. (Aug. 30, 1964, 78 Stat. 676, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 28-2704 (Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1181).

Changes are made in phraseology.

**NOTES TO DECISIONS UNDER PRESENT LAW****Pleading**

A complaint against a centralized credit service, which sought to recover all interest paid by plaintiff and persons similarly situated and to which there was a statement attached showing that the defendant service charged 18% interest per annum on certain amounts and 12% interest per annum on other sum without any assertion that the statement constituted plaintiff's account, asked, in essence, for an advisory opinion that the defendant services' finance charges were usurious and should cease, and failed to state a cause of action. *P. Simmons v. Central Charge Service, Inc.* (D.C. App. 1970, 269 A. 2d 850).

**Time limitation**

An action by makers of a promissory note secured by deeds of trust on Washington, D.C. property to recover usurious portion of interest, would have to be brought within one year of date of payment of interest under District of Columbia Code provision. *J. Katz et al. v. Simcha Company, Inc.* (Court of App. Md. 1968, 246 A. 2d 555).

**NOTES TO DECISIONS UNDER PRIOR LAW****Admissibility of evidence**

Where there was evidence that indorsee finance company for which trustee brought replevin suit to recover chattels named in chattel trust deed securing a note was in the business of lending money rather than solely that of discounting notes in the sense of buying from a creditor an existing obligation at less than face value, proffered evidence consisting of court trials of five municipal court cases in which finance company sued to recover on notes assigned to it was material to defendant's defense that finance company was in business of lending money at rate of interest greater than 6 percent, without required license and should have been admitted. *Hartman v. Lubar* (D.C. Mun. App. 1946, 49 A. 2d 553).

**Cancellation**

A suit for cancellation of note and deed of trust on ground of usury, regarded as suit for declaratory judgment that complete defense existed to the obligation on the note, was not barred by this section or three-year general statute, § 12-201. *Hill v. Hawes* (1944, 144 F. 2d 511, 79 U.S. App. D.C. 168).

This section applies to recovery of any payments made on usurious obligation in excess of amount necessary to extinguish the note, though cancellation of usurious obligation was not barred. *Id.*

**Commissions**

Commissions deducted in advance by the lender constitute usury. *Von Rosen v. Dean* (1930, 41 F. 2d 982, 59 App. D.C. 359).

**Construction**

The time limitation in this section permitting recovery of all interest paid on a usurious transaction provided suit is begun within one year from date of such payment, is not a general statute of limitations but is a limitation imposed by statute which created right and is limitation of right itself. *Earll v. Searl* (D.C. Mun. App. 1954, 101 A. 2d 248).

**Corporate financing—interest rates**

Filing of certificate of withdrawal by foreign corporation did not change status previously acquired by corporation's contracts so that under statute allowing corporations to seek financing without regard to lawful interest rates its complaint for recovery of usurious interest under prior contracts was barred. *Indian Lake Estates, Inc. v. Ten Individual Defendants* (1965, 350 F. 2d 435, 121 U.S. App. D.C. 305).

**Defenses**

There are no limitations on claim of usury as a defense in a suit based on usurious obligations. *Hill v. Hawes* (1944, 144 F. 2d 511, 79 U.S. App. D.C. 168).

Although plaintiff's action to recover unpaid balance on note given by defendants to plaintiff as commission



for obtaining a loan was brought more than one year after last payment, usury would defeat recovery pro tanto on the note, but affirmative relief by way of recovery of payments made was barred by this section. *Earll v. Searl* (D.C. Mun. App. 1954, 101 A. 2d 248).

#### Inferences

Where defendant had subpoenas duces tecum served upon officers of indorsee finance company for which trustee was maintaining replevin suit to compel them to produce at trial all records regarding the company for purpose of showing that company was in business of lending money at rate of interest greater than 6 percent without required license, and officers failed to produce the records, jury could infer from failure to produce subpoenaed records that contents thereof would have been unfavorable to trustee's case. *Hartman v. Lubar* (D.C. Mun. App. 1946, 49 R. 2d 553).

#### Interest forfeited

Whole of the interest contracted to be paid by the terms of the trust is forfeited as usury when the trust deed for amount in addition to the loan was payable to an intermediary who professed to sell the same to the actual lender. *Quinn v. National Mtg. & Inv. Co.* (1932, 57 F. 2d 410, 61 App. D.C. 44).

This section authorizing recovery of all "unlawful interest" paid on a loan, does not limit recovery to the amount above the lawful rate of interest, but authorizes recovery of the whole of the interest paid. *Cockrell v. First Federal Savings & Loan Ass'n* (D.C. Mun. App. 1943, 33 A. 2d 621).

#### Joint action

Action for recovery of usury brought by joint makers of note within one year after last payment on debt by one of the makers was not barred, even as to maker who had made no payment on debt for more than one year. *Knott v. Jackson* (D.C. Mun. App. 1943, 31 A. 2d 662).

Where makers related by marriage or blood executed a joint and several note secured by joint deed of trust on two properties, and proceeds of note were used by them under an apparent joint agreement, the three joint makers could maintain joint action and obtain joint judgment for usury admittedly paid, even though they could not show exactly what amount each had individually paid. *Id.*

#### Laches

An action to cancel usurious obligation was not barred by laches, in view of this section allowing recovery of usurious payments made within one year before suit, regardless of date of the note, since refusal of cancellation would merely result in circuitry of action. *Hill v. Hawes* (1944, 144 F. 2d 511, 79 U.S. App. D.C. 168).

#### Pleading

Where borrowers sought to recover usurious interest more than one year after last payment, lender's agent did not waive defense of one year time limitation by failing to plead it in view of fact that time limitation was imposed by this section which created the right and unlike statute of limitations it did not have to be pleaded in defense. *Earll v. Searl* (D.C. Mun. App. 1954, 101 A. 2d 248).

Where both the original and amended complaints were based on a claim for usury paid on account of a loan to plaintiff and it was apparent that defendants were not misled by an amendment setting up different dates and amounts, the amendment did not set up a "new cause of action" barred by limitations. *Cockrell v. First Federal Savings & Loan Ass'n* (D.C. Mun. App. 1943, 33 A. 2d 621).

#### Purchase at discount

Evidence did not sustain finding that lender was purchaser of note secured by trust deed and was not in fact the lender of the amount loaned thereon but established that the pretense of buying the note from the vendor was nothing more than an attempt to cover up the usurious loan, and hence the borrower was entitled to recover usurious interest paid. *Elliott v. Schlein* (D.C. Mun. App. 1954, 104 A. 2d 418).

#### Questions for jury

In action by joint makers of note for recovery of usury, question whether \$50 payment made by lender to his attorney on account of expenses and fees in connection

with the loan was proper charge against the borrowers was properly submitted to jury. *Knott v. Jackson* (D.C. Mun. App. 1943, 31 A. 2d 662).

Where joint makers of note instituted joint action for recovery of usury but lender contended that one maker, upon making payment more than one year before institution of action, was released from all obligation under note and that as a consequence her claim was barred by one-year limitation of this section, question whether such maker was released from further personal liability at time she made the payment was properly submitted to jury. *Id.*

#### Repayment of loan

One-year limitation runs, not from the time that usurious interest may have been deducted, but from the time the last payment was made. "Until that time the full amount of the deduction had not been paid by her. There could be no usurious interest collected until the appellee had paid the full amount she received, together with legal interest." *Brown v. Slocum* (1908, 30 App. D.C. 576).

Section 28-2703 et seq. relating to usury do not destroy the obligation to repay the principal on account of the usury, but requires a forfeiture of all interest contracted for, if unpaid, or permits its recovery, if paid, by action begun within one year after payment. *Cockrell v. First Federal Savings & Loan Ass'n* (D.C. Mun. App. 1943, 33 A. 2d 621).

An action to recover usurious interest paid can only be maintained after last payment on debt has been made. *Knott v. Jackson* (D.C. Mun. App. 1943, 31 A. 2d 662).

A loan transaction which would be free from usury if loan were paid at agreed maturity date is not rendered usurious by borrower's voluntary repayment of loan before maturity, even though, by reason of such repayment, amount of interest received by lender exceeds lawful interest computed to day the loan is paid, provided that total interest received by lender does not exceed lawful interest computed to maturity date stipulated in loan contract. *Atlantic Life Ins. Co. of Richmond, Va. v. Wolf* (D.C. Mun. App. 1947, 54 A. 2d 641).

#### Running of period

In action to recover unpaid balance on note given by defendants to plaintiff as commision for obtaining a loan which was made by plaintiff's wife to defendants through straw party, one year time limitation would not be extended in absence of evidence of fraud on part of plaintiff in concealing name of actual lender. *Earll v. Searl* (D.C. Mun. App. 1954, 101 A. 2d 248).

#### Sufficiency of evidence

In replevin by trustee of indorsee finance company to recover chattels named in trust deed securing a note, evidence that loan was usurious, in that an amount in excess of legal rate was deducted in advance and that plaintiff knew the amount deducted in advance, was sufficient to make defense of illegality available to defendant. *Hartman v. Lubar* (D.C. Mun. App. 1946, 49 A. 2d 553).

### § 28-3305. Unlawful interest credited on principal debt

In an action upon a contract for the payment of money with interest at a rate forbidden by law, any payment of interest that may have been made on account of the contract is deemed to be payment made on account of the principal debt; and judgment shall be rendered for no more than the balance found due after deducting and properly crediting the interest so paid. A bona fide indorsee of negotiable paper purchased before due is not affected by any usury exacted by a former holder of the paper unless he had notice of the usury before his purchase. (Aug. 30, 1964, 78 Stat. 676, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-2705 (Mar. 3, 1901, 31 Stat. 1378, ch. 854, § 1182; June 30, 1902, 32 Stat. 542, ch. 1329).

Changes are made in phraseology.



## NOTES TO DECISIONS UNDER PRIOR LAW

**Innocent holders for value**

No relief to borrowers of money at usurious rates against innocent holders for value. *Whipp v. Glueck* (1932, 58 F. 2d 523, 61 App. D. C. 118).

**Maker of new notes**

Quaere, whether maker of new notes to take the place of former usurious notes to which he was a party can take advantage of this section and plead usury as a defense to all except the principal sum due. *King v. Curtin* (1908, 31 App. D.C. 23).

**Recovery of interest**

Finance company, which was not a holder in due course of promissory note calling for usurious rate of interest, was not entitled to recover any interest on note. *J. W. Beatty v. Franklin Investment Co. Inc.* (1963, 319 F. 2d 712, 115 U.S. App. D.C. 311).

**§ 28-3306. Parties compelled to testify**

When in an action to recover a debt the defendant claims that payment of unlawful interest on the debt has been made to the plaintiff or those under whom he claims, which the defendant is entitled to have credited on the principal of the debt, the plaintiff or the party who received the unlawful interest may be examined as a witness to prove the payment, and may not be excused from testifying in relation thereto. A creditor who is made defendant in a proceeding for discovery as to payments of unlawful interest made to him may not be excused from answering. (Aug. 30, 1964, 78 Stat. 676, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 28-2706 (Mar. 3, 1901, 31 Stat. 1378, ch. 854, § 1183).

Changes are made in phraseology.

**§ 28-3307. District of Columbia Council authorized to exempt certain mortgages and loans**

The District of Columbia Council is authorized from time to time to provide by regulation for the exemption from the provisions of this chapter of any mortgage or loan insured or guaranteed under the National Housing Act or chapter 37 of title 38, United States Code, the interest rate of which is subject to regulation by an officer or agency of the Federal Government. The Council is further authorized to amend or repeal any such regulation at any time, but no such amendment or repeal shall affect any such loan or mortgage lawfully made or committed to be made while such exemption is in effect. (Added Aug. 20, 1970, Pub. L. 91-385, § 2(a), 84 Stat. 828.)

**REFERENCE IN TEXT**

The National Housing Act, referred to in text, is classified to 12 U.S.C. 1701 et seq.

**§ 28-3308. Finance charge on direct installment loans**

(a) On a loan in which the principal does not exceed \$25,000 (other than a loan directly secured on real estate or a direct motor vehicle installment loan covered by chapter 36 of this subtitle) to be repaid in equal or substantially equal monthly, or other periodic, installments, any federally insured bank or savings and loan association doing business in the District of Columbia may contract for and receive interest at the rate permitted under this chapter or, in lieu of such interest, a finance charge, which, if expressed as an annual percentage rate, does not exceed a rate of 11½ percent per annum on the unpaid balances of principal. This section does

not limit or restrict the manner of contracting for the finance charge, whether by way of discount, add-on or simple interest, so long as the annual percentage rate of the finance charge does not exceed that permitted by this section.

(b) If such installment loan is precomputed,

(1) the finance charge may be calculated on the assumption that all scheduled payments will be made when due, and

(2) except as provided in subsection (c), upon prepayment in full of the unpaid balance of a precomputed direct installment loan, refinancing, or consolidation, an amount not less than the unearned portion of the finance charge calculated according to this section shall be rebated to the debtor. If the rebate otherwise required is less than \$1, no rebate need be made.

(c) Upon prepayment in full of such direct installment loan other than a refinancing or consolidation, whether or not precomputed, the lender may collect or retain a minimum charge within the limits stated in this section of the finance charge earned at the time of prepayment is less than any minimum charge contracted for. The minimum charge may not exceed the smaller of the following: (1) the amount of the finance charge contracted for, or (2) \$5 in a transaction which had a principal of \$75 or less, or \$7.50 in a transaction which had a principal of more than \$75.

(d) The unearned portion of the finance charge is a fraction of the finance charge of which the numerator is the sum of the periodic balances scheduled to follow the computational period in which the prepayment occurs, and the denominator is the sum of all periodic balances under either the related loan agreement or, if the balance owing resulted from a refinancing or a consolidation, under the related refinancing agreement or consolidation agreement.

(e) As used in this section, "finance charge", and "annual percentage rate" shall have the respective meanings under the provisions of the Truth-in-Lending Act (82 Stat. 146 et seq.; 15 U.S.C. 1601 et seq.) and the regulations and interpretations thereunder; and "federally insured bank or savings and loan association" means an insured bank as defined in section 3 of the Federal Deposit Insurance Act or an "insured institution" as defined in section 401 of the National Housing Act. (Added Dec. 17, 1971, Pub. L. 92-200, § 3, 85 Stat. 665.)

**REFERENCE IN TEXT**

Section 3 of the Federal Deposit Insurance Act and section 401 of the National Housing Act, referred to in subsec. (e), are classified to 12 U.S.C. 1813 and 12 U.S.C. 1724, respectively.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 28-3301, 28-3303, 28-3802.

**Chapter 35.—STATUTE OF FRAUDS****Sec.**

- 28-3501. Estate created otherwise than by deed.
- 28-3502. Special promise to answer for debt or default of another.
- 28-3503. Declaration, grant, and assignment of trust.
- 28-3504. New promise or acknowledgment of contract—  
Action against joint contractors.
- 28-3505. New promise or acknowledgment of debt incurred during infancy.



**§ 28-3501. Estate created otherwise than by deed**

An estate, attempted to be created for a greater term than one year in real estate, other than by deed, is an estate by sufferance. (Aug. 30, 1964, 78 Stat. 676, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 28-3001 (Mar. 3, 1901, 31 Stat. 1367, ch. 854, § 1116).

The term "real estate" is substituted for "lands, tenements, or hereditaments" to conform with the style of revisions generally.

Changes are made in phraseology.

**CROSS REFERENCE**

Other provisions requiring estates in lands to be created by written instrument, see §§ 45-106, 45-820.

**NOTES TO DECISIONS UNDER PRIOR LAW****Assignment of lease**

An assignment of a lease conveys an interest in realty and comes within the statute of frauds if for a greater term than one year, however, it is well established that an oral agreement creating an interest in land which has been carried into effect is valid and enforceable and where the lessee turns the premises over to the assignee and the assignee enters into possession with the consent of the lessor and pays rent, the assignment is complete and the rights and liabilities of the parties are not affected by the statute. *Diatz v. Washington Technical School* (D.C. Mun. App. 1950, 73 A. 2d 227, rehearing denied 73 A. 2d 718).

**Executed oral assignment**

An oral agreement creating an interest in land which has been carried into effect is valid. *Mars v. Spanos* (1944, 139 F. 2d 369, 78 U.S. App. D.C. 230).

Where retiring partner received back his contributions to partnership and orally assigned to copartner rights in five-year lease of store, lease became property of general partnership under oral agreement between assignee and third person, and general partnership immediately took possession of leased premises with implied consent of landlord and discharged obligations under lease until dissolved by order of court, as respects rights of assignors and assignees, both assignments were completely executed and hence not avoidable for violation of this section. *Id.*

**Extension agreement**

A written six months' extension agreement which was entered into by lessor and lessees before expiration of five-year lease, and which did not create or purport to create a new estate, and which made no change in original lease except to fix new expiration date, was valid although not under seal, and lessees would not be entitled to thirty-day notice to quit as tenants at sufferance. *Binder v. Jaffe* (D.C. Mun. App. 1953, 101 A. 2d 260).

**Lease by agent-lessor**

Where by terms of lease the agent-lessor formally let and demised property to lessee for a term and in the acknowledgment the instrument was referred to as deed of lease, deed, and "act and deed" of the parties and instrument was signed and sealed by agent-lessor, such instrument was a conveyance which satisfied statute requiring that a lease shall be evidenced by deed signed and sealed by the lessor and consequently lessee was not a tenant by sufferance. *Paul v. Holloway* (D.C. Mun. App. 1956, 122 A. 2d 774).

**Ouster of tenants**

Plaintiff-grantee could not ignore the legal procedure provided for ousting tenants, and compromise with them for a sum which it might elect to pay, and then recover that sum from defendant-grantors upon any basis of breach of warranty. *Standard Sav. Bank v. Stone* (1922, 280 F. 1016, 2d App. D.C. 42).

**Parol agreement**

In suit for specific performance of deceased's alleged parol agreement to leave house and premises to plaintiff in consideration for his caring for deceased, where plaintiff and wife moved into house after it was purchased by

deceased, plaintiff paid no rent during lifetime of deceased who occupied room of house and occasionally ate meals with plaintiff, evidence supported judgment dismissing action on ground that performance was not sufficient to take case out of operation of statute of frauds. *Slaughter v. Madison* (1943, 135 F. 2d 650, 77 U.S. App. D.C. 226, certiorari denied 63 S. Ct. 1331, 319 U.S. 768, 87 L. Ed. 1717).

**Termination of oral tenancy**

Where, at most, claim of tenant was that landlord orally promised that tenant could remain in possession of lot used as a parking lot at such rental as landlord might from time to time fix and to which tenant might agree, landlord's notice to tenant to quit terminated the tenancy, though landlord had allegedly agreed that lease was to run until landlord desired to erect a building on the lot. *Snitman v. Goodman et al.* (D.C. Mun. App. 1955, 118 A. 2d 394).

**§ 28-3502. Special promise to answer for debt or default of another**

An action may not be brought to charge an executor or administrator upon a special promise to answer damages out of his own estate, or to charge the defendant upon a special promise to answer for the debt, default, or miscarriage of another person, or to charge a person upon an agreement made upon consideration of marriage, or upon a contract or sale of real estate, of any interest in or concerning it, or upon an agreement that is not to be performed within one year from the making thereof, unless the agreement upon which the action is brought, or a memorandum or note thereof, is in writing, which need not state the consideration and signed by the party to be charged therewith or a person authorized by him. (Aug. 30, 1964, 78 Stat. 676, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 28-3002 (Mar. 3, 1901, 31 Stat. 1367, ch. 854, § 1117).

Changes are made in phraseology.

**NOTES TO DECISIONS UNDER PRESENT LAW****Conflict of laws**

For the purpose of determining whether a corporate officer's personal guaranty of work to be performed by the corporation was within the statute of frauds, there was no significant difference between the form of statute in force in District of Columbia and Maryland. *I. R. Friedman v. D. Clark* (Md. C. App. 1969, 248 A. 2d 867).

**Memorandum**

The general rule is that the essential terms of agreement required to be in writing by virtue of statute of frauds must be expressed in writing without resort to parol evidence. *Educational Enterprises, Inc. v. P. C. Greening* (D.C. App. 1970, 265 A. 2d 287).

**Oral promise**

Even if oral agreement was made whereby defendant was to purchase, each year, football season tickets as agent of plaintiffs, statute of frauds was applicable to bar action, notwithstanding any hardship incurred by claimants in reliance. *G. G. Tauber et ano. v. G. M. Jacobson et ano.* (D.C. App. 1972, 293 A. 2d 861).

**Parol evidence**

In this case, the court of appeals held that the trial court properly ruled that parol evidence of employer's policy regarding bonuses was admissible as aid in interpretation of handwritten agreement, which was signed by employer some nine months after oral promise to pay employee certain salary for a year and which provided that "Earning—Salary and Bonus" for year totaled specified amount, to explain that total compensation for year was limited to specified amount and that employee would not receive an additional amount by way of discretionary Christmas



bonus. *Educational Enterprises, Inc. v. P. C. Greening* (D.C. App. 1970, 265 A.2d 287).

#### Sufficiency of writing

Letter wherein shopping center operators indicated appreciation for company's efforts in assisting operators in their application for proper zoning and stated that in event of success operators would give company opportunity to be major tenant with rental and terms at least equal to that of any other major department store in the center, together with full performance by company of the assistance services, was sufficient writing to satisfy District of Columbia statute of frauds. *City Stores Company v. H. M. Ammerman et al.* (1967, 266 F. Supp. 766).

#### Unilateral contract

Defendants' letter stating that defendants would give plaintiff opportunity to become major tenant in contemplated shopping center with rental and terms at least equal to that of any other major store in center was sufficient evidence of unilateral contract to satisfy District of Columbia statute of frauds. *H. M. Ammerman et al. v. City Stores Company* (1968, 394 F.2d 950, 129 U.S. App. D.C. 325).

### NOTES TO DECISIONS UNDER PRIOR LAW

#### Acknowledgment

Where defendant, with whom plaintiff had made a gratuitous bailment of money, wrote plaintiff, in response to letters requesting payment of the money, that he was in no position "at present" to send plaintiff any money, the letter was sufficient acknowledgment of the debt to stop running of statute of limitations. *Irvine v. Grado-ville* (1955, 221 F.2d 544, 95 U.S. D.C. 263).

#### Ambiguities

Necessary elements of a writing required by statute of frauds may not be supplied by parol, but ambiguities in the terms may be resolved by other evidence. *Sweeney v. Jacobsen* (D.C.D.C. 1952, 103 F. Supp. 399, affirmed 202 F.2d 461, 92 U.S. App. D.C. 93).

#### Application generally

This section applies to an agreement which appears from its terms to be incapable of performance within a year. *Street v. Maddux* (1928, 24 F.2d 617, 58 App. D.C. 42).

In action brought by real estate broker for damages resulting from alleged breach by defendant of agreement whereunder defendant allegedly promised to pay to broker and defendant's son an amount equal to retail price of realty over specified amount, if broker and defendant's son would assist defendant in obtaining title to realty for specified price, wherein broker claimed no interest in realty, statute of frauds was not applicable and afforded no defense. *Kyle v. Wiley* (D.C. Mun. App. 1951, 78 A.2d 769).

#### Approval

The fact that printed form used in making agreement for purchase of realty provided that the deposit was subject to the owner's approval did not render agreement signed by purchasers and broker but not by owner unenforceable under this section where such approval had previously been given in exchange of telegrams between owner and broker. *Ochs v. Weil* (1944, 142 F.2d 758, 79 U.S. App. D.C. 84).

#### Contract signed by purchaser only

Where purchaser brought action against vendor for breach of contract to convey land and only produced carbon copy of contract bearing only the signature of the purchaser, such document was no more than an offer to buy and was within statute of frauds and was unenforceable against vendor. *Greenfield v. Murray, Executor* (D.C. Mun. App. 1955, 117 A.2d 227).

#### Description of property

If contract contains in itself no description of the property to be sold, standing alone, no court of equity could specifically enforce it, but, if the description is found in other writings, forming part and parcel of the transaction, the omission is not fatal. *Shell Eastern Petroleum Products v. White* (1934, 68 F.2d 379, 62 App. D.C. 332).

#### Estoppel

One who induces another by a parol agreement to change his position so materially that unless inducing agreement is enforced a fraud results is estopped to set up statute of frauds to bar such enforcement. *Brewood v. Cook et al.* (1953, 207 F.2d 439, 92 U.S. App. D.C. 386).

That employee, upon obtaining employment, came from Harrisburg to Washington, did not estop employer asserting that alleged oral contract for two years' employment was barred by statute of frauds. *Easter v. Kass-Berger, Inc.* (D.C. Mun. App. 1956, 121 A.2d 868).

#### Evidence

In action against vendor by purchaser to have contract for sale of realty canceled and to recover payments made under the contract, on ground that purchaser was induced to sign a contract by fraudulent misrepresentations of vendor, evidence of settlement agreed to by the parties after suit had been begun, was properly admitted over objection that offers to compromise are not admissible in support of a contested claim or defense, though agreement was oral and payments were not to be completed within one year, so that no suit could have been brought on the agreement itself. *Hiltbold v. Stern* (D.C. Mun. App. 1951, 82 A.2d 123).

#### Fraud

Doctrine of fraud may be invoked to prevent statute of frauds from becoming an instrument of fraud. *Easter v. Kass-Berger, Inc.* (D.C. Mun. App. 1956, 121 A.2d 868).

In absence of other and stronger circumstances, a mere refusal to perform an oral agreement is not such fraud as to prevent application of statute of frauds, despite hardship to a plaintiff. *Id.*

#### Improvements

One who has been induced to alter his position and make improvements on property based on a parol contract may enforce such contract in the courts notwithstanding this section. *De Grazia v. Anderson* (D.C. Mun. App. 1948, 62 A.2d 194).

#### Memorandum

One party's memorandum, evidencing oral agreement for sale of land, not signed by other parties or any one on their behalf was insufficient. *Bell v. Morgan* (1952, 199 F.2d 168, 91 U.S. App. D.C. 65).

Where there was a full and definite agreement as to all essentials which parties intended to be binding, and the parties signed a memorandum which was sufficient to satisfy the statute of frauds, execution of a formal contract as contemplated by the memorandum was not necessary to effect a valid contract between the parties. *Sweeney v. Jacobsen* (D.C.D.C. 1952, 103 F. Supp. 393, affirmed 202 F.2d 461, 92 U.S. App. D.C. 93).

Written memorandum, signed by two parties, which stated that a \$500 deposit had been received from one of the parties, and that such deposit represented partial payment on agreed price of \$7,500 cash and assumption of existing note in purchase of business and machinery of named business, the location of which was stated, plus agreement of lease, and which stated that formal contract was to be drawn later, with full settlement within 30 days of such memorandum, was sufficiently definite and certain to satisfy statute of frauds, since it left no doubt as to who was purchaser, who was seller, what property was involved, and what the terms were. *Id.*

A written memorandum, to remove an oral agreement for two years' employment of statute of frauds, must state all promises of parties with sufficient clarity and definiteness to render essential terms of agreement clear without resort to parol testimony. *Easter v. Kass-Berger, Inc.* (D.C. Mun. App. 1956, 121 A.2d 868).

Letter wherein defendant offered employment and stated that defendant was likely to be busy for at least the succeeding two years was not a sufficient memorandum of an alleged oral contract for two years' employment to remove contract from statute of frauds. *Id.*

#### — Disclosure or vendor

A contract for the sale of land, where the memorandum fails to disclose the name of the vendor, can not be enforced. *Storow v. Concord Club* (1934, 70 F.2d 852, 63 App. D.C. 190).



Where owner employed broker to sell realty and in response to broker's telegram regarding cash offer and query "Advise immediately if accepted," owner telegraphed broker to accept offer and asked for \$1,000 deposit and thereafter broker and purchasers signed agreement which identified purchasers and property and fully set out purchase price and manner of payment, the contract was binding under this section, notwithstanding the owner's name did not appear in the agreement and it was never signed by him. *Ochs v. Weil* (1944, 142 F. 2d 758, 79 U.S. App. D.C. 84).

Where owner employed broker to sell realty and in response to broker's telegram regarding cash offer and query "Advise immediately if accepted," owner telegraphed broker to accept offer, the fact that agreement, which was signed by broker and purchasers, did not name owner and was sent to owner who refused to sign it did not establish that broker did not have authority to make agreement binding on owner under this section. *Id.*

Where contract for sale of real estate described the seller as the "seller" and there was no description of the premises allegedly involved except that the contract stated that the premises were "owner occupied", there was no reasonably sufficient description of the premises involved and parol testimony was inadmissible to supply the description. *Fitzgan v. Burke* (D.C. Mun. App. 1948, 61 A. 2d 721).

#### Option within year

While plaintiff's contract with defendant was in parol, the option might have been exercised within a year, and the statute therefore did not apply. *Campbell v. Rawlings* (1922, 280 F. 1011, 52 App. D.C. 37, 23 A.L.R. 854).

#### Oral promise

Where debt of open advertising account had been incurred by corporation, and after corporation had become insolvent, one of the officers made several payments on debt with his personal funds and stated that he wanted advertiser to get his money, it was doubtful that oral statement constituted a promise to pay corporate debt and even assuming it did, any claim based on it was barred by statute of frauds. *Alvin Epstein Advertising Corp. v. Helfer and Spector* (D.C. Mun. App. 1957, 138 A. 2d 925).

#### — Stockholder's oral promise

In action by creditor of corporation against its sole stockholder on alleged oral promise to pay corporation's debts, evidence, verbal or documentary, failed to establish consideration which would support an original promise to pay debt, independent of simultaneous responsibility of corporation. *Smith v. Lo Castro* (D.C. Mun. App. 1957, 134 A. 2d 486).

#### — Extension by oral agreement

Under District of Columbia law, provision for time of performance in contract for sale of business and leasehold of premises upon which business was conducted, which contract was required to be in writing and signed by party to be charged, could validly be extended by oral agreement, where time was not of essence of contract. *Jacobsen v. Sweeney* (1953, 202 F. 2d 461, 92 U.S. App. D.C. 93).

Where lessor and lessees entered into written six months' extension agreement before expiration of five-year lease, lessees were not entitled to remain in possession past the extension period on basis of alleged parol option for additional six months' extension beyond first extension in view of fact that alleged option did not comply with Statute of Frauds and was not supported by any consideration. *Binder v. Jaffe* (D.C. Mun. App. 1953, 161 A. 2d 260).

#### Parol evidence

Where time is not of the essence of a written contract within the statute of frauds, strict compliance with covenant as to time of performance may be waived, prior to breach, by oral agreement of the parties without affecting other provisions of the written contract, and the mutual promises of the parties are sufficient consideration for such oral agreement. *Sweeney v. Jacobsen* (D.C.D.C. 1952, 103 F. Supp. 393, affirmed 202 F. 2d 461, 92 U.S. App. D.C. 93).

The existence of a separate oral agreement as to any matter on which a written contract is silent, and which is not inconsistent with its terms, may be proved by parol, if under the circumstances it may be properly inferred that the party did not intend the writing to be a complete and final statement of the whole transaction. *Jay's Restaurant v. Jack Stone Co.* (D.C. Mun. App. 1949, 62 A. 2d 799).

#### Performance—Defeasance distinguished

An oral contract wherein plaintiff was to assume duties of resident manager of an apartment development for which services he was to receive \$75 per week in addition to a rent-free apartment for the duration of the contract which was to continue until plaintiff completed his law studies as a student duly matriculated at a law school or unless plaintiff were obliged to discontinue his law studies because of deficient scholarship or for some similar reason, was void under the statute of frauds as an agreement not to be performed within the space of one year from the making thereof, in view of fact that at the time of contract plaintiff had approximately three years of law studies to complete, and in view of fact that provision for termination of the contract which might have occurred within one year was not performance necessary to take the agreement out of the operation of the statute. *Coan, Jr. v. Orsinger and Tyler Gardens Corp.* (1959, 265 F. 2d 575, 105 U.S. App. D.C. 201).

Fact that a contract may be terminated, or further performance rendered impossible, within the period of one year, does not take it out of the statute of frauds where the obligation is one which cannot be performed within the year, since discharge from liability under a contract is not performance thereof within the statute. *Id.*

#### — Partial performance

Remaining in employ of one orally agreeing to devise real estate when husband wished to move to another city did not amount to such a change in the course of service in life of promisee as would justify invocation of exceptional rule of equity permitting specific performance. *Faunce v. Woods* (1925, 5 F. 2d 753, 55 App. D.C. 330, 40 A.L.R. 208).

That employee worked for six weeks under alleged oral contract for two years' employment was not sufficient part performance to take contract from statute of frauds. *Easter v. Kass-Berger, Inc.* (D.C. Mun. App. 1956, 121 A. 2d 868).

Generally, nothing short of full performance will take a contract not to be performed within one year from within statute of frauds. *Id.*

#### — Susceptible of performance within one year

An alleged co-broker's agreement was not within the statute of frauds where it would have been fully performed as soon as the purchaser purchased the building site which could have occurred within one year, it being immaterial that the sale for which commissions were sought took place more than a year after the alleged co-broker's agreement. *Snyder etc. v. Hillegeist et al.* (1957, 246 F. 2d 649, 100 U.S. App. D.C. 368).

An agreement which is capable, possible or susceptible of performance within one year is not within the statute of frauds. *Id.*

#### — Time of performance

Although time of performance was specifically provided in written memorandum, in view of mutual agreement between parties on or before date of performance to waive strict compliance and to extend time for the performance, time was not of the essence of the contract, and therefore the contract as orally extended was not void under statute of frauds. *Sweeney v. Jacobsen* (D.C.D.C. 1952, 103 F. Supp. 393, affirmed 202 F. 2d 461, 92 U.S. App. D.C. 93).

#### Personal obligation

Where principal contract did not cover additional work which owner, through general contractor requested plumbing subcontractor to perform for owner, subcontractor's claim against owner was based on owner's personal promise to pay owner's own debt and not debt of another, and § 38-121 authorizing subcontractor to recover amount owed by original contractor from owner who



specially promises in writing for consideration to be answerable for such amount was inapplicable to subcontractor's claim against owner, and such claim was not within this section requiring special promise to answer for debt of another person to be in writing. *Jones v. Guice* (D.C. Mun. App. 1948, 57 A. 2d 190).

#### Pleading

Complaint, alleging in effect that owner employed broker to sell realty, that in response to broker's telegram regarding cash offer and query "Advise immediately if accepted," owner telegraphed broker to accept offer and that broker and purchasers signed agreement which carried out authority granted to broker and which identified purchasers and property and set out purchase price and manner of payment, stated a claim on which relief could be granted, although agreement did not name, and was not signed by owner. *Ochs v. Weil* (1944, 142 F. 2d 758, 79 U.S. App. D.C. 84).

#### Question for court

Where evidence is clear and unconflicting, legal sufficiency of memorandum to remove case from statute of frauds is question for court. *Easter v. Kass-Berger, Inc.* (D.C. Mun. App. 1956, 121 A. 2d 868).

#### Renewal notice under lease

Where extended term of a lease is fixed by and is a part of the original written lease, and comes into existence merely by lessee's exercising his option and giving required notice, no question as to application of statute of frauds arises. *Worthing, T/A etc. v. Serkes* (D.C. Mun. App. 1955, 111 A. 2d 877).

Renewal notice of tenant unsigned, but bearing stamped trade name, enclosed in the same envelope containing his rental check which bore tenant's signature and trade name was sufficient compliance with requirements of lease. *Id.*

#### Review

In action by creditor of corporation against its sole stockholder on alleged oral promise to pay corporation's debt, in view of general findings in favor of stockholder, municipal court of appeals must assume that issues of consideration, and whether promise, if made, was an original and independent or merely a collateral promise to answer for the debt, default, or miscarriage of the corporation, had been resolved in favor of stockholder. *Smith v. Lo Castro* (D.C. Mun. App. 1957, 134 A. 2d 486).

#### Sale—Leasehold

Under District of Columbia law, agreement for sale of business and leasehold of premises upon which business was conducted, covered an interest in land and was required to be in writing and signed by party to be charged. *Jacobsen v. Sweeney* (1953, 202 F. 2d 461, 92 U.S. App. D.C. 93).

#### — Realty

Under statute of frauds, a contract for sale of realty is valid and enforceable only when it is in writing and there is sufficient description of property to be sold, price to be paid and the names of parties to transaction. *P. T. Apostolides, etc. v. G. Colecchia, et al.* (D.C. App. 1966, 221 A. 2d 437).

Under this section, an agreement for sale of real estate is enforceable only when it is in writing and there is a sufficient description of the thing sold, the price to be paid, and the names of the party selling and the party buying, and none of such elements can be supplied by parol testimony. *Ochs v. Weil* (1944, 142 F. 2d 758, 79 U.S. App. D.C. 84). See, also, *Fitzaan v. Burke* (D.C. Mun. App. 1948, 61 A. 2d 721).

#### Settlements

The statute of frauds requiring written evidence of an agreement to answer for the death, default or miscarriage of another is not applicable where the settlement agreement in compromise rested on the theory of direct liability by reason of ownership of the striking car. *Saunders System Washington Co. v. Kuffner* (D.C. Mun. App. 1950, 75 A. 2d 136).

#### Trusts

Where complaint charged facts indicating that defendant held all but her own share of land in question charged with a constructive trust for plaintiff and certain other designated persons, plaintiff was not foreclosed from recovery of her share by this section. *Major v. Shaver* (1946, 6 F.R.D. 207).

#### Unjust enrichment

Where plaintiff's alleged oral option to purchase land was invalid under statute of frauds, and plaintiff's alleged action in interesting third party to purchase land was not for benefit of landowners but solely to enable plaintiff to make profit, unintended benefit conferred on landowners when they sold to such third party at higher price was not necessarily unjust and plaintiff could not recover value of the benefit under theory of unjust enrichment. *Rosenkoff v. Finkelstein* (1952, 195 F. 2d 203, 90 U.S. App. D.C. 263).

#### Waiver

In discharged employee's action to recover salary after discharge, wherein employer at outset denied alleged contract of employment and made it clear that employer was relying on statute of frauds, employee's testimony as to conversation concerning employment was admissible on issue as to whether there had been an oral agreement for employment, and employer's failure to object to such testimony did not constitute a waiver of the defense based on statute of frauds. *Easter v. Kass-Berger, Inc.* (D.C. Mun. App. 1956, 121 A. 2d 868).

#### Writings

Generally, a check may be deemed to be a writing sufficient to satisfy requirements of statute of frauds if it bears notations or contains references to papers which embody the essential terms of the contract. *Alvin Epstein Advertising Corp. v. Helfer and Spector* (D.C. Mun. App. 1957, 138 A. 2d 925).

Even if oral statements constituted a promise to pay debt of corporation, issuance of three personal checks by alleged promisor in part payment of debt where checks were not in evidence could not constitute a writing sufficient to satisfy requirements of statute of frauds. *Id.*

#### — Related writings

A complete contract regarding realty binding under this section may be gathered from letters, writings and telegrams between the parties relating to the subject matter of the contract when so connected with each other that they may be fairly said to constitute one paper relating to the contract. *Ochs v. Weil* (1944, 142 F. 2d 758, 79 U.S. App. D.C. 84).

### § 28-3503. Declaration, grant, and assignment of trust

A declaration or creation of trust or confidence of real estate which is not in writing, signed by the party who is by law enabled to declare the trust or by his last will in writing, is void.

A grant or assignment of a trust or confidence which is not in writing, signed by the party granting or assigning it, or by his last will, is void.

Where a conveyance is made of real estate by which a trust or confidence is or may arise or result by the implication or construction of law, or is transferred or extinguished by an act or operation of law, the trust or confidence is of the same effect as it would have been if this section had not been enacted. (Aug. 30, 1964, 78 Stat. 676, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-3003 (Mar. 3, 1901, 31 Stat. 1367, ch. 854, § 1118).

Changes are made in phraseology.

#### CROSS REFERENCES

Conveyances in general, see § 45-101 et seq.

Estates in lands in general, see § 45-801 et seq.

Mortgages and deeds of trust, see § 45-601 et seq.



## NOTES TO DECISIONS UNDER PRIOR LAW

**Fraudulent verbal promise**

Facts presented bring case within the second provision of the Statute of Frauds and a trust would result by implication or construction of law. *Bennett v. Bennett* (D.C.D.C. 1949, 83 F. Supp. 19).

**Generally**

This section requires, not only that writing be sufficient to establish trust, but that it show precisely what the trust covers. *Moore v. Guy* (1943, 135 F. 2d 476, 77 U.S. App. D.C. 379).

The requisite of certainty in instrument creating trust in realty includes subject matter embraced within trust, beneficiaries, the nature and quantity of interests which they are to have and manner in which trust is to be performed. *Moore v. Guy* (1943, 135 F. 2d 476, 77 U.S. App. D.C. 379). See also, *Loehler Constr. Co. v. Auth* (1931, 51 F. 2d 435, 60 App. D.C. 273).

**Implied trusts**

Implied or resulting trusts are recognized by the law in force in the District of Columbia. *Haliday v. Haliday* (1926, 11 F. 2d 565, 56 App. D.C. 179).

The statute relating to declarations and grants of trust and to implied trusts did not preclude court from recognizing as a trust fund money on deposit with building association in name of testatrix as trustee for her grandson who was a polio victim. *In re Scott's Estate* (D.C.D.C. 1951, 96 F. Supp. 290).

**Informal writing sufficient**

The writing required to prove the trust may be informal provided it establishes the fact and the terms of the trust. *Tschiffely v. Tschiffely* (1940, 107 F. 2d 191, 70 App. D.C. 386).

**Oral agreements**

Where landlord brought suit against tenant for unpaid rent and caused writ of attachment before judgment to be sued out, and under writ, money, which had been received by auctioneer from sale of tenant's mortgaged furniture and furnishings, was seized, and tenant moved to quash writ, and agent of chattel mortgagee intervened, claiming that the money was not subject to attachment because of alleged oral agreement with tenant that sum realized from sale of furniture and furnishings should be paid to mortgagee in full settlement of mortgaged debt, alleged oral agreement was without force or effect under statute of frauds to defeat rights of landlord. *Thurm v. Wall* (D.C. Mun. App. 1954, 104 A. 2d 835).

**Parol trust unenforceable**

Parol trust agreement is unenforceable under status of frauds. *Baldi v. Ambrogi* (1937, 89 F. 2d 845, 67 App. D.C. 101). See, also, *Chiswell v. Johnston* (1924, 299 F. 681, 55 App. D.C. 3); *Dahlgren v. Dahlgren* (1924, 1 F. 2d 755, 55 App. D.C. 52, certiorari denied 45 S. Ct. 125, 266 U.S. 626, 69 L. Ed. 475).

**Taxation**

Where taxpayer and his housekeeper had entered into agreement whereby he bought and paid for house but title was taken in her name, and, pursuant to agreement that house should belong to survivor upon death of other, housekeeper had willed house to taxpayer, transfer of house to taxpayer at death of his housekeeper was subject to tax under District of Columbia Code section taxing all property transferred from any person who may die, seized or possessed thereof, either by will, or by law, or by right of survivorship. *Slyder v. District of Columbia* (1951, 187 F. 2d 217, 88 U.S. App. D.C. 170).

**Third parties**

Verbal trusts are without force or effect under statute of frauds to defeat rights of third parties. *Thurm v. Wall* (D.C. Mun. App. 1954, 104 A. 2d 835).

**Writing, sufficiency of**

Where wife first executed deed conveying to husband one-third interest in property and then, having kept possession of deed, destroyed it, simultaneously making will devising property to her brother and sister, and

still later wife wrote explanatory letter to husband stating that her brother and sister would deal fairly with him and "Do the best you can, and sell, and enjoy the little I have been able to accumulate and which I now gladly and lovingly pass on to the three of you", the letter was not a "declaration of trust" in favor of husband. *Moore v. Guy* (1943, 135 F. 2d 476, 77 U.S. App. D.C. 379).

**§ 28-3504. New promise or acknowledgement<sup>1</sup> of contract—Action against joint contractors**

In an action upon a simple contract, an acknowledgement or promise by words only is not sufficient evidence of a new or continuing contract whereby to take the case out of the operation of the statute of limitations or to deprive a party of the benefit thereof unless the acknowledgement or promise is in writing, signed by the party chargeable thereby. This section does not alter or take away, or lessen the effect of a payment of principal or interest made by any person. In actions against two or more joint contractors, or executors, or administrators, if it appears at the trial, or otherwise, that the plaintiff, though barred by the statute of limitations as to one or more of the defendants, is nevertheless entitled to recover against any other defendant by virtue of a new acknowledgement or promise or otherwise, judgment may be given for the plaintiff as to that defendant. An indorsement or memorandum of a payment written or made upon a promissory note, bill of exchange, or other writing, by or on behalf of the party to whom the payment is to be made, is<sup>2</sup> sufficient proof of the payment so as to take the case out of the operation of the statute of limitations. (Aug. 30, 1964, Pub. L. 88-509, § 1, 78 Stat. 677, eff. Jan. 1, 1965.)

**REVISION NOTES**

Based on D.C. Code, 1961 ed., § 28-3005 (Mar. 3, 1901, 31 Stat. 1390, ch. 854, § 1271).

The term "real estate" is substituted for "lands, tenements, or hereditaments" to conform with the style of revisions generally.

Changes are made in phraseology.

**CROSS REFERENCE**

Statutes of limitation, see § 12-301 et seq.

**NOTES TO DECISIONS UNDER PRESENT LAW****Acknowledgment**

Letter, by first attorney for person injured in automobile accident to second attorney to whom injured person's action against motorist had been referred, stating that both attorneys had to sue injured person on behalf of doctor for unpaid portion of such doctor's fee or they would have to personally take care of balance due the doctor is sufficient written acknowledgment of first attorney's debt to remove doctor's cause of action against first attorney under written assignment agreement from operation of the statute of limitations. *T. B. Heffelfinger v. M. Gibson* (D.C. App. 1972, 290 A. 2d 390).

Under this section providing that an acknowledgment by words only is not sufficient evidence of a continuing contract whereby to take action upon a simple contract out of operation of the statute of limitations unless the acknowledgment is in writing and signed by party chargeable thereby, such acknowledgment must be made either to creditor or to someone acting for him, or to some third person with intent that it be known by and influence action of the creditor. *Id.*

<sup>1</sup>So in original. Does not agree with spelling in section catchline as set out in section analysis of this chapter preceding § 28-3501.

<sup>2</sup>So in original. The word "not" preceding the word "sufficient" was probably inadvertently omitted.



A distinct and unequivocal acknowledgment of debt as a still subsisting personal obligation constitutes an implied promise to pay it and takes contract out of the statute of limitations. *Id.*

#### Construction

This section providing that an acknowledgment or promise by words only is not sufficient evidence of a new or continuing contract so as to take case out of statute of limitations does not apply to an arrangement having for its consideration, not simply moral obligation to honor an old debt, but a fresh contemporaneous consideration which would support a binding contract between parties. *N. S. Nyhus v. Travel Management Corporation* (1972, 446 F. 2d 440, 151 U.S. App. D.C. 269).

#### Evidence—Sufficiency

The court below was correct in concluding, on issue whether clients were estopped by their informal assurances to attorney from asserting limitations as defense in attorney's action to recover fee, that the evidence was insufficient for jury. *R. M. Brown v. E. O. Lamb et ano.* (1969, 414 F. 2d 1210, 134 U.S. App. D.C. 314).

### NOTES TO DECISIONS UNDER PRIOR LAW

#### Prior decisions

*Mann v. Cooper* (1894, 2 App. D.C. 226); *Flannery v. Maine Red Granite Co.* (1894, 3 App. D.C. 395); *Pumphrey v. Boggan* (1896, 8 App. D.C. 449); *Cropley v. Eyster* (1896, 9 App. D.C. 373); *Reed v. Tierney* (1898, 12 App. D.C. 165).

#### Acknowledgment

Defendant can not be permitted, after he has made an acknowledgment, the effect of which may be to remove the bar, or to prevent the running of the statute, as to a particular account, upon a different occasion, by his declaration or claim, to overcome, qualify, or defeat the effect of his previous acknowledgment. *Bean v. Wheatley* (1898, 13 App. D.C. 473).

A promise to pay to the creditor an indebtedness at such time as creditor should need it is not a conditional promise to pay but an acknowledgment and new promise, and sufficient to avoid bar of statute of limitations *Cooper v. Olcott* (1893, 1 App. D.C. 123).

#### Acknowledgment of partner

When debt is legally subsisting and not affected by the statute of limitations, an acknowledgment or promise of one partner will avoid the operation of the statute as to the rest. *Flannery v. Maine Red Granite Co.* (1894, 3 App. D.C. 395).

#### Estoppel

Oral statements of maker which at most represented bare verbal promises to pay the debt at a vague future time with an implied request for forbearance by the payee until maker could secure more funds did not estop maker from claiming the three year statute of limitations. *Grass v. Eiker, trading as T. E. Eiker & Co.* (D.C. Mun. App. 1957, 135 A, 2d 153).

#### Evidence

Testimony of oral acknowledgment and promise to pay debt within statute of limitations is admissible in action against one upon the debt when there is other and written evidence consisting of letters relating to the debt, as § 1271 does not make testimony of oral acknowledgment wholly inadmissible, but provides only that it shall not be sufficient evidence. *Shelley v. Westcott* (1904, 23 App. D.C. 135).

Parol evidence, if competent, is admissible as to inderorsement of payment on note. *Madison v. White* (1932, 54 F. 2d 440, 60 App. D.C. 329).

Evidence of a new promise may be given under the general issue joined on the plea of limitations. *Pumphrey v. Boggan* (1896, 8 App. D.C. 449).

#### Extension of time

Agreement for the extension of time for payment was good and binding upon the parties thereto; and consequently the right of action upon the note, by reason of such extension of time for payment, did not accrue until the 16th of March 1894; and as this action was commenced on the 19th of February 1897, therefore

the statute of limitations formed no bar to the right of recovery. *Reed v. Tierney* (1898, 12 App. D.C. 165).

#### Judgment for execution

Judgment for execution is a new judgment and statute of limitations begins to run from the new date. *Mann v. Cooper* (1894, 2 App. D.C. 226).

#### New contracts

Where payee surrendered note to maker in January, 1949, at which time the note was not barred by three-year statute of limitations, and the maker in turn gave the payee a second note which was a direct promise to pay, the second note was within statute under which a new or continuing contract takes a case out of the operation of statute of limitations, and hence suit instituted on second note on October 31, 1949, was not barred by three-year statute of limitations, notwithstanding that more than three years had then elapsed since the signing of the first note. *Garfinkle v. Needle* (1953, 201 F. 2d 202, 91 U.S. App. D.C. 342).

This section respecting form of acknowledgement in actions of debt, or upon the case, grounded upon any simple contract, in order to take case out of operation of statute of limitations, has reference only to a unilateral act or statement, and does not render ineffective a new promise supported by contemporaneous consideration. *Cafritz v. Koslow* (1948, 167 F. 2d 749, 83 U.S. App. D.C. 212).

Where plaintiff, in sister's action to recover money allegedly loaned to brother, was seeking to recover on basis of new relationship founded upon oral contract whereby old indebtedness barred by limitations was incorporated as an element of consideration, old indebtedness, if it ever existed and remained unsatisfied, would afford consideration for new oral contract, since statute of limitations operated merely to extinguish the remedy and not the right. *Id.*

#### Notes secured by mortgage

On petition by holder of one of two notes secured by mortgage for leave to participate in sale of mortgaged property in foreclosure proceedings by the holder of the other note, in this proceeding the bar of limitation, or lapse of time, does not apply, as in case of an action on the note, but to the remedy for the enforcement of an equitable right in land under the mortgage; hence the same period that would bar an ejectment is required. *Cropley v. Eyster* (1896, 9 App. D.C. 373).

#### Sufficiency of acknowledgment

An acknowledgment or promise must be made either to the creditor or to someone acting for him, or to some third person with intent that it be known by and influence the action of the creditor, in order to take a case out of the statute of limitations. *Grass v. Eiker, Trading as T. E. Eiker & Co.* (D.C. Mun. App. 1956, 123 A. 2d 613).

The mere listing of debts in a report to the Securities and Exchange Commission is not an acknowledgment sufficient to stop the running of the statute of limitations against such debts. *Id.*

"To effect a confirmation of a contract entered into during infancy, the act must have been done with knowledge that the contract was voidable." *Manning v. Gannon* (1915, 44 App. D.C. 98). See, also, *Gannon v. Manning* (1914, 42 App. D.C. 206).

"A distinct and unequivocal acknowledgment by the debtor of the debt as a still subsisting personal obligation constitutes an implied promise to pay it, and this, 'according to all the authorities, is all that is required to remove the statute in the case of a simple contract'" (referring to such a promise in writing). *Green v. Reeves* (1917, 47 App. D.C. 83). See, also, *Hornblower v. George Washington University* (1908, 31 App. D.C. 64, 14 Ann. Cas. 696); *Strong v. Andros* (1910, 34 App. D.C. 278, 19 Ann. Cas. 101).

Correspondence between parties, to be sufficient acknowledgment of indebtedness to toll the statute, must recognize subsisting personal obligation. *Hayden v. International Banking Corp.* (1930, 41 F. 2d 107, 59 App. D.C. 313).

The acknowledgment must not be accompanied by circumstances which negative any intention or promise to



pay. *Moore v. Snider* (1940, 109 F. 2d 840, 71 App. D.C. 293, certiorari denied 60 S. Ct. 808, 309 U.S. 685, 84 L. Ed. 1029).

Letter by Maryland corporation, whose charter has been forfeited for nonpayment of taxes, to debtor extending, at the debtor's request, the time for action for deficiency judgment, was not sufficient to toll the statute of limitations, and the debtor was not estopped to plead such statute. *Glennan v. Lincoln Inv. Corp.* (1940, 110 F. 2d 130, 71 App. D.C. 365).

#### Summary judgment

Where it appeared possible that payees might be able to show that a delay of over three years in enforcing their claims on two notes was induced by representations or promises of maker accompanying certain oral acknowledgments and admissions, and such a showing might have effect of estopping maker from pleading statute of limitations in bar of payees' claims, maker was not entitled to summary judgment in his favor. *Grass v. Eiker, Trading as T. E. Eiker & Co.* (D.C. Mun. App. 1956, 123 A. 2d 613).

#### § 28-3505. New promise or acknowledgement<sup>1</sup> of debt incurred during infancy

An action may not be maintained to charge a person upon an acknowledgment of, or promise to pay, a debt contracted during infancy, made after full age, except for necessities, unless the acknowledgment or promise is in writing signed by the party to be charged therewith. This section does not affect ratification by conduct. (Aug. 30, 1964, 78 Stat. 677, Pub. L. 88-509, § 1, eff. Jan. 1, 1965.)

#### REVISION NOTES

Based on D.C. Code, 1961 ed., § 28-3006 (Mar. 3, 1901, 31 Stat. 1390, ch. 854, § 1271; June 30, 1902, 32 Stat. 542, ch. 1329).

Changes are made in phraseology.

#### NOTES TO DECISIONS UNDER PRIOR LAW

##### Tort action

Seller of automobile to minor representing himself to be of age, who disaffirms purchase, may nevertheless recover damage to car. *Dick Murphy, Inc. v. Holcer* (1932, 57 F. 2d 431, 61 App. D.C. 65).

### Chapter 36.—DIRECT MOTOR VEHICLE INSTALLMENT LOANS

#### Sec.

- 28-3601. Direct motor vehicle installment loans.
- 28-3602. Finance charge.
- 28-3603. Definitions.

#### CODIFICATION

Chapter was enacted without section analysis, which has been supplied by the codifier.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 28-3301, 28-3303, 28-3308, 28-3802, 28-3812, 28-3814.

#### § 28-3601. Direct motor vehicle installment loans

The provisions of the Act approved April 22, 1960 (Public Law 86-431, 74 Stat. 69; D.C. Code, 1967 ed., chapter 9 of title 40), covering installment sales of motor vehicles, as amended, and the regulations issued thereunder, shall apply to the extent appropriate to, a direct installment loan, secured by a security interest in a motor vehicle, made by a federally insured bank or savings and loan association doing business in the District of Columbia, subject to section 28-3602. (Added Dec. 17, 1971, Pub. L. 92-200, § 4, 85 Stat. 666.)

<sup>1</sup> So in original. Does not agree with spelling in section catchline as set out in section analysis of this chapter preceding § 28-3501.

#### § 28-3602. Finance charge

Such a bank or savings and loan association may contract for and receive interest at the rate provided for in chapter 33 or, in lieu of such interest, a finance charge which, if expressed as an annual percentage rate, does not exceed a rate of 11½ percent per annum on the unpaid balances of principal. (Added Dec. 17, 1971, Pub. L. 92-200, § 4, 85 Stat. 667).

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28-3601.

#### § 28-3603. Definitions

As used in this chapter, "finance charge" and "annual percentage rate" shall have the respective meanings under the provisions of the Truth-in-Lending Act (82 Stat. 146 et seq.; 15 U.S.C. 1601 et seq.) and the regulations and interpretations thereunder; and "federally insured bank or savings and loan association" means an insured bank as defined in section 3 of the Federal Deposit Insurance Act or an "insured institution" as defined in section 401 of the National Housing Act. (Added Dec. 17, 1971, Pub. L. 92-200, § 4, 85 Stat. 667.)

#### REFERENCE IN TEXT

Section 3 of the Federal Deposit Insurance Act and section 401 of the National Housing Act, referred to in text, are classified to 12 U.S.C. 1813 and 12 U.S.C. 1724, respectively.

### Chapter 37.—REVOLVING CREDIT ACCOUNTS

#### Sec.

- 28-3701. Definitions.
- 28-3702. Amount and computation of credit service charge.

#### CODIFICATION

Chapter was enacted without section analysis, which has been supplied by the codifier.

#### § 28-3701. Definitions

As used in this chapter—

(1) "revolving credit account" means an arrangement between a seller or financial institution and a buyer pursuant to which (A) the seller may permit the buyer to purchase goods or services on credit either from the seller or by use of a credit card or other device, whether issued by the seller or a financial institution, (B) the unpaid balances of amounts financed arising from purchases and the credit service and other appropriate charges are debited to an account, (C) a credit service charge if made is not precomputed but is computed on an outstanding unpaid balance of the buyer's account from time to time, and (D) the buyer has the privilege of paying the balances in full or in installments.

(2) "credit service charge" means the sum of (A) all charges payable directly or indirectly by the buyer and imposed directly or indirectly by the seller as an incident to the extension of credit, including any of the following types of charges which are applicable; time price differential, service, carrying or other charge, however denominated, premium or other charge for any guarantee or insurance protecting the seller against the buyer's default or other credit loss; (B) charges incurred for investigating the collateral or credit-worthiness of the buyer or for commissions or brokerage for obtaining the credit,



irrespective of the person to whom the charges are paid or payable, unless the seller had no notice of the charges when the credit was granted.

(3) "seller" means a person engaged in the District of Columbia in the business of selling goods or services to retail buyers.

(4) "buyer" means a person who buys goods or obtains services from a seller pursuant to a retail credit sale and not principally for the purpose of resale; and includes a person who enters into a prior agreement with a financial institution whereby the latter agrees to pay the debts of the buyer as they accrue at various retail sellers, designated by the financial institution, in consideration of the buyer paying to the financial institution the cash sales price plus the credit service charge on the purchase.

(5) "person" includes any individual, partnership, corporation, association, trust, joint stock company, or any other group of persons however organized.

(6) "financial institution" means a person who enters into an agreement with a buyer whereby the former agrees to extend credit to the buyer and to apply it as directed by the buyer pursuant to a credit card issued to the buyer by the financial institution; and this term includes any federally insured bank as defined in section 3 of the Federal Deposit Insurance Act doing business in the District of Columbia. (Added Dec. 17, 1971, Pub. L. 92-200, § 4, 85 Stat. 667.)

#### REFERENCE IN TEXT

Section 3 of the Federal Deposit Insurance Act, referred to in par. (6), is classified to 12 U.S.C. 1813.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28-3802, 28-3805.

#### § 28-3702. Amount and computation of credit service charge

(a) The seller or financial institution may contract for the payment by the buyer of a credit service charge not exceeding that permitted by this section.

(b) A credit service charge may be made in each billing cycle. For the purpose of computing the outstanding balance subject to the credit service charge, (1) the outstanding balance on any day shall consist of an amount which shall not exceed the sum of the total charges to the account less the amounts paid or credited to the account prior to such day, or (2) the outstanding balance may be computed by the average daily balance method. The credit service charge may also be computed for all outstanding balances within a range of not in excess of \$10 on the basis of the median amount within such range if as so computed such credit service charge is applied to all outstanding balance within such range.

(c) If the billing cycle is monthly, the charge may not exceed  $1\frac{1}{2}$  percent of that part of the outstanding balance which is \$500 or less and 1 percent on that part of this amount which is more than \$500. If the billing cycle is not monthly, the maximum charge is that percentage which bears the relation to the applicable monthly percentage as the number of days in the billing cycle bears to thirty. For the purposes of this section, a variation of not more than four days from month to month is "the same day of the billing cycle." (Added Dec. 17, 1971, Pub. L. 92-200, § 4, 85 Stat. 668.)

### Chapter 38.—CONSUMER PROTECTIONS

#### Sec.

28-3801. Scope—Limitation on agreements and practices.

28-3802. Definitions.

28-3803. Balloon payments.

28-3804. Assignment of earnings and authorization to confess judgment prohibited.

28-3805. Debts secured by cross-collateral.

28-3806. Attorney's fees.

28-3807. Negotiable instruments prohibited.

28-3808. Assignees subject to defenses.

28-3809. Lender subject to defenses arising from sales.

28-3810. Referral sales.

28-3811. Home solicitation sales.

28-3812. Limitation on creditors' remedies.

28-3813. Consumers' remedies.

28-3814. Debt collection.

28-3815. Administrative enforcement.

28-3816. Inconsistent laws: What law governs.

#### CODIFICATION

Chapter was enacted without section analysis, which has been supplied by the codifier.

#### SHORT TITLE

Section 10 of Act Dec. 17, 1971, Pub. L. 92-200, provided: "This Act (enacting chapters, 36, 37, and 38 of title 28, sections 16-583, 16-584, 26-612, and 28-3308, and amending sections 16-571, 16-572, 28-3301, and 28-3303) may be cited as the 'District of Columbia Consumer Credit Protection Act of 1971'."

#### § 28-3801. Scope—Limitation on agreements and practices

This chapter applies to actions to enforce rights arising from a consumer credit sale or a direct installment loan. (Added Dec. 17, 1971, Pub. L. 92-200, § 4, 85 Stat. 668.)

#### § 28-3802. Definitions

As used in this chapter—

(1) "revolving credit account" means a revolving credit account as defined in section 28-3701 of this subtitle.

(2) "consumer credit sale" means a sale of goods or services in which—

(A) A credit is granted by a person who regularly engages as a seller in credit transactions of the same kind;

(B) the buyer is a natural person;

(C) the goods or services are purchased primarily for a personal, family, household, or agricultural purpose;

(D) either the debt is payable in installments or a finance charge is made; and

(E) the amount financed does not exceed \$25,000.

The term includes any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the property upon full compliance with his obligations under the contract.

(3) "direct installment loan" means a direct installment loan as that term is used in section 28-3308 of this subtitle and does not include a loan secured on real estate or a direct motor vehicle installment loan covered by chapter 36 of this subtitle.

(4) "cross collateral" means an arrangement wherein a seller in a "consumer credit sale secures



a debt arising from the sale by contracting for a security interest in other property if as a result of a prior sale the seller has an existing security interest in the other property. The seller may also contract for a security interest in the property sold in the subsequent sale as a security for the previous debt. (Added Dec. 17, 1971, Pub. L. 92-200, § 4, 85 Stat. 669.)

#### § 28-3803. Balloon payments

With respect to a consumer credit sale or direct installment loans except for revolving credit accounts:

(1) No creditor shall at any time enter into an agreement which contains or anticipates a schedule of payments under which any one payment is not equal or substantially equal to all other payments, excluding any final payment which is less than the average of previous payments or any down payment received by the creditor contemporaneously with or prior to the consummation of the transaction, or under which the intervals between any consecutive payments differ substantially.

(2) Notwithstanding any provision of this section, where a consumer's livelihood is dependent upon seasonal or intermittent income, the parties may agree in a separate writing that one or more payments or the intervals between one or more payments may be reduced or expanded in accordance with the needs of the consumer if such payments are expressly related to the consumer's income. The separate writing shall contain a conspicuous notice directly above the signature line stating: "I waive my right to have all payments to be made under this agreement in substantially equal amounts".

(3) In the event that the provisions of paragraph (2) apply, the consumer shall have the right at any time, without further cost or obligation, to revise the schedule of payments to conform both as to amounts and intervals to the average of all installments and intervals. (Added Dec. 17, 1971, Pub. L. 92-200, § 4, 85 Stat. 669.)

#### § 28-3804. Assignment of earnings and authorization to confess judgment prohibited

(a) A creditor may not take an assignment of earnings of the consumer for payment or as security for payment of an obligation arising out of a consumer credit sale or direct installment loan.

(b) A creditor may not take or accept from the consumer a warrant or power of attorney or other authorization for the creditor, or other person acting on his behalf, to confess judgment arising out of a consumer credit sale or direct installment loan.

(c) An assignment of earnings or an authorization in violation of this section is subject to the provisions of section 28-3813(d)(1) of this subtitle. (Added Dec. 17, 1971, Pub. L. 92-200, § 4, 85 Stat. 670.)

#### § 28-3805. Debts secured by cross-collateral

(a) If debts arising from two or more consumer credit sales other than sales pursuant to a revolving charge account (§ 28-3701), are secured by cross-collateral, or consolidated into one debt payable on a single schedule of payments, and the debt is secured

by security interests taken with respect to one or more of the sales, payments received by the seller after the taking of the cross-collateral or the consolidation are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been first applied to the payment of the debts arising from the sales first made. To the extent debts are paid according to this section, security interests in items of property terminate as the debts originally incurred with respect to each item are paid.

(b) Payment received by the seller upon a revolving charge are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of credit service charges in the order of their entry to the account and then to the payment of debts in the order in which the entries to the account showing the debts were made.

(c) If the debts consolidated arose from two or more sales made on the same day, payments received by the seller are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of the smallest debt. (Added Dec. 17, 1971, Pub. L. 92-200, § 4, 85 Stat. 670.)

#### § 28-3806. Attorney's fees

With respect to a consumer credit sale or direct installment loans the agreement may provide for the payment by the consumer of reasonable attorney's fees not in excess of 15 per centum of the unpaid balance of the obligation. (Added Dec. 17, 1971, Pub. L. 92-200, § 4, 85 Stat. 670.)

#### § 28-3807. Negotiable instruments prohibited

(a) In a consumer credit sale, no seller shall take or otherwise arrange for the consumer to sign an instrument, except a check, payable "to order" or "to bearer" as evidence of the credit obligation of the consumer.

(b) Any holder of an instrument prohibited by subsection (a) of this section 28-3807, if he takes it with knowledge of a violation of this section, takes it subject to all claims and defenses of the consumer up to the amount owing on the transaction total at the time of the assignment. (Added Dec. 17, 1971, Pub. L. 92-200, § 4, 85 Stat. 670.)

#### § 28-3808. Assignees subject to defenses

(a) With respect to a consumer credit sale, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the consumer or lessee arising out of the sale notwithstanding any terms or agreements to the contrary, but the assignee's liability under this section may not exceed the amount owing to the assignee at the time of the assignment.

(b) Rights of the consumer or lessee can only be asserted as a matter of defense to or set-off against a claim by the assignee. (Added Dec. 17, 1971, Pub. L. 92-200, § 4, 85 Stat. 670.)

#### § 28-3809. Lender subject to defenses arising from sales

(a) A lender who makes a direct installment loan for the purpose of enabling a consumer to purchase goods or services is subject to all claims and defenses



of the consumer against the seller arising out of the purchase of the goods or service if such lender acts at the express request of the seller, and—

(1) the seller participates in the preparation of the loan instruments, or

(2) the lender is a person or organization controlled by or under common control with the seller, or

(3) the seller receives or will receive a fee, compensation, or other consideration from the lender for arranging the loan.

(b) The lender's liability under this section may not exceed the amount of the loan. Rights of the debtor can only be asserted affirmatively in an action to cancel and void the sale from its inception, or as a matter of defense to or set-off against a claim by the lender. (Added Dec. 17, 1971, Pub. L. 92-200, § 4, 85 Stat. 671.)

#### § 28-3810. Referral sales

With respect to a consumer credit sale, the seller or lessor may not give or offer to give a rebate or discount or otherwise pay or offer to pay value to the buyer or lessee as an inducement for a sale or lease in consideration of his giving to the seller or lessor the names of prospective purchasers of lessees, or otherwise aiding the seller or lessor in making a sale or lease to another person, if the earning of the rebate, discount, or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease. If a buyer or lessee is induced by a violation of this section to enter into a consumer credit sale, the agreement is unenforceable by the seller or lessor and the buyer or lessee, at his option, may rescind the agreement or retain the goods delivered and the benefit of any services performed, without any obligation to pay for them. (Added Dec. 17, 1971, Pub. L. 92-200, § 4, 85 Stat. 671.)

#### § 28-3811. Home solicitation sales

(a) As used in this section, "home solicitation sale" means a cash sale or a consumer credit sale of goods, other than farm equipment, or services in which the seller or a person acting for him engages in a personal solicitation of the sale at or near a residence of the buyer and the buyer's agreement or offer to purchase is there given to a seller or a person acting for him. It does not include a sale made pursuant to a preexisting revolving credit account or prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale.

(b) Except as provided in subsection (f), in addition to any right otherwise to revoke an offer, the buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase which complies with this section.

(c) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement or offer to purchase.

(d) Notice of cancellation, if given by mail, is given when it is deposited in a mail box properly addressed and the postage prepaid.

(e) Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale.

(f) The buyer may not cancel a home solicitation sale if the buyer requests the seller to provide goods or services without delay because of an emergency, and

(1) the seller in good faith makes a substantial beginning of performance of the contract before the buyer gives notice of cancellation, and

(2) in the case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer, and

(3) the buyer has signed separately the following notice which appears under the conspicuous caption: "WAIVER OF RIGHT TO CANCEL," and reads as follows: "Because of an emergency I waive any right I may have to cancel this home solicitation sale".

(g) (1) In a home solicitation sale, unless the buyer requests the seller to provide goods or services without delay in an emergency, the seller must present to the buyer and obtain his signature to a written agreement or offer to purchase which designates as the date of the transaction the date on which the buyer actually signs and contains a statement of the buyer's rights which complies with paragraph (2) of this subsection.

(2) The statement must—

(A) appear under this conspicuous caption: "BUYERS RIGHT TO CANCEL", and

(B) read as follows:

"If this agreement was solicited at or near your residence and you do not want the goods or services, you may cancel this agreement by mailing a notice to the seller. The notice must say that you do not want the goods or services and must be mailed before midnight of the third business day after you signed this agreement. The notice must be mailed to:-----

(insert name and address of seller)

If you cancel, the seller may not keep any of your cash down payment."

(3) Until the seller has complied with this section the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of his intention to cancel.

(h) (1) Except as provided in this section, within ten days after a home solicitation sale has been canceled or an offer to purchase revoked the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness. A provision permitting the seller to keep all or any part of any payment, note, or evidence of indebtedness is in violation of this section and unenforceable.

(2) If the down payment includes goods traded in, the goods must be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.



(3) The seller is not entitled to retain a cancellation fee.

(4) Until the seller has complied with the obligations imposed by this section the buyer may retain possession of goods delivered to him by the seller and has a lien on the goods in his possession or control for any recovery to which he is entitled.

(i) (1) Except as provided by the provisions on retention of goods by the buyer (subsection (h) (4) of this section), within a reasonable time after a home solicitation sale has been canceled or an offer to purchase revoked, the buyer upon demand must tender to the seller any goods delivered by the seller pursuant to the sale but he is not obligated to tender at any place other than his residence. If the seller fails to demand possession of goods within a reasonable time after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them. For the purpose of this section, forty days is presumed to be a reasonable time.

(2) The buyer has a duty to take reasonable care of the goods in his possession before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk.

(3) If the seller has performed any services pursuant to a home solicitation sale prior to its cancellation, the seller is entitled to no compensation. (Added Dec. 17, 1971, Pub. L. 92-200, § 4, 85 Stat. 671.)

#### § 28-3812. Limitation on creditors' remedies

(a) This section applies to actions or other proceedings to enforce rights arising from consumer credit sales, consumer leases, and direct installment loans (other than a loan directly secured on real estate or a direct motor vehicle installment loan covered by chapter 36 of title 28, District of Columbia Code); and, in addition, to extortionate extensions of credit.

(b) (1) During the thirty-day period after a default consisting of a failure to pay money the creditor may not because of the default (A) accelerate the unpaid balance of the obligation, (B) bring action against the debtor, or (C) proceed against the collateral.

(2) Unless the creditor has first (A) notified the debtor that he has elected to accelerate the unpaid balance of the obligation because of default, (B) brought action against the debtor, or (C) proceeded against the collateral, the debtor may cure a default consisting of a failure to pay money by tendering the amount of all unpaid sums due at the time of tender, without acceleration, plus any unpaid delinquency or deferral charges. Cure restores the debtor to his rights under the agreement as though the defaults cured had not occurred.

(3) Posting of any notice required by law shall be deemed valid if mailed by certified mail to the debtor's last known address.

(c) (1) The debtor may redeem the collateral from the creditor at any time—

(A) within fifteen days of the creditor's taking possession of the collateral, or

(B) thereafter until the creditor has either disposed of the collateral, entered into a contract for

its disposition, or gained the right to retain the collateral in satisfaction of the debtor's obligation pursuant to the provisions on disposition of collateral in section 9-505 of subtitle I of title 28, District of Columbia Code.

(2) The debtor may redeem the collateral by tendering fulfillment of all obligations secured by the collateral including reasonable expenses incurred in realizing on the security interest.

(d) Subject to the provisions in this part, the parties may agree that the creditor has the right to take possession of the collateral on default. In taking possession, a secured party may proceed without judicial process if this can be done without breach of the peace and with consent of the debtor. Those who take the collateral through repossession shall be deemed the agent of the creditor, and the creditor shall be civilly liable for any of the actions of its agents.

(e) (1) This subsection applies to consumer credit sales of goods or services and to direct installment loans secured by interests in goods.

(2) A creditor may not maintain a proceeding for a deficiency unless he has disposed of the goods in good faith and in a commercially reasonable manner.

(3) If the creditor repossesses or voluntarily accepts surrender of goods which were the subject of the sale and in which he has a security interest, the consumer is not personally liable to the creditor for the unpaid balance of debt arising from the sale of a commercial unit of goods of which the cash price was \$2,000 or less. In that case the creditor is not obligated to resell the collateral unless the consumer has paid 60 percent or more of the cash price and has not signed after default a statement renouncing his rights in the collateral.

(4) If the creditor takes possession or voluntarily accepts surrender of goods which were not the subject of the sale but in which he has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services and the cash price of the sale was \$2,000 or less, the debtor is not personally liable to the creditor for the unpaid balance of the debt arising from the sale and the creditor's duty to dispose of the collateral is governed by the provisions on disposition of collateral in section 9-505 of subtitle I of title 28, District of Columbia Code.

(5) If the creditor takes possession or voluntarily accepts surrender of goods in which he has a security interest to secure a debt arising from a direct installment loan and the net proceeds of the loan paid to or for the benefit of the debtor are \$2,000 or less, the consumer is not personally liable to the lender for the unpaid balance of the debt arising from the loan and the lender's duty to dispose of the collateral is governed by the provisions on disposition of collateral in section 9-505 of subtitle I of title 28, District of Columbia Code.

(6) The consumer shall be liable in damages to the creditor if the debtor has wrongfully damaged the collateral or if, after default and demand, the debtor has wrongfully failed to make collateral available to the creditor.

(7) If the creditor elects to bring an action against the buyer for a debt arising from a consumer credit



sale of goods or services, when under this section he would not be entitled to a deficiency judgment if he repossessed the collateral, and obtains judgment—

(A) he may not repossess the collateral, and

(B) the collateral is not subject to levy or sale on execution or similar proceedings pursuant to the judgment.

(f) (1) If it is the understanding of the creditor and the debtor at the time an extension of credit is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person, the repayment of the extension of credit is unenforceable through civil judicial processes against the debtor.

(2) If it is shown that an extension of credit was made at an annual rate exceeding 45 per centum and that the creditor then had a reputation for the use or threat of use of violence or other criminal means to cause harm to the person, reputation, or property of any person to collect extensions of credit or to punish the nonrepayment thereof, there is prima facie evidence that the extension of credit was unenforceable under paragraph (1) of this subsection.

(g) (1) With respect to a consumer credit sale, or direct installment loan, if the court as a matter of law finds—

(A) the agreement to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement, or

(B) any clause of the agreement to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, or may enforce the remainder of the agreement without the unconscionable clause, or may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) If it is claimed or appears to the court that the agreement or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making the determination.

(3) For the purpose of this section, a charge or practice expressly permitted by this section is not in and of itself unconscionable in the absence of other practices and circumstances. (Added Dec. 17, 1971, Pub. L. 92-200, § 4, 85 Stat. 673.)

#### § 28-3813. Consumers' remedies

(a) The remedies provided by this section shall be liberally administered to the end that the consumer as the aggrieved party shall be put in at least as good a position as if the creditor had fully complied with this chapter. Except as is otherwise specifically provided where there are willful and repeated violations of this chapter consequential and special damages may be had in lieu of the specific penalties allowed, and in addition punitive damages may be had as indicated.

(b) Any right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect.

(c) "Transaction total" means—

(1) in the case of transactions pursuant to open end credit plans or consumer credit transactions, the total of the following calculated as if the amount or amounts financed were paid over the maximum period of the plan or, if there is no such period, over twelve months beginning with the next billing cycle or cycles following the transaction or transactions:

(A) the amount financed, plus any down payment or required deposit balance, and

(B) the total finance charge, including any prepaid finance charge;

(2) in the case of other than open end transactions or consumer credit transactions, the total of the following:

(A) the amount financed, plus any down payment or required deposit balance, and

(B) the amount of all precomputed or precomputable finance charge, including any prepaid finance charge.

(d) (1) In the discretion of the court, a consumer may recover from the person violating this chapter, in addition to the damages the law otherwise allows, 10 percent of the transaction total, if applicable, or \$100, whichever is greater, for violations to which this section applies.

(2) This section also applies to all violations for which no other remedy is specifically provided.

(e) If a consumer prevails in a suit brought under this Act,<sup>1</sup> the court may assess reasonable attorney's fees in addition to any other amounts recoverable under this chapter.

(f) Any charge, practice, term, clause, provision, security interest, or other action or conduct which can be shown to be in willful violation of the provisions of this chapter shall confer no rights or obligations enforceable by action. (Added Dec. 17, 1971, Pub. L. 92-200, § 4, 85 Stat. 675.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28-3804.

#### § 28-3814. Debt collection

(a) This section only applies to conduct and practices in connection with collection of obligations arising from consumer credit sales, consumer leases, and direct installment loans (other than a loan directly secured on real estate or a direct motor vehicle installment loan covered by chapter 36 of title 28).

(b) As used in this section, the term—

(1) "claim" means any obligation or alleged obligation, arising from a consumer credit sale, consumer lease, or direct installment loan;

(2) "debt collection" means any action, conduct or practice in connection with the solicitation of claims for collection or in connection with the collection of claims, that are owed or due, or are alleged to be owed or due, a seller or lender by a consumer; and

(3) "debt collector" means any person engaging directly or indirectly in debt collection, and includes any person who sells or offers to sell forms represented to be a collection system, device, or scheme intended or calculated to be used to collect claims.

<sup>1</sup> So in original, probably should be "chapter".



(c) No debt collectors shall collect or attempt to collect any money alleged to be due and owing by means of any threat, coercion, or attempt to coerce in any of the following ways:

(1) the use, or express or implicit threat of use, of violence or other criminal means, to cause harm to the person, reputation, or property of any person;

(2) the accusation or threat to falsely accuse any person of fraud or any crime, or any conduct which, if true, would tend to disgrace such other person or in any way subject him to ridicule, or any conduct which, if true, would tend to disgrace such other person or in any way subject him to ridicule or contempt of society;

(3) false accusations made to another person, including any credit reporting agency, that a consumer has not paid a just debt, or threat to so make such false accusations;

(4) the threat to sell or assign to another the obligation of the consumer with an attending representation or implication that the result of such sale or assignment would be that the consumer would lose any defense to the claim or would be subjected to harsh, vindictive, or abusive collection attempts; and

(5) the threat that nonpayment of an alleged claim will result in the arrest of any person.

(d) No debt collector shall unreasonably oppress, harass, or abuse any person in connection with the collection of or attempt to collect any claim alleged to be due and owing by that person or another in any of the following ways:

(1) the use of profane or obscene language or language that is intended to unreasonably abuse the hearer or reader;

(2) the placement of telephone calls without disclosure of the caller's identity or with the intent to harass or threaten any person at the called number; and

(3) causing expense to any person in the form of long-distance telephone tolls, telegram fees, or other charges incurred by a medium of communication, by concealment of the true purpose of the notice, letter, message, or communication.

(e) No debt collector shall unreasonably publicize information relating to any alleged indebtedness or debtor in any of the following ways:

(1) the communication of any false information relating to a consumer's indebtedness to any employer or his agent except where such indebtedness had been guaranteed by the employer or the employer has requested the loan giving rise to the indebtedness and except where such communication is in connection with an attachment or execution after judgments as authorized by law;

(2) the disclosure, publication, or communication of false information relating to a consumer's indebtedness to any relative or family member of the consumer unless such person is known to the debt collector to be a member of the same household as the consumer, except through proper legal action or process or at the express and unsolicited request of the relative or family member;

(3) the disclosure, publication, or communications of any information relating to a consumer's indebtedness by publishing or posting any list of consumers, except for the publication and distribution of "stop lists" to point-of-sale locations where credit is extended, or by advertising for sale any claim to enforce payment thereof or in any other manner other than through proper legal action, process, or proceeding; and

(4) the use of any form of communication to the consumer, which ordinarily may be seen by any other persons, that displays or conveys any information about the alleged claim other than the name, address, and phone number of the debt collector.

(f) No debt collector shall use any fraudulent, deceptive, or misleading representation or means to collect or attempt to collect claims or to obtain information concerning consumers in any of the following ways:

(1) the use of any company name, while engaged in debt collection, other than the debt collector's true company name;

(2) the failure to clearly disclose in all written communications made to collect or attempt to collect a claim or to obtain or attempt to obtain information about a consumer, that the debt collector is attempting to collect a claim and that any information obtained will be used for that purpose;

(3) any false representation that the debt collector has in his possession information or something of value for the consumer, that is made to solicit or discover information about the consumer;

(4) the failure to clearly disclose the name and full business address of the person to whom the claim has been assigned for collection, or to whom the claim is owed, at the time of making any demand for money;

(5) any false representation or implication of the character, extent, or amount of a claim against a consumer, or of its status in any legal proceeding;

(6) any false representation or false implication that any debt collector is vouched for, bonded by, affiliated with or an instrumentality, agent, or official of the District of Columbia or any agency of the Federal or District government;

(7) the use or distribution or sale of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by a court, an official, or any other legally constituted or authorized authority, or which creates a false impression about its source, authorization, or approval;

(8) any representation that an existing obligation of the consumer may be increased by the addition of attorney's fees, investigation fees, service fees, or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation; and

(9) any false representation or false impression about the status or true nature of or the services rendered by the debt collector or his business.



(g) No debt collector shall use unfair or unconscionable means to collect or attempt to collect any claim in any of the following ways:

(1) the seeking or obtaining of any written statement or acknowledgment in any form that specifies that a consumer's obligation is one incurred for necessities of life where the original obligation was not in fact incurred for such necessities;

(2) the seeking or obtaining of any written statement or acknowledgment in any form containing an affirmation of any obligation by a consumer who has been declared bankrupt without clearly disclosing the nature and consequences of such affirmation and the fact that the consumer is not legally obligated to make such affirmation;

(3) the collection or the attempt to collect from the consumer all or any part of the debt collector's fee or charge for services rendered;

(4) the collection of or the attempt to collect any interest or other charge, fee, or expense incidental to the principal obligation unless such interest or incidental fee, charge, or expense is expressly authorized by the agreement creating the obligation and legally chargeable to the consumer or unless such interest or incidental fee, charge, or expense is expressly authorized by law; and

(5) any communication with a consumer whenever it appears that the consumer has notified the creditor that he is represented by an attorney and the attorney's name and address are known.

(h) No debt collector shall use, or distribute, sell, or prepare for use, any written communication that violates or fails to conform to United States postal laws and regulations.

(i) No debt collector shall take or accept for assignment any of the following:

(1) an assignment of any claim for attorney's fees which have not been lawfully provided for in the writing evidencing the obligation; or

(2) an assignment for collection of any claim upon which suit has been filed or judgment obtained, without the debt collector first making a reasonable effort to contact the attorney representing the consumer.

(j) (1) Proof, by substantial evidence, that a debt collector has willfully violated any provision of the foregoing subsections of this section shall subject such debt collector to liability to any person affected by such violation for all damages proximately caused by the violation.

(2) Punitive damages may be awarded to any person affected by a willful violation of the foregoing subsections of this section, when and in such amount as is deemed appropriate by the court and trier of fact. (Added Dec. 17, 1971, Pub. L. 92-200, § 4, 85 Stat. 675.)

#### § 28-3815. Administrative enforcement

(a)<sup>1</sup> As used in this section—

(1) "Commissioner" means the Commissioner of the District of Columbia or his designated agent;

(b) Compliance with the requirements imposed under this chapter shall be enforced by the Commissioner. Nothing contained herein shall be construed to affect the authority and jurisdiction of the respective agencies designated in section 108 of the Truth-in-Lending Act (82 Stat. 146 et seq.; 15 U.S.C. 1601 et seq.). (Added Dec. 17, 1971, Pub. L. 92-200, § 4, 85 Stat. 678.)

#### § 28-3816. Inconsistent laws: What law governs

If any provision of law or regulation promulgated thereunder is inconsistent with this chapter, this chapter shall govern, unless this chapter or the inconsistent provision of the other laws specifically provides otherwise. (Added Dec. 17, 1971, Pub. L. 92-200, § 4, 85 Stat. 678.)

<sup>1</sup> So in original, subsec. (a) contained no par. (2)



## TITLE 29.—CORPORATIONS

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### Chapter 1.—GENERAL PROVISIONS

Sec.
29-101. Reorganization of corporations existing or doing business prior to January 1, 1902—Procedure.
29-102. Notice of application for, alteration to, or exten- sion of charter or special privileges.
29-103. Change of name—Procedure—Effect—Notice— Recording.
29-104. Capital stock to be subscribed and 10 percent paid before certificate is recorded.
29-105. Semiannual publication of financial statement required from foreign insurance companies, building associations, and banking companies, doing business in District—Exemption—Fra- ternal orders.

#### § 29-101. Reorganization of corporations existing or doing business prior to January 1, 1902— Procedure.

Any corporation existing or doing business in the District of Columbia prior to January 1, 1902, may come under and avail itself of the provisions of this chapter by giving to its stockholders, members, or associates notice as prescribed in section 29-231 and pursuing the same procedure and complying with the same requirements as are prescribed in chapter 2 of this title and sections 26-302, 29-103, 44-101 to 44-103 in respect to increase or diminution of capital stock; and upon filing its certificate of reorganization in such case, such company shall be entitled to the privileges and provisions and be subject to the liabilities of the class of corporations to which it belongs, as provided in and by this chapter. (Mar. 3, 1901, 31 Stat. 1316, ch. 854, § 766).

#### REFERENCES IN TEXT

In the original "this chapter", referred to in the text in two instances, refers to chapter 18 of act Mar. 3, 1901, ch. 854, which includes sections 574-797. For distribution of sections 574-797 in the Code, see Tables.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29-238 to 29-240.

#### § 29-102. Notice of application for, alteration to, or extension of charter or special privileges.

Whoever, not being a Senator or Representative in Congress, intends to present to Congress a bill for an act of incorporation, or for an alteration or extension of the charter of a corporation in the Dis-

trict of Columbia, or of any special privileges in said District, shall give notice of such intention by publishing a copy of the bill at least once a week for four successive weeks, in a newspaper published in the District of Columbia, the last of said publications to be made at least fourteen days prior to the presentation of such bill. Such newspaper shall be designated by the person proposing the bill and approved by the District of Columbia Council. (Mar. 3, 1901, 31 Stat. 1316, ch. 854, § 767.)

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(228) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of approving newspapers in which persons may give notice of intention to present to Congress bills for incorporation or for alteration or extension of corporation charters under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29-238 to 29-240.

#### § 29-103. Change of name—Procedure—Effect—No- tice—Recording.

Any corporation organized under the laws of the District of Columbia may change its name in the manner following:

The board of directors shall pass a resolution declaring that such change is advisable and calling a meeting of the stockholders to take action thereon. Such a meeting shall be called upon such notice as the by-laws provide, and in the absence of such provision upon ten days' notice given personally to each stockholder as his address is contained in the records of such corporation, a notice deposited in the United States mail, postage prepaid, at least ten days prior to such meeting to be considered sufficient notice under this section. If two-thirds in interest of each class of stockholders having voting powers and of other persons having like powers shall vote in favor of such a change, a certificate thereof shall be signed by the president and secretary, under the corporate seal, and acknowledged as in the case of deeds of real estate, and such certificate shall be filed in the office of the recorder of deeds of the District of Columbia, and upon the filing of the same the certificate of incorporation shall be deemed to be amended and the name changed accordingly; and the filing of said certificate in conformity with this section shall have the same force and effect as to all future proceedings as if said certificate of incorporation or organization had been originally drafted in conformity with the amendment so made.

A certified copy of such certificate shall be taken and accepted as evidence in all courts and places of all matters legally stated therein; and the recorder of deeds shall keep an index in his office showing the new name and the change from the old name,



and the old name showing the change to the new name; and no fees shall be required by the recorder of deeds for filing and recording any such certificate, except that ordinarily required for deeds of real estate of like length.

A corporation under its new name shall have the same rights, powers, and privileges, and shall be subject to the same duties, obligations, and liabilities as before, and may sue and be sued by its new name, but no action brought against it or by it under its former name shall be abated on that account, and on motion of either party the new name may be substituted therefor in the action.

Upon the filing of said certificate for record a copy thereof shall be inserted, by the corporation whose name has been changed as hereinabove provided, once each week for four consecutive weeks, in two daily papers published in the District of Columbia. (Mar. 3, 1901, ch. 854, § 639a, as added Mar. 1, 1921, 41 Stat. 1194, ch. 94.)

#### CROSS REFERENCE

Amendment of charter, additional classes of stock, and transfer of assets as an entirety, see §§ 29-238 to 29-240.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-101.

### § 29-104. Capital stock to be subscribed and 10 percent paid before certificate is recorded.

The recorder of deeds shall not file or record any certificate of organization of any incorporation until it has been proved to his satisfaction that all the capital stock of said company has been subscribed for in good faith, and not less than ten per cent. of the par value of the stock has been actually paid in cash, and the money derived therefrom is then in the possession of the persons named as the first board of trustees. (Mar. 3, 1901, 31 Stat. 1276, ch. 854, § 552 pt.; Feb. 4, 1905, 33 Stat. 689, ch. 299.)

#### CODIFICATION

Section comprises part of paragraph added to section 552 of act Mar. 3, 1901, by act Feb. 4, 1905. Such paragraph, including the part set out as this section, is also set out as one of the paragraphs of section 45-708.

#### CROSS REFERENCE

Payment in money or in property at its actual value, see § 29-209.

### § 29-105. Semiannual publication of financial statement required from foreign insurance companies, building associations, and banking companies, doing business in District—Exemption—Fraternal orders.

Except as otherwise provided in sections 26-101, 29-213, and 35-103, any insurance company, building association or company, banking company, savings institution, or other company or association advertising for or receiving premiums, deposits, or dues for membership, incorporated under the laws of any other State, Territory, or foreign government, and transacting business within the District of Columbia, shall publish in at least two daily papers printed in the District of Columbia semiannually, during the months of March and September of each year, a full statement, under oath, showing their capital stock and the amount paid in on account of the same, assets, liabilities, debts, deposits, dividends and dues, as well as their current expenses during six months ending January and July preceding.

Any such company, association, or institution failing to publish statements as required by this section shall forfeit its right to do business in said District, and thereupon it shall be the duty of the Commissioner of the District of Columbia to revoke its license or permit to do business in said District: *Provided*, That fraternal beneficiary associations or societies doing business on the lodge plan and paying death benefits be exempted from the provisions of this section. (July 29, 1892, 27 Stat. 325, ch. 321, §§ 1, 2.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## Chapter 2.—BUSINESS CORPORATIONS (1901)

### Sec.

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- 29-202. Contents of certificate.
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- 29-204. Trustees—Qualifications—Election.
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## Sec.

- 29-237. Fire insurance companies formed prior to January 1, 1902, may become perpetual.
- 29-238. Amendment of charter—Procedure—Purposes.
- 29-239. Stock—Preferred stock authorized—Classes of common—"Charter" defined—Preferences, restrictions, qualifications—Statement thereof on stock.
- 29-240. Sale, lease, or exchange of property or assets as an entirety—Transfer of franchise—Agreement submitted to stockholders—Rights of dissenting stockholders—Procedure—Effect of performance of agreement—Recording.

## CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 5-710, 26-401, 29-101, 43-503.

## DISTRICT OF COLUMBIA BUSINESS CORPORATION ACT

Formation of corporations under the provisions of the District of Columbia Business Corporation Act 180 days after June 8, 1954, and prohibition against incorporation, after such date, under any other act or statute then in force, see Effective Date note set out under § 29-901.

## § 29-201. Formation—Certificate—Exception—Dealing in real estate.

Any three or more persons who desire to form a company for the purpose of carrying on any enterprise or business which may be lawfully conducted by an individual, excepting banks of circulation or discount, railroads, and such other enterprise or business as may be otherwise specially provided for in this code, may make, sign, and acknowledge, before some officer competent to take the acknowledgment of deeds, and file in the office of the recorder of deeds, a certificate in writing: *Provided*, That nothing herein contained shall be held to authorize the organization of corporations to buy, sell, or deal in real estate, except corporations to transact the business ordinarily carried on by real-estate agents or brokers. (Mar. 3, 1901, 31 Stat. 1284, ch. 854, § 605; June 30, 1902, 32 Stat. 533, ch. 1329.)

## AMENDMENT

1902—Act June 30, 1902, struck out the words "corporations to buy, sell, or deal with real property" following the words "banks of circulation or discount," and added the proviso.

## CROSS REFERENCES

Banking corporations and financial institutions, see title 26.

Building and homestead associations to be incorporated under this chapter, see § 26-401.

Insurance corporations, see title 35.

Merger of street railway; new company to be formed under this chapter, see § 43-503.

Public utilities, see title 43.

Railroads and other carriers, see title 44.

## NOTES TO DECISIONS

## In general

Insofar as the general incorporation statutes passed by Congress for the District are concerned, these provide for the incorporation of both business corporations and benevolent corporations. *White v. Central Dispensary & Emergency Hosp.* (1938, 99 F. 2d 355, 69 App. D.C. 122, 119 A. L. R. 1002).

## Capacity to sue and be sued

Defendant corporation is in general capable of suing and being sued, regardless of whether part or all of its stock is owned by the United States. *Ingram Day Lbr. Co. v. United States Shipping Bd. Emergency Fleet Corp.* (D.C. Miss. 1920, 267 F. 283).

## Emergency fleet corporation

In form the Emergency Fleet Corporation is a private corporation, but its services are of a public nature and it has never done any business, or conducted any operation,

except on behalf of the United States. *United States Shipping Bd. Emergency Fleet Corp. v. Western Union Tel. Co.* (1928, 48 S. Ct. 198, 275 U.S. 415, 72 L. Ed. 345).

Fleet Corporation was entitled to the Government rate, not because it was an instrumentality of the Government, but because it was a department of the United States within the meaning of the Post Roads Act and, in respect to messages sent, on the Government's business, no distinction could properly be made between those of the Shipping Board and those of the Fleet Corporation. *Id.*

When shipbuilding company sued the United States Shipping Board Emergency Fleet Corporation upon an alleged contract for the building of ships, which, it was alleged, it was not allowed to build, it was a suit arising under the Constitution and laws of the United States and motion to remand should be denied. *Union Timber Products Co. v. United States Shipping Bd. Emergency Fleet Corp.* (D.C. Wash. 1918, 252 F. 320).

"The board (Shipping Board), if in its judgment such action is necessary to carry out the purposes of this act, may form under the laws of the District one or more corporations for the purchase, construction, equipment, lease, charter, maintenance, and operation of merchant vessels in the commerce of the United States." *Southern Bridge Co. v. United States Shipping Bd. Emergency Fleet Corp.* (D.C. Ala. 1920, 266 F. 747).

Business of the Fleet Corporation was not peculiarly governmental in its nature, but was commercial and industrial, and its powers not essentially different from those possessed by private corporations and no provision can be found either in acts of Congress or in charter of the company giving to the corporation or its stockholders any rights, privileges, or obligations different from those possessed by any other corporation under laws of the District with respect to its business. *In re Eastern Shore Shipbuilding Corp.* (C.C.A. 2, 1921, 274 F. 893).

Object and purpose of the corporation was to purchase, construct, equip, lease, maintain, and operate vessels in the commerce of the United States and for other lawful purposes. *Buffalo Union Furnace Co. v. United States Shipping Bd. Emergency Fleet Corp.* (D.C. N.Y. 1922, 283 F. 673).

Fleet Corporation acted in two capacities; notwithstanding the ownership of its stock by the United States, it was a private corporation; as such it was a distinct entity; it might make contracts and transact the business for which it was organized; it might sue and be sued, and then it was subject to the statute of limitations. *Harwood v. United States Shipping Bd. Emergency Fleet Corp.* (D.C. Conn. 1928, 26 F. 2d 116).

## Extension of business

The 1901 code, §§ 633 and 635 (§§ 29-229, 29-231), providing for the extension of the business of the corporation, radically different classes of business. *Dancy v. Clark* cannot be so construed as to permit a combination of two (1905, 24 App. D.C. 487).

## Nature of business

This section does not authorize or allow the combination of all classes of industrial business by one corporation. "On the contrary, the tenor of the enactment is decidedly adverse to any such theory." *Dancy v. Clark* (1905, 24 App. D.C. 487).

The statute allows formation of corporation for only "one business, one enterprise, and not a combination of all the classes of business provided for in the statute." *Id.*

"No domestic corporation is authorized to hold real estate except as an incident to its business. It clearly is not authorized to hold it for the purpose of selling or dealing in it." *Groo v. Norman* (1914, 42 App. D.C. 387).

A foreign corporation will not be accorded greater rights than are enjoyed by domestic corporations. Nevertheless "want of capacity in a domestic or foreign corporation to own and dispose of real estate can only be asserted by the State," and until so questioned good title may be conveyed. *Hight v. Richmond Park Imp. Co.* (1918, 47 App. D.C. 518). See, also, *Groo v. Norman* (1914, 42 App. D.C. 387).

The proviso "neither declares contracts made in violation of its terms void as against public policy nor does it expressly apply this restriction to foreign corporations



doing business in this District." *Hight v. Richmond Park Imp. Co.* (1918, 47 App. D.C. 518).

#### Principal place of business

The proviso of the statute that no corporation may be organized thereunder unless place where it conducts its principal business is located within the District of Columbia speaks prospectively, and where corporation owning a baseball club, although reincorporated under the 1954 act, was organized under the act of 1901, imposing no restrictions upon the place where the corporation might conduct its principal business, such corporation was not required to conduct its principal business at a place within the District and was not prohibited from moving its American League franchise to any other city outside the District. *Murphy v. Washington American League Baseball Club, Inc., et al.* (1959, 267 F. 2d 655, 105 U.S. App. D.C. 378).

#### § 29-202. Contents of certificate.

In such certificate shall be stated—

First. The corporate name of the company and the object for which it is formed.

Second. The term of its existence, which may be perpetual.

Third. The amount of the capital stock of the company and the number of shares of which said stock shall consist.

Fourth. The number of trustees who shall manage the concerns of the company for the first year and their names.

Fifth. The name of the place in the District in which the operations of the company are to be carried on. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 606.)

#### CROSS REFERENCE

Amendment of charter, additional classes of stock, and transfer of assets as an entirety, see §§ 29-238 to 29-240.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29-203, 29-234.

#### NOTES TO DECISIONS

##### Principal place of business

The proviso of the statute that no corporation may be organized thereunder unless place where it conducts its principal business is located within the District of Columbia speaks prospectively, and where corporation owning a baseball club, although reincorporated under the 1954 act, was organized under the act of 1901, imposing no restrictions upon the place where the corporation might conduct its principal business, such corporation was not required to conduct its principal business at a place within the District and was not prohibited from moving its American League franchise to any other city outside the District. *Murphy v. Washington American League Baseball Club, Inc., et al.* (1959, 267 F. 2d 655, 105 U.S. App. D.C. 378).

#### § 29-203. Formation—Signers of certificate incorporated—Name—Powers—Mortgages or liens on property to be approved by stockholders.

When the certificate shall have been filed, in accordance with the provisions of section 29-202, the persons who shall have signed and acknowledged the same and their successors shall be a body politic and corporate in fact and in name, by the names stated in such certificate, and by that name have succession and be capable of suing and being sued in any court of law or equity in the District; and they and their successors may have a common seal and make and alter the same at pleasure, and they shall by their corporate name be capable in law of purchasing, holding, and conveying any real or personal estate whatever which may be necessary to enable the company to carry on its operations named in

such certificates, but shall not mortgage such estate or give any lien thereon, except in pursuance of a vote of the stockholders of the company. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 607.)

#### CROSS REFERENCES

Conveyances of real estate, formal requisites, see §§ 45-302.

Fire insurance companies, perpetual existence, see § 29-237.

Increase or diminution of stock, extension of business, see §§ 29-229 to 29-237.

Indorsement of negotiable instrument as passing title through corporation or officers lacked capacity, see §§ 28-3-204, 205, 206.

Quo warranto proceedings to question right to corporate rights and franchises, see § 16-3501 et seq.

Restraint from doing business upon second conviction of operating a bucket-shop, see § 22-1510.

#### NOTES TO DECISIONS

##### In general

This section does not put District corporations upon a different footing from those formed under the laws of the States. *Sloan Shipyards Corp. v. United States Shipping Board* (1922, 42 S. Ct. 386, 258 U.S. 549, 66 L. Ed. 762).

##### Emergency Fleet Corporation

The Emergency Fleet Corporation was in general capable of suing and being sued, regardless of whether part or all of its stock was owned by the United States. *Ingram Day Lbr. Co. v. United States Shipping Bd. Emergency Fleet Corp.* (D.C. Miss. 1920, 267 F. 283).

Business of the Emergency Fleet Corporation was not peculiarly governmental in its nature, but was commercial and industrial, and its powers were not essentially different from those possessed by private corporations. *In re Eastern Shore Shipbuilding Corp.* (C.C.A. 2, 1921, 274 F. 893).

#### § 29-204. Trustees—Qualifications—Election.

The stock, property, and concerns of such company shall be managed by not less than three trustees, who shall be stockholders, and shall, except for the first year, be annually elected by the stockholders, at such time and place as shall be determined by the by-laws of the company. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 608; July 13, 1959, 73 Stat. 181, Pub. L. 86-83; Apr. 22, 1960, 74 Stat. 78, Pub. L. 86-436.)

#### AMENDMENTS

1960—Act Apr. 22, 1960, substituted "who shall be stockholders, and shall" for "who shall, respectively, be stockholders, and a majority citizens of the District, and shall."

1959—Act July 13, 1959, struck out the words "nor more than fifteen" following "three."

#### NOTES TO DECISIONS

##### Corporate acts

A corporation can only act through its agents, directors, or trustees and its intention can only be learned by the language of its recorded acts and the plain terms of a resolution of the board of directors cannot be altered by an affidavit purporting to show its intention. *Fox v. Johnson* (D.C.D.C. 1940, 31 F. Supp. 64, affirmed 127 F. 2d 729, 75 U.S. App. D.C. 211).

##### Emergency Fleet Corporation

Although most of the stock was owned by the United States, the business of the fleet corporation was not peculiarly governmental in its nature, but was commercial and industrial, and its powers were not essentially different from those possessed by private corporations. *In re Eastern Shore Shipbuilding Corp.* (C.C. A. 2, 1921, 274 F. 893).

##### Exchange of stock

When insurance company sold a building to realty company, for whose stock the insurance company's stock-



holders were allowed to exchange their stock, and as terms would not cause substantial loss to the stockholders, their stock was not illegal or void under this section which gives trustees power to manage the affairs of the corporation. *Tryson v. Southern Realty Corp.* (1921, 274 F. 135, 61 App. D.C. 55).

#### Liability for debts

Under the act of Congress (16 Stat. 98, ch. 80), under which certain corporations were organized in the District of Columbia, providing for personal liability of trustees for debts in excess of capital stock, an action at law could not be sustained by one creditor among many for the liability thus created, or for any part of it, but the remedy is in equity and this excess constitutes a fund for the benefit of all the creditors, so far as the condition of the company renders a resort to it necessary for the payment of their debts. *Hornor v. Henning* (1876, 93 U.S. 228, 93 Otto 228, 23 L. Ed. 879).

Under the act of May 5, 1870 (16 Stat. 98), providing for the organization of associations and the liability of trustees for indebtedness exceeding the capital stock, and the act of June 17, 1870 (16 Stat. 153), authorizing the establishment of savings banks under the former act, the excess of debts for which the trustees were liable constituted a trust fund for the benefit of all creditors, and an action at law could not be maintained by one creditor for any part of it, but the remedy was in equity. *Id.*

#### Stockholders

"Plainly the requirement of this section is that the trustees shall at all times be stockholders, as well for the first year as for all subsequent years." *Dancy v. Clark* (1905, 24 App. D.C. 487).

#### § 29-205. Election of trustees—Notice—Procedure.

Public notice of the time and place of holding such election shall be published not less than thirty days previous thereto in some newspaper printed and published in the District, and the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy. All the elections shall be by ballot, and each stockholder shall be entitled to as many votes as he owns shares of stock in the company, and the persons receiving the greatest number of votes shall be trustees; and when any vacancy shall happen among the trustees it shall be filled for the remainder of the year in such manner as may be provided by the by-laws of the company. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 609.)

#### § 29-206. Corporation not dissolved by failure to hold election of trustees at time designated in by-laws.

In case it shall happen at any time that an election of trustees shall not be made on the day designated by the by-laws of said company when it ought to have been made, the company shall not for that reason be dissolved, but it shall be lawful on any other day to hold an election for trustees, in such manner as shall be provided by the by-laws, and all acts of trustees shall be valid and binding as against said company until their successors shall be elected. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 610.)

#### § 29-207. Officers—Bond.

There shall be a president of the company, who shall be designated from the trustees; and also such subordinate officers as may be elected or appointed, and who may be required to give security for the faithful performance of the duties of their office, as the company by its by-laws may require. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 611.)

#### CROSS REFERENCE

Quo warranto proceedings questioning right to corporate office, see § 16-3501 et seq.

#### § 29-208. By-laws.

The trustees shall have power to make such prudential by-laws as they deem proper for the management and disposal of the stock and business affairs of such company, not inconsistent with the laws of the District and the Constitution of the United States, and prescribing the duties of officers, artificers, and servants that may be employed, for the appointment of all officers, and for carrying on all kinds of business within the objects and purposes of such company. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 612.)

#### § 29-209. Authority to do business—Calls—Forfeiture—Notice.

No company incorporated under this chapter and sections 26-302 and 44-101 to 44-103 shall be authorized to transact any business until ten per centum of the capital stock shall have been actually paid in, either in money or in property at its actual value; and it shall be lawful for the trustees to call in and demand from the stockholders the residue of their subscriptions in money or property at such times and in such instalments as the trustees shall deem proper, under the penalty of forfeiting the shares of stock subscribed for and all previous payments made thereon, if payment shall not be made by the stockholder within sixty days after a personal demand or a notice requiring such payment shall have been published for six successive weeks in a newspaper in the District. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 613.)

#### CODIFICATION

The words "this chapter and sections 26-302 and 44-101 to 44-103" have been substituted for, and are a literal translation of, the words "this subchapter", which appear in the act of 1901. The subchapter consisted of sections 605 to 644. Sections 26-302 and 44-101 to 44-103 of this Code, which are based on sections 641 to 644 of the act of 1901, have no reference to the subject matter of this chapter.

#### CROSS REFERENCES

Initial ten per centum payment in cash, see § 29-104.  
Sale of securities, 15 U.S.C. § 77a et seq.

#### § 29-210. Stock to be personal property—Manner of transfer to be prescribed by by-laws—No transfer until previous call is paid.

The stock of such company shall be deemed personal estate and shall be transferable in such manner as shall be prescribed by the by-laws of the company; but no shares shall be transferable until all previous calls thereon shall have been fully paid in or the shares shall have been declared forfeited for nonpayment. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 614.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-225.

#### NOTES TO DECISIONS

##### Suit for subscription

Subscribers to stock must be sued severally to recover unpaid subscriptions. *Peoples Nat. Bank v. Saville* (1905, 25 App. D.C. 139, appeal dismissed 26 S. Ct. 760, 201 U.S. 641, 50 L. Ed. 901).



**§ 29-211. Liability of stockholders.**

All the stockholders of every company incorporated under this chapter and sections 26-302 and 44-101 to 44-103 shall be severally individually liable to the creditors of the company in which they are stockholders for the unpaid amount due upon the shares of stock held by them, respectively, for all debts and contracts made by such company, until the whole amount of capital stock fixed and limited by such company shall have been paid in, and a certificate thereof shall have been made and recorded, as prescribed in section 29-212. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 615.)

**CODIFICATION**

The words "this chapter and sections 26-302 and 44-101 to 44-103" have been substituted for, and are a literal translation of, the words "this subchapter", which appear in the act of 1901. The subchapter consisted of sections 605 to 644. Sections 26-302 and 44-101 to 44-103 of this Code, which are based on sections 641 to 644 of the act of 1901, have no reference to the subject matter of this chapter.

**NOTES TO DECISIONS****In general**

Under this section, the stockholders are individually liable to the creditors for the unpaid amount due upon the shares of stock held by them respectively for the debts and contracts of the company until the amount of capital stock fixed by such company shall have been paid in. *Capitol Dress Mfg. Co. v. Moran* (1936, 84 F. 2d 253, 65 App. D.C. 400).

**Contract of subscription**

A contract of subscription may be shown without a formal subscription in writing. *National Exp. Co. v. Morris* (1899, 15 App. D.C. 262).

To recover on a subscription to the capital stock, the corporation plaintiff must establish, by legal and competent proof, the existence of a contract of subscription to the stock. *Id.*

**Sale of stock rescinded**

Person who purchased stock from corporation under an option to rescind the agreement at the expiration of a year is not precluded from doing so because no power has been given to the corporation to purchase its own stock. *Royal Glue Co. v. Lange* (1913, 40 App. D.C. 9).

**Statute of limitations**

Statute of limitations begins to run from the time that call is made for payment of unpaid subscription. *Glenn v. Sothoron* (1894, 4 App. D.C. 125).

**Suit for subscription**

Subscribers to stock must be sued severally to recover unpaid subscriptions. *Peoples Nat. Bank v. Saville* (1905, 25 App. D.C. 139, appeal dismissed 26 S. Ct. 760, 201 U.S. 641, 50 L. Ed. 901).

**Transfer of stock**

The mere transfer of the stock into the name of the defendant is not sufficient to impose the liability of a stockholder, unless he consents thereto, or subsequently exercises the rights of a stockholder. *National Exp. Co. v. Morris* (1899, 15 App. D.C. 262).

**Trust fund**

Capital stock of a corporation is a trust fund for the benefit of the creditors, and which cannot be withdrawn without their consent, but the corporation may when solvent hold the property as an individual, free from the touch of a creditor who has acquired no lien, and may dispose of stock to bona fide purchasers for a valuable consideration. *Gilbert v. Washington Ben. Endowment Assn.* (1897, 10 App. D.C. 316, appeal dismissed 19 S. Ct. 877, 173 U.S. 701, 43 L. Ed. 1185).

**§ 29-212. Certificate of capital stock paid in—Recording.**

The president and a majority of the trustees, within thirty days after the payment of the last

instalment of the capital stock so fixed and limited, shall make a certificate stating the amount of the capital so fixed and paid in, which certificate shall be signed and sworn to by the president and a majority of the trustees; and they shall within the said thirty days record the same in the office of the recorder of deeds of the District. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 616.)

**CROSS REFERENCE**

Limitation on recorder to record certificate, see § 29-104.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 29-211.

**§ 29-213. Annual report of stock and debts—Verification—Publication.**

Every such company shall annually, except insurance companies, within twenty days from the first of January, make a report, which shall be published in a newspaper in the District, which shall state the amount of capital and of the proportion actually paid and the amount of existing debts, which report shall be signed by the president and a majority of the trustees, and shall be verified by the oath of the president or secretary of the company, and filed in the office of the recorder of deeds of the District. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 617.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 29-105, 29-214.

**NOTES TO DECISIONS****Construction**

Laws similar to this requiring insurance companies to publish annually a report of their assets and liabilities and making trustees liable for existing corporate debts for failure to fulfill requirements were construed as being penal in their nature and were to be strictly construed. *Jackson v. Clifford* (1895, 5 App. D.C. 312).

**§ 29-214. Failure to publish annual report—Mandamus by creditor—Expenses of action.**

If any company fails to comply with the provisions of section 29-213, any creditor of the corporation or other person interested may by petition for mandamus against the corporation and its proper officers compel such publication to be made, and in such case the court shall require the corporation or the officers at fault to pay all the expenses of the proceeding, including counsel fees. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 618; June 30, 1902, 32 Stat. 533, ch. 1329.)

**AMENDMENT**

1902—Act June 30, 1902, amended section generally. Prior to such amendment, section read as follows: "If any company fails to comply with the provisions of the preceding section, all the trustees of such company shall be jointly and severally liable for the debts of the company then existing and for all that shall be contracted before such report shall be made."

**§ 29-215. Liability of officers for false report.**

If any certificate or report made or public notice given by the officers of any company in pursuance of the provisions of this chapter and sections 26-302 and 44-101 to 44-103 shall be false in any material representation, all the officers who shall have signed the same, knowing it to be false, shall be jointly and severally liable for all debts of the company contracted while they are stockholders or officers thereof. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 619.)



## CODIFICATION

The words "this chapter and sections 26-302 and 44-101 to 44-103" have been substituted for, and are a literal translation of, the words "this subchapter", which appear in the act of 1901. The subchapter consisted of sections 605 to 644. Sections 26-302 and 44-101 to 44-103 of this Code, which are based on sections 641 to 644 of the act of 1901, have no reference to the subject matter of this chapter.

### § 29-216. Purchase of stock of other corporations unlawful.

It shall not be lawful for any corporation, except a charitable, educational, or religious corporation incorporated under the laws of the District of Columbia or under any Act of Congress, to use its funds to purchase stock in any other corporation. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 620; Mar. 14, 1952, 66 Stat. 24, ch. 103, § 1.)

## AMENDMENT

1952—Act Mar. 14, 1952, substituted "corporation" for "company" following "lawful for any" and added the exception.

## CROSS REFERENCE

Amendment of charter, additional classes of stock, and transfer of assets as an entirety, see §§ 29-238 to 29-240.

## NOTES TO DECISIONS

## Bank stock illegally held

This being statement of general policy applicable to all District corporations, claim against insolvent trust company for assessment on shares purchased from another bank was rejected. *Dunn v. O'Connor* (1937, 89 F. 2d 830, 67 App. D.C. 76).

## Transfer in liquidation

As appellant had no corporate power to purchase stocks and bonds of the Charles Town Company, a contract to purchase, unless permissible under the Utilities Act, would have been unenforceable because ultra vires. *Washington Gas Light Co. v. Dann* (1934, 70 F. 2d 746, 63 App. D.C. 142).

A bank receiving assets of another bank in liquidation is liable for taxes as a transferee notwithstanding this section. *Gould v. Com. Int. Rev.* (21 B. T. A. 824).

### § 29-217. Loans to stockholders—Liability of officers.

No loan of money shall be made by any company upon the security, in whole or in part, of its own stock; and if any such loan shall be made, the trustee or officer authorizing the same shall be responsible to the corporation therefor: *Provided*, That nothing herein contained shall be held to release the borrower in such a case from liability to the corporation. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 621; June 30, 1902, 32 Stat. 533, ch. 1329.)

## AMENDMENT

1902—Act June 30, 1902, amended section generally. Prior to such amendment, section read as follows: "No loan of money shall be made by any company upon the security, in whole or in part, of its own stock; and if any such loan shall be made to a stockholder, the officers who shall make it or who shall assent thereto shall be jointly and severally liable, to the extent of such loan and interest, for all debts of the company contracted while they are stockholders or officers thereof."

### § 29-218. Dividends not to be declared if corporation is thereby rendered insolvent or capital decreased—Trustees personally liable for debts.

If the trustees of any company shall declare and pay any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severally liable for all the debts of the company then existing

and for all that shall be thereafter contracted while they shall respectively remain in office. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 622.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-219.

## NOTES TO DECISIONS

## Evidence

In order for a corporate creditor to impose personal liability on three trustees of corporation on any theory of transfer of funds in an attempt to hinder or defraud creditors, distribution of corporate assets to themselves in violation of statute, or breach of fiduciary obligation to account to creditors, it was necessary for contractor to prove assets in question ultimately were received by such trustees, or disposed of by them in contravention of contractor's rights as a creditor. *Askew v. Randolph Carney Co., Inc., et al.* (D.C. Mun. App. 1957, 128 A. 2d 788).

### § 29-219. Trustees objecting to such dividends and filing certificate exempt from personal liability.

If any of the trustees shall object to declaring such dividend or the payment of the same, and shall, at any time before the time fixed for the payment thereof, file a certificate of their objection in writing with the secretary of the company and with the recorder of deeds of the District, they shall be exempt from the liability prescribed in section 29-218. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 623.)

### § 29-220. Executors, administrators, guardians, and trustees not personally liable.

No person holding stock in such company as executor, administrator, guardian, or trustee shall be personally subject to any liability as stockholder of such company, but the estate and funds in the hands of such executor, administrator, guardian, or trustee shall be liable in like manner and to the same extent as the testator or intestate or the ward or person interested in such trust fund would have been if he had been living and competent to act and hold the stock in his own name. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 624.)

### § 29-221. Executor, administrator, guardian, or trustee shall represent and vote.

Every such executor, administrator, guardian, or trustee shall represent the stock in his hands at all meetings of the company, and may vote accordingly as a stockholder. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 625.)

### § 29-222. Pledges of stock—Pledgee not liable as stockholder—Right to vote.

No person holding stock in such company as collateral security shall be personally subject to any liability as stockholder of such company, but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and every person who shall pledge his stock as collateral security may, nevertheless, represent the same at all meetings and vote as a stockholder. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 626.)

### § 29-223. Stock book to be kept by treasurer or secretary.

It shall be the duty of the trustees of every corporation formed under this chapter and sections 26-302 and 44-101 to 44-103 to cause a book



to be kept by the treasurer or secretary thereof, containing the names of all persons alphabetically arranged, who are or shall within six years have been stockholders of such company, and showing their place of residence, the number of shares of stock held by them respectively, the time when they became owners of such shares, and the amount of stock actually paid in. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 627.)

#### CODIFICATION

The words "this chapter and sections 26-302 and 44-101 to 44-103" have been substituted for, and are a literal translation of, the words "this subchapter", which appear in the act of 1901. The subchapter consisted of sections 605 to 644. Sections 26-302 and 44-101 to 44-103 of this Code, which are based on sections 641 to 644 of the act of 1901, have no reference to the subject matter of this chapter.

#### NOTES TO DECISIONS

##### In general

This section does not apply to corporations not formed under this chapter. *Morgan v. Howard* (1924, 293 F. 650, 54 App. D.C. 3).

#### § 29-224. Stock books open for inspection.

Such book shall, during the usual business hours of the day, on every business day, be open for inspection of stockholders and creditors of the company and their personal representatives, at the office or principal place of business of such company in the District where its business operations shall be located, and any stockholder, creditor, or representative shall have a right to make extracts from such books. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 628.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-228.

#### NOTES TO DECISIONS

##### Purpose of inspection

Under common law, stockholder can inspect books only when his interests are directly involved, and "it is apparent that in equity and good faith he should be permitted to inform himself as to how the affairs of the corporation are being conducted. \* \* \* Where that right has not been enlarged by statute, it may be exercised only in good faith, and for some just, useful, or reasonable purpose." *Morgan v. Howard* (1924, 293 F. 650, 54 App. D.C. 3).

#### § 29-225. Effect of stock book record—Company—Creditors—Subsequent purchasers.

A person in whose name shares of stock stand on the books of a company shall be deemed the owner thereof as regards the company, but if any such person shall in good faith sell, pledge, or otherwise dispose of any of his shares of stock to another and deliver to him the certificate for such shares, with written authority for the transfer of the same on the books, the title of the former shall vest in the latter so far as may be necessary to effect the purpose of the sale, pledge, or other disposition, not only as between the parties themselves, but also as against the creditors of and subsequent purchasers from the former, subject to the provisions of section 29-210. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 629.)

#### NOTES TO DECISIONS

##### In general

The requirement of transfer on the corporate books is intended for the convenience and security of the corporation alone. *National Safe Deposit, Sav. & Trust Co. v. Hibbs* (1909, 32 App. D.C. 459, affirmed 33 S. Ct. 818, 229 U.S. 391, 57 L. Ed. 1241).

##### Certificate indorsed in blank

Stock broker, holding certificate, indorsed in blank, for a limited purpose, may convey good title to innocent purchaser. *National Safe Deposit, Sav. & Trust Co. v. Hibbs* (1909, 32 App. D.C. 459, affirmed 33 S. Ct. 818, 229 U.S. 391, 57 L. Ed. 1241).

While certificates of stock indorsed in blank "do not become negotiable instruments in a strictly legal sense, they nevertheless so approximate them as that the ordinary rules of agency and estoppel which apply in the case of chattels are applied to them with great liberality in the behalf of an innocent purchaser." *Id.*

##### Pledged certificate

When stock certificate with written transfer and power of attorney in blank is signed by the person to whom certificate was issued, and is pledged by one in possession to secure preexisting debts, the pledgee is not chargeable with notice of equities which exist between original owner and pledgor. *National Safe Deposit, Sav. & Trust Co. v. Gray* (1898, 12 App. D.C. 276).

##### Title of assignee

Although corporation may require that transfer of stock be registered on the corporate books, the assignee upon delivery with transfer and power of attorney to transfer on the books, duly executed, takes the entire equitable, if not the legal title thereto. *National Safe Deposit, Sav. & Trust Co. v. Hibbs* (1909, 32 App. D.C. 459, affirmed 33 S. Ct. 818, 229 U.S. 391, 57 L. Ed. 1241).

#### § 29-226. Stock books presumptive evidence of facts stated therein.

Such books shall be presumptive evidence of the fact therein stated in favor of the plaintiff in any suit or proceeding against such company or against any one or more stockholders. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 630.)

#### § 29-227. Failure to make entries in or to allow inspection of books—Misdemeanor—Penalty.

Every officer or agent of any company who shall neglect to make any proper entry in such book, or shall refuse or neglect to exhibit the same, or allow the same to be inspected and extracts to be taken therefrom, as herein provided, shall be deemed guilty of a misdemeanor, and the company shall pay to the party injured a penalty of fifty dollars for any such neglect or refusal, and all damages resulting therefrom. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 631.)

#### § 29-228. Liability to District of Columbia for neglect to keep books open.

Every company that shall neglect to keep such book open for inspection, as provided in section 29-224, shall forfeit to the District of Columbia the sum of fifty dollars for every day it shall so neglect, to be sued for and recovered in the Superior Court of the District of Columbia. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 632; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91-358, title I, §§ 155(c) (1) (F), 169(1), 84 Stat. 570, 590.)

#### AMENDMENTS

1970—Section 155(c) (1) (F) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

Section 169(1) of Act July 29, 1970, Public Law 91-358 amended section by striking out "to the United States" and inserting in lieu thereof "to the District of Columbia".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.



## CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

### § 29-229. Increase or diminution of stock—Extending of business.

Any company which may be formed under this chapter and sections 26-302 and 44-101 to 44-103 may increase or diminish its capital stock, by complying with the provisions of this chapter, and sections 26-302 and 44-101 to 44-103, to any amount which may be deemed sufficient and proper for the purposes of the corporation, and may also extend its business to any other business authorized hereby, subject to the provisions and liabilities of this chapter and sections 26-302 and 44-101 to 44-103. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 633.)

## CODIFICATION

The words "this chapter and sections 26-302 and 44-101 to 44-103" have been substituted for, and are a literal translation of, the words "this subchapter", which appear in the Act of 1901. The subchapter consisted of sections 605 to 644. Sections 26-302 and 44-101 to 44-103 of this Code, which are based on sections 641 to 644 of the Act of 1901, have no reference to the subject matter of this chapter.

## CROSS REFERENCE

Sale of securities, see 15 U.S.C. § 77a et seq.

### § 29-230. Diminution of capital stock when debts exceed proposed capital.

Before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 634.)

### § 29-231. Meeting of stockholders for purpose of increase or diminution of capital stock, or change of business—Notice to stockholders.

Whenever any company shall desire to call a meeting of the stockholders for the purpose of increasing or diminishing the amount of its capital stock, or for extending or changing its business, it shall be the duty of the trustees or directors to publish a notice, signed by a majority of them, in a newspaper in the District, at least three successive weeks, and to deposit a notice thereof in the post office addressed to each stockholder at his usual place of residence, at least three weeks previous to the day fixed upon for holding such meeting, specifying the object of the meeting and the time and place when and where such meeting shall be held. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 635.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29-101, 29-232, 29-240.

## NOTES TO DECISIONS

## Change of business

"Provision is made for a change of business; but even if we assume that this change might be made to a radi-

cally different class of business, as for example, from that of mining to that of agriculture, yet the very word 'change' implies the abandonment of the one by the adoption of the other, not the combination of both." *Dancy v. Clark* (1905, 24 App. D.C. 487).

## Extension of business

"Extension of business is the taking in of something cognate." *Dancy v. Clark* (1905, 24 App. D.C. 487).

"A company organized for the making of cotton goods might well be extended to the manufacture of woolen goods, possibly even to the manufacture of iron or steel, for it is all manufacture." *Id.*

### § 29-232. Representatives of two-thirds of stock to be present.

If, at any time and place specified in the notice provided for in section 29-231, stockholders shall appear by proxy or in person representing not less than two-thirds of all the shares of stock of the corporation, they shall organize and proceed to a vote of those present or by proxy. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 636.)

### § 29-233. Certificate by chairman—Contents—Verification.

If, on canvassing the votes, it shall appear that a sufficient number of votes are in favor of increasing or diminishing the amount of capital, or extending or changing the business of the company, a certificate of the proceedings, showing a compliance with the provisions of this chapter and sections 26-302 and 44-101 to 44-103, the amount of capital actually paid in, the business to which it is extended or changed, the whole amount of debts and liabilities of the company, and the amount to which the capital shall be increased or diminished, shall be made out, signed, and verified by the affidavit of the chairman, and be countersigned by the secretary. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 637.)

## CODIFICATION

The words "this chapter and sections 26-302 and 44-101 to 44-103" have been substituted for, and are a literal translation of, the words "this subchapter", which appear in the Act of 1901. The subchapter consisted of sections 605 to 644. Sections 26-302 and 44-101 to 44-103 of this Code, which are based on sections 641 to 644 of the Act of 1901, have no reference to the subject matter of this chapter.

### § 29-234. Certificate to be filed—Effect.

Such certificate shall be acknowledged by the chairman, and filed as required by section 29-202, and when so filed the capital stock of such corporation shall be increased or diminished to the amount specified in the certificate, and the business extended or changed accordingly; and the company shall be entitled to the privileges and provisions and be subject the liabilities of this chapter and sections 26-302 and 44-101 to 44-103. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 638.)

## CODIFICATION

The words "this chapter and sections 26-302 and 44-101 to 44-103" have been substituted for, and are a literal translation of, the words "this subchapter", which appear in the Act of 1901. The subchapter consisted of sections 605 to 644. Sections 26-302 and 44-101 to 44-103 of this Code, which are based on sections 641 to 644 of the Act of 1901, have no reference to the subject matter of this chapter.

Act Mar. 3, 1901, refers to § 29-202. However, for necessity for filing certificate, see § 29-201.



**§ 29-235. Two-thirds vote required.**

A vote of at least two-third of all the shares of the stock of a company shall be necessary to an increase or diminution of the amount of its capital stock or the extension or change of its business. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 639.)

**§ 29-236. Copy of certificate to be evidence.**

A copy of any certificate of incorporation filed in pursuance of this chapter and sections 26-302 and 44-101 to 44-103, certified by the recorder of deeds to be a true copy and the whole of such certificate, shall be received in all courts and places as presumptive legal evidence of the facts therein stated. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 640.)

**CODIFICATION**

The words "this chapter and sections 26-302 and 44-101 to 44-103" have been substituted for, and are a literal translation of, the words "this subchapter", which appear in the Act of 1901. The subchapter consisted of sections 605 to 644. Sections 26-302 and 44-101 to 44-103 of this Code, which are based on sections 641 to 644 of the Act of 1901, have no reference to the subject matter of this chapter.

**§ 29-237. Fire insurance companies formed prior to January 1, 1902, may become perpetual.**

Any company formed prior to January 1, 1902, agreeably by law, for the purpose of carrying on fire insurance, may become perpetual by filing, in the office of the recorder of deeds, a certificate to that effect, in like manner as is provided by law for the filing of the original certificate of incorporation. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 641.)

**NOTES TO DECISIONS****Powers and duties**

Filing of the certificate under this section merely extended indefinitely the life of the company, without affecting the scope of its powers and duties. *Morgan v. Howard* (1924, 293 F. 650, 54 App. D.C. 3).

**§ 29-238. Amendment of charter—Procedure—Purposes.**

Every corporation having capital stock and heretofore or hereafter organized or existing under this chapter and sections 26-302 and 44-101 to 44-103, or which has availed or may hereafter avail itself of the provisions of this chapter and sections 26-302 and 44-101 to 44-103 pursuant to sections 29-101, 29-102, may, by pursuing the same procedure and complying with the same requirements as are prescribed in this chapter and sections 26-302 and 44-101 to 44-103 in respect to the increase or diminution of capital stock, amend its charter so as to accomplish any one or more of the following objects: The addition to or diminution of the corporate purposes and powers, or the substitution of other purposes and powers in whole or in part for those set forth in the charter; the changing of the corporate business; the changing of the location of the place in the District of Columbia in which the operations of the corporation are to be carried on; and the making of any other amendment or amendments, not otherwise provided for under this chapter and sections 26-302 and 44-101 to 44-103, of the charter that may be desired, provided such amendment or amendments

shall contain only such provisions as it would be lawful or proper to insert in an original certificate of incorporation made at the time of making such amendment or amendments. (Mar. 3, 1901, ch. 854, § 639b, as added Feb. 12, 1931, 46 Stat. 1089, ch. 120.)

**CODIFICATION**

The words "this chapter and sections 26-302 and 44-101 to 44-103" have been substituted for, and are a literal translation of, the words "this subchapter", which appear in the Act of 1901. The subchapter consisted of sections 605 to 644. Sections 26-302 and 44-101 to 44-103 of this Code, which are based on sections 641 to 644 of the Act of 1901, have no reference to the subject matter of this chapter.

**CROSS REFERENCE**

Proceedings for increase or diminution of capital stock, see §§ 29-229 to 29-235.

**§ 29-239. Stock—Preferred stock authorized—Classes of common—"Charter" defined—Preferences, restrictions, qualifications—Statement thereof on stock.**

In addition to its common stock every corporation heretofore or hereafter organized or existing under this chapter and sections 26-302 and 44-101 to 44-103, or which has availed or may hereafter avail itself of the provisions of this chapter and sections 26-302 and 44-101 to 44-103 pursuant to sections 29-101, 29-102, may create one or more classes of preferred stock, with such preferences, restrictions, and qualifications not inconsistent with law as shall be expressed in its charter. Such preferred stock shall have such voting powers as are provided in such charter, or it may have no voting power if such charter so provides. Each such corporation may have one or more classes of common stock, with or without voting powers, and with such rights, restrictions, and qualifications as shall be expressed in its charter. The term "charter" is hereby defined to include a charter granted by Special Act, certificate of incorporation, certificate of organization, or certificate of reorganization, either as originally passed or filed or as amended, unless such construction would be inconsistent with the context. Preferred stock of any class may be made subject to redemption at such times and prices as may be determined in such charter. In the case of stock which is preferred as to its distributive share of the assets of the corporation upon dissolution, the amount and terms of such preference shall be stated in the charter. All certificates for stock which has no voting powers or is restricted or limited as to its voting powers, or which is preferred or limited as to its dividends, or as to its share of the assets upon dissolution, shall have a statement of such restriction, limitation, or preference plainly stated thereon. (Mar. 3, 1901, ch. 854, § 639c, as added Feb. 12, 1931, 46 Stat. 1089, ch. 120.)

**CODIFICATION**

The words "this chapter and sections 26-302 and 44-101 to 44-103" have been substituted for, and are a literal translation of, the words "this subchapter", which appear in the Act of 1901. The subchapter consisted of sections 605 to 644. Sections 26-302 and 44-101 to 44-103 of this Code, which are based on sections 641 to 644 of the Act of 1901, have no reference to the subject matter of this chapter.

**CROSS REFERENCE**

Sale of securities, see 15 U.S.C. § 77a et seq.



## NOTES TO DECISIONS

Applicability of provisions of 1901 Act to corporation formed in 1958

Provision which was part of Business Corporation Act of 1901 and required restrictions to be stated on certificate had no application to corporation organized for profit in 1958. *Sankin v. 5410 Connecticut Avenue Corp., et al.*; *Benn v. Garfield* (1968, 281 F. Supp. 524).

§ 29-240. Sale, lease, or exchange of property or assets as an entirety—Transfer of franchise—Agreement submitted to stockholders—Rights of dissenting stockholders—Procedure—Effect of performance of agreement—Recording.

Every corporation having capital stock and heretofore or hereafter organized or existing under this chapter and sections 26-302 and 44-101 to 44-103, or which has availed or may hereafter avail itself of the provisions of this chapter and sections 26-302 and 44-101 to 44-103 pursuant to sections 29-101, 29-102, may, pursuant to a meeting of its stockholders, held upon notice given in accordance with the provisions of section 29-231, sell, lease, or exchange all of its property and assets as an entirety, including its good will, and franchises howsoever granted and/or acquired, to or with any other such corporation or any other corporation organized or existing under the laws of any state of the United States which is duly authorized by its charter or otherwise to acquire and hold such or similar property, or to or with any natural person. An agreement containing the terms and conditions of the proposed sale, lease, or exchange shall, after approval thereof by a majority of the trustees or directors of such vendor, lessor, or grantor corporation, be submitted to said stockholders at said meeting for their approval; and if approved by the affirmative vote of two-thirds of all the stock outstanding (or, if two or more classes of stock have been issued, of two-thirds of each class, including stock of any class to which the charter denies the right to vote), such agreement shall be executed and its terms and conditions performed. Any stockholder who, at such meeting, voted against the agreement submitted or who shall in writing file his protest at least five days before the holding of such meeting, may within twenty days after such meeting (but not afterwards) make upon such vendor, lessor, or grantor corporation a written demand for payment for his stock; and he shall thereupon be entitled to receive an amount equal to the fair value thereof, unaffected by such sale, lease, or exchange of said corporate property and assets. If such dissenting stockholder and said vendor, lessor, or grantor corporation of which he is a stockholder shall fail to agree upon the fair value of said stock (or if, having agreed, such corporation shall fail to pay or tender the amount thereof), such stockholder shall be entitled to file, within thirty days after such written demand (but not afterwards, against said vendor, lessor or grantor corporation, in the court having jurisdiction of civil actions wherein the amount in controversy exceeds \$50,000, a petition for an accounting and for the ascertainment of the fair value of his shares without regard to any depreciation or appreciation thereof in consequence of such sale, lease, or exchange; and on the coming in of the answer to said petition, which shall be filed within such reasonable period

as the court may fix, the court shall pass an order referring the matter to a commissioner or commissioners agreed upon by the parties, and if the parties do not so agree, then to the auditor of said court, for the purpose of ascertaining such fair value, and such order may prescribe the time and manner of producing evidence; and the award of said commissioner or commissioners (or that of a majority of them) or of said auditor, when confirmed by decree of said court, shall be final and conclusive on all parties, and said vendor, lessor, or grantor corporation shall pay such stockholder the fair value of his shares ascertained as aforesaid, and on receiving such payment or on a tender thereof, said stockholder shall transfer his stock to the said vendor, lessor, or grantor corporation for cancellation, and until said award is paid or tendered, said stockholder shall have a lien for the payment of such award on the proceeds of such sale, lease, or exchange, prior to any distribution by said vendor, lessor, or grantor corporation and said payment and lien may be collected and enforced in the same manner as other decrees and liens are by law enforceable in such court. If the amount awarded said stockholder exceeds the amount offered by the corporation prior to the filing of said suit, costs shall be awarded to said stockholder; otherwise, costs shall be awarded to the corporation. Each party shall have the right of appeal as in other cases in such court. The proceeding by a dissenting stockholder hereunder shall not prevent or delay the execution and performance of any agreement so approved by the affirmative vote of two-thirds of each class of stock: *Provided, however*, That the right granted to a dissenting stockholder hereunder to demand payment for his shares shall cease, if at any time prior to the entry of any decree herein provided for, the defendant corporation shall make it appear to such court that the agreement of sale, lease, or exchange has been rescinded by appropriate corporate action, so that the shares of such dissenting shareholder remain unaffected thereby. Upon the performance of any agreement of sale hereunder of all of the property and assets as an entirety of a corporation (including its good will and franchises), all property, assets, rights, privileges, franchises, and powers of said selling corporation shall be vested in the purchasing corporation or person and shall thereafter be as effectually the property of the purchasing corporation or person as they were of the selling corporation subject to the provisions of this section, and such purchasing corporation or person shall thereupon immediately file in the office of the recorder of deeds of the District of Columbia proper evidence of such sale, and thereupon said selling corporation shall be dissolved and cease, subject, however, to the provisions of sections 29-715 to 29-718. Nothing contained herein shall affect the provisions of sections 28-1701 to 28-1705, or any of the provisions of chapters 1-10 of title 43, or any amendment or supplement thereof, or of any other law regulating public-utility corporations in the District of Columbia. (Mar. 3, 1901, ch. 854, § 639d, as added Feb. 12, 1931, 46 Stat. 1089, ch. 120, and amended June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139,



§ 127; July 29, 1970, Pub. L. 91-358, title I, § 168(d) (1), 84 Stat. 589.)

#### REFERENCES IN TEXT

Chapters 1-10 of title 43 relate to public utilities.

Sections 28-1701 to 28-1705, referred to in this section, were repealed by Act Dec. 30, 1963, 77 Stat. 774, Pub. L. 88-243, § 15(a) (7), and are now covered by section 28: 6-101 et seq.

#### CODIFICATION

The words "this chapter and sections 26-302 and 44-101 to 44-103" have been substituted for, and are a literal translation of, the words "this subchapter", which appear in the Act of 1901. The subchapter consisted of sections 605 to 644. Sections 26-302 and 44-101 to 44-103 of this Code, which are based on sections 641 to 644 of the Act of 1901, have no reference to the subject matter of this chapter.

#### AMENDMENT

1970—Section 168(d) (1) of Act July 29, 1970, Public Law 91-358 amended section, (A) by striking out "the United States District Court for the District of Columbia" the first time it appears and inserting in lieu thereof "the court having jurisdiction of civil actions wherein the amount in controversy exceeds \$50,000",

(B) by striking out "the United States District Court for the District of Columbia" the second time it appears and inserting in lieu thereof "such court", and

(C) by striking out "said United States District Court for the District of Columbia" each time it appears and inserting in lieu thereof "such court".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

#### CROSS REFERENCE

Court having jurisdiction of civil actions wherein amount in controversy exceeds \$50,000, see §§ 11-501, 11-921.

#### NOTES TO DECISIONS

##### Stockholder's suit

Under statute authorizing stockholder dissenting from corporation's decision to dispose of all assets to bring suit in District Court of United States for the District of Columbia, against corporation for fair value of shares, dissenting stockholder could not bring suit in Municipal Court for the District of Columbia, Civil Division, on theory that Municipal Court Act or Business Corporation Act of 1954 gave right to Municipal Court to assume jurisdiction, even though value of dissenting stockholder's shares was less than \$3,000. *Davis v. Universal Corporation* (D. C. Mun. App. 1957, 133 A. 2d 479).

The Municipal Court is a statutory court of limited jurisdiction, and its jurisdiction is not to be extended by inference or implication unless necessary to carry out the plain intention of Congress. *Id.*

### Chapter 3.—BOARDS OF TRADE

Sec.

- 29-301. Incorporation.
- 29-302. Power to hold real or personal estate.
- 29-303. Officers.
- 29-304. Election of officers—Failure to hold.
- 29-305. Tenure of office.
- 29-306. By-laws.
- 29-307. Fines—Imposition—Collection.
- 29-308. What business to be carried on.

#### § 29-301. Incorporation.

Any number of persons, not less than twenty, residing in the District, may associate themselves

together as a board of trade, and assemble at any time and place upon which a majority of the members so associating may agree, and elect a president and one or more vice-presidents, as they may see fit, and adopt a name, constitution, and by-laws, such as they may agree upon. Such persons shall thereupon become a body corporate and politic in fact and in name, by the name and style or title which they may have adopted, and by that name shall have succession, shall be capable in law to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in all the courts of law and equity; and they and their successors shall have a common seal, and may alter and change the same at their discretion. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, §§ 701, 702.)

#### CROSS REFERENCES

Powers, see § 29-308.

Quo warranto proceedings to question right to corporate rights and franchises, see § 16-3501 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-308.

#### § 29-302. Power to hold real or personal estate.

Such corporation, by the name and style which shall be adopted, shall be capable in law of purchasing, holding, and conveying any estate, real or personal, for the use of the corporation, not exceeding in quantity one city lot and building in the District. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 703.)

#### CROSS REFERENCE

Conveyances of real estate, formal requisites, see § 45-302.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-308.

#### § 29-303. Officers.

The president, vice-president, secretary, and treasurer shall be ex officio members of the board of directors, and, together with the directors elected, shall manage the business of the corporation. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 704.)

#### CROSS REFERENCE

Quo warranto proceedings questioning right to corporate office, see § 16-3501 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-308.

#### § 29-304. Election of officers—Failure to hold.

All officers shall be elected by a plurality of votes given at any election, and a general election of officers shall be held at least once in each year; but in case of any accidental failure or neglect to hold such general election the corporation shall not thereby lapse or terminate, but shall continue and exist, and the old officers shall hold over until the next general election of officers provided for in the constitution adopted. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 705.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-308.

#### § 29-305. Tenure of office.

The officers shall hold their offices for the time which shall be prescribed in the constitution adopted by the corporation and until others shall be elected



and qualified as prescribed by such constitution. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 706.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-308.

#### § 29-306. By-laws.

Such corporation shall have the right to admit as members such persons as they may see fit, and expel any members as they may see fit; and in all cases a majority of the members present at any stated meetings shall have the right to pass, and also the right to repeal, any by-law of the corporation; and in all cases the constitution and by-laws adopted by the corporation shall be binding upon and control the same until altered, changed, or abrogated in the manner that may be prescribed in such constitution. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 707.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-308.

#### § 29-307. Fines—Imposition—Collection.

Such corporation may inflict fines upon any of its members, and collect the same, for breach of the provisions of the constitution or by-laws; but no fine shall in any case exceed twenty-five dollars. Such fines may be collected by action of debt, brought in the name of the corporation, before the Superior Court of the District of Columbia, against the person upon whom the fine shall have been imposed. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 708; Feb. 17, 1909, 35 Stat. 623, ch. 134; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended section by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

The name and jurisdiction of the justice of the peace court was changed to the municipal court to conform to act Feb. 17, 1909.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded Act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions. See section 11-101.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-308.

#### § 29-308. What business to be carried on.

Such corporation shall have no power or authority to do or carry on any business excepting such as is usual in the management and conduct of boards of trade or chambers of commerce and is provided for in sections 29-301 to 29-307. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 709.)

### Chapter 4.—INSTITUTIONS OF LEARNING

#### Sec.

- 29-401. Organization — Certificate — Contents — Recording.
- 29-402. Incorporation—Signers—Body politic and corporate—Powers.
- 29-403. Corporate powers.
- 29-404. Property to be held for purposes of education.

#### Sec.

- 29-405. Application of funds.
- 29-406. Donations, devises, or bequests for particular purposes may be accepted.
- 29-407. Quantity of land which may be held.
- 29-408. Excess holdings of lands to revert on failure of corporation to dispose of same.
- 29-409. Officers.
- 29-410. Treasurer—Bond required.
- 29-411. Annual statement—Content.
- 29-412. Process against corporation.
- 29-413. Quo warranto.
- 29-414. Incorporation fee.
- 29-415. License to confer degrees—Issuance by Board of Higher Education—Evidence required.
- 29-416. Application for license—Recordation—Use of public school personnel authorized.
- 29-417. Revocation of license—Hearing before Board of Higher Education—Review.
- 29-418. Title of institution not to imply official connection with Government of United States or District of Columbia—Prohibition applicable to nonresidents and foreign corporation conferring degrees in District of Columbia—License not to be denied merely because of use of prohibited words.
- 29-419. Penalties.
- 29-420. Definition.
- 29-421. Exemption of institutions of higher education from usury law.

#### § 29-401. Organization — Certificate — Contents — Recording.

Any five or more persons desirous of associating themselves for the purpose of establishing an institution of learning, may make, sign, and acknowledge, before any officer authorized to take acknowledgment of deeds in the District, and file in the office of the recorder of deeds, a certificate in writing, to be recorded in a book kept for that purpose and open to public inspection, in which shall be stated:

First. The name or title by which the institution shall be known in law;

Second. The number of trustees, directors, or managers, and their names;

Third. The particular branch of literature and science, or either of them, proposed to be taught; and,

Fourth. If the institution is to be of the rank of a college or university, the number and designation of the professorships to be established. (Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 574.)

#### CROSS REFERENCES

Gallaudet College, see § 31-1025 et seq.  
Medical and dental colleges, see § 31-901 et seq.  
Religious schools, see § 29-512.

#### NOTES TO DECISIONS

#### Definitions

Institutions of learning within the meaning of this section are organizations of a permanent nature where instruction is given only in the higher branches of education, and which owe their origin to private or public munificence, and are established not for private gain but for the public good. *Chicago Business College v. Payne* (1902, 20 App. D.C. 606).

#### § 29-402. Incorporation—Signers—Body politic and corporate—Powers.

Upon filing such certificate, the persons signing and acknowledging the same and their successors and associates shall be a body politic and corporate, by the name and style stated in the certificate, and by that name and style shall have perpetual succession, with power to sue and be sued, plead and be impleaded; to acquire, hold, and convey property in all



lawful ways; to have and use a common seal, and to alter and change the same at pleasure; to make and alter, from time to time, such by-laws not inconsistent with the Constitution of the United States or the laws in force in the District as they may deem necessary for the government of the institution, and to confer upon such persons as may be considered worthy such academical or honorary degrees as are usually conferred by similar institutions. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 575.)

## CROSS REFERENCES

Abandonment or readjustment of streets and highways to provide land, see § 7-113.

Conveyances of real estate, formal requisites, see § 45-302.

Other provisions as to conferring of degrees, see § 29-415.

Quo warranto proceedings questioning right to corporate rights and franchises, see § 29-413.

## § 29-403. Corporate powers.

Such corporation shall be competent in law and equity to take to themselves, in their corporate name, real, personal, or mixed property by gift, grant, bargain and sale, conveyance, will, devise, or bequest of any person whomsoever, and to grant, bargain, sell, convey, demise, let, place out at interest, or otherwise dispose of the same for the use of the institution, in such manner as shall seem most beneficial thereto. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 576.)

## CROSS REFERENCE

Exemption of institutions of higher education from usury law, see § 29-421.

## NOTES TO DECISIONS

## Power to confer degrees

There is nothing in these sections which says that the corporation thus formed shall have the power to confer degrees, or admit its members to degrees, or to issue to its members a certificate pertaining to degrees. *National Assn. of Certified Public Accountants v. United States* (1923, 292 F. 668, 53 App. D.C. 391).

## Tax exemption

A corporation organized under these sections is entitled to exemption from real and personal property tax under statute exempting property that is used for educational purposes. *District of Columbia v. Mt. Vernon Seminary* (1939, 100 F. 2d 116, 69 App. D.C. 251).

## § 29-404. Property to be held for purposes of education.

Such corporation shall hold the property of the institution solely for the purposes of education, and not for the individual benefit of themselves or of any contributor to the endowment thereof. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 577.)

## NOTES TO DECISIONS

## Use of property and income

All of the property of the plaintiff is used for educational purposes, and though the receipts show a net profit to the institution, yet none of this has gone to the incorporators nor to any contributor to its endowment. *District of Columbia v. Mt. Vernon Seminary* (1939, 100 F. 2d 116, 69 App. D.C. 251).

## § 29-405. Application of funds.

The trustees, directors, or managers of any such corporation shall faithfully apply all the funds collected or the proceeds of the property belonging to the institution, according to their best judgment, in

erecting or completing suitable buildings, supporting necessary officers, instructors, and servants, and procuring books, maps, charts, globes, and philosophical, chemical, and other apparatus necessary to the success of said institution. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 578.)

## § 29-406. Donations, devises, or bequests for particular purposes may be accepted.

In case any donation, devise, or bequest shall be made for particular purposes, in accordance with the designs of the institution, and the corporation shall accept the same, such donation, devise, or bequest shall be applied in conformity with the express condition of the donor or devisor. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 579.)

## § 29-407. Quantity of land which may be held.

No such corporation shall hold more land at any one time than necessary for the purposes of education, as set forth in its articles of association, unless it shall have received the same by gift, grant, or devise, and in such case the corporation shall be required to sell or dispose of the same within fifteen years from the time the title thereto is acquired. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 580.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-408.

## § 29-408. Excess holdings of lands to revert on failure of corporation to dispose of same.

On failure to so dispose of the land, so much of the same over and above the amount necessary to be used as provided in section 29-407 shall revert to the original donor, grantor, devisor, or their heirs. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 581.)

## § 29-409. Officers.

Such corporation shall have the power to appoint a president or principal for the institution and such professors or servants as may be necessary, and to displace any of them, as the interests of the institution require; to fill vacancies which may happen by death, resignation, or otherwise among such officers or servants, and to prescribe and direct the course of studies to be pursued in the institution. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 582.)

## CROSS REFERENCE

Quo warranto proceedings questioning right to corporate office, see § 16-3501 et seq.

## § 29-410. Treasurer—Bond required.

Such corporation may require the treasurer of the institution and all other agents thereof, before entering upon the duties of their appointment, to give bond for the security of the corporation in such sums and with such security as may be deemed sufficient by the corporation. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 583.)

## § 29-411. Annual statement—Content.

It shall be the duty of the trustees of any institution, or a majority of them, to file, on or before the first Monday in January in each year, in the office of the recorder of deeds, who shall index the same, a statement of the trustees and officers of the institution, with an inventory of its property and liabili-



ties and students, and such other information as will exhibit its condition or operation. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 584.)

#### § 29-412. Process against corporation.

All process against any such corporation shall be by summons, and the service of the same shall be by leaving an attested copy thereof with the president, secretary, or treasurer, or at the office of the corporation at least sixty days before the return day thereof. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 585.)

#### § 29-413. Quo warranto.

In case any such corporation shall at any time violate or fail to comply with any of the preceding provisions, upon complaint being made to the Superior Court of the District of Columbia, a writ of quo warranto shall issue, and the United States attorney shall prosecute, in behalf of the people, for a forfeiture of all rights and privileges secured by this chapter to such corporation. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 586; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 909, 991, ch. 646, §§ 1, 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91-358, title I, § 155(c) (1) (G), 84 Stat. 570.)

#### AMENDMENT

1970—Section 155(c) (1) (G) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, § 32(b), eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1948, § 1, eff. Sept. 1, 1948, substituted "United States Attorney" for "United States District Attorney." See U.S. Code, title 28, § 501.

#### CROSS REFERENCE

Quo warranto proceedings generally, see § 16-3501 et seq.

#### § 29-414. Incorporation fee.

The fee payable to the recorder of deeds for filing the certificate of incorporation under this chapter shall be \$25. (Mar. 3, 1901, ch. 854, § 586a, as added Mar. 2, 1929, 45 Stat. 1503, ch. 523.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29-416, 29-419.

#### § 29-415. License to confer degrees—Issuance by Board of Higher Education—Evidence required.

No institution heretofore or hereafter incorporated under the provisions of this chapter shall have the power to confer any degree in the District of Columbia or elsewhere, nor shall any institution incorporated outside of the District of Columbia or any person or persons individually or as a partnership or association or otherwise, undertaking to confer any degree, operate in the District of Columbia, unless under and by virtue of a license from the Board of Higher Education of the District of Co-

lumbia, which before granting any such license may require satisfactory evidence—

1. That in the case of an individual or any unincorporated group of individuals he, or a majority of them, or in the case of an incorporated institution, a majority of the trustees, directors, or managers of said institution are persons of good repute and qualified to conduct an institution of learning.

2. That any such degree shall be awarded only after such quantity and quality of work shall have been completed as are usually required by reputable institutions awarding the same degree: *Provided*, That if more than one-half the requirements for any degree are earned by correspondence, or extramural study, such fact shall be conspicuously noted upon the diploma conferred: *Provided further*, That no diploma shall be issued conferring a degree in medicine or any healing art, or in dentistry, for study pursued or work done by correspondence.

3. That applicants for said degree possess the usual high-school qualifications at the time of their candidacy therefor.

4. That considering the number and character of the courses offered, the faculty is of reasonable number and properly qualified, and that the institution is possessed of suitable classroom, laboratory, and library equipment. (Mar. 3, 1901, ch. 854, § 586b, as added Mar. 2, 1929, 45 Stat. 1504, ch. 523; Nov. 7, 1966, 80 Stat. 1430, Pub. L. 89-791, title I, § 106.)

#### AMENDMENT

1966—Section 106(a) of act Nov. 7, 1966, amended section by substituting "Board of Higher Education" for "Board of Education", in the beginning clause.

#### LICENSES ISSUED PRIOR TO 1966 AMENDMENT

Section 106(b) of act Nov. 7, 1966, 80 Stat. 1430, Pub. L. 89-791, title I, provided: "Nothing contained in the amendment made by this section [subsec. (a) having amended §§ 29-415 to 29-418 and enacted § 29-420] shall be construed as effecting the validity of any license issued by the Board of Education prior to the date of the enactment [Nov. 7, 1966] of this title."

#### CROSS REFERENCES

D.C. Council authorized to regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

Medical and dental colleges, see § 31-901 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29-416, 29-417, 29-419.

#### NOTES TO DECISIONS

##### Construction

In District of Columbia Code authorizing board of education to license educational institutions and providing that board "may require satisfactory evidence" along certain specified lines, the word "may" has a mandatory significance and does not confer upon board the choice whether to require proof or not before granting a license, and hence such statute is not discriminatory. *Kraft v. Board of Education for District of Columbia* (D.C.D.C. 1965, 247 F. Supp. 21).

##### Evidence

Substantial evidence including showing that school, although called the "National Art Academy" was really a school for teaching of commercial art and design sustained findings of District of Columbia board of education showing failure to comply with some statutory requirements and standards, warranting revocation of license of school to confer degree of Bachelor of Fine Arts. *Kraft v. Board of Education for District of Columbia* (D.C.D.C. 1965, 247 F. Supp. 21).



In action to set aside order of District of Columbia board of education revoking license of plaintiff to confer the degree of Bachelor of Fine Arts, evidence must be considered from standpoint most favorable to the board; the court does not weigh the evidence on both sides but merely determines whether there was sufficient evidence to support the findings. *Id.*

**§ 29-416. Application for license—Recordation—Use of public school personnel authorized.**

Application for the license referred to in section 29-415 shall be in writing upon forms prepared under the direction of the Board of Higher Education, and shall be filed with the secretary of the said board, whose duty it shall be, in case the institution so licensed is incorporated under the laws of the District of Columbia, to forward a copy of said license to the recorder of deeds for the District of Columbia, who shall indorse upon the certificate of incorporation the fact that said license has been issued. The Board of Higher Education is hereby authorized to employ the personnel of the public-school system of the District of Columbia, so far as the same may be necessary, for the proper performance of its duties under sections 29-414 to 29-419, and it shall be the duty of all public officers and bureaus of the federal government concerned with educational matters to render such advice and assistance to the Board of Higher Education as it may from time to time consider necessary or desirable for the better performance of its duties under sections 29-414 to 29-419. (Mar. 3, 1901, ch. 854, § 586c, as added Mar. 2, 1929, 45 Stat. 1504, ch. 523; Nov. 7, 1966, 80 Stat. 1430, Pub. L. 89-791, title I, § 106.)

**AMENDMENT**

1966—Section 106(a) of act Nov. 7, 1966, amended section by substituting "Board of Higher Education" for "Board of Education", wherever latter term appeared in section.

**LICENSES ISSUED PRIOR TO 1966 AMENDMENT**

Saving clause with respect to licenses issued by Board of Education prior to amendment of this section by act Nov. 1, 1966, see § 106(b) of such act, set out as a note under § 29-415.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 29-419.

**§ 29-417. Revocation of license—Hearing before Board of Higher Education—Review.**

A license once issued may be revoked by said Board of Higher Education for noncompliance on the part of any individual or individuals, associations, or incorporated institution so licensed with the provisions of section 29-415. Upon the revocation of any such license it shall be the duty of the secretary of the Board of Higher Education, in the case of an institution incorporated under the laws of the District of Columbia, to forward a copy of the revocation to the recorder of deeds for the District of Columbia, who shall cause a notation to be placed upon the certificate of incorporation to the effect that its authority to confer degrees has been revoked: *Provided, however*, That thirty days' notice shall first have been given to such individual or individuals, association, or to the trustees, directors, or managers of said institutions, with full opportunity to be heard by said Board of Higher Education at either a public or nonpublic session thereof,

as may be desired by such individual or individuals, association, or the institution threatened with revocation of its license, and the evidence upon which said board shall act in the revocation of such license shall be committed to writing under the direction of the board, and upon application therefor a copy thereof furnished to such individual or individuals, association, or the institution whose license has been revoked: *And provided further*, That any party aggrieved by the action of said board in refusing to license or in revoking a license previously granted may appeal as provided in the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1501 to 1-1510). (Mar. 3, 1901, ch. 854, § 586d, as added Mar. 2, 1929, 45 Stat. 1504, ch. 523, and amended June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Nov. 7, 1966, 80 Stat. 1430, Pub. L. 89-791, title I, § 106; July 29, 1970, Pub. L. 91-358, § 163(a), title I, 84 Stat. 582.)

**AMENDMENTS**

1970—Section 163(a) of Act July 29, 1970, Public Law 91-358 amended section by striking out "have the action of the said Board of Higher Education reviewed by the United States District Court for the District of Columbia at an equity term thereof" and inserting in lieu thereof "appeal as provided in the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1501 to 1-1510)".

1966—Section 106(a) of act Nov. 7, 1966, amended section by substituting "Board of Higher Education" for "Board of Education", wherever latter term appeared in section.

**EFFECTIVE DATE OF 1970 AMENDMENT**

See note preceding section 11-101.

**CHANGE OF NAME**

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

**LICENSES ISSUED PRIOR TO 1966 AMENDMENT**

Saving clause with respect to licenses issued by Board of Education prior to amendment of this section by act Nov. 7, 1966, see § 106(b) of such act, set out as a note under § 29-415.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 29-416, 29-419.

**NOTES TO DECISIONS**

**Court's authority**

In action to set aside an order of District of Columbia board of education revoking license to confer degree of Bachelor of Fine Arts, court could consider whether board was guilty of any error of law, whether its findings of fact were supported by substantial evidence, and whether its decision was arbitrary or capricious, but court could not review the weight of evidence and reach an independent conclusion on basis of evidence presented at hearing before the board. *Kraft v. Board of Education for District of Columbia* (D.C.D.C. 1965, 247 F. Supp. 21).

**Evidence**

In action to set aside order of District of Columbia board of education revoking license of plaintiff to confer the degree of Bachelor of Fine Arts, evidence must be considered from standpoint most favorable to the board; the court does not weigh the evidence on both sides but merely determines whether there was sufficient evidence to support the findings. *Kraft v. Board of Education for District of Columbia* (D.C.D.C. 1965, 247 F. Supp. 21).

Substantial evidence including showing that school, although called the "National Art Academy" was really



a school for teaching of commercial art and design sustained findings of District of Columbia board of education showing failure to comply with some statutory requirements and standards, warranting revocation of license of school to confer degree of Bachelor of Fine Arts. *Id.*

#### Review

In statute providing that any party aggrieved by action of board of education in refusing to license or in revoking a license may have the action of board reviewed by United States District Court "at an equity term", there is no legal significance to quoted phrase in view of abolishment of distinction between law and equity, and all that phrase means is that review shall be in a civil non-jury branch of the court. *Kraft v. Board of Education for District of Columbia* (D.C.D.C. 1965, 247 F. Supp. 21).

**§ 29-418. Title of institution not to imply official connection with Government of United States or District of Columbia—Prohibition applicable to nonresidents and foreign corporation conferring degrees in District of Columbia—License not to be denied merely because of use of prohibited words.**

No institution incorporated under the provisions of this chapter shall use as its title, in whole or in part, the words United States, federal, American, national, or civil service, or any other words which might reasonably imply an official connection with the government of the United States, or any of its departments, bureaus, or agencies, or of the government of the District of Columbia, nor shall any such institutions advertise or claim the power to issue degrees under the authority of Congress or otherwise than under the authority of the license granted to them by the Board of Higher Education as hereinbefore provided. The prohibition in this section contained shall be deemed to include and is hereby declared applicable to any individual or individuals, association, or incorporation outside of the District of Columbia which shall undertake to do business in the District of Columbia or to confer degrees or certificates therein, and any such individual or individuals, association, or incorporation violating the provisions of this section shall be subject to the penalty hereinafter in section 29-419: *Provided*, That no institution, incorporated prior to April 16, 1934, under the provisions of this chapter, and carrying on its work exclusively in any foreign country with the consent and approval of the government thereof, shall if otherwise entitled to be licensed by the Board of Higher Education, be denied the same solely because of the inclusion in its name and as descriptive of its origin of any of the specific words the use of which is by this section forbidden to incorporations under the provisions of this chapter. (Mar. 3, 1901, ch. 854, § 586e, as added Mar. 2, 1929, 45 Stat. 1505, ch. 523, and amended Apr. 16, 1934, 48 Stat. 592, ch. 143; Nov. 7, 1966, 80 Stat. 1430, Pub. L. 89-791, title I, § 106.)

#### AMENDMENTS

1966—Section 106(a) of act Nov. 7, 1966, amended section by substituting "Board of Higher Education" for "Board of Education", wherever latter term appeared in section.

1934—Act Apr. 16, 1934, added the proviso. The act purported to amend § 29-415.

#### LICENSES ISSUED PRIOR TO 1966 AMENDMENT

Savings clause with respect to licenses issued by Board of Education prior to amendment of this section by act

Nov. 7, 1966, see § 106(b) of such act set out as a note under § 29-415.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29-416, 29-419.

#### § 29-419. Penalties.

Any person or persons who shall, directly or indirectly, participate in, aid, or assist in the conferring of any degree by any unlicensed individual or individuals, association, or institution, or by any individual or individuals, association, or institution whose license has been revoked, or shall advertise or claim any authority to confer any such degree, except in pursuance of provisions of sections 29-414 to 29-419, or who shall violate the provisions of section 29-418 shall be deemed guilty of a misdemeanor, and upon conviction thereof in the Superior Court of the District of Columbia shall be punished by a fine of not more than \$2,000, or imprisonment for not more than two years, or both. (Mar. 3, 1901, ch. 854, § 586f, as added Mar. 2, 1929, 45 Stat. 1505, ch. 523, and amended June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91-358, title I, § 155(c) (1) (H), 84 Stat. 570.)

#### AMENDMENT

1970—Section 155(c) (1) (H) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29-416, 29-418.

#### § 29-420. Definition.

As used in this chapter the term "Board of Higher Education" means the Board of Higher Education established pursuant to subchapter I of chapter 16 of title 31. (March 3, 1901, ch. 854, § 586g, as added Nov. 7, 1966, 80 Stat. 1430, Pub. L. 89-791, title I, § 106(a).)

#### LICENSES ISSUED PRIOR TO 1966 AMENDMENT

Saving clause with respect to licenses issued prior to enactment of this section by act Nov. 7, 1966, see § 106(b) of such act, set out as a note under § 29-415.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9-220.

#### § 29-421. Exemption of institutions of higher learning from usury law.

Any institution of higher education located in the District of Columbia and described in the first sentence of section 1141(a) of title 20, U.S. Code (other than District of Columbia Teachers' College, Federal City College, Gallaudet College, and Howard University) may borrow money at such rates of interest as the institution may determine, without regard to the



restrictions of any usury law applicable in the District of Columbia, and shall not plead any statutes against usury in any action. (Jan. 5, 1971, Pub. L. 91-650, title IV, § 402, 84 Stat. 1936.)

#### CODIFICATION

Section was enacted as a part of the District of Columbia Revenue Act of 1970 and not as a part of subchapter I of chapter 18 of the Act of Mar. 3, 1901, which comprises this chapter.

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91-650

See secs. 801-803 of act Jan. 5, 1971, Pub. L. 91-650, set out as a note under § 47-2501a.

#### CROSS REFERENCE

Usury law, see § 28-3303.

### Chapter 5.—RELIGIOUS SOCIETIES

#### Sec.

- 29-501. Land to be acquired.
- 29-502. Trustees.
- 29-503. Certificate—Verification—Recording.
- 29-504. Trustees or directors—Tenure of office—Vacancies—Rules and regulations—Removal.
- 29-505. Successors of trustees or directors to file certificate.
- 29-506. Failure to elect trustees or directors not to work dissolution.
- 29-507. Corporate powers.
- 29-508. Title vested in trustees or directors.
- 29-509. Conveyances of property—Powers of trustees or directors.
- 29-510. Mortgages.
- 29-511. Upon dissolution property to revert to donors.
- 29-512. Religious schools.
- 29-513. Conveyances to religious congregations—Not void for want of trustees.
- 29-514. Procedure for appointment of trustees to receive conveyances.
- 29-515. Suits by trustees.
- 29-516. Limitations on use of land.

#### § 29-501. Land to be acquired.

It shall be lawful for the members of any society or congregation in the District, formed for the purpose of religious worship, to receive by gift, devise, or purchase a quantity of land not exceeding an acre, and to erect thereon such houses and buildings and to make such other use of the land and such other improvements thereon as may be deemed necessary for the purposes named, and for the comfort and convenience of the society or congregation. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 587.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-512.

#### NOTES TO DECISIONS

##### Purpose abandoned

When for practically 20 years, there has been nothing in the nature of a religious society or collective body doing or sustaining the work which it may have been the purpose of the donor to organize, a purely voluntary association, unincorporated and unorganized, cannot be said to have an existence after definitely abandoning the purpose of its creation and ceasing to exercise its functions. *Rose Campbell Mission v. Richardson* (1935, 73 F. 2d 661, 64 App. D.C. 21).

##### Secular corporation

Appropriation for Providence Hospital, a secular corporation created by act of Congress, is not unconstitutional as a law respecting the establishment of religion, regardless of the religious opinion of the members of the corporation. *Bradfield v. Roberts* (1900, 20 S. Ct. 121, 175 U.S. 291, 44 L. Ed. 168).

#### § 29-502. Trustees.

Such society or congregation may assume a name, and any number of trustees, not exceeding ten, who shall be styled trustees of such society or congregation by the name so assumed, may be elected or appointed according to the rules or discipline governing the church or denomination to which said society or congregation may belong. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 588.)

#### CODIFICATION

Act June 26, 1922, 42 Stat. 665, ch. 241, added the words "or directors," following the word "trustees" in the eight sections immediately following, but failed to add them in this section, which says that they "shall" be styled trustees.

#### CROSS REFERENCES

Quo warranto proceedings to question right to corporate rights and franchises, see § 16-3501 et seq.

Religious schools, see § 29-512.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-512.

#### NOTES TO DECISIONS

##### Society disbanded

When for 17 years the society was disbanded and all its activities at an end, the property reverts to the original donor or his heirs. *Rose Campbell Mission v. Richardson* (1935, 73 F. 2d 661, 64 App. D.C. 21).

#### § 29-503. Certificate—Verification—Recording.

The persons elected or appointed as trustees or directors shall immediately thereafter make a certificate under their hands and seals, stating the date of their election or appointment, the name of the society or congregation, and length of time for which they were elected or appointed, which shall be verified by the affidavit of one of the persons making the same, and shall be filed and recorded in the office of the recorder of deeds of the District. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 589; June 26, 1922, 42 Stat. 665, ch. 241.)

#### AMENDMENT

1922—Act June 26, 1922, inserted the words "or directors" after the word "trustees."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-512.

#### § 29-504. Trustees or directors—Tenure of office—Vacancies—Rules and regulations—Removal.

The trustees or directors shall hold office during the period stated in their certificates, and vacancies in the office of trustee may be filled by election or appointment as above provided, and rules and regulations may be adopted in relation to the management of the estate and the duties of trustees or directors, or for their removal from office, in accordance with the rules or discipline governing the church or denomination to which such society or congregation may belong, not inconsistent with the Constitution of the United States and the laws in force in the District. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 590; June 26, 1922, 42 Stat. 665, ch. 241.)

#### AMENDMENT

1922—Act June 26, 1922, inserted the words "or directors" after the word "trustees" wherever it appears.

#### CROSS REFERENCE

Quo warranto proceedings questioning right to corporate office, see § 16-3501 et seq.



## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-512.

§ 29-505. Successors of trustees or directors to file certificate.

At the expiration of the term of service of any of the trustees or directors one or more successors may be elected or appointed, and a certificate of their appointment or election shall be made, verified, filed, and recorded as provided hereinbefore. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 591; June 26, 1922, 42 Stat. 665, ch. 241.)

## AMENDMENT

1922—Act June 26, 1922, inserted the words "or directors" after the word "trustees."

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-512.

§ 29-506. Failure to elect trustees or directors not to work dissolution.

A failure to elect or appoint trustees or directors at the proper time shall not work a dissolution of the society or congregation; but the trustees or directors last elected or appointed shall be considered as in office until another election or appointment shall take place. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 592; June 26, 1922, 42 Stat. 665, ch. 241.)

## AMENDMENT

1922—Act June 26, 1922, inserted the words "or directors" after the word "trustees" wherever it appears.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-512.

§ 29-507. Corporate powers.

Such trustees or directors and their successors shall have perpetual succession and existence, and shall be capable in law to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in all courts of law or equity whatsoever, in and by the name and style assumed as hereinbefore provided. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 593; June 26, 1922, 42 Stat. 665, ch. 241.)

## AMENDMENT

1922—Act June 26, 1922, inserted the words "or directors" after the word "trustees."

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-512.

## NOTES TO DECISIONS

## Action by trustees

Under this chapter relating to incorporation of religious societies, action by trustees of church to recover church property could be brought in name of trustees and was not required to be brought in corporate name of church. *Stevenson v. Reed* (D. C. Mun. App. 1953, 96 A. 2d 268).

§ 29-508. Title vested in trustees or directors.

The title to land authorized to be purchased and to buildings and improvements thereon shall be vested in the trustees or directors by their assumed name and their successors forever, and the same shall be held for the uses and purposes named and no other. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 594; June 26, 1922, 42 Stat. 665, ch. 241.)

## AMENDMENT

1922—Act June 26, 1922, inserted the words "or directors" after the word "trustees."

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-512.

§ 29-509. Conveyances of property—Powers of trustees or directors.

The trustees or directors shall have power, under the direction of the society or congregation, or the authority by whom they were elected or appointed, to sell and execute deeds and conveyances of the property authorized to be held by the society or congregation; and such deeds or conveyances shall have the same effect as like deeds or conveyances made by natural persons; but no deed or conveyance shall be made so as to defeat or destroy the interest or effect of any grant, donation, or bequest and all grants, donations, and bequests shall be appropriated and used as directed by the person making the same. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 595; June 26, 1922, 42 Stat. 665, ch. 241.)

## AMENDMENT

1922—Act June 26, 1922, inserted the words "or directors" after the word "trustees."

## CROSS REFERENCE

Conveyances of real estate, see formal requisites, § 45-302.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-512.

§ 29-510. Mortgages.

The trustees or directors shall have power under the direction of the society or congregation, or the authority by whom they were elected or appointed, to execute mortgages, or deeds of trust in the nature of mortgages, upon the estate and property which any society or congregation are authorized to hold or to lease the same for a term not exceeding ten years; and such mortgages, deeds, and conveyances shall have the same effect and be enforced by the same remedies and proceedings as like mortgages, deeds, leases, and conveyances made by natural persons. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 596; June 26, 1922, 42 Stat. 665, ch. 241.)

## AMENDMENT

1922—Act June 26, 1922, inserted the words "or directors" after the word "trustees."

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-512.

§ 29-511. Upon dissolution property to revert to donors.

Upon the dissolution of any society or congregation the estate and property of such society or congregation shall revert back to the persons, their heirs, and assigns who may have given or contributed to the purchase of or payment for the same, according to their respective rights. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 597.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-512.

## NOTES TO DECISIONS

## Application

Whether the dissolution is the result of an agreement on the part of the former members or is accomplished by abandonment and nonuser, the statute applies and in either case the property reverts. *Rose Campbell Mission v. Richardson* (1935, 73 F. 2d 661, 64 App. D.C. 21).



## § 29-512. Religious schools.

The provisions of sections 29-501 to 29-511 are intended to extend to members of societies formed to establish and maintain private schools for religious purposes, but shall not be construed as conferring privileges or any benefits to such societies under the school laws of the District. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 598.)

## § 29-513. Conveyances to religious congregations—Not void for want of trustees.

Where any conveyance or devise of real estate is made for the use and benefit of any religious congregation as a place of public worship, such conveyance or devise shall not be void or frustrated by reason of the want of trustees to take and hold the same in trust, but trustees may be appointed as provided in section 29-514. (R. S., D. C., § 453.)

## § 29-514. Procedure for appointment of trustees to receive conveyances.

When such conveyance or devise is made whether by the intervention of trustees or not the court having probate jurisdiction shall, on application of the United States attorney, on behalf of the authorities of any such congregation, have power to appoint trustees, originally, when there are none, or to substitute others, from time to time, in cases of death, refusal, or neglect to act, removal from the District, or other inability to execute the trust beneficially and conveniently; and the legal title shall thereupon become exclusively vested in the whole number of the trustees and their successors. (R.S., D.C., § 454; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91-358, title I, § 158(a) (2), 84 Stat. 576.)

## AMENDMENT

1970—Section 158(a) (2) of Act July 29, 1970, Public Law 91-358 amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court having probate jurisdiction".

## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

## CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

## CROSS REFERENCES

Court having probate jurisdiction, see §§ 11-501, 11-921. Other provisions concerning rights and duties of surviving trustees, see § 20-1105.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-513.

## § 29-515. Suits by trustees.

A majority of the acting trustees for any such congregation may sue and be sued in their own names, in relation to the title, possession, or enjoyment of such property, without abatement by the death of any of the trustees, or substitution of others; and the action or suit may be prosecuted to its final termination in the names of the trustees by or against whom the same was instituted, and all other proceedings

had in relation thereto, in like manner as if such death or substitution had not occurred. (R. S., D. C., § 455.)

## NOTES TO DECISIONS

## In general

Under statute relating to incorporation of religious societies, action by trustees of church to recover church property could be brought in name of trustees and was not required to be brought in corporate name of church. *Stevenson v. Reed* (D. C. Mun. App. 1953, 96 A. 2d 268).

## § 29-516. Limitations on use of land.

Land authorized to be conveyed and held subsequent to June 17, 1844, and prior to May 5, 1870, for the uses of any religious congregation, in quantity not exceeding fifty acres, if in the District outside of the cities of Washington and Georgetown, nor exceeding three acres, if in either of said cities, shall not be held by the trustees of such congregation for any other use than as a place of public worship, religious or other instruction, burial-ground, or residence of their minister. (R. S., D. C., § 456.)

## Chapter 6.—CHARITABLE, EDUCATIONAL, AND RELIGIOUS ASSOCIATIONS

## Sec.

29-601. Formation—Certificate—Contents.

29-602. Formation—Signers incorporated—Powers—Taxation of property.

29-603. Trustees, directors, and managers.

29-604. Reincorporation—Extension of time of corporate existence—Change of name.

29-605. Property—Power to lease, mortgage, sell—Proceeds.

29-606. Name of corporation.

## § 29-601. Formation—Certificate—Contents.

Any three or more persons of full age, citizens of the United States, a majority of whom shall be citizens of the District, who desire to associate themselves for benevolent, charitable, educational, literary, musical, scientific, religious, or missionary purposes, including societies formed for mutual improvement or for the promotion of the arts, may make, sign, and acknowledge, before any officer authorized to take acknowledgment of deeds in the District, and file in the office of the recorder of deeds, to be recorded by him, a certificate in writing, in which shall be stated—

First. The name or title by which such society shall be known in law.

Second. The term for which it is organized, which may be perpetual.

Third. The particular business and objects of the society.

Fourth. The number of its trustees, directors, or managers for the first year of its existence. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 599.)

## CROSS REFERENCES

Eleemosynary, curative, correctional, and penal institutions, see title 32.

Gallaudet College, see § 31-1025 et seq.

Medical and dental colleges, see § 31-901 et seq.

Provisions deemed contained in governing instrument of corporation or association treated as tax exempt private foundation, see § 29-1030a.

Religious schools, see § 29-512.

## NOTES TO DECISIONS

## Abandonment of purpose

A purely voluntary religious association, unincorporated and unorganized, cannot be said to have an existence



after definitely abandoning the purpose of its creation and ceasing to exercise its functions. *Rose Campbell Mission v. Richardson* (1935, 73 F. 2d 661, 64 App. D.C. 21).

#### Accounting

The South Carolina subordinate lodge of a grand lodge organized under act May 1870, 16 Stat. 98, ch. 80, in the District of Columbia could not be held to account for a judgment against the Georgia division of the same lodge. *Washington v. King* (1931, 157 S.E. 613, 159 S. Car. 431).

#### De facto corporations

To establish a corporation as de facto is all that is necessary to enable it to maintain an action against any one, other than the State, who has contracted with the corporation, or done it a wrong. *Baltimore & P. R. Co. v. Fifth Baptist Church* (1890, 11 S. Ct. 185, 137 U.S. 568, 34 L. Ed. 784).

#### Federal question

When a Federal right, as the right to incorporate a fraternal organization under act May 5, 1870, 16 Stat. 98, ch. 80, was held by a State court to have been lost by subsequent conduct, that of itself involves no Federal question, and the Supreme Court may not examine the decision unless the State court in substance is denying the right. *Creswill v. Grand Lodge K. of P.* (1912, 32 S. Ct. 822, 225 U.S. 246, 56 L. Ed. 1074).

Where a lodge or fraternal organization was organized in Georgia in 1864, and incorporated under act May 5, 1870, 16 Stat. 98, ch. 80, complying with the statute in all respects, membership in which was limited to white males, it was estopped by laches from contesting the incorporation in the District of Columbia of an organization similar in name, organized by Negroes in Mississippi in 1880, in Georgia in 1886, and application made in the District of Columbia in 1889. *Id.*

#### Health association

Group health association is a "relief association, not conducted for profit." *Jordan v. Group Health Assn.* (1940, 107 F. 2d 239, 71 App. D.C. 38).

Group health is in fact and in function a consumer cooperative, the functions of such an organization are not identical with those of insurance or indemnity companies and the latter are concerned primarily, if not exclusively, with risk and the consequences of its descent. *Id.*

A group of individuals might incorporate themselves for their own mutual benefit and such corporation, not for profit but for the mutual benefit of its members, is not engaged in practice of medicine when they contracted with members of medical profession. *Group Health Assn. v. Moor* (D.C.D.C. 1938, 24 F. Supp. 445).

#### Hospital

Even if it be a fact that the appellee is incorporated as a charitable corporation and even if judicial notice could be taken that it is so incorporated, this would not conclude the question whether or not it is a charity. *White v. Central Dispensary & Emergency Hosp.* (1938, 99 F. 2d 355, 69 App. D.C. 122, 119 A.L.R. 1002).

#### Injunction

White fraternal order incorporated under State law was not entitled to injunction against Negro order, organized under this act, in view of laches and acquiescence. *Ancient Egyptian Arabic Order v. Michaux* (1929, 49 S. Ct. 485, 279 U.S. 737, 73 L. Ed. 931).

#### Object of organization

Object for which a corporation is organized is to be determined from what is stated in its certificate of incorporation and its constitution and bylaws. *Vanderbilt v. Com. Int. Rev.* (C.C.A. 1, 93 F. 2d 360).

A corporation cannot deny its purposes are those set forth in its charter. *Better Business Bureau of Washington, D. C. v. District Unemployment Compensation Board* (D.C. Mun. App. 1943, 34 A. 2d 614).

#### Power to confer degrees

Claiming the right to confer degrees a right in the articles of incorporation does not confer such power. "It might have taken less than the section gave but not more." *National Assn. of Certified Public Accountants v. United States* (1923, 292 F. 668, 53 App. D.C. 391).

Corporation organized under this section has no power to confer degrees. *Id.*

#### Proof of corporate existence

To prove the existence of a corporation under act May 5, 1870, 16 Stat. 99, ch. 80, § 2, a recorder's copy of the certificate of incorporation, acknowledgment, and affidavit was sufficient, together with a record of an action in which the corporation recovered judgment against the defendant without objection of capacity to sue. *Baltimore & P.R. Co. v. Fifth Baptist Church* (1890, 11 S. Ct. 185, 137 U.S. 568, 34 L. Ed. 784).

#### § 29-602. Formation—Signers incorporated—Powers—Taxation of property.

Upon filing their certificates the persons who shall have signed and acknowledged the same and their associates and successors shall be a body politic and corporate, by the name stated in such certificate; and by that name they and their successors may have and use a common seal, and may alter and change the same at pleasure, and may make by-laws and elect officers and agents, and may take, receive, hold, and convey real and personal estate necessary for the purposes of the society as stated in their certificate, and other real and personal property the income from which shall be applied to the purposes of such society: *Provided, however,* That this section shall not be construed to exempt any property from taxation in addition to that specifically exempted by law. (Mar. 3, 1901, 31 Stat. 1284, ch. 854, § 600; Apr. 20, 1932, 47 Stat. 87, ch. 121.)

#### AMENDMENT

1932—Act Apr. 20, 1932, substituted "income from which shall be applied to the purposes of such society" for "clear annual income from which shall not exceed in value \$25,000."

#### CROSS REFERENCES

Abandonment or readjustment of streets and highways to provide lands, see § 7-113.

Conveyances of real estate, formal requisites, see § 45-302.

Quo warranto proceedings questioning rights to corporate rights and franchises, see § 16-3501 et seq.

#### NOTES TO DECISIONS

##### Group Health Association

Appellee Group Health Association, organized as non-profit cooperation, was not an insurance company. *Jordan v. Group Health Assn.* (1940, 107 F. 2d 329, 71 App. D.C. 38).

##### Tax exemption—Real estate

In order to qualify under statute exempting real estate belonging to educational institutions from taxation in District of Columbia, institution must render service which relieves District of Columbia of burden it otherwise might assume. *Washington Chapter of American Institute of Banking v. District of Columbia* (1953, 203 F. 2d 68, 92 U.S. App. D.C. 139).

##### — Social security

In ascertaining whether a corporation organized under § 29-601 relating to benevolent, charitable, educational, and similar corporations was exempt from District of Columbia Unemployment Compensation Act, § 46-301, said section must be considered but said section cannot be conclusive in face of specific objects selected by corporation for inclusion in its charter. *Better Business Bureau of Washington, D. C. v. District Unemployment Compensation Board* (D.C. Mun. App. 1943, 34 A. 2d 614).

A corporation, whose object in part, as indicated by its charter, was for the mutual welfare, protection, and improvement of business methods among merchants and for protecting the interests of certain classes of businesses to enable them to profitably conduct their business, was not exempt as organized exclusively for "educational or scientific purposes" from District of Columbia Unemployment



Compensation Act, § 46-301, notwithstanding corporation's purposes were to be accomplished by educational methods. *Id.*

#### § 29-603. Trustees, directors and managers.

Such incorporated society may elect its trustees, directors, or managers at such time and place and in such manner as may be specified in its bylaws, who shall have the control and management of the affairs and funds of the society, and a majority of whom shall be a quorum for the transaction of business, unless a less number be specified as a quorum in the bylaws; and whenever any vacancy shall happen in such board of trustees, directors, or managers the vacancies shall be filled in such manner as shall be provided by the bylaws of the society. The bylaws of a society incorporated under the provisions of this chapter may provide that stockholders, if the same be a stock corporation, or members or delegates, if the same be not a stock corporation, may vote by proxy or by mail. The bylaws may restrict such method of voting to the election of trustees, directors, or managers, or to other matters specified in the bylaws, and may prescribe the form or forms of proxy or of mail ballot to be used and the procedure to be followed in the casting and recording of such votes. (Mar. 3, 1901, 31 Stat. 1284, ch. 854, § 601; June 10, 1930, 46 Stat. 538, ch. 439; Nov. 30, 1945, 59 Stat. 588, ch. 497; Aug. 7, 1946, 60 Stat. 882, ch. 781.)

#### AMENDMENTS

1946—Act Aug. 7, 1946, authorized bylaws to provide for voting by proxy or by mail, to restrict such method of voting and to prescribe the form of ballot.

1945—Act Nov. 30, 1935, inserted in the first sentence "unless a less number be specified as a quorum in the bylaws" and deleted therefrom the proviso reading "Provided, That any society formed only for religious or missionary purposes may provide in its by-laws for a less number than a majority of its trustees to constitute a quorum."

1930—Act June 10, 1930, added to the first sentence the proviso reading "Provided, That any society formed only for religious or missionary purposes may provide in its by-laws for a less number than a majority of its trustees to constitute a quorum".

#### CROSS REFERENCE

Quo warranto proceedings questioning right to corporate office, see § 16-3501 et seq.

#### NOTES TO DECISIONS

##### Suit by United States

The United States, as *parens patriae*, has authority to bring action on behalf of unknown beneficiaries of Foundation organized as charitable corporation under District of Columbia law to cancel its trustees' transfers of shares of building corporation's stock owned by Foundation and require return of such shares to Foundation by transferees. *United States v. Mount Vernon Mortgage Corp.* (D.C.D.C. 1955, 128 F. Supp. 629, affirmed 236 F. 2d 724, 98 U.S. App. D.C. 429, certiorari denied 77 S. Ct. 386, 352 U.S. 988, 1 L. Ed. 2d 367).

#### § 29-604. Reincorporation—Extension of time of corporate existence—Change of name.

Any existing benevolent, charitable, educational, musical, literary, scientific, religious, or missionary corporation incorporated under the provisions of this chapter, including societies formed for mutual improvement, may reincorporate or may continue the term of its existence beyond the time specified in its original certificate of incorporation, or by law, or in any certificate of continuance of corporate

existence, or may change its name by the written consent of two-thirds of its trustees or directors or other governing board, which consent in the case of a stock corporation shall be accompanied by the written consent of the owners of two-thirds of the capital stock of the corporation. A certificate that such consent or consents have been duly given, containing the original name and the new name of the corporation, if the same has been changed, and the term of corporate existence as continued shall be subscribed and acknowledged by the president or vice-president and by the secretary or assistant secretary of such corporation, and shall be filed with such consent or consents in the office of the recorder of deeds, to be recorded by him. Upon the filing of such certificate all the rights, powers, property, and effects of such existing corporation subject to existing liabilities shall vest in and belong to the corporation so reincorporated, continued, or renamed. (Mar. 3, 1901, 31 Stat. 1284, ch. 854, § 602; Mar. 3, 1905, 33 Stat. 1012, ch. 1445.)

#### AMENDMENT

1905—Act Mar. 3, 1905, amended section to read as set out in the text. Prior to the amendment the section read as follows: "The trustees, directors, or stockholders of any existing benevolent, charitable, educational, musical, literary, scientific, religious, or missionary corporation, including societies formed for mutual improvement, may, by conforming to the requirements herein, reincorporate themselves, or continue their existing corporate powers under this chapter, or may change their name, stating in their certificate the original name of such corporation as well as their new name assumed; and all the property and effects of such existing corporation shall vest in and belong to the corporation so reincorporated or continued."

#### NOTES TO DECISIONS

##### Consolidation with another organization

Bill praying for appointment of receiver for church corporation was dismissed for lack of equity where the acts complained of, such as the sale of the church property, consolidation with another organization, and change of name, were done by the duly elected trustees of the corporation. *Schooley v. Dimmick* (1926, 13 F. 2d 956, 56 App. D.C. 350).

#### § 29-605. Property—Power to lease, mortgage, sell—Proceeds.

Any property of the corporation may be leased, encumbered by mortgage or deed of trust in the nature of a mortgage, or sold and conveyed absolutely, when authorized by a vote of the majority of the shares of stock, if the same be a stock corporation, or by a vote of the majority of the directors, managers, or trustees, if the same be not a stock corporation, at a meeting called for the purpose, the proceedings of which meeting shall be duly entered in the records of the corporation, and the proceeds arising therefrom shall be applied or invested for the use and benefit of such corporation. (Mar. 3, 1901, 31 Stat. 1284, ch. 854, § 603.)

#### CROSS REFERENCE

Conveyances of real estate, formal requisites, see § 45-302.

#### § 29-606. Name of corporation.

The provisions of this chapter shall not extend or apply to any corporation, association, or individual who shall in the certificate filed with the recorder of



deeds use or specify a name or style the same as that of any other incorporated body in the District. (Mar. 3, 1901, 31 Stat. 1284, ch. 854, § 604; June 30, 1902, 32 Stat. 533, ch. 1329.)

#### REFERENCES IN TEXT

In the original "this chapter" refers to chapter 18 of act Mar. 3, 1901, ch. 854, which includes sections 574—797. For distribution of sections 574—797 in the Code, see 'Tables.

#### AMENDMENT

1902—Act June 30, 1902, struck out the syllable "sub" before chapter, and inserted after the word "any," the word "corporation."

### Chapter 7.—DISSOLUTION

Sec.

- 29-701. Dissolution—Voluntary—Application to court having jurisdiction.
- 29-702. Contents of application.
- 29-703. Order to appear—Notice.
- 29-704. Reference to take testimony.
- 29-705. Decree of dissolution.
- 29-706. Receiver—Bond required.
- 29-707. Receiver to be vested with corporate property.
- 29-708. Receiver to collect assets—Notice of appointment of receiver—Presentation of claims.
- 29-709. Transactions and judgments confessed after petition filed—Void.
- 29-710. Receiver—Arbitration of controversies—Executory contracts—Insurance.
- 29-711. Surplus assets—Distribution to creditors.
- 29-712. Surplus assets—Dividends to stockholders.
- 29-713. Receiver—Under court's direction—Compensation.
- 29-714. Dissolution before capital stock paid in or investments made.
- 29-715. Trustees for creditors and stockholders.
- 29-716. Actions not to abate—Judgments.
- 29-717. Proceedings in corporate name for use of others.
- 29-718. Suits after dissolution—Process.
- 29-719. Involuntary dissolution—Suit by United States Attorney—Petition—Order to show cause.
- 29-720. Answer of corporation—Verification.
- 29-721. Pleading.
- 29-722. Trial—Decree of forfeiture—Appointment of receiver.
- 29-723. Ex parte proceeding after default in pleading.
- 29-724. Final decree—Power to withhold pending remedy of grievance.
- 29-725. Injunction against assuming corporate franchise or transacting business not authorized by charter.
- 29-726. Involuntary dissolution at the suit of creditors.
- 29-727. Injunction against transferring assets—Receiver.
- 29-728. Parties defendant in creditor's suit.
- 29-729. Account and distribution.

#### § 29-701. Dissolution—Voluntary—Application to court having jurisdiction.

When a majority of the trustees, directors, or other officers having the management of the concerns of any corporation in the District, or stockholders representing not less than one-third of the capital stock of any such corporation, discover that the property and effects of the corporation have been so far reduced, by losses or otherwise, that it will not be able to pay all just demands against it or offer a reasonable security to those who deal with it, or they shall deem it beneficial to the interests of the stockholders that the corporation be dissolved, or when such directors, trustees, or other officers are authorized by a majority of the stockholders to apply for a decree, as hereinafter provided, or when the objects of the corporation have wholly failed or are entirely abandoned or are impracticable, they may apply to the

court having jurisdiction of civil actions wherein the amount in controversy exceeds \$50,000 by petition for the dissolution of said corporation. (Mar. 3, 1901, 31 Stat. 1316, ch. 854, § 768; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91-358, § 168(d) (2), title I, 84 Stat. 589.)

#### AMENDMENT

1970—Section 168(d) (2) of Act July 29, 1970, Public Law 91-358 amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court having jurisdiction of civil actions wherein the amount in controversy exceeds \$50,000".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

#### CROSS REFERENCES

Court having probate jurisdiction, see §§ 11-501, 11-921. Dissolution by sale of all assets, see § 29-240. Involuntary dissolution, see § 29-719 et seq.

#### NOTES TO DECISIONS

##### Cessation of business

"A corporation does not cease to exist through the discontinuance of its business, merely, though ceasing to maintain its active organization, or by becoming hopelessly insolvent." *Fields v. United States* (1906, 27 App. D.C. 433, dismissed 27 S. Ct. 543, 205 U.S. 292, 51 L. Ed. 807). See also, *Brown v. Delafield & Baxter Cement Co.* (1893, 1 App. D.C. 232).

#### § 29-702. Contents of application.

Such application shall contain a statement of the reasons upon which it is founded, and there shall be annexed thereto—

First. A full, just, and true inventory of all the estate, real and personal, of the corporation, and of all the books, vouchers, and securities relating thereto.

Second. A full, just, and true account of the capital stock of the corporation, specifying the names of the stockholders, their residences, when known, the number of shares belonging to each, the amounts paid in upon said shares, respectively, and the amounts still due thereon.

Third. A statement of all the incumbrances on the property of the corporation and of all the engagements entered into by it which have not been fully satisfied or canceled, specifying the place of residence of each creditor and of every person to whom such engagements were made, if known, the sum owing to each creditor and the nature and consideration of the indebtedness, and such application shall be verified by affidavit. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 769.)

#### NOTES TO DECISIONS

##### Voluntary liquidation

A voluntary liquidation and dissolution of a solvent company together with appointment of receivers and reference to the auditor as provided by law was not ultra vires, illegal or void. *Tryson v. Southern Realty Corp.* (1921, 274 F. 135, 51 App. D.C. 55).



## § 29-703. Order to appear—Notice.

On the filing of such application, accounts, inventories, and affidavit, an order shall be passed requiring all persons interested in said corporation to appear in said court and show cause by a day named, if any they have, why it should not be dissolved, and a notice of said order shall be published in some newspaper of general circulation weekly for three successive weeks, the first insertion to be not less than one month before the day fixed for showing cause as aforesaid. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 770.)

## CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32 (b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

## § 29-704. Reference to take testimony.

Whether answer be made or not, the cause shall be referred to the auditor, who shall take testimony in relation to the allegations of the petition, and report to the court, with all convenient speed, with a statement of the property and effects, debts, credits, and engagements of the corporation and all other matters relative to the issues in said cause. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 771.)

## CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32(b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

## § 29-705. Decree of dissolution.

If it appear to the court that the corporation is insolvent, or that a dissolution thereof would be beneficial to the stockholders and not injurious to the public interests, or that the objects of the corporation have wholly failed or been abandoned or are impracticable, a decree shall be entered dissolving the corporation and appointing one or more receivers of its estate and effects; and the corporation shall thereupon be dissolved and cease to exist. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 772.)

## CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32(b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

## § 29-706. Receiver—Bond required.

A director, trustee, or other officer of the corporation, or any of its stockholders, may be appointed a receiver, and any receiver so appointed shall give bond in such penalty, and with such surety or sureties, as may be approved by the court, conditioned for the due discharge of his duties as receiver. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 773.)

## CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32(b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

## § 29-707. Receiver to be vested with corporate property.

Upon his giving surety as aforesaid the receiver shall be vested with all the estate, real or personal, of the corporation, for the benefit of its creditors and stockholders. (Mar. 3, 1901, 31 Stat. 1317, ch. 854 § 774.)

## NOTES TO DECISIONS

## Stockholders union with receiver

As insurance company was solvent, and no stockholder, as far as the record shows, personally united with the receivers in their attack upon the sale, the court refused to set it aside. *Tryson v. Southern Realty Corp.* (1921, 274 F. 135, 51 App. D.C. 55).

## § 29-708. Receiver to collect assets—Notice of appointment of receiver—Presentation of claims.

The said receiver shall proceed to collect and take into his possession all the assets and effects of the corporation, including any sums due and unpaid upon the subscriptions to the capital stock of the corporation, and shall have authority to institute all needful actions for that object. He shall give public notice of his appointment and require all creditors of the corporation to present their claims to him. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 775.)

## § 29-709. Transactions and judgments confessed after petition filed—Void.

All sales, assignments, transfers, mortgages, and conveyances of any part of the estate, real or personal, of said corporation, including choses in action of every description, made after the filing of the petition for dissolution, in payment of or as security for any existing or prior debt, or for any other consideration, and all judgments confessed by said corporation after that time, shall be void as against the receiver appointed on said petition and as against the creditors of the corporation. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 776.)

## § 29-710. Receiver—Arbitration of controversies—Executory contracts—Insurance.

The receiver may settle controversies that arise between him and the debtors or creditors of the corporation by arbitration. If there be any open and subsisting engagements or contracts of the corporation in the nature of insurance, or contingent engagements of any kind, the receiver may, with the consent of the party holding such engagements, cancel and discharge the same by refunding to such party the premium or consideration paid thereon to the corporation, or so much thereof as shall be in the same proportion to the time which remains of any risk assumed by such engagements as the whole premium bears to the whole term of such risk; and upon such amount being paid by the receiver to the person holding such engagement it shall be deemed canceled and discharged as against the receiver. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 777.)



**§ 29-711. Surplus assets—Distribution to creditors.**

The receiver may retain out of the money in his hands the amounts necessary for the purpose of canceling and discharging any open and subsisting engagements and of satisfying any demands for which a suit may be pending against the corporation and the costs of the proceeding, and distribute the residue among the creditors of the corporation, giving preference to debts which are liens on the property of the corporation, and shall make dividends from time to time among the creditors until their debts are paid in full. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 778.)

**§ 29-712. Surplus assets—Dividends to stockholders.**

No dividends shall be paid to stockholders until after the final dividend to the creditors, and if, after such final dividend is made, there remain any surplus in the receiver's hands, he shall distribute the same among the stockholders in proportion to the respective amounts paid in by them severally on their shares of stock. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 779.)

**§ 29-713. Receiver—Under court's direction—Compensation.**

The receiver shall be subject to the direction of the court as to making dividends and rendering his accounts and shall receive such commission as the court shall allow, not exceeding the rate allowed to executors and administrators, and reasonable counsel fees for services rendered to him. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 780.)

**CHANGE OF NAME**

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32(b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

**§ 29-714. Dissolution before capital stock paid in or investments made.**

When a majority of the directors, trustees, or other officers of a corporation become satisfied that the objects of the corporation can not be accomplished, and no instalment of the capital stock has been paid, and no investments have been made and no debts incurred which are unpaid, they may call a meeting of the stockholders, by a notice published in some newspaper of general circulation, and if a majority, in amount, of the stockholders present at such meeting, in person or by proxy, shall decide that the objects of the corporation can not be accomplished, the corporation shall thereupon be dissolved and cease. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 781.)

**§ 29-715. Trustees for creditors and stockholders.**

Upon the dissolution of a corporation by the expiration of its charter, or otherwise, unless other persons be appointed by the stockholders, directors, or trustees of the corporation, or by a decree of the court having jurisdiction of civil actions wherein the amount in controversy exceeds \$50,000, the directors or trustees acting last before the dissolution, and their survivors, shall be the trustees for the creditors and stockholders of the dissolved corpora-

tion, and shall have full power to settle the affairs of the same, to collect its assets and pay its outstanding debts, and divide among its stockholders the money or other property remaining, in proportion to the stock of each stockholder paid up; and in case of the refusal of said trustees or directors, or a majority of them, to act, the said court may, upon the application of any person interested, appoint trustees in their place. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 782; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91-358, § 168(d)(2), title I, 84 Stat. 589.)

**AMENDMENT**

1970—Section 168(d)(2) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court having jurisdiction of civil actions wherein the amount in controversy exceeds \$50,000".

**EFFECTIVE DATE OF 1970 AMENDMENT**

See note preceding section 11-101.

**CHANGE OF NAME**

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

**CROSS REFERENCE**

Court having jurisdiction of civil actions wherein the amount in controversy exceeds \$50,000, see §§ 11-501, 11-921.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 29-240.

**§ 29-716. Actions not to abate—Judgments.**

No action pending in favor of or against any corporation shall be discontinued or abate by the dissolution of the corporation, whether such dissolution occur by the expiration of its charter or otherwise, but all such actions may be prosecuted to final judgment in its corporate name; and on all judgments so obtained, whether before or after its dissolution, execution may be had and satisfaction enforced in such corporate name. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 783.)

**CROSS REFERENCE**

Abatement and revivor in general, see § 12-101 et seq.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 29-240.

**NOTES TO DECISIONS****Suits against dissolved corporations**

A foreign corporation doing business in the District which had been dissolved by its chartering state, could not be sued in the District after dissolution since local statutes preserve litigation only as to local corporations and the chartering state did not preserve such litigation. *Sedgwick v. Beasley* (1949, 173 F. 2d 918, 84 U.S. App. D.C. 325).

**§ 29-717. Proceedings in corporate name for use of others.**

A corporation may, after its dissolution, prosecute any action in and by its corporate name, for the use of the person or persons entitled to receive the proceeds of such action, upon any cause of action accrued, or which, but for such dissolution, would have



accrued in favor of the corporation, in the same manner and with the like effect as if it had not been dissolved. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 784.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-240.

#### § 29-718. Suits after dissolution—Process.

Any such dissolved corporation may be sued by its corporate name for or upon any cause of action accrued or which, but for such dissolution, would have accrued against it in the same manner and with the like effect as if it were not dissolved; and process in such action may be served upon any one of the assignees, trustees, or receivers having the management of the assets of the corporation. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 785.)

#### CROSS REFERENCE

Abatement and revivor in general, see § 12-101 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-240.

#### NOTES TO DECISIONS

##### Service of summons

Question is whether summons was served upon an officer, agent, or employee of the corporation which may be raised by a motion to quash the service of summons in the case. *Bloedorn v. Washington Times Co.* (1937, 89 F. 2d 835, 67 App. D.C. 91).

##### Suit in corporate name

Action was properly brought against company in its corporate name even though it had been lawfully dissolved. *Lyman v. Knickerbocker Theatre Co.* (1925, 5 F. 2d 538, 55 App. D.C. 323).

##### Suits against dissolved corporations

A foreign corporation doing business in the District which had been dissolved by its chartering state, could not be sued in the District after dissolution since local statutes preserve litigation only as to local corporations and the chartering state did not preserve such litigation. *Sedgwick v. Beasley* (1949, 173 F. 2d 918, 84 U.S. App. D.C. 325).

#### § 29-719. Involuntary dissolution—Suit by United States Attorney—Petition—Order to show cause.

Whenever the United States attorney for the District of Columbia shall become satisfied that any corporation organized under the laws of said District has been guilty of such misuse, abuse, or nonuser of its corporate powers and franchises, or such violation of law as would authorize and make proper the forfeiture of its charter, corporate powers, and franchises, the said United States attorney shall file in the court having jurisdiction of civil actions wherein the amount in controversy exceeds \$50,000 a petition setting forth, fully and in detail, the alleged abuse, misuse, or nonuser by reason whereof such forfeiture is sought, which petition shall be supported by affidavits of credible persons; and upon the filing of such petition the said court shall lay a rule requiring such defendant corporation to show cause, within such time as the court may deem proper, why a decree should not issue as prayed in said petition, a copy of which rule and petition shall be served on said corporation by a day therein limited. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 786; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 909, 991, ch. 646, §§ 1, 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91-358, §§ 168(d) (2), 169(2), title I, 84 Stat. 589, 590.)

#### AMENDMENTS

1970—Section 168(d) (2) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court having jurisdiction of civil actions wherein the amount in controversy exceeds \$50,000".

Section 169(2) of Act July 29, 1970, Public Law 91-358, amended section by striking out "in the name of the United States".

#### EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11-101.

#### CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, § 32(b) eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1948, § 1, eff. Sept. 1, 1948, substituted "United States attorney" for "district attorney of the United States and "district attorney." See U.S. Code, title 28, § 501.

#### CROSS REFERENCES

Court having jurisdiction of civil actions wherein the amount in controversy exceeds \$50,000, see §§ 11-501, 11-921.

Dissolution upon second conviction of operating a bucket-shop, see § 22-1510.

Voluntary dissolution, see §§ 29-701 to 29-714.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-836.

#### NOTES TO DECISIONS

##### Failure to pay license tax

"A charter of incorporation is not ipso facto abrogated or annulled by failure to pay a license tax, notwithstanding that the statute may provide that such failure shall work a forfeiture." *Ohio Bank v. Central Constr. Co.* (1901, 17 App. D.C. 524).

##### Parties

Statute providing in part that whenever District Attorney of District of Columbia should become satisfied that any corporation organized under laws of District had been guilty of such misuse of its powers as would make proper the forfeiture of its charter, district attorney should file petition in district court in name of United States for rule to show cause why forfeiture should not be granted, requires that proceeding be initiated by United States District Attorney, and afforded no remedy to one who sought to revoke charter of bar association by reason of its alleged misuse. *United States ex rel. Robinson v. Bar Ass'n of District of Columbia* (1952, 197 F. 2d 408, 91 U.S. App. D.C. 3).

#### § 29-720. Answer of corporation—Verification.

The said corporation, by the day named in said order, unless further time be granted by the court, shall file an answer to said petition, fully setting forth all the defenses upon which it intends to rely in resisting the application, which shall be verified by affidavit of some officer of the corporation. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 787.)

#### CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32(b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.



## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-836.

## § 29-721. Pleading.

The petitioners may thereupon plead to or traverse all or any of the material averments set forth in the answer, and the defendant shall join issue with or demur to said plea or traverse within five days thereafter. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 788.)

## FEDERAL RULES OF CIVIL PROCEDURE

Generally, 28 U.S.C. App.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-836.

## § 29-722. Trial—Decree of forfeiture—Appointment of receiver.

If issue or issues be joined on such proceedings, the same shall stand for trial at such time as the court shall direct and shall be tried by a jury if either party desire it; otherwise, they shall be heard and determined by the court. If, from the findings of the jury or upon consideration and determination of the case by the court, the court shall be of opinion that legal cause of forfeiture has been shown and the public interests require that said forfeiture shall be declared, a decree of forfeiture shall be entered and the charter of said corporation shall thereby be annulled and vacated and its corporate franchises and powers shall cease and be void; and the court shall thereupon appoint a receiver or receivers of the assets and estate of said corporation, who shall proceed to wind up the affairs of said corporation, for the benefit of its creditors and stockholders, under the direction of the court. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 789.)

## CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32 (b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29-723, 29-836.

## § 29-723. Ex parte proceeding after default in pleading.

If any corporation upon which a petition and rule to show cause shall have been served as aforesaid, shall neglect to file an answer thereto at the time appointed by the court, the court shall proceed to hear the application ex parte within five days thereafter, and if it shall be of opinion that good cause of forfeiture is shown it shall proceed to decree as provided in section 29-722. (Mar. 3, 1901, 31 Stat. 1320, ch. 854, § 790.)

## CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32 (b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-836.

## § 29-724. Final decree—Power to withhold pending remedy of grievance.

If the court, either upon a hearing ex parte or after answer, shall be of opinion that no cause of forfeiture is shown or that the public interests do not demand that such forfeiture be decreed, though legal cause therefor has been shown, it shall dismiss the petition. And if the court shall determine that legal cause of forfeiture has been shown, it may, in its discretion, before passing a final decree of forfeiture, pass orders requiring the said corporation, within a time to be therein fixed, to remedy the grievance complained of, and may suspend the passage of the final decree of forfeiture until the time so fixed, and may afterwards refuse to pass such decree if the grievance shall have been remedied by the time so fixed. (Mar. 3, 1901, 31 Stat. 1320, ch. 854, § 791.)

## CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32 (b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-836.

## § 29-725. Injunction against assuming corporate franchise or transacting business not authorized by charter.

The United States attorney may file a bill in said Superior Court of the District of Columbia for the purpose of restraining by injunction any corporation organized under the laws of the District from assuming or exercising any franchise, liberty, or privilege or transacting any business not allowed by its charter or certificate of incorporation or not by law allowed to be assumed or exercised by said corporation, and said United States attorney may file a bill to enjoin any foreign corporation from transacting in the District of Columbia any business not allowed by its charter or certificate of incorporation, or from transacting any business in said District when it has not complied with any provision of this code relating to foreign corporations; and in the same manner may file a bill to restrain any individuals from exercising any corporate rights, privileges, or franchises not granted to them by law; and on the filing of any such bill the said Superior Court of the District of Columbia shall have power to issue an injunction as prayed and to exercise all the powers of a court of equity over the subject-matter of such bill. (Mar. 3, 1901, 31 Stat. 1320, ch. 854, § 793; June 30, 1902, 32 Stat. 534, ch. 1329; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 909, 991, ch. 646, §§ 1, 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91-358, title I, §§ 155(c)(1)(I), 169(3), 84 Stat. 570, 590.)

## AMENDMENTS

1970—Section 155(c)(1)(I) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."



Section 169(3) of Act July 29, 1970, Public Law 91-358 amended section by striking out "in the name of the United States".

1902—Act June 30, 1902, inserted after the word "corporation" the second time it appears the words "and said district attorney may file a bill to enjoin any foreign corporation from transacting in the District of Columbia any business not allowed by its charter or certificate of incorporation, or from transacting any business in said District when it has not complied with any provision of this code relating to foreign corporations."

#### EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11-101.

#### CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, § 32 (b), eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1948, § 1 eff. Sept. 1, 1948, substituted "United States Attorney" for "district attorney." See U.S. Code, title 28, § 501.

#### CROSS REFERENCES

Quo warranto proceedings questioning rights to corporate rights as franchises, see § 16-3501 et seq.

Restraining doing business upon second conviction of operating a bucket-shop, see § 22-1510.

#### NOTES TO DECISIONS

##### Unauthorized degrees

This section declares that the district attorney may file a bill in the name of the United States in the Supreme Court of the District and it applies to corporations giving degrees when not authorized. *National Assn. of C. P. A. v. United States* (1923, 292 F. 668, 53 App. D.C. 391).

#### § 29-726. Involuntary dissolution at the suit of creditors.

When any corporation in the District has remained insolvent for a year, or has neglected or refused for that period to pay and discharge its notes or other evidences of debt, or has, for that period, suspended its ordinary and lawful business, a bill may be filed by the United States attorney, as aforesaid, for the dissolution of said corporation, or, if he shall decline to do so, on the application of any judgment creditor of said corporation, the said judgment creditor, if an execution upon his judgment shall be returned unsatisfied, in whole or in part, may file such bill. (Mar. 3, 1901, 31 Stat. 1320, ch. 854, § 794; June 25, 1948, 62 Stat. 909, ch. 646, § 1.)

#### CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States Attorney" for "district attorney." See U.S. Code, title 28, § 501.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-836.

#### NOTES TO DECISIONS

##### District tax claims

District of Columbia Revenue Act provision giving priority to District for unpaid gross sales taxes against a taxpayer in bankruptcy before all claimants of whatsoever kind or nature and making penalties and interest a prior and preferred claim gives District a priority in whatever local insolvency proceedings are instituted where bankrupt person or corporation involved is not eligible to become a bankrupt under the Bankruptcy Act. *District of Columbia v. Greenbaum, trustee etc.* (1955, 223 F. 633, 96 U.S. App. D.C. 168).

##### Sufficiency of bill

A bill for a receivership of an insurance company, asking for a dissolution, may be sufficient to invoke the court's general equity jurisdiction, though not for a statutory dissolution. *National Ben. Life Ins. Co. v. Shaw-Walker Co.* (1940, 111 F. 2d 497, 71 App. D.C. 276).

#### § 29-727. Injunction against transferring assets—Receiver.

Upon prima facie proof of the facts necessary to sustain such suit the court may issue an injunction restraining the corporation, its trustees, directors, and officers from collecting or receiving any debt or demand and from paying out or transferring or delivering to any person any of its property or effects and from exercising any of its corporate rights and franchises during the pendency of the suit, unless by permission of the court. And at any stage of the proceeding the court may appoint a receiver to collect and preserve the property of the corporation and dispose of and manage the same, under the direction of the court, until final decree in the cause. (Mar. 3, 1901, 31 Stat. 1320, ch. 854, § 795.)

#### CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32(b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-836.

#### NOTES TO DECISIONS

##### Collateral attack

Where a receiver for a life insurance company had been appointed, and a representative of policyholders subsequently instituted a second proceeding for a dissolution, and asking another receiver, on the ground that the court had exceeded its jurisdiction in appointing the first receiver, the second proceeding was an arbitrary exercise of discretion, as the assets had been liquidated, and only dissolution remained to be made, and an unwarranted collateral attack. *National Ben. Life Ins. Co. v. Shaw-Walker Co.* (1940, 111 F. 2d 497, 71 App. D.C. 276).

##### Discretion of court

The provision for the appointment of a receiver in dissolution proceedings is not mandatory, and the appointment is at the court's discretion. *National Ben. Life Ins. Co. v. Shaw-Walker Co.* (1940, 111 F. 2d 497, 71 App. D.C. 276).

#### § 29-728. Parties defendant in creditor's suit.

Where the action is brought by a creditor, the stockholders, directors, trustees, or other officers, or any of them who may be made liable by law for the payment of the complainant's debt, may be made parties defendant by the original or a supplemental bill, and their liability may be declared and enforced by the decree; but nothing herein shall prevent any creditor from enforcing such liability in a separate suit against such parties. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 796.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Pleadings and motions, see Rule 7 et seq., 28 U.S.C. App.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-836.



## § 29-729. Account and distribution.

In such suit, if the court shall be of opinion that the complainant is entitled to the relief prayed, and that such corporation ought to be dissolved, the court shall cause an account to be taken of the assets and debts of the corporation and shall decree an equal distribution of the assets among the creditors, subject to existing liens; but if said corporation has no property to satisfy its creditors, or to the extent to which its property is insufficient therefor, the court may require the stockholders, who are parties defendant to the suit, to pay into court the amounts due and unpaid on the shares of stock held by them, and shall ascertain the amounts properly chargeable, in favor of creditors, to said stockholders and the trustees, directors, or other officers who are parties to the suit, and in the final decree for the dissolution shall adjudge and decree that said amounts shall be paid into court by the parties respectively liable therefor, to be applied to the payment of the debts of the corporation. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 797.)

## CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32 (b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-836.

## Chapter 8.—COOPERATIVE ASSOCIATIONS

## Sec.

- 29-801. Definitions.
- 29-802. Who may incorporate.
- 29-803. Purposes for which incorporated.
- 29-804. Powers of association.
- 29-805. Articles of incorporation—Contents.
- 29-806. Filing and recordation of articles—Fees—Effect of certificate.
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- 29-818. Directors.
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- 29-825. Share and membership certificates—Issuance and contents.
- 29-826. Transfer of shares and membership—Withdrawal.
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- 29-834. Annual report of association.
- 29-835. Notice of delinquent reports—Mandamus.
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- 29-842. Legality declared—Not in restraint of trade.
- 29-843. Laws not applicable.
- 29-844. Taxation—Annual license fee.
- 29-845. Separability of provisions.
- 29-846. Reservation of right to amend or repeal.
- 29-847. Short title.

## § 29-801. Definitions.

In this chapter unless the subject-matter requires otherwise—

(1) "Association" means a group enterprise legally incorporated under this chapter, and shall be deemed to be a nonprofit corporation.

(2) "Member" means not only a member in a nonshare association but also a member in a share association.

(3) "Net savings" means the total income of an association minus the costs of operation.

(4) "Savings returns" means the amount returned to the patrons in proportion to their patronage or otherwise in accordance with the provisions of section 29-831 herein.

(5) "Cooperative basis" as applied to any incorporated or unincorporated group referred to in sections 29-804 (7), 29-813, 29-823, 29-837, 29-840, and 29-841 herein means—

(a) that each member has one vote and only one vote, except as may be altered in the articles or by-laws by provision for voting by member organizations;

(b) that the maximum rate at which any return is paid on share or membership capital is limited to not more than 8 per centum per annum;

(c) that the net savings after payment, if any, of said limited return on capital and after making provision for such separate funds as may be required or specifically permitted by statute, articles, or by-laws, or allocated or distributed to member patrons, or to all patrons, in proportion to their patronage; or retained by the enterprise, for the actual or potential expansion of its services or the reduction of its charges to the patrons, or for other purposes not inconsistent with its nonprofit character. (June 19, 1940, 54 Stat. 480, ch. 397, § 1.)

## § 29-802. Who may incorporate.

Any five or more natural persons or two or more associations may incorporate in the District of Columbia under this chapter. (June 19, 1940, 54 Stat. 481, ch. 397, § 2.)

## § 29-803. Purposes for which incorporated.

An association may be incorporated under this chapter to engage in any one or more lawful mode or modes of acquiring, producing, building, operating, manufacturing, furnishing, exchanging, or distributing any type or types of property, commodities, goods, or services for the primary and mutual



benefit of the patrons of the association (or their patrons, if any) as ultimate consumers. (June 19, 1940, 54 Stat. 481, ch. 397, § 3.)

#### § 29-804. Powers of association.

An association shall have the capacity to act possessed by natural persons and the authority to do anything required or permitted by this chapter and also—

(1) To continue as a corporation for the time specified in its articles;

(2) To have a corporate seal and to alter the same at pleasure;

(3) To sue and be sued in its corporate name;

(4) To make by-laws for the government and regulation of its affairs;

(5) To acquire, own, hold, sell, lease, pledge, mortgage, or otherwise dispose of any property incident to its purposes and activities;

(6) To own and hold membership in and share capital of other associations and any other corporations, and any types of bonds or other obligations; and while the owner thereof to exercise all the rights of ownership;

(7) To borrow money, contract debts, and make contracts, including agreements of mutual aid or federation with other associations, other groups organized on a cooperative basis, and other nonprofit groups;

(8) To conduct its affairs within or without the District of Columbia;

(9) To exercise in addition any power granted to ordinary business corporations, save those powers inconsistent with this chapter;

(10) To exercise all powers not inconsistent with this chapter which may be necessary, convenient, or expedient for the accomplishment of its purposes, and, to that end, the foregoing enumeration of powers shall not be deemed exclusive. (June 19, 1940, 54 Stat. 481, ch. 397, § 4.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-801.

#### NOTES TO DECISIONS

##### Collateral attack

A collateral attack upon the creation and existence of a cooperative, and alleged want of capacity to own and dispose of real estate can only be asserted by the state and not by parties to a private dispute. *Glennon v. Butler* (D. C. Mun. App. 1949, 66 A. 2d 519).

##### Powers

Cooperative associations are specifically authorized to acquire, own, hold, sell, lease, pledge, mortgage or otherwise dispose of any properties incident to their purposes and activities. *Glennon v. Butler* (D. C. Mun. App. 1949, 66 A. 2d 519).

#### § 29-805. Articles of incorporation—Contents.

Articles of incorporation shall be signed by each of the incorporators and acknowledged by at least three of them if natural persons, and by the presidents and secretaries, if associations, before an officer authorized to take acknowledgments.

Within the limitations of this chapter the articles shall contain—

(1) A statement as to the purpose or purposes for which the association is formed;

(2) The name of the association which shall include the word "cooperative";

(3) The term of existence of the association which may be perpetual;

(4) The location and address of the principal office of the association;

(5) The names and addresses of the incorporators of the association;

(6) The names and addresses of the directors who shall manage the affairs of the association for the first year, unless sooner changed by the members;

(7) A statement of whether the association is organized with or without shares, and the number of shares or memberships subscribed for;

(8) If organized with shares, a statement of the amount of authorized capital, the number and types of shares and the par value thereof which may be placed at any figure, and the rights, preferences, and restrictions of each type of share;

(9) The minimum number or value of shares which must be owned in order to qualify for membership; if organized without shares, a statement of whether the property rights of members shall be equal or unequal, and if unequal, the rule by which their rights shall be determined;

(10) The maximum amount or percentage of capital which may be owned or controlled by any member; including a statement of whether or not each member shall be limited to a single share, and whether such single shares shall be of various par values;

(11) The method by which any surplus, upon dissolution of the association, shall be distributed, in conformity with the requirements of section 29-836 herein for division of such surplus.

The articles may also contain any other provisions not inconsistent with law or with this chapter, for the conduct of the association's affairs. (June 19, 1940, 54 Stat. 481, ch. 397, § 5.)

#### § 29-806. Filing and recordation of articles—Fees—Effect of certificate.

The articles shall be delivered to the recorder of deeds. If he finds that the articles conform to law, he shall file the same upon the payment of a fee of \$5, and he shall record the same, upon payment of a fee of \$1. Said fees shall be in lieu of any other fees or payments provided in section 45-708, or in any other section of the Code of Laws of the District of Columbia, to be paid for at the time of said filing; and the last paragraph of section 45-708 shall have no application to associations organized under this chapter. After such filing and recording, he shall issue a certificate of incorporation, whereupon the corporate existence shall begin. Such certificate shall be conclusive evidence of the fact that the corporation has been duly incorporated. This shall not preclude the institution of quo warranto proceedings under sections 16-1601 to 16-1611. The filing or recording of the articles or of amendments thereto, or of any other papers pursuant to this chapter is required for the purpose of affording all persons the opportunity of acquiring knowledge of the contents thereof, but no person or incorporated or unincorporated group dealing with the association shall be charged with constructive notice of the contents of any such articles or papers by reason of such filing or recording. (June 19, 1940, 54 Stat. 482, ch. 397, § 6.)



## REFERENCES IN TEXT

Sections 16-1601 to 16-1611, referred to in text, were repealed by Act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88-241, § 21(a), and are now covered by § 16-3501 et seq.

## § 29-807. Amendments of articles—Fee.

Amendments to the articles may be proposed by a two-thirds vote of the board of directors, or by petition of 10 per centum of the association's members. Notice of the meeting to consider such amendment shall be sent by the Secretary at least thirty days in advance thereof to each member at his last-known address, accompanied by the full text of the proposal and by that part of the articles to be amended. Two-thirds of the members voting may adopt said amendment and when verified by the president and secretary, it shall be filed and recorded with the recorder of deeds within thirty days of its adoption, and a fee of \$1 shall be paid.

If the amendment is to alter the preferences of outstanding shares of any type, or to authorize the issuance of shares having preferences superior to outstanding shares of any type, the vote of two-thirds of the members owning such outstanding shares affected by the change shall also be required for the adoption of the amendment; if the amendment is to alter the rule by which members' property rights in a nonshare association are determined, a vote of two-thirds of the entire membership shall be required.

The amount of capital and the number and par value of shares may be diminished or increased by amendment of the articles, but the capital shall not be diminished below the amount of paid-up capital existing at the time of amendment. (June 19, 1940, 54 Stat. 483, ch. 397, § 7.)

## § 29-808. By-laws—Adoption, amendment, or repeal.

By-laws shall be adopted, amended, or repealed by at least a majority vote of the members voting. (June 19, 1940, 54 Stat. 483, ch. 397, § 8.)

## § 29-809. Contents of by-laws.

The by-laws may, within the limitations of this chapter provide for—

(1) The method and terms of admission to membership and the disposal of members' interests on cessation of membership for any reason;

(2) The time, place, and manner of calling and conducting meetings;

(3) The number or percentage of the members constituting a quorum;

(4) The number, qualifications, powers, duties, term of office, and manner, time, and vote for election, of directors and officers; and the division or classification, if any, of directors to provide for rotating or overlapping terms;

(5) The compensation, if any, of the directors, and the number of directors necessary to constitute a quorum;

(6) The method of distributing the net savings;

(7) The various discretionary provisions of this chapter as well as other provisions incident to the purposes and activities of the association. (June 19, 1940, 54 Stat. 483, ch. 397, § 9.)

## § 29-810. Meetings—Regular and special.

Regular meetings of members shall be held as prescribed in the by-laws, but shall be held at least once a year. Special meetings may be demanded by a majority vote of the directors or by written petition of at least one-tenth of the membership, in which case it shall be the duty of the secretary to call such meeting to take place within thirty days after such demand. Regular or special meetings, including meetings by units as hereinafter provided, may be held within or without the District of Columbia as the articles may prescribe. (June 19, 1940, 54 Stat. 483, ch. 397, § 10.)

## § 29-811. Notice of meetings.

The secretary shall give notice of the time and place of meetings by sending a notice thereof to each member at his last-known address not less than the number of days in advance of the meeting specified in the by-laws. In case of a special meeting, the notice shall specify the purpose for which such meeting is called. (June 19, 1940, 54 Stat. 483, ch. 397, § 11.)

## § 29-812. Meetings by units of the membership.

The articles or by-laws may provide for the holding of meetings by units of the membership and may provide for a method of transmitting the votes there cast to the central meeting, or for a method of representation by the election of delegates to the central meeting, or for a combination of both such methods. (June 19, 1940, 54 Stat. 484, ch. 397, § 12.)

## § 29-813. Voting—One member, one vote.

Each member of an association shall have one and only one vote, except that where an association includes among its members any number of other associations or groups organized on a cooperative basis the voting rights of such member associations or groups may be as prescribed in the articles or by-laws.

No voting agreement or other device to evade the one-member-one-vote rule shall be enforceable at law or in equity. (June 19, 1940, 54 Stat. 484, ch. 397, § 13.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29-801, 29-825.

## § 29-814. Proxy voting prohibited.

No member shall be permitted to vote by proxy. (June 19, 1940, 54 Stat. 484, ch. 397, § 14.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-825.

## § 29-815. Voting by mail.

The articles or by-laws may provide for either or both of the following types of voting by mail:

(1) That the secretary shall send to the members a copy of any proposal scheduled to be offered at a meeting, together with the notice of said meeting, and that the mail votes cast by the members shall be counted together with those cast at the meeting if such mail votes are returned to the association within a specified number of days;

(2) That the secretary shall send to any member absent from a meeting an exact copy of the proposal



acted upon at the meeting, and that the mail vote of the member upon such proposal, if returned within a specified number of days, shall be counted together with the votes cast at said meeting.

The articles or by-laws may also determine whether and to what extent mail votes shall be counted in computing a quorum. (June 19, 1940, 54 Stat. 484, ch. 397, § 15.)

#### § 29-816. Application of voting provisions to voting by mail.

If an association has provided for voting by mail, any provision of this chapter referring to votes cast by the members shall be construed to include the votes cast by mail. (June 19, 1940; 54 Stat. 484, ch. 397, § 16.)

#### § 29-817. Application of voting provisions to voting by delegates.

If an association has provided for voting by delegates any provision of this chapter referring to votes cast by the members shall apply to votes cast by delegates; but this shall not permit delegates to vote by mail. (June 19, 1940, 54 Stat. 484, ch. 397, § 17.)

#### § 29-818. Directors.

An association shall be managed by a board of not less than five directors, who shall be elected for a term fixed in the by-laws not to exceed three years, by and from the members of the association and shall hold office until their successors are elected, or until removed. Vacancies in the board of directors, otherwise than by removal or expiration of term, shall be filled in such manner as the by-laws may provide.

The by-laws may provide for a method of apportioning the number of directors among the units into which the association may be divided, and for the election of directors by the respective units to which they are apportioned.

An executive committee of the board of directors may be elected in such manner and with such powers and duties as the articles or by-laws may prescribe.

Meetings of directors and of the executive committee may be held within or without the District of Columbia. (June 19, 1940, 54 Stat. 484, ch. 397, § 18.)

#### NOTES TO DECISIONS

##### Validity of by-laws

Incorporated cooperative association's by-law providing that board of directors' selection of counsel shall be subject to approval of membership violated statute, and such by-law did not preclude counsel from recovering for services rendered under contract approved by the board. *Capitol Cab Cooperative Ass'n Inc. v. W. C. Darden* (D.C. Mun. App. 1961, 169 A. 2d 463; see also, same case, 154 A. 2d 352).

#### § 29-819. Officers.

The officers of an association shall include a president, one or more vice-presidents, a secretary and a treasurer, or a secretary-treasurer. The officers shall be elected annually by the directors unless the by-laws otherwise provide. The president and at least one vice-president must be directors, but no other officer need be a director. (June 19, 1940, 54 Stat. 485, ch. 397, § 19.)

#### § 29-820. Removal of directors and officers.

A director or officer may be removed with or without cause, by a vote of two-thirds of the members voting at a regular or special meeting. The director or officer involved shall have an opportunity to be heard at said meeting. A vacancy caused by any such removal shall be filled by the vote provided in the by-laws for election of directors. (June 19, 1940, 54 Stat. 485, ch. 397, § 20.)

#### § 29-821. Referendum on acts of directors.

The articles or by-laws may provide that within a specified period of time any action taken by the directors must be referred to the members for approval or disapproval if demanded by petition of at least 10 per centum of all the members or by vote of at least a majority of the directors: *Provided, however*, That the rights of third parties which have vested between the time of such action, and such referendum shall not be impaired thereby. (June 19, 1940, 54 Stat. 485, ch. 397, § 21.)

#### NOTES TO DECISIONS

##### Validity of by-laws

Incorporated cooperative association's by-law providing that board of directors' selection of counsel shall be subject to approval of membership violated statute, and such by-law did not preclude counsel from recovering for services rendered under contract approved by board. *Capitol Cab Cooperative Ass'n Inc. v. W. C. Darden* (D.C. Mun. App. 1961, 169 A. 2d 463; see also, same case, 154 A. 2d 352).

#### § 29-822. Limitations upon the return on capital.

The return upon capital shall not exceed 6 per centum per annum upon the paid-up capital and shall be noncumulative.

Total return upon capital distributed for any single period shall not exceed 50 per centum of the net savings for that period. (June 19, 1940, 54 Stat. 485, ch. 397, § 22.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-831.

#### § 29-823. Eligibility and admission to membership.

Any natural person, association, incorporated, or unincorporated group organized on a cooperative basis, or any nonprofit group, shall be eligible for membership in an association if it has met the qualifications for eligibility, if any, stated in the articles or by-laws and shall be deemed a member upon payment in full for the par value of the minimum amount of share or membership capital stated in the articles as necessary to qualify for membership. (June 19, 1940, 54 Stat. 485, ch. 397, § 23.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-801.

#### § 29-824. Subscribers.

Any natural person or group eligible for membership and legally obligated to purchase a share or shares of, or membership in, an association shall be deemed a subscriber. The articles or by-laws may determine whether, and the conditions under which, any voting rights or other rights of membership shall be granted to subscribers. (June 19, 1940, 54 Stat. 485, ch. 397, § 24.)



**§ 29-825. Share and membership certificates—Issuance and contents.**

No certificate for share or membership capital shall be issued until the par value thereof has been paid for in full. There shall be printed upon each certificate issued by an association a full or condensed statement of the requirements of sections 29-813, 29-814, and 29-826 herein. (June 19, 1940, 54 Stat. 485, ch. 397, § 25.)

**§ 29-826. Transfer of shares and membership—Withdrawal.**

If a member desires to withdraw from the association or dispose of any or all of his holdings therein, the directors shall have the power to purchase such holdings by paying him the par value of any or all of the holdings offered. The directors shall then reissue or cancel the same. A vote of the majority of the members voting at a regular or special meeting may order the directors to exercise this power to purchase.

If the association fails, within sixty days of the original offer, to purchase all or any part of the holdings offered, the member may dispose of the unpurchased interest elsewhere, subject to the approval of the transferee by a majority vote of the directors. Any would-be transferee not approved by the directors may appeal to the members at their first regular or special meeting thereafter, and the action of the meeting shall be final. If such transferee is not approved, the directors shall exercise their power to purchase, if and when such purchase can be made without jeopardizing the solvency of the association. (June 19, 1940, 54 Stat. 485, ch. 397, § 26.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 29-825.

**§ 29-827. Share and membership certificates—Recall.**

The by-laws may give the directors the power to use the reserve funds to recall, at par value, the holdings of any member in excess of the amount requisite for membership; and may also provide that if any member has failed to patronize the association during a period of time specified in the by-laws, the directors may use the reserve funds to recall all his holdings and thereupon he shall cease to be a member of the association. When so recalled, such certificates of share or membership capital shall be either reissued or canceled. (June 19, 1940, 54 Stat. 485, ch. 397, § 27.)

**§ 29-828. Share and membership certificates—Attachment.**

The holdings of any member of an association, to the extent of the minimum amount necessary for membership, but not to exceed \$50, shall be exempt from attachment, execution, or garnishment for the debts of the owner. If any holdings in excess of this amount are subjected to such liability, the directors of the association may either admit the purchaser thereof to membership, or may purchase from him such holdings at par value. (June 19, 1940, 54 Stat. 485, ch. 397, § 28.)

**§ 29-829. Liability of members.**

Members shall not be jointly or severally liable for any debts of the association, nor shall a subscriber

be so liable except to the extent of the unpaid amount on the shares or membership certificate subscribed by him. No subscriber shall be released from such liability by reason of any assignment of his interest in the shares or membership certificate, but shall remain jointly and severally liable with the assignee until the shares or certificates are fully paid up. (June 19, 1940, 54 Stat. 486, ch. 397, § 29.)

**§ 29-830. Expulsion of members—Procedure—Purchase of holdings.**

A member may be expelled by the vote of a majority of the members voting at a regular or special meeting. The member against whom the charges are to be preferred shall be informed thereof in writing at least ten days in advance of the meeting, and shall have an opportunity to be heard in person or by counsel at said meeting. On decision of the association to expel a member, the board of directors shall purchase the member's holdings at par value, if and when there are sufficient reserve funds. (June 19, 1940, 54 Stat. 486, ch. 397, § 30.)

**§ 29-831. Allocation and distribution of net savings.**

At least once a year the members and/or the directors, as the articles or by-laws may provide, shall apportion the net savings of the association in the following order:

(1) Not less than 10 per centum shall be placed in a reserve fund until such time as the fund shall equal at least 50 per centum of the paid-up capital; and such fund may be used in the general conduct of the business. The amounts apportioned to the reserve fund shall be allocated on the books of the association on a patronage basis, or in lieu thereof, the books and records of the association shall afford a means for doing so, in order that upon dissolution or earlier, if deemed advisable, such reserves may be returned to the patrons who have contributed the same, subject to the limitations of section 29-836 herein;

(2) A return upon capital, within the limitations of section 29-822, may be paid upon share capital, or, if the by-laws so provide, upon the membership capital certificates of a nonshare association; but such return upon capital may be paid only out of the surplus of the aggregate of the assets over the aggregate of the liabilities (including in the latter the amount of the capital stock) after deducting from such aggregate of the assets the amount by which such aggregate was increased by unrealized appreciation in value or revaluation of fixed assets;

(3) A portion of the remainder, as determined by the articles or by-laws, shall be allocated to an educational fund to be used in teaching cooperation, and a portion may also be allocated to funds for the general welfare of the members of the association;

(4) The remainder shall be allocated at the same uniform rate to all patrons of the association in proportion to their individual patronage: *Provided*, That—

(a) in the case of a member patron, his proportionate amount of savings returns shall be distributed to him unless he agrees that the association should credit the amount to his account toward the purchase of an additional share or shares, or additional membership capital;



(b) in the case of a subscriber patron, his proportionate amount of savings returns may, as the articles or by-laws provide, be distributed to him, or credited to his account until the amount of capital subscribed for has been fully paid;

(c) in the case of a nonmember patron, his proportionate amount of savings returns shall be set aside in a general fund for such patrons and shall be allocated to individual nonmember patrons only upon request and presentation of evidence of the amount of their patronage. Any savings return so allocated shall be credited to such patron toward payment of the minimum amount of share or membership capital necessary for membership. When a sum equal to this amount has accumulated at any time within a period of time specified in the by-laws, such patron shall be deemed and become a member of the association if he so agrees or requests, and complies with any provisions in the by-laws for admission to membership. The certificates of shares or membership to which he is entitled shall then be issued to him.

(d) if within any periods of time specified in the articles or by-laws, (1) any subscriber has not accumulated and paid in the amount of capital subscribed for; or (2) any nonmember patron has not accumulated in his individual account the sum necessary for membership; or (3) any nonmember patron has accumulated the sum necessary for membership but neither requests nor agrees to become a member, or fails to comply with the provisions of the by-laws, if any, for admission to membership, then the amounts so accumulated or paid in and any part of the general fund for nonmember patrons which has not been allocated to individual nonmember patrons shall go to the educational fund and thereafter no member or other patron shall have any rights in said paid-in capital or accumulated savings returns as such: *Provided further*, That nothing in this section shall prevent an association under this chapter which is engaged in rendering services from disposing of the net savings from the rendering of such services in such manner as to lower the fees charged for services or otherwise to further the common benefit of the members: *And provided further*, That nothing in this section shall prevent an association from adopting a system whereby the payment of savings returns which would otherwise be distributed, shall be deferred for a fixed period of months or years; nor from adopting a system, whereby the savings returns distributed shall be partly in cash, partly in shares, such shares to be retired at a fixed future date, in the order of their serial number or date of issue. (June 19, 1940, 54 Stat. 486, ch. 397, § 31.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-801.

#### § 29-832. Bonding of officers and employees.

Every individual acting as officer or employee of an association and handling funds or securities amounting to \$1,000 or more, in any one year, shall be covered by an adequate bond as determined by the board of directors, and at the expense of the association; and the by-laws may also provide for

the bonding of other employees or officers. (June 19, 1940, 54 Stat. 486, ch. 397, § 32.)

#### § 29-833. Books—Auditing.

To record its business operation, every association shall keep a set of books, which shall be audited at the end of each fiscal year by an experienced bookkeeper or accountant, who shall not be an officer or director. Where the annual business amounts to less than \$10,000, the audit may be performed by an auditing committee of three, who shall not be directors, officers, or employees. A written report of the audit, including a statement of the amount of business transacted with members, and the amount transacted with nonmembers, the balance sheet, and the income and expenses, shall be submitted to the annual meeting of the association. (June 19, 1940, 54 Stat. 488, ch. 397, § 33.)

#### § 29-834. Annual report of association.

Every association shall annually, within sixty days of the close of its operations for that year, make a report of its condition, sworn to by the president and secretary, which report shall be filed with the recorder of deeds. The report shall state—

(a) The name and principal address of the association.

(b) The names, addresses, occupations, and date of expiration of the terms, of the officers and directors, and their compensation, if any.

(c) The amount and nature of its authorized, subscribed, and paid-in capital, the number of its shareholders, and the number admitted and withdrawn during the year, the par value of its shares and the rate at which any return upon capital has been paid. For nonshare associations the annual report shall state the total number of members, the number admitted or withdrawn during the year, and the amount of membership fees received.

(d) The receipts, expenditures, assets, and liabilities of the association.

A copy of this report shall be kept on file at the principal office of the association.

Any person who shall subscribe or make oath to such report containing a materially false statement, known to such person to be false, shall upon conviction of such offense be punished by a fine of not less than \$25 nor more than \$200, or by imprisonment of not less than thirty days nor more than one year, or both such fine and imprisonment. (June 19, 1940, 54 Stat. 488, ch. 397, § 34.)

#### § 29-835. Notice of delinquent reports—Mandamus.

If an association fails to make such report within the required period of sixty days, the recorder of deeds shall within sixty days from the expiration of said period send such association a registered letter directed to its principal office, stating the delinquency and its consequences. If the association fails to file the report within sixty days from the mailing of such notice, any member of the association or the United States attorney for the District of Columbia may by petition for mandamus against the association and its proper officers compel such filing to be made, and in such case the court shall require the association or the officers at fault to pay all the



expenses of the proceeding including counsel fees. (June 19, 1940, 54 Stat. 488, ch. 397, § 35.)

#### § 29-836. Dissolution—Methods—Procedure.

An association may, at any regular or special meeting legally called, be directed to dissolve by a vote of two-thirds of the entire membership. By a vote of a majority of the members voting three of their number shall be designated as trustees, who shall, on behalf of the association and within a time fixed in their designation or within any extension thereof, liquidate its assets, and shall distribute them in the manner set forth in this section. A suit for involuntary dissolution of an association organized under this chapter may be instituted for the causes and prosecuted in the manner set forth in sections 29-719 to 29-724, 29-726 to 29-729: *Provided*, That any distribution of assets shall be in the manner set forth in this section. In case of any dissolution of an association, its assets shall be distributed in the following manner and order: (1) By paying its debts and expenses; (2) by returning to the members the par value of their shares or of their membership certificates, returning to the subscribers the amounts paid on their subscriptions, and returning to the patrons the amount of savings returns credited to their accounts toward the purchase of shares or membership certificates; and (3) by distributing any surplus in either or both of the following ways as the articles may provide—

(a) Among those patrons who have been members or subscribers at any time during the past six years, on the basis of their patronage during that period;

(b) As a gift to any consumers' cooperative association or other nonprofit enterprise which may be designated in the Articles. (June 19, 1940, 54 Stat. 489, ch. 397, § 36.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29-805, 29-831.

#### § 29-837. Penalties—Unauthorized use of name "cooperative"—Existing cooperatives.

Only (1) associations organized under this chapter, (2) groups organized on a cooperative basis under any other law of the District of Columbia, and (3) foreign corporations operating on a cooperative basis and authorized to do business in the District of Columbia under this or any other law of the District of Columbia shall be entitled to use the term "cooperative," or any abbreviation or derivation thereof, as part of their business name, or to represent themselves, in their advertising or otherwise, as conducting business on a cooperative basis.

Any person, firm, or corporation violating the above provision shall upon conviction of such offense be punished by a fine of not less than \$25 nor more than \$200, with an additional fine of not more than \$200 for each month during which a violation occurs after the first month, or by imprisonment for not less than thirty days nor more than one year, or by both such fine and imprisonment. The United States attorney for the District of Columbia, or any individual, or association, or group organized on a cooperative basis, may sue to enjoin an alleged violation of this section.

Should a court of competent jurisdiction decide that any person, firm, or corporation using the name

"cooperative" prior to this chapter, and not organized on a cooperative basis, is entitled to continue in such use, any such business shall always place immediately after its name the words "does not comply with the cooperative association law of the District of Columbia" in the same kind of type, and in letters not less than two-thirds as large, as those used in the term "cooperative." (June 19, 1940, 54 Stat. 489, ch. 397, § 37; June 25, 1948, 62 Stat. 909, ch. 646, § 1.)

#### CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorney" for district attorney of the "United States." See U.S. Code, title 28, § 501.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29-801, 29-844.

#### § 29-838. Promotion expenses—Limitations—Penalty.

An association shall not, directly or indirectly, use any of its funds, nor issue shares nor incur any indebtedness, for the payment of any compensation for the organization of the association except necessary legal fees; nor for the payment of any promotion expenses in excess of 5 per centum of the amount paid in for the shares or membership certificates involved in the promotion transaction. Any association's officer, director, or agent who gives, or any person, firm, corporation or association which receives such promotion commission in violation of this section shall, upon conviction of such offense, be punished by a fine of not less than \$25, nor more than \$200, or by imprisonment for not less than thirty days nor more than one year, or by both such fine and imprisonment. (June 19, 1940, 54 Stat. 489, ch. 397, § 38.)

#### § 29-839. Spreading false reports—Penalty.

Any person, firm, corporation, or association which maliciously and knowingly spreads false reports about the management or finances of any association shall, upon conviction of such offense, be punished by a fine of not less than \$25 and not more than \$200, or by imprisonment for not less than thirty days nor more than one year, or by both such fine and imprisonment. (June 19, 1940, 54 Stat. 490, ch. 397, § 39.)

#### § 29-840. Existing cooperative groups—Acceptance of act.

Any group incorporated under another law of the District of Columbia and operating on a cooperative basis or any unincorporated group operating on such a basis in the District of Columbia may elect by a vote of two-thirds of the members voting to secure the benefits of and be bound by this chapter, and shall thereupon amend such of its articles and by-laws as are not in conformity with this chapter. A certified copy of the amended articles shall be filed and recorded with the recorder of deeds and a fee of \$5 shall be paid. (June 19, 1940, 54 Stat. 490, ch. 397, § 40.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-801.

#### § 29-841. Foreign corporations and associations—Admission to do business.

A foreign corporation or association operating on a cooperative basis and complying with the applicable laws of the state wherein it is organized shall



be entitled to do business in the District of Columbia as a foreign cooperative corporation or association. (June 19, 1940, 54 Stat. 490, ch. 397, § 41.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29-801, 29-844.

#### § 29-842. Legality declared—Not in restraint of trade.

No association, or method or act thereof which complies with this chapter, shall be deemed a conspiracy or combination in restraint of trade or an illegal monopoly, or an attempt to lessen competition or fix prices arbitrarily. (June 19, 1940, 54 Stat. 490, ch. 397, § 42.)

#### § 29-843. Laws not applicable.

No law of the District of Columbia conflicting or inconsistent with any part of this chapter shall, to the extent of the conflict or inconsistency, be construed as applicable to associations formed hereunder; nor shall any law of the District of Columbia inappropriate to the purposes of such associations be so construed; nor shall any of the provisions of sections 574 through 797, both inclusive, of the Act entitled "An Act to establish a Code of Law for the District of Columbia," approved March 3, 1901, be construed as applicable to associations formed hereunder, except as expressly stated in this chapter. Chapter 6 of title 26 (relating to licenses for loaning of money), and chapter 33 of title 28 (relating to interest rates) shall not apply to—

(A) any association formed under this chapter (whose sole function is to arrange and provide financing for its members), and

(B) any members of such association engaged in utility operations

with respect to any contract or agreement between such association and any member relating to a loan of money in connection with such utility operations. (June 19, 1940, 54 Stat. 490, ch. 397, § 43; Aug. 20, 1970, Pub. L. 91-385, § 1, 84 Stat. 828.)

#### CODIFICATION

The above reference to the Code of Law for the District is to the 1901 Code, and covers the entire subject of corporations as printed in that Code, including Banks, Cemeteries, Insurance, and other specific purpose corporations.

The sections of the 1901 Code above referred to appear in this Code under the following section numbers:

26-101, 26-102, 26-301 to 26-336, 26-401 to 26-416 (Banking and Other Financial Institutions);

27-101 to 27-128 (Cemeteries and Crematories);

29-101 to 29-103, 29-201 to 29-240, 29-301 to 29-308, 29-401 to 29-420, 29-501 to 29-512, 29-601 to 29-606, 29-701 to 29-729 (Corporations);

35-101 to 35-108, 35-201 to 35-205, 35-901 to 35-917, 35-1133, 35-1201, 35-1202 (Insurance);

44-101 to 44-103, 44-210 to 44-212 (Railroads and Other Carriers).

#### AMENDMENT

1970—Act Aug. 20, 1970, Pub. L. 91-385, § 1, added last sentence as above set out.

#### § 29-844. Taxation—Annual license fee.

Associations formed hereunder, and foreign corporations and associations admitted under section 29-841 to do business in the District of Columbia and entitled to the benefits of section 29-837, shall pay an annual license fee of \$10. (June 19, 1940, 54 Stat. 490, ch. 397, § 44.)

#### § 29-845. Separability of provisions.

If any provision of this chapter or the application thereof to any person or circumstance shall be held unconstitutional or otherwise invalid for any reason, the validity of the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby. (June 19, 1940, 54 Stat. 490, ch. 397, § 45.)

#### § 29-846. Reservation of right to amend or repeal.

The Congress reserves the right to alter, amend, or repeal this chapter, or any charter or certificate of incorporation made thereunder. (June 19, 1940, 54 Stat. 491, ch. 397, § 46.)

#### § 29-847. Short title.

This chapter may be cited as the "District of Columbia Cooperative Association Act." (June 19, 1940, 54 Stat. 491, ch. 397, § 47.)

### Chapter 9.—BUSINESS CORPORATIONS (1954)

#### Sec.

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## CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1-1461, 29-1007, 29-1066, 29-1103, 29-1104, 29-1106, 29-1111, 29-1118, 29-1119, 45-714.

## CHAPTER REFERRED TO IN U.S. CODE

This chapter is referred to in title 42, section 3932, U.S. Code.

## § 29-901. Short title.

This chapter shall be known and may be cited as the "District of Columbia Business Corporation Act" (June 8, 1954, 68 Stat. 179, ch. 269, § 1.)

## EFFECTIVE DATE

Section 146 of act June 8, 1954, provided that "This Act [this chapter] shall take effect one hundred and eighty days after the date of its approval [June 8, 1954], and thereafter no corporation eligible to be formed under this Act [this chapter] shall be incorporated under any other Act or statute now in force in the District of Columbia."

## TRANSFER OF FUNCTIONS

Transfer of functions by the Commissioners of the District of Columbia, see note under section 29-935.

## § 29-902. Definitions.

As used in and for the purposes of this chapter, unless the context otherwise requires—

(a) "Corporation" or "domestic corporation", except as used in section 29-953, means a corporation subject to the provisions of this chapter, except a foreign corporation.



(b) "Foreign corporation" means a corporation for profit organized under laws other than the laws of the District of Columbia and special Acts of Congress.

(c) "Articles of incorporation" include the original articles of incorporation and all amendments thereto, and include articles of merger or consolidation.

(d) "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation.

(e) "Incorporator" means one of the signers of the original articles of incorporation.

(f) "Shares" are the units into which the shareholders' right to participate in the control of the corporation, in its surplus or profits, or in the distribution of its assets, are divided.

(g) "Shareholder" means one who is a holder of record of shares in a corporation.

(h) "Authorized shares" means the aggregate number of shares of all classes, whether with or without par value, which the corporation is authorized to issue.

(i) Shares of its own stock belonging to a corporation shall be deemed to be "issued" shares, but not "outstanding" shares.

(j) "Stated capital" means, at any particular time, the sum of (1) the par value of all shares then issued having a par value and (2) the consideration received by the corporation for all shares then issued without par value, except such part thereof as may have been allocated otherwise than to stated capital in a manner permitted by law, and (3) such amounts not included in clauses (1) or (2) of this paragraph as may have been transferred to the stated capital account of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus such formal reductions from said sum as may have been effected in a manner permitted by law.

(k) "Paid-in surplus" means all that part of the consideration received by the corporation for, or on account of, all shares issued which does not constitute stated capital, whether heretofore or hereafter created by (1) the receipt by the corporation, for, or on account of, the issuance of shares having a par value of consideration in excess of the par value of such shares or (2) the allocation of any part of the consideration received by the corporation for, or on account of, the issuance of shares in a manner permitted by law or (3) a reduction of stated capital under this chapter, minus such formal reductions of paid-in surplus as may have been effected in a manner permitted by law.

(l) "Net assets", for the purpose of determining the right of a corporation to purchase its own shares and of determining the right of a corporation to declare and pay dividends and the liabilities of directors therefor, shall not include shares of its own stock belonging to such corporation.

(m) "Registered office" means that office maintained by the corporation, the address of which is on file with the Commissioner.

(n) "Insolvent" means that the corporation is unable to pay its debts as they become due in the usual course of its business.

(o) "State" means any State, Territory, colony, dependency, or possession of the United States of America, or any foreign country.

(p) "Commissioner" means the Commissioner of the District of Columbia or the agent or agents designated by him to perform any function vested in the Commissioner by this chapter. It shall be the duty of the Recorder of Deeds and of any other officer or agency of the Government of the District of Columbia to perform any function delegated to such officer or agency by the Commissioner pursuant to this chapter.

(q) "District" means the District of Columbia.

(r) "The court", except where otherwise specified, means the court in the District of Columbia having jurisdiction of civil actions wherein the amount in controversy exceeds \$50,000. (June 8, 1954, 68 Stat. 179, ch. 269, § 2; Aug. 3, 1954, 68 Stat. 651, ch. 653, § 5; July 29, 1970, Pub. L. 91-358, § 168(c) (1), title I, 84 Stat. 588.)

#### AMENDMENTS

1970—Section 168(c) (1) of Act July 29, 1970, Public Law 91-358, amended par. (r) generally. For provisions of this section prior to this amendment, see 1967 edition of the code.

1954—Par. (p) amended by act Aug. 3, 1954, which added the second sentence relating to the duty of the Recorder of Deeds and other officers and agencies to perform delegated functions.

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CROSS REFERENCE

Court having jurisdiction of civil actions wherein the amount in controversy exceeds \$50,000, see §§ 11-501, 11-921.

#### NOTES TO DECISIONS

##### Insolvency

In action by judgment creditor of corporation to impress a constructive trust on property conveyed by corporation to defendant officer and majority shareholder, evidence supported finding of financial incapacity of the corporation at the time of the conveyance. *L. N. Tauber v. M. Noble* (D.C. Mun. App. 1961, 172 A. 2d 552).

#### § 29-903. Purposes.

Corporations for profit may be organized under this chapter for any lawful purpose or purposes, except for the purpose of banking or insurance or the acceptance and execution of trusts, the operation of railroads, or building and loan associations: *Provided*, That nothing contained in this chapter shall be construed to relieve any public-utility corporation incorporated or reincorporated under the provisions of this chapter from complying with all applicable provisions of the laws of the District of Columbia relating to such corporations. (June 8, 1954, 68 Stat. 180, ch. 269, § 3; Sept. 3, 1963, 77 Stat. 137, Pub. L. 88-111, § 1(5).)

#### AMENDMENT

1963—Section 1(5) of act Sept. 3, 1963, amended the section by striking therefrom the last proviso clause.

#### EFFECTIVE DATE OF 1963 AMENDMENTS

Section 3 of act Sept. 3, 1963 [amending sections 29-903, 29-904, 29-907a, 29-907b, 29-916, 29-927g, 29-933h, 29-933i, 29-936, 29-938d, 29-941, 29-947 and adding sec-



tion 29-959], provided that: "This Act shall become effective sixty days after the date of its enactment"

#### POPULAR NAME

Section 2 of act Sept. 3, 1963, cited to text [amending sections 29-903, 29-904, 29-907a, 29-907b, 29-916, 29-927g, 29-933h, 29-933i, 29-936, 29-938d, 29-941, 29-947, and adding section 29-959], provided that: "This Act may be cited as the 'District of Columbia Business Corporation Act Amendments of 1963'."

#### NOTES TO DECISIONS

##### In general

In determining whether proviso of this section that no corporation may be organized unless the place where it conducts its principal business is located within District prohibits a corporation from conducting business in a city outside of District, court would examine this chapter as a whole. *Murphy v. Washington American League Baseball Club, Inc.* (D.C.D.C. 1958, 167 F. Supp. 215, affirmed 267 F. 2d 655, 105 U.S. App. D.C. 378).

Applicability of provisions of 1901 Act to corporation formed in 1953

Provision which was part of Business Corporation Act of 1901 and required restrictions to be stated on certificate had no application to corporation organized for profit in 1958. *Sankin v. 5410 Connecticut Avenue Corp., et al.; Benn v. Garfield* (1968, 281 F. Supp. 524).

##### Organization

Under this section providing that "no corporation may be organized" under this chapter "unless the place where it conducts its principal business is located within the District of Columbia", the word "organized" has relation only to time of incorporation and hence such provision would not prohibit corporation operating professional baseball team from transferring its franchise from District to a city outside of District since the usual meaning of word "organized" when used in relation to corporate structures is in the sense of having been brought into being or created and the word as used in the chapter sounds in praesenti and means the creation of a corporation without reference to the future. *Murphy v. Washington American League Baseball Club, Inc.* (D.C.D.C. 1958, 167 F. Supp. 215, affirmed 267 F. 2d 655, 105 U.S. App. D.C. 378).

##### Place of business after organization

This chapter, considered in its entirety, contemplates that principal place of business of a corporation may be outside the District after organization in the sense of creation, and there was no intention to make the proviso that "no corporation may be organized" under the chapter "unless the place where it conducts its principal business is located within the District of Columbia" a continuing regulation. *Murphy v. Washington American League Baseball Club, Inc.* (D.C.D.C. 1958, 167 F. Supp. 215, affirmed 267 F. 2d 655, 105 U.S. App. D.C. 378).

##### Retrospective effect

The proviso of this section that no corporation may be organized under this chapter unless place where it conducts its principal business is located within the District of Columbia speaks prospectively, and where corporation owning a baseball club, although reincorporated under the 1954 act, was organized under the act of 1901, imposing no restrictions upon the place where the corporation might conduct its principal business, such corporation was not required to conduct its principal business at a place within the District and was not prohibited from moving its American League franchise to any other city outside the District. *Murphy v. Washington American League Baseball Club, Inc., et al.* (1959, 267 F. 2d 655, 105 U.S. App. D.C. 378).

The proviso of Business Corporation Act of District of Columbia that no corporation may be organized unless the place where it conducts its principal business is located within District of Columbia did not apply to corporation operating professional baseball team as reincorporated corporation which under old act had power to conduct its principal place of business outside District of Columbia, and though not exercised, the power available by amendment to certificate of corporation was

preserved under the Act, and hence proviso would not preclude corporation from transferring its franchise to a city outside the District. *Murphy v. Washington American League Baseball Club, Inc.* (D.C.D.C. 1958, 167 F. Supp. 215, affirmed 267 F. 2d 655, 105 U.S. App. D.C. 378).

#### § 29-904. General powers.

Each corporation shall have power:

(a) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.

(b) To sue and be sued, complain and defend, in its corporate name.

(c) To have a corporate seal, which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

(d) To purchase, take, receive, lease, take by gift, devise, or bequest, or otherwise acquire, and to own, hold, improve, use, and otherwise deal in and with real or personal property, or any interest therein, wherever situated.

(e) To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets.

(f) To lend money to, and otherwise assist, its employees, other than its officers and directors.

(g) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other corporations organized under the laws of the District of Columbia, of foreign corporations, and of associations, partnerships, or individuals.

(h) To make contracts and incur liabilities; to borrow money at such rates of interest as the corporation may determine without regard to the restrictions of any usury law; to issue its notes, bonds, and other obligations; and to secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income. No corporation formed hereunder shall plead any statutes against usury in any action.

(i) To invest its surplus funds from time to time and to lend money for its corporate purposes, and to take and hold real and personal property as security for the payment of funds so invested or loaned.

(j) To conduct its business, carry on its operations, and have offices and exercise the powers granted by this chapter within and without the District of Columbia and to exercise in any State, Territory, district, colony, or possession of the United States, or in any foreign country the powers granted by this chapter, subject to the laws of such State, Territory, District, colony, or possession of the United States, or such foreign country.

(k) To elect or appoint officers and agents of the corporation, and to define their duties and fix their compensation.

(l) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of the District of Columbia, for the administration and regulation of the affairs of the corporation.

(m) To make contributions to charitable organizations, and, in time of war, to transact any lawful business in aid of the United States.



(n) To cease its corporate activities and surrender its corporate franchise.

(o) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is formed.

(p) To indemnify any and all of its directors or officers or former directors or officers or any person who may have served at its request as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor against expenses actually and necessarily incurred by them in connection with the defense of any action, suit, or proceeding in which they, or any of them, are made parties, or a party, by reason of being or having been directors or officers or a director or officer of the corporation, or of such other corporation, except in relation to matters as to which any such director or officer or former director or officer or person shall be adjudged in such action suit, or proceeding to be liable for negligence or misconduct in the performance of duty. Such indemnification shall not be deemed exclusive of any other rights to which those indemnified may be entitled, under any bylaw, agreement, vote of stockholders, or otherwise. (June 8, 1954, 68 Stat. 180, ch. 269, § 4; Sept. 3, 1963, 77 Stat. 136, Pub. L. 88-111, § 1(1).)

#### AMENDMENT

1963—Section 1(1) of act Sept. 3, 1963, amended subsection (h) by adding the following "No corporation formed hereunder shall plead any statutes against usury in any action."

#### EFFECTIVE DATE OF 1963 AMENDMENTS

See note to section 29-903.

#### CROSS REFERENCE

Usury defined, see § 28-3303.

#### NOTES TO DECISIONS

##### Appealable order

Whether foreign corporation, previously qualified, possessed different status when it filed in advance of suit for recovery of allegedly usurious interest a certificate of withdrawal was relevant issue in addition to question raised in first amended complaint as to whether statute allowing corporations to seek financing without regard to lawful interest rates barred a corporation's action to recover usurious interest, and order dismissing second amended complaint which presented issue of foreign corporation's status was a final and appealable order. *Indian Lake Estates, Inc. v. Ten Individual Defendants* (1965, 350 F. 2d 435, 121 U.S. App. D.C. 305).

Applicability of provisions of 1901 Act to corporation formed in 1958

Provision which was part of Business Corporation Act of 1901 and required restrictions to be stated on certificate had no application to corporation organized for profit in 1958. D.C. Code 1961. *Sankin v. 5410 Connecticut Avenue Corp, et al.; Benn v. Garfield* (1968, 281 F. Supp. 524).

##### Place of business after organization

This chapter, considered in its entirety, contemplates that principal place of business of a corporation may be outside the District after organization in the sense of creation, and there was no intention to make the proviso that "no corporation may be organized" under the chapter "unless the place where it conducts its principal business is located within the District of Columbia" a continuing regulation. *Murphy v. Washington American League Baseball Club, Inc.* (D.C.D.C. 1958, 167 F. Supp. 215, affirmed 267 F. 2d 655, 105 U.S. App. D.C. 378).

##### Usury

Filing of certificate of withdrawal by foreign corporation did not change status previously acquired by cor-

poration's contracts so that under statute allowing corporations to seek financing without regard to lawful interest rates its complaint for recovery of usurious interest under prior contracts was barred. *Indian Lake Estates, Inc. v. Ten Individual Defendants* (1965, 350 F. 2d 435, 121 U.S. App. D.C. 305).

#### § 29-904a. Power of corporation to acquire its own shares.

A corporation shall have power to purchase, take, receive, or otherwise acquire, hold, own, pledge, transfer, or otherwise dispose of its own shares: *Provided*, That it shall not purchase, either directly or indirectly, its own shares when its net assets are less than the sum of its stated capital, its paid-in surplus, any surplus arising from unrealized appreciation in value or revaluation of its assets and any surplus arising from surrender to the corporation of any of its shares, or when by so doing its net assets would be reduced below such sum. Notwithstanding the foregoing limitations, a corporation may purchase or otherwise acquire its own shares for the purpose of—

(a) eliminating fractional shares;

(b) collecting or compromising claims of the corporation or any indebtedness to the corporation;

(c) paying dissenting shareholders entitled to payment for their shares under the provisions of this chapter;

(d) effecting the retirement of its redeemable shares by redemption or by purchase at not to exceed the redemption price, but no redemption or purchase of redeemable shares shall be made which will reduce the remaining assets of the corporation below an amount sufficient to pay all debts and known liabilities of the corporation as they mature, except such debts and liabilities as have been otherwise adequately provided for, or which will reduce the net assets below the aggregate amount payable to the holders of shares having prior or equal rights to the assets of the corporation upon dissolution. (June 8, 1954, 68 Stat. 181, ch. 269, § 5.)

#### § 29-904b. Dealing in real estate as corporate purpose.

A corporation having among its purposes, as set forth in its articles of incorporation, that of acquiring, owning, using, conveying, and otherwise disposing of and dealing in real property or any interest therein, shall have power and authority so to do without limitation. (June 8, 1954, 68 Stat. 182, ch. 269, § 6.)

#### § 29-905. Defense of ultra vires.

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted—

(a) in a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceed-



ing and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained;

(b) in a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation;

(c) in a proceeding by the Commissioner, as provided in this chapter, to dissolve the corporation, or in a proceeding by the Commissioner to enjoin the corporation from the transaction of unauthorized business. (June 8, 1954, 68 Stat. 182, ch. 269, § 7; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 1.)

#### AMENDMENT

1957—Subsec. (a) amended by act Sept. 2, 1957, which deleted "authorized" from the words "if the authorized acts."

#### EFFECTIVE DATE OF 1957 AMENDMENT

Section 36 of act Sept. 2, 1957, provided that: "This Act [amending sections 29-905, 29-906a, 29-907a, 29-908a, 29-908g, 29-910a, 29-916g, 29-921b, 29-921f, 29-921g, 29-923a, 29-924, 29-924b, 29-925, 29-927d, 29-927h, 29-928 to 29-930, 29-930c, 29-930h, 29-930k, 29-933e, 29-933h, 29-933i, 29-934 to 29-934c, 29-936, 29-938, 29-941, and 29-952 to 29-953] shall take effect on the thirtieth day after its approval [Sept. 2, 1957]."

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### NOTES TO DECISIONS

##### Ultra vires

Nonprofit corporation representing persons engaged in business of selling, installing and servicing air-conditioning equipment was not vested with right to challenge capacity of District of Columbia gas company to enter into contractual arrangement for gas service on the ground that contract was ultra vires. *Association of Fair Competitive Practices in Air Conditioning, Inc. v. Public Service Commission of the District of Columbia, et al.* (1967, 372 F. 2d 934, 125 U.S. App. D.C. 361).

#### § 29-906. Corporate name.

The corporate name—

(a) shall contain the word "corporation", "company", "incorporated", or "limited", or shall contain an abbreviation of one of such words;

(b) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;

(c) shall not be the same as, or deceptively similar to, the name of any domestic corporation, or that of any corporation organized under any Act of Congress authorizing the formation of corporations under the laws of the District of Columbia, or that of any corporation created pursuant to any special Act of Congress to transact business in the District of Columbia, or that of any foreign corporation authorized to transact business in the District of Co-

lumbia, or a name the exclusive right to which is at the time reserved in the manner provided in this chapter;

(d) shall not indicate, nor shall any statement be made, that the corporation is organized under an Act of Congress. (June 8, 1954, 68 Stat. 183, ch. 269, § 8.)

#### § 29-906a. Reserved name.

(a) The exclusive right to the use of a corporate name may be reserved by—

(1) any person intending to organize a corporation under this chapter or any Act for the organization of a corporation under the laws of the District of Columbia;

(2) any corporation organized under this chapter proposing to change its name;

(3) any corporation organized under any law other than this chapter proposing to reincorporate or incorporate under this chapter;

(4) any foreign corporation intending to make application for a certificate of authority to transact business in the District of Columbia;

(5) any foreign corporation authorized to transact business in the District of Columbia and intending to change its name;

(6) any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to transact business in the District of Columbia.

(b) The reservation shall be made by filing with the Commissioner an application to reserve a specified corporate name, executed by the applicant. If the Commissioner finds that the name is available for corporate use, he shall reserve the same for the exclusive use of the applicant for a period of sixty days.

(c) The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing with the Commissioner a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee. (June 8, 1954, 68 Stat. 183, ch. 269, § 9; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 2.)

#### AMENDMENT

1957—Subsec. (a) (3) amended by act Sept. 2, 1957, which inserted the words "or incorporate".

#### EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 29-905.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-907. Registered office and registered agent.

Each corporation shall have and continuously maintain in the District of Columbia—

(a) a registered office which may be, but need not be, the same as its place of business;

(b) a registered agent, which agent may be either an individual resident in the District of Columbia whose business office is identical with such registered office, or a corporation authorized by the articles of incorporation to act as such agent and authorized to



transact business in the District of Columbia having a business office identical with such registered office. (June 8, 1954, 68 Stat. 183, ch. 269, § 10.)

#### NOTES TO DECISIONS

##### Place of business

Under this section requiring a corporation to have and continuously maintain in district a registered office which may be but need not be the same as its place of business and a registered agent, Congress intended only that the registered office and registered agent remain in District and did not require that they be at place of business which would imply, so far as events after organization are concerned, that the place of business might be elsewhere than the District. *Murphy v. Washington American League Baseball Club, Inc.* (D.C.D.C. 1958, 167 F. Supp. 215, affirmed 267 F. 2d 655, 105 U.S. App. D.C. 378).

##### After organization

This chapter, considered in its entirety, contemplates that principal place of business of a corporation may be outside the District after organization in the sense of creation, and there was no intention to make the proviso that "no corporation may be organized" under the chapter "unless the place where it conducts its principal business is located within the District of Columbia" a continuing regulation. *Murphy v. Washington American League Baseball Club, Inc.* (D.C.D.C. 1958, 167 F. Supp. 215, affirmed 267 F. 2d 655, 105 U.S. App. D.C. 378).

#### § 29-907a. Change of registered office or registered agent.

(a) A corporation may change its registered office or change its registered agent, or both, by filing with the Commissioner a statement setting forth—

- (1) the name of the corporation;
- (2) the address, including street and number, if any, of its then registered office;
- (3) if the address of its registered office be changed, the address, including street and number, if any, to which the registered office is to be changed;
- (4) the name of its then registered agent;
- (5) if its registered agent be changed, the name of its successor registered agent;
- (6) that the address of its registered office and the address of the business office of its registered agent as changed, will be identical; and
- (7) that such change was authorized by resolution duly adopted by its board of directors or was authorized by an officer of the corporation duly empowered to make such change.

(b) Such statement shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and delivered to the Commissioner. If the Commissioner finds that such statement conforms to the provisions of this chapter, he shall:

- (1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;
- (2) file one of such duplicate originals in his office;
- (3) return the other duplicate original to the corporation or its representative.

(c) The change of address of the registered office, or the change of registered agent, or both, as the case may be, shall become effective upon the filing of such statement by the Commissioner.

(d) Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in triplicate, with the Commissioner, who shall forthwith mail one copy thereof to the corporation at its registered office and another copy thereof to the corporation at its principal office in the District as shown on the records of the Commissioner. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the Commissioner or upon the appointment of a successor agent becoming effective, whichever occurs first. No fee or charge of any kind shall be imposed with respect to a filing under this subsection.

(e) The registered agent of one or more domestic corporations may change the address of the registered office of such domestic corporation or corporations by filing with the Commissioner a statement setting forth:

- (1) the name of the registered agent;
- (2) the present address, including street and number, if any, of such registered agent;
- (3) the names of the corporation or corporations represented by such registered agent at such address;
- (4) the address, including street and number, if any, to which the office of such registered agent is to be changed; and
- (5) the date upon which such change will take place.

(f) Such statement shall be executed in duplicate by such registered agent in his individual name, but if such agent is a corporation, domestic or foreign, such statement shall be executed by such corporation by its president or vice president and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary and delivered to the Commissioner. If the Commissioner finds that such statement conforms to law, he shall, when all fees and charges have been paid as prescribed in this chapter:

- (1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;
- (2) file one of such duplicate originals in his office; and
- (3) return the other duplicate original to the registered agent.

(g) The change of address of such registered agent as to the domestic corporation or corporations named in such statement shall become effective upon the filing of such statement by the Commissioner or on the date set forth in such statement as the date on which such change of location of such registered office will take place, whichever is later. (June 8, 1954, 68 Stat. 184, ch. 269, § 11; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 3; July 23, 1959, 73 Stat. 239, Pub. L. 86-106, § 1; Sept. 3, 1963, 77 Stat. 136, Pub. L. 88-111, § 1(2).)

#### AMENDMENTS

1963—Section 1(2) of act Sept. 3, 1963, amended section by adding subsection (e), (f) and (g).

1959—Subsec. (d) added by act July 23, 1959.

1957—Subsec. (b) amended by act Sept. 2, 1957, which inserted "in duplicate" after "executed", struck out "file such statement" at the end of the subsection and added clauses (1)—(3).



**EFFECTIVE DATE OF 1963 AMENDMENT**

See note to section 29-903.

**EFFECTIVE DATE OF 1959 AMENDMENT**

Section 18 of act July 23, 1959, provided that: "This Act [adding sections 29-957, 29-958, and amending sections 29-907a, 29-908a, 29-908g, 29-908i, 29-910a, 29-913, 29-915, 29-916c, 29-918, 29-920, 29-931b, 29-932, 29-933d, 29-933h, 29-933i, and 29-933m] shall take effect on the sixtieth day after the date of its enactment [July 23, 1959]."

**EFFECTIVE DATE OF 1957 AMENDMENT**

See note under section 29-905.

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**§ 29-907b. Registered agent as an agent for service.**

(a) The registered agent so appointed by a corporation shall be an agent of such corporation upon whom process against the corporation may be served, and upon whom any notice or demand required or permitted by law to be served upon the corporation may be served. Service of any process, notice, or demand upon a corporate agent, as such agent, may be had by delivering a copy of such process, notice, or demand to the president, vice president, the secretary, or an assistant secretary of such corporate agent.

(b) Whenever a corporation shall fail to appoint or maintain a registered agent in the District, or whenever any such registered agent cannot with reasonable diligence be found at the registered office of such corporation in the District, or whenever the articles of incorporation of any domestic corporation shall be revoked, then the Commissioner shall be an agent of such corporation upon whom any process against such corporation may be served and upon whom any notice or demand required or permitted by law to be served upon such corporation may be served. Service on the Commissioner of any such process, notice, or demand shall be made by delivering to and leaving with the Commissioner, or with any clerk having charge of his office duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is so served, the Commissioner shall immediately cause one of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its registered office.

(c) The Commissioner shall keep a record of all processes, notices, and demands served upon him under this section, and shall record therein the time of such service and his action with respect thereto.

(d) Nothing herein contained shall limit or affect the right to serve any process, notice, or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law. (June 8, 1954, 68 Stat. 184, ch. 269, § 12; Sept. 3, 1963, 77 Stat. 137, Pub. L. 88-111, § 1(3).)

**AMENDMENT**

1963—Section 1(3) of act Sept. 3, 1963, amended subsection (b) generally.

**EFFECTIVE DATE OF 1963 AMENDMENT**

See note to section 29-903.

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**§ 29-908. Authorized shares.**

(a) Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, any or all of which classes may consist of shares with par value or shares without par value, with such designations, preferences, voting powers, special or relative rights and such limitations, restrictions, or qualifications thereof as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting power of the shares of any class.

(b) Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes—

(1) subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof;

(2) entitling the holders thereof to cumulative or noncumulative dividends;

(3) having preference over any other class or classes of shares as to the payment of dividends;

(4) having preference as to the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation;

(5) convertible into shares of any other class: *Provided*, That shares without par value shall not be converted into shares with par value unless that part of the stated capital of the corporation represented by such shares without par value is, at the time of conversion, at least equal to the aggregate par value of the shares into which the shares without par value are to be converted. (June 8, 1954, 68 Stat. 185, ch. 269, § 13.)

**§ 29-908a. Issuance of shares of preferred or special classes in series.**

(a) If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation: *Provided*, That all shares of the same class shall be identical except as to the following relative rights and preferences, in respect of any or all of which there may be variations between different series:

(1) The rate of dividend, the time of payment and the dates from which dividends on cumulative shares shall be accumulative, and the extent of other participation rights, if any.

(2) The price at and the terms and conditions on which shares may be redeemed.

(3) The amount payable upon shares in event of involuntary liquidation.



(4) The amount payable upon shares in event of voluntary liquidation.

(5) Sinking-fund provisions for the redemption or purchase of shares.

(6) The terms and conditions on which shares may be converted, if the shares of any series are issued with the privilege of conversion.

(7) Any right to vote with holders of shares of any other series or class and any right to vote as a class, either generally or as a condition to specified corporate action.

(b) If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority to divide any or all of such classes into series and, within the limitations set forth in this section, fix and determine the relative rights and preferences of the shares of any series so established: *Provided*, That such authority of the board of directors shall be subject to such further limitations, if any, as are stated in the articles of incorporation and shall always be subject to the limitation that the board of directors shall not create a sinking fund in respect of any series unless provision for a sinking fund at least as beneficial to all issued and outstanding shares of the same class shall either then exist or be at the same time created.

(c) In order for the board of directors to establish a series, where authority so to do is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof, or so much thereof as shall not be fixed and determined by the articles of incorporation.

(d) Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall file with the Commissioner a statement setting forth—

(1) the name of the corporation;

(2) a copy of the resolution establishing and designating the series, and fixing and determining the relative rights and preferences thereof;

(3) the date of adoption of such resolution;

(4) that such resolution was duly adopted by the board of directors.

(e) Such statement shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and shall be delivered to the Commissioner. If the Commissioner finds that such statement conforms to law, he shall, when all franchise taxes, fees, and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in his office;

(3) return the other duplicate original to the corporation or its representative.

(f) Upon the filing of such statement by the Commissioner, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become effective. (June 8, 1954, 68 Stat. 185, ch. 269, § 14; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 4; July 23, 1959, 73 Stat. 240, Pub. L. 86-106, § 2.)

#### AMENDMENTS

1959—Subsec. (a) amended by act July 23, 1959, which added to clause (1) the matter starting with "the time of" and added clause (7).

1957—Subsec. (e)(3) added by act Sept. 2, 1957, § 4 (1).

Subsec. (f), formerly (g), so redesignated by act Sept. 2, 1957, § 4(3). Former subsec. (f), which read "The duplicate original shall be filed for record in the office of the Recorder of Deeds" was deleted by act Sept. 2, 1957 § 4(2).

#### EFFECTIVE DATE OF 1959 AMENDMENT

See note under section 29-907a.

#### EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 29-905.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-908b. Subscriptions for shares.

(a) A subscription for shares of a corporation to be organized shall be irrevocable for a period of six months unless otherwise provided by the terms of the subscription agreement, or unless all of the subscribers consent to the revocation of such subscription.

(b) Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class. In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. The bylaws may prescribe other penalties for failure to pay installments or calls that may become due, but no penalty working a forfeiture of the shares, or of the amounts paid thereon, shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of twenty days after written demand has been made therefor. Such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber at his last post-office address known to the corporation, with the postage thereon prepaid. In the event of the sale of any shares by reason of any forfeiture, the excess of proceeds realized over the amount due and unpaid on such shares shall be paid to the delinquent subscriber or to his legal representative. (June 8, 1954, 68 Stat. 186, ch. 269, § 15.)

#### § 29-908c. Consideration for shares.

(a) Shares having a par value may be issued for such consideration, not less than the par value thereof, as shall be fixed from time to time by the board of directors.



(b) Shares without par value may be issued for such consideration as may be fixed from time to time by the board of directors unless the articles of incorporation reserve to the shareholders the right to fix the consideration. In the event that such right be reserved as to any shares, the shareholders shall, prior to the issuance of such shares, fix the consideration to be received for such shares, by a vote of the holders of a majority of all outstanding shares entitled to vote thereon.

(c) Shares of a corporation issued and thereafter acquired by it may be disposed of by the corporation for such consideration as may be fixed from time to time by the board of directors.

(d) That part of the surplus of a corporation which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be the consideration for the issuance of such shares.

(e) In the event of an exchange of issued shares having a par value for a different number of shares having the same aggregate par value, whether of the same or of a different class or classes, or in the event of a conversion of shares, or in the event of an exchange of shares with or without par value into the same or a different number of shares without par value, whether of the same or a different class or classes, the consideration for the shares so issued in exchange shall be deemed to be (1) the consideration originally received for the shares so exchanged or converted; and (2) that part of surplus, if any, transferred to stated capital upon the issuance of shares for the shares so exchanged or converted; and (3) any additional consideration paid to the corporation upon the issuance of shares for the shares so exchanged or converted. (June 8, 1954, 68 Stat. 187, ch. 269, § 16.)

#### § 29-908d. Payment for shares.

(a) The consideration for the issuance of shares may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued, which, in the case of shares having a par value, shall be not less than the par value thereof, shall have been received by the corporation, such shares shall be deemed to be full paid and non-assessable.

(b) Neither promissory notes nor future services shall constitute payment or part payment for shares of a corporation.

(c) In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive. (June 8, 1954, 68 Stat. 187, ch. 269, § 17.)

#### § 29-908e. Determination of amount of stated capital.

(a) A corporation may determine that only a part of the consideration for which its shares may be issued, from time to time, shall be stated capital: *Provided*, That in the event of any such determination—

(1) if the shares issued shall consist wholly of shares having a par value, then the stated capital

represented by such shares shall be not less than the aggregate par value of the shares so issued;

(2) if the shares issued shall consist wholly of shares without par value, all of which shares have a preferential right in the assets of the corporation in the event of its involuntary liquidation, then the stated capital represented by such shares shall be not less than the aggregate preferential amount payable upon such shares in the event of involuntary liquidation;

(3) if the shares issued consist wholly of shares without par value, and none of such shares has a preferential right in the assets of the corporation in the event of its involuntary liquidation, then the stated capital represented by such shares shall be the total consideration received therefor less such part thereof as may be allocated to paid-in surplus;

(4) if the shares issued shall consist of several or all of the classes of shares enumerated in (1), (2), and (3) of this section, then the stated capital represented by such shares shall be not less than the aggregate par value of any shares so issued having a par value and the aggregate preferential amount payable upon any shares so issued without par value having a preferential right in the event of involuntary liquidation.

(b) In order to determine that only a part of the consideration for which shares without par value may be issued from time to time shall be stated capital, the board of directors shall adopt a resolution setting forth the part of such consideration allocated to stated capital and the part otherwise allocated, and expressing such allocation in dollars. If the board of directors shall not have determined (a) at the time of the issuance of any shares issued for cash, or (b) within sixty days after the issuance of any shares issued for labor or services actually performed for the corporation or issued for property other than cash, that only a part of the consideration for shares so issued shall be stated capital, then the stated capital of the corporation represented by such shares shall be an amount equal to the aggregate par value of all such shares having a par value, plus the consideration received for all such shares without par value.

(c) The stated capital of the corporation may be increased from time to time by resolution of the board of directors directing that all or a part of the paid-in or other surplus of the corporation be transferred to stated capital. The board of directors may direct that the amount of the surplus so transferred shall be deemed to be stated capital in respect of any designated class of shares. (June 8, 1954, 68 Stat. 188, ch. 269, § 18.)

#### § 29-908f. Expenses of organization, reorganization, and financing.

The reasonable charges and expenses of organization or reorganization of a corporation and reasonable compensation for the sale or underwriting of its shares may be paid or allowed by such corporation out of the consideration received by it in payment for its shares without thereby rendering such shares not full paid and nonassessable. (June 8, 1954, 68 Stat. 188, ch. 269, § 19.)



## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-926.

## § 29-908g. Certificates representing shares.

(a) The shares of a corporation shall be represented by certificates signed by the president or a vice president and the secretary or an assistant secretary and sealed with the seal of the corporation. Such seal may be a facsimile. Where such a certificate is countersigned by a transfer agent other than the corporation itself or an employee of the corporation, or by a transfer clerk and registered by a registrar, the signatures of the president or vice president and the secretary or assistant secretary upon such certificate may be facsimiles. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if such officer had not ceased to hold such office at the date of its issue.

(b) Notwithstanding the provisions of section 28:8-204 of the District of Columbia Code, every certificate representing shares the transferability of which is restricted or limited shall state upon the face thereof that the transferability of such shares is restricted or limited and upon the face or back thereof shall either set forth a full or summary statement of any such restriction or limitation upon the transferability of such shares or shall state that the corporation will furnish to any shareholder upon request and without charge such full or summary statement.

(c) Subject to the provisions of subsection (b) of this section, every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back thereof, or shall state that the corporation will furnish to any shareholder upon request and without charge, a full or summary statement of the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued, and, if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.

(d) Each certificate representing shares shall also state—

(1) that the corporation is organized under the laws of the District of Columbia;

(2) the name of the person to whom issued;

(3) the number and class of shares which such certificate represents;

(4) the par value of each share represented by such certificate, or a statement that the shares are without par value.

(e) No certificate shall be issued for any share until such share is fully paid.

(f) As to corporations availing themselves of the provisions of section 29-952, the provisions of this section shall be applicable only to the shares of such corporations issued subsequent to such reincorpora-

tion or incorporation. (June 8, 1954, 68 Stat. 189, ch. 269, § 20; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 5; July 23, 1959, 73 Stat. 240, Pub. L. 86-106, § 3; Dec. 30, 1963, 77 Stat. 770, Pub. L. 88-234, § 4.)

## AMENDMENTS

1963—Section 4 of act Dec. 30, 1963, amended subsection (b) by changing the reference to section 28-2915 to the new section 28:8-204.

1959—Subsec. (b) amended by act July 23, 1959, which substituted the provisions set forth in the text for former provisions which read: "Every certificate representing shares issued by a corporation which is authorized to issue shares the transferability of which is restricted or limited shall state upon the face or back thereof, in full or in the form of a summary, all of the limitations and restrictions upon the transferability thereof."

Subsec. (c) amended by act July 23, 1959, which substituted the provisions set forth in the text for former provisions which read: "Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall state upon the face or back thereof, in full or in the form of a summary, all of the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued, and, if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series."

1957—Subsec. (f) added by act Sept. 2, 1957.

## EFFECTIVE DATE OF 1963 AMENDMENT

See note preceding article I of subtitle I, of title 28.

## EFFECTIVE DATE OF 1959 AMENDMENT

See note under section 29-907a.

## EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 29-905.

## NOTES TO DECISIONS

## Stock voting agreement

Agreement whereby majority stockholder and minority stockholder agreed that their voting power should be equal but which was not endorsed upon stock certificates was not invalid. *Sankin v. 5410 Connecticut Avenue Corp., et al.*; *Benn v. Garfield* (1968, 281 F. Supp. 524).

Parties to fraudulent scheme to induce minority stockholder to pay inflated price for majority stockholder's stock and who knew of agreement between majority stockholder and minority stockholder for equal voting power in corporate affairs were not entitled to claim that voting agreement was invalid because of stock certificates' failure to contain such restriction. *Id.*

Statutory provision that stock certificates must contain statement as to restrictions thereon was designed for protection of innocent purchasers of stock and could not be used as defense to suit by minority stockholder against those who were parties to fraudulent scheme whereby minority stockholder paid inflated price for majority stockholder's stock. *Id.*

## § 29-908h. Issuance of fractional shares or scrip.

A corporation may, but shall not be obliged to, issue a certificate for a fractional share, and, by action of its board of directors, may issue in lieu thereof scrip or other evidence of ownership, which shall entitle the holder to receive a certificate for a full share upon the surrender of such scrip or other evidence of ownership aggregating a full share, but which shall not, unless otherwise provided, entitle the holder to exercise any voting right, or to receive dividends thereon or to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause such scrip or evi-



dence of ownership to be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares before a specified date, or subject to the condition that the shares for which such scrip or evidence of ownership is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of such scrip or evidence of ownership, or subject to any other conditions which the board of directors may deem advisable. (June 8, 1954, 68 Stat. 189, ch. 269, § 21.)

#### § 29-908i. Liability of subscribers and shareholders.

(a) A holder of or a subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which said shares were issued or to be issued, which, as to shares having a par value, shall be not less than the par value thereof. Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

(b) No person holding shares as executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall be personally liable as a shareholder, but the estate and funds in the hands of said executor, administrator, conservator, guardian, trustee, assignee, or receiver shall be so liable. No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

(c) Where it cannot be determined that shares which have been issued and outstanding for more than twelve years are fully paid and nonassessable, a determination by the board of directors that the net assets of a corporation applicable to such shares have a fair value at least equal to the stated capital represented by such shares, shall, in the absence of fraud, have the same effect as if such shares had been issued in consideration of such net assets upon such a determination made at the time of issuance, except that no such determination shall affect any rights of any then existing creditors. (June 8, 1954, 68 Stat. 190, ch. 269, § 22; July 23, 1959, 73 Stat. 240, Pub. L. 86-106, § 4.)

#### AMENDMENT

1959—Subsec. (c) added by act July 23, 1959.

#### EFFECTIVE DATE OF 1959 AMENDMENT

See note under section 29-907a.

#### § 29-908j. Shareholders' preemptive rights.

(a) The preemptive right of a shareholder to acquire additional shares of a corporation may be limited or denied to the extent provided in the articles of incorporation.

(b) Unless otherwise provided by its articles of incorporation, any corporation may issue and sell its shares to its employees or to the employees of any subsidiary corporation, without first offering such shares to its shareholders, for such consideration and upon such terms and conditions as shall be ap-

proved by the holders of two-thirds of its shares entitled to vote or by its board of directors pursuant to like approval of the shareholders. (June 8, 1954, 68 Stat. 190, ch. 269, § 23.)

#### § 29-909. Bylaws.

The power to make, alter, amend, or repeal the bylaws of the corporation shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation. (June 8, 1954, 68 Stat. 190, ch. 269, § 24.)

#### § 29-910. Meetings of shareholders.

(a) Meetings of shareholders may be held at such place within or without the District of Columbia as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation.

(b) An annual meeting of the shareholders shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

(c) Special meetings of the shareholders may be called by the president, the secretary, the board of directors, the holders of not less than one-fifth of all the outstanding shares entitled to vote, or by such other officers or persons as may be provided in the articles of incorporation or the bylaws. (June 8, 1954, 68 Stat. 190, ch. 269, § 25.)

#### § 29-910a. Notice of shareholders' meetings.

Except as provided in section 29-945 hereof, written or printed notice stating the place, day, and hour of the meeting, and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall, in the absence of a provision in the bylaws specifying a different period of notice, be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or person calling the meeting, to each shareholder of record entitled to vote at such meeting.

If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the records of the corporation, with postage thereon prepaid. (June 8, 1954, 68 Stat. 190, ch. 269, § 26; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 6; July 23, 1959, 73 Stat. 240, Pub. L. 86-106, § 5.)

#### AMENDMENTS

1959—Act July 23, 1959, inserted in the first par. words “, in the absence of a provision in the bylaws specifying a different period of notice.”

1957—Act Sept. 2, 1957, added the introductory words “Except as provided in section 29-945 hereof” to the first par.

#### EFFECTIVE DATE OF 1959 AMENDMENT

See note under section 29-907a.

#### EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 29-905.



## § 29-911. Voting of shares.

(a) Unless otherwise provided in the articles of incorporation, each outstanding share shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders.

(b) Shares of its own stock belonging to a corporation shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of outstanding shares at any given time, but shares of its own stock held by it in a fiduciary capacity may be voted and shall be counted in determining the total number of outstanding shares at any given time.

(c) A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney in fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the person executing it or his personal representatives or assigns; but the parties to a valid pledge or to an executory contract of sale may agree in writing as to which of them shall vote the stock pledged or sold until the contract of pledge or sale is fully executed.

(d) The articles of incorporation may provide that in all elections for directors every shareholder entitled to vote shall have the right to vote, in person or by proxy, the number of shares owned by him, for as many persons as there are directors to be elected, or to cumulate said shares, and give one candidate as many votes as the number of such directors multiplied by the number of his shares shall equal, or to distribute such votes on the same principle among any number of such candidates. (June 8, 1954, 68 Stat. 191, ch. 269, § 27.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-913.

## NOTES TO DECISIONS

## Stock voting agreement

Agreement whereby majority stockholder and minority stockholder agreed that their voting power should be equal but which was not endorsed upon stock certificates was not invalid. *Sankin v. 5410 Connecticut Avenue Corp., et al.*; *Benn v. Garfield* (1968, 281 F. Supp. 524).

Parties to fraudulent scheme to induce minority stockholder to pay inflated price for majority stockholder's stock and who knew of agreement between majority stockholder and minority stockholder for equal voting power in corporate affairs were not entitled to claim that voting agreement was invalid because of stock certificates' failure to contain such restriction. *Id.*

Statutory provision that stock certificates must contain statement as to restrictions thereon was designed for protection of innocent purchasers of stock and could not be used as defense to suit by minority stockholder against those who were parties to fraudulent scheme whereby minority stockholder paid inflated price for majority stockholder's stock. *Id.*

## § 29-912. Closing of transfer books and fixing record date.

For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders, or shareholders entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock-transfer books shall be closed for a stated

period but not to exceed, in any case, fifty days. If the stock-transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten days immediately preceding such meeting. In lieu of closing the stock-transfer books, the board of directors may fix in advance a date as the record date for any determination of shareholders, such date in any case to be not more than fifty days and, in case of a meeting of shareholders, not less than ten days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. If the stock-transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. (June 8, 1954, 68 Stat. 191, ch. 269, § 28.)

## § 29-913. Voting of shares by certain holders.

(a) Shares standing in the name of another corporation may be voted by such officer, agent, or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine. A proxy purporting to be executed by a corporation shall be presumed to be valid and the burden of proving invalidity shall rest on any challenger.

(b) Shares standing in the name of a deceased person may be voted by his administrator or executor, either in person or by proxy. Shares standing in the name of a guardian, conservator, or trustee may be voted by such fiduciary, either in person or by proxy, but no guardian, conservator, or trustee shall be entitled, as such fiduciary, to vote shares held by him without a transfer of such shares into his name.

(c) Shares standing in the name of a receiver or a trustee in bankruptcy may be voted by such receiver or trustee, and shares held by or under the control of a receiver or a trustee in bankruptcy may be voted by such receiver or trustee without the transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver or trustee in bankruptcy was appointed.

(d) Except as otherwise provided in section 29-911, a shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

(e) Shares standing in the name of a partnership may be voted by any partner. A proxy purporting to be executed by a partnership shall be presumed to be valid and the burden of proving invalidity shall rest on any challenger.

(f) Shares standing in the name of two or more persons as joint tenants, or tenants in common, or tenants by the entirety, may be voted in person or by



proxy by any one or more of such persons. If more than one of such tenants shall vote such shares, the vote shall be divided among them in proportion to the number of such tenants voting in person or by proxy unless a different apportionment of the vote is requested by such tenants. (June 8, 1954, 68 Stat. 192, ch. 269, § 29; July 23, 1959, 73 Stat. 240, Pub. L. 86-106, § 6.)

## AMENDMENTS

1959—Subsec. (a) amended by act July 23, 1959, which added presumption of validity respecting execution of a proxy.

Subsecs. (e) and (f) added by act July 23, 1959.

## EFFECTIVE DATE OF 1959 AMENDMENT

See note under section 29-907a.

## § 29-914. Voting trust.

Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed ten years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office, and by transferring their shares to such trustee or trustees for the purposes of the agreement. The counterpart of the voting-trust agreement so deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as is the record of shareholders of the corporation, and shall be subject to examination by any holder of a beneficial interest in the voting trust, either in person or by agent or attorney, at any reasonable time for any proper purpose. The trustee or trustees may execute and deliver to the transferors voting-trust certificates which shall be transferable in the same manner and with the same effect as certificates representing shares. (June 8, 1954, 68 Stat. 192, ch. 269, § 30.)

## § 29-915. Quorum of shareholders.

(a) Unless otherwise provided in the articles of incorporation or bylaws, a majority of the outstanding shares having voting power, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders: *Provided*, That in no event shall a quorum consist of less than one-third of the outstanding shares having voting power.

(b) The shareholders present at a duly organized meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

(c) If a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting from time to time until a quorum is present when any business may be transacted that may have been transacted at the meeting as originally called.

(d) If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number, or voting by classes, is required by this chapter or the articles of incorporation, and except that in elections of directors, those receiving

the greatest number of votes shall be deemed elected even though not receiving a majority. (June 8, 1954, 68 Stat. 191, ch. 269, § 31; July 23, 1959, 73 Stat. 241, Pub. L. 86-106, § 7.)

## AMENDMENT

1959—Subsec. (d) added by act July 23, 1959.

## EFFECTIVE DATE OF 1959 AMENDMENT

See note under section 29-907a.

## § 29-916. Board of directors.

The business and affairs of a corporation shall be managed by a board of directors. Directors need not be shareholders in the corporation unless the articles of incorporation or bylaws so provide. The articles of incorporation or bylaws may prescribe other qualifications for directors.

Unless otherwise provided in the articles of incorporation or bylaws, the board of directors, by the affirmative vote of a majority of the directors then in office, and irrespective of any personal interest of any director, shall have authority to establish reasonable compensation of all directors for services to the corporation as directors, officers, or otherwise. (June 8, 1954, 68 Stat. 193, ch. 269, § 32; Sept. 3, 1963, 77 Stat. 137, Pub. L. 88-111, § 1(4).)

## AMENDMENT

1963—Section 1(4) of act Sept. 3, 1963, amended section by adding the second paragraph relating to compensation of directors.

## EFFECTIVE DATE OF 1963 AMENDMENT

See note to section 29-903.

## § 29-916a. Number and election of directors.

The number of directors of a corporation shall not be less than three. Subject to such limitation, the number of directors shall be fixed by the bylaws, except as to the number constituting the first board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation. The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual meeting of shareholders, or until their successors shall have been elected and qualified. At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors to hold office until the next succeeding annual meeting, except as hereinafter provided. Each director shall hold office for the term for which he is elected or until his successor shall have been elected and qualified. (June 8, 1954, 68 Stat. 193, ch. 269, § 33.)

## § 29-916b. Classification of directors.

The bylaws may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third



annual meeting after their election. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes. No classification of directors shall be effective prior to the first annual meeting of shareholders. (June 8, 1954, 68 Stat. 193, ch. 269, § 34.)

#### § 29-916c. Vacancies.

Any directorship to be filled by reason of an increase in the number of directors may be filled by election at an annual meeting or at a special meeting of shareholders entitled to vote called for that purpose. Any vacancy occurring in the board of directors for any cause other than by reason of an increase in the number of directors may be filled by affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors, unless the articles of incorporation otherwise provide. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. (June 8, 1954, 68 Stat. 193, ch. 269, § 35; July 23, 1959, 73 Stat. 241, Pub. L. 86-106, § 8.)

#### AMENDMENT

1959—Act July 23, 1959, substituted "by affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors, unless the articles of incorporation otherwise provide" for "by the board of directors".

#### EFFECTIVE DATE OF 1959 AMENDMENT

See note under section 29-907a.

#### § 29-916d. Quorum of directors.

A majority of the number of directors fixed by the bylaws or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws. (June 8, 1954, 68 Stat. 193, ch. 269, § 36.)

#### § 29-916e. Executive committee.

If the bylaws so provide, the board of directors, by resolution adopted by a majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, may designate two or more directors to constitute an executive committee, which committee, to the extent provided in such resolution or in the bylaws of the corporation shall have and may exercise all of the authority of the board of directors in the management of the business and affairs of the corporation; but the designation of such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed upon it or him by law. (June 8, 1954, 68 Stat. 194, ch. 269, § 37.)

#### § 29-916f. Place of directors' meetings.

Meetings of the board of directors, regular or special, may be held at such place within or without the District of Columbia as may be provided in the bylaws or by resolution adopted by a majority of the board of directors. (June 8, 1954, 68 Stat. 174, ch. 269, § 38.)

#### § 29-916g. Notice of directors' meetings.

Except as provided in section 29-945 hereof, meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting. (June 8, 1954, 68 Stat. 194, ch. 269, § 39; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 7.)

#### AMENDMENT

1957—Act Sept. 2, 1957, added the introductory words "Except as provided in section 29-945 hereof" to the first sentence.

#### EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 29-905.

#### § 29-917. Dividends.

The board of directors of a corporation may declare and the corporation may pay dividends on its outstanding shares in cash, property, or its own shares, subject to the following provisions:

(a) No dividend shall be declared or paid at a time when the corporation is insolvent or its net assets are less than its stated capital, or when payments thereof would render the corporation insolvent or reduce its net assets below its stated capital.

(b) Dividends may be paid out of paid-in surplus or surplus arising from the surrender to the corporation of any of its shares only upon shares having a preferential right to receive dividends, provided that the source of such dividends shall be disclosed to the shareholders receiving such dividends, concurrently with payment thereof. The limitations of this subparagraph shall not limit nor be deemed to conflict with the provisions of this chapter in respect of the distribution of assets as a liquidating dividend.

(c) If a dividend is declared payable in its own shares having a par value, such shares shall be issued at the par value thereof and there shall be transferred to stated capital at the time such dividend is paid, an amount of surplus equal to the aggregate par value of the shares to be issued as a dividend.

(d) If a dividend is declared payable in its own shares without par value, such shares shall be issued at such value as shall be fixed by the board of directors by resolution adopted at the time such dividend is declared, and there shall be transferred to stated capital at the time such dividend is paid, an amount of surplus equal to the aggregate value so fixed in respect of such shares. The amount per share transferred to stated capital shall be disclosed to the



shareholders receiving such dividends, concurrently with payment thereof.

(e) A split up or division of issued shares into a greater number of shares of the same class shall not be construed to be a share dividend within the meaning of this section.

(f) No dividend shall be declared or paid contrary to any restrictions contained in the articles of incorporation.

(g) Subject to any restrictions contained in its articles of incorporation, the directors of any corporation engaged in the exploitation of wasting assets may determine the net profits derived from the exploitation of such wasting assets without taking into consideration the depletion of such wasting assets resulting from lapse of time or from necessary consumption of such assets incidental to their exploitation and may pay dividends from the net profits so determined by the directors. (June 8, 1954, 68 Stat. 194, ch. 269, § 40.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-926.

§ 29-917a. Dividends in partial liquidation.

A corporation, from time to time, may distribute a portion of its assets, in cash or kind, to its shareholders as a liquidating dividend, in the following manner and subject to the following restrictions:

(a) The board of directors shall adopt a resolution recommending the payment of a liquidating dividend, specifying the class or classes of shareholders entitled thereto and the amount thereof, and directing that the question of such distribution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(b) Written or printed notice stating that the purpose or one of the purposes of such meeting is to consider the question of such distribution shall be given to each shareholder of record entitled to vote within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders. If such meeting be an annual meeting, such purpose may be included in the notice of such meeting.

(c) At such meeting a vote of the shareholders entitled to vote shall be taken by classes on the question of the proposed distribution. The affirmative vote of the holders of at least two-thirds of the outstanding shares of each class shall be required for the authorization of such distribution.

(d) No such distribution shall be made at a time when the corporation is insolvent or its net assets are less than its stated capital, or when such distribution would render the corporation insolvent or reduce its net assets below its stated capital.

(e) No such distribution shall be made to any class of shareholders unless all cumulative dividends accrued on preferred or special classes of shares entitled to preferential dividends shall have been fully paid.

(f) No such distribution shall be made to any class of shareholders which will reduce the remaining net assets below the aggregate preferential amount payable in event of voluntary liquidation to the holders of shares having preferential rights to

the assets of the corporation in the event of liquidation.

(g) Each such distribution, when made, shall be identified as a liquidating dividend and the amount per share shall be disclosed to the shareholders receiving the same, concurrently with the payment thereof. (June 8, 1954, 68 Stat. 195, ch. 269, § 41.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-926.

§ 29-918. Liability of directors in certain cases.

(a) In addition to any other liabilities imposed by law upon directors of a corporation—

(1) directors of a corporation who vote for or assent to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders contrary to the provisions of this chapter, or contrary to any restrictions contained in the articles of incorporation, shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this chapter or any restrictions in the articles of incorporation;

(2) the directors of a corporation who vote for or assent to the declaration of any dividend or other distribution of assets of a corporation to its shareholders which renders the corporation insolvent or reduces its net assets below its stated capital shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such assets which are distributed, to the extent that the corporation is thereby rendered insolvent or its net assets are reduced below its stated capital;

(3) the directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without an adequate provision for, or the payment and discharge of, all debts, obligations, and liabilities of the corporation shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the corporation are not thereafter paid and discharged;

(4) the directors of a corporation who vote for or assent to the making of a loan to an officer or director of the corporation shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof.

(b) A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be conclusively presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such



right to dissent shall not apply to a director who voted in favor of such action.

(c) A director shall not be liable under either subparagraph (1) or (2) of this section if he relied and acted in good faith upon a balance sheet and profit-and-loss statement of the corporation represented to him to be correct by the president or the officer of such corporation having charge of its books of account, or certified by or otherwise represented in a written report of an independent public or certified public accountant or firm of such accountants to fairly reflect the financial condition of such corporation, nor shall he be so liable if in good faith in determining the amount available for any such dividend or distribution he considered the assets to be of their book value.

(d) Any director against whom a claim shall be asserted under or pursuant to this section, and who shall be held liable thereon, shall be entitled to contribution from the other directors who are likewise liable thereon.

(e) Any director against whom a claim shall be asserted under or pursuant to this section for the improper declaration of a dividend or other distribution of assets of a corporation and who shall be held liable thereon, shall be entitled to contribution from the shareholders who knowingly accepted or received any such dividend or assets, in proportion to the amounts received by them, respectively.

(f) No suit shall be brought against any director for any liability imposed by this chapter except within three years after the right of action shall accrue. (June 8, 1954, 68 Stat. 196, ch. 269, § 42; July 23, 1959, 73 Stat. 241, Pub. L. 86-106, § 9.)

#### AMENDMENTS

1959—Subsec. (c) amended by act July 23, 1959, which inserted "or otherwise represented in a written report of" following "certified by".

Subsec. (f) added by act July 23, 1959.

#### EFFECTIVE DATE OF 1959 AMENDMENT

See note under section 29-907a.

#### NOTES TO DECISIONS

##### Liability of officers

President of "association" which filed its articles of incorporation that were first rejected but later accepted could be held personally liable on obligation entered into by "association" before certificate of incorporation was issued, and creditor was not estopped from denying existence of corporation because, after certificate of incorporation was issued, he accepted first installment payment on note executed by "association." *M. G. Robertson v. E. M. Levy* (D.C. App. 1964, 197 A. 2d 443).

#### § 29-919. Officers.

(a) The officers of a corporation shall consist of a president, one or more vice presidents as may be prescribed by the bylaws, a secretary, and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. If the bylaws so provide, any two or more offices may be held by the same person, except the offices of president and secretary.

(b) All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the property and affairs of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws. (June 8, 1954, 68 Stat. 197, ch. 269, § 43.)

#### § 29-919a. Removal of officers.

Any officer or agent elected or appointed by the board of directors may be removed by the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. (June 8, 1954, 68 Stat. 197, ch. 269, § 44.)

#### § 29-920. Books and records.

(a) Each corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its shareholders and board of directors; and shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares held by each.

(b) Any person or persons who shall be the holder or holders of record of at least 5 per centum of all the outstanding shares of a corporation shall have the right to examine, in person, or by agent or attorney, at any reasonable time or times, for any proper purpose, its record of shareholders and to make extracts therefrom.

(c) A holder of a voting-trust certificate evidencing an interest in a voting trust conforming to the provisions of this chapter shall have the same rights as a shareholder to examine and make extracts from the record of shareholders of the corporation.

(d) If any person or persons holding in the aggregate 5 per centum or more of all of the outstanding shares of a corporation shall present to any officer, director, or registered agent of the corporation a written request stating the purpose thereof, for a statement of its affairs, it shall be his duty to make or procure such a statement sworn to by the president or a vice president or by the treasurer or an assistant treasurer, embracing a particular account of its assets and liabilities in detail, and to have the same ready and on file at the registered office of the corporation within thirty days after the presentation of such request. Such statement shall at all times during business hours be open to the inspection of any shareholder and he shall be entitled to copy the same.

(e) Any corporation whose officers or agents shall refuse to allow any such shareholder, entitled under the provisions of this section to examine the record of shareholders, or his agent or attorney, so to examine and make extracts from its record of shareholders, for any proper purpose, shall be liable to such shareholder in a penalty of \$50, in addition to any other damages or remedy afforded him by law. It shall be a defense to any action for penalties under this section that the person suing therefor has with-



in two years sold or offered for sale any list of shareholders of such corporation or any other corporation or has aided or abetted any person in procuring any list of shareholders for any such purpose, or has improperly used any information secured through any prior examination of the record of shareholders of such corporation or any other corporation.

(f) Nothing herein contained shall impair the power of any court of competent jurisdiction, upon proof by a shareholder of proper purpose, irrespective of the period of time during which such shareholder shall have been a shareholder of record, and irrespective of the number of shares held by him, to compel by mandamus or otherwise the production for examination by such shareholder of the books and records of account, minutes, and record of shareholders of a corporation. (June 8, 1954, 68 Stat. 197, ch. 269, § 45; July 23, 1959, 73 Stat. 241, Pub. L. 86-106, § 10.)

#### AMENDMENT

1959—Subsec. (d) amended by act July 23, 1959, which inserted the words "stating the purpose thereof," after "written request."

#### EFFECTIVE DATE OF 1959 AMENDMENT

See note under section 29-907a.

#### NOTES TO DECISIONS

##### Place of business after organization

This chapter, considered in its entirety, contemplates that principal place of business of a corporation may be outside the District after organization in the sense of creation, and there was no intention to make the proviso that "no corporation may be organized" under the chapter "unless the place where it conducts its principal business is located within the District of Columbia" a continuing regulation. *Murphy v. Washington American League Baseball Club, Inc.* (D.C.D.C. 1958, 167 F. Supp. 215, affirmed 267 F. 2d 655, 105 U.S. App. D.C. 378).

##### § 29-921. Incorporators.

Three or more natural persons of the age of twenty-one years or more may act as incorporators of a corporation by signing, verifying, and filing in duplicate in the office of the Commissioner articles of incorporation for such corporation. (June 8, 1954, 68 Stat. 198, ch. 269, § 46.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

##### § 29-921a. Articles of incorporation.

The articles of incorporation shall set forth:

- (a) The name of the corporation.
- (b) The period of duration, which may be perpetual.
- (c) The purpose or purposes for which the corporation is organized.
- (d) The aggregate number of shares which the corporation shall have authority to issue; if said shares are to consist of one class only, the par value of each of said shares, or a statement that all of said shares are without par value; or, if said shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each such class or that such shares are to be without par value.

(e) If the shares are to be divided into classes, the designation of each class and a statement of the preferences, voting power, limitations, restrictions, qualifications, and the special or relative rights in respect of the shares of each class.

(f) A statement that the minimum amount of capital with which the corporation shall commence business shall be not less than \$1,000.

(g) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between different series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series.

(h) Any provision limiting or denying to shareholders the preemptive right to acquire additional shares of the corporation.

(i) Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision which under this chapter is required or permitted to be set forth in the bylaws.

(j) The address, including street and number, if any, of its initial registered office, and the name of its initial registered agent at such address.

(k) The number of directors constituting the initial board of directors and the names and addresses, including street and number, if any, of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify.

(l) The name and address, including street and number, if any, of each incorporator.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter. Whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling. (June 8, 1954, 68 Stat. 198, ch. 269, § 47.)

#### NOTES TO DECISIONS

##### Place of business after organization

This chapter, considered in its entirety, contemplates that principal place of business of a corporation may be outside the District after organization in the sense of creation, and there was no intention to make the proviso that "no corporation may be organized" under the chapter "unless the place where it conducts its principal business is located within the District of Columbia" a continuing regulation. *Murphy v. Washington American League Baseball Club, Inc.* (D.C.D.C. 1958, 167 F. Supp. 215, affirmed 267 F. 2d 655, 105 U.S. App. D.C. 378).

##### Principal place of business

The provision of this chapter providing that each corporation "shall keep at each registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its shareholders" contemplated that principal place of business might also be outside the district after organization. *Murphy v. Washington American League Baseball Club, Inc.* (D.C.D.C. 1958, 167 F. Supp. 215, affirmed 267 F. 2d 655, 105 U.S. App. D.C. 378).



**§ 29-921b. Filing of articles of incorporation.**

(a) Duplicate originals of the articles of incorporation shall be delivered to the Commissioner. If the Commissioner finds that the articles of incorporation conform to law, he shall, when all fees have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in his office;

(3) issue a certificate of incorporation to which he shall affix the other duplicate original.

(b) The certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto by the Commissioner, shall be delivered to the incorporators or their representatives. (June 8, 1954, 68 Stat. 199, ch. 269, § 48; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 8.)

**AMENDMENT**

1957—Subsec. (b) amended by act Sept. 2, 1957, which substituted "delivered to the incorporators or their representatives" for "recorded by the Commissioners in the office of the Recorder of Deeds."

**EFFECTIVE DATE OF 1957 AMENDMENT**

See note under section 29-905.

**DESTRUCTION OF DUPLICATE CORPORATE PAPERS**

Section 150 of act June 8, 1954, as added July 23, 1959, Pub. L. 86-106, § 17, provided that:

"The Recorder of Deeds, after publishing notice of his intention so to do, is authorized, one hundred and eighty days after the effective date of this section [see note set out under section 29-907a] to destroy all duplicate original corporation papers filed in his office pursuant to this Act [chapter] prior to October 2, 1957. Such notice shall describe in general terms each class of papers affected, and shall be published once a week for three consecutive weeks in a newspaper of general circulation in the District of Columbia, the third publication of such notice to appear not less than thirty days prior to the date after which such papers may be destroyed. Any corporation shall be entitled to the return to it of any paper authorized by this section to be destroyed upon written request to the Recorder of Deeds accompanied by a fee in the amount of \$1 for each such paper to cover the cost of postage and handling."

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**§ 29-921c. Effect of issuance of certificate of incorporation.**

Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter, except as against the District of Columbia in a proceeding to cancel or revoke the certificate of incorporation. (June 8, 1954, 68 Stat. 199, ch. 269, § 49.)

**NOTES TO DECISIONS****Starting date of existence**

Corporation comes into existence only when certificate of incorporation has been issued, and before certificate issues, there is no corporation de jure, de facto, or by estoppel. *M. G. Robertson v. E. M. Levy* (D.C. App. 1964, 197 A.2d 443).

**§ 29-921d. Requirement before commencing business.**

A corporation shall not transact any business or incur any indebtedness, except such as shall be incidental to its organization or to obtaining subscriptions to or payment for its shares, until at least the minimum amount of capital set forth in its articles of incorporation as the minimum amount of capital with which it will commence business has been fully paid in. (June 8, 1954, 68 Stat. 199, ch. 269, § 50.)

**§ 29-921e. Organization meeting of directors.**

After the issuance of the certificate of incorporation an organization meeting of the board of directors named in the articles of incorporation shall be held within the United States, at the call of a majority of the directors so named, for the purpose of adopting bylaws (unless the power to adopt bylaws has been reserved by the articles of incorporation to the shareholders, in which event the bylaws shall be adopted by the shareholders), electing officers, and the transaction of such other business as may come before the meeting. The directors calling the meeting shall give at least five days' notice thereof by mail to each director so elected, which notice shall state the time and place of the meeting: *Provided, however*, That if all the directors shall waive notice in writing and fix a time and place for said organization meeting no notice shall be required of such meeting. (June 8, 1954, 68 Stat. 199, ch. 269, § 51.)

**§ 29-921f. Right to amend articles of incorporation.**

A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired: *Provided*, That its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation if made at the time of making such amendment, and, if a change in shares or the rights of shareholders, or an exchange, reclassification, or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification, or cancellation.

In particular, and without limitation upon such general power of amendment, a corporation may amend its articles of incorporation, from time to time, so as:

(a) To change its corporate name.

(b) To change its period of duration.

(c) To change, enlarge, or diminish its corporate purposes.

(d) To increase or decrease the aggregate number of shares, or shares of any class, which the corporation has authority to issue.

(e) To increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued.

(f) To exchange, classify, reclassify, or cancel all or any part of its shares, whether issued or unissued.

(g) To change the designations of all or any part of its shares, whether issued or unissued, and to change the preferences, voting power, qualifications, limitations, restrictions, and the special or relative rights in respect of all or any part of its shares, whether issued or unissued.



(h) To divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares of such series.

(i) To authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established.

(j) To authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed.

(k) To revoke, diminish, or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established.

(l) To change shares having a par value, whether issued or unissued, into the same or a different number of shares without par value, and to change shares without par value, whether issued or unissued, into the same or a different number of shares having a par value.

(m) To change the shares of any class, whether issued or unissued, and whether with or without par value, into a different number of shares of the same class or into the same or a different number of shares, either with or without par value, of other classes.

(n) To create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued.

(o) To limit, deny, or grant to shareholders of any class the preemptive right to subscribe for or acquire additional shares of the corporation, whether then or thereafter authorized. (June 8, 1954, 68 Stat. 200, ch. 269, § 52; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 9.)

#### AMENDMENT

1957—Subsec. (m) amended by act Sept. 2, 1957, which substituted "shares" for "share."

#### EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 29-905.

#### § 29-921g. Procedure to amend articles of incorporation before acceptance of subscriptions to shares.

Amendments to the articles of incorporation before any subscriptions to shares have been accepted by the board of directors shall be made in the following manner:

(a) Amended articles of incorporation modifying, changing, or altering the original articles of incorporation shall be signed by all of the living or competent incorporators who signed the original articles of incorporation, verified and filed in duplicate with the Commissioner. Such amended articles of incorporation shall contain only such provisions as might be lawfully contained in original articles of incorporation if made at the time of making such amended articles of incorporation.

(b) Such amended articles of incorporation shall be delivered in duplicate original to the Commissioner. If the Commissioner finds that such amended articles of incorporation conform to law, he shall, when all fees have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in his office;

(3) issue an amended certificate of incorporation, to which he shall affix the other duplicate original.

(c) The amended certificate of incorporation with the duplicate original of the amended articles of incorporation affixed thereto shall be delivered to the corporation or its representative.

(d) Upon the issuance of the amended certificate of incorporation, the amended articles of incorporation shall become effective and shall take the place of the original articles of incorporation. (June 8, 1954, 68 Stat. 201, ch. 269, § 53; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 10.)

#### AMENDMENTS

1957—Subsec. (a) amended by act Sept. 2, 1957, which substituted "Amended" for "Amendments to the" and "with the Commissioners" for "by the Commissioners."

Subsec. (b) (3) amended by act Sept. 2, 1957, which substituted "issue an amended certificate of incorporation, to which they shall affix the other duplicate original" for "the other duplicate original shall be recorded in the office of the Recorder of Deeds."

Subsec. (c) added by act Sept. 2, 1957. Former subsec. (c) redesignated (d).

Subsec. (d), formerly (c), so redesignated and amended by substituting "certificate" for "articles."

#### EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 29-905.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### NOTES TO DECISIONS

##### Amendment of articles by original incorporators

Where payment of subscription for all corporate stock was made to the promoter but the corporate minute book showed no action by board of directors with respect to subscription, original incorporators could amend articles of incorporation to increase capital stock and amendment was not governed by provision for amendment of articles of incorporation by board of directors after acceptance of subscription. *Sankin v. 5410 Connecticut Avenue Corp., et al.*; *Benn v. Garfield* (1968, 281 F. Supp. 524).

#### § 29-921h. Procedure to amend articles of incorporation after acceptance of subscription to shares.

Amendments to the articles of incorporation shall be made in the following manner:

(a) The board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(b) Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this



chapter for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the proposed amendment or such summary shall be included in the notice of such annual meeting.

(c) At such meeting a vote of the shareholders entitled to vote shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote, unless any class of shares is entitled to vote as a class in respect thereof, as hereinafter provided, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares of each class of shares entitled to vote as a class in respect thereof and of the total outstanding shares entitled to vote.

(d) Any number of amendments may be submitted to the shareholders, and voted upon by them, at one meeting. (June 8, 1954, 68 Stat. 201, ch. 269, § 54.)

#### NOTES TO DECISIONS

##### Amendment of Articles by original incorporators

Where payment of subscription for all corporate stock was made to the promoter but the corporate minute book showed no action by board of directors with respect to subscription, original incorporators could amend articles of incorporation to increase capital stock and amendment was not governed by provision for amendment of articles of incorporation by board of directors after acceptance of subscription. *Sankin v. 5410 Connecticut Avenue Corp, et al.*; *Benn v. Garfield* (1968, 281 F. Supp. 524).

##### § 29-922. When entitled to vote by classes.

The holders of the outstanding shares of a class whether by the provisions of the articles of incorporation such class of stock is entitled to vote or not shall be entitled to vote as a class upon a proposed amendment which would—

(a) Increase or decrease the aggregate number of authorized shares of such class.

(b) Increase or decrease the par value of the shares of such class.

(c) Effect an exchange, reclassification, or cancellation of all or part of the shares of such class.

(d) Effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of such class.

(e) Change the designations, preferences, limitations, voting, or relative rights of the shares of such class.

(f) Change the shares of such class having a par value into the same or a different number of shares without par value, or change the shares of such class without par value into the same or a different number of shares having a par value.

(g) Change the shares of such class, whether with or without par value, into a different number of shares of the same class, or into the same or a different number of shares, either with or without par value, of other classes.

(h) In the case of a preferred or special class of shares, divide the shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series.

(i) Create a new class of shares having rights and preferences prior and superior to the shares of such class.

(j) Limit or deny the existing preemptive rights of the shares of such class. (June 8, 1954, 68 Stat. 202, ch. 269, § 55.)

##### § 29-923. Articles of amendment.

(a) The articles of amendment shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and shall set forth—

(1) the name of the corporation;

(2) the amendment so adopted;

(3) the date of the adoption of the amendment by the shareholders;

(4) the number of shares outstanding, and the number of shares entitled to vote, and if the shares of any class are entitled to vote as a class, the designation of each such class and the number of outstanding shares thereof entitled to vote;

(5) the number of shares voted for and against such amendment, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against such amendment, respectively;

(6) If such amendment provides for an exchange, reclassification, or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected;

(7) if such amendment effects a change in the amount of stated capital, or paid-in surplus, or both, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of stated capital and the amount of paid-in surplus as charged by such amendment.

(b) If issued shares without par value are changed into the same or a different number of shares having par value, the aggregate par value of the shares into which the shares without par value are changed shall not exceed the sum of (1) the amount of stated capital represented by such shares without par value, and (2) the amount of surplus, if any, transferred to stated capital on account of such change, and (3) any additional consideration paid for such shares with par value and allocated to stated capital. (June 8, 1954, 68 Stat. 202, ch. 269, § 56.)

##### § 29-923a. Filing of articles of amendment.

(a) Duplicate originals of the articles of amendment shall be delivered to the Commissioner. If the Commissioner finds that the articles of amendment conform to law, he shall, when all fees and taxes have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in his office;

(3) issue a certificate of amendment to which he shall affix the other duplicate original.



(b) The certificate of amendment with the duplicate original of the articles of amendment affixed thereto shall be delivered to the corporation or its representative. (June 8, 1954, 68 Stat. 203, ch. 269, § 57; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 11.)

#### AMENDMENT

1957—Subsec. (b) amended by act Sept. 2, 1957, which substituted "delivered to the corporation or its representative" for "recorded in the office of the Recorder of Deeds."

#### EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 29-905.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-923b. Effect of certificate of amendment.

(a) Upon the issuance of the certificate of amendment, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

(b) No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party, or the existing rights of persons other than shareholders; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason. (June 8, 1954, 68 Stat. 203, ch. 269, § 58.)

#### § 29-924. Redemption and cancellation of shares.

(a) If the articles of incorporation provide that redeemable shares redeemed, or purchased or otherwise acquired by the corporation, shall be canceled and shall not be reissued, then, in the event of such cancellation of shares, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so canceled.

(b) No redemption or purchase of redeemable shares shall be made which will reduce the remaining assets of the corporation below an amount sufficient to pay all debts and known liabilities of the corporation as they mature, except such debts and liabilities as have been otherwise adequately provided for, or which will reduce the net assets below the aggregate amount payable to the holders of shares having prior or equal rights to the assets of the corporation upon dissolution.

(c) When redeemable shares of a corporation have been canceled pursuant to the provisions of the articles of incorporation, a statement shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by the secretary or an assistant secretary, which statement shall set forth—

- (1) the name of the corporation;
- (2) the aggregate number of shares which the corporation had authority to issue; itemized by classes and series;
- (3) the number of shares canceled, itemized by classes and series;
- (4) the number of shares which the corporation has authority to issue, itemized by classes and series, after giving effect to such cancellation;

(5) a statement of the aggregated number of issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class, after giving effect to the cancellation;

(6) a statement, expressed in dollars, of the amount of the stated capital and the amount of paid-in surplus of the corporation after giving effect to such cancellation.

(d) Such statement shall be delivered to the Commissioner. If the Commissioner finds that such statement conforms to law, he shall—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in his office;

(3) return the other duplicate original to the corporation or its representative.

(e) The filing of such statement by the Commissioner shall operate as an amendment to the articles of incorporation and shall reduce the number of shares of the class so canceled which the corporation is authorized to issue by the number of shares so canceled.

(f) Nothing contained in this section shall be construed to forbid a reduction of authorized shares or a reduction of stated capital in any other manner permitted by this chapter. (June 8, 1954, 68 Stat. 203, ch. 269, § 59; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 12.)

#### AMENDMENTS

1957—Subsec. (d)(3) added by act Sept. 2, 1957, § 12 (1).

Subsecs. (e) and (f), formerly (f) and (g), so redesignated by act Sept. 2, 1957, § 12 (3). Former subsec. (e) which read "The duplicate original shall be recorded in the office of the Recorder of Deeds" was deleted by act Sept. 2, 1957, § 12 (2).

#### EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 29-905.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-924b. Cancellation of reacquired shares.<sup>1</sup>

(a) A corporation may at any time, by resolution of its board of directors, cancel all or any part of the shares of the corporation of any class reacquired by it through redemption, purchase, or otherwise, and in the event of such cancellation a statement of cancellation shall be filed as provided in this section. When any reacquired shares have been canceled by resolution of the board of directors, a statement shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by the secretary or assistant secretary, which statement shall set forth—

- (1) the name of the corporation;
- (2) the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class;

<sup>1</sup> Section probably should have been numbered as § 29-924a.



(3) the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class before giving effect to such cancellation;

(4) the number of shares canceled, itemized by classes, par value of shares, shares without par value, and series, if any, within a class;

(5) a statement that the shares so canceled were canceled by a resolution duly adopted by the board of directors;

(6) the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, after giving effect to such cancellation;

(7) a statement, expressed in dollars, of the amount of the stated capital and the amount of the paid-in surplus of the corporation before giving effect to such cancellation;

(8) a statement, expressed in dollars, of the amount of the stated capital and the amount of the paid-in surplus of the corporation after giving effect to such cancellation.

(b) Such statement shall be delivered to the Commissioner. If the Commissioner finds that such statement conforms to law, he shall—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in his office;

(3) return the other duplicate original to the corporation or its representative.

(c) Upon the filing of such statement by the Commissioner, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so canceled and the shares so canceled shall be deemed to be authorized but unissued shares.

(d) Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by this chapter. (June 8, 1954, 68 Stat. 204, ch. 269, § 60; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 13.)

#### AMENDMENT

1957—Subsec. (b)(3) amended by act Sept. 2, 1957, which substituted "return the other duplicate original to the corporation or its representative" for "the other duplicate original shall be recorded in the office of the Recorder of Deeds."

#### EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 29-907a.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

### § 29-925. Reduction of stated capital in certain cases.

(a) The reduction of the stated capital of a corporation where such reduction is not accompanied by an exchange, reclassification, or cancellation of shares, or by a reduction in the par value of issued shares, or by a reduction of the number of authorized shares of any class below the number of issued shares of that class, or by a redemption and can-

cellation of shares, may be made in the following manner:

(1) The board of directors shall adopt a resolution setting forth the amount of the proposed reduction and the manner in which the reduction shall be effected, and directing that the question of such reduction be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written or printed notice, stating that the purpose or one of the purposes of such meeting is to consider the question of reducing the stated capital of the corporation, shall be given to each shareholder of record entitled to vote within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders.

(3) At such meeting a vote of the shareholders entitled to vote shall be taken on the question of the proposed reduction of stated capital, which shall require for its adoption the affirmative vote of the holders of at least a majority of the outstanding shares entitled to vote.

(b) When a reduction of the stated capital of a corporation has been approved as provided in this section, a statement shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by the secretary or an assistant secretary, which statement shall set forth—

(1) the name of the corporation;

(2) a copy of the resolution of the shareholders approving such reduction;

(3) the total number of shares outstanding and the number of shares entitled to vote;

(4) the number of shares voted for and against such reduction, respectively;

(5) a statement of the manner in which such reduction is effected, and a statement, expressed in dollars, of the amount of stated capital and the amount of paid-in surplus of the corporation adjusted to give effect to such reduction.

(c) Such statement shall be delivered to the Commissioner. If the Commissioner finds that such statement conforms to law, he shall, when all fees have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in his office;

(3) return the other duplicate original to the corporation or its representative.

(June 8, 1954, 68 Stat. 205, ch. 269, § 61; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 14.)

#### AMENDMENT

1957—Subsec. (c)(3) amended by act Sept. 2, 1957, which substituted "return the other duplicate original to the corporation or its representative" for "the other duplicate original shall be recorded in the office of the Recorder of Deeds."

#### EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 29-905.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.



## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-925a.

**§ 29-925a. Reduction of stated capital—Limits—Paid-in surplus.**

(a) No reduction of stated capital shall be made under the provisions of section 29-925 which would reduce the amount of the aggregate stated capital of the corporation to an amount less than the aggregate preferential amounts payable upon all issued shares having a preferential right in the assets of the corporation in the event of involuntary liquidation, plus the aggregate par value, after such reduction, of all issued shares having a par value but no preferential right in the assets of the corporation in the event of involuntary liquidation.

(b) The surplus, if any, created by or arising out of the reduction of the stated capital of a corporation shall be deemed to be paid-in surplus, except where such reduction is effected by the cancellation of its own shares belonging to the corporation, or by the redemption and cancellation of shares, in either of which events the paid-in surplus, if any, created by such reduction shall not exceed the amount by which the stated capital represented by such shares exceeded the cost thereof to the corporation. (June 8, 1954, 68 Stat. 206, ch. 269, § 62.)

**§ 29-926. Reduction of paid-in surplus.**

A corporation may, by resolution of its board of directors, apply any part or all of its paid-in surplus to the payment of dividends as permitted by section 29-917, or to the distribution of liquidating dividends as permitted by section 29-917a, to the payment of reasonable compensation for the sale or underwriting of its shares as permitted by section 29-908f, the reduction or elimination of any deficit arising from operating or other losses or from diminution in value of its assets. (June 8, 1954, 68 Stat. 206, ch. 269, § 63.)

**§ 29-927. Procedure for merger.**

Any two or more domestic corporations may merge into one of such corporations in the following manner:

The board of directors of each corporation shall, by resolution adopted by a majority vote of the members of each such board, approve a plan of merger setting forth:

(a) The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.

(b) The terms and conditions of the proposed merger.

(c) The manner and basis of converting the shares of each merging corporation into shares or other securities or obligations of the surviving corporation.

(d) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger.

(e) Such other provisions with respect to the proposed merger as are deemed necessary or desirable. (June 8, 1954, 68 Stat. 206, ch. 269, § 64.)

**§ 29-927a. Procedure for consolidation.**

Any two or more domestic corporations may consolidate into a new corporation in the following manner:

The board of directors of each corporation shall, by a resolution adopted by a majority vote of the members of each such board, approve a plan of consolidation setting forth:

(a) The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.

(b) The terms and conditions of the proposed consolidation.

(c) The manner and basis of converting the shares of each corporation into shares, or other securities, or obligations of the new corporation.

(d) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter.

(e) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable. (June 8, 1954, 68 Stat. 207, ch. 269, § 65.)

**§ 29-927b. Meetings of shareholders.**

The board of directors of each corporation, upon approving such plan of merger or plan of consolidation, shall, by resolution, direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. Written or printed notice shall be delivered not less than twenty days before such meeting, either personally or by mail, to each shareholder of record entitled to vote at such meeting. Such notice shall state the place, day, hour, and purpose of the meeting, and a copy or a summary of the plan of merger or plan of consolidation, as the case may be, shall be included in or enclosed with such notice. (June 8, 1954, 68 Stat. 207, ch. 269, § 66.)

**§ 29-927c. Approval by shareholders.**

At each such meeting, a vote of the shareholders shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of two-thirds of the outstanding shares of each corporation unless as to any of such corporations two or more classes of shares are issued in which event as to such corporation or corporations the plan of merger or consolidation shall be approved upon receiving the affirmative vote of at least two-thirds of the outstanding shares of each such class. (June 8, 1954, 68 Stat. 207, ch. 267, § 67.)

**§ 29-927d. Articles of merger or consolidation.**

(a) Upon such approval, articles of merger or articles of consolidation shall be executed in duplicate by each corporation by its president or a vice president, and verified by him, and the corporate seal of each corporation shall be thereto affixed, attested by its secretary or an assistant secretary, and shall set forth—

(1) the plan of merger or the plan of consolidation;

(2) as to each corporation, the number of shares outstanding, and if there are two or more



classes of shares issued, the designation of each such class and the number of shares thereof outstanding;

(3) as to each corporation, the number of shares voted for and against such plan respectively, and, if there are two or more classes of shares issued the number of shares of each such class voted for and against such plan, respectively.

(b) Such articles of merger or consolidation shall be delivered to the Commissioner. If the Commissioner finds that such articles of merger or consolidation conform to law, he shall, when all fees have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in his office;

(3) issue a certificate of merger or certificate of consolidation to which he shall attach the other duplicate original.

(c) The certificate of merger or certificate of consolidation, together with the duplicate original affixed thereto, shall be delivered to the surviving or new corporation, as the case may be, or its representative. (June 8, 1954, 68 Stat. 207, ch. 269, § 68; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 15.)

#### AMENDMENT

1957—Subsec. (c) amended by act Sept. 2, 1957, which substituted "delivered to the surviving or new corporation, as the case may be, or its representative" for "recorded in the office of the Recorder of Deeds."

#### EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 29-905.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-927e. Effective date of merger or consolidation.

Upon the issuance of the certificate of merger or the certificate of consolidation by the Commissioner, the merger or consolidation shall be effected. (June 8, 1954, 68 Stat. 208, ch. 269, § 69.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-927f. Effect of merger or consolidation.

When such merger or consolidation has been effected:

(a) The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(b) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(c) Such surviving or new corporation, as the case may be, shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter.

(d) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as a private nature, of each of the merging or consolidating corporations; and all property—real, personal, and mixed—and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(e) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted to judgment as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(f) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the articles of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the articles of incorporation of the new corporation.

(g) The aggregate amount of the net assets of the merging or consolidating corporations which was available for the payment of dividends immediately prior to such merger or consolidation, to the extent that the amount thereof is not transferred to stated capital by the issuance of shares or otherwise, shall continue to be available for the payment of dividends by such surviving or new corporation. (June 8, 1954, 68 Stat. 208, ch. 269, § 70.)

#### § 29-927g. Merger or consolidation of domestic and foreign corporations.

One or more foreign corporations and one or more domestic corporations may be merged or consolidated if permitted by the laws of the State under which each such foreign corporation is organized:

(a) Each domestic corporation shall comply with the provisions of this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the State under which it is organized.

(b) If the surviving or new corporation, as the case may be, is to be governed by the laws of any State other than the District of Columbia, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to do business



in the District of Columbia, and in every case it shall file with the Commissioner—

(1) an agreement that it may be served with process in the District of Columbia in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation;

(2) an irrevocable appointment of the Commissioner of the District of Columbia as its agent to accept service of process in any such proceeding;

(3) an agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this chapter with respect to the rights of dissenting shareholders; and

(4) a post office address to which the Commissioner may mail a copy of any process against the corporation that may be served on them.

(c) The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of the District of Columbia. If the surviving or new corporation is to be governed by the laws of any jurisdiction other than the District of Columbia, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other jurisdiction provide otherwise. (June 8, 1954, 68 Stat. 209, ch. 269, § 71; Sept. 3, 1963, 77 Stat. 137, Pub. L. 88-111, § 1(6).)

#### AMENDMENTS

1963—Section 1(6) of act Sept. 3, 1963, amended subsection (b) by striking out “and” in paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof a semicolon and the word “and” and by adding thereto the paragraph numbered (4).

#### EFFECTIVE DATE OF 1963 AMENDMENTS

See note to section 29-903.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

### § 29-927h. Merger of parent corporation and wholly owned subsidiary.

(a) Any corporation now or hereafter organized under the provisions hereof or existing under the laws of the District of Columbia, for the purpose of carrying on any kind of business authorized by this chapter, owning all of the stock of any other corporation now or hereafter organized hereunder or existing under the laws of the District of Columbia, or now or hereafter organized under the laws of any other State of the United States of America, if the laws under which said other corporation is formed shall permit a merger as herein provided, may file, in duplicate original with the Commissioner, a certificate of such ownership in its name and under its corporate seal, signed by its president or a vice president, and its secretary or assistant secretary, and setting forth a copy of the resolution of its board

of directors to merge such other corporation, and to assume all of its obligations and the date of the adoption thereof. If the Commissioner finds that such certificate of ownership conforms to law, he shall, when all fees have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word “Filed”, and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in his office;

(3) issue a certificate of merger to which he shall affix the other duplicate original.

(b) The certificate of merger, together with the duplicate original affixed thereto, shall be delivered to the surviving corporation or its representative.

(c) Upon the issuance of the certificate of merger, the merger shall be effected and thereupon all of the estate, property, rights, privileges, and franchises of such other corporation shall vest in and be held and enjoyed by such parent corporation as fully and entirely and without change or diminution as the same were before held and enjoyed by such other corporation, and be managed and controlled by such parent corporation, and except as herein-after in this section provided, in its name, but subject to all liabilities and obligations of such other corporation and the rights of all creditors thereof. The parent corporation shall not thereby acquire power to engage in any business, or to exercise any right, privilege, or franchise, of a kind which it could not lawfully engage in or exercise under the provisions of the law or laws by or pursuant to which such parent corporation is organized, or operates in the District of Columbia. The parent corporation shall be deemed to have assumed all of the obligations and liabilities of the merged corporation and shall be liable in the same manner as if it had itself incurred such liabilities and obligations. The parent corporation may relinquish its corporate name and assume in lieu thereof the name of the merged corporation, by including it in a provision to that effect in the resolution of merger adopted by the directors and set forth in the certificate of ownership, and upon the filing of such certificate the change of name shall be completed, with the same force and effect and subject to the same conditions and consequences as if such change had been accomplished by proceedings under the appropriate section of this chapter. (June 8, 1954, 68 Stat. 210, ch. 269, § 72; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 16.)

#### AMENDMENTS

1957—Subsec. (a)(3) amended by act Sept. 2, 1957, § 16(1), which substituted “certificate of merger” for “certificate of ownership.”

Subsec. (b) amended by act Sept. 2, 1957, § 16(2), which substituted “The certificate of merger, together with the duplicate original affixed thereto, shall be delivered to the surviving corporation or its representative” for “The certificate of merger or certificate of consolidation, together with the duplicate original affixed thereto, shall be recorded in the office of the Recorder of Deeds.”

Subsec. (c) amended by act Sept. 2, 1957, § 16(3), which substituted “certificate of merger” for “certificate of ownership.”

#### EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 29-905.



## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## § 29-927i. Rights of dissenting shareholders.

(a) If a shareholder of a corporation which is a party to a merger or consolidation shall file with such corporation, prior to or at the meeting of shareholders at which the plan of merger or consolidation is submitted to a vote, a written objection to such plan of merger or consolidation, and shall not vote in favor thereof, and such shareholder, within twenty days after the merger or consolidation is effected, shall make written demand on the surviving or new corporation for payment of the fair value of his shares as of the day prior to the date on which the vote was taken approving the merger or consolidation, the surviving or new corporation shall pay to such shareholder, upon surrender of his certificate or certificates representing said shares, such fair value thereof. Such demand shall state the number and class of the shares owned by such dissenting shareholder. Any shareholder failing to make demand within the twenty-day period shall be bound by the terms of the merger or consolidation.

(b) If within thirty days after the date on which such merger or consolidation was effected the value of such shares is agreed upon between the dissenting shareholder and the surviving or new corporation payment therefor shall be made within ninety days after the date on which such merger or consolidation was effected, upon the surrender of his certificate or certificates representing said shares. Upon payment of the agreed value the dissenting shareholder shall cease to have any interest in such shares or in the corporation.

(c) If within such period of thirty days the shareholder and the surviving or new corporation do not so agree, then the dissenting shareholder may, within sixty days after the expiration of the thirty-day period, file a petition in any court of competent jurisdiction within the District of Columbia, asking for a finding and determination of the fair value of such shares, and shall be entitled to judgment against the surviving or new corporation for the amount of such fair value as of the day prior to the date on which such vote was taken approving such merger or consolidation, together with interest thereon at the rate of 5 per centum per annum to the date of such judgment. The judgment shall be payable only upon and simultaneously with the surrender to the surviving or new corporation of the certificate or certificates representing said shares. Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares or in the surviving or new corporation. Such shares may be held and disposed of by the surviving or new corporation as it may see fit. Unless the dissenting shareholder shall file such petition within the time herein limited, such shareholder and all persons claiming under him shall be bound by the terms of the merger or consolidation.

(d) The right of a dissenting shareholder to be paid the fair value of his shares as herein provided

shall cease if and when the corporation shall abandon the merger or consolidation. (June 8, 1954, 68 Stat. 210, ch. 269, § 73.)

## NOTES TO DECISIONS

## Stockholder's suit

Under this section authorizing stockholder dissenting from corporation's decision to dispose of all assets to bring suit in District Court of United States for the District of Columbia, against corporation for fair value of shares dissenting stockholder could not bring suit in Municipal Court for the District of Columbia, Civil Division, on theory that Municipal Court Act or Business Corporation Act of 1954 gave right to Municipal Court to assume jurisdiction, even though value of dissenting stockholders' shares was less than \$3,000. *Davis v. Universal Corporation* (D. C. Mun. App. 1957, 133 A. 2d 479).

## § 29-928. Sale, lease, exchange, or mortgage of assets in usual and regular course of business.

The sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of a corporation, when made in the usual and regular course of the business of the corporation, may be made upon such terms and conditions and for such considerations, which may consist in whole or in part, of money or property, real or personal, including shares of any other corporation, whether or not such other corporation be organized under the provisions of this chapter, as shall be authorized by its board of directors; and in such case no authorization or consent of the shareholders shall be required. (June 8, 1954, 68 Stat. 211, ch. 269, § 74; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 17.)

## AMENDMENT

1957—Act Sept. 2, 1957, struck out the words "less than" following "other disposition of" and preceding "substantially."

## EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 29-905.

## § 29-929. Sale, lease, exchange, or mortgage of assets other than in usual and regular course of business.

A sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets, with or without the good will, of a corporation, if not made in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist, in whole or in part, of money or property, real or personal, including shares of any other corporation, whether or not such other corporation be organized under the provisions of this chapter, as may be authorized in the following manner:

(a) The board of directors shall adopt a resolution recommending such sale, lease, exchange, mortgage, pledge, or other disposition and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(b) Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of the corporation shall be given to each shareholder of record entitled to vote within the time and in the manner provided by



this chapter for the giving of notice of meetings of shareholders.

(c) At such meetings the shareholders may authorize such sale, lease, exchange, mortgage, pledge, or other disposition and fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote, unless there are two or more classes of stock issued and outstanding and entitled to vote, in which event such authorization shall require the affirmative vote of the holders of at least two-thirds of the outstanding shares of each such class of shares issued and outstanding and entitled to vote.

(d) After such authorization by a vote of shareholders, the board of directors nevertheless, in its discretion, may abandon such sale, lease, exchange, mortgage, pledge, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders. (June 8, 1954, 68 Stat. 211, ch. 269, § 75; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 18.)

#### AMENDMENT

1957—Act Sept. 2, 1957, inserted “, if not made in the usual and regular course of its business,” in the first paragraph.

#### EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 29-905.

#### NOTES TO DECISIONS

##### Assets, disposition of

Corporation's transfer of its major league baseball franchise from one location to another was not such disposition of assets as required approval of two-thirds of stockholders, under District of Columbia Law. *H. G. Murphy v. Washington American League Baseball Club, Inc., et al.* (1961, 293 F. 2d 522, 110 U.S. App. D.C. 334).

#### § 29-930. Voluntary dissolution of corporation by its incorporators.

A corporation which has not commenced business and which has not issued any shares may be voluntarily dissolved by its incorporators at any time within one year from the date of the issuance of its certificate of incorporation in the following manner:

(a) Articles of dissolution shall be executed in duplicate by a majority of the incorporators, and verified by them, and shall set forth—

- (1) the name of the corporation;
- (2) the date of issuance of its certificate of incorporation;
- (3) that none of its shares have been issued;
- (4) that the corporation has not commenced business;
- (5) that the amount, if any, actually paid in on subscriptions to its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto;
- (6) that no debts of the corporation remain unpaid;
- (7) that all the incorporators elect that the corporation be dissolved.

(b) Duplicate originals of the articles of dissolution shall be delivered to the Commissioner. If the

Commissioner finds that the articles of dissolution conform to law, he shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word “Filed”, and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in his office;

(3) issue a certificate of dissolution to which he shall affix the other duplicate original.

(c) The certificate of dissolution, together with the duplicate original affixed thereto, shall be delivered to the incorporators or their representatives.

(d) Upon the issuance of such certificate of dissolution the existence of the corporation shall cease. (June 8, 1954, 68 Stat. 212, ch. 269, § 76; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 19.)

#### AMENDMENT

1957—Subsec. (c) amended by act Sept. 2, 1957, which substituted “delivered to the incorporators or their representatives” for “recorded in the office of the Recorder of Deeds.”

#### EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 29-905.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-930a. Dissolution by consent of shareholders.

A corporation may be dissolved by the written consent of the holders of record of all of its outstanding shares in the following manner:

Upon the execution of such written consent by all the shareholders of record, a statement of intent to dissolve shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, which shall set forth and contain—

- (a) The name of the corporation.
- (b) The names and respective addresses, including street and number, if any, of its officers.
- (c) The names and respective addresses, including street and number, if any, of its directors.
- (d) A copy of the agreement signed by all shareholders of record of the corporation consenting to its dissolution.

(e) A statement that such agreement has been signed by all shareholders of record of the corporation or signed in their names by their attorneys thereunto duly authorized. (June 8, 1954, 68 Stat. 213, ch. 269, § 77.)

#### § 29-930b. Dissolution by act of corporation.

A corporation may be dissolved by the act of the corporation in the following manner:

(a) The board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(b) Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each shareholder of record



entitled to vote within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders.

(c) At such meeting a vote of the shareholders entitled to vote shall be taken on a resolution to dissolve the corporation, which shall require for its adoption the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote.

(d) Upon the adoption of such resolution, a statement of intent to dissolve shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, which shall set forth—

- (1) the name of the corporation;
- (2) the names and respective addresses, including street and number, if any, of its officers;
- (3) the names and respective addresses, including street and number, if any, of its directors;
- (4) a copy of the resolution of the shareholders authorizing the dissolution of the corporation;
- (5) the number of shares outstanding and entitled to vote;
- (6) the number of shares voted for and against the dissolution of the corporation.

(June 8, 1954, 68 Stat. 213, ch. 269, § 78.)

#### § 29-930c. Filing of statement of intent to dissolve.

Duplicate originals of the statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, shall be delivered to the Commissioner. If the Commissioner finds that such statement conforms to law, he shall, when all fees and charges have been paid as in this chapter prescribed—

(a) Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof.

(b) File one of such duplicate originals in his office.

(c) Return the other duplicate original to the corporation or its representative. (June 8, 1954, 68 Stat. 213, ch. 269, § 79; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 20.)

#### AMENDMENT

1957—Subsec. (c) amended by act Sept. 2, 1957, which substituted "Return the other duplicate original to the corporation or its representative" for "The other duplicate original shall be recorded in the office of the Recorder of Deeds."

#### EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 29-905.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-930d. Effect of statement of intent to dissolve.

Upon the filing by the Commissioner of a statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, the corporation shall cease to carry on its business, except insofar as may be necessary for the proper winding up thereof. (June 8, 1954, 68 Stat. 214, ch. 269, § 80.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-930e. Proceedings after filing of statement of intent to dissolve.

After the filing by the Commissioner of a statement of intent to dissolve—

(a) The corporation shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy, and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests.

(b) The corporation, at any time during the liquidation of its business and affairs, may make application to the court to have the liquidation continued under the supervision of the court as provided in this chapter. (June 8, 1954, 68 Stat. 214, ch. 269, § 81; July 29, 1970, Pub. L. 91-358, title I, § 168(c) (2), 84 Stat. 589).

#### AMENDMENT

1970—Section 168(c) (2) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-930f. Revocation by consent of shareholders of voluntary dissolution proceedings.

By the written consent of the holders of record of all of its outstanding shares, a corporation may, at any time prior to the issuance of a certificate of dissolution by the Commissioner as hereinafter provided, revoke voluntary dissolution proceedings theretofore taken, in the following manner:

Upon the execution of such written consent by all the shareholders of record, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, which shall set forth and contain—

- (a) The name of the corporation.
- (b) The names and respective addresses, including street and number, if any, of its officers.
- (c) The names and respective addresses, including street and number, if any, of its directors.

(d) A copy of the agreement signed by all shareholders of record of the corporation revoking such voluntary dissolution proceedings.

(e) That such agreement is signed by all shareholders of record of the corporation or signed in their names by their attorneys thereunto duly authorized. (June 8, 1954, 68 Stat. 214, ch. 269, § 82.)



## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**§ 29-930g. Revocation by act of corporation of voluntary dissolution proceedings.**

By the act of the corporation, a corporation may, at any time prior to the issuance of a certificate of dissolution by the Commissioner as hereinafter provided, revoke voluntary dissolution proceedings theretofore taken in the following manner:

(a) The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked and directing that the question of such revocation be submitted to a vote at a meeting of shareholders.

(b) Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each shareholder of record entitled to vote within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders.

(c) At such meeting a vote of the shareholders entitled to vote shall be taken on a resolution revoking the voluntary dissolution proceedings, which shall require for its adoption the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote.

(d) Upon the adoption of such resolution, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, which shall set forth—

- (1) the name of the corporation;
- (2) the names and respective addresses, including street and number, if any, of its officers;
- (3) the names and respective addresses, including street and number, if any, of its directors;
- (4) a copy of the resolution of the shareholders revoking the voluntary dissolution proceedings;
- (5) the number of shares outstanding and entitled to vote;
- (6) the number of shares voted for and against the revocation of the voluntary dissolution proceedings, respectively.

(June 8, 1954, 68 Stat. 215, ch. 269, § 83.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**§ 29-930h. Filing of statement of revocation of voluntary dissolution proceedings.**

Duplicate originals of the statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, shall be delivered to the Commissioner. If the Commissioner finds that such statement conforms to law, he shall, when all fees have been paid as in this chapter prescribed—

(a) Endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof.

(b) File one of such duplicate originals in his office.

(c) Return the other duplicate original to the corporation or its representative. (June 8, 1954, 68 Stat. 215, ch. 269, § 84; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 21.)

## AMENDMENT

1957—Subsec. (c) amended by act Sept. 2, 1957, which substituted "Return the other duplicate original to the corporation or its representative" for "The other duplicate original shall be recorded in the office of the Recorder of Deeds."

## EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 29-905.

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**§ 29-930i. Effect of statement of revocation of voluntary dissolution proceedings.**

Upon the filing by the Commissioner of a statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, the revocation of the voluntary dissolution proceedings shall become effective and the corporation may thereupon again carry on its business. (June 8, 1954, 68 Stat. 215, ch. 269, § 85.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**§ 29-930j. Articles of dissolution.**

When all debts, liabilities, and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary which shall set forth—

(a) The name of the corporation.  
(b) That the corporation has theretofore filed with the Commissioner a statement of intent to dissolve, and the date on which such statement was filed.

(c) That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor.

(d) That all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests.

(e) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit. (June 8, 1954, 68 Stat. 216, ch. 269, § 86.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.



**§ 29-930k. Filing of articles of dissolution.**

(a) Duplicate originals of such articles of dissolution shall be delivered to the Commissioner. If the Commissioner finds that such articles of dissolution conform to law, he shall, when all fees have been paid as in this chapter prescribed—

(1) endorse on each such duplicate original the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in his office;

(3) issue a certificate of dissolution, to which he shall affix the other duplicate original.

(b) The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto, shall be returned to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by shareholders, directors, and officers as provided in this chapter. (June 8, 1954, 68 Stat. 216, ch. 269, § 87; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 22.)

**AMENDMENT**

1957—Subsec. (b) amended by act Sept. 2, 1957, which substituted "returned to the representative of the dissolved corporation" for "recorded in the office of the Recorder of Deeds."

**EFFECTIVE DATE OF 1957 AMENDMENT**

See note under section 29-905.

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**§ 29-931. Involuntary dissolution.**

A corporation may be dissolved involuntarily by a decree of a court of equity in an action instituted by the Commissioner in the name of the District of Columbia, when it is made to appear to the court that—

(a) The franchise of the corporation was procured through fraud; or

(b) The corporation has continued to exceed or abuse the authority conferred upon it by this chapter; or

(c) The corporation has failed for thirty days to appoint and maintain a registered agent as provided in this chapter; or

(d) The corporation has failed for thirty days after change of its registered office or registered agent to file with the Commissioner a statement of such change. (June 8, 1954, 68 Stat. 216, ch. 269, § 88.)

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**§ 29-931a. Venue and process.**

Every action for the involuntary dissolution of a corporation on the grounds hereinbefore provided shall be commenced by the Commissioner in the court. Summons shall issue and shall be served as in other civil actions. In case a return is made

thereon that no officer or agent of such corporation can be found within the territorial limits of the District of Columbia, then the Commissioner shall cause publication to be made in some newspaper of general circulation published in the District of Columbia, containing a notice of the pendency of such action, the title of the court, the names of the parties thereto, and the date on or after which default may be entered. The Commissioner shall cause a copy of such notice to be mailed by registered mail to the corporation at its registered office within ten days after the first publication thereof. The certificate of the Commissioner of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once each week for three successive weeks, and the first publication thereof may begin at any time after the summons has been returned. Unless a corporation shall have been served with summons, no default shall be taken against it earlier than thirty days after the first publication of such notice. The cost of publication of such notice shall be paid by the Commissioner, unless the decree is against the corporation and such cost is collected from it. (June 8, 1954, 68 Stat. 217, ch. 269, § 89; July 29, 1970, Pub. L. 91-358, title I, § 168(c) (2), 84 Stat. 589.)

**AMENDMENT**

1970—Section 168(c) (2) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court".

**EFFECTIVE DATE OF 1970 AMENDMENT**

See note preceding section 11-101.

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**§ 29-931b. Jurisdiction of court to liquidate assets and business of corporation.**

(a) The court shall have full power to liquidate the assets and business of a corporation—

(1) upon application by a corporation which has filed a statement of intent to dissolve, as provided in this chapter, to have its liquidation continued under the supervision of the court;

(2) when an action has been commenced by the Commissioner to dissolve a corporation and it is made to appear that liquidation of its business and affairs should precede the entry of a decree of dissolution;

(3) in an action by a shareholder when it is established that the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof;

(4) in an action by a shareholder when it is established that the shareholders are deadlocked in voting power and for that reason have been unable at two consecutive annual meetings to elect successors to directors whose terms had expired.

(b) Proceedings under this section shall be brought in the court.

(c) It shall not be necessary to make shareholders parties to any such action or proceeding un-



less relief is sought against them personally. (June 8, 1954, 68 Stat. 217, ch. 269, § 90; July 23, 1959, 73 Stat. 241, Pub. L. 86-106, § 11; July 29, 1970, Pub. L. 91-358, title I, § 168(c) (2), 84 Stat. 589.)

#### AMENDMENTS

1970—Section 168(c) (2) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court".

1959—Subsec. (a) amended by act July 23, 1959, which added pars. (3) and (4).

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### EFFECTIVE DATE OF 1959 AMENDMENT

See note under section 29-907a.

### § 29-931c. Procedure in liquidation of corporation by court.

(a) In proceedings to liquidate the assets and business of a corporation the court shall have power to issue injunctions, to appoint a receiver or receivers pendente lite with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be had.

(b) After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by shareholders on account of any unpaid portion of the consideration for the issuance of shares. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey, and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders according to their respective rights and interests. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

(c) A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall, for the purposes of this chapter, have exclusive jurisdiction of the corporation and its property, wherever situated. (June 8, 1954, 68 Stat. 217, ch. 269, § 91.)

### § 29-931d. Qualifications of receivers.

A receiver shall in all cases give such bond as the court may direct with such sureties as the court may require. (June 8, 1954, 68 Stat. 218, ch. 269, § 92.)

### § 29-931e. Filing of claims in liquidation proceedings.

In proceedings to liquidate the assets and business of a corporation the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation. (June 8, 1954, 68 Stat. 218, ch. 269, § 93.)

### § 29-931f. Discontinuance of liquidation proceedings.

The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceedings when it is made to appear to the court that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets. (June 8, 1954, 68 Stat. 218, ch. 269, § 94.)

### § 29-931g. Decree of involuntary dissolution.

In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease. (June 8, 1954, 68 Stat. 218, ch. 269, § 95.)

### § 29-931h. Filing of decree of dissolution.

In case the court shall enter a decree dissolving a corporation it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the Commissioner. No fee shall be charged by the Commissioner for the filing thereof. (June 8, 1954, 68 Stat. 219, ch. 269, § 96.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

### § 29-931i. Survival of remedy after dissolution.

The dissolution of a corporation either (1) by the issuance of a certificate of dissolution by the Commissioner, or (2) by proclamation of the Commissioner for failure to pay annual report fees or file annual reports as provided in the chapter, or (3) by expiration of its period of duration, shall not take away or impair any remedy available to or against



such corporation, its directors, or shareholders, or any right or claim existing, or any liability incurred, prior to such dissolution if suit or other proceeding thereon is commenced within two years after the date of such dissolution. Any suit or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of two years so as to extend its period of duration. (June 8, 1954, 68 Stat. 219, ch. 269, § 97.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### NOTES TO DECISIONS

##### Claims barred by two year limitation

District of Columbia statute stating that causes of action on rights or claims of corporation existing prior to dissolution by proclamation for failure to file annual reports and pay related fees must be brought within two years applies to claims which so arose, notwithstanding statute providing that when corporation is dissolved by proclamation it shall nevertheless be continued for terms of three years for purpose of prosecuting and defending suits. *Columbia Institute of Radio and Television Broadcasting, Inc. v. R. R. Shehyn* (1964, 336 F. 2d 974, 119 U.S. App. D.C. 55).

District of Columbia statute provided that suit by corporation dissolved by proclamation for failure to file reports and pay related fees with reference to right on claims prior to dissolution must be brought within two years would not bar such a corporation's claim filed more than two years after dissolution that it was object of illegitimate scheme to eliminate it from the market and that purpose was mainly effectuated by improper appropriation of its corporate name, thereby frustrating its purpose to secure its reinstatement, since it was not a claim or right in existence prior to dissolution. *Id.*

#### § 29-932. Annual report of domestic corporation.

(a) Each corporation shall file with the Commissioner, on or before April 15 of each year, an annual report setting forth—

(1) the name of the corporation, the address, including street and number, if any, of its registered office in the District of Columbia, and the name of its registered agent at such address;

(2) the address, including street and number, if any, of its principal office in the District, if such office is other than its registered office;

(3) the names and respective addresses, including street and number, if any, of its directors and officers;

(4) a brief statement of the character of the business in which the corporation is actually engaged;

(5) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class;

(6) a statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value and series, if any, within a class.

(b) Such annual report shall be made on forms prescribed and furnished by the Commissioner, and the information therein contained shall be given as of the date of the execution of the report.

(c) It shall be executed by the corporation by its president, vice president, secretary, assistant secretary, or treasurer, and verified by the officer executing the report, and the corporate seal shall be thereto affixed. (June 8, 1954, 68 Stat. 219, ch. 269, § 98; July 23, 1959, 73 Stat. 241, Pub. L. 86-106, § 12.)

#### AMENDMENT

1959—Subsec. (a) amended by act July 23, 1959, which added par. (2) and redesignated former pars. (2)—(5) as pars. (3)—(6).

#### EFFECTIVE DATE OF 1959 AMENDMENT

See note under section 29-907a.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### NOTES TO DECISIONS

##### Place of business after organization

This chapter, considered in its entirety, contemplates that principal place of business of a corporation may be outside the District after organization in the sense of creation, and there was no intention to make the proviso that "no corporation may be organized" under the chapter "unless the place where it conducts its principal business is located within the District of Columbia" a continuing regulation. *Murphy v. Washington American League Baseball Club, Inc.* (D.C.D.C. 1958, 167 F. Supp. 215, affirmed 267 F. 2d 655, 105 U.S. App. D.C. 378).

#### § 29-933. Admission of foreign corporation—Exemption from certificate requirement in certain cases—Service of process on exempt corporations—Rules and regulations.

A foreign corporation shall procure a certificate of authority from the Commissioner before it transacts business in the District, but no foreign corporation shall be entitled to procure a certificate of authority under this chapter to transact in the District the business of banking, insurance, assurance, benefit, indemnity, building and loan association, or the acceptance of savings deposits, such corporations being admitted to and shall do business in the District of Columbia pursuant to the laws relating to such business. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the State under which such corporation is organized governing its organization and internal affairs differ from the laws of the District, and nothing in this chapter contained shall be construed to authorize the District to regulate the organization or the internal affairs of such corporation.

(b)<sup>1</sup> A foreign corporation shall not be required to procure a certificate of authority merely for the prosecution of litigation, the collection of its debts, or the taking of security for the same, or by reason of the appointment of an agent for the solicitation of business not to be transacted in the District, nor for the sale of personal property to the United States within the District of Columbia unless a contract for such sale is accepted by the seller within the District or such property is delivered

<sup>1</sup> So in original. First par. is not designated "(a)".



from stock of the seller within the District for use within the District.

(c) No foreign corporation having income from loans excluded from gross income under section 47-1557a(b)(17) shall be subject to the provisions of this chapter.

(d) Nothing in subsection (c) of this section shall be construed as affecting the amenability of a foreign corporation to the service of any process, notice, or demand to which such corporation would be amenable without reference to the provisions of such subsection (c).

(e)(1) Any foreign corporation having income from loans excluded from gross income under section 47-1557a(b)(17) shall be deemed to have waived any immunity to service of process and suit in the courts of the District of Columbia. Any such foreign corporation shall appoint and maintain in the District of Columbia an agent for service of process, and shall register with the Commissioner of the District of Columbia the address of its principal office and the name and address of its agent for service of process in the District of Columbia, including any changes in such addresses.

(2) Whenever any such foreign corporation does not have an agent for service of process or such agent cannot be found with reasonable diligence at his registered address, then the Commissioner of the District of Columbia shall be the agent for service of process for such corporation. Service of process on the Commissioner shall be made by delivery to, and leaving with him, or with any person having charge of his office, duplicate copies of the process, together with a fee, the amount of which shall be fixed from time to time by the District of Columbia Council but not in excess of \$5. In the event of such service the Commissioner shall immediately cause one of such copies to be forwarded by certified or registered mail, addressed to such foreign corporation at its principal office as it appears on the records of the Commissioner. Any such service shall be returnable in not less than thirty days, unless the rules of the court issuing such process prescribe another period, in which case such prescribed period shall govern.

(3) Nothing contained in this subsection shall limit or affect the right to serve any process, notice of demand required or permitted by law to be served on a foreign corporation in any other manner now or hereafter permitted by law.

(4) Any foreign corporation which fails to comply with the requirements of paragraph (1) of this subsection shall be guilty of a misdemeanor and shall be fined not more than \$500.

(5) The District of Columbia Council is authorized to make such rules and regulations as may be necessary to carry out the purpose of this subsection.

(f) As used herein, the term "foreign corporation" having income from loans excluded from gross income under section 47-1557a(b)(17) shall include any foreign corporation subject to a tax only as a result of activities contemplated by subparagraph (G) of section 47-1557a(b)(17). (June 8, 1954, 68 Stat. 219, ch. 269, § 99; Sept. 19, 1966, 80 Stat. 813, Pub. L. 89-591, § 2.)

## AMENDMENT

1966—Subsection (c)—(f) added by act Sept. 19, 1966.

## EFFECTIVE DATE OF 1966 AMENDMENT

Section 3 of act Sept. 19, 1966, 80 Stat. 814, provided: "This Act [adding subsecs. (c)—(f) to this section, and adding par. (17) to subsec. (b) of § 47-1557a] shall take effect on the date of its enactment [Sept. 19, 1966]".

## TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402 (229 and 230) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the functions of the Board of Commissioners, under subsection (e) (2) and (5) as to fixing fees relating to process, and making rules and regulations relating to service of process, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

## NOTES TO DECISIONS

## Action for rent

Maryland corporation's assuming balance of third party's existing lease on certain property in District of Columbia in order to obtain third party as long-term tenant in its building in Maryland and Maryland corporation's subletting of property to several tenants in District of Columbia for remainder of term did not constitute transaction of business by Maryland corporation in District of Columbia and, although it had never been authorized to transact business in District of Columbia, it was not precluded from maintaining action for unpaid rents for District of Columbia property. *3 M Distributing Corp. v. Rugby Corp.* (D.C. App. 1965, 209 A. 2d 790).

## Liable to suit

Swiss corporation's filing and prosecution of civil action in District of Columbia to recover property consisting of stock of Delaware corporation established presence of the corporation in the District and subjected corporation to Attorney General and Secretary of Treasury from paying any part of corporation's share of proceeds of sale of the stock to corporation on ground that citizens and others had suffered under the "Nazi Conspiracy" and that Swiss corporation was creature of German corporation profiting therefrom. *W. Kelberine v. Societe Internationale, etc.* (1966, 363 F. 2d 989, 124 U.S. App. D.C. 257).

Liability of foreign corporation to suit in District of Columbia does not depend upon its doing business in the District but depends upon its being found there. *Id.*

## Suit by foreign corporation

Pennsylvania corporation that employed several persons at Virginia office that served area encompassing Virginia, Maryland, and District of Columbia, that sold products to Virginia sales representatives to customers in District, and that used its own trucks to make deliveries to customers in District was engaged in interstate commerce, and thus could not under commerce clause be required to obtain District of Columbia certificate of authority before commencing action in District on promissory note. *Lehigh Portland Cement Company v. E. W. Ornstein et al.* (1971, 334 F. Supp. 1032).

English corporation was not precluded from suing in District of Columbia by lack of certificate of authority to do business in District. *N. A. Loe v. Normalair Limited, etc.* (D.C. App. 1966, 222 A. 2d 643).

## § 29-933a. Powers of foreign corporation.

No foreign corporations subject to the provisions of this chapter shall transact in the District any business for the conduct of which a domestic corporation may not be organized or which is prohibited to a domestic corporation. A foreign corporation which shall have received a certificate of authority under this chapter shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this chapter, enjoy the same rights



and privileges as, but no greater rights and privileges than, a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, except as in this chapter otherwise provided, shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character. (June 8, 1954, 68 Stat. 220, ch. 269, § 100.)

## NOTES TO DECISIONS

## Appeal

Whether foreign corporation, previously qualified, possessed different status when it filed in advance of suit for recovery of allegedly usurious interest a certificate of withdrawal was relevant issue in addition to question raised in first amended complaint as to whether statute allowing corporations to seek financing without regard to lawful interest rates barred a corporation's action to recover usurious interest, and order dismissing second amended complaint which presented issue of foreign corporation's status was a final and appealable order. *Indian Lake Estates, Inc. v. Ten Individual Defendants* (1965, 350 F. 2d 435, 121 U.S. App. D.C. 305).

## Usury

Filing of certificate of withdrawal by foreign corporation did not change status previously acquired by corporation's contracts so that under statute allowing corporations to seek financing without regard to lawful interest rates its complaint for recovery of usurious interest under prior contracts was barred. *Indian Lake Estates, Inc. v. Ten Individual Defendants* (1965, 350 F. 2d 435, 121 U.S. App. D.C. 305).

## § 29-933b. Corporate name of foreign corporations.

No certificate of authority shall be issued to a foreign corporation—

(a) Which has a name the same as, or deceptively similar to, the name of any domestic corporation, or that of any corporation organized under any Act of Congress authorizing the formation of corporations under the laws of the District of Columbia, or that of any corporation created pursuant to any special Act of Congress to transact business in the District of Columbia, or that of any foreign corporation authorized to transact business in the District of Columbia, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter.

(b) The name of which does not contain the word "corporation", "company", "incorporated", or "limited", or does not contain an abbreviation of one of said words, unless such corporation, for use in the District, adds at the end of its name one of such words or an abbreviation thereof. (June 8, 1954, 68 Stat. 220, ch. 269, § 101.)

## NOTES TO DECISIONS

## Change of name

Where Superintendent of Corporations had no written regulations or statements of policy, practice, or procedure governing determination whether one corporate name was deceptively similar to another, the court, on trial de novo following appeal from refusal to accept application to change corporate name on ground of deceptive similarities, is required to consider only the validity of the Superintendent's subjective judgment. *Eaton Yale & Towne, Inc. v. A. Goldstein et al* (1971, 335 F. Supp. 1043).

The names "Eaton Corporation" and Eaton Associates, Inc., are not deceptively similar; thus, applicant is entitled to change its corporate name from "Eaton Yale & Towne, Inc." to "Eaton Corporation." *Id.*

## § 29-933c. Change of name by foreign corporation.

Whenever a foreign corporation which is admitted to transact business in the District shall change its name to one under which a certificate of authority to transact business in the District would not be granted to it on application therefor, the authority of such corporation to transact business in the District shall be suspended and it shall not thereafter transact any business in the District until it has changed its name to a name which is available to it under the laws of the District. (June 8, 1954, 68 Stat. 220, ch. 269, § 102.)

## § 29-933d. Application for certificate of authority.

A foreign corporation may procure a certificate of authority to transact business in the District by making application therefor to the Commissioner, which application shall set forth—

(a) The name of the corporation and the State under the laws of which it is organized.

(b) If the name of the corporation does not contain one of the words "corporation", "company", "incorporated", "limited", or does not contain an abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in the District.

(c) The date of its incorporation and the period of its duration.

(d) The address, including street and number, if any, of its principal office in the State under the laws of which it is organized.

(e) The address, including street and number, if any, of its proposed registered office in the District, and the name of its proposed registered agent in the District at such address.

(f) A brief statement of the business it proposes to transact in the District.

(g) The names and respective addresses, including street and number, if any, of its directors and officers.

(h) Such additional information as may be necessary or appropriate in order to enable the Commissioner to determine whether such corporation is entitled to a certificate of authority to transact business in the District. Such application shall be made on forms prescribed and furnished by the Commissioner and shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary. (June 8, 1954, 68 Stat. 221, ch. 269, § 103; July 23, 1959, 73 Stat. 242, Pub. L. 86-106, § 13.)

## AMENDMENTS

1959—Subsec. (f), formerly (g), so redesignated and amended by act July 23, 1959, § 13(b), (a), which substituted "A brief statement of the business it proposes to transact in the District" for "The purpose or purposes for which it was organized and which it proposes to pursue in the transaction of business in the District." Former subsec. (f) which read "The name or names of the State or States, if any, in which it is admitted or qualified to transact business" was repealed by act July 23, 1959, § 13(b).

Subsec. (g), formerly (h), so redesignated by act July 23, 1959, § 13(b). Former subsec. (g) redesignated (f).

Subsec. (h), formerly (k), so redesignated by act July 23, 1959, § 13(b). Former subsec. (h) redesignated (g).



Subsecs. (i) and (j), which read "A statement of the aggregate number of shares which it has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class" and "A statement of the aggregate number of its issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class", respectively, were repealed by act July 23, 1959, § 13(b).

Subsec. (k) redesignated (h) by act July 23, 1959, § 13(b).

#### EFFECTIVE DATE OF 1959 AMENDMENT

See note under section 29-907a.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-933e. Filing of documents on application for certificate of authority.

(a) There shall be delivered to the Commissioner—

(1) duplicate originals of the application of the corporation for a certificate of authority, and

(2) a copy of its articles of incorporation and all amendments thereto, duly certified by the proper officer of the State wherein it is incorporated.

(b) If, according to law, a certificate of authority to transact business in the District should be issued to such corporation, the Commissioner shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such documents the word "Filed", and the month, day, and year of the filing thereof;

(2) file in his office one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto;

(3) issue a certificate of authority to transact business in the District, to which he shall affix the other duplicate original application.

(c) The certificate of authority with the duplicate original of the application affixed thereto by the Commissioner shall be delivered to the corporation or its representative. (June 8, 1954, 68 Stat. 221, ch. 269, § 104; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 23.)

#### AMENDMENT

1957—Subsec. (c) amended by act Sept. 2, 1957, which substituted "delivered to the corporation or its representative" for "recorded in the office of the Recorder of Deeds."

#### EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 29-905.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-933f. Effect of certificate of authority.

Upon the issuance of a certificate of authority by the Commissioner, the corporation shall have the right to transact business in the District for those purposes set forth in its application, subject, however, to the right of the District to suspend or to revoke such right to transact business in the District as provided in this chapter. (June 8, 1954, 68 Stat. 22, ch. 269, § 105.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### NOTES TO DECISIONS

##### Suit by foreign corporation

Pennsylvania corporation that employed several persons at Virginia office that served area encompassing Virginia, Maryland, and District of Columbia, that sold products to Virginia sales representatives to customers in District, and that used its own trucks to make deliveries to customers in District was engaged in interstate commerce, and thus could not under commerce clause be required to obtain District of Columbia certificate of authority before commencing action in District on promissory note. *Lehigh Portland Cement Company v. E. W. Ornstein et al.* (1971, 334 F. Supp. 1032).

#### § 29-933g. Registered office and registered agent of foreign corporation.

(a) Each foreign corporation authorized to transact business in the District shall have and continuously maintain in the District—

(1) a registered office which may be, but need not be, the same as its place of business in the District;

(2) a registered agent, which agent may be either an individual, resident in the District, whose business office is identical with such registered office, or a corporation authorized by its articles of incorporation to act as such agent and authorized to transact business in the District having a business office identical with such registered office.

(b) The address, including street and number, if any, of the initial registered office, and the name of the initial registered agent of each foreign corporation shall be as stated in its application for a certificate of authority to transact business in the District. (June 8, 1954, 68 Stat. 222, ch. 269, § 106.)

#### § 29-933h. Change of registered office or registered agent of foreign corporation.

(a) A foreign corporation may from time to time change the address of its registered office. A foreign corporation shall change its registered agent if the office of registered agent shall become vacant for any reason, or if its registered agent becomes disqualified or incapacitated to act, or if it revokes the appointment of its registered agent.

(b) A foreign corporation may change the address of its registered office or change its registered agent, or both, by filing with the Commissioner a statement setting forth—

(1) the name of the corporation;

(2) the address, including street and number, if any, of its then registered office;

(3) if the address of its registered office be changed, the address including street and number, if any, to which the registered office is to be changed;

(4) the name of its then registered agent;

(5) if its registered agent be changed, the name of its successor registered agent;

(6) that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical;

(7) that such change was authorized by resolution duly adopted by the board of directors or



was authorized by an officer of the corporation duly empowered to make such change.

(c) Such statement shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and shall be delivered to the Commissioner. If the Commissioner finds that such statement conforms to the provisions of this chapter, he shall—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in his office;

(3) return the other duplicate original to the corporation or its representative.

(d) The change of address of the registered office, or the change of registered agent, or both, as the case may be, shall become effective upon the filing of such statement by the Commissioner.

(e) Any registered agent of a foreign corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the Commissioner, who shall forthwith mail a copy thereof to the corporation at its principal office in the State under the laws of which it is organized as shown on the records of the Commissioner. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the Commissioner or upon the appointment of a successor agent becoming effective, whichever occurs sooner. No fee or charge of any kind shall be imposed with respect to a filing under this subsection.

(f) A registered agent of one or more foreign corporations may change the address of the registered office of such foreign corporation or corporations by filing with the Commissioner a statement setting forth:

(1) the name of the registered agent;

(2) the present address, including street and number, if any, of such registered agent;

(3) the names of the corporation or corporations represented by such registered agent at such address;

(4) the address, including street and number, if any, to which the office of such registered agent is to be changed; and

(5) the date upon which such change will take place."

(g) Such statement shall be executed in duplicate by such registered agent in his individual name but if such agent is a corporation, domestic or foreign, such statement shall be executed by such corporation by its president or a vice president and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and delivered to the Commissioner. If the Commissioner finds that such statement conforms to law, he shall, when all fees and charges have been paid as in this chapter prescribed:

(1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in his office; and

(3) return the other duplicate original to the registered agent.

(h) The change of address of such registered agent as to each corporation named in such statement shall become effective upon the filing of such statement by the Commissioner or on the date set forth in such statement as the date on which such change of location of such registered office will take place, whichever is later. (June 8, 1954, 68 Stat. 222, ch. 269, § 107; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 24; July 23, 1959, 73 Stat. 242, Pub. L. 86-106, § 14; Sept. 3, 1963, 77 Stat. 137, Pub. L. 88-111, § 1(7).)

#### AMENDMENTS

1963—Section 1(7) of act Sept. 3, 1963, amended the section by adding subsections (f), (g) and (h) thereto.  
1959—Subsec. (e) added by act July 23, 1959.

1957—Subsec. (c)(3) amended by act Sept. 2, 1957, which substituted "return the other duplicate original to the corporation or its representative" for "the other duplicate original shall be recorded in the office of the Recorder of Deeds."

#### EFFECTIVE DATE OF 1963 AMENDMENTS

See note to section 29-903.

#### EFFECTIVE DATE OF 1959 AMENDMENT

See note under section 29-907a.

#### EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 29-905.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-933i. Service of process on foreign corporation.

(a) The registered agent so appointed by a foreign corporation authorized to transact business in the District shall be an agent of such foreign corporation upon whom process against such corporation may be served, and upon whom any notice or demand required or permitted by law to be served upon such corporation may be served. Service of any process, notice, or demand upon a corporate agent, as such agent, may be had by delivering a copy of such process, notice, or demand to the president, vice president, the secretary, or an assistant secretary of such corporate agent.

(b) Whenever a foreign corporation authorized to transact business in the District shall fail to appoint or maintain a registered agent in the District, or whenever any such registered agent cannot with reasonable diligence be found at the registered office of such corporation in the District, or whenever the certificate of authority of a foreign corporation shall be revoked, then the Commissioner shall be an agent of such foreign corporation upon whom any process against such corporation may be served and upon whom any notice or demand required or permitted by law to be served upon such corporation may be served. Service on the Commissioner of any such process, notice, or demand shall be made by delivering to and leaving with the Commissioner, or with any clerk having charge of his office, duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is



served on the Commissioner, he shall immediately cause one of such copies thereof to be forwarded by registered or certified mail, addressed to such corporation at its principal office in the State under the laws of which it is organized as the same appears in the records of the Commissioner.

(c) If any foreign corporation shall transact business in the District without a certificate of authority, it shall, by transacting such business, be deemed to have thereby appointed the Commissioner its agent and representatives upon whom any process, notice, or demand may be served. Service shall be made by delivering to and leaving with the Commissioner, or with any clerk having charge of his office, duplicate copies of such process, notice, or demand, together with an affidavit giving the latest known post office address of such corporation and such service shall be sufficient if notice thereof and a copy of the process, notice, or demand are forwarded by registered mail or certified mail addressed to such corporation at the address given in such affidavit.

(d) The Commissioner shall keep a record of all processes, notices, and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

(e) Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a foreign corporation in any other manner now or hereafter permitted by law. (June 8, 1954, 68 Stat. 223, ch. 269, § 108; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 25; July 23, 1959, 73 Stat. 242, Pub. L. 86-106, § 15; Sept. 3, 1963, 77 Stat. 138, Pub. L. 88-111, § 1(8).)

#### AMENDMENTS

1963—Section 1(8) of act Sept. 3, 1963, amended the section generally.

1959—Subsec. (a) amended by act July 23, 1959, § 15(a), which inserted: "in the State under the laws of which it is organized" following "principal office."

Subsec. (b) added by act July 23, 1959, § 15(b). Former subsec. (b) redesignated (c).

Subsec. (c), formerly (b), so redesignated by act July 23, 1959, § 15(b). Former subsec. (c) redesignated (d).

Subsec. (d), formerly (c), so redesignated by act July 23, 1959, § 15(b).

1957—Subsec. (a) amended by act Sept. 2, 1957, which substituted "service" for "services" in the sixth sentence.

#### EFFECTIVE DATE OF 1963 AMENDMENTS

See note to section 29-903.

#### EFFECTIVE DATE OF 1959 AMENDMENT

See note under section 29-907a.

#### EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 29-905.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### NOTES TO DECISIONS

##### Judgment of recovery against garnishee

In this case where garnishee appeared and opposed, the motion on jurisdictional grounds, the judgment creditor's motion for judgment of recovery, though garnishee had previously failed to answer the interrogatories and where the garnishee alleged that nothing was owed to judgment debtor when writs were received and that judgment debtor thereafter left his job with the garnishee, judgment of recovery should not be entered if, on further proceed-

ings, it is shown that no additional wages became due judgment debtor from garnishee between receipt of writs and termination of debtor's employment and if there were otherwise cause to permit answer to be filed. *Metropolitan Roofing and Sheet Metal Co., Inc. v. Franklin Investment Co., Inc.* (D.C. App. 1969, 256 A.2d 913).

##### Service on agent

Service on attorney in fact who had been appointed and maintained in District of Columbia by Swiss corporation and who was authorized to accept service of all notices and process on corporation's behalf for proceedings between Attorney General, Secretary of Treasury, and corporation which sued to recover property that had been vested in Alien Property Custodian under Trading with the Enemy Act was valid in action by citizens to enjoin Attorney General and Secretary from paying proceeds of sale of property to Swiss corporation. *W. Kelberine v. Societe Internationale, etc.* (1966, 363 F.2d 989, 124 U.S. App. D.C. 257).

Foreign corporation which is present in District and has duly authorized agent to do tasks for which the corporation is present can be served with process in action reasonably within ambit of those tasks by serving the agent. *Id.*

Foreign corporation which comes to District of Columbia for purpose of filing and prosecuting in District Court a suit concerning certain property cannot by restricting authority of its resident agent immunize itself against suit in the same court involving the same property. *Id.*

##### Service on Commissioners

District of Columbia statute making service upon officer of foreign corporation transacting business in District without place of business or resident agent therein effectual as to suits growing out of contracts entered into therein and statute providing that foreign corporation transacting business in District without certificate shall be deemed to have appointed commissioners its agents are to be read in pari materia, and, in respect to action on District contract, service on commissioners was valid. *Central Insurance Agency Co., Inc. v. Financial Credit Corp., et al.* (D.C.D.C. 1963, 222 F. Supp. 627).

Service was quashed and complaint dismissed in treble damage action against foreign corporation under Clayton Act where plaintiff failed to establish that it had complied with statutory requirement of delivering to and leaving with the Commissioners of District of Columbia, or with any clerk having charge of their office, copies of process. *Curtis Brothers, Inc. v. Thomasville Chair Co.* (1961, 292 F.2d 774, 110 U.S. App. D.C. 281).

##### Transacting business

Alabama insurance corporation which received insurance applications at its principal office in Alabama and for the past ten years mailed contracts of insurance to District of Columbia residents whose applications were accepted, which employed independent adjusting firm in the District on case by case basis to investigate and attempt settlement of claims against its policyholders, and which also employed attorneys to defend actions against its policyholders was maintaining a "regular, continuous course of business" in the District under statute and was subject to in personam jurisdiction by delivery of copy of complaint to District commissioners. *J. V. Stevens etc. v. American Service Mutual Insurance Co.; American Service Mutual Insurance Co. v. J. V. Stevens etc.* (D.C. App. 1967, 234 A.2d 305).

Absence of tangible indicia of corporate presence does not automatically mean that corporation is immune from service of process if it is, in fact, carrying on regular course of business in jurisdiction. *Id.*

#### § 29-933j. Amendment to articles of incorporation of foreign corporation.

Whenever the articles of incorporation of a foreign corporation authorized to transact business in the District are amended, such foreign corporation shall forthwith file with the Commissioner a copy of such amendment duly certified by the proper officer of the State under the laws of which such



corporation is organized; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in the transaction of business in the District, nor authorize such corporation to transact business in the District under any other name than the name set forth in its certificate of authority. (June 8, 1954, 68 Stat. 223, ch. 268, § 109.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-933k. Merger of foreign corporation authorized to transact business in the District.

Whenever a foreign corporation authorized to transact business in the District shall be a party to a statutory merger permitted by the laws of the State under which it is organized, and such corporation shall be the surviving corporation, it shall forthwith file with the Commissioner a copy of the articles of merger duly certified by the proper officer of the State under the laws of which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to transact business in the District unless the name of such corporation be changed thereby or unless the corporation desires to pursue in the District other or additional purposes than those which it is then authorized to transact in the District. (June 8, 1954, 68 Stat. 224, ch. 269, § 110.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-933l. Amended certificate of authority.

(a) A foreign corporation authorized to transact business in the District shall secure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in the District other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the Commissioner.

(b) The requirements in respect to the form and contents of such application, the manner of its execution, the filing of duplicate originals thereof with the Commissioner, the issuance of an amended certificate of authority and the effect thereof shall be the same as in the case of an original application for a certificate of authority. (June 8, 1954, 68 Stat. 224, ch. 269, § 111.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-933m. Annual report of foreign corporations.

Each foreign corporation authorized to transact business in the District shall file on or before April 15 of each year with the Commissioner an annual report setting forth—

(a) The name of the corporation and the State under the laws of which it is organized.

(b) If the name of the corporation does not contain one of the words "corporation", "company",

"incorporated", or "limited", or does not contain an abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it has elected to add thereto for use in the District.

(c) The date of its incorporation and the period of its duration.

(d) The address, including street and number, if any, of its principal office in the State under the laws of which it is organized.

(e) The address, including street and number, if any, of its registered office in the District, and the name of its registered agent at such address.

(f) A brief statement of the character of the business in which it is actually engaged in the District.

(g) The names and respective addresses, including street and number, if any, of its directors and officers.

Such annual report shall be made on forms prescribed and furnished by the Commissioner and the information therein contained shall be given as of the date of the execution of the report. It shall be executed by the corporation by its president, vice president, secretary, assistant secretary, or treasurer, and verified by the officer making the report, and the corporate seal shall be thereto affixed. (June 8, 1954, 68 Stat. 224, ch. 269, § 112; July 23, 1959, 73 Stat. 242, Pub. L. 86-106, § 16.)

#### AMENDMENTS

1959—Subsec. (f), formerly (g), so redesignated by act July 23, 1959. Former subsec. (f) which read "The name or names of the State or States other than the District, if any, in which it is admitted or qualified to transact business" was repealed by act July 23, 1959.

Subsec. (g), formerly (h), so redesignated by act July 23, 1959. Former subsec. (g) redesignated (f).

Subsec. (h) redesignated (g) by act July 23, 1959.

Subsec. (i) which read "A statement of the aggregate number of shares which the corporation has authority to issue, and the aggregate number of its issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class" was repealed by act July 23, 1959.

#### EFFECTIVE DATE OF 1959 AMENDMENT

See note under section 29-907a.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-934. Withdrawal of foreign corporation.

(a) A foreign corporation authorized to transact business in the District may withdraw from the District upon procuring from the Commissioner a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall file with the Commissioner an application for withdrawal.

(b) The application for withdrawal shall set forth—

(1) the name of the corporation and the State under the laws of which it is organized;

(2) that it is not transacting business in the District;

(3) that it surrenders its authority to transact business in the District;

(4) that it revokes the authority of its registered agent in the District to accept service of



process and consents that service of process in any suit, action, or proceeding based upon any cause of action arising in the District during the time it was authorized to transact business in the District may thereafter be made on such corporation by service thereof on the Commissioner;

(5) a post-office address to which the Commissioner may mail a copy of any process against the corporation that may be served on him;

(6) such information as may be necessary or appropriate in order to enable the Commissioner to determine and assess any unpaid fees payable by such foreign corporation as in this chapter prescribed.

(c) The application for withdrawal shall be made on forms prescribed and furnished by the Commissioner and shall be executed by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, or, if the corporation is in the hands of a receiver or trustee, the same shall be executed on behalf of the corporation by such receiver or trustee and verified by him. (June 8, 1954, 68 Stat. 225, ch. 269, § 113; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 26.)

#### AMENDMENT

1957—Subsec. (b)(5) amended by act Sept. 2, 1957 which substituted "them" for "him."

#### EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 29-905.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

### § 29-934a. Filing of application for withdrawal.

(a) Duplicate originals of such application for withdrawal shall be delivered to the Commissioner. Upon receipt thereof he shall examine the same and, if he finds that it conforms to the provisions of this chapter, he shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in his office;

(3) issue a certificate of withdrawal to which he shall affix the other duplicate original.

(b) The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto, shall be delivered to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to transact business in the District shall cease. (June 8, 1954, 68 Stat. 225, ch. 269 § 114; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 27.)

#### AMENDMENT

1957—Subsec. (b) amended by act Sept. 2, 1957, which substituted "delivered to the corporation or its representative" for "recorded in the office of the Recorder of Deeds."

#### EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 29-905.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

### § 29-934b. Revocation of certificate of authority.

(a) The certificate of authority of a foreign corporation to transact business in the District may be revoked by the Commissioner when he finds that—

(1) the certificate of authority of the corporation was procured through fraud practiced upon the District; or

(2) the corporation has continued to exceed or abuse the authority conferred upon it by this chapter; or

(3) the corporation has failed for a period of ninety days to pay any fees, charges, or penalties prescribed by this chapter; or

(4) the corporation has failed for ninety days to appoint and maintain a registered agent in the District; or

(5) the corporation has failed for thirty days after change of its registered office or registered agent to file with the Commissioner a statement of such change; or

(6) the corporation has failed to file its annual report as required by this chapter; or

(7) the corporation for a period of two years has not transacted any business in the District; or

(8) The corporation has failed to file with the Commissioner a duly authenticated copy of each amendment to its articles of incorporation within thirty days after such amendment becomes effective; or

(9) a misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this chapter.

(b) No certificate of authority of a foreign corporation shall be revoked by the Commissioner unless

(1) he shall have given the corporation not less than thirty days' notice by mail, addressed to such corporation at its principal office as the same appears in the records of the Commissioner or at its registered office in the District, of his intent to revoke the certificate of authority, and (2) the corporation, prior to such revocation and as the case may be, shall fail to submit satisfactory evidence that said certificate was not procured by such fraud, or that the corporation has not exceeded or abused such authority, or shall fail to pay such fees, charges, or penalties, or to appoint a registered agent in the District, or to file the required statement of change of registered office or registered agent, or to file such annual report, or to file a statement showing that it has transacted business in the District within a period of two years, or to file a copy of any such amendment to its articles of incorporation, or shall fail to submit satisfactory evidence that a misrepresentation of a material matter was not made in any such application, report, affidavit, or other document. (June 8, 1954, 68 Stat. 226, ch. 269, § 115; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 28.)



## AMENDMENT

1957—Act Sept. 2, 1957, designated existing provisions as subsec. (a), redesignated clauses (a)—(1) as clauses (1)—(9), deleted from clause (9) the words “in which event the Commissioners shall give not less than thirty days’ notice forwarded by registered mail, addressed to such corporation at its principal office as the same appears in the records of the Commissioners or at its registered office in the District, of their intent to revoke the certificate of authority.” and added subsec. (b).

## EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 29-905.

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## § 29-934c. Issuance of certificate of revocation.

(a) Upon revoking any such certificate of authority, the Commissioner shall—

(1) issue a certificate of revocation in duplicate;

(2) file one of such certificates in his office;

(3) mail to such corporation at its registered office in the District a notice of such revocation together with the other such certificate.

(b) Upon the issuance of such certificate of revocation, the authority of the corporation to transact business in the District shall cease. (June 8, 1954, 68 Stat. 226, ch. 269, § 116; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 29.)

## AMENDMENT

1957—Subsec. (a) amended by act Sept. 2, 1957, which substituted “their” for “his” in clause (2) and added “together with the other such certificate” and deleted the sentence “The certificate of revocation, together with the duplicate original affixed hereto, shall be recorded in the office of the Recorder of Deeds.” from clause (3).

## EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 29-905.

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## § 29-934d. Effect of revocation or withdrawal upon actions and contracts.

The revocation of certificate of authority or the voluntary withdrawal of a foreign corporation whereby its authority to do business in the District shall cease and be determined, shall not affect any action then pending, nor affect any right of action upon any contract made by the corporation in the District before such revocation or withdrawal, and, in any action upon any liability or obligation so incurred before the revocation or withdrawal, the process against the corporation may be served, after the filing thereof, upon the Commissioner. (June 8, 1954, 68 Stat. 226, ch. 269, § 117.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## NOTES TO DECISIONS

## In general

Filing of certificate of withdrawal by foreign corporation previously qualified does not change status corporation's contracts had acquired prior to filing. *Indian Lake Estates, Inc. v. Ten Individual Defendants, Net Limited, Inc.* (1965, 350 F. 2d 435, 121 U.S. App. D.C. 305).

## § 29-934e. Application to foreign corporations transacting business on the effective date of this chapter.

Foreign corporations transacting business in the District at the time this chapter takes effect for a purpose or purposes for which a certificate of authority is required under the provisions of this chapter shall, within six months after the effective date of this chapter, procure a certificate of authority and shall otherwise comply with all applicable provisions of this chapter. Failure to secure a certificate of authority within the time provided in this section shall subject the corporation to all the penalties, liabilities, and restrictions provided in this chapter for transacting business without a certificate of authority. (June 8, 1954, 68 Stat. 227, ch. 269, § 118.)

## REFERENCES IN TEXT

Effective date of this chapter one hundred and eighty days after June 8, 1954, see Effective Date note set out under section 29-901.

## § 29-934f. Transacting business without certificate of authority.

(a) No foreign corporation which is subject to the provisions of this chapter and which transacts business in the District without a certificate of authority shall be permitted to maintain an action at law or in equity in any court of the District until such corporation shall have obtained a certificate of authority. Nor shall an action at law or in equity be maintained in any court of the District by any successor or assignee of such corporation on any right, claim, or demand arising out of the transaction of business by such corporation in the District until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

(b) The failure of a foreign corporation to obtain a certificate of authority to transact business in the District shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action at law or suit in equity in any court of the District.

(c) A foreign corporation which transacts business in the District without a certificate of authority shall be liable to the District, for the years or parts thereof during which it transacted business in the District without a certificate of authority, in an amount equal to all fees and other charges which would have been imposed by this chapter upon such corporation had it duly applied for and received a certificate of authority to transact business in the District as required by this chapter and thereafter filed all reports required by this chapter; and in addition thereto it shall be liable for a penalty of not in excess of \$500. The Commissioner shall bring proceedings to recover all amounts due the District under the provisions of this section. Such charges and penalties shall be paid to the District before any certificate of authority is issued to such foreign corporation. (June 8, 1954, 68 Stat. 227, ch. 269, § 119.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.



## NOTES TO DECISIONS

## Compliance with provisions

Under provision prohibiting a foreign corporation transacting business in the District without a certificate from maintaining an action until such certificate is obtained and that such failure shall not impair the validity of any contract or act of the corporation, non-compliance with the statutes was a mere temporary disability and capable of obviation at any stage of the proceedings and hence the statute was not absolutely prohibitive of an action of a foreign corporation but was merely suspensory until compliance with the statute. *Hill-Lanham, Inc. v. Lightview Development Corp.* (D.C.D.C. 1958, 163 F. Supp. 475).

## Purpose

Under provisions prohibiting foreign corporations transacting business in the District without a certificate from maintaining actions therein, real purpose of legislation was to bring such corporations under regulation of public officials charged with such responsibility to end that public could have the same information respecting their background and financial standing as demanded of domestic corporations and as a consequence to render them amenable to ordinary legal processes. *Hill-Lanham, Inc., v. Lightview Development Corp.* (D.C.D.C. 1958, 163 F. Supp. 475).

## Qualification after motion to dismiss

Under provision that foreign corporation which transacts business in District of Columbia without a certificate of authority shall not be permitted to maintain an action at law or in equity in any court of the District until such a certificate is obtained, defendant was not entitled to have suit brought by foreign corporation on a contract entered into in District of Columbia dismissed for failure to qualify as a foreign corporation when plaintiff obtained a certificate of authority subsequent to filing of defendant's motion to dismiss the action. *Federal Loose Leaf Corp. v. Woodhouse Stationery Co.* (D.C.D.C. 1958, 163 F. Supp. 482).

## Suit by foreign corporation

English corporation was not precluded from suing in District of Columbia by lack of certificate of authority to do business in District. *N. A. Loe v. Normalair Limited, etc.* (D.C. App. 1966, 222 A. 2d 643).

By suing in District of Columbia, English corporation voluntarily submitted to jurisdiction of general sessions court, and fact that corporation had no office or agent in District and did no business there did not preclude the court from hearing corporation's claim. *Id.*

## § 29-935. Commissioner—Duties and functions.

(a) The Commissioner shall be charged with the administration and enforcement of this chapter. Said Commissioner is authorized to employ such personnel as may be necessary for the administration of this chapter, within appropriations made by Congress. The compensation of such personnel shall be fixed in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters].

(b) The Commissioner may transfer any or all of the functions vested in him by this chapter to any agent designated by him pursuant to the provisions of this chapter, or to any office or agency established by the Commissioners pursuant to Reorganization Plan Numbered 5 of 1952.

(c) The District of Columbia Council shall provide a distinctive official seal, which shall be the seal of the District of Columbia surrounded by a border in which shall appear such legend as the Council may determine.

(d) Every certificate and other document or paper executed by the Commissioner, in pursuance

of any authority conferred upon him by this chapter, and sealed with the seal prescribed by subsection (b) hereof, and all copies of such papers as well as of documents and other papers filed in accordance with the provisions of this chapter, when certified by him and authenticated by said seal, shall have the same force and effect as evidence as would the originals thereof in any action or proceeding in any court and before a public officer, or official body.

(e) The Commissioner is authorized to attend and participate in the meetings of national organizations of State officials having supervision over corporations, and of the committees thereof, and there is hereby authorized to be appropriated such sums as may be necessary to defray the expenses of attendance at such meetings and to pay such annual dues or other fees as may be necessary to membership in said organizations. The Commissioner is further authorized to visit the corporation departments of the various States when in his judgment such visits are necessary or desirable in connection with the organization or proper conduct of any office or agency established by him.

(f) The District of Columbia Council is authorized to make and modify, and the Commissioner is authorized to enforce, such regulations as the Council may deem necessary to carry out the provisions of this chapter, the Council is authorized to prescribe penalties for the violation of any such regulations not exceeding a fine of \$300 or imprisonment for ninety days, or both, and the Commissioner is authorized to prescribe such forms and procedures for use in the conduct of the business of any office or agency established by him as he may deem appropriate. (June 8, 1954, 68 Stat. 227, ch. 269, § 120.)

## CODIFICATION

In subsec. (a) the reference "chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89-554, set out in note under § 1-251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

## TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(231 and 232) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the functions of the Board of Commissioners, under subsection (c) and (f) of providing an official seal and making and modifying regulations to carry out this chapter, and prescribing penalties for the violation of any such regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

## DELEGATION OF FUNCTIONS

Certain functions under this chapter delegated to the Recorder of Deeds, see Org. Ord. No. 101, dated Jan. 24, 1963, as amended, set out in the Appendix to title 1.

## CROSS REFERENCE

Authority of District Commissioner and Council to delegate functions vested in them by Reorg. Plan No. 3 of 1967, see §§ 205 and 305 of the Plan, set forth in the Appendix to title 1.



## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-1093.

## § 29-936. Fees and license taxes, and charges.

(a) There are hereby imposed the following fees and charges:

- (1) fees for filing documents and issuing certificates;
- (2) license fees;
- (3) miscellaneous charges.

(b) The Commissioner shall charge for—

- (1) filing articles of incorporation, \$20;
- (2) filing amendment to articles of incorporation, \$20;
- (3) filing articles of merger or consolidation, \$20;
- (4) filing a statement of intent to dissolve, \$5;
- (5) filing articles of reincorporation, \$20;
- (6) filing articles of dissolution, \$10;
- (7) filing statement of change of address of registered office or change of registered agent, or both, \$1;
- (8) filing statement of the establishment of a series of shares, \$5;
- (9) filing an application of a foreign corporation for certificate of authority to transact business in the District and issuing a certificate of authority, \$20;
- (10) filing an application for reservation of a corporate name or for a renewal of reservation, \$5;
- (11) filing notice of transfer of a reserved corporate name, \$5;
- (12) filing an application of a foreign corporation for amended certificate of authority to transact business in the District and issuing an amended certificate of authority, \$20;
- (13) filing a copy of amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in the District, \$5;
- (14) filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in the District, \$20;
- (15) filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, \$5;
- (16) filing application for reinstatement of a domestic or foreign corporation and issuing certificate of reinstatement, \$50;
- (17) filing any other statement or report, except an annual report, of a domestic or a foreign corporation, \$1;
- (18) for indexing each document filed, except an annual report, of a domestic or a foreign corporation, \$2;
- (19) for furnishing a certified copy of any document, instrument, report, or paper relating to a corporation, \$5;
- (20) filing by a registered agent of corporations of a statement of change of address of such registered agent, \$5, plus \$1 for each corporation, domestic or foreign, listed in such statement; and
- (21) furnishing a certificate as to the status of a corporation, domestic or foreign, or as to the existence or nonexistence of facts relating to cor-

porations, domestic or foreign, such fee as the District of Columbia Council may, from time to time, determine to be reasonable.

(c) An initial license fee is hereby imposed as follows:

(1) Every domestic corporation upon the filing of its articles of incorporation shall pay, in addition to any other fees and charges imposed by this chapter, the sum of 2 cents for each authorized share of its capital stock up to and including ten thousand shares, and the sum of 1 cent for each additional authorized share up to and including fifty thousand shares, and the sum of one-half of 1 cent for each additional authorized share in excess of fifty thousand shares: *Provided*, That in any case in which the articles of incorporation, of a domestic corporation authorizes par value shares having a par value per share other than \$100 per share, then, in respect to such shares only, the aggregate par value of all of such shares shall be divided by the figure 100 and the quotient so obtained shall be the number of shares for the purpose of the initial license tax as to such shares: *And provided further*, That in no case shall the initial license fee payable be less than \$10.

(2) Every domestic corporation upon the filing of any amendment of its articles of incorporation effecting an increase of its authorized capital stock, in addition to any other fees and charges imposed by this chapter, a sum equal to the difference between the initial license fee computed at the rates provided in paragraph (c) (1) of this section on the total of the authorized number of shares, including the proposed increase and the initial license fee so computed on the total of the authorized number of shares excluding said increase: *Provided*, That in no case shall the sum payable be less than \$10.

(3) Upon filing of articles of consolidation or articles of merger, if the corporation created in the case of articles of consolidation, or the corporation surviving in the case of articles of merger shall be a domestic corporation, then in addition to any other fees and charges imposed by this chapter, a sum equal to the difference between the initial license fee computed at the rates provided in paragraph (c) (1) of this section upon the total of the authorized number of shares of the corporation created by such consolidation or surviving in the case of a merger and the initial license fee so computed upon the aggregate amount of the total authorized number of shares of such of the constituent corporations as are domestic corporations: *Provided further*, That in no case shall the sum payable as an initial license fee be less than \$20.

(d) Each foreign corporation authorized under the provisions of this chapter to do business in the District shall pay an annual report fee of \$10, which sum shall be paid at the time of the filing of the annual report required of such corporations under the provisions of this chapter.

(e) Each domestic corporation organized, incorporated, or reincorporated under the provisions of this chapter shall pay, at the rate hereinafter set out, an annual report fee based upon the amount of



its total authorized capital stock on the 15th day of March immediately preceding the date on which such annual report is due to be filed. The annual report fee shall be paid at the time of filing the annual report required of such corporations under the provisions of this chapter. The amount of the annual report fee shall be as follows:

Where the total authorized capital stock does not exceed \$25,000, \$15; where the total authorized capital stock exceeds \$25,000, but does not exceed \$100,000, \$25; where the total authorized capital stock exceeds \$100,000, but does not exceed \$300,000, \$40; where the total authorized capital stock exceeds \$300,000, but does not exceed \$500,000, \$70; where the total authorized capital stock exceeds \$500,000, but does not exceed \$1,000,000, \$100; and a further sum of \$50 for each \$1,000,000, or fraction thereof, in excess of \$1,000,000. Shares without par value, for the purpose of ascertaining the amount of the annual report fee, but for no other purpose, shall be taken to be of the par value of \$100 each.

(f) In the case of a newly organized corporation, the amount of the annual report fee to be paid at the time of the filing of its first annual report shall be an amount at the rates provided in subsection (e) of this section prorated on a monthly basis for the period from the date its certificate of incorporation or reincorporation was filed with the Commissioner to the April 15 on which said first annual report is due to be filed.

(g) If the annual report fee of any domestic corporation is unpaid on the April 15 on which the same is due, the annual report fee shall bear interest at the rate of 1 per centum per month until paid.

(h) All taxes, fees, and charges provided for in this chapter shall be paid to the Commissioner and deposited in the Treasury of the United States to the credit of the District. (June 8, 1954, 68 Stat. 228, ch. 269, § 121; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 30; Sept. 3, 1963, 77 Stat. 139, Pub. L. 88-111, § 1(9).)

#### AMENDMENTS

1963—Section 1(9) of act Sept. 3, 1963, amended subsection (b) by adding paragraphs (20) and (21) thereto.

1957—Subsec. (c) amended by act Sept. 2, 1957, which substituted "(c)" for "(b)" in clause (2), and substituted "articles" for "an agreement," wherever appearing, "(c)" for "(b)", "shares of such" for "shares such" and "constituent corporations" for "constituent corporation" in clause (2).

#### EFFECTIVE DATE OF 1963 AMENDMENTS

See note to section 29-903.

#### EFFECTIVE DATE OF 1957 AMENDMENTS

See note to section 29-903.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(233) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of determining fee which shall be charged for furnishing a certificate as to the status of a corporation or as to the existence or nonexistence of facts relating to corporations under subsection (b) (21), to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### § 29-937. Effect of failure to pay annual report fee or to file annual report.

If any corporation incorporated or reincorporated under this chapter, or any foreign corporation having a certificate of authority issued under this chapter, shall for two consecutive years fail or refuse to pay any annual report fee or fees payable under this chapter, or fail or refuse to file any annual report as required by this chapter for two consecutive years, then, in the case of a domestic corporation, the articles of incorporation shall be void and all powers conferred upon such corporation are declared inoperative, and, in the case of a foreign corporation, the certificate of authority shall be revoked and all powers conferred thereunder shall be inoperative. (June 8, 1954, 68 Stat. 230, ch. 269, § 122.)

#### § 29-938. Proclamation of revocation.

(a) On the second Monday in September of each year, the Commissioner shall issue a proclamation listing the names of all domestic corporations and all foreign corporations which have failed or refused to pay any annual report fee or fees or failed or refused to file any annual report as required by this chapter for two consecutive years next preceding June 30 in the year in which such proclamation is issued and upon the issuance of such proclamation the articles of incorporation or the certificate of authority, as the case may be, shall be void and all powers thereunder inoperative without further proceedings of any kind.

(b) The proclamation of the Commissioner shall be filed in his office and shall be published once during the month of September in each of two daily newspapers of general circulation in the District of Columbia.

(c) Upon publication of the proclamation of revocation as provided in this chapter each domestic corporation listed in such proclamation shall be deemed to have been dissolved without further legal proceedings and each such corporation shall cease to carry on its business and shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy, and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all of its obligations, distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interest.

(d) All domestic corporations the articles of incorporation of which are revoked by proclamation or the term of existence of which expires by limitation set forth in its articles of incorporation shall nevertheless be continued for the term of three years from the date of such revocation or expiration bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to collect their assets, convey and dispose of such of their properties as are not to be distributed in kind to their shareholders, pay, satisfy, and discharge their liabilities and obligations and do all other acts required to liquidate their business and affairs, and, after paying or adequately



providing for the payment of all its obligations, to distribute the remainder of their assets, either in cash or in kind among their shareholders according to their respective rights and interests, but not for the purpose of continuing the business for which such corporation shall have been organized: *Provided, however*, That with respect to any action, suit, or proceeding begun or commenced by or against a corporation prior to such revocation or expiration and with respect to any action, suit, or proceeding begun or commenced by or against such corporation within three years after the date of such revocation or expiration, such corporation shall only for the purpose of such actions, suits, or proceedings so begun or commenced be continued bodies corporate beyond said three-year period and until any judgments, orders, or decrees therein shall be fully executed. (June 8, 1954, 68 Stat. 230, ch. 269, § 123; Sept. 2, 1957, 71 Stat. 572, Pub. L. 85-254, § 31.)

#### AMENDMENT

1957—Subsec. (b) amended by act Sept. 2, 1957, which deleted the second sentence reading "A certified copy of the proclamation shall be transmitted to the Recorder of Deeds and he shall cause notation of the fact of revocation to be made upon the articles of incorporation of each domestic corporation listed in said proclamation."

#### EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 29-905.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### NOTES TO DECISIONS

##### Construction

Statute, which for purposes other than doing business preserves corporate existence for period of three years after its articles of incorporation are revoked by proclamation, does not permit a corporation to maintain an action for three years after its articles of incorporation are revoked despite fact that the corporation is delinquent in its financial obligations to the District of Columbia. *York and York Construction Company v. J. Alexander et al.* (D.C. App. 1972, 296 A. 2d 710).

#### § 29-938a. Penalty for carrying on business after issuance of proclamation.

Any corporation, person, or persons who shall exercise or attempt to exercise any powers under articles of incorporation of a domestic corporation or under a certificate of authority of a foreign corporation which has been revoked shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding \$500 or by imprisonment not exceeding one year, or both, in the discretion of the court. (June 8, 1954, 68 Stat. 231, ch. 269, § 124.)

#### § 29-938b. Correction of error in proclamation.

Whenever it is established to the satisfaction of the Commissioner that any corporation named in said proclamation has not failed or refused to pay any annual report fee or file any annual report for two consecutive years, or has been inadvertently included in the list of corporations as so failing or refusing to pay annual report fees or file reports, the Commissioner is authorized to correct such mistake by issuing a proclamation to that effect and restoring the articles of incorporation or certificate of authority, as the case may be, into good standing

with like effect as if such proclamation or revocation, as to such corporation, had not been issued. (June 8, 1954, 68 Stat. 231, ch. 269, § 125.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-938c. Reservation of name of proclaimed corporation.

The Commissioner shall reserve the names of all corporations the articles of incorporation of which have been revoked and of all foreign corporations the certificates of authority of which have been revoked until December 31 of the year in which the proclamation of revocation was issued and no domestic corporation shall be formed nor the name of any such domestic corporation changed to a name the same as or deceptively similar to such reserved name nor shall any foreign corporation be authorized to do business under a name the same as or deceptively similar to such reserved name. (June 8, 1954, 68 Stat. 232, ch. 269, § 126.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-938d. Reinstatement of proclaimed corporations.

(a) A corporation, the articles of incorporation or certificate of authority of which have been revoked by proclamation, may at any time after the date of the issuance of the proclamation of revocation deliver to the Commissioner a petition for reinstatement, in duplicate, accompanied by the delinquent annual report or reports, or payment of delinquent annual report fee or fees in full, or both, as the case may be, plus interest thereon as provided by this chapter, together with any penalties imposed by this chapter.

(b) If the petition for reinstatement of a proclaimed corporation is delivered to the Commissioner after the period for reservation of the name has expired and if he finds that the name is not available for corporate use pursuant to the provisions of this chapter, then, in addition to complying with the provisions of the preceding paragraph, the proclaimed corporation shall set forth in its petition for reinstatement its name at the time of issuance of the proclamation of revocation and its new name, which shall be a name available for corporate use pursuant to the provisions of this chapter.

(c) If the Commissioner finds that all such documents conform to law, and that the period for reservation of the name has not expired, or if such period has expired, that the name is available for corporate use pursuant to the provisions of this chapter, they shall, when all fees, charges, interest, and penalties have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals and any such annual report or reports the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals and any such annual report or reports in his office;



(3) issue a certificate of reinstatement to which he shall affix the other duplicate original;

(4) deliver such certificate of reinstatement and other duplicate original to the corporation or its representative.

(d) Upon the issuance of the certificate of reinstatement, the revocation proceedings theretofore taken as to such corporation by proclamation shall be deemed to be annulled, and such corporation shall have such powers, rights, duties, and obligations as it had at the time of the issuance of the proclamation with the same force and effect as to such corporation as if the proclamation had not been issued. (June 8, 1954, 68 Stat. 232, ch. 269, § 127; Sept. 3, 1963, 77 Stat. 139, Pub. L. 88-111, § 1(10).)

#### AMENDMENT

1963—Section 1(10) of act Sept. 3, 1963, amended the section generally, and divided section into subsections.

#### EFFECTIVE DATE OF 1963 AMENDMENT

See note to section 29-903.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-939. Penalty for failure to file annual report on time.

Any corporation organized under this chapter or any foreign corporation having a certificate of authority under this chapter which fails or refuses to file the annual report required by this chapter to be filed on April 15 of each year shall pay a penalty of \$25. (June 8, 1954, 68 Stat. 232, ch. 269, § 128.)

#### § 29-940. Penalty for failure to maintain registered office or registered agent.

Any corporation incorporated or reincorporated under this chapter, or any foreign corporation which has been issued a certificate of authority under this chapter, which fails or refuses to maintain a registered office or a registered agent in the District of Columbia, in accordance with the provisions of this chapter shall be deemed to be guilty of a misdemeanor and upon conviction thereof by a court of competent jurisdiction shall be fined in an amount not exceeding \$500. (June 8, 1954, 68 Stat. 232, ch. 269, § 129.)

#### § 29-941. Effect of nonpayment of fees.

(a) The Commissioner shall not file any articles, statements, certificates, reports, applications, notices, or other papers relating to any corporation, domestic or foreign, organized under or subject to the provisions of this chapter, until all fees and charges provided to be paid in connection therewith shall have been paid to him or while the corporation is in default in the payment of any fees, charges, or penalties herein provided to be paid by or assessed against it. Nothing in this section shall prevent the filing, without the payment of all such fees, charges and penalties, of a written notice of resignation by a registered agent of a corporation, domestic or foreign.

(b) No corporation required to pay a fee, charge, or penalty under this chapter shall maintain in the District of Columbia any action at law or suit in equity until all such fees, charges, and penalties

have been paid in full. (June 8, 1954, 68 Stat. 232, ch. 269, § 130; Sept. 2, 1957, 71 Stat. 572, Pub. L. 85-254, § 32; Sept. 3, 1963, 77 Stat. 140, Pub. L. 88-111, § 1(11).)

#### AMENDMENTS

1963—Section 1(11) of act Sept. 3, 1963, amended subsection (a) by adding thereto the sentence beginning with the word "Nothing" and ending with the word "foreign".

1957—Subsec. (a) amended by act Sept. 2, 1957, which substituted "them" for "him."

#### EFFECTIVE DATE OF 1963 AMENDMENT

See note to section 29-903.

#### EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 29-905.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### NOTES TO DECISIONS

##### Construction

Statute, which prohibits maintaining of action by corporation until required corporate fees are paid, does not foreclose reinstatement once the fees are paid, nor does it require immediate dismissal when nonpayment is brought to the court's attention. *York and York Construction Company v. J. Alexander et al.* (D.C. App. 1972, 296 A. 2d 710).

#### § 29-942. Penalties—Violation or failure a misdemeanor.

Any person, or corporation, who violates any provision of this chapter, or fails to comply with any provision thereof, for which violation or failure no penalty is provided therein or elsewhere in the laws of the District of Columbia, shall be deemed guilty of a misdemeanor and upon conviction thereof by a court of competent jurisdiction shall be fined not exceeding \$500 for each and every violation or failure. (June 8, 1954, 68 Stat. 233, ch. 269, § 131.)

#### § 29-943. Rights and immunities of witnesses.

No person shall be excused from testifying or from producing books, accounts, and papers in any proceeding based upon or growing out of any violation of the provisions of this chapter, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may have testified or produced any documentary evidence: *Provided*, That no person so testifying shall be exempted from prosecution or punishment for perjury: *Provided further*, That the immunity hereby conferred shall extend only to a natural person who, in obedience to a subpoena gives testimony under oath or produces evidence, documentary or otherwise, under oath. (June 8, 1954, 68 Stat. 233, ch. 269, § 132.)

#### § 29-944. Monopolies and restraint of trade.

Nothing in this chapter shall be interpreted to authorize a corporation to do any act in violation of the common law or the statutes relating to the District of Columbia or of the United States with respect to monopolies and illegal restraint of trade. (June 8, 1954, 68 Stat. 233, ch. 269, § 133.)



## CROSS REFERENCE

Monopolies and combinations in restraint of trade, see 15 U.S.C. ch. 1.

## § 29-945. Waiver of notice.

Whenever any notice whatever is required to be given under the provisions of this chapter or under the provisions of the articles of incorporation or by-laws of any corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. (June 8, 1954, 68 Stat. 233, ch. 269, § 134.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29-910a, 29-916g.

## § 29-946. Voting requirements of articles of incorporation.

Whenever, with respect to any action to be taken by the shareholders of a corporation, the articles of incorporation require the vote or concurrence of the holders of a greater proportion of the shares, or of any class or series thereof, than required by this chapter with respect to such action, the provisions of the articles of incorporation shall control. (June 8, 1954, 68 Stat. 233, ch. 269, § 135.)

## § 29-947. Action without a meeting.

Any action required or permitted to be taken at a meeting of the shareholders of a corporation or of the board of directors or of any committee thereof may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof, or by all of the members of the board or of such committee as the case may be, and such written consent is filed with the minutes of proceedings of the shareholders or the board or the committee. Such consent shall have the same force and effect as a unanimous vote of the shareholders or the board or the committee, as the case may be, and may be stated as such in any article or document filed with the Commissioner under this chapter. (June 8, 1954, 68 Stat. 234, ch. 269, § 136; Sept. 3, 1963, 77 Stat. 140, Pub. L. 88-111, § 1(12).)

## AMENDMENT

1963—Section 1(12) of act Sept. 3, 1963, amended the section generally.

## EFFECTIVE DATE OF 1963 AMENDMENT

See note to section 29-903.

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## § 29-948. Appeal from Commissioner.

(a) If the Commissioner shall fail to approve any articles of incorporation, amendment, merger, consolidation, or dissolution, or any other document required by this chapter to be approved by the Commissioner before the same shall be filed in his office, he shall, within ten days after the delivery thereof to him give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor.

From such disapproval such person or corporation may appeal to the court, by filing with the clerk of such court a petition setting forth a copy of the articles or other documents sought to be filed and a copy of the written disapproval thereof by the Commissioner; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Commissioner or direct him to take such action as the court may deem proper.

(b) If the Commissioner shall revoke the certificate of authority to transact business in the District of any foreign corporation, pursuant to the provisions of this chapter, such foreign corporation, may likewise appeal to the court, by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to transact business in the District and a copy of the notice of revocation given by the Commissioner; whereupon the matter shall be tried de novo by the court and the court shall either sustain the action of the Commissioner or direct him to take such action as the court may deem proper.

(c) Appeals from all final orders and judgments entered by the court under this section may be taken by either party to the proceeding within sixty days after service on the party of a copy of the order or judgment of the court. (June 8, 1954, 68 Stat. 234, ch. 269, § 137; July 29, 1970, Pub. L. 91-358, §§ 163(b), 168(c)(3), title I, 84 Stat. 582, 589.)

## AMENDMENTS

1970—Section 163(b) of Act July 29, 1970, Public Law 91-358, amended subsection (c) generally. For provisions of this section prior to this amendment, see 1967 edition of the code.

Section 168(c)(3) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court" each time it appears.

## EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11-101.

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## NOTES TO DECISIONS

## Corporate name

Where Superintendent of Corporations had no written regulations or statements of policy, practice, or procedure governing determination whether one corporate name was deceptively similar to another, the court, on trial de novo following appeal from refusal to accept application to change corporate name on ground of deceptive similarities, is required to consider only the validity of the Superintendent's subjective judgment. *Eaton Yale & Towne, Inc. v. A. Goldstein et al.* (1971, 335 F. Supp. 1043).

## § 29-949. Certificates and certified copies of certain documents to be received in evidence.

All certificates issued by the Commissioner in accordance with the provisions of this chapter, and all copies of documents filed in his office in accordance with the provisions of this chapter when certified by him, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the Commissioner under the seal of his office, as to the existence or nonexistence of the facts relating to corporations which would not



appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated. (June 8, 1954, 68 Stat. 234, ch. 269, § 138.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-950. Unauthorized assumption of corporate powers.

All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof. (June 8, 1954, 68 Stat. 235, ch. 269, § 139.)

#### § 29-951. Forms to be furnished by Commissioner.

All reports required by this chapter to be filed in the office of the Commissioner shall be made on forms which shall be prescribed and furnished by the Commissioner. Forms for all other documents to be filed in the office of the Commissioner shall be furnished by the Commissioner on request therefor, but the use thereof, unless otherwise specifically prescribed in this chapter, shall not be mandatory. (June 8, 1954, 68 Stat. 235, ch. 269, § 140.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-952. Reincorporation or incorporation of existing corporations.

##### I. REINCORPORATION

(a) Any corporation which is organized and existing under the laws of the District of Columbia on December 5, 1954, and which is organized for profit and for a purpose or purposes authorized by this chapter may avail itself of the provisions of this chapter and may become reincorporated hereunder in the following manner:

(1) The board of directors shall adopt a resolution declaring it advisable in the judgment of the board that the corporation should be reincorporated under the provisions of this chapter, setting forth the proposed articles of reincorporation, and directing that such proposed reincorporation be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written or printed notice setting forth the proposed articles of reincorporation or a summary thereof shall be given to each shareholder of record within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders.

(3) At such meeting a vote of the shareholders shall be taken on the proposed reincorporation; and it shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the outstanding shares unless two or more classes of shares are issued, in which event it shall be adopted upon receiving the affirmative vote of

two-thirds of the outstanding shares of each class issued.

(b) Upon receiving such approval, the articles of reincorporation shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and shall set forth—

(1) the name (which may be different from its existing name) under which the corporation elects to be reincorporated and which shall be subject to the other provisions of this chapter;

(2) the address, including street and number, if any, of its registered agent in the District of Columbia, and the name of its registered office at such address;

(3) the period of duration, which may be perpetual and which may be different from its existing period of duration;

(4) the purpose or purposes (which may be different from its existing purposes) which it will hereafter carry on, and which shall not include any purpose prohibited to a corporation organized under this chapter;

(5) the aggregate number of shares which the corporation was authorized to issue and, if said shares were of one class only, the par value of each of such shares, or a statement that all were without par value, as the case may be; or if said shares were divided into classes, the number of shares of each class and a statement of the par value of each share of each such class or that such shares were without par value;

(6) if the shares were divided into classes, the designation of each class and a statement of the preferences, qualifications, limitations, restrictions, and the special or relative rights in respect of the shares of each class and whether the shares of any class have full, limited, or no voting power;

(7) any other provision, not inconsistent with law or this chapter (whether or not included in its existing certificate of incorporation), for the regulation of the internal affairs of the corporation, including any provision which under this chapter is required or permitted to be set forth in the bylaws;

(8) the number of directors of the corporation, and a statement that the board of directors adopted a resolution declaring it advisable in the judgment of the board that the corporation should be reincorporated under the provisions of this chapter in the manner set forth in the articles of reincorporation;

(9) a statement that the corporation elects to surrender its existing charter and to be reincorporated under and subject to the provisions of this chapter:

(10) the aggregate number of shares outstanding of each class; and

(11) the number of shares of each class voted for and against such reincorporation.

(c) It shall not be necessary to set forth in the articles of reincorporation any of the corporate powers enumerated in this chapter. Whenever a



provision of the articles of reincorporation is inconsistent with a bylaw, the provision of the articles of reincorporation shall be controlling.

(d) Duplicate originals of the articles of reincorporation shall be delivered to the Commissioner. If the Commissioner finds that the articles of reincorporation conform to law, he shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in his office;

(3) issue a certificate of reincorporation to which he shall affix the other duplicate original;

(4) deliver such certificate of reincorporation and other duplicate original to the corporation or its representative.

## II. INCORPORATION

(a) Any corporation which is created under the provisions of a special Act of Congress to transact business in the District of Columbia for profit and for purposes authorized by this chapter may avail itself of the provisions of this chapter and may become incorporated hereunder in the following manner:

(1) The board of directors shall adopt a resolution declaring it advisable in the judgment of the board that the corporation should elect to avail itself of the provisions of this chapter and become incorporated hereunder, and directing that such proposed incorporation be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written or printed notice of such proposed incorporation shall be given to each shareholder of record within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders.

(3) At such meeting a vote of the shareholders shall be taken on the proposed incorporation; and it shall be adopted upon receiving the affirmative vote of the holders of a majority of the outstanding shares, unless two or more classes of shares are issued in which event it shall be adopted upon receiving the affirmative vote of a majority of the outstanding shares of each class issued.

(b) Upon such approval being given by the shareholders, a statement of incorporation shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and shall set forth—

(1) the name of the corporation, which shall contain the word "corporation", "company", "incorporated", or "limited", or shall end with an abbreviation of one of said words;

(2) the address, including street and number, if any, of its registered office in the District of Columbia, and the name of its registered agent at such address;

(3) the purpose or purposes for which the corporation was organized and which it will hereafter carry on;

(4) the aggregate number of shares which the corporation was authorized to issue and, if said shares were of one class only, the par value of each of such shares, or a statement that all were without par value, as the case may be; or if said shares were divided into classes, the number of shares of each class and a statement of the par value of each share of each such class or that such shares were without par value;

(5) if the shares were divided into classes, the designation of each class and a statement of the preferences, qualifications, limitations, restrictions, and the special or relative rights in respect of the shares of each class and whether the shares of any class have full, limited, or no voting power;

(6) a statement that the corporation elects to avail itself of the provisions of this chapter and become incorporated hereunder;

(7) the number of directors of the corporation, and a statement that the board of directors adopted a resolution declaring it advisable in the judgment of the board that the corporation should elect to avail itself of the provisions of this chapter and become incorporated thereunder;

(8) the aggregate number of shares outstanding of each class; and

(9) the number of shares of each class voted for and against such incorporation.

(c) It shall not be necessary to set forth in the statement of incorporation any of the corporate powers enumerated in this chapter.

(d) Duplicate originals of the statement of incorporation shall be delivered to the Commissioner, together with a copy of the corporation's charter of articles or certificate of incorporation then in effect, certified by the secretary of the corporation. If the Commissioner finds that the statement of incorporation conforms to law, he shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in his office, together with said copy of the corporation's charter or articles or certificate of incorporation as then in effect;

(3) issue a certificate of incorporation to which he shall affix the other duplicate originals; and

(4) deliver such certificate of incorporation and other duplicate original to the corporation or its representative.

(June 8, 1954, 68 Stat. 235, ch. 269, § 141; Sept. 2, 1957, 71 Stat. 572, Pub. L. 85-254, § 33.)

## AMENDMENTS

1957—Act Sept. 2, 1957, amended section to read as above set out. As originally enacted the section read:

"Any corporation which is either—

"(1) organized and existing under the laws of the District of Columbia on the date this Act takes effect [see section 146 of act June 8, 1954, set out as note under section 29-901] and which is organized for profit and for a purpose or purposes authorized by this Act [this chapter]; or

"(2) created under the provisions of a special Act of Congress to transact business in the District of Columbia



for profit and for purposes authorized by this Act [this chapter];

may avail itself of the provisions of this Act [this chapter] and may become reincorporated or incorporated hereunder in the following alternative manner:

#### "I. Reincorporation

"(a) The board of directors shall adopt a resolution declaring it advisable in the judgment of the board that the corporation should be reincorporated under the provisions of this Act [this chapter] and further setting forth the following statements for articles of incorporation under this Act [this chapter]:

"(1) The name which the corporation elects to be reincorporated under and which shall contain the word 'corporation', 'company', 'incorporated', or 'limited', or shall contain an abbreviation of one of said words.

"(2) The designation of the address, including street and number, if any, of its registered office in the District of Columbia; and the name of its registered agent at such address.

"(3) The purpose or purposes for which the corporation was organized and which it will hereafter carry on.

"(4) The aggregate number of shares which the corporation was authorized to issue and, if said shares were of one class only, the par value of such shares, or a statement that all were without par value, as the case may be; or if said shares were divided into classes, the number of shares of each class, if any, that have a par value and the par value of each share of each such class, and the number of shares of each class, if any, that are without par value.

"(5) If the shares were divided into classes, the designation of each class and a statement of the preferences, qualifications, limitations, restrictions, and the special or relative rights in respect of the shares of each class and whether the shares of any class have full, limited, or no voting power.

"(6) The number of directors of the corporation.

"(7) Any other provisions, not inconsistent with law, or this Act [this chapter], for the regulation of the internal affairs of the corporation.

"(8) That it elects to surrender its existing charter and to be reincorporated under and subject to the provisions of this Act [this chapter].

"It shall not be necessary to set forth in the articles of reincorporation any of the corporate powers enumerated in this Act [this chapter].

"(b) Written or printed notice setting forth the proposed articles of reincorporation or a summary thereof shall be given to each shareholder of record within the time and in the manner provided in this Act [this chapter] for giving notice of meetings of shareholders.

"(c) At such meeting a vote of the shareholders shall be taken on the proposed reincorporation and it shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the outstanding shares unless two or more classes of shares are issued in which event it shall be adopted upon receiving the affirmative vote of two-thirds of the outstanding shares of each class issued.

"(d) Upon receiving such approval, articles of reincorporation shall be executed in duplicate by the corporation by its president or vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and delivered to the Commissioners.

"(e) If the Commissioners find that the articles of reincorporation conform to law, they shall, when all fees and charges have been paid as in this Act [this chapter] prescribed—

"(1) endorse on each of such duplicate originals the word 'Filed', and the month, day, and year of the filing thereof;

"(2) file one of such duplicate originals in their office;

"(3) issue a certificate of reincorporation to which they shall attach the other duplicate original.

"(f) The certificate of reincorporation, together with the duplicate original of the articles of reincorporation affixed thereto, shall be recorded in the office of the Recorder of Deeds.

#### "II. Incorporation

"(a) By filing with the Commissioners a copy of its charter, or articles of incorporation, then in effect, certified by the secretary of said corporation, together with a certificate executed on behalf of the corporation by the president or a vice president and the secretary or the assistant secretary setting forth the following:

"(1) The name of the corporation, which shall contain the word 'corporation', 'company', 'incorporated', or 'limited', or shall end with an abbreviation of one of said words.

"(2) The designation of the address, including street and number, if any, of its registered office in the District of Columbia; and the name of its registered agent at such address.

"(3) The purpose or purposes for which the corporation was organized and which it will hereafter carry on.

"(4) The aggregate number of shares which the corporation was authorized to issue and, if said shares were of one class only, the par value of such shares, or a statement that all were without par value, as the case may be; or if said shares were divided into classes, the number of shares of each class, if any, that have a par value and the par value of each share of each such class, and the number of shares of each class, if any, that are without par value.

"(5) If the shares were divided into classes, the designation of each class and a statement of the preferences, qualifications, limitations, restrictions, and the special or relative rights in respect of the shares of each class and whether the shares of any class have full, limited, or no voting power.

"(6) The number of directors of the corporation.

"(7) Any other provisions, not inconsistent with law, or this Act [this chapter], for the regulation of the internal affairs of the corporation.

"It shall not be necessary to set forth in such certificate any of the corporate powers enumerated in this Act [this chapter].

"(b) A copy of a resolution of the board of directors certified to by the secretary of such corporation which shows that said board believes it advisable that the corporation should elect to avail itself of the provisions of this Act [this chapter] and become incorporated hereunder.

"(c) A certificate of the secretary of such corporation to the effect that such action by the corporation has been ratified and approved by the affirmative vote of not less than a majority of the outstanding shares of capital stock of such corporation entitled to vote.

"(d) If the Commissioners find that such papers conform to law, they shall accept them for filing in the same manner as herein provided for the filing of articles of incorporation."

#### EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 29-905.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29-908g, 29-952a.

#### § 29-952a. Effect of issuance of certificate of reincorporation or incorporation.

Upon the issuance under section 29-952 of a certificate of reincorporation or of incorporation, as the case may be, by the Commissioner the existence of the corporation shall be continued under this chapter, and such certificate shall be conclusive evidence that all conditions precedent required to be performed under section 29-952 have been complied with and that the corporation has been reincorporated or incorporated under this chapter, as the case may be, except as against the District of Columbia in a proceeding to cancel or revoke the certificate of reincorporation or of incorporation; and



the corporation shall be entitled to and be possessed of all the privileges, franchises, and powers and subject to all the provisions of this chapter as fully and to the same extent as if such corporation had been originally incorporated under this chapter; and all privileges, franchises, and powers theretofore belonging to said corporation and all property, real, personal, and mixed, and all debts due on whatever account, and all choses in action, and all and every other interest of or belonging to or due such corporation shall be and the same are hereby ratified, approved, and confirmed and assured to such corporation with like effect and to all intents and purposes as if the same had been originally acquired through incorporation under this chapter: *Provided, however,* That any corporation thus reincorporating or incorporating under the provisions of this chapter shall be subject to all the contracts, debts, claims, duties, liabilities, and obligations of the corporations thus reincorporated or incorporated as if such reincorporation or incorporation had not taken place and neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such reincorporation or incorporation. Such reincorporated or incorporated corporation shall not be subject to the payment of the initial license tax provided by this chapter. (June 8, 1954, 68 Stat. 237, ch. 269, § 142; Sept. 2, 1957, 71 Stat. 574, Pub. L. 85-254, § 34.)

#### AMENDMENT

1957—Act Sept. 2, 1957, substituted catchline reading "Effect of issuance of certificate of reincorporation or incorporation" for "Effect of filing articles of reincorporation or certificates of incorporation" and "Upon the issuance under section 29-952 of a certificate of reincorporation or of incorporation, as the case may be, by the Commissioners the existence of the corporation shall be continued under this chapter, and such certificate shall be conclusive evidence that all conditions precedent required to be performed under section 29-952 have been complied with and that the corporation has been reincorporated or incorporated under this chapter, as the case may be, except as against the District of Columbia in a proceeding to cancel or revoke the certificate of reincorporation or of incorporation," for "Upon the issuance of articles of reincorporation or the certificate of incorporation by the Commissioners the existence of the corporation shall be continued under this chapter."

#### EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 29-905.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### NOTES TO DECISIONS

##### Place of business after organization

This chapter, considered in its entirety, contemplates that principal place of business of a corporation may be outside the District after organization in the sense of creation, and there was no intention to make the proviso that "no corporation may be organized" under the chapter "unless the place where it conducts its principal business is located within the District of Columbia" a continuing regulation. *Murphy v. Washington American League Baseball Club, Inc.* (D.C.D.C. 1958, 167 F. Supp. 215, affirmed 267 F. 2d 655, 105 U.S. App. D.C. 378).

##### Pre-existing corporation

The provision of this chapter granting to a corporation which is reincorporated under the chapter all the privi-

leges and powers and making corporation subject to all provisions of the chapter was intended to place a pre-existing corporation on equality with one newly organized, so far as benefits and burdens under the chapter were concerned, but in order not to deprive a pre-existing corporation of that which it already had, the subsequent provision confirming and assuring all privileges and powers theretofore belonging to the corporation was intended to preserve them intact. *Murphy v. Washington American League Baseball Club, Inc.* (D.C.D.C. 1958, 167 F. Supp. 215, affirmed 267 F. 2d 655, 105 U.S. App. D.C. 378).

##### Principal place of business

The proviso that no corporation may be organized unless place where it conducts its principal business is located within the District of Columbia speaks prospectively, and where corporation owning a baseball club, although reincorporated under the 1954 act, was organized under the act of 1901, imposing no restrictions upon the place where the corporation might conduct its principal business, such corporation was not required to conduct its principal business at a place within the District and was not prohibited from moving its American League franchise to any other city outside the District. *Murphy v. Washington American League Baseball Club, Inc., et al.* (1959, 267 F. 2d 655, 105 U.S. App. D.C. 378).

The proviso that no corporation may be organized unless the place where it conducts its principal business is located within District of Columbia did not apply to corporation operating professional baseball team as reincorporated corporation which under old act had power to conduct its principal place of business outside District of Columbia, and though not exercised, the power available by amendment to certificate of corporation was preserved under the Act, and hence proviso would not preclude corporation from transferring its franchise to a city outside the District. *Murphy v. Washington American League Baseball Club, Inc.* (D.C.D.C. 1958, 167 F. Supp. 215, affirmed 267 F. 2d 655, 105 U.S. App. D.C. 378).

#### § 29-953. Transfer of duties of Recorder of Deeds.

(a) All powers conferred and all duties imposed upon the Recorder of Deeds of the District of Columbia by any Act of Congress in relation to the organization of corporations, the amendment of certificates of incorporation or charters of corporations, change in capital stock, change of name, reincorporation, dissolution, or other corporate action are on December 5, 1954, hereby transferred to imposed upon, and shall be exercised or performed by the Commissioner; and wherever the words "Recorder of Deeds" or other words denoting that officer appear in any of the Acts of Congress relating to the organization of corporations under the laws of the District of Columbia, or to amendments to the certificate of incorporation or charter of any corporation organized and existing under any of such Acts, or to changes of name, changes of capital stock, reincorporation, dissolution, or other corporate action of any such corporation, whether such words relate to the powers and duties of such officer in relation to organization of corporations under any such Acts, or to any of the corporate Acts hereinbefore enumerated or are used in connection with the imposition of obligations or duties or the conferring of rights or privileges upon corporations or other persons, such words shall be construed to mean the Commissioner. All fees and charges, except as hereinafter provided, now chargeable by the Recorder of Deeds for doing the work or performing the services hereby transferred to the Commissioner shall, after December 5, 1954, be chargeable by the Commissioner. On and after December



5, 1954, all certificates of incorporation or charters for the organization of corporations under any Act of Congress authorizing the formation of corporations under the laws of the District of Columbia, or for the amendment of any such certificate of incorporation or charter, changes in capital stock, reincorporation, dissolution, or other corporate action under any such chapter, shall be delivered to the Commissioner in duplicate original. If the Commissioner finds that any such document conforms to law, he shall, when all fees have been paid as prescribed by law—

(1) endorse on each such duplicate original the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in his office;

(3) return the other duplicate original to the corporation or its representative.

(b) The filing of such document in the office of the Commissioner shall have the same force and effect as the recordation or lodging for recordation of certificates of incorporation and other corporate documents hereinbefore enumerated, formerly had in the office of the Recorder of Deeds.

(c) On December 5, 1954, the Commissioner shall take possession of all original books, papers, and records theretofore filed, recorded, used, or acquired by the Recorder of Deeds in the exercise of the powers and in the performance of the duties hereby transferred to the Commissioner, but nothing herein contained shall require the Recorder of Deeds to transfer any copies or transcripts of corporate papers that may constitute part of the records of his office. (June 8, 1954, 68 Stat. 238, ch. 269, § 143; Sept. 2, 1957, 71 Stat. 575, Pub. L. 85-254, § 35.)

#### AMENDMENTS

1957—Act Sept. 2, 1957, § 35(1), amended subsec. (a) (3) which substituted "return the other duplicate original to the corporation or its representative" for "the other duplicate original shall be recorded in the office of the Recorder of Deeds." It also struck out "of" after "recordation" and changed it to "or".

Subsec. (b) amended by act Sept. 2, 1957, § 35(2), which substituted "or" for "of" following "recordation."

#### EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 29-905.

#### DELEGATION OF FUNCTIONS

Retransfer of authority to the Recorder of Deeds to administer the D.C. Business Corporation Act, see Organization Order 101 in appendix to title 1.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-902.

### § 29-954. Separability of provisions.

The invalidity of any portion of this chapter shall not affect the validity of any other portion thereof which can be given effect without such invalid part. (June 8, 1954, 68 Stat. 238, ch. 269, § 144.)

### § 29-955. Right of repeal reserved.

Congress reserves the right to alter, amend, or repeal this chapter, or any part thereof, or any cer-

tificate of incorporation or certificate of authority issued pursuant to its provisions. (June 8, 1954, 68 Stat. 238, ch. 269, § 145.)

### § 29-956. Appropriation of funds.

There are hereby authorized to be appropriated from any moneys in the Treasury of the United States to the credit of the District of Columbia, such amounts as may be necessary to carry into effect the provisions of this chapter. (June 8, 1954, 68 Stat. 239, ch. 269, § 147.)

### § 29-957. Use of certified mail.

Wherever provision of this chapter authorizes or requires the service or forwarding of any process, notice, or demand by registered mail, such provision shall be deemed to include as an alternative the service or forwarding of such process, notice, or demand by certified mail. (June 8, 1954, ch. 269, § 148, as added July 23, 1959, 73 Stat. 242, Pub. L. 86-106, § 17.)

#### CROSS REFERENCE

Certified mail receipts as prima facie evidence of delivery see § 14-506.

#### EFFECTIVE DATE

Section effective on sixtieth day after July 23, 1959, see section 18 of act July 23, 1959, set out as a note under section 29-907a.

### § 29-958. Civil actions and prosecutions.

All civil actions under this chapter which the Commissioner is authorized to commence, and all prosecutions for violations of the provisions of this chapter, shall be brought in the name of the District of Columbia by the Corporation Counsel of the District of Columbia. (June 8, 1954, ch. 269, § 149, as added July 23, 1959, 73 Stat. 242, Pub. L. 86-106, § 17.)

#### EFFECTIVE DATE

Section effective on sixtieth day after July 23, 1959, see section 18 of act July 23, 1959, set out as a note under section 29-907a.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

### § 29-959. Verification no longer required.

A requirement in this chapter that any instrument be verified by oath need not be complied with after November 2, 1963. A person who signs any instrument delivered to the Commissioner pursuant to this chapter knowing it to contain a misstatement of fact shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding \$500, or by imprisonment not exceeding one year, or both, in the discretion of the court. (June 8, 1954, ch. 269, § 151, as added Sept. 3, 1963, 77 Stat. 140, Pub. L. 88-111, § 1(13).)

#### EFFECTIVE DATE

Section 3 of act Sept. 3, 1963, provided: "This Act shall become effective sixty days after the date of its enactment."

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.



## Chapter 10.—NONPROFIT CORPORATIONS

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- 29-1099l. Appropriation of funds.
- § 29-1001. Short title.
- This chapter shall be known and may be cited as the "District of Columbia Nonprofit Corporation Act." (Aug. 6, 1962, 76 Stat. 265, Pub. L. 87-569, § 1.)
- EFFECTIVE DATE
- Section 110 act Aug. 6, 1962 (classified to § 29-1099k), provides as follows: "This Act [this chapter] shall take effect one hundred and eighty days after the date of its approval". [Aug. 6, 1962]
- § 29-1002. Definitions.
- As used in this chapter, unless the context otherwise requires, the term—
- (a) "Corporation" or "domestic corporation" means a corporation not for profit subject to the provisions of this chapter, except a foreign corporation.
- (b) "Foreign corporation" means a corporation not for profit organized under laws other than the laws of the District of Columbia, for a purpose or



purposes for which a corporation might be organized under this chapter, but shall not include a corporation created by a special Act of Congress.

(c) "Not for profit corporation" means a corporation no part of the income of which is distributable to its members, directors, or officers; except nothing in this chapter shall be construed as prohibiting the payment of reasonable compensation for services rendered and the making of distribution upon dissolution of final liquidation as permitted in this chapter.

(d) "Articles of incorporation" means the original articles of incorporation and all amendments thereto, including articles of merger or consolidation, and in the case of a corporation created by a special Act of Congress, means such special Act and any amendments thereto made by special Act of Congress, or pursuant to general law.

(e) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of a corporation irrespective of the name or names by which such rules are designated.

(f) "Member" means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws.

(g) "Board of directors" means the group of persons vested with the management of the affairs of a corporation irrespective of the name by which such group is designated.

(h) "Insolvent" means that a corporation is unable to pay its debts as they become due in the usual course of its affairs.

(i) "Commissioner" means the Commissioner of the District of Columbia or the agent or agents designated by him to perform any function vested in the Commissioner by this chapter.

(j) "District" means the District of Columbia.

(k) "The court", except where otherwise specified, means the court in the District of Columbia having jurisdiction of civil actions wherein the amount in controversy exceeds \$50,000. (Aug. 6, 1962, 76 Stat. 266, Pub. L. 87-569, § 2; July 29, 1970, Pub. L. 91-358, § 168(e)(1), title I, 84 Stat. 589.)

#### AMENDMENT

1970—Section 168(e)(1) of Act July 29, 1970, Public Law 91-358, amended subsection (k) generally. For provisions of this section prior to this amendment, see 1967 edition of the code.

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CROSS REFERENCE

Court having jurisdiction of civil actions wherein the amount in controversy exceeds \$50,000, see §§ 11-501, 11-921.

#### § 29-1003. Applicability.

(a) The provisions of this chapter relating to domestic corporations shall apply to all corporations organized hereunder or which elect to accept the provisions of this chapter.

(b) The provisions of this chapter relating to foreign corporations shall apply to all foreign not

for profit corporations conducting affairs in the District of Columbia for a purpose or purposes for which a corporation might be organized under this chapter.

(c) No corporation eligible to be formed under this chapter shall be incorporated under any other Act or statute now in force in the District of Columbia except that those organizations eligible to be formed under the Acts or parts of Acts referred to in section 49-303, may be formed under those Acts or part of Acts. (Aug. 6, 1962, 76 Stat. 267, Pub. L. 85-569, § 3.)

#### CROSS REFERENCE

For other provisions dealing with nonprofit organizations, see chapters 3, 4, 5, 6 and 8 of title 29, chapter 9 of title 31, and title 32.

#### § 29-1004. Purposes.

Corporations may be organized under this chapter for any lawful purpose or purposes including, but not limited to, one or more of the following or similar purposes: benevolent; charitable; religious; missionary; educational; scientific; research; literary; musical; social; athletic; patriotic; political; civic; professional, commercial, industrial, business, or trade association; mutual improvement; promotion of the arts; except that cooperative organizations or organizations subject to any of the provisions of the insurance laws of the District may not be organized under this chapter. (Aug. 6, 1962, 76 Stat. 267, Pub. L. 87-569, § 4.)

#### § 29-1005. General powers.

Each corporation shall have power—

(a) to have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(b) to sue and be sued, complain and defend, in its corporate name;

(c) to have a corporate seal which may be altered at pleasure and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;

(d) to purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with, real or personal property, or any interest therein, wherever situated;

(e) to sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(f) to lend money to and otherwise assist its employees other than its officers and directors;

(g) to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals, or direct or indirect obligations of the United States, or of any other government, State, territory, governmental district, or municipality or of any instrumentality thereof;

(h) to make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds,



and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income;

(i) to lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(j) to conduct its affairs, carry on its operations, hold property, and have offices and exercise the powers granted by this chapter in any part of the world;

(k) to elect or appoint officers and agents of the corporation, and define their duties and fix their compensation;

(l) to make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of the District of Columbia, for the administration and regulation of the affairs of the corporation;

(m) unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for religious, charitable, scientific research, or educational purposes, or for other purposes for which the corporation is organized;

(n) to indemnify any director or officer or former director or officer of the corporation, or any person who may have served at its request as a director or officer of another corporation, whether for profit or not for profit, against expenses actually and necessarily incurred by him in connection with the defense of any action, suit, or proceeding in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of a duty. Such indemnification shall not be deemed exclusive of any other rights to which such director or officer may be entitled, under any bylaw, agreement, vote of board of directors or members, or otherwise;

(o) to cease its corporate activities and surrender its corporate franchise;

(p) to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

(Aug. 6, 1962, 76 Stat. 267, Pub. L. 87-569, § 5.)

#### § 29-1006. Defense of ultra vires.

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(a) In a proceeding by a member or a director against the corporation to enjoin the doing of any act, or the transfer of real or personal property by or to the corporation. If the act or transfer sought to be enjoined is being, or is to be, performed pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or the other parties to the contract, as the case may be, compensation for the

loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(b) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against the incumbent or former officers or trustees of the corporation.

(c) In a proceeding by the Commissioner, as provided in this chapter, to dissolve the corporation, or in a proceeding by the Commissioner to enjoin the corporation from the transaction of unauthorized acts. (Aug. 6, 1962, 76 Stat. 269, Pub. L. 87-569, § 6.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-1007. Corporate name.

The corporate name—

(a) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;

(b) shall not be the same as, or deceptively similar to, the name of any domestic corporation, whether for profit or not for profit organized under any Act of Congress authorizing the formation of corporations under the laws of the District of Columbia, or that of any corporation created pursuant to any special Act of Congress to transact business or conduct affairs in the District, or that of any foreign corporation whether for profit or not for profit authorized to transact business or conduct affairs in the District, or a name the exclusive right to which is at the time reserved in the manner provided in this chapter or in accordance with the provisions of chapter 9 of this title;

(c) shall be transliterated into letters of the English alphabet, if it is not in English;

(d) shall not indicate, nor shall any statement be made, that the corporation is organized under an Act of Congress.

(Aug. 6, 1962, 76 Stat. 269, Pub. L. 87-569, § 7.)

#### § 29-1008. Reserved name.

(a) The exclusive right to the use of a corporate name may be reserved by any person or corporation, domestic or foreign, by delivering to the Commissioner an application to reserve a specified corporate name, executed by the applicant. If the Commissioner finds that the name is available for corporate use, he shall reserve the same for the exclusive use of the applicant for a period of sixty days. Such reservation may be renewed for an additional period of sixty days and for good cause shown such reservation may be further extended for a reasonable period.

(b) The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by delivering to the Commissioner a notice of such transfer, executed by the applicant for whom the name was reserved,



and specifying the name and address of the transferee. (Aug. 6, 1962, 76 Stat. 269, Pub. L. 87-569, § 8.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-1009. Registered office and registered agent.

Each corporation shall have and continuously maintain in the District of Columbia—

(a) a registered office, which may be, but need not be, the same as its principal office;

(b) a registered agent, which agent may be either an individual resident of the District of Columbia whose business office is identical with such registered office, a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in the District of Columbia and having an office identical with such registered office.

(Aug. 6, 1962, 76 Stat. 270, Pub. L. 87-569, § 9.)

#### § 29-1010. Change of registered office or registered agent.

(a) The registered office of a corporation or its registered agent, or both, may be changed by delivering to the Commissioner a statement setting forth—

- (1) the name of the corporation;
- (2) the address, including street and number, if any, of its then registered office;
- (3) if the address of its registered office is to be changed, the address, including street and number, if any, to which the registered office is to be changed;
- (4) the name of its then registered agent;
- (5) if its registered agent is to be changed, the name of its successor registered agent;
- (6) that the address of its registered office and the address of the office of its registered agent as changed will be identical; and
- (7) that such change was authorized by resolution duly adopted by its board of directors or was authorized by an officer of the corporation duly empowered to make such change.

(b) Such statement shall be executed in duplicate by the corporation by its president or a vice president, and the corporate seal shall be thereto affixed, attested by the secretary or an assistant secretary, and delivered to the Commissioner. If the Commissioner finds that such statement conforms to law, he shall, when all fees and charges have been paid as in this chapter prescribed—

- (1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;
- (2) file one of such duplicate originals in his office;
- (3) return the other duplicate original to the corporation or its representative.

(c) The change of address of the registered office, or the change of registered agent, or both, as the case may be, shall become effective upon the filing of such statement by the Commissioner.

(d) A corporation shall change its registered agent if the office of registered agent shall become vacant for any reason, or if its registered agent becomes disqualified or incapacitated, or if it revokes the appointment of its registered agent.

(e) Any registered agent of a corporation may resign as such agent by delivering written notice thereof, executed in triplicate, to the Commissioner, who shall file one copy thereof in his office and forthwith mail a copy thereof to the corporation at its registered office and another copy to the corporation at its principal office in the District of Columbia as shown by the records of the Commissioner. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the Commissioner or upon the appointment of a successor agent becoming effective, whichever occurs sooner. No fee or other charge of any kind shall be imposed with respect to a filing under this subsection. (Aug. 6, 1962, 76 Stat. 270, Pub. L. 87-569, § 10.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-1011. Registered agent as an agent for service.

(a) The registered agent appointed by a corporation as provided in this chapter shall be an agent of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served. Service of any process, notice, or demand upon a corporate agent, as such agent, may be had by delivering a copy of such process, notice, or demand to the president, vice president, the secretary, or an assistant secretary of such corporate agent.

(b) Whenever a corporation shall fail to appoint or maintain a registered agent in the District or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the Commissioner shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the Commissioner of any such process, notice, or demand shall be made by delivering to and leaving with him or with any clerk having charge of his office duplicate copies of such process, notice, or demand. In the event that any such process, notice, or demand is served on the Commissioner, he shall immediately cause one of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its registered office.

(c) The Commissioner shall keep a record of all processes, notices, and demands served upon him under this section, and shall record therein the time of such service and their action with respect thereto.

(d) Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law. (Aug. 6, 1962, 76 Stat. 271, Pub. L. 87-569, § 11.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.



## § 29-1012. Members.

A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the manner of election or appointment and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the bylaws. If the corporation has no members, that fact shall be set forth in the articles of incorporation. A corporation may issue certificates evidencing membership therein. (Aug. 6, 1962, 76 Stat. 271, Pub. L. 87-569, § 12.)

## § 29-1013. Bylaws.

The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws. (Aug. 6, 1962, 76 Stat. 271, Pub. L. 87-569, § 13.)

## § 29-1014. Meetings of members.

(a) Meetings of members may be held at such place within or without the District of Columbia as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

(b) An annual meeting of the members shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

(c) Special meetings of the members may be called by the president, the secretary, the board of directors, or by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having at least one-twentieth of the votes entitled to be cast at such meeting. (Aug. 6, 1962, 76 Stat. 272, Pub. L. 87-569, § 14.)

## § 29-1015. Notice of members' meetings.

Written or printed notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall, in the absence of a provision in the bylaws specifying a different period of notice, be delivered not less than ten or more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid. (Aug. 6, 1962, 76 Stat. 272, Pub. L. 87-569, § 15.)

## § 29-1016. Voting.

(a) Members shall not be entitled to vote except as the right to vote shall be conferred by the articles of incorporation.

(b) A member may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the member or his duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. Where the articles of incorporation or the bylaws so provide, voting on all matters, including the election of directors or officers where they are to be elected by the members, may be conducted by mail.

(c) The articles of incorporation or the bylaws may provide that in all elections for directors every member entitled to vote shall have the right to cumulate his vote and to give one candidate a number of votes equal to his vote multiplied by the number of directors to be elected or by distributing such votes on the same principle among any number of such candidates.

(d) If a corporation has no members or if the members have no right to vote, the directors shall have the sole voting power and shall have all of the authority and may take any action herein permitted members. (Aug. 6, 1962, 76 Stat. 272, Pub. L. 87-569, § 16.)

## § 29-1017. Quorum.

(a) The bylaws may provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, members having at least one-tenth of the votes entitled to be cast represented in person or by proxy shall constitute a quorum. The affirmative vote of a majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum is present, shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by this chapter, the articles of incorporation or the bylaws.

(b) Unless otherwise provided by the articles of incorporation or the bylaws, the members present at a duly organized meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

(c) If a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting from time to time until a quorum is present, when any business may be transacted that may have been transacted at the meeting as originally called. (Aug. 6, 1962, 76 Stat. 272, Pub. L. 87-569, § 17.)

## § 29-1018. Board of directors.

The affairs of a corporation shall be managed by a board of directors. Directors need not be residents of the District of Columbia or members of the corporation unless the articles of incorporation or the bylaws so require. The articles of incorporation or the bylaws may prescribe other qualifications for directors. (Aug. 6, 1962, 76 Stat. 273, Pub. L. 87-569, § 18.)



**§ 29-1019. Number, election, classification, and removal of directors.**

(a) The number of directors of a corporation shall be not less than three. Subject to such limitation, the number of directors shall be fixed by the bylaws, except as to the number of the first board of directors which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

(b) The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the bylaws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the term of office, the term of office of a director shall be one year.

(c) Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is elected or appointed and until his successor shall have been elected or appointed and qualified, except in the case of ex officio directors.

(d) A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation or the bylaws, and if none be provided may be removed at a meeting called expressly for that purpose, with or without cause, by such vote as would suffice for his election. (Aug. 6, 1962, 76 Stat. 273, Pub. L. 87-569, § 19.)

**§ 29-1020. Vacancies.**

Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the then members of the board of directors, though less than a quorum of the board, unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control. A director elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office. (Aug. 6, 1962, 76 Stat. 274, Pub. L. 87-569, § 20.)

**§ 29-1021. Quorum of directors.**

A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business, unless other-

wise provided in the articles of incorporation or the bylaws; but in no event shall a quorum consist of less than one-third of the number of directors so fixed or stated. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by this chapter or by the articles of incorporation or the bylaws. (Aug. 6, 1962, 76 Stat. 274, Pub. L. 87-569, § 21.)

**§ 29-1022. Committees.**

If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees, each of which shall consist of two or more directors, which committees, to the extent provided in said resolution, in the articles of incorporation or in the bylaws of the corporation, shall have and exercise the authority of the board of directors in the management of the corporation. Other committees not having and exercising the authority of the board of directors in the management of the corporation may be designated and appointed by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any individual director, of any responsibility imposed upon it or him by law. (Aug. 6, 1962, 76 Stat. 274, Pub. L. 87-569, § 22.)

**§ 29-1023. Place and notice of directors' meetings.**

Meetings of the board of directors, regular or special, may be held at such place within or without the District of Columbia, and upon such notice as may be prescribed in the bylaws or, where not inconsistent with the bylaws, by resolution of the board of directors. A director's attendance at any meeting shall constitute waiver of notice of such meeting, excepting such attendance at a meeting by the director for the purpose of objecting to the transaction of business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting, unless otherwise provided in the articles of incorporation or the bylaws. (Aug. 6, 1962, 76 Stat. 274, Pub. L. 87-569, § 23.)

**§ 29-1024. Officers.**

(a) The officers of a corporation shall consist of a president, a secretary, and a treasurer, and may include one or more vice presidents and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding three years as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors. If the bylaws so provide, any two or more offices may be held by the same person, except the offices of president and secretary.



(b) The articles of incorporation or the bylaws may provide that any one or more officers of the corporation or other organizations shall be ex officio members of the board of directors.

(c) The officers of a corporation may be designated by such other titles as may be provided in the articles of incorporation or the bylaws.

(d) All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the property and affairs of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws. (Aug. 6, 1962, 76 Stat. 275, Pub. L. 87-569, § 24.)

#### § 29-1025. Removal of officers.

Any officer or agent elected or appointed may be removed by the persons authorized to elect or appoint such officer or agent whenever in their judgment the best interest of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not itself create contract rights. (Aug. 6, 1962, 76 Stat. 275, Pub. L. 87-569, § 25.)

#### § 29-1026. Books and records.

Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors, and committees having any of the authority of the board of directors; and shall keep at its registered office or principal office in the District of Columbia a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any member having voting rights, or his agent or attorney, for any proper purpose at any reasonable time. (Aug. 6, 1962, 76 Stat. 275, Pub. L. 87-569, § 26.)

#### § 29-1027. Shares of stock and dividends prohibited.

A corporation shall not authorize or issue shares of stock. No dividend shall be paid and no part of the income of a corporation shall be distributed to its members, directors, or officers. A corporation may pay compensation, including pensions, in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members or others as permitted by this chapter. (Aug. 6, 1962, 76 Stat. 275, Pub. L. 87-569, § 27.)

#### § 29-1028. Loans to directors and officers prohibited.

No loans shall be made by a corporation to its directors or officers. The directors of a corporation who vote for or assent to the making of a loan to a director or officer of the corporation, and any officer or officers participating in the making of such a loan, shall be jointly and severally liable to the corporation for the amount of such loan until the

repayment thereof. (Aug. 6, 1962, 76 Stat. 275, Pub. L. 87-569, § 28.)

#### § 29-1029. Incorporators.

Three or more natural persons of the age of twenty-one years or more may act as incorporators of a corporation by signing, verifying, and delivering in duplicate to the Commissioner articles of incorporation for such corporation. (Aug. 6, 1962, 76 Stat. 276, Pub. L. 87-569, § 29.)

#### § 29-1030. Articles of incorporation.

(a) The articles of incorporation shall set forth—

(1) the name of the corporation;

(2) the period of duration, which may be perpetual;

(3) the purpose or purposes for which the corporation is organized;

(4) if the corporation is to have no members, a statement to that effect;

(5) if the corporation is to have one or more classes of members, any provision which the incorporators elect to set forth in the articles of incorporation designating the class or classes of members, stating the qualifications and rights of the members of each class and conferring, limiting, or denying the right to vote;

(6) if the directors or any of them are not to be elected or appointed by one or more classes of members, a statement of the manner in which such directors shall be elected or appointed; or that the manner of such election or appointment of such directors shall be provided in the bylaws;

(7) any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation and any provision which under this chapter is required or permitted to be set forth in the bylaws;

(8) the address, including street and number, if any, of its initial registered office, and the name of its initial registered agent at such address;

(9) the number of directors constituting the initial board of directors, and the names and addresses, including street and number, if any, of the persons who are to serve as the initial directors until the first annual meeting or until their successors be elected and qualify;

(10) the name and address, including street and number, if any, of each incorporator.

(b) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

(c) Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. Whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling. (Aug. 6, 1962, 76 Stat. 276, Pub. L. 87-569, § 30.)



**§ 29-1030a. Corporation treated as tax exempt private foundation—Provisions deemed contained in governing instrument—Amendment of governing instrument.**

(a) Notwithstanding any provision to the contrary in the governing instrument or under any law applicable to the District of Columbia (except as provided in subsection (c) of this section), the governing instrument of any corporation organized under the laws of the District of Columbia, or under any Act of Congress applicable to the District of Columbia, which is treated during a particular year as a private foundation described in section 509 of the Internal Revenue Code of 1954 shall be deemed during such particular year to contain the following provisions:

(1) The corporation shall not engage in any act of self-dealing which is taxable under section 4941 of the Code.

(2) The corporation shall make distributions at such time and in such manner as not to subject it to tax under section 4942 of the Code.

(3) The corporation shall not retain any excess business holdings which would subject it to tax under section 4943 of the Code.

(4) The corporation shall not make any investments which would subject it to tax under section 4944 of the Code.

(5) The corporation shall not make any taxable expenditures which would subject it to tax under section 4945 of the Code.

With respect to any such corporation organized prior to January 1, 1970, subsection (a) shall apply to taxable years beginning on or after January 1, 1972.

(b) The governing instrument of any corporation described in subsection (a) may be amended, in the manner provided by law for amendment of such governing instrument, expressly to include the provisions required by section 508(e) of the Code.

(c) The provisions of subsection (a) shall not apply to any corporation to the extent that its governing instrument is amended in the manner provided by law for amendment of such governing instrument, expressly to exclude the application of subsection (a).

(d) For purposes of this section, the term "corporation" includes an association (other than an association treated as a trust described in section 1801 of title 21).

(e) For the purposes of this section, the term "Code" means the Internal Revenue Code of 1954. (Dec. 6, 1971, Pub. L. 92-177, § 2, 85 Stat. 496.)

**REFERENCE IN TEXT**

Sections 508(e), 509, and 4941-4945 of the Internal Revenue Code of 1954, referred to in text, are classified to 26 U.S.C. 508(e), 509, and 4941-4945.

**CODIFICATION**

Section was not enacted as part of the District of Columbia Nonprofit Corporation Act, which comprises this chapter.

**EFFECTIVE DATE**

Section 3 of Act Dec. 6, 1971, Pub. L. 92-177, provided: "Except as otherwise provided in this Act, or in the amendments made by this Act, the provisions of this Act (enacting sections 21-1801 and 29-1030a) shall first apply with respect to taxable years of trusts and corporations beginning on or after January 1, 1970."

**CROSS REFERENCE**

For similar provisions relating to charitable and split-interest trusts, see § 21-1801.

**§ 29-1031. Filing of articles of incorporation.**

(a) Duplicate originals of the articles of incorporation shall be delivered to the Commissioner.

(b) If the Commissioner finds that the articles of incorporation conform to law, he shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of filing thereof;

(2) file one of such duplicate originals in his office;

(3) issue a certificate of incorporation to which he shall affix the other duplicate original;

(4) deliver the certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto, to the incorporators or their representative.

(Aug. 6, 1962, 76 Stat. 276, Pub. L. 87-569, § 31.)

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**§ 29-1032. Effect of issuance of certificate of incorporation.**

Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter, except as against the District of Columbia in a proceeding to cancel or revoke the certificate of incorporation. (Aug. 6, 1962, 76 Stat. 277, Pub. L. 87-569, § 32.)

**§ 29-1033. Organization meetings.**

(a) After the issuance of the certificate of incorporation an organization meeting of the board of directors named in the articles of incorporation shall be held within the United States at the call of a majority of the directors so named for the purpose of adopting bylaws (unless the power to adopt bylaws has been reserved by the articles of incorporation to the members, in which event the bylaws shall be adopted by the members), electing officers, and the transaction of such other business as may come before the meeting. The directors calling the meeting shall give at least five days' notice thereof by mail to each director so named, which notice shall state the time and place of the meeting: *Provided, however,* That if all the directors shall waive notice in writing and fix a time and place for said organization meeting no notice shall be required of such meeting.

(b) A first meeting of the members may be held at the call of the directors, or a majority of them, upon at least five days' notice, for such purposes as shall be stated in the notice of meeting. (Aug. 6, 1962, 76 Stat. 277, Pub. L. 87-569, § 33.)



## § 29-1034. Right to amend articles of incorporation.

A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired: *Provided*, That its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation if made at the time of making such amendment. (Aug. 6, 1962, 76 Stat. 277, Pub. L. 87-569, § 34.)

## § 29-1035. Procedure to amend articles of incorporation.

Amendments to the articles of incorporation shall be made in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting.

(b) Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. If the meeting be an annual meeting, the proposed amendment or such summary shall be included in the notice of such annual meeting.

(c) The proposed amendment shall be adopted upon receiving the affirmative vote of at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(d) Where there are no members, or no members having voting rights, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(e) Any number of amendments may be submitted and voted upon at any one meeting. (Aug. 6, 1962, 76 Stat. 277, Pub. L. 87-569, § 35.)

## § 29-1036. Articles of amendment.

The articles of amendment shall be executed in duplicate by the corporation by its president or a vice president, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and shall set forth—

(a) the name of the corporation;

(b) the amendment so adopted;

(c) where there are members having voting rights, (1) a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting, or (2) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto;

(d) where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted, and a

statement of the fact that such amendment received the vote of a majority of the directors in office.

(Aug. 6, 1962, 76 Stat. 278, Pub. L. 87-569, § 36.)

## § 29-1037. Filing of articles of amendment.

(a) Duplicate originals of the articles of amendment shall be delivered to the Commissioner.

(b) If the Commissioner finds that the articles of amendment conform to law, he shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in his office;

(3) issue a certificate of amendment to which he shall affix the other duplicate original;

(4) deliver the certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto, to the corporation or its representative.

(Aug. 6, 1962, 76 Stat. 278, Pub. L. 87-569, § 37.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## § 29-1038. Effect of certificate of amendment.

(a) Upon the issuance of the certificate of amendment, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

(b) No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party, or the existing rights of persons other than members; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason. (Aug. 6, 1962, 76 Stat. 278, Pub. L. 87-569, § 38.)

## § 29-1039. Procedure for merger.

Any two or more domestic corporations subject to the provisions of this chapter may merge into one of such corporations in the following manner:

The board of directors of each corporation shall, by resolution adopted by a majority vote of the members of each such board, approve a plan of merger setting forth—

(a) the names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation;

(b) the terms and conditions of the proposed merger;

(c) a statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger;

(d) such other provisions with respect to the proposed merger as are deemed necessary or desirable.

(Aug. 6, 1962, 76 Stat. 279, Pub. L. 87-569, § 39.)



**§ 29-1040. Procedure for consolidation.**

Any two or more domestic corporations subject to the provisions of this chapter may consolidate into a new corporation in the following manner:

The board of directors of each corporation shall, by resolution adopted by a majority vote of the members of each such board, approve a plan of consolidation setting forth—

(a) the names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;

(b) the terms and conditions of the proposed consolidation;

(c) with respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter;

(d) such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

(Aug. 6, 1962, 76 Stat. 279, Pub. L. 87-569, § 40.)

**§ 29-1041. Approval of merger or consolidation.**

A plan of merger or consolidation shall be approved in the following manner:

(a) Where the members of any merging or consolidating corporation have voting rights, the board of directors of such corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting.

(b) Written or printed notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members.

(c) At each such meeting, a vote of the members shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved upon receiving the affirmative vote of at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(d) Where any merging or consolidating corporation has no members, or no members having voting rights, a plan of merger or consolidation shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

(e) After such approval, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation. (Aug. 6, 1962, 76 Stat. 279, Pub. L. 87-569, § 41.)

**§ 29-1042. Articles of merger or consolidation.**

(a) Upon such approval, articles of merger or articles of consolidation shall be executed in duplicate by each corporation by its president or a vice president, and the corporate seal of each such corporation shall be thereto affixed, attested by its secretary or an assistant secretary, and shall set forth—

(1) the plan of merger or the plan of consolidation;

(2) where the members of any merging or consolidating corporation have voting rights, then as to each such corporation (a) a statement setting forth the date of the meeting of members at which the plan was approved, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting, or (b) a statement that such amendment was approved by a consent in writing signed by all members entitled to vote with respect thereto;

(3) where any merging or consolidating corporation has no members, or no members having voting rights, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors at which the plan was approved and a statement of the fact that such plan received the vote of a majority of the directors in office.

(b) Duplicate originals of the articles of merger or articles of consolidation shall be delivered to the Commissioner.

(c) If the Commissioner finds that such articles conform to law, he shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in his office;

(3) issue a certificate of merger or a certificate of consolidation to which he shall affix the other duplicate original;

(4) deliver the certificate of merger or certificate of consolidation, together with the duplicate original of the articles of merger or articles of consolidation affixed thereto, to the surviving or new corporation, as the case may be, or its representative.

(Aug. 6, 1962, 76 Stat. 280, Pub. L. 87-569, § 42.)

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**§ 29-1043. Effective date of the merger or consolidation.**

Upon the issuance of the certificate of merger, or the certificate of consolidation by the Commissioner, the merger or consolidation shall be effected. (Aug. 6, 1962, 76 Stat. 280, Pub. L. 87-569, § 43.)

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**§ 29-1044. Effect of merger or consolidation.**

When such merger or consolidation has been effected—

(a) the several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of



a consolidation, shall be the new corporation provided for in the plan of consolidation;

(b) the separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease;

(c) such surviving or new corporation, as the case may be, shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter;

(d) such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property—real, personal, and mixed—and all debts due on whatever account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate or other property, or any interest therein, vested in any of such corporations shall not revert unless required by the terms of the gift, bequest, or devise, or be in any way impaired by reason of such merger or consolidation;

(e) such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted to judgement as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation;

(f) in the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the articles of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the articles of incorporation of the new corporation.

(Aug. 6, 1962, 76 Stat. 280, Pub. L. 87-569, § 44.)

#### § 29-1045. Merger or consolidation of domestic and foreign corporations.

One or more foreign corporations and one or more domestic corporations may be merged or consolidated if permitted by the laws of the State or country under which each such foreign corporation is organized.

(a) Each domestic corporation shall comply with the provisions of this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the State or country under which it is organized.

(b) If the surviving or new corporation, as the case may be, is to be governed by the laws of any State or country other than the District of Columbia, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to carry on its affairs in the District of Columbia, and in every case it shall deliver to the Commissioner, who shall file—

(1) an agreement that it may be served with process in the District of Columbia in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation;

(2) an irrevocable appointment of the Commissioner of the District of Columbia as its agent to accept service of process in any such proceeding; and

(3) a post office address to which the Commissioner may mail a copy of any service of process, notice, or demand against the corporation that may be served on him.

(c) The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of the District of Columbia. If the surviving or new corporation is to be governed by the laws of any jurisdiction other than the District of Columbia, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other jurisdiction provide otherwise. (Aug. 6, 1962, 76 Stat. 281, Pub. L. 87-569, § 45.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-1046. Sale, lease, exchange, or mortgage of assets.

A sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution recommending such sale, lease, exchange, mortgage, pledge, or other disposition and directing the submission thereof to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting.

(b) Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of the corporation shall be given to each member entitled to vote at such meeting, within the time and in the manner provided by this chapter for the giving of notice of meetings of members.

(c) At such meeting the members may authorize such sale, lease, exchange, mortgage, pledge, or other disposition and may fix, or may authorize the board



of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the vote of at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(d) After such authorization by a vote of members, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, exchange, mortgage, pledge, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members.

(e) Where there are no members, or no members having voting rights, a sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of a corporation shall be authorized upon receiving the vote of a majority of the directors in office. (Aug. 6, 1962, 76 Stat. 282, Pub. L. 87-569, § 46.)

#### § 29-1047. Voluntary dissolution.

A corporation may dissolve and wind up its affairs in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(b) Where there are no members, or no members having voting rights, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

(c) Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation shall cease to conduct its affairs except in so far as may be necessary for the winding up thereof, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation, and shall proceed to collect its assets and apply and distribute them as provided in this chapter. (Aug. 6, 1962, 76 Stat. 283, Pub. L. 87-569, § 47.)

#### CROSS REFERENCE

See also chapter 8, title 29.

#### § 29-1048. Distribution of assets.

The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

(a) All liabilities and obligations of the corporation shall be paid, satisfied, and discharged, or adequate provision shall be made therefor.

(b) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with such requirements.

(c) Assets received and held by the corporation subject to limitations, permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this chapter.

(d) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others.

(e) Any remaining assets may be distributed to such persons, societies, organizations, or domestic or foreign corporations, whether for profit or not for profit, as may be specified if a plan of distribution adopted as provided in this chapter. (Aug. 6, 1962, 76 Stat. 283, Pub. L. 87-569, § 48.)

#### § 29-1049. Plan of distribution.

A plan providing for the distribution of assets, not inconsistent with the provisions of this chapter, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this chapter requires a plan of distribution, in the following manner:

(a) Where there are members having voting rights the board of directors shall adopt a resolution recommending a plan of distribution and directing that the plan be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(b) Where there are no members, or no members having voting rights, a plan of distribution shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office. (Aug. 6, 1962, 76 Stat. 284, Pub. L. 87-569, § 49.)

#### § 29-1050. Revocation of voluntary dissolution proceedings.

A corporation may, at any time prior to the issuance of a certificate of dissolution by the Com-



missioner, as hereinafter provided, revoke the action theretofore taken to dissolve the corporation, in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(b) Where there are no members, or no members having voting rights, a resolution to revoke the voluntary dissolution proceeding shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(c) Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation may thereupon again conduct its affairs. If the articles of dissolution have been delivered to the Commissioner, notice of such revocation shall be given to him in writing. (Aug. 6, 1962, 76 Stat. 284, Pub. L. 87-569, § 50.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-1051. Articles of dissolution.

If voluntary dissolution proceedings have not been revoked, when all debts, liabilities, and obligations of the corporation shall have been paid and discharged, or adequate provisions shall have been made therefor, and all of the remaining property and assets of the corporation shall have been transferred, conveyed, or distributed in accordance with the provisions of this chapter, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice president, and the corporate seal shall be thereto affixed and attested by its secretary or an assistant secretary, and such statement shall set forth—

(a) the name of the corporation;

(b) where there are members having voting rights—

(1) a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting, or

(2) a statement that such resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto;

(c) where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted and a statement of the fact that such resolution received the vote of a majority of the directors in office;

(d) that all debts, liabilities, and obligations of the corporation have been paid and discharged or that adequate provision has been made therefor;

(e) that all the remaining property and assets of the corporation have been transferred, conveyed, or distributed in accordance with the provisions of this chapter;

(f) that there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

(Aug. 6, 1962, 76 Stat. 285, Pub. L. 87-569, § 51.)

#### § 29-1052. Filing of articles of dissolution.

(a) Duplicate originals of such articles of dissolution shall be delivered to the Commissioner.

(b) If the Commissioner finds that such articles of dissolution conform to law, he shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in his office;

(3) issue a certificate of dissolution to which he shall affix the other duplicate original;

(4) deliver the certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto, to the representative of the dissolved corporation.

(c) Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by members, directors, and officers as provided in this chapter. (Aug. 6, 1962, 76 Stat. 285, Pub. L. 87-569, § 52.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-1053. Involuntary dissolution.

(a) A corporation may be dissolved involuntarily by a decree of the court in an action instituted by the Commissioner in the name of the District of Columbia when it is made to appear to the court that—

(1) the franchise of the corporation was procured through fraud; or

(2) the corporation has continued to exceed or abuse the authority conferred upon it by this chapter; or

(3) the corporation has failed for ninety days to appoint and maintain a registered agent as provided in this chapter; or

(4) the corporation has failed for ninety days after change of its registered office or registered



agent to deliver to the Commissioner a statement of such change.

(b) At least thirty days before any action for the involuntary dissolution of a corporation shall be filed by the Commissioner, he shall notify the corporation by certified or registered mail addressed to such corporation at its registered office a notice of his intention to file such suit and the reason therefor. If, before action is filed, the corporation as the case may be shall submit satisfactory evidence that said franchise was not procured through fraud or that the corporation has not exceeded or abused such authority or shall appoint or maintain a registered agent as provided in this chapter, or deliver to the Commissioner the required statement of change of registered agent, the Commissioner shall not file an action against such corporation for such cause. If, after action is filed, for a reason stated in paragraph (3) or (4) of the preceding subsection the corporation shall as the case may be appoint or maintain a registered agent as provided in this chapter, or shall deliver to the Commissioner the required statement of change of registered agent, and shall pay the costs of such action, the action for such cause shall abate. (Aug. 6, 1962, 76 Stat. 286, Pub. L. 87-569, § 53.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CROSS REFERENCE

See also chapter 8, title 29.

#### § 29-1054. Venue and process.

In every action for the involuntary dissolution of a corporation hereinbefore provided, summons shall issue and be served as in other civil actions. In case a return is made thereon that no officer or agent of such corporation can be found within the territorial limits of the District of Columbia, then the Commissioner shall cause publication to be made in some newspaper of general circulation published in the District of Columbia, containing a notice of the pendency of such action, the title of the court, the names of the parties thereto, and the date on or after which default may be entered. The Commissioner shall cause a copy of such notice to be mailed by registered or certified mail to the corporation at its registered office within ten days after the first publication thereof. The certificate of the Commissioner of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once each week for two successive weeks, and the first publication thereof may begin at any time after the summons has been returned. Unless a corporation shall have been served with summons, no default shall be taken against it earlier than thirty days after the first publication of such notice. The cost of publication of such notice shall be paid by the Commissioner, unless the decree is against the corporation and such cost is collected from it. (Aug. 6, 1962, 76 Stat. 286, Pub. L. 87-569, § 54.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-1055. Jurisdiction of court to liquidate assets and affairs of corporation.

The court shall have full power to liquidate the assets and affairs of a corporation—

(a) in any action by a member or director when it is made to appear—

(1) that the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof, and either that the members are unable to break the deadlock or there are no members having voting rights; or

(2) that the acts of the directors or those in control of the corporation are illegal, oppressive, or fraudulent; or

(3) that the corporate assets are being misapplied or wasted; or

(4) that the corporation is unable to carry out its purposes;

(b) in an action by a creditor—

(1) when the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied and it is established that the corporation is insolvent; or

(2) when the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent;

(c) upon application by a corporation to have its dissolution continued under the supervision of the court;

(d) when an action has been commenced by the Commissioner to dissolve a corporation and it is made to appear that liquidation of its affairs should precede the entry of a decree of dissolution;

(e) it shall not be necessary to make directors or members parties to any such action or proceeding unless relief is sought against them personally.

(Aug. 6, 1962, 76 Stat. 287, Pub. L. 87-569, § 55; July 29, 1970, Pub. L. 91-358, title I, § 168(e) (2), 84 Stat. 589.)

#### AMENDMENT

1970—Section 168(e) (2) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "the court".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-1056. Procedure in liquidation of corporation by court.

(a) In proceedings to liquidate the assets and affairs of a corporation the court shall have the power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the affairs of the corporation until a full hearing can be had.



(b) After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey, and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

(c) The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied and distributed as follows:

(1) All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied, and discharged, or adequate provision shall be made therefor;

(2) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred, or conveyed in accordance with such requirements;

(3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the court may direct;

(4) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members or any class or classes of members, or provide for distribution to others;

(5) Any remaining assets may be distributed to such persons, societies, organizations, or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted as provided in this chapter, or where no plan of distribution has been adopted, as the court may direct.

(d) The court shall have power to allow, from time to time, as expenses of the liquidation, compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

(e) A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall, for the purposes of this chapter,

have exclusive jurisdiction of the corporation and its property, wherever situated. (Aug. 6, 1962, 76 Stat. 287, Pub. L. 87-569, § 56.)

#### § 29-1057. Qualification of receivers.

A receiver shall in all cases be a citizen of the United States or a corporation for profit authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in the District of Columbia, and shall in all cases give such bond as the court may direct with such sureties as the court may require. (Aug. 6, 1962, 76 Stat. 288, Pub. L. 87-569, § 57.)

#### § 29-1058. Filing of claims in liquidation proceedings.

In proceedings to liquidate the assets and affairs of a corporation the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation. (Aug. 6, 1962, 76 Stat. 288, Pub. L. 87-569, § 58.)

#### § 29-1059. Discontinuance of liquidation proceedings.

The liquidation of the assets and affairs of a corporation may be discontinued at any time during the liquidation proceedings when it is made to appear that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets. (Aug. 6, 1962, 76 Stat. 289, Pub. L. 87-569, § 59.)

#### § 29-1060. Decree of dissolution.

In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed in accordance with the provisions of this chapter, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, and all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease. (Aug. 6, 1962, 76 Stat. 289, Pub. L. 87-569, § 60.)

#### § 29-1061. Filing of decree of dissolution.

In case the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of the court to cause a certified copy of the decree to be delivered to the Commissioner, who shall file the same. No fee shall be charged by the Commissioner



for the filing thereof. (Aug. 6, 1962, 76 Stat. 289, Pub. L. 87-569, § 61.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-1062. Deposits in registry of court.

Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to any person who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash and deposited in the registry of the court and shall be paid over to such person or to his legal representative upon proof satisfactory to the court of his right thereto. If any portion thereof remain in the registry after ten years from the date of deposit, it shall escheat to the District of Columbia and shall be paid into the Treasury of the United States for the credit of the said District. (Aug. 6, 1962, 76 Stat. 289, Pub. L. 87-569, § 62.)

#### § 29-1063. Survival of remedy after dissolution.

The dissolution of a corporation or the expiration of its period of duration shall not take away or impair any remedy available to or against such corporation, its directors, officers, or members for any right or claim existing, or any liability incurred, prior to such dissolution if suit or other proceeding thereon is commenced within two years after the date of such dissolution. Any suit or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of two years so as to extend its period of duration. (Aug. 6, 1962, 76 Stat. 289, Pub. L. 87-569, § 63.)

#### § 29-1064. Admission of foreign corporation.

(a) A foreign corporation to which this chapter is applicable shall procure a certificate of authority from the Commissioner before it conducts affairs in the District, but no foreign corporation shall be entitled to procure a certificate of authority under this chapter to conduct in the District any affairs which a corporation organized under this chapter is not permitted to conduct. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of the District, and nothing in this chapter contained shall be construed to authorize the District to regulate the organization or the internal affairs of such corporation.

(b) Without excluding other activities which may not constitute conducting affairs in the District of Columbia, a foreign corporation shall not be considered to be conducting affairs in the District for

the purposes of the chapter, by reason of conducting an isolated transaction completed in thirty days and not in the course of a number of repeated transactions of like nature or by reason of any one or more of the following activities in the District:

- (1) maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;
- (2) holding meetings of its directors or members or carrying on other activities concerning its internal affairs;
- (3) maintaining bank accounts;
- (4) creating evidences of debt, mortgages, or liens on real or personal property;
- (5) collecting its debts, taking security for the same, or enforcing any rights in property securing the same.

(Aug. 6, 1962, 76 Stat. 290, Pub. L. 87-569, § 64.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-1065. Powers of foreign corporation.

(a) No foreign corporation to which this chapter is applicable shall conduct in the District any affairs which may not be conducted by a corporation organized under this chapter.

(b) A foreign corporation which shall have received a certificate of authority under this chapter shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this chapter, enjoy the same rights and privileges as, but no greater rights and privileges than, a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, except as in this chapter otherwise provided, shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character. (Aug. 6, 1962, 76 Stat. 290, Pub. L. 87-569, § 65.)

#### § 29-1066. Corporate name of foreign corporation.

No certificate of authority shall be issued to a foreign corporation—

(a) which has a name the same as, or deceptively similar to, the name of any domestic corporation, whether for profit or not for profit, organized under any Act of Congress authorizing the formation of corporations under the laws of the District of Columbia or that of any corporation created pursuant to any special Act of Congress to transact business or conduct affairs in the District, or that of any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in the District, or a name, the exclusive right to which is, at the time, reserved in the manner provided in this chapter, or in accordance with the provisions of chapter 9 of this title;

(b) unless the corporate name of such corporation is in English, or is transliterated into letters of the English alphabet if it is not in English. (Aug. 6, 1962, 76 Stat. 290, Pub. L. 87-569, § 66.)



**§ 29-1067. Change of name by foreign corporation.**

Whenever a foreign corporation which is authorized to conduct affairs in the District of Columbia shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the authority of such corporation shall be suspended and it shall not thereafter conduct any affairs in the District until it has changed its name to a name which is available to it under the laws of the District. (Aug. 6, 1962, 76 Stat. 291, Pub. L. 87-569, § 67.)

**§ 29-1068. Application for certificate of authority.**

A foreign corporation, in order to procure a certificate of authority to conduct affairs in the District of Columbia, shall make application therefor to the Commissioner, which application shall set forth—

(a) the name of the corporation and the State or country under the laws of which it is incorporated;

(b) the date of incorporation and the period of duration of the corporation;

(c) the address, including street and number, if any, of the principal office of the corporation in the State or country under the laws of which it is incorporated;

(d) the address, including street and number, if any, of the proposed registered office of the corporation in the District, and the name of its proposed registered agent in the District at such address;

(e) a brief statement of the purposes it proposes to pursue in conducting its affairs in the District;

(f) the names and respective addresses, including street and number, if any, of the directors and officers of the corporation;

(g) such additional information as may be necessary or appropriate in order to enable the Commissioner to determine whether such corporation is entitled to a certificate to conduct affairs in the District.

Such application shall be executed in duplicate by the corporation by its president or a vice president, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary. (Aug. 6, 1962, 76 Stat. 291, Pub. L. 87-569, § 68.)

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**§ 29-1069. Filing of application for certificate of authority.**

(a) There shall be delivered to the Commissioner—

(1) duplicate originals of the application of the corporation for a certificate of authority;

(2) a copy of its articles of incorporation and all amendments thereto, duly certified by the proper officer of the State or country under the laws of which it is incorporated.

(b) If the Commissioner finds that such application conforms to law, he shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file in his office one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto;

(3) issue a certificate of authority to conduct affairs in the District to which he shall affix the other duplicate original application;

(4) deliver the certificate of authority, together with the duplicate original of the application affixed thereto, to the corporation or its representative.

(Aug. 6, 1962, 76 Stat. 291, Pub. L. 87-569, § 69.)

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**§ 29-1070. Effect of certificate of authority.**

Upon the issuance of a certificate of authority by the Commissioner, the corporation shall have the right to conduct affairs in the District for those purposes set forth in its application, subject, however, to the right of the District to suspend or to revoke such authority as provided in this chapter. (Aug. 6, 1962, 76 Stat. 292, Pub. L. 87-569, § 70.)

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**§ 29-1071. Registered office and registered agent of foreign corporation.**

Each foreign corporation authorized to conduct affairs in the District shall have and continuously maintain in the District—

(a) a registered office which may be, but need not be, the same as its principal office in the District;

(b) a registered agent, which agent may be either an individual resident in the District whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in the District, having a business office identical with such registered office.

(Aug. 6, 1962, 76 Stat. 292, Pub. L. 87-569, § 71.)

**§ 29-1072. Change of registered office or registered agent of foreign corporation.**

(a) The registered office of a corporation or its registered agent, or both, may be changed by delivering to the Commissioner a statement setting forth—

(1) the name of the corporation;

(2) the address, including street and number, if any, of its then registered office;

(3) if the address of its registered office is to be changed, the address, including street and number, if any, to which the registered office is to be changed;

(4) the name of its then registered agent;

(5) if its registered agent is to be changed, the name of its successor registered agent;



(6) that the address of its registered office and the address of the office of its registered agent, as changed, will be identical;

(7) that such change was authorized by resolution duly adopted by its board of directors, or was authorized by an officer of the corporation duly empowered to make such change.

(b) Such statement shall be executed in duplicate by its president or vice president, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and shall be delivered to the Commissioner. If the Commissioner finds that such statement conforms to law, he shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in his office;

(3) return the other duplicate original to the corporation or its representative.

(c) The change of address of the registered office, or the change of registered agent, or both, as the case may be, shall become effective upon the filing of such statement by the Commissioner.

(d) A foreign corporation shall change its registered agent if the office of registered agent shall become vacant for any reason, or if its registered agent becomes disqualified or incapacitated to act, or if it revokes the appointment of its registered agent.

(e) Any registered agent of a foreign corporation may resign as such agent by delivering a written notice thereof, executed in duplicate, to the Commissioner who shall file one copy thereof in his office and forthwith mail a copy thereof to the corporation at its principal office in the state or country under the laws of which it is incorporated as the same appears in the records of the Commissioner. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the Commissioner or upon the appointment of a successor agent becoming effective, whichever occurs sooner. No fee or charge of any kind shall be imposed with respect to a filing under this subsection. (Aug. 6, 1962, 76 Stat. 292, Pub. L. 87-569, § 72.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-1073. Service of process on foreign corporation.

(a) The registered agent so appointed by a foreign corporation authorized to conduct affairs in the District shall be an agent of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation, may be served. Service of any such process, notice, or demand upon a corporate agent, as such agent, may be had by delivering a copy of such process, notice, or demand to the president, vice president, the secretary, or an assistant secretary of such corporate agent.

(b) Whenever a foreign corporation authorized to conduct affairs in the District shall fail to appoint or maintain a registered agent in the District, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation shall be suspended or revoked, then the Commissioner shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the Commissioner of any such process, notice, or demand shall be made by delivering to and leaving with him, or with any clerk having charge of his office, duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is served on the Commissioner, he shall immediately cause one of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its principal office in the state or country under the laws of which it is incorporated, as the same appears in the records of the Commissioner.

(c) If any foreign corporation shall conduct affairs in the District without a certificate of authority, it shall by conducting such affairs be deemed to have thereby appointed the Commissioner its agent and representative upon whom any process, notice, or demand may be served. Service shall be made by delivery to and leaving with the Commissioner, or with any clerk having charge of his office, duplicate copies of such process, notice, or demand, together with an affidavit giving the latest known post office address of such corporation, and such service shall be sufficient if notice thereof and a copy of the process, notice, or demand are forwarded by registered or certified mail, addressed to such corporation at the address given in such affidavit.

(d) The Commissioner shall keep a record of all processes, notices, and demands served upon him under this section, and shall record therein the time of such service and their action with reference thereto.

(e) Nothing herein contained shall limit or affect the right to serve any process, notice, or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law. (Aug. 6, 1962, 76 Stat. 293, Pub. L. 87-569, § 73.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-1074. Amendment to articles of incorporation of foreign corporation.

Whenever the articles of incorporation of a foreign corporation authorized to conduct affairs in the District are amended, such foreign corporation shall, within ninety days after such amendment becomes effective, file with the Commissioner a copy of such amendment duly certified by the proper officer of the state or country under the laws of which it is incorporated; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in



conducting its affairs in the District, nor authorize such corporation to conduct affairs in the District under any other name than the name set forth in its certificate of authority. (Aug. 6, 1962, 76 Stat. 294, Pub. L. 87-569, § 74.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-1075. Merger of foreign corporation.

Whenever a foreign corporation authorized to conduct affairs in the District shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, and such corporation shall be the surviving corporation, it shall, within ninety days after such merger becomes effective, deliver to the Commissioner a copy of the articles of merger duly certified by the proper officer of the state or country under the laws of which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to conduct affairs in the District unless the name of such corporation be changed thereby or unless the corporation desires to pursue in the District other or additional purposes than those which it is then authorized to pursue in the District. (Aug. 6, 1962, 76 Stat. 294, Pub. L. 87-569, § 75.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-1076. Amended certificate of authority.

(a) A foreign corporation authorized to conduct affairs in the District shall procure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in the District other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the Commissioner.

(b) The requirements in respect to the form and contents of such application, the manner of its execution, the delivering of duplicate originals thereof to the Commissioner, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority. (Aug. 6, 1962, 76 Stat. 294, Pub. L. 87-569, § 76.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-1077. Withdrawal of foreign corporation.

(a) A foreign corporation authorized to conduct affairs in the District may withdraw from the District upon procuring from the Commissioner a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the Commissioner an application for withdrawal.

(b) The application for withdrawal shall state—

(1) the name of the corporation and the state

or country under the laws of which it is incorporated;

(2) that the corporation is not conducting affairs in the District;

(3) that the corporation surrenders its authority to conduct affairs in the District;

(4) that the corporation revokes the authority of its registered agent in the District to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in the District during the time the corporation was authorized to conduct affairs in the District may thereafter be made on such corporation by service thereof on the Commissioner;

(5) a post office address to which the Commissioner may mail a copy of any process against the corporation that may be served on him.

(c) The application for withdrawal shall be executed by the corporation by its president or a vice president, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him. (Aug. 6, 1962, 76 Stat. 295, Pub. L. 87-569, § 77.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-1078. Filing of application for withdrawal.

(a) Duplicate originals of such application for withdrawal shall be delivered to the Commissioner. If the Commissioner finds that such application conforms to law, he shall, when all fees have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in his office;

(3) issue a certificate of withdrawal to which he shall affix the other duplicate original;

(4) deliver the certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto, to the corporation or its representative.

(b) Upon the issuance of such certificate of withdrawal, the authority of the corporation to conduct affairs in the District shall cease. (Aug. 6, 1962, 76 Stat. 295, Pub. L. 87-569, § 78.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-1079. Revocation of certificate of authority.

(a) The certificate of authority of a foreign corporation to conduct affairs in the District may be revoked by the Commissioner when he finds that—

(1) the certificate of authority of the corporation was procured through fraud practiced upon the District; or



(2) the corporation has continued to exceed or has abused the authority conferred upon it by this chapter; or

(3) the corporation has failed for a period of ninety days to pay any fees, charges, or penalties prescribed by this chapter; or

(4) the corporation has failed for a period of ninety days to appoint and maintain a registered agent in the District; or

(5) the corporation has failed for ninety days after change of its registered office or registered agent to file with the Commissioner a statement of such changes; or

(6) the corporation for a period of two years has not conducted any affairs in the District; or

(7) the corporation has failed to file with the Commissioner a duly certified copy of each amendment to its articles of incorporation within ninety days after such amendment becomes effective; or

(8) a misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this chapter.

(b) No certificate of authority of a foreign corporation shall be revoked by the Commissioner unless (1) he shall have given the corporation not less than thirty days' notice thereof by certified or registered mail addressed to such corporation at its principal office in the state or country under the laws of which such corporation is organized, as the same appears in the records of the Commissioner or at its registered office in the District, and (2) the corporation, prior to such revocation and as the case may be, shall fail to submit satisfactory evidence that said certificate was not procured by such fraud, or that the corporation has not exceeded or abused such authority, or shall fail to pay such fees, charges, or penalties, or shall fail to appoint a registered agent in the District, or shall fail to file the required statement of change of registered office or registered agent, or shall fail to file a statement showing that it has conducted affairs in the District within a period of two years, or shall fail to file a copy of any such amendment to its articles of incorporation, or shall fail to submit satisfactory evidence that a misrepresentation of a material matter was not made in any such application, report, affidavit, or other document. (Aug. 6, 1962, 76 Stat. 295, Pub. L. 87-569, § 79.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-1080. Issuance of certificate of revocation.

(a) Upon revoking any such certificate of authority, the Commissioner shall—

(1) issue a certificate of revocation in duplicate;

(2) file one of such certificates in his office;

(3) mail the other such certificate to such corporation at its registered office in the District or to its principal place of business as the same appears in the records of the Commissioner.

(b) Upon the issuance of such certificate of revocation, the authority of the corporation to conduct

affairs in the District shall cease. (Aug. 6, 1962, 76 Stat. 296, Pub. L. 87-569, § 80.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-1081. Application to foreign corporations conducting affairs on the effective date of this chapter.

Foreign corporations conducting affairs in the District at the time this chapter takes effect for a purpose or purposes for which a certificate of authority is required under the provisions of this chapter shall, within six months after the effective date of this chapter, procure a certificate of authority and shall otherwise comply with all applicable provisions of this chapter. Failure to secure a certificate of authority within the time provided in this section shall subject the corporation to all the penalties, liabilities, and restrictions provided in this Act for conducting affairs without a certificate of authority. (Aug. 6, 1962, 76 Stat. 296, Pub. L. 87-569, § 81.)

#### § 29-1082. Conducting affairs without certificate of authority.

(a) No foreign corporation which is conducting affairs in the District without a certificate of authority shall be permitted to maintain any action, suit, or proceeding in any court of the District until such corporation shall have obtained a certificate of authority. Nor shall any action, suit, or proceeding be maintained in any court of the District by any successor or assignee of such corporation on any right, claim, or demand arising out of the conduct of affairs by such corporation in the District, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

(b) The failure of a foreign corporation to obtain a certificate of authority to conduct affairs in the District shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit, or proceeding in any court of the District.

(c) A foreign corporation which conducts affairs in the District without a certificate of authority shall be liable to the District for the years or parts thereof during which it conducted affairs in the District without a certificate of authority, in an amount equal to all fees, penalties, and other charges which would have been imposed by this chapter upon such corporation had it duly applied for and received a certificate of authority to conduct affairs in the District as required by this chapter and thereafter filed all reports required by this chapter; and, in addition thereto, it shall be liable for a penalty to be assessed by the Commissioner of not in excess of \$200. The Commissioner shall bring proceedings to recover all amounts due the District under the provisions of this section. Such charges and penalties shall be paid to the District before any certificate of authority is issued to such foreign corporation. (Aug. 6, 1962, 76 Stat. 297, Pub. L. 87-569, § 82.)



## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## § 29-1083. Annual report of domestic and foreign corporations.

(a) Each domestic corporation, and each foreign corporation authorized to conduct affairs in the District, shall prepare an annual report setting forth—

(1) the name of the corporation and the State or country under the laws of which it is incorporated;

(2) the address, including street and number, if any, of its registered office in the District, and the name of its registered agent at such address, and, in the case of a foreign corporation, the address, including street and number, if any, of its principal office in the State or country under the laws of which it is incorporated;

(3) a brief statement of the character of the affairs which the corporation is actually conducting, or, in the case of a foreign corporation, which the corporation is actually conducting in the District;

(4) the names and respective addresses, including street and number, if any, of the directors and officers of the corporation.

(b) such annual report shall be made on forms prescribed and furnished by the Commissioner, and the information therein contained shall be given as of the date of the execution of the report. It shall be executed by the corporation by its president, a vice president, secretary, an assistant secretary, treasurer, or assistant treasurer, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation by such receiver or trustee. (Aug. 6, 1962, 76 Stat. 297, Pub. L. 87-569, § 83.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## § 29-1084. Filing of annual report of domestic and foreign corporations.

Such annual report of a domestic or foreign corporation shall be delivered to the Commissioner on or before the fifteenth day of April of each year, except that the first annual report of a domestic or foreign corporation shall be delivered to the Commissioner on or before the fifteenth day of April of the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the Commissioner. Proof to the satisfaction of the Commissioner that prior to the fifteenth day of April such report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement. If the Commissioner finds that such report conforms to law, he shall file the same. If he finds that it does not so conform, he shall promptly return the same to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for failure to file such

report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of this chapter and returned to the Commissioner in sufficient time to be filed prior to the first day of July of the year in which it is due. (Aug. 6, 1962, 76 Stat. 298, Pub. L. 87-569, § 84.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## § 29-1085. Effect of failure to pay annual report fee or to file annual report.

If any corporation incorporated under this chapter, or any corporation which has elected to accept this chapter, or any foreign corporation having a certificate of authority issued under this chapter, shall for two consecutive years fail or refuse to pay any annual report fee or fees payable under this chapter, or fail or refuse to file any annual report as required by this chapter for two consecutive years, then, in the case of a domestic corporation, the articles of incorporation shall be void and all powers conferred upon such corporation are declared inoperative, and, in the case of a foreign corporation, the certificate of authority shall be revoked and all powers conferred thereunder shall be inoperative. (Aug. 6, 1962, 76 Stat. 298, Pub. L. 87-569, § 85.)

## § 29-1086. Proclamation of revocation.

(a) On the second Monday in September of each year, the Commissioner shall issue a proclamation listing the names of all domestic corporations and all foreign corporations which have failed or refused to pay any annual report fee or fees or failed or refused to file any annual report as required by this chapter for two consecutive years next preceding June 30 in the year in which such proclamation is issued and upon the issuance of such proclamation the articles of incorporation or the certificate of authority, as the case may be, shall be void and all powers thereunder inoperative without further proceedings of any kind.

(b) The proclamation of the Commissioner shall be filed in his office and shall be published once during the month of September in each of two daily newspapers of general circulation in the District of Columbia.

(c) Upon publication of the proclamation of revocation as provided in this chapter each domestic corporation listed in such proclamation shall be deemed to have been dissolved without further legal proceedings and each such corporation shall cease to carry on its business and shall, after paying or adequately providing for the payment of all of its obligations, distribute the remainder of its assets, as in this chapter provided with respect to dissolved corporations.

(d) All domestic corporations the articles of incorporation of which are revoked by proclamation or the term of existence of which expires by limitation set forth in its articles of incorporation shall nevertheless be continued for the term of three years from the date of such revocation or expiration bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling



them to pay, satisfy, and discharge their liabilities and obligations and, after paying or adequately providing for the payment of all its obligations, to distribute the remainder of their assets, as in this chapter provided with respect to dissolved corporations, but not for the purpose of continuing to conduct the affairs for which such corporation shall have been organized: *Provided, however,* That with respect to any action, suit, or proceeding begun or commenced by or against a corporation prior to such revocation or expiration and with respect to any action, suit, or proceeding begun or commenced by or against such corporation within three years after the date of such revocation or expiration, such corporation shall only for the purpose of such actions, suits, or proceedings so begun or commenced be continued a body corporate beyond said three-year period and until any judgments, orders, or decrees therein shall be fully executed. (Aug. 6, 1962, 76 Stat. 298, Pub. L. 87-569, § 86.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-1087. Penalty for conducting affairs after issuance of proclamation.

Any corporation, person, or persons who shall exercise or attempt to exercise any powers under articles of incorporation of a domestic corporation or under a certificate of authority of a foreign corporation which has been revoked shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding \$500 or by imprisonment not exceeding one year, or both. (Aug. 6, 1962, 76 Stat. 299, Pub. L. 87-569, § 87.)

#### § 29-1088. Correction of error in proclamation.

Whenever it is established to the satisfaction of the Commissioner that any corporation named in said proclamation has not failed or refused to pay any annual report fee or file any annual report for two consecutive years, or has been inadvertently included in the list of corporations as so failing or refusing to pay annual report fees or file reports, the Commissioner is authorized to correct such mistake by issuing a proclamation to that effect and restoring the articles of incorporation or certificate of authority, as the case may be, to good standing with like effect as if such proclamation of revocation, as to such corporation, had not been issued. (Aug. 6, 1962, 76 Stat. 299, Pub. L. 87-569, § 88.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-1089. Reservation of name of proclaimed corporation.

The Commissioner shall reserve the names of all corporations the articles of incorporation of which have been revoked and of all foreign corporations the certificates of authority of which have been revoked until December 31 of the year in which the proclamation of revocation was issued and no domestic corporation shall be formed nor the name of any such domestic corporation changed to a name

the same as or deceptively similar to such reserved name nor shall any foreign corporation be authorized to do business under a name the same as or deceptively similar to such reserved name. (Aug. 6, 1962, 76 Stat. 299, Pub. L. 87-569, § 89.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-1090. Reinstatement of proclaimed corporations.

(a) A domestic corporation, the articles of incorporation of which have been revoked, may at any time after the date of the issuance of the proclamation of revocation deliver to the Commissioner a petition for reinstatement, in duplicate, accompanied by the delinquent annual report or reports, or payment of delinquent annual report fee or fees in full, or both, as the case may be, plus interest thereon as provided by this chapter, together with any penalties imposed by this chapter. The Commissioner, if he finds that all such documents conform to law, and that the period for reservation of the name has not expired, or if such period has expired, that the name is available for corporate use pursuant to the provisions of this chapter, shall file them in his office and shall issue their certificate of reinstatement which shall have the effect of annulling the revocation proceedings theretofore taken as to such corporation and such corporation shall have such powers, rights, duties, and obligations as it had at the time of the issuance of the proclamation with the same force and effect as to such corporation as if the proclamation had not been issued.

(b) If the petition for reinstatement of a proclaimed corporation is delivered to the Commissioner after the period for reservation of the name has expired and if he finds that the name is not available for corporate use pursuant to the provisions of this chapter, then, in addition to complying with the provisions of the preceding paragraph the proclaimed corporations shall set forth in its petition for reinstatement its name at the time its articles of incorporation were proclaimed void and the new name by which the corporation will thereafter be known, which shall be a name available for corporate use pursuant to the provisions of this chapter.

(c) A foreign corporation whose certificate of authority has been revoked shall, upon reentering the District, comply with all of the requirements of law applicable to an original application for a certificate of authority, including the payment of the filing fee for filing an application for a certificate of authority, but it need not file again a copy of its articles of incorporation or any amendment thereof that is then on file with the Commissioner. After the revocation of the certificate of authority of a foreign corporation, the Commissioner shall retain the articles of incorporation and amendments theretofore filed and the original application for a certificate of authority for a period of ten years. (Aug. 6, 1962, 76 Stat. 300, Pub. L. 87-569, § 90.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.



**§ 29-1091. Penalties imposed upon corporations.**

Each corporation, domestic or foreign, that fails or refuses to file its annual report for any year within the time prescribed by this chapter shall be subject to a penalty of \$5 to be assessed by the Commissioner. (Aug. 6, 1962, 76 Stat. 300, Pub. L. 87-569, § 91.)

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**§ 29-1092. Fees for filing documents and issuing certificates.**

The Commissioner shall charge and collect for—

- (a) filing articles of incorporation and issuing a certificate of incorporation, \$10;
- (b) filing articles of amendment and issuing a certificate of amendment, \$5;
- (c) filing articles of merger or consolidation and issuing a certificate of merger or consolidation, \$5;
- (d) filing a statement of change of address or registered office or change of registered agent, or both, \$1;
- (e) filing articles of dissolution, \$1;
- (f) filing an application for reservation of a corporate name or for a renewal of reservation, \$5;
- (g) filing notice of transfer of a reserved corporate name, \$5;
- (h) filing statement of election to accept this chapter and issuing certificate of acceptance, \$10;
- (i) filing an application of a foreign corporation for a certificate of authority to conduct affairs in the District and issuing a certificate of authority, \$10;
- (j) filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in the District and issuing an amended certificate of authority, \$5;
- (k) filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to conduct affairs in the District, \$5;
- (l) filing a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in the District, \$5;
- (m) filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, \$1;
- (n) filing application for reinstatement of a domestic or foreign corporation and issuing certificate of reinstatement, \$10;
- (o) filing any other statement or report, including an annual report, of a domestic or foreign corporation, \$1;
- (p) indexing each document filed, except an annual report, \$2;
- (q) furnishing a certified copy of any document, instrument, or paper relating to a corporation, \$5;
- (r) furnishing a certificate as to the existence or nonexistence of a fact relating to a corporation, \$1;

- (s) The District of Columbia Council is authorized to make regulations providing for reasonable fees for other services not listed in this section. (Aug. 6, 1962, 76 Stat. 300, Pub. L. 87-569, § 92.)

**TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL**

Section 402(234) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of making regulations providing for fees for services under subsection (s), to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

**§ 29-1093. Commissioner: Duties and functions.**

(a) The Commissioner shall have the power and authority reasonably necessary to enable him to administer this chapter efficiently and to perform the duties therein imposed upon him.

(b) The Commissioner shall be charged with the administration and enforcement of this chapter. Said Commissioner is authorized to employ such personnel as may be necessary for the administration of this chapter, within appropriations made by Congress. The compensation of such personnel shall be fixed in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters].

(c) The Commissioner may transfer any or all of the functions vested in him by this chapter to any agent designated by him pursuant to law. It shall be the duty of any officer or agency of the government of the District of Columbia to perform any function delegated to such officer or agency by the Commissioner pursuant to this chapter.

(d) Every certificate and other document or paper executed by the Commissioner, in pursuance of any authority conferred upon him by this chapter, and sealed with the seal prescribed by subsection (c) of section 29-935, and all copies of such papers, as well as of documents and other papers filed in accordance with the provisions of this chapter, when certified by him and authenticated by said seal, shall have the same force and effect as evidence as would the originals thereof in any action or proceeding in any court and before a public officer, or official body.

(e) The District of Columbia Council is authorized to make and modify, and the Commissioner is authorized to enforce, such regulations as the Council may deem necessary to carry out the provisions of this chapter, the Council is authorized to prescribe penalties for the violation of any such regulations not exceeding a fine of \$300 or imprisonment for ninety days, or both, and the Commissioner is authorized to prescribe such forms and procedures for use in the conduct of the business of any office or agency established by him as he may deem appropriate. (Aug. 6, 1962, 76 Stat. 301, Pub. L. 87-569, § 93.)

**CODIFICATION**

In subsec. (b) the reference "chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code, relating to the classification of government employees and related matters" was substituted for "the Classification Act of 1949,



as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89-554, set out in note under § 1-251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(235) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of making and modifying regulations to carry out the provisions of this chapter, and prescribing penalties for the violation of any such regulation under subsection (e), to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### CROSS REFERENCE

Authority of District Commissioner and Council to delegate functions vested in them by Reorg. Plan No. 3 of 1967, see §§ 205 and 305 of the Plan, set forth in the Appendix to title 1.

#### § 29-1094. Appeal from Commissioner.

(a) If the Commissioner shall fail to approve any articles of incorporation, amendment, merger, consolidation, or dissolution, or any other document required by this chapter to be approved by the Commissioner before the same shall be filed in his office, he shall, within ten days after the delivery thereof to him, give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. From such disapproval such person or corporation may appeal to the court by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the Commissioner; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Commissioner or direct him to take such action as the court may deem proper.

(b) If the Commissioner shall revoke the certificate of authority to conduct affairs in the District of any foreign corporation, pursuant to the provisions of this chapter, such foreign corporation may likewise appeal to the court by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to conduct affairs in the District and a copy of the notice of revocation given by the Commissioner; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Commissioner or direct him to take such action as the court may deem proper.

Appeals from all final orders and judgments entered by the court under this section in review of any ruling or decision of the Commissioner may be taken as in other civil actions. (Aug. 6, 1962, 76 Stat. 302, Pub. L. 87-569, § 94; July 29, 1970, Pub. L. 91-358, title I, § 168(e) (3), 84 Stat. 589.)

#### AMENDMENT

1970—Section 168(e) (3) of Act July 29, 1970, Public Law 91-358, amended section by striking out "the United States District Court for the District of Columbia" and inserting in lieu thereof "the court" each place it appears.

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-1095. Certificates and certified copies to be received in evidence.

All certificates issued by the Commissioner in accordance with the provisions of this chapter, and all copies of documents filed in their office in accordance with the provisions of this chapter when certified by them, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the Commissioner under the seal of his office, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated. (Aug. 6, 1962, 76 Stat. 302, Pub. L. 87-569, § 95.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-1096. Forms to be furnished by Commissioner.

All reports required by this chapter to be filed in the office of the Commissioner shall be made on forms which shall be prescribed and furnished by the Commissioner. Forms for all other documents to be filed in the office of the Commissioner shall be furnished by the Commissioner on request therefor, but the use thereof, unless otherwise specifically prescribed in this chapter, shall not be mandatory. (Aug. 6, 1961, 76 Stat. 302, Pub. L. 87-569, § 96.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 29-1097. Greater voting requirements.

Whenever, with respect to any action to be taken by the members or directors of a corporation, the articles of incorporation require the vote or concurrence of a greater proportion of the members or directors, as the case may be, than required by this chapter with respect to such action, the provisions of the articles of incorporation shall control. (Aug. 6, 1962, 76 Stat. 303, Pub. L. 87-569, § 97.)

#### § 29-1098. Waiver of notice.

Whenever any notice is required to be given to any member or director of a corporation under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. Presence without objection also waives notice. (Aug. 6, 1962 76 Stat. 303, Pub. L. 87-569, § 98.)



**§ 29-1099. Action by members or directors without a meeting.**

Any action required by this chapter to be taken at a meeting of the members or directors of a corporation, or any action which may be taken at a meeting of the members or directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof, or all of the directors, as the case may be.

Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any articles or document filed with the Commissioner under this chapter. (Aug. 6, 1962, 76 Stat. 303, Pub. L. 87-569, § 99.)

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**§ 29-1099a. Unauthorized assumption of corporate powers.**

All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof. (Aug. 6, 1962, 76 Stat. 303, Pub. L. 87-569, § 100.)

**§ 29-1099b. Procedure to elect to accept chapter.**

Any corporation which is organized and existing under the laws of the District of Columbia or under any special Act of Congress on the date this chapter takes effect, and which is organized not for profit, and is without authority to issue shares of stock, and is organized for a purpose or purposes for which a corporation may be organized under the provisions of this chapter may elect to avail itself of the provisions of this chapter in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the corporation accept this chapter and directing that the question of such acceptance be submitted to a vote at a meeting of the members having voting rights which may be either an annual meeting or a special meeting. Written or printed notice setting forth the proposal to accept this chapter shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposal to elect to accept this chapter shall be adopted upon receiving at least two thirds of the vote entitled to be cast by members present or represented by proxy at such meeting.

(b) Where there are no members, or no members having voting rights, the election to accept this chapter may be adopted at a meeting of the board of directors upon receiving the vote of at least a majority of the directors in office. (Aug. 6, 1962, 76 Stat. 303, Pub. L. 87-569, § 101.)

**§ 29-1099c. Statement of election to accept this chapter.**

The statement of election to accept this chapter shall be executed in duplicate by the corporation by its president or vice president, and the corporate

seal shall be thereto affixed, attested by its secretary, or an assistant secretary, and shall set forth—

(a) the name of the corporation;

(b) a statement by the corporation that it has elected to accept this chapter;

(c) where there are members having voting rights—

(1) a statement setting forth the date of the meeting of the members at which the election to accept this chapter was adopted; that a quorum was present at such meeting, and that such acceptance received the affirmative vote of at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting, or

(2) a statement that such election to accept this chapter was adopted by a consent, in writing, signed by all members entitled to vote with respect thereto;

(d) where there are no members or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the election to accept this chapter was adopted, and the statement of the fact that such acceptance received the vote of a majority of the directors in office;

(e) the purpose or purposes (which may be different from its existing purposes) which it will thereafter pursue, and shall not include any purpose prohibited to a corporation organized under this chapter;

(f) if the corporation has no members, a statement to that effect;

(g) if the corporation has members, there shall be set forth—

(1) the number of classes of members;

(2) if there is more than one class of members, a statement of the qualifications and rights and limitations of each class of members;

(3) if members, or any class or classes of members, are not entitled to vote, a statement to that effect;

(4) if members, or any class or classes of members are entitled to vote, a statement setting forth the voting rights and of any limitation or limitations thereof of members or of any class or classes thereof;

(h) any other provision, not inconsistent with law, or this chapter, for the regulation of the internal affairs of the corporation;

(i) the address, including street and number, if any, of its registered office in the District of Columbia and the name of its registered agent at such address;

(j) the names and respective addresses, including street and number, if any, of its officers and directors;

(k) it shall not be necessary to set forth in the statement of election to accept this chapter any of the corporate purposes enumerated in this chapter. Whenever a provision in the statement of election to accept this chapter is inconsistent with a bylaw, the provision of the statement of



election to accept this chapter shall be controlling.

(Aug. 6, 1962, 76 Stat. 304, Pub. L. 87-569, § 102.)

**§ 29-1099d. Filing of statement of election to accept this chapter.**

(a) Duplicate originals of the statement of election to accept this chapter shall be delivered to the Commissioner.

(b) If the Commissioner finds that the statement of election to accept this chapter conforms to law, he shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in his office;

(3) issue a certificate of acceptance, to which he shall affix the other duplicate original;

(4) deliver such certificate of acceptance with the other duplicate original affixed thereto to the corporation or its representative.

(Aug. 6, 1962, 76 Stat. 304, Pub. L. 87-569, § 103.)

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**§ 29-1099e. Effect of certificate of acceptance.**

(a) Upon the issuance of a certificate of acceptance as hereinbefore provided, the election of the corporation to accept this chapter shall become effective and the existence of the corporation shall be continued under this chapter and such certificate shall be conclusive evidence that all conditions precedent required to be performed under this chapter have been complied with and that the corporation has elected to accept the provisions of this chapter and the corporation shall be entitled to and be possessed of all of the privileges and powers and franchises and be subject to all of the provisions of this chapter as fully and to the same extent as if such corporation had been originally incorporated under this chapter; and all privileges, franchises, and powers theretofore belonging to said corporation and all property, real, personal, and mixed, and all debts due on whatever account, and all choses in action, and all and every other interest of or belonging to or due such corporation shall be and the same are hereby ratified, approved and confirmed and assured to such corporation with like effect and to all intents and purposes as if the same had been originally acquired through incorporation under this chapter; but no contract, debt, claim, duty, liability, or obligation of any corporation to which a certificate of acceptance has been issued shall be affected or impaired in any way nor shall the rights of creditors or any liens upon the property of such corporation be affected or impaired by such election to accept this chapter.

(b) Neither the issuance of a certificate of acceptance to a corporation created under the provisions of a special Act of Congress, nor the adoption of any amendment pursuant to this chapter, shall release or terminate any duty or obligation ex-

pressly imposed upon any such corporation under and by virtue of the special Act of Congress under which it was created or any amendment made thereto, nor enlarge any right, power, or privilege granted any such corporation by such special Act except to the extent that such right, power, or privilege might have been included in the articles of incorporation of a corporation organized under this chapter. (Aug. 6, 1962, 76 Stat. 305, Pub. L. 87-569, § 104.)

**§ 29-1099f. Actions to be in name of District of Columbia.**

All civil actions under this chapter which the Commissioner is authorized to commence, and all prosecutions for violations of the provisions of this chapter or of regulations promulgated under the authority of this chapter, shall be brought in the name of the District of Columbia by the Corporation Counsel of the District of Columbia. As used in this chapter the term "Corporation Counsel" means the attorney for the District, by whatever title such attorney may be known, designated by the Commissioner to perform the functions prescribed for the Corporation Counsel in this chapter. (Aug. 6, 1962, 76 Stat. 305, Pub. L. 87-569, § 105.)

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**§ 29-1099g. Right of repeal reserved.**

Congress reserves the right to alter, amend, or repeal this chapter, or any part thereof, or any certificate of incorporation or certificate of authority issued pursuant to its provisions. (Aug. 6, 1962, 76 Stat. 306, Pub. L. 87-569, § 106.)

**§ 29-1099h. Chapter not to affect Internal Revenue Code of 1954.**

Nothing in this chapter shall be construed as repealing or affecting any provision of the Internal Revenue Code of 1954. (Aug. 6, 1962, 76 Stat. 306, Pub. L. 87-569, § 107.)

**REFERENCES IN TEXT**

The Internal Revenue Code of 1954 is set out in Title 26, U.S. Code.

**§ 29-1099i. Effect of invalidity of part of this chapter.**

If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section, or part of this chapter, such judgment or decree shall not affect, impair, invalidate, or nullify the remainder of this chapter, but the effect thereof shall be confined to the clause, sentence, paragraph, section, or part of this chapter so adjudged to be invalid or unconstitutional. (Aug. 6, 1962, 76 Stat. 306, Pub. L. 87-569, § 108.)

**§ 29-1099j. Effect of false statement.**

A person who signs any instrument delivered to the Commissioner pursuant to this chapter, knowing it to contain a misstatement of fact, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding \$500 or by imprisonment for not exceeding one year, or by both such fine and imprisonment. (Aug. 6, 1962, 76 Stat. 306, Pub. L. 87-569, § 109.)



## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## § 29-1099k. Effective date.

This chapter shall take effect one hundred and eighty days after the date of its approval. (Aug. 6, 1962, 76 Stat. 306, Pub. L. 87-569, § 110.)

## § 29-1099l. Appropriation of funds.

There are hereby authorized to be appropriated from any moneys in the Treasury of the United States to the credit of the District of Columbia, such amounts as may be necessary to carry into effect the provisions of this chapter. (Aug. 6, 1962, 76 Stat. 306, Pub. L. 87-569, § 111.)

## Chapter 11.—PROFESSIONAL CORPORATIONS

## Sec.

- 29-1101. Short title.
- 29-1102. Definitions.
- 29-1103. Applicability.
- 29-1104. Construction.
- 29-1105. Purpose; powers.
- 29-1106. Incorporation.
- 29-1107. Number of directors.
- 29-1108. Qualifications of shareholder, director, and officer.
- 29-1109. Corporate name.
- 29-1110. Proxy.
- 29-1111. Professional relationship; liabilities.
- 29-1112. Transfer of shares.
- 29-1113. Merger or consolidation.
- 29-1114. Foreign professional corporations.
- 29-1115. Disqualified professional.
- 29-1116. Stock of disqualified, deceased, legally incompetent shareholder.
- 29-1117. Redemption price.
- 29-1118. Perpetual existence; dissolution.
- 29-1119. Annual report.
- 29-1120. Noncompliance; penalties.

## CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 47-1574.

## § 29-1101. Short title.

This chapter shall be known and may be cited as the "District of Columbia Professional Corporation Act". (Dec. 10, 1971, Pub. L. 92-180, § 1, 85 Stat. 576.)

## § 29-1102. Definitions.

As used in this chapter, unless the context otherwise requires:

(a) The term "professional corporation" means a corporation organized under this chapter solely for the specific purposes provided under this chapter, and which has as its shareholders only individuals who themselves are duly licensed to render the same professional service as the corporation.

(b) The term "professional service" means any type of personal service to the public which may be lawfully rendered only pursuant to a license and which by law, custom, standards of professional conduct or practice in the District of Columbia, before December 10, 1971, could not be rendered by a corporation, including without limitation the services performed by certified public accountants, attorneys, architects, practitioners of the healing arts, dentists, optometrists, podiatrists, and professional engineers.

(c) The term "license" or "licensed" refers to a license, certification, certificate, or registration, or

other legal authorization required by law as a condition precedent to the rendering of professional service within the District of Columbia.

(d) The term "Council" means the District of Columbia Council or the agent or agents designated by it to perform any function vested in the Council by this chapter,

(e) The term "Commissioner" means the Commissioner of the District of Columbia or his designated agent. (Dec. 10, 1971, Pub. L. 92-180, § 2, 85 Stat. 576.)

## CODIFICATION

In par. (b), "December 10, 1971" has been substituted for "the effective date of this Act."

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-1114.

## § 29-1103. Applicability.

This chapter shall not apply to any corporation now in existence or hereafter organized which may lawfully render professional services other than pursuant to this chapter, nor shall anything herein contained alter or affect any existing or future right or privilege permitting or not prohibiting performance of professional services through the use of any form of business organization. Any corporation organized under chapter 9 of this title may be brought within the provisions of this chapter by complying with the provisions of this chapter and filing amended or restated articles of incorporation meeting the requirements of section 29-1106. (Dec. 10, 1971, Pub. L. 92-180, § 3, 85 Stat. 577.)

## § 29-1104. Construction.

The provisions of this chapter shall not be construed as repealing, modifying, or restricting the applicable provisions of law relating to corporations, or regulating the several professions covered by this chapter, except insofar as such laws conflict with the provisions of this chapter. Except as otherwise provided by this chapter, the provisions of chapter 9 of this title shall be applicable to any professional corporation organized under this chapter. (Dec. 10, 1971, Pub. L. 92-180, § 4, 85 Stat. 577.)

## § 29-1105. Purpose; powers.

(a) A professional corporation may be organized solely to render professional services through its shareholders, directors, officers, employees, or agents who are themselves duly licensed to render the particular service, and to render service ancillary thereto. A professional corporation may charge for such services, may collect such charges, and may compensate those who render such service. A professional corporation may employ persons who are not licensed, but such persons shall not perform professional services; and no license shall be required of any person who is employed by a professional corporation to perform services for which no license is otherwise required.

(b) No professional corporation may do any act which is prohibited to an individual licensed to render the professional service for which the corporation is organized.

(c) Notwithstanding any provision of this chapter, a professional corporation may—



(i) invest its funds in real estate, mortgages, stocks, bonds, or other type of investment;

(ii) own real estate or personal property; and

(iii) enter into partnership and other agreements with individuals (who may be shareholders, directors, employees, or agents of the professional corporation), partnerships, or professional corporations rendering the same type of professional services within or without the District of Columbia, to the same extent that an individual licensed to render the same professional service may enter into such partnership or other agreements pursuant to law, rules, regulations, or standards of professional conduct of the profession practiced through the professional corporation.

(Dec. 10, 1971, Pub. L. 92-180, § 5, 85 Stat. 577.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-1114.

### § 29-1106. Incorporation.

One or more natural persons may incorporate a professional corporation by delivering articles of incorporation in duplicate originals to the Commissioner. The articles of incorporation shall meet the requirements of chapter 9 of this title and, in addition, shall set forth—

(a) the designation of the professional services to be rendered through the corporation;

(b) the names and addresses, including street and number, if any, of the original shareholders of the corporation; and

(c) a statement that each of the original shareholders and directors named in the articles of incorporation is licensed to render a professional service which the corporation is to be organized. (Dec. 10, 1971, Pub. L. 92-180, § 6, 85 Stat. 578.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29-1103, 29-1114.

### § 29-1107. Number of directors.

A professional corporation shall have one or more directors, without regard to the number of shareholders. (Dec. 10, 1971, Pub. L. 92-180, § 7, 85 Stat. 578.)

### § 29-1108. Qualifications of shareholder, director, and officer.

No person shall be a shareholder, director, or officer of a professional corporation or render professional services on its behalf unless he is an individual licensed to render a professional service for which the corporation is organized, except that if a professional corporation has only one shareholder, the secretary of the corporation need not be licensed to perform (and may not perform if not so licensed) such professional services. As used in this section, the term "officer" shall mean chairman of the board, president, vice president, treasurer, and secretary. Nothing in this chapter shall require a shareholder or incorporator of a professional corporation to have a present or future employment relationship with the corporation or actively to participate in any capacity in the production of income of, or performance of professional service by, such corporation. (Dec. 10, 1971, Pub. L. 92-180, § 8, 85 Stat. 578.)

### § 29-1109. Corporate name.

The corporate name shall contain the words "professional corporation", or the abbreviation "P.C.", or the word "chartered", and shall not contain the word "company", "incorporated", "corporation", or "limited", or an abbreviation of one of such words. A professional corporation shall render professional services and exercise its authorized powers under its corporate name. (Dec. 10, 1971, Pub. L. 92-180, § 9, 85 Stat. 578.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-1114.

### § 29-1110. Proxy.

No shareholder of a professional corporation shall enter into a voting trust, proxy, or any other arrangement vesting another person (other than another shareholder of the same corporation) with the authority to exercise the voting power of any or all of his shares, and any such voting trust, proxy, or other arrangement shall be void. (Dec. 10, 1971, Pub. L. 92-180, § 10, 85 Stat. 578.)

### § 29-1111. Professional relationship; liabilities.

(a) The provisions of this chapter shall not be construed to alter or affect the professional relationship between an individual furnishing professional services and an individual receiving such service, either with respect to liability arising out of such professional service or the confidential relationship, if any, between the individual rendering, and the individual receiving such professional service. An individual shall be personally liable and accountable only for any negligent or wrongful acts or misconduct committed by him, or by any individual under his supervision and control in the rendering of professional service on behalf of a corporation organized under this chapter. No individual shall be so personally liable and accountable merely because he is a director, officer, or manager of the professional corporation.

(b) The corporation shall be liable up to the full value of its assets for any negligent or wrongful acts or misconduct committed by any of its officers, shareholders, directors, agents, or employees in their rendering of professional services on behalf of the corporation. Except as otherwise provided in this section, the liabilities of a professional corporation and its shareholders shall be governed by chapter 9 of this title. (Dec. 10, 1971, Pub. L. 92-180, § 11, 85 Stat. 578.)

### § 29-1112. Transfer of shares.

(a) Shares in a professional corporation may be transferred only to an individual who is eligible under this chapter to be a shareholder of such corporation, or to such professional corporation, or may devolve by operation of law upon the personal representative or estate of a deceased or legally incompetent shareholder. The articles of incorporation, bylaws, or an agreement among its shareholders may provide that any such transfer shall be subject to the express approval of all, or of any lesser proportion of the remaining shareholders of the corporation,



and may provide for the manner in which such consent shall be given. Any transfer made in violation of this section shall be void.

(b) A professional corporation may reacquire its own shares through purchase or redemption, and may cancel such shares if at least one share remains issued and outstanding, except when it is insolvent or the purchase or redemption would render it insolvent.

(c) The provisions of chapter 24 of title 2, and of the Securities Act of 1933 (15 U.S.C. 77a et seq.), shall not apply to the issuance or transfer of securities of a professional corporation. Every certificate for shares of a professional corporation shall contain on its face the following legend: "The ownership and transfer of these shares and the rights and obligations of shareholders are subject to the limitations of the District of Columbia Professional Corporation Act."

(d) In the event that shares of a professional corporation are attached for the individual debts of a shareholder, or are executed upon under any pledge or hypothecation thereof, the sole right of the creditor with respect to such shares shall be to obtain their redemption by such professional corporation within sixty days after serving written demand for redemption upon such corporation. The redemption price for such shares shall be (1) the amount to which the shareholder is entitled upon voluntary redemption of his shares by the provisions of the articles of incorporations, bylaws, or an agreement among its shareholders, or if there are no such provisions, (2) the book value of such shares at the end of the month immediately preceding the date of such demand, determined under generally accepted accounting methods consistent with the method of accounting used by the corporation for Federal income tax purposes, by an independent certified public accountant selected by the corporation, but paid by such creditor, for the purpose. (Dec. 10, 1971, Pub. L. 92-180, § 12, 85 Stat. 579.)

#### § 29-1113. Merger or consolidation.

A professional corporation may merge or consolidate only with another domestic professional corporation, and only if both corporations are organized to render the same professional services or professional services which, although not the same, could otherwise be rendered by a single professional corporation. (Dec. 10, 1971, Pub. L. 92-180, § 13, 85 Stat. 580.)

#### § 29-1114. Foreign professional corporations.

Notwithstanding any other provision of this chapter, a foreign professional corporation licensed in a jurisdiction other than the District of Columbia to perform a professional service of the type defined in section 29-1102(b), may apply for and obtain a certificate of authority to render such professional services in the District of Columbia under the following terms and conditions:

(a) The articles of incorporation shall meet the requirements of section 29-1106, and shall state the address of its registered office in the District of Columbia and the name of its registered agent in the District of Columbia.

(b) The name of the foreign professional corporation shall meet the requirements of section 29-1109 and shall conform to any ethical standards applicable to the rendering of professional service in the District of Columbia.

(c) The powers of any foreign professional corporation admitted under this section shall not exceed the powers permitted to domestic professional corporations under section 29-1105.

(d) Any foreign professional corporation seeking admission to the District under the provisions of this section shall have at least one director or officer as resident agent for its registered office in the District. Additionally, such resident agent and any other shareholder, director, officer, employee, or agent who renders professional services within the District on behalf of the foreign professional corporation shall be licensed to render professional services in the District of Columbia.

(e) An annual report shall be filed in accordance with the requirements of section 29-1119.

(f) No certificate of authority shall be granted to a professional corporation incorporated in a jurisdiction which does not permit reciprocal admission of professional corporations incorporated under the laws of the District of Columbia. (Dec. 10, 1971, Pub. L. 92-180, § 14, 85 Stat. 580.)

#### § 29-1115. Disqualified professional.

If any individual rendering professional services on behalf of a professional corporation assumes a public office which prohibits his rendering of the professional services, or for any other reason is disqualified by law to render the professional services, he immediately shall sever all employment relationship in which he shares in the corporation's profits attributable to professional services rendered after such assumption of office or other disqualification. For the purposes of section 29-1116, he shall be referred to as a "disqualified shareholder". (Dec. 10, 1971, Pub. L. 92-180, § 15, 85 Stat. 580.)

#### § 29-1116. Stock of disqualified, deceased, legally incompetent shareholder.

(a) Subject to the limitations of this section, a disqualified shareholder and personal representatives, legatees, or heirs of a deceased or legally incompetent shareholder may continue to own shares of a professional corporation but shall not be permitted to participate in any decisions concerning the rendering of professional services by the corporation. The articles of incorporation, bylaws, or an agreement among the shareholders of a professional corporation may provide, consistent with the provisions of this section, for the disposition of shares of a disqualified, deceased, or legally incompetent shareholder.

(b) The articles of incorporation, bylaws, or an agreement among shareholders may provide that, within ninety days (or any earlier date) after the date a shareholder becomes a disqualified shareholder, the disqualified shareholder shall sell and surrender, and the corporation or any individuals qualified to be shareholders shall purchase and receive, his shares of stock of the corporation. In the absence of any such provision, the disqualified



shareholder shall sell and surrender, and the corporation shall purchase and receive, his shares of stock of the corporation within thirty days after the date he becomes a disqualified shareholder. Unless otherwise provided by the articles of incorporation, bylaws, or an agreement among the shareholders, payment for the shares of stock purchased pursuant to the provisions of this subsection shall be made in full no later than six months after the expiration of the period by which the purchases must be made.

(c) The articles of incorporation, bylaws, or an agreement among shareholders may provide that, within one year (or any earlier date) after the date of death of a shareholder, his personal representative, legatees, or heirs shall sell and surrender, and the corporation or any individuals qualified to be shareholders shall purchase and receive, the shares of stock of the corporation owned by the deceased shareholder. In the absence of any such provision, the personal representatives, legatees, or heirs shall sell and surrender, and the corporation shall purchase and receive, the shares of stock of the corporation within one hundred and eighty days after the date of death of the shareholder. Unless otherwise provided by the articles of incorporation, bylaws, or an agreement among the shareholders, payment for the shares of stock purchased pursuant to the provision of this subsection shall be made in full no later than one year after the date of death of the shareholder. (Dec. 10, 1971, Pub. L. 92-180, § 16, 85 Stat. 580.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-1115.

#### § 29-1117. Redemption price.

In the event the articles of incorporation, bylaws or an agreement among the shareholders, do not fix the price at which the corporation or its shareholders may purchase the shares of a disqualified, deceased, legally incompetent, retired, or expelled shareholder, or does not provide a method of determining such price, then the price for such shares shall be the book value of such shares on the last day of the month immediately preceding the disqualification, death, adjudication of incompetence, retirement or expulsion of the shareholder, determined under generally accepted accounting methods, consistent with the method of accounting used by the corporation for Federal income tax purposes, by an independent certified public accountant employed by the corporation for the purpose. (Dec. 10, 1971, Pub. L. 92-180, § 17, 85 Stat. 581.)

#### § 29-1118. Perpetual existence; dissolution.

A professional corporation shall have perpetual existence, except that whenever all shareholders of a professional corporation cease at any time for any reason to be licensed to perform the professional services for which the corporation was organized, the professional corporation shall be treated as converted into a corporation organized under chapter 9 of this title. Unless the holders of all of the outstanding shares of the corporation unanimously amend the articles of incorporation to adopt purposes consistent with chapter 9 of this title within sixty days after the date on which the last shareholder of the corporation ceased to be licensed to perform those professional services, the dissolution of the corporation shall be deemed to have been authorized by the act of the corporation and any shareholder may at any time thereafter file with the Commissioner, on behalf of the corporation, a statement of intent to dissolve. (Dec. 10, 1971, Pub. L. 92-180, § 18, 85 Stat. 582.)

#### § 29-1119. Annual report.

The annual reports of a professional corporation shall meet the requirements of chapter 9 of this title and, in addition, shall set forth—

(a) the names and addresses, including street and number, if any, of all shareholders of the corporation; and

(b) a statement that each shareholder, director, and officer of the corporation is currently licensed to render a professional service for which the corporation is organized. (Dec. 10, 1971, Pub. L. 92-180, § 19, 85 Stat. 582.)

#### CROSS REFERENCE

Annual report of foreign professional corporation, see § 29-1114.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-1114.

#### § 29-1120. Noncompliance; penalties.

The failure of a professional corporation to comply, or to require compliance with any provision of this chapter, shall be a ground for the involuntary dissolution of such corporation. Any person, including a corporation, who violates any provision of this chapter or who fails to comply with any provision thereof, for which violation or failure no penalty is provided therein or elsewhere in the laws of the District of Columbia, shall be deemed guilty of a misdemeanor and upon conviction thereof by a court of competent jurisdiction shall be fined not more than \$500 for each violation or failure. (Dec. 10, 1971, Pub. L. 92-180, § 20, 85 Stat. 582.)







## TITLE 30.—DOMESTIC RELATIONS

Chap.		Sec.
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2. Property Rights.....		30-201
3. Uniform Support.....		30-301

### Chapter 1.—MARRIAGE

Sec.	
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#### § 30-101. Prohibitions—Marriages void ab initio.

The following marriages are prohibited in the District of Columbia and shall be absolutely void ab initio, without being so decreed, and their nullity may be shown in any collateral proceedings, namely:

First. The marriage of a man with his grandmother, grandfather's wife, wife's grandmother, father's sister, mother's sister, mother, stepmother, wife's mother, daughter, wife's daughter, son's wife, sister, son's daughter, daughter's daughter, son's son's wife, daughter's son's wife, wife's son's daughter, wife's daughter's daughter, brother's daughter, sister's daughter.

Second. The marriage of a woman with her grandfather, grandmother's husband, husband's grandfather, father's brother, mother's brother, father, stepfather, husband's father, son, husband's son, daughter's husband, brother, son's son, daughter's son, son's daughter's husband, daughter's daughter's husband, husband's son's son, husband's daughter's son, brother's son, sister's son.

Third. The marriage of any persons either of whom has been previously married and whose previous marriage has not been terminated by death

or a decree of divorce. (Mar. 3, 1901, 31 Stat. 1391, ch. 854, § 1283.)

#### CROSS REFERENCES

Divorce and separation, see § 16-902 et seq.  
 Proceedings to annul a marriage, see §§ 16-903, 16-908 to 16-912.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16-903.

#### NOTES TO DECISIONS

##### Common-law marriage

Common-law marriage is recognized in District of Columbia. *E. Matthews v. T. Britton, Deputy Commissioner etc.* (1962, 303 F. 2d 408, 112 U.S. App. D.C. 397).

If parties agreed to be husband and wife in ignorance of impediment to lawful matrimony, removal of impediment results in common-law marriage between parties if they have continued to cohabit and live together as husband and wife; the same result obtains even if parties have knowledge of impediment at time that they agree to be married. *Id.*

If man and woman agree to be married before impediment was removed and continued thereafter to cohabit and live together as husband and wife, a common-law union between man and woman was effected when woman's prior spouse was awarded divorce. *Id.*

Proof of common-law marriage was not sufficient to sustain a contract in consideration of marriage. *Evans v. Neumann* (1922, 278 F. 1013, 51 App. D.C. 300).

Common-law marriage is not invalid and surviving widow may recover compensation. *Hoage v. Murch Bros. Constr. Co.* (1931, 50 F. 2d 983, 60 App. D.C. 218).

The rule which finds a common-law marriage upon the removal of the impediment, has sometimes been applied though one or both of the parties knew of the impediment, and this result seems socially sound. *Thomas v. Murphy* (1940, 107 F. 2d 268, 71 App. D.C. 69).

The removal of an impediment to marriage while the parties continued to live together as husband and wife in the District of Columbia, gives rise to a "common law marriage." *McVicker v. McVicker* (1942, 130 F. 2d 837, 76 U.S. App. D.C. 208). See, also, *Thomas v. Murphy* (1940, 107 F. 2d 268, 71 App. D.C. 69).

Intermittent visitations by persons domiciled in New Jersey to the District of Columbia after entry of divorce decree of one of such parties could not suffice to alter the parties' domiciliary status, so that they might establish a common-law marriage under the law of the District of Columbia on such visits. *Metropolitan Life Insurance Company v. Chase et al.* (1960, 189 F. Supp. 326).

Where insured, who had been previously married to woman who had borne him children, ceremonially married second woman in District of Columbia in 1941, in 1948 divorced first wife, and continued to live with second woman as husband and wife until his death in 1957, and at all times husband and second woman were domiciled in New Jersey, the attempted ceremonial marriage was void under the law of District of Columbia, and no common-law marriage came into existence after 1948, since the New Jersey statute and public policy prohibited common-law marriages, and second woman was not insured's widow, even though second woman and insured may have, on visits to District of Columbia from time to time, held themselves out as husband and wife, and second woman was not entitled to proceeds of life policy payable to widow, or if there was no widow, to children, but insured's surviving children were entitled to the proceeds. *Id.*

A common-law marriage is recognized as legal in the District of Columbia, and the removal of an impediment while parties continue to live together as husband and



wife gives rise to a common-law marriage under the District's law. *Id.*

#### Defense in collateral proceedings

A divorced husband, marrying another woman in Maryland while both of them were domiciled in District of Columbia within six months after entry of divorce decree in court of such District, was not estopped to plead invalidity of second marriage under District Code as ground for vacation of order against him for support of second wife's minor child, whose paternity he denied, especially in view of statutory provision that nullity of bigamous marriage may be shown in any collateral proceeding. *Oliver v. Oliver* (1951, 185 F. 2d 429, 87 U.S. App. D. C. 334).

#### Delinquent or dependent children

Marriage of a female child, in itself, does not automatically terminate the control of delinquent or dependent children. *Richardson v. Browning* (1927, 18 F. 2d 1008, 57 App. D.C. 186).

#### Divorce obtained by fraud

Although District residents, seeking divorce in Virginia, are in pari delicto, a divorce fraudulently obtained will render a subsequent marriage by one absolutely void. *Simmons v. Simmons* (1927, 19 F. 2d 690, 57 App. D.C. 216, 54 A. L. R. 75).

Status of parties obtaining divorce by falsehood and subterfuge; decree void; subsequent marriage void; decree not required if marriage void ab initio. *Frey v. Frey* (1932, 59 F. 2d 1046, 61 App. D.C. 232).

#### Divorced persons

This section does not apply to the prohibited remarriage of a divorced person. *Loughran v. Loughran* (1934, 54 S. Ct. 684, 292 U.S. 216, 78 L. Ed. 1219). See, also, *Thomas v. Murphy* (1940, 107 F. 2d 268, 71 App. D.C. 69).

#### Laches and estoppel

Annulment action was not barred by laches, where evidence supported allegation of complaint that plaintiff did not learn of invalidity of divorce from prior wife until immediately before filing complaint. *M. G. Sears v. J. C. Sears* (1961, 293 F. 2d 884, 110 U.S. App. D.C. 407).

Court of equity, in determining whether to interpose bar of equitable estoppel in action to annul marriage, must consider all factors of case, parties involved, effect of ultimate decision on third parties not before court, nature of rights sought to be vindicated, and public policy. *Id.*

Husband, who obtained mail-order Mexican divorce from first wife, married second wife, and lived with second wife for fifteen years, was estopped in his annulment action against second wife, to deny validity of marriage to second wife. *Id.*

Plaintiff who caused divorce action to be instituted in Virginia by defendant, and thereafter married defendant and lived with her for more than 10 years, is barred by the principles of laches or estoppel from challenging the Virginia decree of divorce. *Goodloe v. Hawk* (1940, 113 F. 2d 753, 72 App. D.C. 287).

Since this chapter, read as a whole, is not clear regarding intention of Congress as to whether doctrines of laches and estoppel can be applied in both independent annulment suits and in an attack upon marriage in divorce action on ground of invalidity of prior divorce decree of one of the parties, it must be construed and a reasonable intent must be attributed to Congress. *Ruppert v. Ruppert* (1943, 134 F. 2d 497, 77 U.S. App. D.C. 65).

In wife's divorce suit, where at time of hearing of motion for new trial on ground of newly discovered evidence that wife's foreign divorce decree from another was invalid because of fraud perpetrated on court regarding wife's residence, law in District of Columbia had been declared to be that in annulment proceedings doctrines of laches and estoppel were inapplicable but thereafter it was held that the general public policy no longer prevented application in annulment actions of laches and estoppel doctrines in determining the effect to be given an irregular foreign divorce decree, wife was entitled to a determination of the case on the basis of the law as declared in the later decision. *Id.*

Under marriage and divorce statutes of District of Columbia, in determining the effect to be given irregular

foreign divorce decree, the doctrines of "laches" and "estoppel" may be applied not only in annulment actions but also in divorce action where attack upon marriage by a party thereto is made by way of defense. *Id.*

In wife's divorce action, where at conclusion of hearing on husband's motion for new trial on ground of invalidity of wife's prior foreign divorce decree, trial court dismissed complaint on ground that wife's previous marriage had not been terminated but made no finding of fact and stated no conclusions of law upon issues of laches and estoppel of husband to set up invalidity of foreign divorce decree of wife, judgment was reversed and cause remanded for further findings of fact and conclusions of law on such issue. *Id.*

In wife's divorce action, where at conclusion of hearing on husband's motion for new trial on ground of invalidity of marriage because of invalidity of wife's prior foreign divorce decree from another, court ordered wife's complaint dismissed on theory that prior marriage had not been terminated and wife's motion to vacate judgment and for new trial was not timely made, overruling of wife's motion could not be considered a determination against the wife of issues of laches and estoppel presented by her motion since it was assumed that the trial court properly overruled the motion on the ground that the motion was too late and did not pass on the merits of the motion. *Id.*

Husband seeking annulment of marriage to second wife with whom he had lived for some 15 years was not barred by laches or estoppel from asserting invalidity of his Mexican mail order divorce from first wife, where Mexican divorce was wholly null and void, marriage to first wife remained undissolved, no appearance had been made in Mexico, no fraudulent misrepresentations as to residence or domicile or otherwise had been practiced upon Mexican court and neither husband, second wife, nor first wife had ever been deceived by Mexican divorce. *Sears v. Sears* (D.C. Mun. App. 1960, 166 A. 2d 748).

#### Previous undissolved marriage

Where common-law marriage had not been terminated by death or decree of divorce, attempted ceremonial marriage in Maryland of common-law husband to another woman was void in District of Columbia. *I. M. Lee v. G. M. Lee and G. V. Lee* (D.C. App. 1964, 201 A. 2d 873).

Estoppel cannot be availed of to defeat the public policy of the District of Columbia which renders void a marriage attempted to be entered into by party whose prior marriage still remained undissolved. *Metropolitan Life Insurance Company v. Chase et al.* (1960, 189 F. Supp. 326).

Public policy is against bigamous marriages. *Sears v. Sears* (D.C. Mun. App. 1960, 166 A. 2d 748).

Where parties were married in Maryland and husband had a previous undissolved marriage, marriage was void ab initio in District of Columbia without being so decreed. *Koonin, next friend of Hornsby v. Hornsby* (D.C. Mun. App. 1958, 140 A. 2d 309).

#### Remarriage during period for appeal

Where marriage was annulled, remarriage of wife after final decree of annulment but before expiration of period for appeal was valid. *Tillinghast v. Tillinghast* (1928, 25 F. 2d 531, 58 App. D.C. 107).

#### State laws

Marriages not polygamous or incestuous, or otherwise declared void by statute, will, if valid by the law of the state where entered into, be recognized as valid in every other jurisdiction. *Loughran v. Loughran* (1934, 54 S. Ct. 684, 292 U.S. 216, 78 L. Ed. 1219).

Mere statutory prohibition by the state of the domicile either generally of the remarriage of a divorced person, or of remarriage within a prescribed period after the entry of the decree, is given only territorial effect and such a statute does not invalidate a marriage solemnized in another state in conformity with the laws thereof. *Id.*

Language of the Illinois statute does not go so far as the language of the District regarding prohibited marriages which "shall be absolutely void ab initio, without being so decreed, and their nullity may be shown in any collateral proceedings." *Abramson v. Abramson* (1931, 49 F. 2d 501, 60 App. D.C. 119).



A marriage which is void under the laws of the state where it was celebrated is void in the District of Columbia. *Rhodes v. Rhodes* (1938, 96 F. 2d 715, 68 App. D.C. 313).

Particular public-policy may require annulment of marriage without regard to guilt or innocence of parties affected, but the general public policy in this jurisdiction, as judicially interpreted, no longer prevents application in annulment actions of the laches and estoppel doctrines in determining the effect to be given foreign divorce decrees. *Goodloe v. Hawk* (1940, 113 F. 2d 753, 72 App. D.C. 287).

Divorce decree of Virginia court granted person acquiring domicile to obtain divorce but with intention of remaining for an indefinite period is valid under Virginia law and will be recognized in the District of Columbia. *Id.*

#### Voidable marriages

Where boy who was of the age of 16 years and 7 months and girl who was of the age of 15 years and 10 months were domiciled in District of Columbia, and boy obtained father's consent to marry by falsely representing that girl was pregnant and obtained Virginia marriage license by falsely representing that he was age 18 and that she was age 17, and after their marriage in Virginia they lived together in District of Columbia in their own home as man and wife for about six months and then separated, under the District of Columbia statutes the marriage, although forbidden, was not void ab initio, but was merely void when declared so by court decree, and court had judicial discretion to refuse to grant annulment, and under the circumstances such refusal was not abuse of discretion. *Duley etc. v. Duley* (D.C. Mun. App. 1959, 151 A. 2d 255).

#### § 30-102. Marriage may be decreed to be void.

Any of such marriages may also be declared to have been null and void by judicial decree. (Mar. 3, 1901, 31 Stat. 1391, ch. 854, § 1284.)

#### CROSS REFERENCE

Proceedings to annul marriage, see §§ 16-903, 16-908 to 16-912.

#### NOTES TO DECISIONS

##### Void marriages

Where it appears to the court that a marriage is an absolute nullity, the duty under the law is to decree such a marriage void and prevent any further criminal union of the parties. *Simmons v. Simmons* (1927, 19 F. 2d 690, 57 App. D.C. 216, 54 A.L.R. 75).

##### Voidable marriages

Where boy who was of the age of 16 years and 7 months and girl who was of the age of 15 years and 10 months were domiciled in District of Columbia, and boy obtained father's consent to marry by falsely representing that girl was pregnant and obtained Virginia marriage license by falsely representing that he was age 18 and that she was age 17, and after their marriage in Virginia they lived together in District of Columbia in their own home as man and wife for about six months and then separated, under the District of Columbia statutes the marriage, although forbidden, was not void ab initio, but was merely void when declared so by court decree, and court had judicial discretion to refuse to grant annulment, and under the circumstances such refusal was not abuse of discretion. *Duley etc. v. Duley* (D.C. Mun. App. 1959, 151 A. 2d 255).

#### § 30-103. Marriages void from date of decree—Age of consent.

The following marriages in said District shall be illegal, and shall be void from the time when their nullity shall be declared by decree, namely:

First. The marriage of an idiot or of a person adjudged to be a lunatic.

Second. Any marriage the consent to which of either party has been procured by force or fraud.

Third. Any marriage either of the parties to which shall be incapable, from physical causes, of entering into the married state.

Fourth. When either of the parties is under the age of consent, which is hereby declared to be eighteen years of age for males and sixteen years of age for females. (Mar. 3, 1901, 31 Stat. 1391, ch. 854, § 1285; June 30, 1902, 32 Stat. 543, ch. 1329; Aug. 12, 1937, 50 Stat. 626, ch. 596, § 1.)

#### AMENDMENTS

1937—Par. Fourth amended by act Aug. 12, 1937, which increased the age of consent for males from sixteen to eighteen and for females from fourteen to sixteen.

1902—Par. Fourth added by act June 30, 1902.

#### CROSS REFERENCE

Proceedings for divorce or to annul marriage, see § 16-903 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16-903.

#### NOTES TO DECISIONS

##### Annulment because of lunacy

"Full force and effect will be given to section 1285 (§ 30-103), if the adjudication of lunacy referred to therein is construed to mean adjudication of lunacy in the suit instituted for the annulment of the marriage, although such adjudication per se might not authorize the appointment of a committee, as under section 115b of the code (§ 21-301), which requires a direct proceeding for the purpose." *Mackey v. Peters* (1903, 22 App. D.C. 341).

Suit for annulment of marriage because of lunacy may be filed by a next friend, notwithstanding the fact that a committee has been appointed. *Id.*

##### Disease

"Public policy" does not require that an innocent woman must live in marital relationship with a syphilitic husband where marriage is procured by fraud of husband in concealing the disease. *Stone v. Stone* (1943, 136 F. 2d 761, 78 U. S. App. D. C. 5).

Where wife suing for annulment of marriage, contracted in Virginia, because of husband's alleged fraudulent concealment of fact that he was suffering with a venereal disease, produced evidence indicating that husband concealed his condition and that wife on being advised that husband had disease immediately separated and speedily instituted annulment suit, suit was improperly dismissed notwithstanding wife failed to produce Virginia examining physician. *Id.*

Where wife sought annulment of marriage, contracted in Virginia, on ground of husband's fraudulent concealment of fact that he was suffering with a venereal disease, and wife acted promptly, as soon as she ascertained truth, and refused thereafter to continue marital status, the wife who failed to produce Virginia examining physician, counsel having been appointed by court to represent husband, did not come under rule that a party who has it peculiarly within his power to produce a witness, by failing to do so, creates an inference that if the testimony were produced it would be unfavorable. *Id.*

##### Grounds for annulment

Where husband prior to marriage told wife of his opposition to birth prevention, and wife promised that contraception would not be practiced, but immediately after marriage she refused to have marital relations unless some means were used to prevent conception, and they never had marital relations, husband was entitled to annulment on ground of fraud. *Zoglio v. Zoglio* (D.C. Mun. App. 1960, 157 A. 2d 627).

Concealment of pregnancy as fraud. *Lenoir v. Lenoir* (1904, 24 App. D.C. 160).

Mere barrenness is not a ground for the annulment of a marriage, though the prime object of marriage is thus defeated. *Burroughs v. Burroughs* (1925, 4 F. 2d 938, 55 App. D.C. 271).

##### Knowledge of mental condition

Woman who knew of man's commitment to mental institution at time of marriage was not entitled to annulment and the annulment should have been granted to the man. *A. D. Martin v. L. P. Martin* (D.C. App. 1968, 240 A. 2d 363).



**Law governing**

There being no "public policy" in the District of Columbia which declares marriages contracted by females over 16 but under 18 or males over 18 but under 21 without consent of their parents to be void, the determinant of the right to annulment of a marriage contracted under such circumstances was the law as it prevailed in state where marriage occurred. *Hitchens v. Hitchens* (D.C.D.C. 1942, 47 F. Supp. 73).

**Proof**

In suit for annulment of marriage, on ground of fraud, proof must be clear and convincing, particularly if suit is undefended. *Zoglio v. Zoglio* (D.C. Mun. App. 1960, 157 A. 2d 627).

**Purpose**

It is the purpose of this section that marriages procured by fraud may be set aside at instance of innocent party. *Stone v. Stone* (1943, 136 F. 2d 761, 78 U.S. App. D.C. 5).

**Remarriage within period for appeal**

A marriage of the unsuccessful party is not void which was performed before the twenty-day period allowed for appeal from an annulment decree, such provision being for the protection of the unsuccessful party. *Tillinghast v. Tillinghast* (1928, 25 F. 2d 531, 58 App. D.C. 107).

**Voidable marriages**

Where boy who was of the age of 16 years and 7 months and girl who was of the age of 15 years and 10 months were domiciled in District of Columbia, and boy obtained father's consent to marry by falsely representing that girl was pregnant and obtained Virginia marriage license by falsely representing that he was age 18 and that she was age 17, and after their marriage in Virginia they lived together in District of Columbia in their own home as man and wife for about six months and then separated, under the District of Columbia statutes the marriage, although forbidden, was not void ab initio, but was merely void when declared so by court decree, and court had judicial discretion to refuse to grant annulment, and under the circumstances such refusal was not abuse of discretion. *Duley etc. v. Duley* (D.C. Mun. App. 1959, 151 A. 2d 255).

### § 30-104. Annulment—Party plaintiff—Next friend—Capable person who knowingly contracted illegal marriage.

A proceeding to declare the nullity of a marriage may be instituted in the case of an infant under the age of consent by such infant, through a next friend, or by the parent or guardian of such infant; and in the case of an idiot or lunatic by next friend. But no such proceedings shall be allowed to be instituted by any person who, being fully capable of contracting a marriage, has knowingly and wilfully contracted any marriage declared illegal by the foregoing sections. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1286; June 30, 1902, 32 Stat. 543, ch. 1329.)

**AMENDMENT**

1902—Act June 30, 1902, substituted "contracted" for "contracted."

**CROSS REFERENCE**

Proceedings to annul marriage, see § 16-903 et seq.

**NOTES TO DECISIONS****Generally**

Suit for annulment of marriage because of lunacy may be filed by a next friend, notwithstanding the fact that a committee has been appointed. *Mackey v. Peters* (1903, 22 App. D.C. 341).

**Capable of contracting marriage**

In statute providing that no annulment proceedings can be instituted by person who, being "fully capable of contracting a marriage," has knowingly and wilfully contracted any marriage declared illegal by statutes, quoted phrase refers to person with intrinsic legal capacity and does not allude to extrinsic impediments to valid marriage. *M. G. Sears v. J. C. Sears* (1961, 293 F. 2d 884, 110 U.S. App. D.C. 407).

Where husband's marriage to first wife remained undissolved and husband's Mexican mail order divorce from first wife was wholly null and void and husband had married a second wife, husband was not "capable of contracting marriage" within this section providing that proceeding to nullify marriage cannot be maintained by person who, being capable of contracting marriage, has entered into illegal marriage, and consequently husband could sue for annulment of second marriage. *Sears v. Sears* (D.C. Mun. App. 1960, 166 A. 2d 748).

**Laches and estoppel**

Statutory estoppel is not applicable in an action for an annulment of marriage on the ground that plaintiff's divorce from prior marriage had not become legally effective, at the time of second marriage. *T. Taylor v. F. C. Taylor* (D.C. App. 1967, 233 A. 2d 43).

Husband, who obtained mail-order Mexican divorce from first wife, married second wife, and lived with second wife for fifteen years, was estopped in his annulment action against second wife to deny validity of marriage to second wife. *M. G. Sears v. J. C. Sears* (1961, 293 F. 2d 884, 110 U.S. App. D.C. 407).

Under marriage and divorce statutes of District of Columbia, in determining the effect to be given irregular foreign divorce decree, the doctrines of "laches" and "estoppel" may be applied not only in annulment actions but also in divorce action where attack upon marriage by a party thereto is made by way of defense. *Ruppert v. Ruppert* (1943, 134 F. 2d 497, 77 U.S. App. D.C. 65).

Since this chapter, read as a whole, is not clear regarding intention of Congress as to whether doctrines of laches and estoppel can be applied in both independent annulment suits and in an attack upon marriage in divorce action on ground of invalidity of prior divorce decree of one of the parties, it must be construed and a reasonable intent must be attributed to Congress. *Id.*

In wife's divorce action, where at conclusion of hearing on husband's motion for new trial on ground of invalidity of wife's prior foreign divorce decree, trial court dismissed complaint on ground that wife's previous marriage had not been terminated but made no finding of fact and stated no conclusions of law upon issues of laches and estoppel of husband to set up invalidity of foreign divorce decree of wife, judgment was reversed and cause remanded for further findings of fact and conclusions of law on such issue. *Id.*

In wife's divorce action, where at conclusion of hearing on husband's motion for new trial on ground of invalidity of marriage because of invalidity of wife's prior foreign divorce decree from another, court ordered wife's complaint dismissed on theory that prior marriage had not been terminated and wife's motion to vacate judgment and for new trial was not timely made, overruling of wife's motion could not be considered a determination against the wife of issues of laches and estoppel presented by her motion since it was assumed that the trial court properly overruled the motion on the ground that the motion was too late and did not pass on the merits of the motion. *Id.*

**Minor's domicile**

Where minor, 19 years of age contracted a marriage in Maryland and thereafter discovered that husband had a previous undissolved marriage, minor could not acquire a domicile by choice in District of Columbia either before or after her marriage and Municipal Court for the District of Columbia did not have jurisdiction to declare marriage a nullity although decree sought was available in her domiciliary state and in state where marriage was performed. *Koonin, next friend of Hornsby v. Hornsby* (D.C. Mun. App. 1958, 140 A. 2d 309).

**Suit by female minor**

Procedure of bringing suit for annulment of a marriage by a minor in name of a next friend is proper where minor is under age of consent; however, where female minor is over age of 18, suit should be brought in minor's name. *Koonin, next friend of Hornsby v. Hornsby* (D.C. Mun. App. 1958, 140 A. 2d 309).

**Void and voidable**

Statute classifies some marriages as void and others as voidable, and in the latter case prohibits, under some circumstances, the bringing of actions to declare them



void. *Rhodes v. Rhodes* (1938, 96 F. 2d 715, 68 App. D.C. 313).

Where boy who was of the age of 16 years and 7 months and girl who was of the age of 15 years and 10 months were domiciled in District of Columbia, and boy obtained father's consent to marry by falsely representing that girl was pregnant and obtained Virginia marriage license by falsely representing that he was age 18 and that she was age 17, and after their marriage in Virginia they lived together in District of Columbia in their own home as man and wife for about six months and then separated, under the District of Columbia statutes the marriage, although forbidden, was not void ab initio, but was merely void when declared so by court decree, and court had judicial discretion to refuse to grant annulment, and under the circumstances such refusal was not abuse of discretion. *Duley etc. v. Duley* (D.C. Mun. App. 1959, 151 A. 2d 255).

#### § 30-105. Marriage out of District of domiciled persons.

If any marriage declared illegal by the foregoing sections shall be entered into in another jurisdiction by persons having and retaining their domicile in the District of Columbia, such marriage shall be deemed illegal, and may be decreed to be void in said District in the same manner as if it had been celebrated therein. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1287.)

#### NOTES TO DECISIONS

##### Defense in collateral proceedings

A divorced husband, marrying another woman in Maryland while both of them were domiciled in District of Columbia within six months after entry of divorce decree in court of such District, was not estopped to plead invalidity of second marriage under District Code as ground for vacation of order against him for support of second wife's minor child, whose paternity he denied, especially in view of statutory provision that nullity of bigamous marriage may be shown in any collateral proceeding. *Oliver v. Oliver* (1951, 185 F. 2d 429, 87 U.S. App. D.C. 334).

##### Prohibited remarriage of divorced persons

This section has no application to marriages in violation of a statute which prohibits remarriage of party divorced for adultery. *Loughran v. Loughran* (1934, 54 S. Ct. 684, 292 U.S. 216, 78 L. Ed. 1219).

#### § 30-106. Persons authorized to perform marriage ceremony.

For the purpose of preserving the evidence of marriages in the District, every minister of the gospel appointed or ordained according to the rites and ceremonies of his church, whether his residence be in the District or elsewhere in the United States or the Territories, may be authorized by any judge of the Superior Court of the District of Columbia to celebrate marriages in the District. And marriages may be celebrated in the District by any judge or justice of any court of record: *Provided, however,* That marriages of members of any church or religious society which does not by its custom require the intervention of a minister for the celebration of marriages may be solemnized in the manner prescribed and practiced in any such society, the license in such case to be issued to, and returns to be made by, a person appointed by such church or religious society for that purpose. The clerk of the Superior Court of the District of Columbia and such deputy clerks of the court as may, in writing, be designated by the clerk of the court and approved by the chief judge, are authorized to celebrate marriages in the District of Columbia. (Mar. 3, 1901, 31

Stat. 1392, ch. 854, § 1288; Apr. 23, 1904, 33 Stat. 297, ch. 1490, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 264, Pub. L. 89-493, § 13 (a) (b); July 29, 1970, Pub. L. 91-358, title I, § 155 (a), 84 Stat. 570.)

#### AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended section by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia."

1966—Section 13(a) of act July 5, 1966, substituted "District of Columbia Court of General Sessions" for "United States District Court for the District of Columbia".

Section 13(b) of act July 5, 1966, added sentence authorizing clerk of District of Columbia Court of General Sessions, and designated deputy clerks of such court, to celebrate marriages.

1904—Act Apr. 23, 1904, added the proviso.

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act July 5, 1966, as effective on first day of first month which is at least ninety days after July 5, 1966, see § 21 of such act, set out in note under § 1-504.

#### CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "judge of the United States District Court for the District of Columbia" for "justice of the District Court of the United States for the District of Columbia."

#### APPROPRIATIONS

Appropriations authorized to carry out purposes of act July 5, 1966, which amended this section, see § 20 of such act, set out in note under § 1-504.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 30-107, 30-112.

#### NOTES TO DECISIONS

##### Religious corporations and societies defined

Belief in or teaching of a Supreme Being or supernatural power is not essential to qualify for tax exemption accorded to "religious corporations," "churches" or "religious societies," under the D. C. Code. *Washington Ethical Society v. District of Columbia* (1957, 249 F. 2d 127, 101 U.S. App. D.C. 371).

##### Religious practices

A Washington Ethical Society which holds regular Sunday services and has "leaders" to preach and minister to the members who are trained graduates of established theological institutions qualifies as a "religious corporation or society" and its building is one primarily and regularly used for public religious worship and entitled to tax exemption under the District of Columbia Tax Statute. *Washington Ethical Society v. District of Columbia* (1957, 249 F. 2d 127, 101 U.S. App. D.C. 371).

#### § 30-107. Marriage performed by unauthorized person—Penalty.

If any one except a minister or other person authorized by section 30-106 shall on and after March 3, 1901 celebrate the rites of marriage in said District, he shall be subject to the penalty prescribed in section 30-108. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1289.)

#### § 30-108. Celebration of marriage without license—Penalty.

No person authorized hereby to celebrate the rites of marriage shall do so in any case without first having delivered to him a license therefor addressed to



him issued from the clerk's office of said Superior Court of the District of Columbia under a penalty of not more than five hundred dollars, in the discretion of the court, to be recovered upon information in the Superior Court of the District of Columbia. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1290; June 30, 1902, 32 Stat. 543, ch. 1329; June 25, 1936, 49 Stat. 1921, ch. 804; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 5, 1966, 80 Stat. 264, Pub. L. 89-493, § 13(a); July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended section by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia."

1966—Act July 5, 1966, substituted "District of Columbia Court of General Sessions" for "United States District Court for the District of Columbia".

1902—Act June 30, 1902, inserted after "therefor," the words "addressed to him."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act July 5, 1966, as effective on first day of first month which is at least ninety days after July 5, 1966, see § 21 of such act, set out in note under § 1-504.

#### CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

"Municipal court" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the police court and the municipal court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

#### APPROPRIATIONS

Appropriations authorized to carry out purposes of act July 5, 1966, which amended this section, see § 20 of such act, set out in note under § 1-504.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 30-107.

### § 30-109. Issuance of license.

A license to marry shall not be issued until three days have elapsed from date of application for issuance of said license. (Aug. 12, 1937, 50 Stat. 626, ch. 596, § 2.)

#### CROSS REFERENCE

Wulver of provisions of this section in certain cases, see § 30-120.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 30-120.

### § 30-110. Duty of clerk before issuing license—Perjury.

It shall be the duty of the clerk of the Superior Court of the District of Columbia before issuing any license to solemnize a marriage to examine any applicant for said license under oath and to ascer-

tain the names, ages, and color of the parties desiring to marry, and if they are under age the names of their parents or guardians, whether they were previously married, whether they are related or not, and if so, in what degree, which facts shall appear on the face of the application, of which the clerk shall provide a printed form, and any false swearing in regard to such matters shall be deemed perjury. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1291; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991 ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 264, Pub. L. 89-493, § 13(a); July 29, 1970, Pub. L. 91-358, Title I, § 155(a), 84 Stat. 570.)

#### AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended section by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia."

1966—Act July 5, 1966, substituted "District of Columbia Court of General Sessions" for "United States District Court for the District of Columbia".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act July 5, 1966, as effective on first day of first month which is at least ninety days after July 5, 1966, see § 21 of such act, set out in note under § 1-504.

#### CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

#### APPROPRIATIONS

Appropriations authorized to carry out purposes of act July 5, 1966, which amended this section, see § 20 of such act, set out in note under § 1-504.

### § 30-111. Consent of parent or guardian.

If any male person intending to marry and seeking a license therefor shall be under twenty-one years of age, or any female so intending shall be under eighteen years of age, and shall not have been previously married, the said clerk shall not issue such license unless the father of such person, or, if there be no father, the mother, or, if there be neither father nor mother, the guardian, if there be such, shall consent to such proposed marriage, either personally to the clerk, or by an instrument in writing attested by a witness and proved to the satisfaction of the clerk. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1292.)

#### NOTES TO DECISIONS

##### Law governing

There being no "public policy" in the District of Columbia which declares marriages contracted by females over 16 but under 18 or males over 18 but under 21 without consent of their parents to be void, the determinant of the right to annulment of a marriage contracted under such circumstances was the law as it prevailed in state where marriage occurred. *Hitchens v. Hitchens* (D.C.D.C. 1942, 47 F. Supp. 73).

##### Majority of female

There was no statute in force which clearly provided that female infants should as a general rule attain their majority at the age of 18 years. Exceptions to the common-law rule have been provided by statute; these, however, recognize the continued existence of the general rule



of the common law. *Jones v. Jones* (1934, 72 F. 2d 829, 63 App. D.C. 373, 95 A.L.R. 352).

### § 30-112. Form of license—Return—Coupon.

Licenses to perform the marriage ceremony shall be addressed to some particular minister, magistrate, or other person authorized by section 30-106 to perform or witness the marriage ceremony and shall be in the following form:

Number \_\_\_\_\_.

To \_\_\_\_\_, authorized to celebrate (or witness) marriages in the District of Columbia, greeting:

You are hereby authorized to celebrate (or witness) the rites of marriage between \_\_\_\_\_, of \_\_\_\_\_, and \_\_\_\_\_, of \_\_\_\_\_, and having done so, you are commanded to make return of the same to the clerk's office of the Superior Court of the District of Columbia within ten days under a penalty of fifty dollars for default therein.

Witness my hand and seal of said court this \_\_\_\_\_ day of \_\_\_\_\_, anno Domini \_\_\_\_\_.

\_\_\_\_\_ Clerk.

By \_\_\_\_\_ Assistant Clerk.

Said return shall be made in person or by mail on a coupon issued with said license and bearing a corresponding number therewith within ten days from the time of said marriage, and shall be in the following form:

Number \_\_\_\_\_.

I, \_\_\_\_\_, who have been duly authorized to celebrate (or witness) the rites of marriage in the District of Columbia, do hereby certify that, by authority of a license of corresponding number herewith, I solemnized (or witnessed) the marriage of \_\_\_\_\_ and \_\_\_\_\_, named therein, on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, in said District.

A second coupon, of corresponding number with the license, shall be attached to and issued with said license, to be given to the contracting parties by the minister or other person to whom such license was addressed, and shall be in the following form:

Number \_\_\_\_\_.

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ were by (or before) me united in marriage in accordance with the license issued by the clerk of the Superior Court of the District of Columbia.

Name \_\_\_\_\_,

Residence \_\_\_\_\_.

(Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1293; June 30, 1902, 32 Stat. 543, ch. 1329; Apr. 23, 1904, 33 Stat. 297, ch. 1490, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 264, Pub. L. 89-493, § 13(a); July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended section by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia."

1966—Act July 5, 1966, substituted "District of Columbia Court of General Sessions" for "United States District Court for the District of Columbia".

1904—Act Apr. 23, 1904, made various changes in the form of the licenses and certificates.

1902—Act June 30, 1902, added the provision that the licenses should be addressed to a particular person authorized to perform marriages in the District.

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act July 5, 1966, as effective on first day of first month which is at least ninety days after July 5, 1966, see § 21 of such act, set out in note under § 1-504.

#### CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

#### APPROPRIATIONS

Appropriations authorized to carry out purposes of act July 5, 1966, which amended this section, see § 20 of such act, set out in note under § 1-504.

### § 30-113. Failure to make return—Penalty.

Any minister or other person, having solemnized or witnessed the rites of marriage under the authority of a license issued as aforesaid, who shall fail to make return as therein required, shall be liable to a penalty of fifty dollars upon conviction of said failure upon information in the Superior Court of the District of Columbia. (Mar. 3, 1901, 31 Stat. 1393, ch. 854, § 1294; Apr. 23, 1904, 33 Stat. 298, ch. 1490, § 3; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### CODIFICATION

The words "of said district", following "Superior Court of the District of Columbia", have been omitted as unnecessary.

#### AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended section by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia."

1904—Act Apr. 23, 1904, inserted after the word "solemnized," the words "or witnessed."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

"Municipal court" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the police court and the municipal court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act, Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

### § 30-114. Record of clerk—Contents.

The clerk of the said court shall provide a record book in his office, consisting of applications and licenses in blank, to be filled up by him with the names and residences of the parties for whose marriage any license may have been issued, said applications and licenses to be numbered consecutively from one upward; and also a record book in which shall be recorded, in the order of their numbers, the certificates of the minister or other persons authorized, upon their return to said office, corresponding to said record book of licenses issued, and a copy of any license



and certificate of marriage so kept and recorded, certified by the clerk under his hand and seal, shall be competent evidence of the marriage. (Mar. 3, 1901, 31 Stat. 1393, ch. 854, § 1295.)

#### REFERENCES IN TEXT

When originally enacted, words in this section, "clerk of the said court", apparently referred to the clerk of the Supreme Court of the District of Columbia (now, U.S. District Court for the District of Columbia), notwithstanding the reference in the preceding section (§ 30-113) to the police court (later, the Municipal Court, then the Court of General Sessions, and now the Superior Court). Such words presumably now refer to the Superior Court of the District of Columbia, in view of amendments to §§ 30-106, 30-108, 30-110 and 30-112 by Act July 29, 1970, Pub. L. 91-358. See notes under those sections.

#### TRANSFER OF RECORDS; EFFECTIVE DATE; APPROPRIATIONS

Act July 5, 1966, 80 Stat. 265, Pub. L. 89-493, § 13(c) (2), effective on first day of first month which was at least ninety days after July 5, 1966, provided:

"The clerk of the United States District Court for the District of Columbia shall transfer all marriage records in his custody (including marriage records transferred from the health department) to the clerk of the District of Columbia Court of General Sessions."

Said act July 5, 1966, as effective on first day of first month which is at least ninety days after July 5, 1966, see § 21 of such act, set out in note under § 1-504; and for authorization of appropriations to carry out purposes of such act July 5, 1966, see § 20 of such act, also set out in note under said § 1-504.

#### CROSS REFERENCES

Duty of director of public health to enforce regulations to secure full and correct records of vital statistics, see § 6-102.

Fees for copies of record, see § 1-244(g).

Penalty for making false or fictitious transcript of any record of marriage, see §§ 6-302, 6-304.

#### § 30-115. Repealed. July 5, 1966, 80 Stat. 265, Pub. L. 89-493 § 13(c)(1).

Section, act Feb. 25, 1929, ch. 314, § 1, 45 Stat. 1285, as affected by acts June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107, provided that clerk of U.S. District Court for District of Columbia should have the same control and custody of the marriage records transferred from health department as he had of the other marriage records in his office. For transfer of all marriage records in such clerk's custody to clerk of District of Columbia Court of General Sessions, see § 13(c) (2) of the repealing act of July 5, 1966, set out in note under § 30-114.

#### EFFECTIVE DATE OF REPEAL

Repeal of this section by act July 5, 1966, as effective on first day of first month which was at least ninety days after July 5, 1966, see § 21 of such act, set out in note under § 1-504.

#### § 30-116. Slave marriages.

All colored persons in the District who, previous to their actual emancipation, had undertaken and agreed to occupy the relation to each other of husband and wife, and were cohabiting together as such or in any way recognizing the relation as existing on the 25th day of July, 1866, whether the rites of marriage have been celebrated between them or not, are deemed husband and wife, and are entitled to all the rights and privileges and subject to the duties and obligations of that relation in like manner as if they had been duly married according to law. All the children of such persons shall be deemed legitimate, whether born before or after the date mentioned. When such parties have ceased to cohabit

before such date, in consequence of the death of the woman or from any other cause, all the children of the woman recognized by the man to be his shall be deemed legitimate. (Mar. 3, 1901, 31 Stat. 1393, ch. 854, § 1296.)

#### § 30-117. Issue of marriage of colored persons—Legitimacy—Property rights.

The issue of any marriage of colored persons contracted and entered into according to any custom prevailing at the time in any of the States wherein the same occurred shall, for all purposes of descent and inheritance and the transmission of both real and personal property within the District of Columbia, be deemed and held to be legitimate and capable of inheriting and transmitting inheritance, and taking as next of kin and distributees according to law, from and to their parents or either of them, and from and to those from whom such parents or either of them may inherit or transmit inheritance, anything in the laws of such State to the contrary notwithstanding: *Provided*, That nothing herein shall be construed as implying that any such marriage is not valid or such issue legitimate for all other purposes. (Mar. 3, 1901, 31 Stat. 1394, ch. 854, § 1297.)

#### § 30-118. Marriage license applications as public records and open to inspection—Accessibility.

All applications for marriage licenses shall be open to inspection as public records. All such applications upon which licenses have not yet been issued shall be kept together in a separate file readily accessible to public examination. (Oct. 15, 1966, 80 Stat. 959, Pub. L. 89-682, § 1.)

#### EFFECTIVE DATE

Section 7 of act Oct. 15, 1966, 80 Stat. 960, Pub. L. 89-682, provided: "This Act [enacting §§ 30-118 to 30-123] shall take effect upon the expiration of ninety days after the date of its enactment [Oct. 15, 1966]."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 30-123.

#### § 30-119. Premarital examinations—Statements regarding blood test to be filed with license application.

No application for a marriage license shall be received unless there shall be filed therewith a statement or statements, upon a form prescribed by the Commissioner of the District of Columbia, signed by (1) a person in the District of Columbia certified by the Department of Public Health as duly qualified to administer and interpret a standard laboratory blood test, (2) a physician licensed to practice medicine or osteopathy in the District of Columbia, a State, or a territory or possession of the United States, or (3) a commissioned medical officer in the military service or in Public Health Service of the United States, that the applicant has submitted to a standard laboratory blood test within thirty days prior to the filing of such application, and that, in the opinion of such certified person, physician, or medical officer, based upon the result of that test, the applicant is not infected with syphilis in a stage of that disease in which it can be transmitted to another person. Such statement shall not disclose the technical data upon which it is based. Any such



statement shall include the name of the person or laboratory administering the test, the name of the test administered, the exact name of the applicant, and the date of the test. (Oct. 15, 1966, 80 Stat. 959, Pub. L. 89-682, § 2.)

## EFFECTIVE DATE

See note under § 30-118.

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## CROSS REFERENCE

Waiver of provisions of this section in certain cases, see § 30-120.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 30-120 to 30-123.

§ 30-120. Waiver of requirement for blood test and waiting period in certain cases.

If a judge of the Superior Court of the District of Columbia determines that public policy or the physical condition of either of the persons applying for a marriage license requires the intended marriage to be celebrated without delay, he may waive the provisions of sections 30-109 and 30-119, and a license may be issued without regard to such sections. (Oct. 15, 1966, 80 Stat. 959, Pub. L. 89-682, § 3; July 7, 1967, Pub. L. 90-53, § 1, 81 Stat. 122; July 29, 1970, Pub. L. 91-358, § 155(a), 84 Stat. 570.)

## AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended section by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia."

1967—Act of July 7, 1967, amended section by striking "United States District Court for the District of Columbia" and inserting in lieu "District of Columbia Court of General Sessions".

## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

## EFFECTIVE DATE

See note under § 30-118.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 30-123.

§ 30-121. Financial inability to pay for blood test or statement required.

In any case in which a person is unable for financial reasons to obtain the services of—

(1) a private physician, or

(2) any other person in the District of Columbia, certified by the Department of Public Health as duly qualified to administer and interpret a standard laboratory blood test, to conduct such test or sign the statement required by section 30-119, any medical officer of the Department of Public Health of the District of Columbia is authorized to conduct such test and provide such statement at no cost to such person. (Oct. 15, 1966, 80 Stat. 959, Pub. L. 89-682, § 4.)

## EFFECTIVE DATE

See note under § 30-118.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 30-123.

## TRANSFER OF FUNCTIONS

Functions of Department of Public Health transferred, see note to § 6-101.

§ 30-122. Confidential character of blood test information.

Any information obtained from any laboratory blood test required under section 30-119 shall be regarded as confidential by each person, agency, or committee who obtains, transmits, or receives such information. (Oct. 15, 1966, 80 Stat. 960, Pub. L. 89-682, § 5.)

## EFFECTIVE DATE

See note under § 30-118.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 30-123.

§ 30-123. Penalties for wrongful acts or failure to comply with sections 30-118 to 30-123.

Whoever—

(1) knowingly divulges, other than in accordance with the provisions of sections 30-118 to 30-123, any information, derived from the laboratory blood test required by section 30-119, relating to any person suffering, or suspected to be suffering from, syphilis,

(2) knowingly misrepresents any fact called for by the statement required by such section, or knowingly falsifies any material fact in connection with the laboratory blood test required by such section,

(3) knowingly issues a marriage license without having received the statement required under such section or an order of the Superior Court of the District of Columbia issued under section 30-120, or

(4) otherwise fails to comply with any other provision of sections 30-118 to 30-123.

shall be imprisoned for not more than six months, or fined not more than \$250, or both. Prosecutions for violations of this section shall be conducted by the Corporation Counsel for the District of Columbia. (Oct. 15, 1966, 80 Stat. 960, Pub. L. 89-682, § 6; July 7, 1967, Pub. L. 90-53, § 1, 81 Stat. 122; July 29, 1970, Pub. L. 91-358, § 155(a), 84 Stat. 570.)

## AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended section by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia."

1967—Act of July 7, 1967, amended section by striking "United States District Court for the District of Columbia," and inserting in lieu "District of Columbia Court of General Sessions".

## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

## EFFECTIVE DATE

See note under § 30-118.

## Chapter 2.—PROPERTY RIGHTS

Sec.

30-201. Married women—Power to dispose of separate property—Under 21 years of age.

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Sec.

- 30-208. Power of married women separately to trade, to contract, and to sue and be sued—Husband not liable for wife's separate contract or tort.
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- 30-214. Insurance payable on death of wife to children, descendants, or her representatives.
- 30-215. Receipt of married woman for payment of money deposited by her—Deposits made to defraud creditors.
- 30-216. Release of dower.

### § 30-201. Married women—Power to dispose of separate property—Under 21 years of age.

Subject to provisions of section 18-201a, married women shall hold all their property of every description, for their separate use as fully as if they were unmarried, and shall have power to dispose of the same by deed, mortgage, lease, will, gift, or otherwise, as fully as husbands have the power to dispose of their property, and no more; except that no disposition of her real or personal property, or any portion thereof, by deed, mortgage, bill of sale, or other conveyance, shall be valid if made by a married woman under twenty-one years of age. (Mar. 3, 1901, 31 Stat. 1374, ch. 854, § 1154; Aug. 31, 1957, 71 Stat. 562, Pub. L. 85-244, § 8; Sept. 14 1961, 75 Stat. 517, Pub. L. 87-246, § 6.)

#### REFERENCES IN TEXT

Section 18-201a, referred to in this section, which, as last amended by act Sept. 14, 1961, 75 Stat. 515, Pub. L. 87-246, § 3, restored the right of dower to the wife and extended the right of dower to the husband, was repealed by act Sept. 14, 1965, 79 Stat. 780, Pub. L. 89-183, § 8, eff. Jan. 1, 1966, and is now covered by § 19-102. See revision note under that section.

#### AMENDMENTS

1961—Act Sept. 14, 1961, substituted the reference "section 18-201a" for "subsection (b) of section 18-201a". Another section of the same act, in amending former § 18-201a, had eliminated subsection (b) of that section. See references in text note above.

1957—Act Aug. 31, 1957, added the introductory phrase "Subject to provisions of subsection (b) of section 18-201a" and substituted the words "as fully as husbands have the power to dispose of their property, and no more; except that" for "as if they were unmarried; Provided, That".

#### EFFECTIVE DATE OF 1961 AMENDMENT

Section 8 of act Sept. 14, 1961, 75 Stat. 517, Pub. L. 87-246, provided: "The foregoing provisions of this act shall become effective six months after the date of enactment of this act". Said act, in addition to amending this section, had amended former §§ 18-101, 18-201a, 18-204 and 18-211. The latter four sections were subsequently repealed by act Sept. 14, 1965, 79 Stat. 780, Pub. L. 89-183, § 8, eff. Jan. 1, 1966, and are now covered by §§ 19-102, 19-104, 19-113, and 19-301.

#### EFFECTIVE DATE OF 1957 AMENDMENT

Section 11 of act Aug. 31, 1957, 71 Stat. 562, provided: "This Act shall become effective ninety days after the date of its enactment". Such act, in addition to amending this section added former §§ 18-201a and 18-215a, amended former §§ 18-101, 18-210, 18-211, 18-212, 18-714, 18-715, 18-716, and 18-717, and repealed former §§ 18-103, 18-104, 18-105, 18-107, 18-111, 18-213, 18-214, and 18-215. Said former §§ 18-101, 18-201a, 18-210, 18-211, 18-212, 18-215a

and 18-714 to 18-717, which such 1957 act amended or added, were subsequently repealed by act Sept. 14, 1965, 79 Stat. 780, Pub. L. 89-183, § 8, and are now covered by §§ 19-102, 19-113, 19-114, 19-301, 19-314 to 19-316, and 19-701.

#### POPULAR NAME

Section 1 of act Sept. 14, 1961, 75 Stat. 515, Pub. L. 87-246, provided: "That this act may be cited as the 'Marital Property Rights Amendments of 1961'." Said act, in addition to amending this section, amended former §§ 18-101, 18-201a, 18-204, and 18-211. See note above with respect to effective date of such 1961 amendment.

#### REPEAL OF INCONSISTENT PROVISIONS

Section 7 of act Sept. 14, 1961, 75 Stat. 517, Pub. L. 87-246, provided: "Any provision of law inconsistent with the provisions and amendments of this Act is hereby repealed." For amendments effected by said 1961 act, in addition to its amendment of this section, see "Effective Date of 1961 Amendment" note above.

Section 10 of act Aug. 31, 1957, 71 Stat. 562, Pub. L. 85-244, provided: "Any provisions of law inconsistent with the provisions of this Act, or any amendment made by this Act, is hereby repealed". For amendments and repeals effected by said 1957 act, in addition to its amendment of this section, see "Effective Date of 1957 Amendment" note above.

#### CROSS REFERENCES

Curtsey abolished, and dower rights extended to both husband and wife, see § 19-102.

Devises and bequests to surviving spouse, effect on other rights, renunciation, election, etc., see § 19-112 et seq.

#### NOTES TO DECISIONS

##### Common law

At common law, the husband was entitled during coverture, to the full control and benefits of property held by entirety, and this right was not derived from the nature of the estate but from the general principle of common law vesting of the wife's property in the husband, and the husband's right to rents and profits was subject to execution, and husband could convey the property so as to divest the wife of possession during his life and, in the case he survived her, to vest in the grantee an absolute estate. *Fairclaw v. Forrest* (1942, 130 F. 2d 829, 76 U.S. App. D.C. 197, 143 A.L.R. 1154, certiorari denied 63 S. Ct. 531, 318 U.S. 756, 87 L. Ed. 1130).

##### Indorsement of stock certificates

The indorsement, by a wife, of stock certificates, delivered to her husband to be used by him as security for a loan, does not violate this section, the wife having no part in the transaction. *Columbia Nat. Bank v. Shacklett* (1927, 18 F. 2d 172, 57 App. D.C. 130).

##### Majority of female

There was no statute in force in the District of Columbia which clearly provided that female infants should as a general rule attain their majority at the age of 18 years. Exceptions to the common-law rule have been provided by statute; these, however, recognize the continued existence of the general rule of the common law. *Jones v. Jones* (1934, 72 F. 2d 829, 63 App. D.C. 373, 95 A.L.R. 352).

##### Tenancy by entirety

Tenancy by the entireties is recognized whether the subject matter is real or personal. *In re Estate of J. S. Wall* (1971, 440 F. 2d 215, 142 U.S. App. D.C. 187).

Rights and remedies of existing creditors cannot be obliterated by the expedient of erecting a tenancy by the entireties in property that is otherwise vulnerable. *Id.*

Where decedent and his widow had owned real estate as tenants by the entireties, and the property was sold in order to avert foreclosure and proceeds were deposited in account in names of decedent and his widow as tenants by the entireties, and the decedent had desired no change in type of ownership of proceeds, proceeds were free from claims of decedent's creditors, and fact that decedent and widow had been separated and had filed separate income tax return would not support inference that decedent and widow had mutually undertaken to dissolve tenancy by the entireties in the fund. *Id.*



"Tenancy by entirety" epitomized the common-law unity of husband and wife by uniting the conceptions of marital entity and joint tenancy and the spouses were neither joint tenants nor tenants in common, for, husband and wife being considered as one person, they could not hold the estate by moities as joint tenants, per tout et per my, but both were seised of the entirety, per tout et non per my, and the consequence of this was a union of husband and wife in the estate so that neither could dispose of any part without the assent of the other and the whole remained to the survivor. *Fairclaw v. Forrest* (1942, 130 F. 2d 829, 76 U.S. App. D.C. 197, 143 A.L.R. 1154, certiorari denied 63 S. Ct. 531, 318 U.S. 756, 87 L. Ed. 1130).

"Tenancy by entirety" is available only to husband and wife and is a convenient mode of protecting a surviving spouse from inconvenient administration of the decedent's estate and from the other's improvident debts, each has the right to receive the property at the death of the other clear of the latter's attempt to encumber it or subjection to payment of his obligations, and the accretion to sole ownership is subject to taxation. *Id.*

Under this chapter each spouse is entitled to the enjoyment and benefits of the whole property held by entirety and neither has a separate estate therein which may be subjected to a conveyance or execution. *Id.*

Under Married Woman's Property Statute, husband can not assert exclusive right to rents and profits from property owned by spouses as tenants by entireties or divest wife of her share thereof either directly by conveyance or indirectly by execution, so that neither may convey any interest in property without other's authority or consent, nor perform any act or make any contract respecting property which would prejudicially affect other spouse. *Deschenes v. McFerren* (D.C. Mun. App. 1956, 125 A. 2d 386).

Where husband's contract to sell realty owned by spouses as tenants by entireties was not accepted on behalf of wife, who had been adjudged of unsound mind, purchasers were liable to spouses for reasonable rental value of purchasers' use and occupancy of property after being notified by husband that he had decided not to sell property and that no committee would be appointed for wife, as he had promised purchasers, though they received permission from husband to enter into possession of property. *Id.*

Good faith reliance by persons contracting with husband to purchase realty owned by spouses as tenants by entireties on his promise to have a committee appointed to accept contract for his wife, who had been adjudged of unsound mind, did not entitle purchasers to possession of property after notice to them by husband that he had decided not to sell property and that no committee would be appointed for wife. *Id.*

#### Wills

Where will executed in 1928 stated that testatrix's husband had been excluded from benefits thereunder because all the real estate in which testatrix was interested was held in joint tenancy with husband and all of testatrix's earnings for 25 years had gone into such real estate, and the residuary clause devised all the residue, real, personal, and mixed, to testatrix's brother, and testatrix's husband thereafter died before testatrix whose will was not thereafter republished, the residuary clause was valid, as respects real estate theretofore owned by testatrix in joint tenancy with her husband who had predeceased testatrix. *Fairclaw v. Forrest* (1942, 130 F. 2d 829, 76 U.S. App. D.C. 197, 143 A.L.R. 1154, certiorari denied 63 S. Ct. 531, 318 U.S. 756, 87 L. Ed. 1130).

#### § 30-202. Married women may make covenant running with the land.

In all deeds made after January 1, 1902, to married women of real estate or chattels real it shall be competent for the grantee or lessee to bind herself and her assigns by any covenant running with or relating to said real estate or chattels real the same as if she were a feme sole. (Mar. 3, 1901, 31 Stat. 1376, ch. 854, § 1170.)

#### § 30-203. Disabilities of infant feme covert—Guardian.

In case any married woman entitled to a separate estate as aforesaid shall be an infant under twenty-one years of age, she shall be under the same disabilities in regard thereto as other infants, except as herein elsewhere provided, and a guardian of said estate shall be appointed. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1157.)

#### CROSS REFERENCE

Adult at age 18 or marriage where will provides a bequest payable at majority, see § 20-1906.

#### § 30-204. Trustee for separate estate of married woman—Not necessary—Appointment.

It shall not be necessary for a married woman to have a trustee to secure to her the sole and separate use of her property; but if she desires it she may make a trustee by deed, or she may apply to a court of equity and have a trustee appointed, in which appointment the uses and trusts for which the trustee holds the property shall be declared. (Mar. 3, 1901 31 Stat. 1374, ch. 854, § 1153.)

#### § 30-205. Husband may convey directly to wife—Rights of creditors—Such conveyance not deemed notice of existence of creditors of husband.

Whenever any interest or estate of any kind in any property, real, personal, or mixed, situate, lying, or being within this District, has been or shall on and after March 3, 1901, be sold, conveyed, assigned, mortgaged, leased, transferred, or delivered by any husband directly or indirectly to his wife, and has been or shall on and after March 3, 1901, be subsequently sold, conveyed, assigned, mortgaged, leased, transferred, or delivered by such wife and husband during their coverture, or after January 1, 1902, by such wife solely or by such wife after such coverture has terminated, or shall after January 1, 1902, be devised or bequeathed by such wife during such coverture or after such coverture has terminated, the fact of such previous sale, conveyance, assignment, mortgage, lease, or delivery by such husband, directly or indirectly, to his wife shall not after January 1, 1902, be deemed or taken, at law or in equity, to have given, preserved, or reserved, nor to give, preserve, or reserve, to any subsisting creditor of such husband, by reason of any debt or obligation, claim, or demand whatsoever, any other or greater right, lien, or cause of action against such interest or estate, or against any third person, his heirs, executors, administrators, or assigns, than such creditors would have had in case such interest or estate had been sold, conveyed, assigned, mortgaged, leased, transferred or delivered, or devised, or bequeathed by such husband directly to such third person. And the fact of such previous sale, conveyance, assignment, mortgage, lease, or delivery by such husband directly or indirectly to his wife, or the recital thereof in any instrument of writing whatever, shall not after January 1, 1902, be deemed or taken, at law or in equity, to give or impart nor to have given or imparted notice to any third person, his heirs, executors, administrators, or assigns of the existence or of the possibility or probability of the existence of any subsisting creditor or creditors of such husband. (Mar. 3, 1901, 31 Stat. 1373, ch. 854, § 1152.)



## § 30-206. Equitable separate estate.

Nothing contained in this chapter shall be construed to prevent the creation of equitable separate estates. Said estates shall be held according to the provisions of the respective settlements thereof and shall be subject to and governed by the rules and principles of equity applicable to such estates. (Mar. 3, 1901, 31 Stat. 1376, ch. 854, § 1171.)

## § 30-207. Wife's separate property not liable for husband's debts.

All the property, real, personal, and mixed, belonging to a woman at the time of her marriage, and all such property which she may acquire or receive after her marriage from any person whomsoever, by purchase, gift, grant, devise, bequest, descent, in the course of distribution, by her own skill, labor, or personal exertions, or as proceeds of a judgment at law or decree in equity, or in any other manner, shall be her own property as absolutely as if she were unmarried, and shall be protected from the debts of the husband and shall not in any way be liable for the payment thereof: *Provided*, That no acquisition of property passing to the wife from the husband after coverture shall be valid if the same has been made or granted to her in prejudice of the rights of his subsisting creditors. (Mar. 3, 1901, 31 Stat. 1373, ch. 854, § 1151.)

## CROSS REFERENCE

Fraudulent conveyances, see § 28-3101 et seq.

## NOTES TO DECISIONS

## Actions in replevin

Either spouse may prosecute replevin against the other, in the courts of the District. *Notes v. Snyder* (1925, 4 F. 2d 426, 55 App. D.C. 233, 41 A.L.R. 1052).

## Burden of proof

In action against decedent's administrator and widow to recover money judgment against administrator under agreement whereby decedent promised to pay plaintiff certain sums for her child's support during minority in consideration of a release and to set aside as fraudulent a transfer to widow, administrator and widow had burden of proving that agreement, which was valid on its face, was invalid and that transfer was valid. *Brady v. Games* (1942, 128 F. 2d 754, 76 U.S. App. D.C. 47).

## Fraudulent transfers

In action against decedent's administrator and widow to recover money judgment against administrator under a certain agreement and to set aside as fraudulent decedent's transfer of property to widow, evidence including fact that transfer was made while action on agreement was pending justified jury in finding that transfer was made with intent to hinder, delay, or defraud plaintiff. *Brady v. Games* (1942, 128 F. 2d 754, 76 U.S. App. D.C. 47).

## Gifts between husband and wife

Gifts between husband and wife, followed quickly thereafter by insolvency on the part of the donor, are justly regarded by the courts with suspicion. *Harding v. Aaronson* (1934, 69 F. 2d 845, 63 App. D.C. 107).

## Guaranty of husband's indebtedness

Subject to the requirement of the Constitution that full faith and credit shall be given by States to the judicial decrees of other States, a judgment of another State on a guaranty by a married woman of her husband's indebtedness will be enforced, notwithstanding statutory provisions. *Hieston v. National City Bank* (1922, 280 F. 525, 51 App. D.C. 394, 24 A.L.R. 1434).

## Judgment subject to collateral attack

A judgment against a married woman is not subject to collateral attack upon an averment that it is founded on the consideration of an accommodation note. *Carroll v. Elkins* (1929, 29 F. 2d 638, 58 App. D.C. 265).

## Note and deed of trust

A note and deed of trust signed by a married woman, as surety for her husband, is void. *Bradbury v. Howard*, (1929, 31 F. 2d 222, 58 App. D.C. 383). See, also, *Steele v. Harrison* (1929, 32 F. 2d 965, 59 App. D.C. 69).

## Surety for husband

A married woman's note is void when she signed as surety of her husband and it is likewise void in hands of payee's assignee. *Schwartz v. Sacks* (1925, 2 F. 2d 188, 55 App. D.C. 87).

Married woman's liability on note dated and made payable in Washington, D. C., which maker signed in Pennsylvania is determined by law of District of Columbia as to question of wife's capacity to sign note as accommodation maker for husband. *Kiess v. Baldwin* (1935, 74 F. 2d 470, 64 App. D.C. 66).

## § 30-208. Power of married women separately to trade, to contract, and to sue and be sued—Husband not liable for wife's separate contract or tort.

Married women shall have power to engage in any business, and to contract, whether engaged in business or not, and to sue separately upon their contracts, and also to sue separately for the recovery, security, or protection of their property, and for torts committed against them, as fully and freely as if they were unmarried; contracts may also be made with them, and they may also be sued separately upon their contracts, whether made before or during marriage, and for wrongs independent of contract committed by them before or during their marriage, as fully as if they were unmarried, and upon judgments recovered against them execution may be issued as if they were unmarried; nor shall any husband be liable upon any contract made by his wife in her own name and upon her own responsibility, nor for any tort committed separately by her out of his presence without his participation or sanction. (Mar. 3, 1901, 31 Stat. 1374, ch. 854, § 1155; May 28, 1926, 44 Stat. 676, ch. 419.)

## AMENDMENT

1926—Act May 28, 1926, struck out the provision "that no married woman shall have power to make any contract as surety or guarantor or as accommodation drawer, acceptor, maker, or indorser."

## CROSS REFERENCE

Actions not subject to abatement because of marriage, see § 12-104.

## NOTES TO DECISIONS

## Accommodation indorsers

Married women may make contracts as accommodation indorsers. *Jett v. Montague Mfg. Co.* (1933, 61 F. 2d 918, 61 App. D.C. 277).

## Action for damages from conspiracy

Wife may maintain an action against persons who formed a conspiracy with her husband to falsely charge her with adultery which was to be brought against her in divorce action. *Ewald v. Lane*, (1939, 104 F. 2d 222, 70 App. D.C. 89).

## Action in replevin

Either spouse may bring replevin against the other, in order to recover possession of personal property if wrongfully detained. *Notes v. Snyder* (1925, 4 F. 2d 426, 55 App. D.C. 233, 41 A.L.R. 1052).

## Actions to recover rent

Under the District Rent Law, a married woman, who is the owner of "rental property," may exercise all the remedies which are secured to owners as such under the act. *Barbagollo v. Fishbien* (1923, 286 F. 780, 52 App. D.C. 318).

Sections 201 et seq. of this title have changed the common-law principles of marital unity so that the husband cannot now assert an exclusive right to the rents and profits or divest the wife of her share directly by con-



veyance or indirectly by execution. *Fairclaw v. Forrest* (1942, 130 F. 2d 829, 76 U.S. App. D.C. 197, 143 A.L.R. 1154, certiorari denied 63 S. Ct. 531, 318 U.S. 756, 87 L. Ed. 1130).

#### Indorsement of stock certificates to husband

This section is not violated when wife indorsed and delivered stock to her husband as she was not a party to the transactions whereby the several banks made the loans to her husband and received the collateral stock from him. *Columbia Nat. Bank v. Shacklett* (1927, 18 F. 2d 172, 57 App. D.C. 130).

#### Interspousal immunity

Action against husband's estate by administratrix of estate of wife who was murdered by husband was not barred by doctrine of interspousal immunity. *N. L. Jones, Administratrix, etc. v. A. Pledger, Sr., Administrator, etc.* (1966, 363 F. 2d 986, 124 U.S. App. D.C. 254).

#### Libel

A married woman trading as feme sole may have action for libel concerning her business without joining her husband. *Wills v. Jones* (1898, 13 App. D.C. 482).

#### Minor's claim for loss of mother's support

Minor child would not, on basis of negligent injury to mother by third parties, have enforceable claim against the third parties for loss of mother's support, education, care, society, affection, and kindness during period of mother's incapacity. *Pleasant v. Washington Sand & Gravel Co., et al.* (1959, 262 F. 2d 471, 104 U.S. App. D.C. 374).

#### Negotiable instruments

When defendant contracted with plaintiff to borrow the money as her separate property, and his note promised to pay her and not her husband, he could not deny her capacity to sue thereon for his default. *Richards v. Bippus* (1901, 18 App. D.C. 2983).

Where a married woman purchases real estate and gives as part payment the promissory notes of herself and husband secured by deed of trust upon the property, a separate suit is maintainable against her as the notes relate to her sole and separate estate. *Sonnemann v. Loeb* (1897, 11 App. D.C. 143).

#### Partnerships

Where automobile passenger sued driver, who was partner of passenger's husband, and others, for injuries sustained in intersectional collision, and passenger's husband was joined as plaintiff, but not as defendant, and suit was not against partnership, under District of Columbia law, the suit was not barred by rule that spouses are not liable for tortious acts of one against the other, though the alleged tort was committed within the ambit of partnership activities. *Tobin v. Hoffman* (D.C. Mun. App. 1953, 96 A. 2d 597).

Statutes removing disabilities of married women should not be construed so broadly as to permit a partnership between husband and wife. *Norwood v. Francis* (1905, 25 App. D.C. 463).

#### Personal injury actions

A husband is not a "necessary party" to suit by wife to recover damages to herself for injuries negligently inflicted on her person *Lansburgh & Bro. v. Clark* (1942, 127 F. 2d 331, 75 U.S. App. D.C. 339).

Under this section, wife has right to recover damages to herself for injuries negligently inflicted on her person. *Id.*

Under act of Congress June 1, 1896, 29 Stat. 193, known as "Married Woman's Act," a married woman may sue without joinder of husband to recover damages for personal injuries. *Capital Trac. Co. v. Rockwell* (1901, 17 App. D.C. 369).

#### Repeal

In view of the judicial history of this section, taken together with the proviso, it was plainly the legislative intent that the repeal of the proviso should remove the restrictions imposed by it upon the rights of married women to make contracts as sureties or guarantors, or as accommodation drawers, acceptors, makers, or indorsers, thereby empowering them to enter into such contracts as if unmarried. *Jett v. Montague Mfg. Co.* (1933, 61 F. 2d 918, 61 App. D.C. 277).

This section repeals § 1155, 1901 code, which prohibited married women from being sureties. *Steele v. Harrison* (1929, 32 F. 2d 965, 59 App. D.C. 69).

#### Surety for husband

A married woman cannot sign note as surety for husband. *Schwartz v. Sacks* (1925, 2 F. 2d 188, 55 App. D.C. 87).

#### Tort action against husband

A wife may not maintain an action for tort committed by her husband upon her person before coverture, where the action is begun, but not brought to justice before marriage. *Spector v. Weisman* (1930, 40 F. 2d 792, 59 App. D.C. 280).

Action against former husband for assault committed after decree of absolute divorce had been entered, but before expiration of six months period when decree would become effective, could be maintained as against contention that a married woman may not sue for assault committed on her by her husband during coverture. *Steele v. Steele* (D.C.D.C. 1946, 65 F. Supp. 329).

Neither husband nor wife is liable for the tortious acts of one against the other and this is the common law rule which prevails today in the District, unaffected by this section. *Yellow Cab Co. v. Dreslin* (1950, 181 F. 2d 626, 86 U.S. App. D.C. 327 19 A.L.R. 2d 1001).

Under District of Columbia law, the common law rule that spouses are not liable for tortious acts of one against the other is extant and unaffected by code provision that married women shall have power to sue for torts committed against them. *Tobin v. Hoffman* (D.C. Mun. App. 1953, 96 A. 2d 597).

### § 30-209. Contracts of married woman deemed made in reference to her separate estate.

Every contract made by a married woman which she has the power to make shall be deemed to be made with reference to her estate which is made her separate estate by this chapter, and also her equitable separate estate, if any she has, as a source of credit to the extent of her power over the same, unless the contrary intent is expressed in the contract. (Mar. 3, 1901, 31 Stat. 1374, ch. 854. § 1156.)

#### NOTES TO DECISIONS

##### In general

A contract clearly within the power of a married woman to make, "must be deemed to have been made with reference to her separate estate, there being no contrary intent expressed. She is therefore liable to be sued separately thereon." *Dobbins v. Thomas* (1905, 26 App. D.C. 157). See, also, *Dobbins v. Thomas* (1908, App. D.C. 511).

### § 30-210. Liability of husband for debts of wife before marriage.

No husband shall be liable in any manner for any debts of his wife contracted or for any claims or demands of any kind against her arising prior to marriage, but she and her property shall remain liable therefor in the same manner as if the marriage had not taken place. (Mar. 3, 1901, 31 Stat. 1376, ch. 854, § 1166.)

#### CROSS REFERENCE

Actions not subject to abatement because of marriage see § 12-104.

### § 30-211. Husband liable for wife's acts in certain cases.

Nothing in this chapter shall be construed to relieve the husband from liability for the debts, contracts, or engagements which the wife may incur or enter into upon the credit of her husband, or as his agent, or for necessities for herself or for his or their children; but as to all such cases his liability shall be or continue as at common law. (Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1177.)



## CROSS REFERENCES

Joint deposits, accounts, or safety-deposit boxes, see § 26-201 et seq.

## NOTES TO DECISIONS

## Credit

A wife, who has been furnished with ample means with which to pay cash for articles of clothing may not purchase the same on her husband's credit. *Saks v. Huddleston* (1930, 36 F. 2d 537, 59 App. D.C. 133).

## Funeral expenses

Under the common law and under this section the husband is primarily liable for "necessaries" furnished his wife which include funeral expenses and such obligation is not affected by this chapter. *In re Tunison's Estate* (D.C.D.C. 1948, 75 F. Supp. 573).

Where testatrix' will failed to make provision for her funeral expenses, her husband was primarily liable for funeral expenses incurred in and out of the District of Columbia, and such expenses were properly chargeable against husband's distributive share of estate, and, if distributive share payable to husband was not sufficient to defray such funeral expenses, excess thereof was payable out of personalty of estate. *Id.*

## Necessaries

This section "does not undertake to provide that she shall not render herself liable for necessities when contracted for independently of her husband and with reference to her separate estate, but merely that, in such cases, the husband shall not be relieved of any liability therefor that he may be under by virtue of the common law. It does not substitute the common-law liability of the husband for that of the wife, but retains it as an additional security for the benefit of the other contracting party." *Dobbins v. Thomas* (1905, 26 App. D.C. 157).

Married Women's Act for the District of Columbia does not substitute common law liability of husband for that of wife but retains it as an additional security for benefit of the other contracting party even though there may be situations in which wife can render herself liable for necessities when contracted for independently of husband. *Stein v. Woodward & Lothrop* (D.C. Mun. App. 1951, 77 A. 2d 564).

## Remarried wife

Generally, husband's liability for debts and necessities of the wife ceases upon her remarriage unless continued liability on his part is expressly provided for in the separation agreement or divorce decree. *W. T. Francis v. D. H. Murray* (D.C. App. 1971, 284 A. 2d 663).

Language within settlement and support agreement that divorced husband agreed "to pay all extraordinary medical and dental expenses of minor children and wife, during their minority." did not mean that the husband's liability for such expenses of wife would continue after her remarriage, particularly in view of failure to use phrase "even if the wife remarried" in conjunction with such language, though such phrase had been used twice previously in the agreement. *Id.*

## § 30-212. Insurance of husband's life—By wife—By husband—Proceeds taken free from claims.

Any married woman, by herself and in her name, or in the name of any third person, with his assent, as her trustee, may insure or cause to be insured for her sole use, the life of her husband for any definite period or for the term of his natural life; and any husband may cause his own life to be insured for the sole use of his wife, and may also assign any policy of insurance upon his own life to his wife for her sole use; and in case of the wife surviving her husband the sum or net amount of such insurance becoming due and payable by the terms of the insurance shall be payable to her for her own use, free from the claims of the representatives of her husband or any of his creditors. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1161.)

## § 30-213. Insurance for benefit of wife, children, dependent relative, or creditor not liable for husband's debts.

All policies of life insurance upon the life of any person maturing on or after January 1, 1902, and which have been or shall be taken out for the benefit of or bona fide assigned to the wife or children of or any relative dependent upon such person, or any creditor, shall be vested in such wife or children or other relative or creditor, free and clear from all claims of the creditors of such insured person. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1162.)

## § 30-214. Insurance payable on death of wife to children, descendants, or her representatives.

If the wife shall die before her husband, the amount of such insurance may be payable after her death to the children or descendants for their use, and to their guardian if under age; and if there be no children or descendants of the wife living at the time of her death, to her legal representatives. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1163.)

## § 30-215. Receipt of married woman for payment of money deposited by her—Deposits made to defraud creditors.

The receipt of any married woman for the payment of money deposited by her before or after marriage shall be a valid discharge to any individual or corporation making such payment: *Provided*, That nothing contained in this section shall prevent any creditor of the husband from attaching the same or restraining the payment by injunction if the deposit was made in fraud of his creditors. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1164.)

## § 30-216. Release of dower.

If the wife of the party executing a deed, being not less than eighteen years of age, shall desire to release her dower in the property conveyed, she may do so either by joining in the same deed or by a separate deed, wherever executed, signed, sealed, and acknowledged by her in the same manner as provided in section 45-402, and her acknowledgment shall be certified in like manner. (Mar. 3, 1901, 31 Stat. 1267, ch. 854, § 494; June 30, 1902, 32 Stat. 531, ch. 1329.)

## AMENDMENT

1902—Act June 30, 1902, amended section generally. Prior to such amendment read as follows: "If the wife of the party executing said deed, being not less than eighteen years of age, shall desire to release her right of dower in the property conveyed, she shall unite in the deed with her husband and sign, seal, and acknowledge the same in the same manner as her husband, and the officer taking her acknowledgment shall add to the above form of certificate a further certificate to the following effect, namely:

"And at the same time personally appeared before me, in said District, E F, the wife of said C D, personally well known to me (or proved by the oath of credible witnesses) to be such, and acknowledged the same to be her act and deed.

"Such wife, however, may release her right of dower by her separate deed, when the release claims or derives title from, by, through or under her husband."

## HUSBAND'S DOWER

Right of husband to dower, and general amendment of all laws relating to right of dower and its incidents to make them applicable to both husband and wife, see § 19-102, and § 3 of act Aug. 31, 1957, 71 Stat. 560, Pub. L. 85-244, as amended by acts Sept. 14, 1961, 75 Stat. 515,



Pub. L. 87-246, § 3; Sept. 14, 1965, 79 Stat. 779, Pub. L. 89-183, § 3, set out in note under said § 19-102.

#### CROSS REFERENCE

Conveyance of real estate acquired after insanity or absence for seven years of wife, see § 19-104.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 45-501.

#### NOTES TO DECISIONS

##### Deeds

By a deed, voluntarily executed and duly acknowledged by husband and wife, the entire title of both may be conveyed. *Hitz v. Jenks* (1887, 8 S. Ct. 143, 123 U.S. 297, 31 L. Ed. 156).

"The relinquishment of an inchoate right of dower which a married woman makes by joining in a deed with her husband, can operate against her only by way of estoppel." *Follansbee v. Follansbee* (1893, 1 App. D.C. 326).

If the conveyance or instrument in which the wife joins is void, or ceases for any reason to operate, and no title has passed, or none remained, the release does not, after that, operate against the wife. *Id.*

##### Mortgages

When a wife joins in a mortgage, she retains her dower in the property, subject to the mortgage. *Follansbee v. Follansbee* (1893, 1 App. D.C. 326).

### Chapter 3.—UNIFORM SUPPORT

[This chapter was chapter 16 of former Title 11 of the Code]

#### Sec.

- 30-301. Purpose—Effective date.
- 30-302. Definitions.
- 30-303. Remedies additional to those now existing.
- 30-304. Extent of duties of support.
- 30-305. Remedies of a State furnishing support or institutional care.
- 30-306. How duties of support are enforced, jurisdiction in domestic relations court—Proceedings.
- 30-307. Contents of the complaint—Verification.
- 30-308. Representation of plaintiff by Corporation Counsel or private counsel.
- 30-309. Complaint on behalf of a minor—Who may bring.
- 30-310. Duty of court when District of Columbia is initiating State.
- 30-311. Costs and fees—Waiver of payment.
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- 30-314. Duty of the court when the District of Columbia is responding State.
- 30-315. Order of support—Bond—Contempt.
- 30-316. Copies of orders to be transmitted to initiating State.
- 30-317. Additional duties of the court—Receive and disburse payments.
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- 30-320. Support of illegitimate children.
- 30-321. Effect of participation in proceeding.
- 30-322. Appeals.
- 30-323. Separability of provisions.
- 30-324. Appropriations authorized.

#### § 30-301. Purpose—Effective date.

The following provisions to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law in respect thereto, shall be in effect in the District of Columbia on and after the effective date of this chapter. (July 10, 1957, 71 Stat. 285, Pub. L. 85-94, § 1.)

#### EFFECTIVE DATE

Section 26 of act July 10, 1957, provided that: "This Act [adding this chapter] shall take effect sixty days after appropriations therefor become available."

#### EFFECT OF REORGANIZATION PLAN No. 5

Section 25 of act July 10, 1957, provided that: "Where any provision of this Act [this chapter] refers to an office or agency abolished under the provisions of Reorganization Plan Numbered 5 of 1952 (66 Stat. 824) [set out in Appendix to Title 1, Administration], such reference shall be deemed to be to the office, agency, or officer now or hereafter exercising the functions of the office or agency so abolished. Nothing contained in this Act [this chapter] shall be construed as a limitation on the authority vested in the Commissioners by such Reorganization Plan."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-1101.

#### NOTES TO DECISIONS

##### Constitutionality

The Uniform Reciprocal Enforcement of Support Act, this chapter, requiring husband, wife, father, mother, or adult child of recipient of public assistance to be responsible, according to his ability to pay, for support of such recipient, does not deny due process. *C. Groover v. Essex County Welfare Board* (D.C. App. 1970, 264 A. 2d 143).

Fact that county welfare board sought to collect support for mother only from one son under this chapter requiring husband, wife, father, mother, or adult child of recipient of public assistance to be responsible according to his ability to pay, for support of such recipient, and not from other children, who live in other jurisdictions, and who are allegedly able to contribute, does not render application of such chapter to son a denial of equal protection. *Id.*

#### § 30-302. Definitions.

As used in this chapter, unless the context requires otherwise—

(a) "State" includes any State, Territory, or possession of the United States and the Commonwealth of Puerto Rico and the District of Columbia in which this or a substantially similar reciprocal law has been enacted.

(b) "Initiating State" means any State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(c) "Responding State" means any State in which a proceeding pursuant to the proceeding in the initiating State is or may be commenced.

(d) "Court" means the Family Division of the Superior Court and, when the context requires, means the court of any other State as defined in a substantially similar reciprocal law.

(e) "Duty of support" includes: (1) any duty of support imposed by statute or by common law, or by any court order, decree, or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, judicial separation, separate maintenance, or otherwise; (2) any duty of reimbursement imposed by law for moneys expended by a State or a political subdivision or an agency thereof for support, including institutional care; and (3) the duty imposed by section 30-320.

(f) "Dependent" means any person who is in need of and entitled to support from a person legally liable for such support.

(g) "Plaintiff" means any person or any State or political subdivision or agency thereof, commencing a proceeding pursuant to this or a similar reciprocal law, whether on his or its own behalf, or on behalf of a dependent as herein defined.



(h) "Defendant" means any person owing a duty of support, against whom a proceeding is commenced pursuant to this chapter or a similar reciprocal Act. (July 10, 1957, 71 Stat. 285, Pub. L. 85-94, § 2; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 159(f) (1), 84 Stat. 578.)

#### AMENDMENT

1970—Section 159(f) (1) of Act July 29, 1970, Public Law 91-358 amended subsection (d) by striking out "Domestic Relations Branch of the Municipal Court for the District of Columbia" and inserting in lieu thereof "Family Division of the Superior Court."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-1101.

#### NOTES TO DECISIONS

##### Counsel fees

In proceeding under Uniform Reciprocal Enforcement of Support Act, this chapter, by a wife, a resident of Maryland, for an order to require husband, a resident of District of Columbia, to support children, the Domestic Relations Branch of the Municipal Court for the District of Columbia had the power to award a counsel fee to the wife's court-appointed attorney. *Britt v. Britt* (D.C. Mun. App. 1959, 153 A. 2d 644).

##### Desertion by mother

Fact that mother allegedly deserted father would not relieve father from obligation of supporting minor children. *Edmonds v. Edmonds* (D.C. Mun. App. 1958, 146 A. 2d 774).

##### Duration of support

Father's motion to vacate and set aside all support orders entered against him, under Uniform Reciprocal Enforcement of Support Act, was premature where filed before child's 18th birthday, and judgment under Act required current support payments until child reached 18. *W. Howze v. E. Howze* (D.C. App. 1967, 225 A. 2d 477).

##### Jurisdiction

When wife's reciprocal enforcement of support proceeding was commenced in New York, that court had primary duty under statute to decide if wife had made prima facie showing of need for support for children and that they were entitled to support from nonresident father. *D. Prager v. J. Smith etc.* (D.C. App. 1963, 195 A. 2d 257).

Valid, existing New York decree which on divorce of parties imposed obligation on father to support children whose custody was awarded to mother made prima facie case in another New York court in reciprocal enforcement of support proceeding against father who was served with process in District of Columbia. *Id.*

An action by mother under Uniform Reciprocal Enforcement of Support Act against father for support of their minor children was properly dismissed where there was an outstanding order in United States District Court for support of the children in an action previously brought by the mother against the father, which court retained jurisdiction for modification in event of change of circumstances, so that there was nothing for Domestic Relations Branch of Court of General Sessions to act upon. *N. E. Y. Jackson v. F. B. Jackson* (D.C. App. 1963, 187 A. 2d 704).

Even though the United States District Court had dismissed, with prejudice, wife's complaint against husband for maintenance of children, for the stated reason that wife had moved to Maryland and had denied the husband his right of visitation, the Domestic Relations Branch of the Municipal Court for the District of Columbia could

entertain wife's petition, under the Uniform Reciprocal Enforcement of Support Act, this chapter, for an order to require husband, a resident of District of Columbia, to support children, and could grant such an order where wife no longer had any reservations concerning the husband's visiting the children. *Britt v. Britt* (D.C. Mun. App. 1959, 153 A. 2d 644).

##### Law governing

District of Columbia judgment, under Uniform Reciprocal Enforcement of Support Act, requiring husband to make support payments until child reaches 18, was not in conflict with doctrines of res judicata or full faith and credit regarding Michigan divorce decree which required payments only until age 17. *W. Howze v. E. Howze* (D.C. App. 1967, 225 A. 2d 477).

When mother's petition in reciprocal enforcement of support proceeding was forwarded to District of Columbia, latter court had to determine under local statute whether father owed duty of support and, if so, amount he should be required to pay. *D. Prager v. J. Smith etc.* (D.C. App. 1963, 195 A. 2d 257).

Where father, since leaving Virginia some years before, had continuously resided in the District of Columbia, law of the District of Columbia was controlling in proceeding in the District of Columbia under the Uniform Reciprocal Enforcement of Support Act of the District of Columbia, this chapter on transmission to the District of Columbia of petition filed by mother under similar act in Virginia to compel support for minor children. *Edmonds v. Edmonds* (D.C. Mun. App. 1958, 146 A. 2d 774).

##### Stepchild

Since the husband did not intend that in loco parentis relation should continue during separation as to child of wife by her former marriage, husband is not obliged to provide support for such child. *L. Jackson, Jr. v. L. Jackson* (D.C. App. 1971, 278 A. 2d 114).

#### § 30-303. Remedies additional to those now existing.

The civil remedies herein provided are in addition to and not in substitution for any other remedies. (July 10, 1957, 71 Stat. 286, Pub. L. 85-94, § 3.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-1101.

#### NOTES TO DECISIONS

##### Additional support

Under Uniform Reciprocal Enforcement of Support Act, wife, who has obtained foreign divorce, may petition for additional support after divorce decree has been fully satisfied. *W. Howze v. E. Howze* (D.C. App. 1967, 225 A. 2d 477).

Decision determining father's continued liability under judgment previously entered under Uniform Act and requiring support payments until Michigan child should reach 18, would not impair right of mother, who had obtained Michigan divorce, to petition Michigan court for further support under Uniform Act after child reached 18. *Id.*

##### Decree as barring action of support

Award for separate maintenance and support for minor children obtained under Reciprocal Enforcement of Support Act did not preclude later statutory action for maintenance and support. *A. E. Figliozzi v. J. Figliozzi* (D.C. Mun. App. 1961, 173 A. 2d 904).

##### Imprisonment for contempt

The intermediate appellate court was quite aware that order of imprisonment must take into account the financial ability of the contemnor to comply with the terms of a court order, and that the appellant failed to make a showing of lack of financial ability in this case. *J. R. Scott v. I. R. Scott* (1967, 382 F. 2d 461, 127 U.S. App. D.C. 245).

##### Money judgment

Money judgment was proper means of collecting arrears in payments due under foreign decree for support of child. *W. Howze v. E. Howze* (D.C. App. 1967, 225 A. 2d 477).



## § 30-304. Extent of duties of support.

Duties of support enforceable under this chapter are those imposed under the laws of any State in which the defendant was present during the period for which support is sought, or in which the dependent was present when the failure to support commenced or where the dependent is when the failure to support continues. The defendant shall be presumed to have been present in the responding State during the period for which support is sought until otherwise shown. (July 10, 1957, 71 Stat. 286, Pub. L. 85-94, § 4.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-1101.

## NOTES TO DECISIONS

## Jurisdiction

Where mother in District of Columbia had custody of child but due to mother's illness decree was entered by Florida court changing custody to father in Florida, and abating father's support payments, and later child, with father's consent, returned to live with mother, the decree changing custody to father did not deprive District of Columbia court of jurisdiction of complaint initiating proceedings by child against father for support under Uniform Reciprocal Enforcement of Support Act, this chapter. *Cobbe, a minor etc. v. Cobbe* (D.C. Mun. App. 1960, 163 A. 2d 333).

## Law governing

In proceeding under Uniform Reciprocal Enforcement of Support Act, this chapter, initiated in District of Columbia, question whether defendant owes a duty of support and complainant is qualified to maintain the action is determined by the law of the District of Columbia although the courts of the responding state must determine, under their law, whether the defendant's conduct constitutes a violation of his parental duty of support and whether the complainant is entitled to support money. *Cobbe, a minor etc. v. Cobbe* (D.C. Mun. App. 1960, 163 A. 2d 333).

Where father, since leaving Virginia some years before, had continuously resided in the District of Columbia, law of the District of Columbia was controlling in proceeding in the District of Columbia under the Uniform Reciprocal Enforcement of Support Act of the District of Columbia on transmission to the District of Columbia of petition filed by mother under similar act in Virginia to compel support for minor children. *Edmonds v. Edmonds* (D.C. Mun. App. 1958, 146 A. 2d 774).

## Liability when mother deserts

Fact that mother allegedly deserted father would not relieve father from obligation of supporting minor children. *A. Edmonds v. H. Edmonds* (D.C. Mun. App. 1958, 146 A. 2d 774).

## Obligor-obligee relationship

In proceedings brought by child in District of Columbia, against her father, who was in Florida, under Uniform Reciprocal Enforcement of Support Act, this chapter, where mother in District of Columbia had custody, but due to mother's illness decree was entered by Florida court changing custody to father and abating father's support payments, and later child, with father's consent, returned to live with mother, the child showed an obligor-obligee relationship sufficient to establish, under law of District of Columbia, a prima facie case for support. *Cobbe, a minor etc. v. Cobbe* (D.C. Mun. App. 1960, 163 A. 2d 333).

## Reliance on divorce decree

Evidence supported finding that divorce decree was no longer being relied upon to impose a duty of support on father, where order at issue was granted in response to mother's petition to increase support payments for her child until child reached age 18, and that order, though not specific, was intended to continue at lease until child was 17 years, 3 months old, and more likely until her 18th

birthday, and, under either view, reliance was clearly placed on District of Columbia support laws and not on 1961 divorce decree which provided for support only until child reached age 17. *W. Howze v. E. Howze* (1967, 385 F. 2d 986, 128 U.S. App. D.C. 204).

## Stepchild

Since the husband did not intend that in loco parentis relation should continue during separation as to child of wife by her former marriage, husband is not obliged to provide support for such child. *L. Jackson, Jr. v. L. Jackson* (D.C. App. 1971, 278 A. 2d 114).

## Support, duties of

Under Uniform Reciprocal Enforcement of Support Act, enforceable duties of support include those imposed or imposable under laws of any state where alleged obligor was present during period for which support was sought. *W. Howze v. E. Howze* (D.C. App. 1967, 225 A. 2d 477).

That mother and her second husband allegedly turned her sons against their father did not relieve father of duty of supporting sons where sons had not been adopted by second husband. *D. Prager v. J. Smith, etc.* (D.C. App. 1963, 195 A. 2d 257).

Natural father's duty to support his minor children is not simply moral obligation but a duty imposed by law and is not relieved by personal disputes, real or fanciful, between contesting parents. *Id.*

## § 30-305. Remedies of a State furnishing support or institutional care.

Whenever any State or a political subdivision or agency thereof has furnished, or is furnishing support or institutional care to a dependent, it shall for the purposes of securing reimbursement of past expenditures and of obtaining continuing support, have the same right to invoke the provisions of this chapter as the dependent to whom such support or care was furnished, or is being furnished. (July 10, 1957, 71 Stat. 286, Pub. L. 85-94, § 5.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-1101.

## § 30-306. How duties of support are enforced, jurisdiction in domestic relations court—Proceedings.

Proceedings to enforce duties of support initiated by the District of Columbia shall be commenced by the filing of a complaint irrespective of the relationship between the plaintiff and defendant. Jurisdiction of all proceedings under this chapter is vested in the Family Division of the Superior Court of the District of Columbia which shall have all power and authority heretofore vested in the Domestic Relations Branch of the District of Columbia Court of General Sessions. (July 10, 1957, 71 Stat. 286 Pub. L. 85-94, § 6; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, § 165(d), title I, 84 Stat. 586.)

## AMENDMENT

1970—Section 165(d) of Act July 29, 1970, Public Law 91-358, amended section generally. For provisions of this section prior to this amendment, see 1967 edition of the code.

## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

## CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-1101.



## NOTES TO DECISIONS

## Counsel fees

Father's deliberate and unjustified failure to comply with New York order for child support, which forced legal custodian to file suit for their protection, warranted award of counsel fees to custodian's court-assigned attorney in reciprocal support case. *D. Prager v. J. Smith etc.* (D.C. App. 1963, 195 A. 2d 257).

In proceeding under Uniform Reciprocal Enforcement of Support Act, this chapter, by a wife, a resident of Maryland, for an order to require husband, a resident of District of Columbia, to support children, the Domestic Relations Branch of the Municipal Court for the District of Columbia had the power to award a counsel fee to the wife's court-appointed attorney. *Britt v. Britt* (D.C. Mun. App. 1959, 153 A. 2d 644).

## Jurisdiction

Even though the United States District Court had dismissed, with prejudice, wife's complaint against husband for maintenance of children, for the stated reason that wife had moved to Maryland and had denied the husband his right of visitation, the Domestic Relations Branch of the Municipal Court for the District of Columbia could entertain wife's petition, under the Uniform Reciprocal Enforcement of Support Act, this chapter, for an order to require husband, a resident of District of Columbia, to support children, and could grant such an order where wife no longer had any reservations concerning the husband's visiting the children. *Britt v. Britt* (D.C. Mun. App. 1959, 153 A. 2d 644).

## Right to support

Husband had duty to support wife after they had separated, in absence of proof that separation was due to her misconduct. *W. Novak v. G. J. Novak* (D.C. App. 1963, 190 A. 2d 266).

Wife may be entitled to award of support payments from husband from whom she has separated even if separation was due to wife's misconduct, but amount awarded will be less than would otherwise be the case. *Id.*

Fact that wife who was separated from husband had no income of her own but was depending entirely on her parents for food and shelter established her need for support, and need was not altered, except perhaps as to extent thereof, by fact that she had a potential earning capacity. *Id.*

Full inquiry into financial status of both parties should be made in action by wife for support after separation from her husband, and husband should be required to make full, detailed and accurate disclosure of his assets and income. *Id.*

## § 30-307. Contents of the complaint—Verification.

The complaint shall be verified and shall state the name and, so far as known to the plaintiff, the address and circumstances of the defendant and of the dependents for whom the duty of support is sought to be enforced, and all other pertinent facts necessary to enable the court to determine whether a duty of support exists on the part of the defendant. The plaintiff may include in or attach to the complaint any information which may help in locating or identifying the defendant including, but without limitation by enumeration, a photograph of the defendant, a description of any distinguishing marks of his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, or social security number. (July 10, 1957, 71 Stat. 286, Pub. L. 85-94, § 7.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-1101.

## § 30-308. Representation of plaintiff by Corporation Counsel or private counsel.

In any instance in which the Corporation Counsel of the District of Columbia is satisfied that a public

support burden has been incurred or is threatened, it shall be his duty to represent the plaintiff in any proceedings arising under this chapter or a similar reciprocal Act. In all other cases the court may, in its discretion, appoint private counsel to represent the plaintiff: *Provided*, That the plaintiff may be represented by private counsel in any proceedings under this chapter at his own expense. (July 10, 1957, 71 Stat. 286, Pub. L. 85-94, § 8.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-1101.

## NOTES TO DECISIONS

## Counsel fees

In proceeding under Uniform Reciprocal Enforcement of Support Act, this chapter, by a wife, a resident of Maryland, for an order to require husband, a resident of District of Columbia, to support children, the Domestic Relations Branch of the Municipal Court for the District of Columbia had the power to award a counsel fee to the wife's court-appointed attorney. *Britt v. Britt* (D.C. Mun. App. 1959, 153 A. 2d 644).

## § 30-309. Complaint on behalf of a minor—Who may bring.

A complaint on behalf of a minor dependent may be brought by any person or agency as next friend of the minor, regardless of whether such person or agency has been appointed guardian of such minor. (July 10, 1957, 71 Stat. 287, Pub. L. 85-94, § 9.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-1101.

## NOTES TO DECISIONS

## Jurisdiction

Where mother in District of Columbia had custody of child but due to mother's illness decree was entered by Florida court changing custody to father in Florida, and abating father's support payments, and later child, with father's consent, returned to live with mother, the decree changing custody to father did not deprive District of Columbia court of jurisdiction of complaint initiating proceedings by child against father for support under Uniform Reciprocal Enforcement of Support Act, this chapter. *Cobbe, a minor etc. v. Cobbe* (D.C. Mun. App. 1960, 163 A. 2d 333).

## Law governing

In proceedings under Uniform Reciprocal Enforcement of Support Act, this chapter, initiated in District of Columbia, question whether defendant owes a duty of support and complainant is qualified to maintain the action is determined by the law of the District of Columbia although the courts of the responding state must determine, under their law, whether the defendant's conduct constitutes a violation of his parental duty of support and whether the complainant is entitled to support money. *Cobbe, a minor etc. v. Cobbe* (D.C. Mun. App. 1960, 163 A. 2d 333).

## Prior decree

A person may institute proceedings for a minor for support under Uniform Reciprocal Enforcement of Support Act, this chapter, regardless of fact that a decree, granting custody to another, is outstanding. *Cobbe, a minor etc. v. Cobbe* (D.C. Mun. App. 1960, 163 A. 2d 333).

## § 30-310. Duty of court when District of Columbia is initiating State.

If the court finds that a complaint initiated in the District of Columbia sets forth facts from which it appears that the defendant owes a duty of support, as defined in this chapter, and that a court of a responding State may obtain jurisdiction of the defendant, it shall so certify and shall cause to be transmitted to the court in the responding State,



three copies of its certificate, three certified copies of the complaint, and three copies of this chapter. (July 10, 1957, 71 Stat. 287, Pub. L. 85-94, § 10.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11-1101, 30-314.

#### NOTES TO DECISIONS

##### Law governing

In proceedings under Uniform Reciprocal Enforcement of Support Act, this chapter, initiated in District of Columbia, question whether defendant owes a duty of support and complainant is qualified to maintain the action is determined by the law of the District of Columbia although the courts of the responding state must determine, under their law, whether the defendant's conduct constitutes a violation of his parental duty of support and whether the complainant is entitled to support money. *Cobbe, a minor etc. v. Cobbe* (D.C. Mun. App. 1960, 163 A. 2d 333).

#### § 30-311. Costs and fees—Waiver of payment.

The complaint, when initiated in the District of Columbia, shall be accompanied by such fees and costs as may be required by the court as well as by the court of the responding State: *Provided*, That the court whether the District of Columbia be the initiating or responding State, may in its discretion direct that payment or prepayment of any part or all fees and costs incurred in the District of Columbia be waived upon the filing of an affidavit representing that the plaintiff is unable to pay the same: *Provided further*, That the court shall direct waiver of payment or prepayment of such fees and costs whenever the plaintiff is a State having a similar provision for waiver of fees, or a political subdivision or agency thereof. Nothing in this section shall be construed to deprive the court of its discretion to assess costs and fees. (July 10, 1957, 71 Stat. 287, Pub. L. 85-94, § 11.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-1101.

#### § 30-312. Jurisdiction by arrest.

When the court has reason to believe that the defendant may flee the jurisdiction of the responding State, it may (a) as the court of the initiating State, request in its certificate that the court of the responding State obtain the body of the defendant by appropriate process if that be permissible under the law of the responding State, or (b) as the court of a responding State, obtain the body of the defendant by any appropriate process. (July 10, 1957, 71 Stat. 287, Pub. L. 85-94, § 12.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-1101.

#### § 30-313. Information agent—Corporation Counsel designated as.

The Corporation Counsel of the District of Columbia is hereby designated as the reciprocal information agent under this chapter and it shall be his duty to transmit a copy of this chapter and any subsequent changes therein to the State information agency of every other State which has adopted this or a substantially similar Act, and to maintain a registry of the names and addresses of the courts having jurisdiction of such proceedings in other States. (July 10, 1957, 71 Stat. 287, Pub. L. 85-94, § 13.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-1101.

#### § 30-314. Duty of the court when the District of Columbia is responding State.

(a) When the court receives from the court of an initiating State certified copies of a complainant or other proceedings containing the essential allegations of a complaint, under whatever name it may be known, and a certificate similar to that required by section 30-310, it shall docket the cause and refer the matter to the Corporation Counsel, or to private counsel, if appropriate, for such further action as may be necessary to obtain jurisdiction of the defendant in order to carry out the provisions of this chapter.

(b) If the court is unable to obtain jurisdiction of the defendant due to inaccuracies or inadequacies in the complaint or otherwise, the court shall communicate this fact to the court in the initiating State, and shall hold the case pending receipt of more accurate information or an amended complaint from the court in the initiating State. (July 10, 1957, 71 Stat. 287, Pub. L. 85-94, § 14.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-1101.

#### NOTES TO DECISIONS

##### Conflict of laws

Where District of Columbia Reciprocal Enforcement of Support Act had no section providing that, where District was receiving jurisdiction, and respondent controverted petition, judge should stay hearing and transmit to initiating state a transcript of clerk's minutes showing denials entered by respondent, trial judge correctly refused to apply such section of initiating state to proceedings in District. *D. Prager v. J. Smith etc.* (D.C. App. 1963, 195 A. 2d 257).

#### § 30-315. Order of support—Bond—Contempt.

If the court finds a duty of support as defined by this chapter it may order the defendant to pay such amounts under such terms and conditions as the court may deem proper. The court may require the defendant to furnish recognizance in the form of a cash deposit or bond, and may punish a defendant who violates any order of the court to the same extent as is provided by law for contempt in any other suit or proceeding cognizable by the court. (July 10, 1957, 71 Stat. 288, Pub. L. 85-94, § 15.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-1101.

#### NOTES TO DECISIONS

##### Abuse of discretion

Award requiring son, pursuant to Uniform Reciprocal Enforcement of Support Act, this chapter, obligating husband, wife, father, mother or adult child of recipient of public assistance to be responsible, according to his ability to pay, for support of such recipient, to pay \$30 every two weeks toward maintenance and support of his mother was not abuse of discretion. *C. Groover v. Essex County Welfare Board* (D.C. App. 1970, 264 A. 2d 143).

Award of \$60 every two weeks for maintenance and support of wife and children, under Uniform Reciprocal Enforcement of Support Act, was not abuse of discretion, although award would disabie husband from meeting obligations to his common law children with whom he lived. *E. Miner v. M. Miner* (D.C. App. 1963, 192, A. 2d 811).



On record presented, order requiring father to make monthly payments for support of child who was living in Florida in custody of father's former wife was proper, and the amount within discretionary limits. *M. Brickey v. L. Weinstein* (D.C. Mun. App. 1961, 173 A, 2d 372).

In a proceeding under the Reciprocal Enforcement of Support Act, this chapter, evidence did not establish that the trial court abused its discretion in awarding a sum for support of the defendant's minor child in excess of the amount requested by his former wife and recommended by the forwarding state. *Menetrez v. Menetrez* (D.C. Mun. App. 1959, 147 A, 2d 772).

#### Imprisonment for contempt

The intermediate appellate court was quite aware that order of imprisonment must take into account the financial ability of the contemnor to comply with the terms of a court order, and that the appellant failed to make a showing of lack of financial ability in this case. *J. R. Scott v. I. R. Scott* (1967, 382 F. 2d 461, 127 U.S. App. D.C. 245).

#### Preference of legitimate children

Children who are the result of a marital relationship are entitled to support from their father before and in preference to child born through an illicit association. *J. L. Mitchell v. B. Mitchell* (D.C. App. 1969, 257 A. 2d 496; aff'd 445 F. 2d 722, 144 U.S. App. D.C. 246).

As between claims of legitimate and illegitimate children, children who are the result of a marital relationship are entitled to support from their father before and in preference to those born through an illicit association. *C. J. Jefferson v. D. J. Jefferson* (D.C. App. 1963, 192 A. 2d 813).

Trial judge, in making an award for support of wife and six minor children properly refused to consider as part of the valid expenditures of husband monthly payments he was required to make for support of five illegitimate children. *Id.*

#### § 30-316. Copies of orders to be transmitted to initiating State.

The court shall cause to be transmitted to the court of the initiating State a certified copy of all orders of support or for reimbursement therefor entered by it. (July 10, 1957, 71 Stat. 288, Pub. L. 85-94, § 16.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-1101.

#### § 30-317. Additional duties of the court—Receive and disburse payments.

The court shall have the additional duty, which may be carried out by the clerk of the court, to receive payments made pursuant to order of the court by defendants within the District of Columbia or transmitted by the court of a responding State, and to disburse the same in accordance with the order of the court, and upon request of the court of an initiating State shall furnish to that court a certified statement of all payments received and disbursed in a particular case. (July 10, 1957, 71 Stat. 288, Pub. L. 85-94, § 17.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-1101.

#### § 30-318. Testimony of spouse—Competency of.

In all proceedings arising under this chapter, husband and wife shall be competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage. (July 10, 1957, 71 Stat. 288, Pub. L. 85-94, § 18.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-1101.

#### § 30-319. Application of payments—Crediting on account of other support orders.

No order for support entered by the court in any proceeding arising under this chapter shall supersede any previous order of support entered in a divorce or separate maintenance action, or any other proceedings, but the amounts for a particular period paid pursuant to either order, when verified, shall be credited against amounts accruing or accrued for the same period under both. (July 10, 1957, 71 Stat. 288, Pub. L. 85-94, § 19.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-1101.

#### NOTES TO DECISIONS

##### Application of support payments

Under support order, rendered under Uniform Act, requiring father to make support payments until child reached 18, and including "money judgment" for arrearages, any "current" payments made after 18th birthday might be applied to reduce arrearage indebtedness *W. Howze v. E. Howze* (D.C. App. 1967, 225 A. 2d 477).

#### § 30-320. Support of illegitimate children.

The natural father of an illegitimate child shall have the duty to support such child until the age of sixteen years (a) when paternity has been established by judicial process, or (b) when paternity has been directly acknowledged by the putative father under oath. (July 10, 1957, 71 Stat. 288, Pub. L. 85-94, § 20.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11-1101, 30-302.

#### § 30-321. Effect of participation in proceeding.

Participation in any proceedings under this chapter shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding. (July 10, 1957, 71 Stat. 288, Pub. L. 85-94, § 21.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-1101.

#### § 30-322. Appeals.

Any party aggrieved by any final or interlocutory order or judgment entered in the court shall have the same right of appeal available in respect to any final or interlocutory order or judgment entered in the Superior Court of the District of Columbia in civil cases. (July 10, 1957, 71 Stat. 289, Pub. L. 85-94, § 22; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 159(f) (2), 84 Stat. 578.)

#### AMENDMENT

1970—Section 159(f) (2) of Act July 29, 1970, Public Law 91-358 amended section by striking out "civil branch of the municipal court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia in civil cases".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

#### CROSS REFERENCE

Right of appeal to District of Columbia Court of Appeals, see § 11-741.



## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-1101.

**§ 30-323. Separability of provisions.**

If any provision hereof or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. (July 10, 1957, 71 Stat. 289, Pub. L. 85-94, § 23.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-1101.

**§ 30-324. Appropriations authorized.**

Appropriations for expenses necessary for carrying out the purposes of this chapter, including additional personal services for the court and for the Office of the Corporation Counsel, are hereby authorized. (July 10, 1957, 71 Stat. 289, Pub. L. 85-94, § 24.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-1101.







## TITLE 31.—EDUCATION AND CULTURAL INSTITUTIONS

Chap.	Sec.
1. Board of Education.....	31-101
2. Compulsory School Attendance and Work Permits .....	31-201
3. Tuition of Nonresidents.....	31-301
4. Free Textbooks.....	31-401
5. Vocational Rehabilitation of Residents of the District of Columbia.....	31-501
6. Teachers, School Officers, and Other Employees in General.....	31-601
7. Retirement of Public School Teachers...	31-701
8. Use of School Buildings.....	31-801
9. Medical and Dental Colleges.....	31-901
10. Gallaudet College.....	31-1001
11. Miscellaneous .....	31-1101
12. Aviation Education in High Schools.....	31-1201
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### Chapter 1.—BOARD OF EDUCATION

Sec.
31-101. Election and number of members—Term of office—Commencement of term—Compensation of members—Qualifications—Forfeiture of office for failure to maintain qualifications—Vacancies—President—Secretary—Meetings.
31-102. Appointment—Promotion—Transfer or dismissal of directors, teachers, upon recommendation of superintendent.
31-103. Determination of general policies—Expenditures of funds—Appointment of teachers and employees.
31-104. Annual estimates.
31-104a. Members exempt from personal liability—Costs and supersedeas bond.
31-104b. Coordination with the District of Columbia Government.
31-105. Superintendent—Appointment—Term of office—Duties.
31-106. Superintendent authorized to act between meetings of the board.
31-107. Acting superintendent authorized to act in absence of superintendent.
31-108. Removal of superintendent.
31-109. Repealed.
31-110. Director of intermediate instruction for white schools—Appointment—Duties.
31-111. Supervisor of manual training—Appointment—Duties.
31-112. Classification of academic and scientific subjects in certain high schools.
31-113. "Head of the department" and "head teacher" defined—Duties—Limitation as to number of students in classes.
31-114. Teachers and officials—Examination—Qualifications—Appointments.
31-115. Principals of schools—Duties.
31-116. Teachers on trial or under investigation to have counsel.
31-117. Masculine pronoun to include both male and female.
31-118. Teachers' college—Expansion of normal schools.
31-119. Repealed.
31-120. Accrediting junior colleges—Effect.
31-121. Education of pages—Board authorized to employ and compensate personnel.

§ 31-101. Election and number of members—Term of office—Commencement of term—Compensation of members—Qualifications—Forfeiture of office for failure to maintain qualifications—Vacancies—President—Secretary—Meetings.

(a) The control of the public schools of the District of Columbia is vested in a Board of Education to consist of eleven elected members, three of whom are to be elected at large, and one to be elected from each of the eight school election wards established under chapter 11 of title 1. The election of the members of the Board of Education shall be conducted on a nonpartisan basis and in accordance with such chapter.

(b) (1) Except as provided in paragraph (2) of this subsection and section 1-1110(e), the term of office of a member of the Board of Education shall be four years.

(2) Of the members of the Board of Education first elected after the date of the enactment of this paragraph, three members elected from wards and two members elected at large shall serve for terms ending January 26, 1970, and the other six members shall serve for terms ending January 24, 1972. The members who shall serve for terms ending January 26, 1970, shall be determined by lots cast before the Board of Elections of the District of Columbia upon a date set and pursuant to regulation issued by the Board of Elections.

(3) The term of office of a member of the Board of Education elected at a general election shall begin at noon on the fourth Monday in January next following such election. A member may serve more than one term.

(4) The members may receive compensation at a rate fixed by the District of Columbia Council, which shall not exceed \$1,200 per annum.

(c) (1) Each member of the Board of Education elected from a ward shall at the time of his nomination (A) be a qualified elector (as that term is defined in section 1-1102) in the school election ward from which he seeks election, (B) have, for the ninety-day period immediately preceding his nomination, resided in the school election ward from which he is nominated, and (C) have, during the ninety-day period next preceding his nomination, been an actual resident of the District of Columbia and have during such period claimed residence nowhere else. A member shall forfeit his office upon failure to maintain the qualifications required by this paragraph.

(2) Each member of the Board of Education elected at large shall at the time of his nomination (A) be a qualified elector (as that term is defined in section 1-1102 in the District of Columbia, and (B) have, during the ninety-day period next preceding his nomination, been an actual resident of the District of Columbia and have during such period



claimed residence nowhere else. A member shall forfeit his office upon failure to maintain the qualifications required by this paragraph.

(3) No individual may hold the office of member of the Board of Education and (A) hold another elective office other than delegate or alternate delegate to a convention of a political party nominating candidates for President and Vice President of the United States, or (B) also be an officer or employee of the District of Columbia government or of the Board of Education. A member will forfeit his office upon failure to maintain the qualifications required by this paragraph.

(d) Whenever, before the end of his term, a member of the Board of Education dies, resigns, or becomes unable to serve or a member-elect of the Board of Education fails to take office, such vacancy shall be filled as provided in section 1-1110(e).

(e) The Board of Education shall select a President from among its members at the first meeting of the Board of Education held on or after the date (prescribed in paragraph (3) of subsection (b) of this section) on which members are to take office after each general election. The Board of Education may appoint a secretary, who shall not be a member of the Board of Education. The Board of Education shall hold stated meetings at least once a month during the school year and such additional meetings as it may from time to time provide for. Meetings of the Board of Education shall be open to the public; except that the Board of Education (1) may close to the public any meeting (or part thereof) dealing with the appointment, promotion, transfer, or termination of employment of, or any other related matter involving, any employee of the Board of Education, and (2) may close to the public any meeting (or part thereof) dealing with any other matter but no final policy decision on such other matter may be made by the Board of Education in a meeting (or part thereof) closed to the public. (June 20, 1906, 34 Stat. 316, ch. 3446, § 2; Jan. 26, 1929, 45 Stat. 1139, ch. 105; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 2, 1957, 71 Stat. 341, Pub. L. 85-119, § 1; Apr. 22, 1968, Pub. L. 90-292, § 3(a), (c), 82 Stat. 101, 102; Dec. 23, 1971, Pub. L. 92-220, § 3, 85 Stat. 795.)

#### CODIFICATION

Section is comprised of subssecs. (a)–(e) of § 2 of Act June 20, 1906, as redesignated and amended. Prior to amendment by Act Apr. 22, 1968, subsec. (a) of this section was comprised of the first par. of such § 2 of Act of 1906, and the last par. of such § 2 as added by Act Jan. 26, 1929. The remaining paragraphs of such § 2 (redesignated as subssecs. (f)–(i) by Act of 1968) are classified to §§ 31-102 to 31-104a, respectively.

#### AMENDMENTS

1971—Section 3 of Act Dec. 23, 1971, Pub. L. 92-220, amended subsec. (c) generally. Prior to this amendment, subsec. (c) read:

(c) (1) Each member of the Board of Education elected from a ward shall at the time of his nomination (A) be a qualified elector (as that term is defined in section 1-1102) in the school election ward from which he seeks election, (B) have, for the one-year period immediately preceding his nomination, resided in the school election ward from which he is nominated, (C) have, during the three years next preceding his nomination, been an actual resident of the District of Columbia and have during

such period claimed residence nowhere else, and (D) hold no elective office other than delegate or alternate delegate to a convention of a political party nominating candidates for President and Vice President of the United States. A member shall forfeit his office upon failure to maintain the qualifications required by this paragraph.

(2) Each member of the Board of Education elected at large shall at the time of his nomination (A) be a qualified elector (as that term is defined in section 1-1102) in the District of Columbia, (B) have, during the three year period next preceding his nomination, been an actual resident of the District of Columbia and have during such period claimed residence nowhere else, and (C) hold no elective office other than delegate or alternate delegate to a convention of a political party nominating candidates for President and Vice President of the United States. A member shall forfeit his office upon failure to maintain the qualifications required by this paragraph.

(3) No individual may hold the office of member of the Board of Education and also be an officer or employee of the District of Columbia government or of the Board of Education. A member will forfeit his office upon failure to maintain the qualification required by this paragraph.

1968—Section 3(a)(c) of the act Apr. 22, 1968, Pub. L. 90-292, amended the section by striking out the first paragraph of subsection (a) as the same appeared as section 2 in the act of June 20, 1906, 34 Stat. 316, being the first six sentences of subsection (a) as the same is set out in the 1967 edition of the Code and inserted in place thereof the matters set out above as subsections (a) to (e), and repealed former subsection (b) relating to removal of members. The last paragraph of sec. 2 of the act of June 20, 1906, relating to personal liability of the members which was added by the act of Jan. 26, 1929, 45 Stat. 1139 (being the seventh sentence of subsection (a) as set out in the 1967 edition of the code) was redesignated by section 3(b) as subsection (i) and has been reclassified herein as section 31-104a.

1957—Act Aug. 2, 1957, designated existing provisions as subsec. (a) and added subsec. (b) relating to removal of members.

1929—Act Jan. 26, 1929, amended section to relieve individual members of the Board of Education of personal liability for acts of the board.

#### EFFECTIVE DATE OF 1971 AMENDMENT

Section 4 of act Dec. 23, 1971, Pub. L. 92-220, provided: "The provisions of this Act and the amendments made thereby (amending this section), sections 1-1101, 1-1102, 1-1104, 1-1105, 1-1107, 1-1108, 1-1109, 1-1110, 1-1111, and 1-1113, and 2 U.S.C. 241) shall take effect as of January 1, 1972."

#### EFFECTIVE DATE OF PUB. L. 90-292 AND TERMINATION OF OFFICE

Section 6(a)<sup>1</sup>, act Apr. 22, 1968, Pub. L. 90-292 provided: "The amendments made by this act [for enumeration of amendments and enactments made by this Act, see Short Title notes under this section and 1-1101] shall take effect on May 15th, 1968, except that—

(1) the Board of Education of the District of Columbia, appointed under the Act of June 20, 1906 (as in effect on the date of the enactment of this Act), shall continue to exercise the powers, functions, duties vested in it under such Act (as in effect on such date);

(2) vacancies in such Board shall be filled by appointment in accordance with such Act (as in effect on such date); and

(3) the members of such Board appointed under such Act (as in effect on such date) shall continue in office; until such time as at least six of the members first elected to the Board of Education (under such Act as amended by this Act) take office."

#### SHORT TITLE

Section 1, act Apr. 22, 1968, Pub. L. 90-292, provided: "This Act (amending sections 31-101 to 31-105, 31-108, 31-110 to 31-112, 31-117 and redesignating the

<sup>1</sup> There is no subsection (b) in sec. 6.



second, third, fourth and fifth paragraphs of sec. 2(a) of the Act of June 20, 1906, as subsections 3(f), (g), (h), and (i), set out herein as sections 31-102 to 31-104a; enacting sec. 2, set out as note to 31-101, and sec. 31-104b, and making certain amendments to the District of Columbia Election Law, as set out in 'Short Title' note under section 1-1101) may be cited as the 'District of Columbia Elected Board of Education Act.' "

#### REPEAL

Act Apr. 22, 1968, Pub. L. 90-292, § 3(c), repealed the provisions of the act of Aug. 2, 1957, Pub. L. 85-119, § 1, which added former subsection (b) to this section. The subsection authorized the Judges of the United States District Court to remove a member of the Board of Education for cause after a public hearing.

#### CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia." "District Court judges" was substituted for "supreme court judges" to conform to such change of name.

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia." "United States District Court judges" was substituted for "District Court judges" to conform to such change of name.

#### TRANSFER OF FUNCTIONS OF THE BOARD OF COMMISSIONERS

Section 501 of Reorganization Plan No. 3 of 1967, effective November 3, 1967, provides:

"Status of certain agencies. (a) Functions now vested in any agency listed in subsection (b) of this section, or in any officer or body of or under such agency, shall remain so vested; but all functions of the Board of Commissioners of the District of Columbia and all functions of the President of that Board or of any other member of the Board, relating to the listed agency or its functions or to an officer or body thereof or to the functions of such officer or body shall be deemed to be transferred by Part IV of this reorganization plan.

"(b) The following agencies of the Corporation are the agencies referred to in subsection (a) of this section:

- "(1) Board of Education (including the public school system)
- "(2) Board of Library Trustees (including the public libraries)
- "(3) Recreation Board
- "(4) Public Service Commission
- "(5) Zoning Commission
- "(6) Zoning Advisory Council
- "(7) Board of Zoning Adjustment
- "(8) Office of the Recorder of Deeds
- "(9) Armory Board"

#### FINDINGS AND DECLARATION OF PURPOSE

Section 2, act Apr. 22, 1968, Pub. L. 90-292, provided:

"The Congress hereby finds and declares that the school is a focal point of neighborhood and community activity; that the merit of its schools and educational system is a primary index to the merit of the community; and that the education of their children is a municipal matter of primary and personal concern to the citizens of a community. It is therefore the purpose of this Act to give the citizens of the Nation's Capital a direct voice in the development and conduct of the public educational system of the District of Columbia; to provide organizational arrangements whereby educational programs may be improved and coordinated with other municipal programs; and to make District schools centers of neighborhood and community life."

#### CROSS REFERENCES

Accrediting junior colleges, see § 31-120.

Child labor and work permits generally, powers and duties of the Board, see § 36-201 et seq.

Compulsory school attendance, exemptions, work permits, powers and duties of Board, see § 31-201 et seq.

Department of school attendance and work permits, see § 31-211 et seq.

Duties of Board in connection with plans and specifications for school buildings, see § 9-219.

Duty to educate colored children, see § 31-1110.

Duty to furnish schoolrooms and teachers for colored persons, see § 31-1113.

Free textbooks and school supplies, see § 31-401 et seq.

Jurisdiction and control over school buildings, see § 31-801 et seq.

Power to license institutions of learning, see §§ 29-415 to 29-419.

Religious schools not entitled to privileges and benefits of school laws of district, see § 29-512.

Retirement of public school teachers, see § 31-701 et seq.

School census, see § 31-208 et seq.

Selection of school to be attended, approval of Board, see § 31-1111.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-1601, 31-1621.

#### NOTES TO DECISIONS

##### Approval of political party

A local statute providing that the election of District of Columbia Board of Education members should be conducted on a nonpartisan basis does not prohibit a candidate from receiving approval of political party and using benefit of such approval to his advantage. *C. L. Boone v. M. Taylor, et al.* (D.C. App. 1969, 256 A. 2d 411).

##### Constitutionality

Issue as to constitutionality or unconstitutionality of statute authorizing members of board of education of public schools of District of Columbia to be appointed by United States District Court judges was not frivolous and matter must be referred to three-judge court. *Hobson v. Hansen* (D.C.D.C. 1966, 252 F. Supp. 4).

Three-judge district court is not required when claim that a statute is unconstitutional is wholly insubstantial, legally speaking nonexistent, nor when prior decisions make frivolous any claim that statute is constitutional. *Id.*

##### Constitutionality of appointment of school board

Constitutional provision empowering Congress to exercise exclusive legislation in all cases whatsoever over the District of Columbia gave Congress power to enact statute providing that members of the District of Columbia board of education shall be appointed by United States District Court judges of the district. *J. W. Hobson, etc., et al. v. C. F. Hansen, Superintendent etc., et al.* (1967, 265 F. Supp. 902).

Constitutional provision that Congress may by law vest appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in heads of departments empowered Congress to enact statute providing that members of the District of Columbia board of education shall be appointed by United States District Court judges of the District of Columbia. *Id.*

The fact that in a number of instances Congress has conferred appointive power upon court or judges of United States District Court for the District of Columbia was not conclusive on issue of validity of statute permitting appointment of members of District of Columbia board of education by United States District Court judges of the District of Columbia but demonstrated the deep-seated congressional view of the constitutional issue and was entitled to weight in judicial decision on that issue. *Id.*

Power conferred upon judges by statute stating that members of District of Columbia board of education shall be appointed by United States District Court judges of District of Columbia does not violate doctrine of separation of powers. *Id.*

The validity of congressional conference upon United States District Court judges of District of Columbia of power to appoint District of Columbia board of education members is not to be denied merely because an appointee in carrying out his own separation functions might become involved in controversies; the board members are accountable under the law for the manner in which they perform their duties. *Id.*



**Impairment of judicial function**

Appointive power conferred by Congress under statute providing that members of District of Columbia board of education shall be appointed by United States District Court judges of the District of Columbia does not violate due process though litigation might arise before the district court over manner in which the board administers the schools. *J. W. Hobson etc., et al. v. C. F. Hansen, Superintendent etc., et al.* (1967, 265 F. Supp. 902).

Court could not presume that in any future case, which might involve performance by members of District of Columbia board of education of their duties, a denial of due process would occur by reason of statute empowering United States District Court judges of the District of Columbia to appoint the board members. *Id.*

The official act of a judge of the United States District Court for the District of Columbia in participating in selection of District of Columbia board of education members does not in and of itself preclude on due process grounds the ability of the judge to decide fairly the merits of litigation challenging validity of performance by board member of his duties as such. *Id.*

**Jurisdiction of court**

Three-judge district court, which was convened to determine constitutional challenge to District of Columbia statute requiring district court judges to appoint board of education, did not have authority to hear other counts of complaint, which alleged racial and economic discrimination and which had no relation to first count except for identity of certain defendants. *Hobson v. Hansen* (D.C. 1966, 256 F. Supp. 18).

**Pupils and parents interest to challenge school board's authority**

Pupils in public schools administered by District of Columbia board of education and parents of those pupils had sufficient interest to challenge authority of the board to administer the schools on theory that statute providing that members of board shall be appointed by United States District Court judges of the District of Columbia is unconstitutional. *J. W. Hobson, etc., et al. v. C. F. Hansen, Superintendent etc., et al.* (1967, 265 F. Supp. 902).

The fact that issue of basic authority of District of Columbia board of education to administer schools might escape resolution unless pupils and their guardians or parents had standing to challenge validity of statute purportedly giving that authority argued for resolving doubts, if any, as to standing in favor of the pupils, parents, and guardians, in absence of hard and fast rule governing standing to sue. *Id.*

**§ 31-102. Appointment—Promotion—Transfer or dismissal of directors, teachers, upon recommendation of superintendent.**

No appointment, promotion, transfer, or dismissal of any director, supervising principal, principal, head of department, teacher, or any other subordinate to the superintendent of schools shall be made by the Board of Education, except upon the written recommendation of the superintendent of schools. (June 20, 1906, 34 Stat. 317, ch. 3446, § 2 (2d par.); redesignated as subsection (f) of § 2 by Act Apr. 22, 1968, Pub. L. 90-292, § 3(b), 82 Stat. 102.)

**CODIFICATION**

See note under § 31-101.

**AMENDMENT**

1968—Section 3(d) of Pub. L. 90-292 amended this section by striking out "board of education" and "board" each place they appear and inserted in lieu thereof "Board of Education" and "Board" respectively.

**EFFECTIVE DATE OF PUB. L. 90-292 AND TERMINATION OF OFFICE**

See note to § 31-101.

**CROSS REFERENCE**

General provisions concerning teachers, school officers, and other employees, see § 31-601 et seq.

**NOTES TO DECISIONS****Appointment of teachers**

The secretary of the board is not empowered to appoint teachers but this power is vested in the board. *Coleman v. District of Columbia* (1922, 279 F. 990, 51 App. D.C. 352).

Letter from secretary notifying teacher of appointment does not estop the board from denying that she was appointed without condition. *Id.*

**Employment contracts**

Where acceptance form specified that position of principal in District of Columbia regular summer school program was subject to approval by the Board of Education, and no such approval was forthcoming, no binding contract of employment existed before the applicant was notified that she did not meet revised criteria for appointment, and hence applicant is not entitled to recover for loss of income following withdrawal of her appointment as principal, although offer of appointment stated that appointment was subject to full funding of program, which it received. *Board of Education of D.C. et al. v. J. C. Wilson* (D.C. App. 1972, 290 A. 2d 400).

**Mandamus to restore position**

Board of Education may be compelled by mandamus to restore to position a school matron dismissed without authority from superintendent. *Whitwell v. United States ex rel. Selden* (1932, 58 F. 2d 895, 61 App. D.C. 169).

**Rules of board**

The board being empowered to make rules and regulations, they must be deemed to have the force and effect of law. *United States ex rel. Denney v. Callahan* (1924, 294 F. 992, 54 App. D.C. 61). See, also, *United States ex rel. Cromwell v. Doyle* (1938, 99 F. 2d 448, 69 App. D.C. 215).

**§ 31-103. Determination of general policies—Expenditures of funds—Appointment of teachers and employees.**

The Board shall determine all questions of general policy relating to the schools, shall appoint the executive officers hereinafter provided for, define their duties, and direct expenditures. All expenditures of public funds for such school purposes shall be made and accounted for as now provided by law under the direction and control of the Commissioner of the District of Columbia. The Board shall appoint all teachers in the manner hereinafter prescribed and all other employees provided for in this chapter. (June 20, 1906, 34 Stat. 317, ch. 3446, § 2 (3d par.); redesignated as subsection (g) of § 2 by Act Apr. 22, 1968, Pub. L. 90-292, § 3(b), 82 Stat. 102.)

**CODIFICATION**

See note under § 31-101.

**AMENDMENT**

1968—Section 3(d) of Pub. L. 90-292 amended this section by striking out "board of education" and "board" each place they appear and inserted in lieu thereof "Board of Education" and "Board" respectively.

**EFFECTIVE DATE OF PUB. L. 90-292 AND TERMINATION OF OFFICE**

See note to § 31-101.

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**NOTES TO DECISIONS****Due process**

Conduct of Board of Education in denying children, who had been labeled as behavioral problems, mentally retarded, emotionally disturbed or hyperactive, and their class all publicly supported education while providing such education to other children violated due process clause. *P. Mills et al. v. Board of Education of the District of Columbia et al.* (1972, 348 F. Supp. 866).



Due process of law required a hearing before children, who had been labeled behavioral problems, mentally retarded, emotionally disturbed or hyperactive, were suspended or expelled from regular schooling in public supported schools or reassigned for specialized instruction. *Id.*

#### Equalization of expenditures

Where District's elementary schools that had 74% white enrollment had 15.5% smaller pupil-teacher ratio, 9.7% greater average teacher cost and 26.7% greater teacher expenditure per pupil than did elementary schools that had 98% black enrollment, notwithstanding contentions that discrepancies were random, were due to technological reasons beyond defendants' control, and were inconsequential, right to equal educational opportunity was being denied, and it would be ordered that per pupil expenditures for teachers' salaries and benefits in any elementary school not deviate, except for adequate justification, by more than 5% from mean per pupil expenditure for teachers' salaries and benefits at all elementary schools in District. *J. W. Hobson etc., et al. v. C. F. Hansen, Superintendent etc. et al.* (1971, 327 F. Supp. 844).

#### Equitable expenditures

If sufficient funds were not available to finance all of services and programs that were needed and desirable in public school system, then available funds must be expended equitably in such manner that no child was entirely excluded from publicly supported education consistent with his needs and ability to benefit therefrom. *P. Mills et al. v. Board of Education of the District of Columbia et al.* (1972, 348 F. Supp. 866).

Inadequacies of District of Columbia public school system, whether occasioned by insufficient funding or administrative inefficiency, could not be permitted to bear more heavily on the "exceptional" or handicapped child than on the normal child. *Id.*

#### Specialized instruction

Board of Education has obligation to provide whatever specialized instruction that will benefit child determined to have behavioral problems, to be mentally retarded, or be emotionally disturbed or hyperactive. *P. Mills et al. v. Board of Education of the District of Columbia et al.* (1972, 348 F. Supp. 866).

Board of Education by failing to provide children, who had been labeled as behavioral problems, mentally retarded, emotionally disturbed or hyperactive, and the class they represented with publicly supported specialized education violated controlling statutes and Board's own regulations. *Id.*

No child eligible for publicly supported education in District of Columbia public schools shall be excluded from a regular public school assignment by a rule, policy or practice of Board of Education of District of Columbia or its agents unless child is provided adequate alternative educational services suited to child's needs, which may include special education or tuition grants, and a constitutionally adequate prior hearing, and periodic review of child's status, progress, and adequacy of any educational alternative. *Id.*

#### § 31-104. Annual estimates.

The Board of Education shall annually on the first day of October transmit to the Commissioner of the District of Columbia an estimate in detail of the amount of money required for the public schools for the ensuing year, and said Commissioner shall transmit the same in his annual estimate of appropriations for the District of Columbia, with such recommendations as he may deem proper. (June 20, 1906, 34 Stat. 317, ch. 3446, § 2 (4th par.); redesignated as subsection (h) of § 2 by Act Apr. 22, 1968, Pub. L. 90-292, § 3(b), 82 Stat. 102.)

#### CODIFICATION

See note under § 31-101.

#### AMENDMENT

1968—Section 3(d) of Pub. L. 90-292 amended this section by striking out "board of education" and "board" each place they appear and inserted in lieu thereof "Board of Education" and "Board" respectively.

EFFECTIVE DATE OF PUB. L. 90-292 AND TERMINATION OF OFFICE

See note to § 31-101.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### TRANSFER OF FUNCTIONS

For transfer of functions with respect to budgetary matters, see § 403 of Reorg. Plan No. 3 of 1967, set out in the Appendix to title 1.

#### CROSS REFERENCES

Apportionment of funds between white and colored schools, see § 31-1112.

Budget estimates, see §§ 47-202, 47-203.

Transportation of students, use of appropriated funds restricted, see § 31-1118.

#### STATUTORY REFERENCE

Budget and Accounting Act, 1921, see 31 U.S.C. ch. 1.

#### § 31-104a. Members exempt from personal liability—Costs and supersedeas bond.

The members of the Board of Education of the District of Columbia shall not be personally liable in damages for any official action of the said Board performed in good faith in which the said members participate, nor shall any member of said Board be liable for any costs that may be taxed against them or the Board on account of any such official action by them as members of the said Board; but such costs shall be charged to the District of Columbia and paid as other costs are paid in suits brought against the municipality; nor shall the said Board or any of its members be required to give any supersedeas bond or security for costs or damages on any appeal whatever. (June 20, 1906, 34 Stat. 316, ch. 3446, § 2; 5th par., as added Jan. 26, 1929, 45 Stat. 1139, ch. 105; redesignated as subsection (i) of § 2 by Apr. 22, 1968, Pub. L. 90-292, § 3(b), 82 Stat. 102.)

#### CODIFICATION

This section was formerly the seventh sentence of subsection (a) of former section 31-101 as set out in the 1967 edition of the Code, and was the fifth paragraph of the Act of June 20, 1906, as amended by the Act of Jan. 26, 1929, Sec. 3(b) of the Act of Apr. 22, 1968, Pub. L. 90-292, redesignated this paragraph as subsection (i) of the Act of June 20, 1906, as amended and the same is therefor set out herein as a separate section. See also codification and amendment notes under § 31-101.

#### AMENDMENT

1968—Section 3(d) of Pub. L. 90-292, amended this section by striking out "board of education" and "board" each place they appear and inserted in lieu thereof "Board of Education" and "Board" respectively.

EFFECTIVE DATE OF PUB. L. 90-292 AND TERMINATION OF OFFICE

See note to § 31-101.

#### § 31-104b. Coordination with the District of Columbia Government.

(a) The Board of Education and the Commissioner of the District of Columbia shall jointly develop procedures to assure the maximum coordination of educational and other municipal programs



and services in achieving the most effective educational system and utilization of educational facilities and services to serve broad community needs. Such procedures shall cover such matters as—

(1) design and construction of educational facilities to accommodate civic and community activities such as recreation, adult and vocational education and training, and other community purposes;

(2) full utilization of educational facilities during nonschool hours for community purposes;

(3) utilization of municipal services such as police, sanitation, recreational, maintenance services to enhance the effectiveness and stature of the school in the community;

(4) arrangements for cost-sharing and reimbursements on school and community programs involving utilization of educational facilities and services; and

(5) other matters of mutual interest and concern.

(b) The Board of Education may invite the Commissioner of the District of Columbia or his designee to attend and participate in meetings of the Board on matters pertaining to coordination of educational and other municipal programs and services and on such other matters as may be of mutual interest. (Apr. 22, 1968, Pub. L. 90-292, § 5, 82 Stat. 107.)

EFFECTIVE DATE OF PUB. L. 90-292 AND TERMINATION OF OFFICE

See note to § 31-101.

#### § 31-105. Superintendent—Appointment—Term of office—Duties.

The Board shall appoint one superintendent for all the public schools in the District of Columbia, who shall hold said office for a term of three years and who shall have the direction of and supervision in all matters pertaining to the instruction in all the schools under the Board of Education. He shall have a seat in the Board and the right to speak on all matters before the Board, but not the right to vote. (June 20, 1906, 34 Stat. 317, ch. 3446, § 3; Apr. 22, 1968, Pub. L. 90-292, § 3(d), 82 Stat. 102.)

##### AMENDMENT

1968—Section 3(d) of Pub. L. 90-292, amended this section by striking out "board of education" and "board" each place they appear and inserted in lieu thereof "Board of Education" and "Board" respectively.

EFFECTIVE DATE OF PUB. L. 90-292 AND TERMINATION OF OFFICE

See note to § 31-101.

##### CROSS REFERENCES

Approval of free textbooks and supplies, see § 31-404.

Excusing children who are regularly employed from school attendance, see § 31-202.

Ex officio member of Commission on Licensure to Practice Healing Art, see § 2-103.

Removal of superintendent, see § 31-108.

School census, see § 31-208 et seq.

#### § 31-106. Superintendent authorized to act between meetings of the board.

The superintendent of schools of the District of Columbia is authorized to accept the resignation or the application for retirement of any employee, to

grant leave of absence to any employee, to extend or terminate any temporary appointment, and to make all changes in personnel and appointments growing out of such resignation, retirement, leave of absence, termination of temporary appointment, or caused by the decease or suspension of any employee, or the organization of a new class or classes, and to perform such other duties necessary for the operation of the public school system as may be authorized by the Board of Education, provisionally and until the next regular meeting of the Board of Education. (Apr. 22, 1932, 47 Stat. 134, ch. 131, § 1.)

##### CROSS REFERENCE

Appointment, promotion, transfer, or dismissal of teachers or directors, recommendation of superintendent, see § 31-102.

##### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-107.

#### § 31-107. Acting superintendent authorized to act in absence of superintendent.

The authority conferred on the superintendent of schools by section 31-106 shall, during his authorized absence, devolve on the person designated as acting superintendent of schools. (Apr. 22, 1932, 47 Stat. 134, ch. 131, § 2.)

#### § 31-108. Removal of superintendent.

The Board shall have power to remove the superintendent at any time for adequate cause affecting his character and efficiency as superintendent. (June 20, 1906, 34 Stat. 317, ch. 3446, § 3; Apr. 22, 1968, Pub. L. 90-292, § 3(d), 82 Stat. 102.)

##### AMENDMENT

1968—Section 3(d) of Pub. L. 90-292, amended this section by striking out "board of education" and "board" each place they appear and inserted in lieu thereof "Board of Education" and "Board" respectively.

EFFECTIVE DATE OF PUB. L. 90-292 AND TERMINATION OF OFFICE

See note to § 31-101.

#### § 31-109. Repealed. July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21, eff. July 1, 1945.

Section, act June 4, 1924, 43 Stat. 374, ch. 250, § 12, provided for two first assistant superintendents of schools, one for the white and one for the colored schools, and described their duties.

#### § 31-110. Director of intermediate instruction for white schools—Appointment—Duties.

The Board, upon the written recommendation of the superintendent of schools, shall appoint a director of intermediate instruction for the white schools who shall have charge under the direction of the superintendent of the unification of educational work of grades five to eight, inclusive. (June 20, 1906, 34 Stat. 317, ch. 3446, § 3; Apr. 22, 1968, Pub. L. 90-292, § 3(d), 82 Stat. 102.)

##### AMENDMENT

1968—Section 3(d) of Pub. L. 90-292, amended this section by striking out "board of education" and "board" each place they appear and inserted in lieu thereof "Board of Education" and "Board" respectively.

EFFECTIVE DATE OF PUB. L. 90-292 AND TERMINATION OF OFFICE

See note under § 31-101.



**§ 31-111. Supervisor of manual training—Appointment—Duties.**

There shall be appointed by the Board a supervisor of manual training who, under the direction of the superintendent, shall have supervision of manual training instruction. (June 20, 1906, 34 Stat. 317, ch. 3446, § 3; Apr. 22, 1968, Pub. L. 90-292, § 3(d), 82 Stat. 102.)

**AMENDMENT**

1968—Section 3(d) of Pub. L. 90-292, amended this section by striking out "board of education" and "board" each place they appear and inserted in lieu thereof "Board of Education" and "Board" respectively.

**EFFECTIVE DATE OF PUB. L. 90-292 AND TERMINATION OF OFFICE**

See note under § 31-101.

**§ 31-112. Classification of academic and scientific subjects in certain high schools.**

The Board of Education shall classify all academic and scientific subjects in the Central, Eastern, Western, and Business High Schools, and the McKinley Manual Training School into eight departments so that each department shall contain correlated subjects and the M Street High School and the Armstrong Manual Training School shall be similarly classified into four departments so that each department shall contain correlated subjects. (June 20, 1906, 34 Stat. 319, ch. 3446, § 5; Apr. 22, 1968, Pub. L. 90-292, § 3(d), 82 Stat. 102.)

**AMENDMENT**

1968—Section 3(d) of Pub. L. 90-292, amended this section by striking out "board of education" and "board" each place they appear and inserted in lieu thereof "Board of Education" and "Board" respectively.

**EFFECTIVE DATE OF PUB. L. 90-292 AND TERMINATION OF OFFICE**

See note under § 31-101.

**§ 31-113. "Head of the department" and "head teacher" defined—Duties—Limitation as to number of students in classes.**

Whenever a department includes two or more high schools then the teacher in charge of the department shall be designated "head of the department," otherwise the teacher in charge of the department shall be designated "head teacher": *Provided*, That heads of departments as such have only an advisory capacity in educational matters and upon all questions shall be inferior in authority to the principal of each particular school: *Provided further*, That no class shall be formed in the high schools with less than ten pupils for a period not longer than fifteen days. (June 20, 1906, 34 Stat. 319, ch. 3446, § 5.)

**CROSS REFERENCE**

Head of department of military science and tactics, see § 31-622a.

**§ 31-114. Teachers and officials—Examination—Qualifications—Appointments.**

No teacher, head of department, principal, or supervising principal shall be appointed to any position in the graded schools, high schools, manual training schools, or teachers' college, and no director, assistant director, or teacher of special studies shall be appointed until he shall have passed an examination

prescribed by the boards of examiners. No person without a degree from an accredited college, or a graduation certificate from an accredited normal school, such normal school graduate to have had at least five years of experience as a teacher in a high school, shall on and after June 20, 1906 be appointed to teach any academic or scientific subjects in the teachers' college, high, and manual training schools. This provision for examination shall not apply to teachers coming from the teachers' college, or teachers being advanced from the different classes in the grade schools. No teacher of manual training, drawing, domestic science, domestic art, music and physical culture in the teachers' college, high and manual training schools shall be appointed without like qualifications to those required of teachers of academic and scientific subjects in the high schools, and teachers of those subjects shall receive their longevity increase according to their previous number of years of experience in teaching in accredited normal, high and manual training high school. (June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 26, 1912, 37 Stat. 156, ch. 182; Feb. 25, 1929, 45 Stat. 1276, ch. 314, § 1.)

**CODIFICATION**

References to normal school were changed to teachers college to conform to the provision of the District of Columbia Appropriation Act, 1930, which provided for expansion of the normal schools into teachers' colleges.

Provision for qualification requirements and longevity increases of teachers of manual training, drawing, domestic science, domestic art, music and physical culture is from the District of Columbia Appropriation Act, 1913.

Section is from part of seventh par. of section 6 of the District of Columbia Teachers' Salary Act of 1906.

**CROSS REFERENCE**

Teaching the nature and effect of alcoholic drinks and narcotics on the human system, and requiring teachers to be qualified in the teaching thereof, see 20 U.S.C. §§ 111—113.

**NOTES TO DECISIONS**

**Qualifications**

Possession of college degree does not alone fulfill eligibility requirements for senior and normal school teachers. *United States ex rel. Gillem v. Carusi* (1929, 32 F. 2d 942, 59 App. D.C. 46).

**Salary**

When teacher is promoted from class 4 to position of high school teacher in class 6, she is entitled to the increase in salary provided by this act. *District of Columbia v. Gardner* (1924, 298 F. 1005, 54 App. D.C. 390).

**§ 31-115. Principals of schools—Duties.**

Principals of normal, high, and manual training schools shall each have entire control of his school, both executive and educational, subject only in authority to the superintendent of schools for the white schools and to the colored assistant superintendent for the colored schools, to whom in each case he shall be directly responsible. (June 20, 1906, 34 Stat. 320, ch. 3446, § 7.)

**ASSISTANT SUPERINTENDENT OF SCHOOLS**

Provision of two first assistant superintendent of schools, one for the white and one for the colored schools and description of their duties, formerly contained in Act June 4, 1924, 43 Stat. 374, ch. 250, § 12, set out as section 31-109, was repealed by act July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21, eff. July 1, 1945.



**§ 31-116. Teachers on trial or under investigation to have counsel.**

When a teacher is on trial or being investigated he or she shall have the right to be attended by counsel and by at least one friend of his or her selection. (June 20, 1906, 34 Stat. 321, ch. 3446, § 10.)

**NOTES TO DECISIONS**

**Generally**

See *Nalle v. Oyster* (1913, 33 S. Ct. 1043, 230 U.S. 165, 57 L. Ed. 1439).

**§ 31-117. Masculine pronoun to include both male and female.**

Wherever the masculine pronoun occurs in this chapter it shall be construed to apply to either male or female teachers or employees of the Board of Education. (June 20, 1906, 34 Stat. 321, ch. 3446, § 12; Apr. 22, 1968, Pub. L. 90-292, § 3(d), 82 Stat. 102.)

**AMENDMENT**

1968—Section 3(d) of Pub. L. 90-292, amended this section by striking out "board of education" and "board" each place they appear and inserted in lieu thereof "Board of Education" and "Board" respectively.

**EFFECTIVE DATE OF PUB. L. 90-292 AND TERMINATION OF OFFICE**

See note under § 31-101.

**§ 31-118. Teachers' college—Expansion of normal schools.**

The Board of Education shall have power to make all necessary rules and regulations for the organization and government of the normal schools, to prescribe the course of study to be pursued therein, and to fix terms for the admission and graduation of pupils: *Provided*, That the Board of Education is hereby authorized, under appropriations hereafter to be made, to expand the two existing normal schools into teachers' colleges, and at the end of the fourth year thereof to award appropriate degrees. (Leg. Assem., June 23, 1873, p. 50, ch. 8, § 3; Feb. 25, 1929, 45 Stat. 1276, ch. 314, § 1.)

**CODIFICATION**

Proviso is from the District of Columbia Appropriation Act, 1930.

**CROSS REFERENCE**

Assumption of control of District of Columbia Teachers College by Board of Higher Education, transfer of personnel, property, etc., exceptions, etc., see § 31-1603(a) (12).

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 31-1603.

**NOTES TO DECISIONS**

**Nonresidents**

Where section 303 of this title showed that Congress assumed to deal with the subject specifically and in mandatory language, this section did not authorize the board in its discretion to impose a charge on a nonresident student whose father was employed in the District of Columbia. *Cavanaugh v. Ballou* (D.C.D.C. 1941, 36 F. Supp. 445).

**§ 31-119. Repealed. July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21, eff. July 1, 1945.**

Section, acts June 20, 1906, 34 Stat. 316, ch. 3446, § 2; June 4, 1924, 43 Stat. 374, ch. 250, § 11, required the Board of Education to designate the number of classrooms in elementary school buildings for the purpose of determining the classification of teaching and administrative principals.

**§ 31-120. Accrediting junior colleges—Effect.**

The Board of Education shall be, and is hereby, authorized and empowered to accredit junior colleges operating within the District of Columbia: *Provided*, That the entrance requirements of such junior colleges be not less than high-school graduation, and the number of semester hours required for the title Associate in Arts or Associate in Science be not less than sixty, and the number and character of the courses offered and the number and qualifications of the faculty be reasonable, and the institution be possessed of suitable classroom, laboratory, and library equipment.

Accreditation by the Board of Education of the District of Columbia shall have the same force and effect as is usual in the case of accreditation by the various accrediting agencies of the several states of the Union. (July 2, 1940, 54 Stat. 729, ch. 523.)

**§ 31-121. Education of pages—Board authorized to employ and compensate personnel.**

The Board of Education of the District of Columbia is hereby authorized to employ such personnel for the education of pages as may be required and to pay compensation for such services in accordance with such rates of compensation as the Board of Education may prescribe. (July 10, 1972, Pub. L. 92-342, § 101, 86 Stat. 441.)

**CODIFICATION**

The provisions of this section were taken from the Legislative Branch Appropriation Act for 1973 and are contained in Pub. L. 92-342, 86 Stat. 441, under the heading, "Education of Pages", which provides for the education of Congressional and Supreme Court pages.

**SIMILAR PROVISIONS**

Provisions similar to those in this section are contained in the following legislative appropriation acts and in a number of earlier appropriation acts:

1972—July 9, 1971, Pub. L. 92-51, § 101, 85 Stat. 136.  
1971—Aug. 18, 1970, Pub. L. 91-382, § 101, 84 Stat. 817.  
1970—Dec. 12, 1969, Pub. L. 91-145, § 101, 83 Stat. 350.  
1969—July 23, 1968, Pub. L. 90-417, § 101, 82 Stat. 407.  
1968—July 28, 1967, Pub. L. 90-57, § 101, 81 Stat. 134.

**Chapter 2—COMPULSORY SCHOOL ATTENDANCE AND WORK PERMITS**

**Sec**

- 31-201. Resident children of 7 to 16 years to have instruction during school year—Duty of parent or guardian.
- 31-202. Employed children between 14 and 16 excused from attendance after completing eighth grade.
- 31-203. Mentally or physically unfit excused from attendance—Specialized instruction.
- 31-204. Board of Education to define valid excuses for absence—Absence without valid excuse unlawful.
- 31-205. Daily record of attendance.
- 31-206. Designated absences in a month to be reported.
- 31-207. Failure to keep child at school a misdemeanor—Penalty.

**SCHOOL CENSUS**

- 31-208. Census of children between ages of 3 and 18 years—Daily amendment—Details of enumeration.
- 31-209. Enrollment and withdrawal of pupils to be reported.
- 31-210. Neglect or refusal to furnish information for enumeration—Penalty.



## ADMINISTRATION

Sec.

- 31-211. Department of school attendance and work permits—Creation.
- 31-212. Director—Appointment—Employees—Competitive examinations.
- 31-213. Family Division of Superior Court given jurisdiction.

**§ 31-201. Resident children of 7 to 16 years to have instruction during school year—Duty of parent or guardian.**

Every parent, guardian, or other person residing permanently or temporarily in the District of Columbia who has custody or control of a child between the ages of seven and sixteen years shall cause said child to be regularly instructed in a public school or in a private or parochial school or instructed privately during the period of each year in which the public schools of the District of Columbia are in session: *Provided*, That instruction given in such private or parochial school, or privately, is deemed equivalent by the Board of Education to the instruction given in the public school. (Feb. 4, 1925, 43 Stat. 806, ch. 140, Art. I, § 1.)

## CROSS REFERENCES

- Board of education, see § 31-101 et seq.
- Child labor and working permits generally, see title 36, ch. 2.
- Department of school attendance and work permits, see § 31-211 et seq.
- Length of school day, see § 31-1101.
- School census, see § 31-208 et seq.
- Selection of school to be attended, see § 31-1111.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-202, 31-205, 31-208, 31-210 to 31-213.

**§ 31-202. Employed children between 14 and 16 excused from attendance after completing eighth grade.**

Any child between the ages of fourteen and sixteen years who has completed satisfactorily the eighth-grade course of study prescribed for the public elementary schools of the District of Columbia, or a course of study deemed by the Board of Education equivalent thereto, may be excused by the superintendent of schools from further attendance at school under the provisions of sections 31-201 to 31-210, provided he is actually, lawfully, and regularly employed. (Feb. 4, 1925, 43 Stat. 806, ch. 140, Art. I, § 2.)

## CROSS REFERENCE

- Powers and duties of superintendent, see § 31-105.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-205, 31-208, 31-210 to 31-213.

**§ 31-203. Mentally or physically unfit excused from attendance—Specialized instruction.**

The Board of Education of the District of Columbia may issue a certificate excusing from attendance at school a child who, upon examination ordered by such board, is found to be unable mentally or physically to profit from attendance at school: *Provided, however*, That if such examination shows that such child may benefit from specialized instruction adapted to his needs, he shall attend upon such instruction. (Feb. 4, 1925, 43 Stat. 806, ch. 140, Art. I, § 3.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-202, 31-205, 31-208, 31-210 to 31-213.

## NOTES TO DECISIONS

## Due process

Conduct of Board of Education in denying children, who had been labeled as behavioral problems, mentally retarded, emotionally disturbed or hyperactive, and their class all publicly supported education while providing such education to other children violated due process clause. *P. Mills et al. v. Board of Education of the District of Columbia et al.* (1972, 348 F. Supp. 866).

Due process of law required a hearing before children, who had been labeled behavioral problems, mentally retarded, emotionally disturbed or hyperactive, were suspended or expelled from regular schooling in public supported schools or reassigned for specialized instruction. *Id.*

## Exclusion from school

No child eligible for publicly supported education in District of Columbia public schools shall be excluded from a regular public school assignment by a rule, policy or practice of Board of Education of District of Columbia or its agents unless child in provided adequate alternative educational services suited to child's needs, which may include special education or tuition grants, and a constitutionally adequate prior hearing, and periodic review of child's status, progress, and adequacy of any educational alternative. *P. Mills et al. v. Board of Education of the District of Columbia et al.* (1972, 348 F. Supp. 866).

## Specialized instruction

Board of Education has obligation to provide whatever specialized instruction that will benefit child determined to have behavioral problems, to be mentally retarded, or to be emotionally disturbed or hyperactive. *P. Mills et al. v. Board of Education of the District of Columbia et al.* (1972, 348 F. Supp. 866).

Board of Education by failing to provide children, who had been labeled as behavioral problems, mentally retarded, emotionally disturbed or hyperactive, and the class they represented with publicly supported specialized education violated controlling statutes and Board's own regulations. *Id.*

**§ 31-204. Board of Education to define valid excuses for absence—Absence without valid excuse unlawful.**

The Board of Education shall define in its rules and regulations valid excuses for absence from school, and the absence of a child between the ages of seven and sixteen years for any reason other than so defined as valid shall be unlawful. (Feb. 4, 1925, 43 Stat. 806, ch. 140, Art. I, § 4.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-202, 31-205, 31-208, 31-210 to 31-213.

**§ 31-205. Daily record of attendance.**

An accurate daily record of the attendance of all children between the ages of seven and sixteen years shall be kept by the teachers of every public, private, or parochial school and by every teacher giving instruction privately. Such record shall at all times be open to the school-attendance officers or other persons authorized to enforce sections 31-201 to 31-210, who may inspect and copy the same. (Feb. 4, 1925, 43 Stat. 806, ch. 140, Art. I, § 5.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-202, 31-208, 31-210 to 31-213.



§ 31-206. Designated absences in a month to be reported.

It shall be the duty of every principal or head teacher of every public, private, or parochial school, or private teacher to report to the department of school attendance and work permits the name and address of any child between the ages of seven and sixteen years enrolled in his school whenever such child has been absent from school two day sessions or four one-half day sessions or more in any school month, together with the reason for such absence as far as known. (Feb. 4, 1925, 43 Stat. 807, ch. 140. Art. I, § 6.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-202, 31-205, 31-208, 31-210 to 31-213.

§ 31-207. Failure to keep child at school a misdemeanor—Penalty.

The parent, guardian, or other person residing permanently or temporarily in the District of Columbia and having charge or control of any child between the ages of seven and sixteen years who is unlawfully absent from public or private school or private instruction shall be guilty of a misdemeanor, and upon conviction of failure to keep such child regularly in public or private school or to cause it to be regularly instructed in private, shall be punished by a fine of \$10 or by commitment to jail for five days, or by both, at the discretion of the court: *Provided*, That each two days such child remains away from school unlawfully shall constitute a separate offense: *Provided further*, That upon conviction of the first offense, sentence may, upon payment of costs, be suspended and the defendant placed on probation. (Feb. 4, 1925, 43 Stat. 807, ch. 140, Art. I, § 7.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-202, 31-205, 31-208, 31-210 to 31-213.

### SCHOOL CENSUS

§ 31-208. Census of children between ages of 3 and 18 years—Daily amendment—Details of enumeration.

It shall be the duty of the director of school attendance and work permits, under instruction of the superintendent of schools, approved by the Board of Education, to cause to be made, annually or as frequently as may be found necessary or desirable, a complete census of all children between the ages of three and eighteen years permanently or temporarily residing in the District of Columbia. Such census shall be amended from day to day as changes of residence occur among children within the ages prescribed in sections 31-201 to 31-210, and as other persons come within the ages prescribed, and as other persons within such ages shall become residents of the District. The record of such enumeration of children shall give the full name, address, race, sex, and date and place of birth of every such child, the school attended by him, and if the child is not at school the name and address of his employer, if any, and the name, address, and occupation of the parents or guardian. (Feb. 4, 1925, 43 Stat. 807, ch. 140, Art. II, § 1.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-202, 31-205, 31-210 to 31-213.

§ 31-209. Enrollment and withdrawal of pupils to be reported.

It shall be the duty of the principal or head teacher of every public, private, or parochial school or private teacher, in accordance with the rules adopted by the Board of Education, to report to the director of the department of school attendance and work permits the name, address, sex, age, and race of every child under eighteen years of age residing permanently or temporarily in the District of Columbia who enrolls in or withdraws from his school. (Feb. 4, 1925, 43 Stat. 807, ch. 140, Art. II, § 2.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-202, 31-205, 31-208, 31-210 to 31-213.

§ 31-210. Neglect or refusal to furnish information for enumeration—Penalty.

Any parent, guardian, custodian, principal, or teacher of a child between the ages of three and eighteen who willfully neglects or refuses to provide the information required by sections 31-201 to 31-210, or who knowingly makes any false or untrue statement, shall be guilty of a misdemeanor and on conviction shall be punished by a fine of \$10 or by commitment to jail for five days, or by both, at the discretion of the court. (Feb. 4, 1925, 43 Stat. 807, ch. 140, Art. II, § 3.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-202, 31-205, 31-208, 31-211 to 31-213.

### ADMINISTRATION

§ 31-211. Department of school attendance and work permits—Creation.

The Board of Education is hereby authorized to consolidate the administrative duties incident to the enforcement of the provisions of sections 31-201 to 31-213 and of the act to regulate child labor under a single division to be known as the department of school attendance and work permits. (Feb. 4, 1925, 43 Stat. 807, ch. 140, Art. III, § 1.)

#### CROSS REFERENCE

Child Labor Law and powers and duties of Board of Education, see § 36-201 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-212, 31-213, 36-209.

§ 31-212. Director—Appointment — Employees — Competitive examinations.

The Board of Education is hereby authorized, empowered, and directed to appoint a director of said department whose rank shall correspond to that of other directors who serve as officers of the Board of Education, and who shall be known as the Director of the Department of School Attendance and Work Permits, and also to appoint such a number of attendance officers, inspectors, clerks, and other assistants as shall be necessary to carry out the provisions of sections 31-201 to 31-213.

Such appointments, other than that of the director of said department and clerks, shall be made



from a list of applicants obtained from open competitive examinations conducted by the respective boards of examiners of the Board of Education, and designed to test the fitness of the applicants for the duties to be performed. (Feb. 4, 1925, 43 Stat. 808, ch. 140, Art. III, § 2; July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21.)

#### AMENDMENT

1945—Act July 21, 1945, amended section by striking out "and who shall be paid the same salary as said directors," following "Board of Education" in first par.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-211, 31-213, 36-209.

§ 31-213. Family Division of Superior Court given jurisdiction.

The Family Division of the Superior Court is hereby given jurisdiction in all cases arising under sections 31-201 to 31-213. (Feb. 4, 1925, 43 Stat. 808, ch. 140, Art. III, § 3; May 29, 1928, 45 Stat. 1006, ch. 908, § 26; July 29, 1970, Pub. L. 91-358, title I, § 159(g), 84 Stat. 578.)

#### AMENDMENTS

1970—Section 159(g) of Act July 29, 1970, Public Law 91-358 amended section by striking out "juvenile Court" and inserting in lieu thereof "Family Division of the Superior Court."

1928—Act May 29, 1928, changed the word "from" to read "under."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-211, 31-212, 36-209.

### Chapter 3.—TUITION OF NONRESIDENTS

Sec.

31-301. Repealed.

31-301a. Attendance at Teachers' College by foreign students.

31-302 to 31-306. Repealed.

31-307. Payment of tuition by nonresidents—Board of Education to fix tuition—Deposit of payments—Exception.

31-308. Board of Education to determine who is required to pay tuition—Penalties—Prosecutions to be conducted by Corporation Counsel.

31-309. Definitions.

31-310. Authority not affected by reorganization plan—Delegation of functions—Section 31-301a to remain in full force and effect.

31-311. Payment of tuition by students of Teachers College.

§ 31-301. Repealed. Sept. 8, 1960, 74 Stat. 854, Pub. L. 86-725, § 6(1).

Section, acts Mar. 3, 1899, 30 Stat. 1056, ch. 422, § 1; Apr. 14, 1906, 34 Stat. 113, ch. 1623; June 26, 1912, 37 Stat. 161, ch. 182, related to the payment of tuition by nonresidents, and is now covered by sections 31-307 to 31-311.

#### EFFECTIVE DATE OF REPEAL

Repeal of section effective on the first day of the school semester which commences at least 60 days after Sept. 8, 1960, see section 8 of act Sept. 8, 1960, set out as a note under section 31-307.

§ 31-301a. Attendance at Teachers' College by foreign students.

Notwithstanding any other provision of law, not to exceed twenty-five foreign students who are in the United States on valid unexpired student visas may be permitted to attend the District of Columbia

Teachers College each year on the same basis, so far as payment of tuition and fees are concerned, as a resident of the District of Columbia. Admission to and attendance at such college by such students shall be subject to rules and regulations prescribed by the Board of Education of the District of Columbia. (Apr. 23, 1958, 72 Stat. 98, Pub. L. 85-384, § 1.)

#### CROSS REFERENCE

Assumption of control of District of Columbia Teachers College by Board of Higher Education, transfer of personnel, property, etc., exceptions, etc., see § 31-1603(a) (12).

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-310.

§§ 31-302 to 31-306. Repealed. Sept. 8, 1960, 74 Stat. 854, Pub. L. 86-725, § 6(2-6).

Section 31-302, act July 21, 1914, 38 Stat. 536, ch. 191, provided that taxes paid by nonresidents were to be credited against tutelage charges.

Section 31-303, act Mar. 3, 1915, 38 Stat. 910, ch. 80, § 1, authorized admission of pupils whose parents are employed in the District of Columbia.

Section 31-304, act Mar. 28, 1918, 40 Stat. 470, ch. 28, § 1, authorized admission of soldiers and sailors on duty at stations adjacent to District of Columbia.

Section 31-305, act June 28, 1944, 58 Stat. 515, ch. 300, § 1, authorized admission of children of officers and men of the Army, Navy and Marine Corps and of employees of the United States stationed outside the District of Columbia.

#### SIMILAR PROVISIONS

Similar provision to those formerly contained in section 31-305 appeared in the following prior appropriation acts:

1944—July 1, 1943, 57 Stat. 324, ch. 184, § 1.

1943—June 27, 1942, 56 Stat. 435, ch. 452, § 1.

1942—July 1, 1941, 55 Stat. 512, ch. 271, § 1.

1941—June 12, 1940, 54 Stat. 319, ch. 333, § 1.

1940—July 15, 1939, 53 Stat. 1017, ch. 281, § 1.

1939—Apr. 4, 1938, 52 Stat. 170, ch. 62, § 1.

1938—June 29, 1937, 50 Stat. 371, ch. 403, § 1.

1937—June 23, 1936, 49 Stat. 1869, ch. 726, § 1.

1936—June 14, 1935, 49 Stat. 356, ch. 241, § 1.

1935—June 4, 1934, 48 Stat. 860, ch. 389, § 1.

1934—June 16, 1933, 48 Stat. 236, ch. 93, § 1.

1933—June 29, 1932, 47 Stat. 360, ch. 308, § 1.

1932—Feb. 23, 1931, 46 Stat. 1394, ch. 282, § 1.

1931—July 3, 1930, 46 Stat. 969, ch. 848, § 1.

1930—Feb. 25, 1929, 45 Stat. 1279, ch. 314, § 1.

1929—May 21, 1928, 45 Stat. 662, ch. 659, § 1.

1928—Mar. 2, 1927, 44 Stat. 1314, ch. 271, § 1.

1927—May 10, 1926, 44 Stat. 433, ch. 276, § 1.

1926—Mar. 3, 1925, 43 Stat. 1233, ch. 477, § 1.

1925—June 7, 1924, 43 Stat. 558, ch. 302, § 1.

Section 31-306, act June 29, 1949, 63 Stat. 309, ch. 279, § 1, provided that no part of the appropriations made for the public schools shall be used for the free instruction of pupils who dwell outside the District of Columbia.

Sections 31-302 to 31-306 are now covered by sections 31-307 to 31-311.

#### EFFECTIVE DATE OF REPEAL

Repeal of sections effective on the first day of the school semester which commences at least 60 days after Sept. 8, 1960, see section 8 of act Sept. 8, 1960, set out as a note under section 31-307.

§ 31-307. Payment of tuition by nonresidents—Board of Education to fix tuition—Deposit of payments—Exception.

(a) In the case of (1) each adult who attends a public school of the District of Columbia and does not reside in the District of Columbia, and (2) each child who attends such a public school and does not have a parent or guardian who resides in the



District of Columbia, or is not an orphan, there shall be paid to the Board of Education the amount fixed by the Board of Education pursuant to subsection (b) of this section.

(b) The amount which shall be paid with respect to each person subject to subsection (a) of this section shall be fixed by the Board of Education with the approval of the District of Columbia Council as the amount necessary to cover the expense of tuition and cost of textbooks and school supplies used by such person.

(c) All amounts received by the Board of Education under this section shall be paid into the Treasury of the United States, to the credit of the District of Columbia.

(d) Notwithstanding the provisions of subsection (a) of this section, upon the submission of evidence satisfactory to the Board of Education that care, custody, and substantial support are supplied by the person or persons with whom a child is residing in the District of Columbia, and that the parent or guardian of such child is unable to supply such care, custody, and support, or that such child is self-supporting, such child shall be considered a resident of the District of Columbia for the purpose of school attendance and exempt from the requirement to pay tuition. (Sept. 8, 1960, 74 Stat. 853, Pub. L. 86-725, § 2.)

#### EFFECTIVE DATE

Section 8 of act Sept. 8, 1960, provided that:

"This Act [adding sections 31-307 to 31-311 and repealing sections 31-301 and 31-302 to 31-306] shall take effect on the first day of the school semester which commences at least sixty days after the date of enactment of this act [Sept. 8, 1960]."

#### SHORT TITLE

Section 1 of act Sept. 8, 1960, provided that: "This Act [adding sections 31-307 to 31-311 and repealing sections 31-301 and 31-302 to 31-306] may be cited as the 'District of Columbia Nonresident Tuition Act.'"

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(236) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of approving amounts fixed by the Board of Education to be paid for non-residents to cover the expense of tuition and costs of textbooks and school supplies under subsection (b), to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-308 to 31-311.

#### NOTES TO DECISIONS

##### Constitutionality

Since pupil had graduated from public elementary and high schools in District of Columbia, the claim by pupil and his next friend to enjoin enforcement of allegedly unconstitutional District of Columbia Non-Resident Public School Tuition Act is moot. *C. Truesdale etc. v. District of Columbia et al.* (1970, 436 F. 2d 288, 141 U.S. App. D.C. 134).

Fair issues of fact as to whether pupil was bona fide resident of District of Columbia, whether his parents denied financial responsibility for his upkeep, including school tuition, whether his parents were financially able to support him, and whether considerations supporting tuition requirements for nonresidents attending a state university and for nonresidents attending public ele-

mentary and high schools are the same, preclude summary judgment in action by pupil and his next friend to recover tuition allegedly improperly exacted under allegedly unconstitutional District of Columbia Non-Resident Public School Tuition Act. *Id.*

#### § 31-308. Board of Education to determine who is required to pay tuition—Penalties—Prosecutions to be conducted by Corporation Counsel.

(a) The Board of Education shall take such action as may be necessary to determine which of the persons, attending or desiring to attend the public schools of the District of Columbia, for whom tuition shall be paid as required by section 31-307, and said Board is authorized, with the approval of the District of Columbia Council, to make regulations to carry out the intent and purposes of sections 31-307 to 31-311.

(b) Any person who makes a statement required or authorized by sections 31-307 to 31-311 to be filed with the Board of Education knowing that the information set forth in such statement is false, shall be fined not more than \$300 or imprisoned for not more than ninety days, or both. Any person violating any regulation made pursuant to the authority in sections 31-307 to 31-311 shall be fined not more than \$100 or imprisoned for not more than thirty days.

(c) All prosecutions for violations of sections 31-307 to 31-311, or regulations made pursuant thereto, shall be conducted in the name of the District of Columbia by the Corporation Counsel or any of his assistants. As used in sections 31-307 to 31-311 the term "Corporation Counsel" means the attorney for the District of Columbia, by whatever title such attorney may be known, designated by the Commissioner of the District of Columbia to perform the functions prescribed for the Corporation Counsel in sections 31-307 to 31-311. (Sept. 8, 1960, 74 Stat. 853, Pub. L. 86-725, § 3.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(237) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of approving regulations made by the Board of Education to carry out the intent and purposes of the §§ 31-307 to 31-311 under subsection (a), to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-309 to 31-311.

#### § 31-309. Definitions.

As used in sections 31-307 to 31-311—

(1) the term "child" means a person who is less than twenty-one years of age,

(2) the term "orphan" means a child who resides in the District of Columbia and who does not have a living parent or guardian;

(3) the term "adult" means a person who is twenty-one years of age, or older;

(4) the term "guardian" means a person (A) appointed as a guardian for a child by a court of competent jurisdiction, and



(B) who has control or custody of such child;

(5) the term "parent" means a person (A) who (i) is a natural parent of a child (ii) is a step-father or stepmother of a child, or (iii) has adopted a child, and (B) who has custody or control of such child; and

(6) the term "Board of Education" means the Board of Education of the District of Columbia. (Sept. 8, 1960, 74 Stat. 854, Pub. L. 86-725, § 4.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-308, 31-310, 31-311.

**§ 31-310. Authority not affected by reorganization plan—Delegation of functions—Section 31-301a to remain in full force and effect.**

(1) Nothing in sections 31-307 to 31-311 shall be construed so as to affect the authority vested in the Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by sections 31-307 to 31-311 in the Commissioners of the District of Columbia or in any office or agency under the jurisdiction and control of said Commissioners may be delegated by said Commissioners in accordance with section 3 of such plan.

(2) Sections 31-307 to 31-311 shall not be construed as superseding section 31-301a, and such section shall continue in full force and effect. (Sept. 8, 1960, 74 Stat. 854, Pub. L. 86-725, § 5.)

#### REFERENCES IN TEXT

Reorganization Plan Numbered 5 of 1952, referred to in the text, is set out in the Appendix to Title 1, Administration.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CROSS REFERENCE

Authority of Commissioner and Council to delegate function vested in them by Reorg. Plan No. 3 of 1967, see §§ 205 and 305 of the Plan set forth in the Appendix to Title 1.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-308, 31-309, 31-311.

**§ 31-311. Payment of tuition by students of Teachers College.**

Nothing contained in sections 31-307 to 31-311 shall be construed as preventing the Board of Education from requiring students of the District of Columbia Teachers College to pay tuition, and the said Board is authorized, in its discretion, to require the payment of tuition by the students of such college, whether or not resident in the District of Columbia, with the exception of those students who are authorized to be excused from the payment of tuition by an Act other than sections 31-307 to 31-311. (Sept. 8, 1960, 74 Stat. 854, Pub. L. 86-725, § 7.)

#### CROSS REFERENCE

Assumption of control of District of Columbia Teachers College by Board of Higher Education, transfer of personnel, property, etc., exceptions, etc., see § 31-1603(a) (12).

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-308 to 31-310.

## Chapter 4.—FREE TEXTBOOKS

### Sec.

- 31-401. Textbooks and supplies furnished without charge.
- 31-402. Books—Property of District—Loaned to students.
- 31-403. Parents and guardians responsible for books—Liability.
- 31-404. Limitation on purchases.
- 31-405. Sale or exchange authorized.
- 31-406. Expense of textbooks and supplies.

**§ 31-401. Textbooks and supplies furnished without charge.**

The Board of Education of the District of Columbia shall provide pupils of the public elementary schools, public junior high schools, and public senior high schools of the District of Columbia free of charge with the use of all textbooks and other necessary educational books and supplies. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 1.)

#### CROSS REFERENCE

School official not to profit from purchase of school supplies, see § 31-1104.

**§ 31-402. Books—Property of District—Loaned to students.**

All books purchased by the Board of Education shall be held as property of the District of Columbia and shall be loaned to pupils under such conditions as the Board of Education may prescribe. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 2.)

#### CROSS REFERENCE

Powers and duties of Superintendent, see § 31-105.

**§ 31-403. Parents and guardians responsible for books—Liability.**

Parents and guardians of pupils shall be responsible for all books loaned to the children in their charge and shall be held liable for the full price of every such book destroyed, lost, or so damaged as to be made unfit for use by other pupils. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 3.)

**§ 31-404. Limitation on purchases.**

The Board of Education shall purchase for use in the public schools only such books and supplies as shall have been duly recommended by the superintendent of schools and formally approved by the Board of Education. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 4.)

#### CROSS REFERENCE

Board of Education, powers and duties, see § 31-101.

**§ 31-405. Sale or exchange authorized.**

The Board of Education, in its discretion, is authorized to make exchange or to sell books or other educational supplies which are no longer desired for school use. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 5.)

**§ 31-406. Expense of textbooks and supplies.**

The Board of Education is authorized to provide for the necessary expenses of purchase, distribution, care, and preservation of said textbooks and educational supplies out of money appropriated under authority of this chapter. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 6.)



## Chapter 5.—VOCATIONAL REHABILITATION OF RESIDENTS OF THE DISTRICT OF COLUMBIA

Sec.

31-501 to 31-507. Repealed.

§§ 31-501 to 31-507. Repealed. July 6, 1943, 57 Stat. 379, ch. 190, § 2.

Sections, act Feb. 23, 1929, 45 Stat. 1260, ch. 303, §§ 1-7, provided for the vocational rehabilitation of disabled residents of the District of Columbia, and are now covered by U.S. Code, title 29, ch. 4.

Section 31-506 amended by act Apr. 17, 1937, 50 Stat. 69, ch. 110.

### EFFECTIVE DATE OF REPEAL

Section 2 of act July 6, 1943, provided that: "Effective July 1, 1943, the Act entitled 'An Act to provide for the vocational rehabilitation of disabled residents of the District of Columbia, and for other purposes,' approved February 23, 1929, as amended [this chapter], is hereby repealed."

## Chapter 6.—TEACHERS, SCHOOL OFFICERS, AND OTHER EMPLOYEES IN GENERAL

Sec.

31-601 to 31-607. Repealed.

31-608. No discrimination in salary because of sex—Deductions affecting salaries—Teacher not to be employed as clerk or librarian.

31-609. Commencement of compensation—Installment payments.

31-609a. Installment payments of certain teachers.

31-610 to 31-613. Repealed.

31-614. Board of Education authorized to establish occupational schools, trade or vocational courses.

31-615. Repealed.

31-616. Salaries of public school librarians.

### CLASSIFICATION AND ASSIGNMENT OF EMPLOYEES

31-617 to 31-622. Repealed.

31-622a. Head of department of military science and tactics—Salary.

31-623. Classification of research assistants.

31-624. Appointment of instructor in automobile driving—Salary.

31-625. Employment of substitutes for engineer, janitor, laborer, fireman, or caretaker—Salary deductions.

### METHOD OF PROMOTION OF EMPLOYEES

31-626 to 31-629. Repealed.

31-630. Rules for division of time and computation of pay for services.

31-631. Double salaries—School teachers and employees in District of Columbia.

31-631a. Same—Custodial employees in District of Columbia.

31-631b. Omitted.

### SABBATICAL YEAR

31-632. Granting of leave authorized—Limitation on number.

31-633. Report of person on leave—Termination of leave.

31-634. Teachers' salary while on leave for educational purposes—Deductions.

31-635. Employees other than elementary and secondary school teachers—Salary while on leave—Deductions—Temporary employees.

31-636. Inclusion of sabbatical year for promotion and retirement purposes.

31-637. Masculine pronoun construed to include female employees.

31-638 to 31-658. Repealed.

### TEACHERS' SALARY ACT OF 1947

31-659 to 31-679. Repealed, omitted or transferred.

### ACCOMPANYING LEGISLATION

31-680. Only one person to be in charge of certain school departments—Rate of compensation.

Sec.

31-681. Teachers in the Americanization schools—Custodial staff.

31-682. Teaching vacancies—Assignment of teachers.

### SICK AND EMERGENCY LEAVES

31-691. Sick and emergency leaves authorized for teachers and attendance officers.

31-691a. Credit for cumulative leave on transfer or promotion.

31-691b. Reinstatement after leave without pay granted.

31-692. Additional leave credits for service prior to July 1, 1949.

31-693. Application of credits to maternity leaves authorized.

31-694. Additional leaves in emergencies.

31-694a. Days of leave with pay, defined.

31-695. Refund required for unearned advanced leave—Exceptions.

31-696. Employment of substitutes.

31-696a. Retired teachers may serve as substitutes—Continuance of annuities—Service not to be used to recompute annuities.

31-697. Rules and regulations—Definitions.

31-698. Regulation of vacation periods and annual leave by the Board of Education.

31-698a. Leave accrued prior to March 5, 1952—Authority of Board of Education to promulgate rules.

### TEACHER FOREIGN EXCHANGE PROGRAM

31-699. Participation in teacher foreign exchange program authorized—Eligibility.

31-699a. Payment of salary during exchange.

31-699b. Assignment of foreign teachers—Waiver of loyalty oath.

§§ 31-601 to 31-606. Repealed. July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21, eff. July 1, 1945.

Section 31-601, acts June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 4, 1924, 43 Stat. 374, ch. 250, § 13, related to board of examiners, its constitution and designation of members.

Section 31-602, acts June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 4, 1924, 43 Stat. 374, ch. 250, § 14, provided for appointment of chief examiners and for service of all members of boards of examiners without additional compensation.

Section 31-603, acts June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 4, 1924, 43 Stat. 374, ch. 250, § 15, provided for annual substitute teachers; their appointment, qualification and assignment; pay deductions from absent teachers; and other substitutes.

Section 31-604, acts June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 4, 1924, 43 Stat. 375, ch. 250, § 16; Apr. 27, 1945, 59 Stat. 99, ch. 100, provided for temporary appointment of teachers, their term of service and salary assignments.

Section 31-605, acts June 20, 1906, 34 Stat. 320, ch. 3446, § 8; June 4, 1924, 43 Stat. 375, ch. 250, § 17, authorized the Board of Education to conduct a community center department, a department of school attendance and work permits, night schools, vacation schools, Americanization schools, and other activities and to prescribe the salaries of said department and activities.

Section 31-606, acts June 20, 1906, 34 Stat. 316, ch. 3446, § 2; June 4, 1924, 43 Stat. 375, ch. 250, § 18, provided for preparation of expenditures for operation of public-school system in conformity with classification of educational employees.

§ 31-607. Repealed. Oct. 13, 1949, 63 Stat. 844, ch. 686, § 9(c), eff. July 1, 1949.

Section, act Mar. 4, 1911, 36 Stat. 1395, ch. 285, provided for leave of absence of regularly employed teachers with salary deductions for payments made to substitute teachers, extended leaves of absence without compensation and leaves of absence of other employees of the Board of Education with salary deductions for payments made to substitutes. See sections 31-691, 31-694, 31-696, 31-698.



**§ 31-608. No discrimination in salary because of sex—Deductions affecting salaries—Teacher not to be employed as clerk or librarian.**

In assigning salaries to teachers no discrimination shall be made between male and female teachers employed in the same grade of school and performing a like class of duties; nor shall it be lawful to pay, or authorize or require to be paid, from any of the salaries of such teachers any portion or percentage thereof for the purpose of adding to salaries of higher or lower grades; and no such teacher shall be employed as, or required to discharge the duties of, a clerk or librarian. (Sept. 1, 1916, 39 Stat. 695, ch. 433, § 1.)

**§ 31-609. Commencement of compensation—Installment payments.**

Effective September 1, 1972, in the case of an employee who is in salary class 15 of the salary schedule contained in section 31-1501 or any other employee of the Board of Education who is paid on a ten-month basis, if such employee's services commence with the opening of school and he performs his duties, his salary shall begin on the first day of September and shall be paid in twenty-four semi-monthly installments (except as provided in section 31-1543). The first semi-monthly installment payment of the salaries of such employees shall be made on the first day of October (or as near that day as is practicable) and the second semi-monthly installment payment of such salaries shall be made on the sixteenth day of October (or as near that day as is practicable). Subsequent semi-monthly installment payments of salaries shall be made on the first and sixteenth days of the month (or as near those days as is practicable). The salaries of other employees of the Board of Education in such salary class 15 shall begin when they enter upon their duties and shall be paid on a semi-monthly basis. (May 26, 1908, ch. 198, § 1, 35 Stat. 291; June 30, 1970, Pub. L. 91-297, title III, § 304(a), 84 Stat. 364; Oct. 21, 1972, Pub. L. 92-518, title I, § 104(a), 86 Stat. 1012.)

**CODIFICATION**

Section is from the District of Columbia Appropriation Act, 1909, as amended.

**AMENDMENTS**

1972—Section 104(a) of Act Oct. 21, 1972, Pub. L. 92-518, amended section generally. Prior to this amendment, section read: "The salaries of all teachers, and clerks and librarians in the high and manual-training schools, duly elected, whose services commence with the opening day of school and who shall perform their duties, shall begin on the first day of September and shall be paid in ten monthly installments, the first payment to be made on the 1st day of October, or as near that date as practicable, and the payment for the month of June to be made upon the completion of the school term in June. However, effective July 1, 1970, the salaries of employees in salary class 15 and such other employees who were paid on a ten-month basis immediately prior to the effective date of the District of Columbia Teachers' Salary Act Amendments of 1970, whose services commence with the opening of school and who shall perform their duties, shall begin on the first day of September and shall be paid in twenty semi-monthly installments except that employees in salary class 15 may, under such rules and regulations as the Board of Education may prescribe, make an election to be paid in twenty-four semi-monthly installments. The first payment shall be made on the first day of October, or as near

that date as practicable; and the second payment shall be made fifteen days thereafter or as near that date as practicable. Subsequent payments shall be on the first and sixteenth days of the month or as near those dates as practicable. The salaries of other employees in salary class 15 shall begin when they enter upon their duties."

1970—Section 304(a) of Pub. L. 91-297, struck out "Provided, That the salaries of other teachers shall begin when they enter upon their duties" and inserted in lieu thereof the last four sentences as above set out in the 1972 amendment note.

**EFFECTIVE DATE OF 1972 AMENDMENT**

See note under § 31-1501.

**EFFECTIVE DATE OF 1970 AMENDMENT**

See note under § 31-1501.

**CROSS REFERENCE**

Installment payment of salaries of employees subject to § 31-1501 et seq., see § 31-1543.

Rules for division of time and computation of pay, see § 31-630.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 31-1402.

**§ 31-609a. Installment payments of certain teachers.**

On and after July 1, 1943 the Board of Education is authorized to designate the months in which the ten salary payments shall be made to teachers assigned to instruction in elementary science and school gardening, and in health, physical education, and playground activities. (July 1, 1943, 57 Stat. 322, ch. 184, § 1.)

**SIMILAR PROVISIONS**

Similar provisions were contained in the following prior appropriation acts:

- 1943—June 27, 1942, 56 Stat. 435, ch. 452, § 1.
- 1942—July 1, 1941, 55 Stat. 512, ch. 271, § 1.
- 1941—June 12, 1940, 54 Stat. 319, ch. 333, § 1.
- 1940—July 15, 1939, 53 Stat. 1017, ch. 281, § 1.
- 1939—Apr. 4, 1938, 52 Stat. 170, ch. 62, § 1.
- 1938—June 29, 1937, 50 Stat. 371, ch. 403, § 1.
- 1937—June 23, 1936, 49 Stat. 1869, ch. 726, § 1.
- 1936—June 14, 1935, 49 Stat. 355, ch. 241, § 1.
- 1935—June 4, 1934, 48 Stat. 860, ch. 389, § 1.
- 1934—June 16, 1933, 48 Stat. 236, ch. 93, § 1.
- 1933—June 29, 1932, 47 Stat. 360, ch. 308, § 1.
- 1932—Feb. 23, 1931, 46 Stat. 1394, ch. 282, § 1.
- 1931—July 3, 1930, 46 Stat. 969, ch. 848, § 1.
- 1930—Feb. 25, 1929, 45 Stat. 1279, ch. 314, § 1.
- 1929—May 21, 1928, 45 Stat. 662, ch. 659, § 1.
- 1928—Mar. 2, 1927, 44 Stat. 1314, ch. 271, § 1.
- 1927—May 10, 1926, 44 Stat. 433, ch. 276, § 1.
- 1926—Mar. 3, 1925, 43 Stat. 1233, ch. 477, § 1.
- 1925—June 7, 1924, 43 Stat. 557, ch. 302, § 1.
- 1924—Feb. 28, 1923, 42 Stat. 1346, ch. 148, § 1.
- 1923—June 29, 1922, 42 Stat. 688, ch. 249, § 1.
- 1922—Feb. 22, 1921, 41 Stat. 1125, ch. 70, § 1.

**CROSS REFERENCE**

Installment payment of salaries of employees subject to § 31-1501 et seq., see § 31-1543.

Rules for division of time and computation of pay, see § 31-630.

**§§ 31-610 to 31-613. Repealed. July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21, eff. July 1, 1945.**

Section 31-610, acts June 20, 1906, 34 Stat. 318, 320, 321, ch. 3446, §§ 4, 8, 9; June 4, 1924, 43 Stat. 367, ch. 250, § 1; Feb. 28, 1929, 45 Stat. 1343, ch. 357, § 1, prescribed the salaries of teachers, school officers and employees and is now covered by section 31-1501.

Section 31-611, act Apr. 10, 1936, 49 Stat. 1194, ch. 175, § 1, stated the purpose of section 31-614 and former sections 31-611 to 31-613, 31-615 to be the raising of salary schedule of trade or vocational schools from elementary to junior high school level and to provide other legislation relating thereto.



Section 31-612, act Apr. 10, 1936, 49 Stat. 1194, ch. 175, § 2, prescribed the salaries of teachers and principals of trade or vocational schools and is now covered by section 31-1501.

Section 31-613, act Apr. 10, 1936, 49 Stat. 1194, ch. 175, § 3, authorized the Board of Education to classify and assign teachers and principals in trade or vocational schools and is now covered by section 31-1511.

#### SECTIONS REFERRED TO IN OTHER SECTIONS

Sections 31-610, 31-612 are referred to in section 31-632.

§ 31-614. Board of Education authorized to establish occupational schools, trade or vocational courses.

The Board of Education is authorized and empowered to establish occupational schools on the elementary school level for pupils not prepared to pursue vocational courses in the trade or vocational schools; and also to carry on trade or vocational courses on the senior high school level or in senior high schools. (Apr. 10, 1936, 49 Stat. 1194, ch. 175, § 4.)

#### CROSS REFERENCE

Classification and assignment of teachers, see § 31-1511.

§ 31-615. Repealed. July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21, eff. July 1, 1945.

Section, act Apr. 10, 1936, 49 Stat. 1194, ch. 175, § 5, provided that appointments, assignments and transfers under section 31-614 and former sections 31-611 to 31-613, 31-615 shall be made in accordance with act June 20, 1906, as amended.

§ 31-616. Salaries of public school librarians.

#### CODIFICATION

Section was from the District of Columbia Appropriation Act, 1941, act June 12, 1940, 54 Stat. 316, ch. 333, § 1, and was not repeated in subsequent appropriation acts.

#### SIMILAR PROVISIONS

Similar provisions were contained in prior appropriation acts as follows:

1940—July 15, 1939, 53 Stat. 1014, ch. 281, § 1.

1939—Apr. 4, 1938, 52 Stat. 167, ch. 62, § 1.

1938—June 29, 1937, 50 Stat. 368, ch. 403, § 1.

### CLASSIFICATION AND ASSIGNMENT OF EMPLOYEES

§§ 31-617 to 31-621. Repealed. July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21, eff. July 1, 1945.

Section 31-617, acts June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 4, 1924, 43 Stat. 370, ch. 250, § 2, authorized the Board of Education to assign teachers, officers and employees to salary classes, to assign the director of intermediate instruction and supervisor of manual training, to abolish the titles of director and assistant director of penmanship and to transfer without examination former employees with such title. See section 31-1511.

Section 31-618, acts June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 4, 1924, 43 Stat. 370, ch. 250, § 3, authorized the Board of Education to assign teachers, officers and employees to salary classes, prescribed the first year of service as the probationary period and provided for the receipt of the first longevity increase. See sections 31-1511, 31-1512, 31-1533(a).

Section 31-619, acts June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 4, 1924, 43 Stat. 371, ch. 250, § 5, related to salary of teachers on probationary tenure. See sections 31-1501, 31-1533.

Section 31-620, act Feb. 28, 1929, 45 Stat. 1344, ch. 357, § 2, related to assignment and promotion of teachers in junior high schools. See section 31-1511(a).

Section 31-621, acts June 20, 1906, 34 Stat. 318, ch. 3446, § 4; June 4, 1924, 43 Stat. 372, ch. 250, § 6; Feb. 28, 1929, 45 Stat. 1344, ch. 357, § 4, related to assignment of teachers and employees in service on July 1, 1924. See section 31-1521.

§ 31-622. Repealed. July 29, 1946, 60 Stat. 709, ch. 693, § 2.

Section, act June 4, 1935, 49 Stat. 320, ch. 167, provided for appointment of retired Army officer as professor of military science and tactics.

§ 31-622a. Head of department of military science and tactics—Salary.

The Board of Education is hereby authorized to establish in the public schools of the District of Columbia two positions, each with a title "head of department of military science and tactics". Persons shall be appointed or promoted to such positions in accordance with the provisions of sections 31-638 to 31-658, and shall be entitled to receive salaries at the same rate as heads of departments assigned to salary class 17 of the salary schedules set forth in section 31-638. (July 29, 1946, 60 Stat. 708, ch. 693, § 1.)

#### REFERENCES IN TEXT

Sections 31-638 to 31-658, referred to in text, were repealed by act July 7, 1947, 61 Stat. 260, ch. 208, title V, § 20, and are now covered by sections 31-691, 31-694, 31-1501, 31-1511, 31-1512, 31-1521, 31-1531 to 31-1534, 31-1536, 31-1543, 31-1546.

§ 31-623. Classification of research assistants.

Research assistants shall be classified as teachers for pay-roll purposes and for retirement purposes. (Apr. 5, 1939, 53 Stat. 568, ch. 39, § 4.)

#### REPEALS

Sections 1-3, 5 of act Apr. 5, 1939, formerly set out as subsecs. (a)-(c), (e), were repealed by act July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21, eff. July, 1945. The sections authorized the Board of Education to appoint research assistants and to assign them to salary class 2, authorized appointments to group A or C of salary class 2, authorized promotions to group B or D of salary class 2 and provided for appointments, assignments and transfers in accordance with provisions of act June 20, 1906, as amended, respectively.

§ 31-624. Appointment of instructor in automobile driving—Salary.

#### CODIFICATION

Section was from the District of Columbia Appropriation Act, 1942, act July 1, 1941, 55 Stat. 508, ch. 271, § 1, and was not repeated in subsequent appropriation acts.

#### SIMILAR PROVISIONS

Similar provisions were contained in prior appropriations acts as follows:

1941—June 12, 1940, 54 Stat. 316, ch. 333, § 1.

1940—July 15, 1939, 53 Stat. 1014, ch. 281, § 1.

§ 31-625. Employment of substitutes for engineer, janitor, laborer, fireman, or caretaker—Salary deductions.

In the event of the absence of any engineer, assistant engineer, janitor, assistant janitor, laborer, fireman, or caretaker at any time during school sessions the board of education is hereby authorized to appoint a substitute, who shall be paid the salary of the position in which employed, and the amount paid to such substitute shall be deducted from the salary of the absent employee. (Mar. 4, 1913, 37 Stat. 956, ch. 150, § 1.)

### METHOD OF PROMOTION OF EMPLOYEES

§§ 31-626 to 31-629. Repealed. July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21, eff. July 1, 1945.

Section 31-626, acts June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 4, 1924, 43 Stat. 373, ch. 250, § 7, provided



for annual salary increases for satisfactory service without action of the Board of Education. See sections 31-1511(a), 31-1531, 31-1533(a).

Section 31-627, acts June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 4, 1924, 43 Stat. 373, ch. 250, § 8, related to salaries upon promotion and the manner of computation. See section 31-1536.

Section 31-628, acts June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 4, 1924, 43 Stat. 373, ch. 250, § 9; Apr. 5, 1939, 53 Stat. 571, ch. 43, related to assignment of teachers in service on July 1, 1924, not otherwise provided for, assignment of new teachers, promotion without examination, restrictions on promotions to Groups B and D, and division of salaries between teachers in white and colored schools. See sections 31-1521, 31-1531, 31-1532.

Section 31-629, acts June 20, 1906, 34 Stat. 316, ch. 3446, § 2; June 4, 1924, 43 Stat. 374, ch. 250, § 10, prescribed the basis for promotions to teaching and administrative principals. See section 31-1511.

#### § 31-630. Rules for division of time and computation of pay for services.

Effective September 1, 1972, the following rules for division of time and computation of pay for services rendered are established: Compensation of all employees in salary class 15 and such other employees who are paid on a ten-month basis shall be paid in twenty-four semimonthly installments (except as provided in section 31-1543). In making payments for a fractional part of a month, one-fifteenth of an installment shall be the daily rate of pay. For the purpose of computing such compensation and for computing time for services rendered during a fractional part of a semimonthly period in connection with the compensation of such employees, each and every semimonthly period shall be held to consist of fifteen days, without regard to the actual number of days in any semimonthly period thus excluding the 31st day of any calendar months from the computation and treating February as if it actually had thirty days. Any person entering the service of the schools during a thirty-one-day month and serving until the end thereof shall be entitled to pay for that month from the date of entry to the 30th day of such month, both days inclusive; and any person entering such service during the month of February and serving until the end thereof shall be entitled to one month's pay, less as many days thereof as there were days elapsed prior to the date of entry. For one day's unauthorized absence on the 31st day of any calendar month one day's pay shall be forfeited. (May 26, 1908, ch. 198, § 1, 35 Stat. 291; June 30, 1970, Pub. L. 91-297, title III, § 304(b), 84 Stat. 365; Oct. 21, 1972, Pub. L. 92-518, title I, § 104(b), 86 Stat. 1012.)

#### CODIFICATION

Section is from the District of Columbia Appropriation Act, 1909, as amended.

#### AMENDMENTS

1972—Section 104(b) of Act Oct. 21, 1972, Pub. L. 92-518, amended the first sentence generally. Prior to this amendment, the sentence read: "Effective July 1, 1970, the following rules for division of time and computation of pay for services rendered are established: Compensation of all employees in salary class 15 and such other employees who were paid on a ten-month basis immediately prior to the effective date of the District of Columbia Teachers' Salary Act Amendments of 1970 shall be paid in twenty semimonthly installments, except that employees in salary class 15 may, under such rules and regulations as the Board of Education may prescribe, make an election to be paid in twenty-four semimonthly installments."

1970—Section 304(b) of Pub. L. 91-297, amended the section generally. For provisions of section prior to amendment, see 1967 edition of the code.

#### EFFECTIVE DATE OF 1972 AMENDMENT

See note under § 31-1501.

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note under § 31-1501.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1402.

#### § 31-631. Double salaries—School teachers and employees in District of Columbia.

Section 5533 of title 5, U.S. Code [relating to dual compensation] shall not apply to teachers in the public schools of the District of Columbia who are also employed as teachers of night schools and vocational schools. (Oct. 6, 1917, 40 Stat. 384, ch. 79, § 9; July 8, 1918, 40 Stat. 823, ch. 139, § 1; June 5, 1920, 41 Stat. 1017, ch. 253, § 1; Aug. 19, 1964, 78 Stat. 491, 493, Pub. L. 88-448, title IV, §§ 401(i), 402(a) (17) (18).)

#### CODIFICATION

The reference in this section to "section 5533 of title 5, U.S. Code [relating to dual compensation]" was substituted for "section 301 of the Dual Compensation Act" on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89-554, set out in note under § 1-251. The Dual Compensation Act (Aug. 19, 1964, 78 Stat. 484, Pub. L. 88-448), except for subsec. (e) of section 301 and other provisions of the act not permanent and general, was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and § 301 thereof, except for subsec. (e) of that section, is now covered by § 5533 of title 5, U.S.C. For provisions of subsec. (e) of such § 301, see note under former § 31-631b.

Double salary restriction was made inapplicable to teachers employed as night school and vocational school teachers by Second Deficiency Appropriation Act, 1917, act Oct. 6, 1917; to teachers employed by executive departments or independent establishments of the United States government and employees of the community center by First Deficiency Appropriation Act, 1918, act July 8, 1918; and to employees of the school garden department by the Third Deficiency Appropriation Act, 1920, act June 5, 1920.

#### AMENDMENT

Section 401(i) of act Aug. 19, 1964, amended section by striking out reference to the applicability of section 6, of the Act of May 10, 1916, and inserted in lieu thereof the phrase "Section 301 of the Dual Compensation Act."

#### REPEALS

Section 402(a) (17) (18) of the act of Aug. 19, 1964, repealed the provisions in the section relating to the applicability of section 6 of the Act of May 10, 1916, to "employees of the community center department of the public schools of the District of Columbia" and "employees of the school garden department of the public schools of the District of Columbia."

#### EFFECTIVE DATE OF 1964 AMENDMENTS AND REPEALS

Sec. 403 of the act of Aug. 19, 1964, provides as follows: "(a) Except as provided in subsection (b) of this section, this Act shall become effective on the first day of the first month which begins later than the ninetieth day following the date of enactment of this Act [Aug. 19, 1964].

"(b) This section and sections 201(g) and 201(h) shall become effective on the date of enactment of this Act."

The above-quoted § 403 of the 1964 act was repealed as executed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a).

#### SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 5, section 5533, U.S. Code.



**§ 31-631a. Same—Custodial employees in District of Columbia.**

Section 5533 of title 5, U.S. Code [relating to dual compensation] shall not apply to the custodial employees who are in the employ of the Board of Education of the District of Columbia when such employees are performing work required of them in school buildings during the time these buildings are used for nonrecreational official purposes by any Federal agency or department of the District of Columbia government other than the Board of Education, in accordance with the rules of the Board of Education governing the use of school buildings and grounds, including their use for day or evening schools; and nothing therein contained shall be deemed to prevent any custodial employee from receiving in addition to his pay, salary, or compensation as an employee of the Board of Education of the District of Columbia any other pay, salary, or compensation at a rate not in excess of the rate of pay received as an employee of the Board of Education, for services which may have been rendered subsequent to May 31, 1941, or which may on and after July 1, 1942 be rendered to any Federal agency or department of the District of Columbia government other than the Board of Education, during its use of school buildings under the jurisdiction of the Board of Education of the District of Columbia. (July 1, 1942, 56 Stat. 467, ch. 467; Aug. 19, 1964, 78 Stat. 491, Pub. L. 88-448, title IV, § 401(k).)

**CODIFICATION**

The reference in this section to "section 5533 of title 5, U.S. Code, [relating to dual compensation]" was substituted for "section 301 of the Dual Compensation Act" on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89-554, set out in note under § 1-251. The Dual Compensation Act (Aug. 19, 1964, 78 Stat. 484, Pub. L. 88-448), except for subsec. (e) of section 301 and other provisions of the act not permanent and general, was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and § 301 thereof, except for subsec. (e) of that section, is now covered by § 5533 of title 5, U.S.C. For provisions of subsec. (e) of such § 301, see note under former § 31-631b.

**AMENDMENT**

1964—Section 401(k) of act Aug. 19, 1964, amended section by striking the reference to the applicability of section 6 of the act of May 10, 1916, and inserting in lieu thereof the phrase "Section 301 of the Dual Compensation Act".

**EFFECTIVE DATE OF 1964 AMENDMENT**

See note to § 31-631.

**SECTION REFERRED TO IN U.S. CODE**

This section is referred to in title 5 section 5533 U.S. Code.

**§ 31-631b. Omitted.**

**CODIFICATION**

Section, which contained five subsections designated (a) through (e), was a composite of those portions of subsections (a) through (e) of § 301 of act Aug. 19, 1964, 78 Stat. 488, Pub. L. 88-448, Title III (Dual Compensation Act, § 301 (a-e); 5 U.S.C. former § 3105 (a-e)), deemed applicable to the District of Columbia, and, with certain exceptions, prohibited receipt of basic compensation from more than one civilian office for more than an aggregate of 40 hours of work in any one calendar week (Sunday through Saturday). Subsecs. (a) through (d) were repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a), and are now covered by 5 U.S.C. § 5533.

Subsec. (e), which was left in force, and which was a saving clause with respect to compensation of persons

serving on the effective date of this former section in more than one position under properly authorized appointments, by providing in such cases that subsec. (a) of this section (which contained the prohibition) should not apply for the duration of the appointments concerned, has been omitted as not permanent and general; nor was such provision carried into 5 U.S.C. § 5533, which constitutes a revision and reenactment of subsecs. (a) through (d) and (f) of said § 301 of act Aug. 19, 1964 (5 U.S.C. former § 3105 (a-d, f)). The "effective date of this former section", referred to above with respect to subsec. (e) of this section, was provided by § 403 (78 Stat. 496) of said act Aug. 19, 1964, under which this former section had become effective on the first day of the first month which began later than the 90th day following August 19, 1964. Said § 403 was also repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a).

**SABBATICAL YEAR**

**§ 31-632. Granting of leave authorized—Limitation on number.**

The Board of Education, on recommendation of the superintendent of schools, may grant leave of absence with part pay to any employee of said Board of Education whose salary is fixed in sections 31-610, 31-612, who has served in the public schools of the District of Columbia not less than six years continuously prior to filing application for leave, for purposes of educational improvement for a period not exceeding one year at a time, under conditions not herein otherwise specified as the Board of Education may determine, and the place of said person to be filled by the appointment of a qualified temporary employee for the period of said leave: *Provided*, That not more than 2 per centum of the total number of the above-mentioned employees may be on leave with part pay at the same time. (June 12, 1940, 54 Stat. 349, ch. 342, § 1.)

**REFERENCES IN TEXT**

Sections 31-610 and 31-612, referred to in text, were repealed by act July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21, and are now covered by section 31-1501.

**CROSS REFERENCE**

Teachers and librarians exempted from general law concerning annual and sick leave for District employees, see 5 U.S.C. § 6301.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 31-634 to 31-637, 31-728, 31-1546.

**§ 31-633. Report of person on leave—Termination of leave.**

Any employee to whom such leave of absence may be granted shall report in writing to the superintendent, in such form as the Board of Education may determine, the manner in which said leave of absence is being employed, and for failure to comply with any requirement of the rules of the Board of Education or to pursue in a satisfactory manner the purpose for which said leave of absence was granted, the Board of Education, on recommendation of the superintendent, may terminate such leave of absence at any time. (June 12, 1940, 54 Stat. 349, ch. 342, § 2.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 31-634 to 31-637, 31-728, 31-1546.

**§ 31-634. Teachers' salary while on leave for educational purposes—Deductions.**

Any employee in the salary class of elementary and secondary school teachers whose salary is fixed



by section 31-1501, who is granted leave of absence for educational purposes under the provisions of sections 31-632 to 31-637, shall receive compensation during the period of such leave of absence, such compensation to be equal to one-half of the salary which he would have received and paid in the same manner as if he were on active duty during the period of such leave of absence reduced by (1) the amount of contributions which he is required to make to the retirement fund as provided by section 31-721, (2) any contributions which he may elect to make to group life insurance as provided by chapter 87 of title 5, U.S. Code, and (3) any contributions which he may elect to make to any health benefits plan as provided by chapter 89 of title 5, U.S. Code. (June 12, 1940, 54 Stat. 349, ch. 342, § 3; Aug. 21, 1964, 78 Stat. 584, Pub. L. 88-472, § 1.)

#### CODIFICATION

The reference in this section to "chapter 87 of title 5, U.S. Code" was substituted for "section 5 U.S.C. 2091(a)" and the reference to "chapter 89 of title 5, U.S. Code" was substituted for "section 5 U.S.C. 3002", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89-554, set out in note under § 1-251. The Federal Employees Group Life Insurance Act of 1954, as amended (Aug. 17, 1954, 68 Stat. 736, ch. 752, as amended), and the Federal Employees Health Benefits Act of 1959, as amended (Sept. 28, 1959, 73 Stat. 708, Pub. L. 86-382, as amended), were repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and such acts are now covered by the respective provisions of title 5, U.S.C., cited. Former § 2091(a) of title 5, U.S.C., is now covered by §§ 8701(a) and 8716 (b) (c) of revised title 5, U.S.C., and former § 3002 of title 5, U.S.C., is now covered by §§ 8901, 8905, and 8913 of revised title 5, U.S.C.

#### AMENDMENT

1964—Section 1 of act Aug. 21, 1964, amended section generally.

#### EFFECTIVE DATE OF 1964 AMENDMENT

Section 4 of act Aug. 21, 1964, provided, "This Act [amending sections 31-634, 31-635 and 31-636] shall take effect on and after July 1, 1963."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-635 to 31-637, 31-728, 31-1546.

#### § 31-635. Employees other than elementary and secondary school teachers—Salary while on leave—Deductions—Temporary employees.

Any employee whose salary is fixed by section 31-1501, other than employees in the salary class of elementary and secondary school teachers, who is granted leave of absence for educational purposes under sections 31-632 to 31-637 shall receive compensation during the period of such leave of absence, such compensation to be equal to one-half of the salary which he would have received and paid in the same as if he were on active duty during the period of such leave of absence or equal to the largest amount to which any employee in the salary class of elementary and secondary school teachers would be entitled if given such educational leave, whichever is less, either payment to be reduced by (1) the amount of contributions which the employee is required to make to the retirement fund as provided by section 31-721, (2) any contributions which he may elect to make to group life insurance as provided by chapter 87 of title 5, U.S. Code, and (3) any contributions which he may elect to

make to any health benefits plan as provided by chapter 89 of title 5, U.S. Code: *Provided*, That during the period of the leave of absence of any employee who is an administrative or supervisory officer, the Board of Education, on the recommendation of the superintendent of schools, may authorize the temporary assignment to his position of any teacher or officer who serves under such officer on leave of absence: *And provided further*, That the position of the teacher or officer so assigned may be filled during the period of such absence by a qualified temporary employee. (June 12, 1940, 54 Stat. 349, ch. 342, § 4; Aug. 21, 1964, 78 Stat. 584, Pub. L. 88-472, § 2.)

#### CODIFICATION

The reference in this section to "chapter 87 of title 5, U.S. Code" was substituted for "section 5 U.S.C. 2091(a)" and the reference to "chapter 89 of title 5, U.S. Code" was substituted for "section 5 U.S.C. 3002", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89-554, set out in note under § 1-251. The Federal Employees Group Life Insurance Act of 1954, as amended (Aug. 17, 1954, 68 Stat. 736, ch. 752, as amended), and the Federal Employees Health Benefits Act of 1959, as amended (Sept. 28, 1959, 73 Stat. 708, Pub. L. 86-382, as amended), were repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and such acts are now covered by the respective provisions of title 5, U.S.C., cited. Former § 2091(a) of title 5, U.S.C., is now covered by §§ 8701(a) and 8716(b) (c) of revised title 5, U.S.C., and former § 3002 of title 5, U.S.C., is now covered by §§ 8901, 8905, and 8913 of revised title 5, U.S.C.

#### AMENDMENT

1964—Section 2 of act Aug. 21, 1964, amended section generally.

#### EFFECTIVE DATE OF 1964 AMENDMENT

See note to § 31-635.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-634, 31-636, 31-637, 31-728, 31-1546.

#### § 31-636. Inclusion of sabbatical year for promotion and retirement purposes.

The employee who takes leave of absence with part pay for educational purposes under the provisions of sections 31-632 to 31-637 shall be construed as in active service, and periods of service for salary increment purposes and for retirement purposes, and the pay which the employee would have received had leave not been taken shall be used in computing retirement annuities. (June 12, 1940, 54 Stat. 350, ch. 342, § 5; Aug. 21, 1964, 78 Stat. 585, Pub. L. 88-472, § 3.)

#### AMENDMENT

1964—Section 3 of act Aug. 21, 1964, struck out "teacher or officer" in two places and inserted in lieu the word "employee".

#### EFFECTIVE DATE OF 1964 AMENDMENT

See note to § 31-636.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-634, 31-635, 31-637, 31-728, 31-1546.

#### § 31-637. Masculine pronoun construed to include female employees.

Wherever the masculine pronoun occurs in sections 31-632 to 31-637 it shall be construed to mean both male and female employees. (June 12, 1940, 54 Stat. 350, ch. 342, § 6.)



## EFFECTIVE DATE

Section 7 of the act of June 12, 1940, ch. 342, provided that the act should take effect on and after July 1, 1940.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-634 to 31-636, 31-728, 31-1546.

§§ 31-638 to 31-658. Repealed. July 7, 1947, 61 Stat. 260, ch. 208, title V, § 20, eff. July 1, 1947.

Sections, act July 21, 1945, 59 Stat. 488, ch. 321, constituted the District of Columbia Teachers' Salary Act of 1945 and are now covered by the District of Columbia Teachers' Salary Act of 1955 which is classified to chapter 15 of this title.

Section 31-638, act July 21, 1945, 59 Stat. 488, ch. 321, title I, § 1, prescribed the salaries of teachers, school officers and other employees and defined "other employees" and is now covered by section 31-1501.

Section 31-639, act July 21, 1945, 59 Stat. 492, ch. 321, title II, § 2, authorized the Board of Education to establish eligibility requirements and prescribe methods of appointment and promotion, to assign teachers, school officers and other employees to salary classes and to dispense with examination for certain teachers employed on June 30, 1945.

Section 31-640, act July 21, 1945, 59 Stat. 492, ch. 321, title II, § 3, authorized the Board of Education to assign teachers, school officers and other employees to salary classes, prescribed the first year of service as the probationary period and provided for the receipt of the first longevity increase. See sections 31-1511, 31-1512, 31-1533(a).

Section 31-641, act July 21, 1945, 59 Stat. 492, ch. 321, title III, § 4, prescribed rules governing assignment of teachers, school officers and other employees to salary classes, defined "annual compensation" and provided for increase in salary.

Section 31-642, act July 21, 1945, 59 Stat. 493, ch. 321, title III, § 5, provided for receipt of first longevity increase of probationary appointees.

Section 31-643, act July 21, 1945, 59 Stat. 493, ch. 321, title III, § 6, related to assignment of teachers, school officers and other employees in service on July 1, 1945 to salary classes.

Section 31-644, act July 21, 1945, 59 Stat. 497, ch. 321, title IV, § 7, provided for increase in salaries without action of Board of Education and credited, in the case of trade teachers, approved training and experience in the trades as though it were experience in and training for teaching. See sections 31-1531 to 31-1533.

Section 31-645, act July 21, 1945, 59 Stat. 497, ch. 321, title IV, § 8, related to salaries upon promotion and the manner of computation. See section 31-1536.

Section 31-646, act July 21, 1945, 59 Stat. 497, ch. 321, title IV, § 9, related to assignment of teachers and other employees in service on July 1, 1945 and thereafter, restrictions on promotions to Groups B and D, and division of salaries between teachers in white and colored schools. See sections 31-1521, 31-1531, 31-1532.

Section 31-647, act July 21, 1945, 59 Stat. 498, ch. 321, title IV, § 10, prescribed the basis for promotions to position of principal in the elementary schools.

Section 31-648, act July 21, 1945, 59 Stat. 498, ch. 321, title V, § 11, required the Board of Education to designate the number of classrooms in elementary school buildings for the purpose of determining the classification of elementary school principals.

Section 31-649, act July 21, 1945, 59 Stat. 498, ch. 321, title V, § 12, provided for two first assistant superintendents of schools, one for the white and one for the colored schools, and described their duties.

Section 31-650, act July 21, 1945, 59 Stat. 498, ch. 321, title V, § 13, related to board of examiners, its composition and designation of members.

Section 31-651, act July 21, 1945, 59 Stat. 498, ch. 321, title V, § 14, provided for appointment of chief examiners and for service of all members of boards of examiners without additional compensation.

Section 31-652, act July 21, 1945, 59 Stat. 499, ch. 321, title V, § 15, provided for annual substitute teachers; their appointment, qualification and assignment; pay deductions from absent teachers; and other substitutes.

Section 31-653, act July 21, 1945, 59 Stat. 499, ch. 321, title V, § 16, provided for appointment of temporary teachers, their term of service and salary assignments and is covered by section 31-1534.

Section 31-654, act July 21, 1945, 59 Stat. 499, ch. 321, title V, § 17, authorized the Board of Education to conduct a department of school attendance and work permits, night schools, vacation schools, Americanization schools, and other activities and to prescribe the salaries of said departments and activities.

Section 31-655, act July 21, 1945, 59 Stat. 499, ch. 321, title V, § 18, required classification of certain employees as teachers for pay-roll purposes and provided for payment of their salaries in ten monthly installments and is covered by section 31-1543.

Section 31-656, act July 21, 1945, 59 Stat. 499, ch. 321, title V, § 19, provided for sick leave of attendance officers in the department of school attendance and work permits and the appointment of substitutes in case of extended absence with provision for pay deductions from compensation of attendance officers absent longer than permitted by law and is covered by sections 31-691, 31-694.

Section 31-657, act July 21, 1945, 59 Stat. 499, ch. 321, title V, § 20, provided for the effective date of the salary rates and for preparation of expenditures for operation of public-school system in conformity with classification of educational employees and restricted salary increases during fiscal year ending June 30, 1946, to those provided in act July 21, 1945.

Section 31-658, act July 21, 1945, 59 Stat. 499, ch. 321, title V, § 22, made applicable the leave for educational improvement provisions to employees of the Board of Education with salaries fixed by act July 21, 1945, and is covered by section 31-1546.

## SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 31-622a.

## TEACHERS' SALARY ACT OF 1947

§§ 31-659 to 31-679. Repealed, omitted or transferred.

The provisions of the District of Columbia Teachers' Salary Act of 1947, act July 7, 1947, 61 Stat. 248, ch. 208, as amended, formerly classified hereunder, were repealed by act Aug. 5, 1955, 69 Stat. 530, ch. 569, title V, § 20, eff. July 1, 1955, and are covered by the District of Columbia Teachers' Salary Act of 1955, which is classified to chapter 15 of this title.

The provisions of the District of Columbia Teachers' Salary Act of 1955, act Aug. 5, 1955, 69 Stat. 521, ch. 569, as amended, formerly classified hereunder, are transferred to chapter 15 of this title.

The disposition of the sections of these acts follows:

Section 31-659, acts July 7, 1947, 61 Stat. 248, ch. 208, title I, § 1; Oct. 6, 1949, 63 Stat. 706, ch. 618, § 1; Oct. 8, 1951, 65 Stat. 368, ch. 448, § 4; Oct. 24, 1951, 65 Stat. 603, ch. 541, § 1, prescribed the salary schedule of teachers, school officers and other employees of the Board of Education, defined "other employees" and provided for receipt of compensation in accordance with certain provisions of act July 7, 1947 during first year of service after July 1, 1947, and is covered by section 31-1501.

Section 31-659a, act Aug. 5, 1953, 67 Stat. 363, ch. 322, § 1(a), provided salary increases for teachers, school officers and other employees.

Section 31-659a-1 transferred to section 31-1501.

Section 31-660, acts July 7, 1947, 61 Stat. 252, ch. 208, title II, § 2; Oct. 24, 1951, 65 Stat. 603, ch. 541, § 2, authorized the Board of Education to establish eligibility requirements and methods of appointment, promotion and salary classification, prescribed the possession of a master's degree for certain appointments and promotions and defined "master's degree" and is covered by section 31-1511(a), (c) (1).

Section 31-660a transferred to section 31-1511.

Section 31-661, acts July 7, 1947, 61 Stat. 253, ch. 208, title II, § 3; Oct. 24, 1951, 65 Stat. 603, ch. 541, § 3, authorized and directed the Board of Education to assign teachers, school officers and other employees to salary classes at time of appointment and prescribed a two year probationary period for appointees and is covered by sections 31-1511(a), 31-1512.



Section 31-661a transferred to section 31-1512.

Section 31-662, acts July 7, 1947, 61 Stat. 253, ch. 208, title III, § 4; Oct. 24, 1951, 65 Stat. 603, ch. 541, § 4, prescribed rules governing assignment of teachers, school officers and other employees of Board of Education to salary classes for fiscal year ending June 30, 1948, including therein definition of "annual compensation" and increase in compensation.

Section 31-662a transferred to section 31-1521.

Section 31-663, act July 7, 1947, 61 Stat. 253, ch. 208, title III, § 5, provided for first annual increase in compensation on date of permanent appointment or promotion and is covered by section 31-1533(a), (b).

Section 31-663a transferred to section 31-1522.

Section 31-664, acts July 7, 1947, 61 Stat. 254, ch. 208, title III, § 6; Oct. 6, 1949, 63 Stat. 706, ch. 618, §§ 2, 3; Oct. 24, 1951, 65 Stat. 604, ch. 541, § 5, related to assignment of teachers, school officers and other employees in service on and appointed after July 1, 1947 to salary classes, evaluation of past experience and absence because of military or naval service. See sections 31-1511(b), 31-1521, 31-1532.

Section 31-664a transferred to section 31-1531.

Section 31-665, acts July 7, 1947, 61 Stat. 257, ch. 208, title IV, § 7; Oct. 24, 1951, 604, ch. 541, § 6, provided for annual salary increases for satisfactory service without action of Board of Education and establishment of inservice training program. See sections 31-1511(a), 31-1531, 31-1533(a).

Section 31-665a transferred to section 31-1532.

Section 31-666, act July 7, 1947, 61 Stat. 258, ch. 208, title IV, § 8, prescribed the salary upon promotion to a higher class and is covered by section 31-1536.

Section 31-666a transferred to section 31-1533.

Section 31-667, acts July 7, 1947, 61 Stat. 258, ch. 208, title IV, § 9; Oct. 24, 1951, 65 Stat. 604, ch. 541, § 7 related to assignment of teachers, and other employees in service on July 1, 1947, to appropriate groups. See sections 31-1511, 31-1535.

Section 31-667a transferred to section 31-1534.

Section 31-668, act July 7, 1947, 61 Stat. 258, ch. 208, title V, § 10, required the Board of Education to designate the number of classrooms in elementary school buildings for the purpose of determining the classification of elementary school principals.

Section 31-668a transferred to section 31-1535.

Section 31-669, act July 7, 1947, 61 Stat. 258, ch. 208, title V, § 11, provided for two first assistant superintendent of schools, one for the white and one for the colored schools, and described their duties.

Section 31-669a transferred to section 31-1536.

Section 31-670, act July 7, 1947, 61 Stat. 258, ch. 208, title V, § 12, related to board of examiners, its composition and designation of members.

Section 31-670a transferred to section 31-1541.

Section 31-671, acts July 7, 1947, 61 Stat. 258, ch. 208, title V, § 13; Oct. 24, 1951, 65 Stat. 605, ch. 541, § 8, provided for appointment of chief examiners and for service of all members of boards of examiners without additional compensations.

Section 31-671a transferred to section 31-1542.

Section 31-672, acts July 7, 1947, 61 Stat. 259, ch. 208, title V, § 14; Oct. 13, 1949, 63 Stat. 843, ch. 686, § 9(a), provided for annual substitute teachers; their appointment, qualification and assignment; pay deductions from absent teachers and other substitutes.

Section 31-672a transferred to section 31-1543.

Section 31-673, act July 7, 1947, 61 Stat. 259, ch. 208, title V, § 15, provided for appointment of temporary teachers, their term of service and salary assignments and is covered by section 31-1534.

Section 31-673a transferred to section 31-1544.

Section 31-674, acts July 7, 1947, 61 Stat. ch. 208, title V, § 16; Mar. 3, 1952, 66 Stat. 11 ch. 73, § 1, authorized the Board of Education to conduct a department of school attendance and work permits, evening schools, vacation schools, Americanization schools and other activities and to prescribe the salaries of said departments and activities and to employ retired members of armed forces as teachers of military science and tactics and is covered by sections 31-1541, 31-1542. See,

also, sections 31-211, 31-2122 with respect to creation of department of school attendance headed by a director.

Section 31-674a transferred to sections 31-1545, 31-1546.

Section 31-675, act July 7, 1947, 61 Stat. 259, ch. 208, title V, § 17, required classification of certain employees as teachers for payroll purposes and provided for payment of their salaries in ten monthly installments and is covered by section 31-1543.

Section 31-675a transferred to sections 31-1547, 31-1548.

Section 31-676, act July 7, 1947, 61 Stat. 259, ch. 208, title V, § 18, which provided for sick leave of attendance officers in the department of school attendance and work permits and the appointment of substitutes in case of extended absence with provisions for pay deductions from compensation of attendance officers absent longer than permitted by law, was repealed by act Oct. 13, 1949, 63 Stat. 844, ch. 686, § 9(b), eff. July 1, 1949, and is covered by sections 31-691, 31-694.

Section 31-677, act July 7, 1947, 61 Stat. 259, ch. 208, title V, § 19, provided for the effective date of the salary rates and for preparation of expenditures for operation of public-school system in conformity with classification of educational employees and restricted salary increases during fiscal year ending June 30, 1948 to those provided in act July 7, 1947.

Section 31-678, acts July 7, 1947, 61 Stat. 260, ch. 208, title V, § 21; Oct. 6, 1949, 63 Stat. ch. 618, § 4, made applicable the leave for educational improvement provisions to employees of the Board of Education with salaries fixed by act July 7, 1947, and the teacher retirement provisions to permanent employees of the Board with salaries fixed by such act and is covered by sections 31-1546 and 31-1548.

Section 31-679, act June 30, 1949, 63 Stat. 376, ch. 287, § 3 (a), (b), provided salary increases for teachers, school officers and other employees.

#### SECTION REFERRED TO IN OTHER SECTIONS

Section 31-659 is referred to in sections 31-691a, 31-697.

Section 31-676 is referred to in section 31-692.

#### ACCOMPANYING LEGISLATION

§ 31-680. Only one person to be in charge of certain school departments—Rate of compensation.

From and after ten days following the approval of this Act there shall be only one person in charge of the following departments in the public school system of the District of Columbia: Art, Business Education, English, Foreign Languages, Guidance and Placement, History, Home Economics, Industrial Arts, Mathematics, Military Science and Tactics, Music, Science, Trade and Industrial Education, and Health, Physical Education, Athletics, and Safety; except that in the case of persons reassigned pursuant to this section, nothing contained herein shall be construed to decrease the rate of compensation that any such person is receiving on the effective date of this section. If such person is placed in a lower salary class and the present salary of the incumbent falls between two step rates for the newly assigned class, he shall receive the higher of such rates. Whenever a department is established hereafter in the public school system of the District of Columbia there shall be but one person in charge of such department. (Aug. 28, 1958, 72 Stat. 1012, Pub. L. 85-838, § 3.)

#### REFERENCES IN TEXT

The approval of this Act, referred to in the text, means Aug. 28, 1958, the date of approval of act Aug. 28, 1958, which enacted this section, amended sections 31-1501, 31-1511, 31-1521, 31-1522, 31-1531, 31-1532, 31-1542 to 31-1545, and enacted provisions set out as notes under section 31-1501.



## CODIFICATION

A prior section 31-680, act Oct. 25, 1951, 65 Stat. 636, ch. 560, § 1(b), provided salary increases for teachers, school officers and other employees.

## EFFECTIVE DATE

Section effective Jan. 1, 1958, see section 4(a) of act Aug. 28, 1958, set out as a note under section 31-1501.

### § 31-681. Teachers in the Americanization schools—Custodial staff.

Officers and teachers in the Americanization, evening, and summer schools may also be officers and teachers in the regular day schools.

Members of the custodial staff in the evening, summer, and Americanization schools may also be members of the custodial staff in the day schools. (July 1, 1943, 57 Stat. 322, ch. 184, § 1.)

### § 31-682. Teaching vacancies—Assignment of teachers.

Teaching vacancies which occur during any school year may be filled by the assignment of teachers of special subjects and teachers not now assigned to classroom instruction, and such teachers are hereby made eligible for such assignment without further examination. (July 1, 1943, 57 Stat. 322, ch. 184, § 1.)

## SICK AND EMERGENCY LEAVES

### § 31-691. Sick and emergency leaves authorized for teachers and attendance officers.

All teachers and attendance officers in the employ of the Board of Education of the District of Columbia shall be entitled to cumulative leave with pay for personal illness, presence of contagious disease or death in the home, or pressing emergency, in accordance with such rules and regulations as the said Board of Education may prescribe. Such cumulative leave with pay shall be granted at the rate of one day for each month from September through June of each year, both inclusive. Under such rules and regulations as the Board of Education may prescribe any teacher or attendance officer may use three days of such cumulative leave with pay in any school year for any purpose, upon giving timely notice of intended absence, except that in the case of leave taken under this sentence for any purpose (other than to attend a religious service or to observe a religious holiday), no more than 5 per centum of the total number of the teachers in any school in the District of Columbia public school system, or 3 teachers in such school, whichever is greater, may be on leave under this sentence. (Oct. 13, 1949, 63 Stat. 842, ch. 686, § 1; Oct. 29, 1951, 65 Stat. 660, ch. 601, § 1; Dec. 18, 1967, Pub. L. 90-212, § 1(a), 81 Stat. 659; May 27, 1968, Pub. L. 90-319, § 5, 82 Stat. 140.)

## AMENDMENTS

1968—Section 5 of act May 27, 1968, Pub. L. 90-319, amended section by adding before the period at the end thereof the exception provisions relating to maximum leave.

1967—Section 1(a), Act Dec. 18, 1967, Pub. L. 90-212, amended section by striking out the third sentence, which read as follows: "The total cumulation shall not exceed seventy-five days for probationary and permanent teachers and attendance officers, and the total cumulation shall not exceed twenty days for temporary teachers and attendance officers."

1951—Act Oct. 29, 1951, increased cumulative leave for probationary and permanent teachers and attendance officers from sixty to seventy-five days and for temporary teachers and attendance officers from ten to twenty days and authorized three days of cumulative leave to be used for any purpose upon notice.

## EFFECTIVE DATE OF 1951 AMENDMENT

Section 6 of act Oct. 29, 1951, provided that: "This Act [enacting sections 31-691a, 31-691b and amending sections 31-691, 31-692, 31-694] shall take effect on the first day of the second month following its enactment [Oct. 29, 1951]."

## EFFECTIVE DATE

Section 11 of act Oct. 13, 1949, provided that: "This Act [enacting sections 31-691, 31-692 to 31-694, 31-695, 31-696, 31-697, amending former section 31-622, repealing sections 31-607 and 31-676 and enacting provisions set out as a note under this section] shall become effective July 1, 1949."

## SHORT TITLE

Section 10 of act Oct. 13, 1949, provided that: "This Act [enacting sections 31-691, 31-692 to 31-694, 31-695, 31-696, 31-697, amending former section 31-622, repealing sections 31-607 and 31-676, and enacting provision set out as note under this section] may be cited as 'District of Columbia Teachers' Leave Act of 1949.'"

## APPROPRIATIONS

Section 8 of act Oct. 13, 1949, provided that: "There is authorized to be appropriated, out of any moneys in the Treasury of the United States to the credit of the District of Columbia not otherwise appropriated, such sums as may be necessary to carry out the purposes of this Act, [sections 31-691, 31-692 to 31-694, 31-695, 31-696, 31-697] and any appropriations for the public schools of the District of Columbia for personal services are hereby made available for the payment of the substitutes provided for in section 6 [31-696] of this Act."

## CROSS REFERENCES

Educational employees of Teachers College, transferred to Board of Higher Education, crediting, pursuant to leave system established for educational employees of such Board, leave accumulated pursuant to District of Columbia Teachers' Leave Act of 1949 (§§ 31-691, 31-692 to 31-694, 31-695 to 31-697), see § 31-1603(a) (13).

Teachers and librarians exempted from general law concerning annual and sick leave for District employees, see 5 U.S.C. § 6301.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-691a, 31-692, 31-694a, 31-697, 31-1402, 31-1545, 31-1603.

### § 31-691a. Credit for cumulative leave on transfer or promotion.

When any person occupying a position, the salary of which position is fixed by classes 1 through 12 of section 31-659, or a position as attendance officer, the salary of which position is fixed in class 32, of section 31-659, is transferred or promoted to any position in the schedule in classes 13 through 34, of section 31-659 (other than a position in class 32) shall be entitled<sup>1</sup> to have credited to his account as accumulated sick leave as provided by the Act entitled "An Act to standardize sick leave and extend it to all civilian employees", approved March 14, 1936 (49 Stat. 1162) as amended, the same number of days as are credited to him as cumulative leave with pay under the provisions of sections 31-691, 31-692 to 31-694, 31-695, 31-696, 31-697. (Oct. 29, 1951, 65 Stat. 660, ch. 601, § 4.)

<sup>1</sup> So in original. Probably should read: "such person shall be entitled."



## REFERENCES IN TEXT

Section 31-659, referred to in the text, was repealed by act Aug. 5, 1955, 69 Stat. 530, ch. 569, title V, § 20, eff. July 1, 1955 and is covered by section 31-1501.

Act to standardize sick leave and extend it to all civilian employees, approved March 14, 1936 (49 Stat. 1162), referred to in the text, formerly classified to 5 U.S.C. §§ 30f to 30k, 30m, was repealed by act Oct. 30, 1951, 65 Stat. 682, ch. 631, title II, § 207(a)(2). It was subsequently covered by the Annual and Sick Leave Act of 1951 (Oct. 30, 1951, 65 Stat. 679, ch. 631, title II, as amended), until the later act was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a). The 1951 act is now covered by §§ 6301-6305 and 6307-6311 of title 5, U.S.C.

## CODIFICATION

Section was not enacted as a part of the District of Columbia Teachers' Leave Act of 1949, classified to sections 31-691, 31-692 to 31-694, 31-695, 31-696, 31-697.

## EFFECTIVE DATE

See note under section 31-691.

§ 31-691b. Reinstatement after leave without pay granted.

Any teacher or attendance officer who after December 1, 1951 is granted leave without pay by the Superintendent of Schools or the Board of Education shall be reinstated to the position from which leave was granted or to an equivalent position when said employee is ready to resume his duties in accordance with the rules of the Board of Education existing at the time such leave was granted. (Oct. 29, 1951, 65 Stat. 661, ch. 601, § 5.)

## CODIFICATION

Section was not enacted as a part of the District of Columbia Teachers' Leave Act of 1949, classified to sections 31-691, 31-692 to 31-694, 31-695, 31-696, 31-697.

## EFFECTIVE DATE

See note under section 31-691.

§ 31-692. Additional leave credits for service prior to July 1, 1949.

In addition to the cumulative leave provided by section 31-691, each probationary and permanent teacher shall be credited on July 1, 1949, with one day of leave with pay for each complete year of service in the public schools of the District of Columbia prior to July 1, 1949: *Provided*, That the leave credited under the provisions of this section shall be granted for the same purposes as leave with pay is provided in section 31-691. Attendance officers shall be credited on July 1, 1949, with all cumulative leave with pay to which they are entitled on June 30, 1949, under the provisions of section 31-676. No attendance officer shall be entitled to annual or sick leave with pay under the provisions of any other act. (Oct. 13, 1949, 63 Stat. 842, ch. 686, § 2; Oct. 29, 1951, 65 Stat. 660, ch. 601, § 2; Dec. 18, 1967, Pub. L. 90-212, § 1(b), 81 Stat. 659.)

## REFERENCE IN TEXT

Section 31-676, referred to in the text, was repealed by act Oct. 13, 1949, 63 Stat. 844, ch. 686 § 9(b), eff. July 1, 1949 and is covered by sections 31-691, 31-694.

## AMENDMENTS

1967—Section 1(b), act Dec. 18, 1967, Pub. L. 90-212, amended the last sentence to read as above set out. This amendment resulted in the deletion of the following language from the sentence: "The total cumulation of leave with pay allowable under sections 31-691, 31-692 to 31-697 and the District of Columbia Teachers' Salary Act of 1947 shall not exceed seventy-five days, and".

1951—Act Oct. 29, 1951, substituted the word "leave" for "total amount to be" and "seventy-five" for "sixty" and deleted from the proviso "shall not exceed twenty days and" which appeared between the words "section" and "shall".

## EFFECTIVE DATE OF 1951 AMENDMENT

See note under section 31-691.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-691a, 31-694a, 31-697, 31-1402, 31-1545, 31-1603.

§ 31-693. Application of credits to maternity leaves authorized.

Probationary and permanent teachers and attendance officers shall be entitled to use all leave to their credit when they are granted maternity leave by the Board of Education. (Oct. 13, 1949, 63 Stat. 843, ch. 686, § 3.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-691a, 31-694a, 31-697, 31-1402, 31-1545, 31-1603.

§ 31-694. Additional leaves in emergencies.

In cases of serious disability or ailments, and when required by the exigencies of the situation, and in accordance with such rules and regulations as the Board of Education may prescribe, the superintendent of schools may advance additional leave with pay not to exceed thirty days to every probationary or permanent teacher or attendance officer who may apply for such advanced leave. (Oct. 13, 1949, 63 Stat. 843, ch. 686, § 4; Oct. 29, 1951, 65 Stat. 660, ch. 601, § 3; Dec. 18, 1967, Pub. L. 90-212, § 1(c), 81 Stat. 659.)

## AMENDMENTS

1967—Section 1(c), Act Dec. 18, 1967, Pub. L. 90-212, amended section by striking out "twenty-five" and inserting "thirty".

1951—Act Oct. 29, 1951, substituted "twenty-five" for "twenty".

## EFFECTIVE DATE OF 1951 AMENDMENT

See note under section 31-691.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-691a, 31-694a, 31-697, 31-1402, 31-1545, 31-1603.

§ 31-694a. Days of leave with pay, defined.

The days of leave with pay provided for by sections 31-691, 31-692 to 31-694, 31-695, 31-696, 31-697, shall mean days upon which teachers and attendance officers would otherwise work and receive pay and shall be exclusive of Saturdays, Sundays, holidays, and vacation periods authorized by the Board of Education. (Dec. 20, 1950, 64 Stat. 1114, ch. 1141, § 1.)

## CODIFICATION

Section was not enacted as a part of the District of Columbia Teachers' Leave Act of 1949, classified to sections 31-691, 31-692 to 31-694, 31-695, 31-696, 31-697.

## EFFECTIVE DATE

Section 1 of act Dec. 20, 1950, provided in part that this section should be effective July 1, 1949.

§ 31-695. Refund required for unearned advanced leave—Exceptions.

In the event of separation from the service of any teacher or attendance officer who is indebted for unearned advanced leave, such teacher or attendance officer shall refund the amount of pay



received for the period of such excess. If such teacher or attendance officer fails to make such refund, deductions therefor shall be made from any salary due him or from any amount standing to his credit under the provisions of subchapter II of chapter 7 of this title. The provisions of this section shall not apply in cases of death, retirement for disability, or in the event that the teacher or attendance officer to whom leave with pay has been advanced is unable to return to duty because of disability. (Oct. 13, 1949, 63 Stat. 843, ch. 686, § 5.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-691a, 31-694a, 31-697, 31-1402, 31-1545, 31-1603.

### § 31-696. Employment of substitutes.

The Board of Education is hereby authorized to employ substitute teachers and attendance officers for service during the absence of any teacher or attendance officer on leave with pay or on leave without pay and to fix the rate of compensation to be paid such substitutes. (Oct. 13, 1949, 63 Stat. 843, ch. 686, § 6; Aug. 5, 1953, 67 Stat. 362, ch. 319, § 1; Aug. 5, 1955, 69 Stat. 530, ch. 569, title V, § 22; Oct. 2, 1972, Pub. L. 92-454, § 3, 86 Stat. 760.)

#### AMENDMENTS

1972—Act Oct. 2, 1972, Pub. L. 92-454, § 3, repealed sec. 22 of Act Aug. 5, 1955, 69 Stat. 530, which added the last sentence excluding service of substitutes from service within the meaning of the Civil Service Retirement Act.

1955—Act Aug. 5, 1955, excluded service of substitutes from service within Civil Service Retirement Act of May 29, 1930, as amended.

1953—Act Aug. 5, 1953, inserted "or on leave without pay".

#### EFFECTIVE DATE OF 1955 AMENDMENT

Amendment of section by act Aug. 5, 1955, effective on July 1, 1955, see section 25 of act Aug. 5, 1955, set out as a note under section 31-1501.

#### EFFECTIVE DATE OF 1953 AMENDMENT

Section 2 of act Aug. 5, 1953, provided that: "This Act [amending this section] shall become effective as of July 1, 1949."

#### RECOMPUTATION OF CERTAIN ANNUITIES

Sec. 2 of Act Oct. 2, 1972, Pub. L. 92-454, provided: "An annuity or survivor annuity based on the service of an employee or annuitant who performed service described in section 1 of this Act [service as a substitute teacher for the government of the District of Columbia after July 1, 1955, if such service is not credited for benefits under any other retirement system established by a law of the United States] shall, upon application to the Civil Service Commission, be recomputed, effective on the first day of the first month following the date of enactment of this Act, in accordance with section 1 of this Act."

#### CROSS REFERENCES

Coverage under teachers retirement system, see §§ 31-728, 31-733, 31-1548.

Creditability of service rendered by substitute teachers for civil service retirement, see 5 U.S.C. § 8332.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-691a, 31-694a, 31-697, 31-1402, 31-1545, 31-1603.

### § 31-696a. Retired teachers may serve as substitutes—Continuance of annuities—Service not to be used to recompute annuities.

Persons who have retired as teachers under the provisions of subchapter I of chapter 7 of this title; or subchapter II of chapter 7 of this title; or subchap-

ter III of chapter 83 of title 5, U.S. Code; may be employed as substitute teachers in the public schools of the District of Columbia when it is not practicable otherwise to secure qualified and competent persons. Any such persons granted temporary employment under authority of this section shall continue to receive their annuities during such employment and no deduction shall be made from the compensation of such persons for retirement benefits. The service rendered by such retired teachers employed as substitute teachers shall not be used to recompute their annuities. (Apr. 24, 1958, 72 Stat. 98, Pub. L. 85-385, § 1.)

#### CODIFICATION

The reference in this section to "subchapter III of chapter 83 of title 5, U.S. Code" was substituted for "the Act entitled 'An Act for the retirement of employees in the classified civil service, and for other purposes', approved May 22, 1920, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89-554, set out in note under § 1-251. The said act of May 22, 1920 (41 Stat. 614, ch. 195), as amended, although the basic act, was generally amended and substantially superseded by later acts, particularly by the Civil Service Retirement Act of May 29, 1930 (46 Stat. 468, ch. 349), which, as amended, was in turn generally amended by act July 31, 1956, 70 Stat. 743 (760), ch. 804, title IV, § 401; and § 18 of said act May 29, 1930, as renumbered and amended by said act July 31, 1956, designated the 1930 act as the "Civil Service Retirement Act". The act of May 22, 1920, as amended, and the act of May 29, 1930, as amended, were repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and are now covered by the provisions of title 5, U.S.C., cited.

Section was not enacted as a part of the District of Columbia Teachers' Leave Act of 1949, classified to sections 31-691, 31-692 to 31-694, 31-695, 31-696, 31-697.

### § 31-697. Rules and regulations—Definitions.

The Board of Education is hereby authorized to prescribe such rules and regulations as it may deem necessary to carry sections 31-691, 31-692 to 31-694, 31-695, 31-696, 31-697, into effect. The term "teacher" used in such sections, shall include all employees whose salaries are fixed by classes 1 to 12 of section 31-659. The term "attendance officers" shall include all employees whose salaries are fixed by class 32 of section 31-659. (Oct. 13, 1949, 63 Stat. 843, ch. 686, § 7.)

#### REFERENCES IN TEXT

Section 31-659, referred to in the text, was repealed by act Aug. 5, 1955, 69 Stat. 530, ch. 569, title V, § 20, eff. July 1, 1955, and is covered by section 31-1501.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-691a, 31-694a, 31-1402, 31-1545, 31-1603.

### § 31-698. Regulation of vacation periods and annual leave by the Board of Education.

The authority to regulate the vacation periods and annual leave of absence of all individuals employed by the Board of Education of the District of Columbia, whose positions are included in salary classes 13-23, inclusive, established by the District of Columbia Teachers' Salary Act of 1947, shall be vested solely in the Board of Education of the District of Columbia. The annual leave of absence granted by the Board of Education of the District of Columbia under the authority of this section and



section 31-698a shall be in lieu of annual leave of absence granted under any other Act. (Mar. 5, 1952, 66 Stat. 14, ch. 81, § 1.)

#### REFERENCES IN TEXT

The District of Columbia Teachers' Salary Act of 1947, as amended, referred to in the text, formerly classified to sections 31-659, 31-660, 31-661, 31-662, 31-663, 31-664, 31-665, 31-666, 31-667, 31-668, 31-669, 31-670, 31-671, 31-672, 31-673, 31-674, 31-675, 31-677 to 31-679, was repealed by act Aug. 5, 1955, 69 Stat. 530, ch. 569, title V, § 20, eff. July 1, 1955, and is covered by the District of Columbia Teachers' Salary Act of 1955, which is classified to chapter 15 of this title.

Section 31-676 (section 18 of the District of Columbia Teachers' Salary Act of 1947, as amended) had previously been repealed by act Oct. 13, 1949, 63 Stat. 844, ch. 686, § 9(b), eff. July 1, 1949, and is covered by sections 31-691, 31-694.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-698a, 31-1544.

#### § 31-698a. Leave accrued prior to March 5, 1952—Authority of Board of Education to promulgate rules.

Notwithstanding the provisions of any other law to the contrary, no individual whose position is within the purview of sections 31-698 and 31-698a shall, by virtue of the enactment of section 31-698 be entitled to lump-sum payment or payments for annual leave accrued or current as of March 5, 1952, but all such individual's annual leave, accrued or current as of March 5, 1952, shall be credited to him for his use and benefit, and to be used in accordance with rules promulgated by the Board of Education. (Mar. 5, 1952, ch. 81, § 2, as added Aug. 5, 1953, 67 Stat. 362, ch. 320, § 1.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-698, 31-1544.

#### TEACHER FOREIGN EXCHANGE PROGRAM

#### § 31-699. Participation in teacher foreign exchange program authorized—Eligibility.

The Board of Education of the District of Columbia is authorized to participate in the teacher foreign exchange program in cooperation with the United States Office of Education.

Any employee of the Board of Education of the District of Columbia who is subject to the provisions of the District of Columbia Teachers' Salary Act of 1947 (Public Law 163) shall, with the approval of the Board of Education, be eligible to participate in such program, and shall if accepted for such foreign assignment serve for a period not to exceed one calendar year, and shall at the conclusion of such service be returned to the position which he held before the exchange was effected: *Provided*, That in any one calendar year not more than ten such employees shall participate in such program. (Sept. 28, 1950, 64 Stat. 1076, ch. 1091, § 1.)

#### REFERENCES IN TEXT

The District of Columbia Teachers' Salary Act of 1947, as amended, referred to in the text, formerly classified to sections 31-659, 31-660, 31-661, 31-662, 31-663, 31-664, 31-665, 31-666, 31-667, 31-668, 31-669, 31-670, 31-671, 31-672, 31-673, 31-674, 31-675, 31-677 to 31-679, was repealed by act Aug. 5, 1955, 69 Stat. 530, ch. 569, title V, § 20, eff. July 1, 1955 and is covered by the District of Columbia Teachers' Salary Act of 1955, which is classified to chapter 15 of this title.

Section 31-676 (section 18 of the District of Columbia Teachers' Salary Act of 1947, as amended) had previously been repealed by act Oct. 13, 1949, 63 Stat. 844, ch. 686, § 9(b), eff. July 1, 1949, and is covered by sections 31-691, 31-694.

#### CODIFICATION

Act July 1, 1943, 57 Stat. 322, ch. 184, § 1, relating to teachers in the Americanization school and custodial staff, formerly classified to this section, was renumbered and is now set out as section 31-681.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-699b, 31-1547.

#### § 31-699a. Payment of salary during exchange.

The Board of Education of the District of Columbia is authorized to pay the full salary of the educational employee of said Board during the time such employee is performing teaching duties in a foreign country under such exchange program, in the same manner and to the same extent as if such educational employee were actually performing his teaching duties in his regularly assigned position in the public schools of the District of Columbia, and any such educational employee participating in such program shall for purposes of promotion, computation of annual increment, computation of service for pension credit, including salary contributions to the pension fund, and leave of absence credits, be considered as performing teaching duties in the schools of the District of Columbia. (Sept. 28, 1950, 64 Stat. 1077, ch. 1091, § 2.)

#### CODIFICATION

Act July 1, 1943, 57 Stat. 322, ch. 184, § 1, relating to teaching vacancies, assignment of teachers, formerly classified to this section was renumbered and is now set out as section 31-682.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-699b, 31-1547.

#### § 31-699b. Assignment of foreign teachers—Waiver of loyalty oath.

(a) Each professionally qualified person from a foreign country exchanged under the provisions of sections 31-699 to 31-699b with an educational employee of the Board of Education of the District of Columbia shall during the period of such exchange serve as a substitute for the exchanged teacher and shall be assigned in the public schools of the District of Columbia as the Board of Education shall determine. Such exchange teacher shall serve without compensation for such service from the District of Columbia or any agency thereof: *Provided further*, That the term of such assignment or exchange shall not exceed one calendar year.

(b) Notwithstanding any other provision of law, any foreign teacher, instructor, or professor assigned to duties in the public schools of the District of Columbia under the provisions of sections 31-699 to 31-699b shall not be required to take an oath of office or any oath of allegiance or loyalty to the United States, but shall satisfy the Board of Education of the District of Columbia as to his personal, moral, and professional fitness to teach in the public schools of Washington, District of Columbia. (Sept. 28, 1950, 64 Stat. 1096, ch. 1077, § 3.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1547.



## Chapter 7.—RETIREMENT OF PUBLIC SCHOOL TEACHERS

### SUBCHAPTER I.—RETIREMENT BEFORE JUNE 30, 1946

Sec.

- 31-701. Deduction from pay to provide annuity—Basis of deductions—Certificate.
- 31-702. Deductions deposited in United States Treasury to credit of teacher—Income from investments.
- 31-703. Retirement age—Continuous-employment requirements.
- 31-704. Retirement for disability after age of 45—Leave of absence without pay not exceeding two years—No break in continuous service—Medical examination.
- 31-705. Annuity allowance.
- 31-706. Minimum-service credit in cases of disability retirement.
- 31-707. Longevity payable from District revenues—Calculation of annual appropriations—Certification to Budget Bureau—Reserves held by Treasurer of United States—Interest.
- 31-708. Credit for public-school service outside District of Columbia—Deposit to cover period of service beyond District—Installment deposits allowed.
- 31-709. Refund on leaving service—Reinstatement.
- 31-710. Payments upon death of teacher—Beneficiary.
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- 31-713. Retirement provisions not to prevent discharge of teachers.
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### SUBCHAPTER II.—RETIREMENT AFTER JUNE 30, 1946

- 31-721. Deductions—Interest bearing accounts—Optional deposits—Refunds.
- 31-721a. Retirement credit for certain leave without pay—Matching retirement deposits.
- 31-722. Retirement and annuity fund—Income from investments—Separate accounts.
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- 31-724. Disability—Annual examination—Reappointment—Discontinued annuity—Voluntary deposits.
- 31-725. Computation of annuity—Options.
- 31-725a. Recomputation of benefits—Computation of average annual salary—Increase to be straight life annuity.
- 31-725b. Annuity increases granted by act Oct. 24, 1962—Effective date.
- 31-726. Annuity of teachers retired for disability.
- 31-727. Appropriations calculation.
- 31-728. Term of service—Reduction of annuity—Contributions on leave—Monthly deposits.
- 31-729. Deferred annuity—Refunds—Deposit of amount withdrawn—Annuity to Survivors—Termination and restoration of annuity—Determination of dependency and disability.
- 31-730. Beneficiaries—Order of precedence for payment of lump-sum benefits—Payment of lump-sum credit—Definitions.

Sec.

- 31-731. Consent to deductions.
- 31-732. Discharge of teacher.
- 31-733. Definitions.
- 31-734. Records and accounts—Report to Congress—Appropriation estimates.
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- 31-739a. Adjustment of annuities on basis of price index—Computation—Definitions.
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- 31-740. Waiver of annuity—Revocation.
- 31-741. Increased annuities for certain retired employees and survivors—Amount—Maximum.
- 31-742. Unmarried widow or widower entitled to annuity—Conditions—Amount—Termination.
- 31-743. Effective dates of annuities provided by sections 31-741 and 31-742—Computation.
- 31-744. Annuities under sections 31-741 to 31-743 to be paid from District of Columbia teachers retirement and annuity fund—Conditions under which annuities and increases terminate after July 1, 1960.
- 31-745. Crediting of certain authorized leave periods for retirement purposes—Conditions.
- 31-746. Tax-sheltered annuity program.

### SUBCHAPTER I.—RETIREMENT BEFORE JUNE 30, 1946

#### SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 31-696a, 31-721, 31-733, 31-738, 31-740.

#### § 31-701. Deduction from pay to provide annuity—Basis of deductions—Certificate.

There shall be deducted and withheld from the annual salary of every teacher in the public schools of the District of Columbia an amount computed to the nearest tenth of a dollar that will be sufficient, with interest thereon at 4 per centum per annum, compounded annually, to purchase, under the provisions of this subchapter, an annuity equal to 1 per centum of his average annual salary received during the ten years immediately preceding retirement, for each year of his whole term of service rendered after June 30, 1926, payable monthly throughout life, for every such teacher who shall be retired, as herein provided.

The deductions herein provided for shall be based on such annuity table or tables as the commissioners of the District of Columbia shall direct: *Provided, however,* That said deductions shall in no case exceed 8 per centum of his annual salary: *And provided further,* That when the annual salary exceeds \$2,000 the deductions and benefits shall be made as on an annual salary of \$2,000.

The commissioners of the District of Columbia shall cause to be filed with the Board of Education on September 10 of each year a certificate showing the amount of deduction to be made from the salary of each teacher during the year, said deduction to be made in equal amounts, one to be deducted for each school month. A similar certificate shall be filed not later than the 15th day of each calendar month to cover cases of new entrants. No deduction shall be made from less than an entire month's



salary. (Jan. 15, 1920, 41 Stat. 387, ch. 39, § 1; June 11, 1926, 44 Stat. 727, ch. 556, § 1.)

## AMENDMENT

1926—Act June 11, 1926, deleted the words "since the passage of Public Act Numbered 254, approved June 20, 1906, for each year of his whole term of service" following the words "annual salary received" in the first paragraph and inserted in lieu thereof the words now contained down to the words "payable monthly, etc."; substituted the commissioners of the District of Columbia for the Secretary of the Treasury; deleted immediately preceding the first proviso and following the word "direct," the words "and shall be varied yearly to correspond to any change in the basic salary of the teacher" and changed the figure \$1,500 to \$2,000 in the second proviso.

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## CROSS REFERENCES

Federal civil service retirement laws as apparently inapplicable to teachers in public schools of District of Columbia, in view of retirement system provided for such teachers by this chapter, see 5 U.S.C. § 8331(1) (ii).

Retirement after June 30, 1946, see §§ 31-721 to 31-739d.

§ 31-702. Deductions deposited in United States Treasury to credit of teacher—Income from investments.

The amount so deducted and withheld from the annual salary of every teacher shall be deposited in the Treasury of the United States and shall be credited, together with interest at 4 per centum per annum, compounded annually, to an individual account of the teacher from whose salary the deduction is made, which account shall be kept by the auditor of the District of Columbia. The fund thus created shall be held and invested by the Treasurer of the United States until paid out as hereinafter provided, and the income derived from such investments shall constitute a part of said fund for the purpose of carrying out the provisions of this subchapter. (Jan. 15, 1920, 41 Stat. 387, ch. 39, § 2; June 11, 1926, 44 Stat. 727, ch. 556, § 1.)

## AMENDMENT

1926—Act June 11, 1926, inserted the phrase "which account shall be kept by the auditor of the District of Columbia" and substituted "Treasurer of the United States" for "Secretary of the Treasury."

## CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739d.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-722.

§ 31-703. Retirement age—Continuous-employment requirements.

Any teacher who shall have reached the age of sixty-two may be retired by the Board of Education on its own motion, or shall be retired if application is made by the teacher. Any teacher who shall have reached the age of seventy shall be retired unless, in the judgment of two-thirds of the Board of Education, such teacher should be longer retained for the good of the service: *Provided*, That no sum shall be paid to any teacher upon his retirement under the provisions of this section unless he shall have been continuously employed as a teacher in the public schools of the District of Columbia from the time

of his attainment of the age of fifty-two years. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 3; June 11, 1926, 44 Stat. 728, ch. 556, § 1.)

## AMENDMENT

1926—Act June 11, 1926, added the proviso.

## CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739d.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-705, 31-709.

§ 31-704. Retirement for disability after age of 45—Leave of absence without pay not exceeding two years—No break in continuous service—Medical examination.

Any teacher who shall have reached the age of forty-five, and who shall have been continuously employed in the public schools of the District of Columbia for not less than ten years immediately prior to his retirement, or who shall have been continuously employed for not less than fifteen years prior to his retirement and who by reason of accident or illness not due to vicious habits has become physically or mentally disabled and incapable of satisfactorily performing the duties of his position, may be retired by the Board of Education under the provisions hereinafter stated: *Provided*, That absence of any teacher on authorized leave of absence without pay for a period not in excess of two years shall not constitute a break in continuous employment: *Provided further*, That no teacher shall be retired by the Board of Education under the provisions of this section until said teacher shall have been examined under the direction of the health officer of the District of Columbia, and as a result of said examination, in his judgment, or in the judgment of two-thirds of the members of the Board of Education shall have been found to be physically or mentally incapacitated for efficient service. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 4; June 11, 1926, 44 Stat. 728, ch. 556, § 1.)

## AMENDMENT

1926—Act June 11, 1926, deleted the words "or shall have taught continuously for fifteen years in the public schools of the District of Columbia" following the words "forty-five" and inserted in lieu thereof the words which now follow the said words "forty-five" down to and including the words "to his retirement"; and, added the provisos.

## CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739d.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-705, 31-706, 31-709.

§ 31-705. Annuity allowance.

Every teacher who shall be retired under the provisions of section 31-703 or section 31-704 shall receive during the remainder of his life a combined annuity composed of (1) an annuity equal to 1 per centum of his average annual salary received during the ten years immediately preceding retirement for each year of his whole term of service after June 30, 1926; (2) a sum equal to 1 per centum of his average annual salary received during the ten years immediately preceding retirement for each year of his whole term of service prior to July 1, 1926, but not to exceed 40 years; and (3) an additional sum of \$15



for each year of said service, but in neither case to exceed forty years, such annuity to be fixed at the nearest multiple of 12 cents and to be payable monthly and to cease and determine at his death. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 5; June 11, 1926, 44 Stat. 728, ch. 556, § 1.)

#### AMENDMENT

1926—Act June 11, 1926, deleted the words "(1) a sum equal to 1 per centum of his average basic salary received since the passage of Public Act Numbered 254, approved June 20, 1906, for each year of his whole term of service, and (2) an additional sum of \$10 for each year of said service, such annuity to be payable monthly and to cease and determine at his death" following the words "composed of" and inserted in lieu thereof the present words.

#### CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739d.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-706, 31-707.

### § 31-706. Minimum-service credit in cases of disability retirement.

In calculating, as provided in section 31-705, the third part of the annuity of a teacher retired under the provisions of section 31-704, a minimum credit of twenty years shall be used in determining the sum allowable to a teacher with less than twenty years of service. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 6; June 11, 1926, 44 Stat. 728, ch. 556, § 1.)

#### AMENDMENT

1926—Act June 11, 1926, substituted the provisions set out in the text for: "The annuity of a teacher retired under the provisions of section 31-703 shall not be less than \$480, and the annuity of a teacher retired under section 31-704 shall not be less than \$420."

#### CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739d.

### § 31-707. Longevity payable from District revenues—Calculation of annual appropriations—Certification to Budget Bureau—Reserves held by Treasurer of United States—Interest.

The second and third parts of the annuity provided for by section 31-705 shall be paid by appropriations from the same fund as the current expenses of the District of Columbia were paid on June 11, 1926, or may thereafter be paid. The amount of each year's appropriation shall be calculated, on an actuarial basis, as a level percentage of the pay-roll of all participants which shall be adequate to cover the liability normally accrued plus a further level percentage of the pay-roll computed to be sufficient to liquidate, within a period of approximately thirty years after July 1, 1926, the amount of the accrued liability as of that date. The amount of the necessary appropriations shall be certified each year by the Commissioner of the District of Columbia to the Office of Management and Budget, and shall be transmitted by it to Congress.

The reserves created as the result of such annual appropriations shall be held by the treasurer of the United States separate from the fund created by the contributions of the teachers, and the fund shall be credited with interest at four per centum per annum, compounded annually. The fund thus created shall be held and invested by the Treasurer of the United States until paid out as hereinafter

provided, and the income derived from such investments shall constitute a part of said fund for the purpose of carrying out the provisions of this subchapter. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 7; June 11, 1926, 44 Stat. 728, ch. 556, § 1.)

#### AMENDMENT

1926—Act June 11, 1926, substituted the provisions set out in the text for: "The second part of the annuity provided for by section 5 hereof shall be paid by appropriations from the same fund as the current expenses of the District; and if the deductions from a teacher's salary with accumulated interest shall be insufficient to pay the first part of the annuity provided for, the deficiency shall be paid by appropriations from the same fund as the current expenses of the District of Columbia are now paid or may hereafter be paid."

#### CHANGE OF NAME

The "Bureau of the Budget" was changed to "Office of Management and Budget" by section 102(a) of Reorganization Plan No. 2 of 1970, 84 Stat. 2085.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### TRANSFER OF FUNCTIONS

For transfer of functions with respect to budgetary matters, see § 403 of 1967 Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the Appendix to title 1.

#### CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739d.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-722.

### § 31-708. Credit for public-school service outside District of Columbia—Deposit to cover period of service beyond District—Installment deposits allowed.

In computing length of service of retiring teachers credit may be given, year for year, but not to exceed ten years, for public-school service or its equivalent outside the District of Columbia: *Provided*, That no credit for service outside of the public schools of the District of Columbia shall be given to any teacher entering the said public schools after June 30, 1926, until he shall have deposited to the credit of the teachers' retirement fund of the District of Columbia a sum equal to the contributions that would have been required of the teacher if such service had been rendered in the public schools of the District of Columbia, with interest thereon at 4 per centum per annum, compounded annually, said contributions to be based on the average annual salary of the class to which the teacher is appointed: *Provided further*, That when the average annual salary of the class exceeds \$2,000 the contributions shall be based on a salary of \$2,000: *Provided further*, That if the teacher so elects he may deposit the required sum in the fund in any number of monthly instalments not exceeding one hundred, with interest at 4 per centum per annum, compounded annually: *And provided further*, That the provisions of this subchapter shall not apply to any teacher who receives an annuity from any state or municipality other than the District of Columbia, nor to allow any teacher more than one year's credit for all services rendered in any one fiscal year. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 8; June 11, 1926, 44 Stat. 729, ch. 556, § 1.)



## AMENDMENT

1926—Act June 11, 1926, deleted the second, third, and fourth paragraphs of the section and added the provisos. The deleted paragraphs were as follows:

"No sum shall be paid to any teacher upon his retirement under the provisions of section 31-703 unless he shall have been employed as a public-school teacher continuously in the District of Columbia from the time of his attainment of the age of fifty-two years.

"No sum shall be paid to any teacher upon his retirement under the provisions of section 31-704 unless he shall have been employed continuously as a teacher in the public schools of the District of Columbia for ten years immediately prior to his retirement.

"When the average basic salary exceeds \$1,500, the first part of the annuity provided for in section 31-705 shall be based on an average basic salary of \$1,500."

## CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739d.

## § 31-709. Refund on leaving service—Reinstatement.

Upon separation of any teacher from the service of the public schools of the District of Columbia, except for retirement under section 31-703 or section 31-704, he shall receive the amount of his deductions, together with the interest then credited thereon.

No teacher who shall withdraw the amount of his deductions under this section shall, after reinstatement, be entitled to credit for previous service unless he shall deposit in the fund the amount so withdrawn by him: *Provided*, That the amount required to be so deposited may be paid by the teacher, if he so elects, in any number of monthly installments, not exceeding one hundred, with interest at 4 per centum compounded annually, but no credit for previous service shall be given in any case of retirement where the teacher has been separated from teaching service in any public-school system for more than five years. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 9; June 11, 1926, 44 Stat. 729, ch. 556, § 1.)

## AMENDMENT

1926—Act June 11, 1926, deleted in the first par. the words "prior to the age of sixty-two years, except for disability, as provided in section 31-704" and inserted in lieu thereof the words "except for retirement under section 31-703 or section 31-704" and deleted the words "as provided in section 31-702 hereof" which followed the present last word of the first paragraph; in the second par. deleted the words "the benefits under section 31-706 unless he shall have served at least ten years after such reinstatement. In case of his reinstatement in the service of the public schools of the District of Columbia, the monthly deductions thereafter from his salary shall be computed as herein provided and from his age at the date of such reinstatement" which followed the words "be entitled to" and inserted in lieu thereof the words which now conclude the section.

## CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739d.

## § 31-710. Payments upon death of teacher—Beneficiary.

Every teacher from whose salary retirement deductions are made in accordance with this subchapter shall be required to designate in writing a beneficiary or beneficiaries to whom the amount of his deductions, together with interest then credited thereon, shall be payable in the event of the death of such teacher. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 10; June 11, 1926, 44 Stat. 729, ch. 556, § 1; Apr. 5, 1939, 53 Stat. 571, ch. 42, § 1.)

## AMENDMENTS

1939—Act Apr. 5, 1939, amended section to read as set out in the text. For provisions of section prior to 1939 Amendment, see 1926 Amendment note hereunder.

1926—Act June 11, 1926, provided as follows: "In case of the death of a teacher while in the service the amount of his deductions, together with the interest then credited thereon, as provided in section 31-702, shall be paid to his legal representatives.

"In the case of the death of an annuitant no part of the deductions made from his salary, with the interest thereon to the credit of his account, shall be returned to his estate unless prior to his retirement he shall have selected, under the provisions of such rules and regulations as the commissioners of the District of Columbia shall prescribe, an annuity which shall carry with it a provision for the return of the unpaid principal or for the continuance of all or part of the annuity as a survivorship annuity."

Prior to 1926 amendment, the second paragraph provided: "In case of the death of an annuitant before he shall have received annuity payments equal to the amount of his deductions, together with the interest credited thereon, as hereinbefore provided, the balance thereof remaining to his credit at the date of his death shall be paid to his legal representative."

## CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739d.

## § 31-711. Precedence of payments upon death of teacher.

In the event of death of any such teacher the order of precedence of payments shall be as follows: First, to the beneficiary, or beneficiaries, designated in writing by the teacher and recorded on his or her individual account; second, if there be no such beneficiary or beneficiaries designated, then to the duly appointed executor, or administrator, of the estate; third, if there be no such beneficiary, or if an executor or administrator be not appointed within six months after the death of such teacher, payment shall be made into the registry of the court having probate jurisdiction. (Apr. 5, 1939, 53 Stat. 571, ch. 42, § 2; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91-358, title I, § 158(g), 84 Stat. 577.)

## AMENDMENT

1970—Section 158(g) of Act July 29, 1970, Public Law 91-358 amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court having probate jurisdiction".

## CROSS REFERENCE

Court having probate jurisdiction, see §§ 11-501, 11-921.

## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

## CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

## CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739d.

## § 31-712. Continuance in service deemed consent to deductions.

Every teacher who shall continue in the service of the public schools of the District of Columbia after January 15, 1920, as well as every person who on and after January 15, 1920, may be appointed to a position as teacher in the public schools of the District of Columbia, shall be deemed to consent and



agree to the deductions made and provided for in this subchapter; and the salary, pay, or compensation, which may be paid monthly or at any other time, shall be full and complete discharge and acquittance of all claims and demands whatsoever for all services rendered by such teacher during the period covered by such payment, except his claim for the benefits to which he may be entitled under the provisions of this subchapter, notwithstanding the provisions of said Public Act Numbered 254 approved June 20, 1906, and of any other law, rule or regulation affecting the salary, pay, or compensation of the teachers employed in the service of the public schools of the District of Columbia. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 11, formerly § 12; renumbered June 11, 1926, 44 Stat. 730, ch. 556, § 1.)

## REFERENCES IN TEXT

Public Act Numbered 254 approved June 20, 1906, refers to act June 20, 1906, 34 Stat. 316, ch. 3446. See Distribution Tables.

## CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739d.

**§ 31-713. Retirement provisions not to prevent discharge of teachers.**

Nothing in this subchapter shall be construed to prevent the discharge of any teacher at any time in the discretion of the Board of Education of the District of Columbia under the provisions of law. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 12, formerly § 13; renumbered June 11, 1926, 44 Stat. 730, ch. 556, § 1.)

## CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739d.

**§ 31-714. Definitions — "Teacher" — "Annual salary" — "His."**

The term "teacher," under this subchapter, shall include all teachers permanently employed by the Board of Education in the public day schools of the District of Columbia, including other educational employees whose salaries are established in the Act approved June 20, 1906, and Acts amendatory thereof, except the employees of the community center department and the department of school attendance and work permits; the term "annual salary" shall be construed to mean the total annual income received during the fiscal year for services rendered in the public day schools of the District of Columbia, including basic salary, longevity allowance, session room allowance, and increase of compensation (bonus); and whenever the pronoun "his" occurs in this subchapter it shall be construed to mean both male and female teachers. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 13, formerly § 14; renumbered and amended June 11, 1926, 44 Stat. 730, ch. 556, § 1.)

## REFERENCES IN TEXT

Act June 20, 1906, referred to in the text, refers to act June 20, 1906, 34 Stat. 316, ch. 3446. See Distribution Tables.

## AMENDMENT

1926—Act June 11, 1926, deleted, following the words "District of Columbia" the first time they are used, the words "including the superintendent of public schools, the assistant superintendents, all supervisors and directors of instruction, group principals, principals, special teachers, and librarians therein; the term 'basic salary' shall be construed to mean the lowest salary of the class

in which the teacher is placed," and inserted in lieu thereof the words which now follow the said words "District of Columbia" down to the last semicolon.

## CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739d.

**§ 31-715. Records to be kept by Commissioner of the District of Columbia—Annual report to Congress—Annual actuarial evaluation of fund.**

The Commissioner of the District of Columbia shall prepare and keep all needful tables, records, and accounts required for carrying out the provisions of this subchapter. The records to be kept shall include data showing the mortality experience of the teachers in the service of the public schools of the District of Columbia and the rate of withdrawal from such service, and any other information pertaining to such service that may be of value and may serve as a guide for future valuations and adjustments of the plan for the retirement of teachers. The Commissioner of the District of Columbia shall make a detailed comparative report annually to Congress showing all receipts and disbursements under the provisions of this subchapter, together with the total number of persons receiving annuities and the amounts paid them. And the Commissioner of the District of Columbia shall have made each year an actual valuation of this retirement fund and the operation thereof, which shall show the financial condition of the fund, and shall report the findings of such investigations to Congress at the opening of the following session. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 14, formerly § 15; renumbered and amended June 11, 1926, 44 Stat. 730, ch. 556, § 1.)

## AMENDMENT

1926—Act June 11, 1926, substituted the Commissioners of the District of Columbia for the Secretary of the Treasury, and changed the requirement that "an actual valuation" be made "every third year" to "each year."

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739d.

**§ 31-716. Annual estimates—No officer or employee receiving regular salary from Government shall receive additional compensation.**

The Commissioner of the District of Columbia shall include in his annual estimates of appropriations a sum sufficient to carry out the provisions of this subchapter and acts amendatory thereof. No officer or employee receiving a regular salary or compensation from the Government shall receive any additional salary or compensation for any service rendered in connection with the system of retiring teachers provided for by this subchapter. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 15, formerly § 16; renumbered and amended June 11, 1926, 44 Stat. 730, ch. 556, § 1.)

## AMENDMENT

1926—Act June 11, 1926, substituted the Commissioners of the District of Columbia for the Secretary of the Treasury.

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.



## TRANSFER OF FUNCTIONS

For transfer of functions with respect to budgetary matters, see § 403 of 1967 Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the Appendix to title 1.

## CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739d.

## § 31-716a. Estimates of annual appropriations—Actuarial valuations.

On and after July 31, 1953, the Treasury Department shall prepare the estimates of the annual appropriations required to be made to the teachers' retirement fund, and shall make actuarial valuations of such fund at intervals of five years, or oftener if deemed necessary by the Secretary of the Treasury, and the Commissioner of the District of Columbia is authorized to expend from money to the credit of the teachers' retirement fund not exceeding \$5,000 per annum for this purpose, including personal services. (July 31, 1953, 67 Stat. 279, ch. 299, § 1.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## SIMILAR PROVISIONS

- 1953—July 5, 1952, 66 Stat. 375, ch. 576, § 1.
- 1952—Aug. 3, 1951, 65 Stat. 156, ch. 292, § 1.
- 1951—July 18, 1950, 64 Stat. 347, ch. 467, § 1.
- 1950—June 29, 1949, ch. 279, § 1, 63 Stat. 303.
- 1949—June 19, 1948, ch. 555, § 1, 62 Stat. 540.
- 1948—July 25, 1947, 61 Stat. 428, ch. 324, § 1.
- 1947—July 9, 1946, 60 Stat. 505, ch. 544, § 1.
- 1946—June 30, 1945, 59 Stat. 275, ch. 209, § 1.
- 1945—June 28, 1944, 58 Stat. 513, ch. 300, § 1.
- 1944—July 1, 1943, 57 Stat. 323, ch. 184, § 1.
- 1943—June 27, 1942, 56 Stat. 434, ch. 452, § 1.
- 1942—July 1, 1941, 55 Stat. 511, ch. 271, § 1.

## § 31-717. Rules and regulations.

The Commissioner of the District of Columbia is hereby authorized to perform, or cause to be performed, any or all acts and the District of Columbia Council is hereby authorized to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this subchapter into full force and effect. (Jan. 15, 1920, 41 Stat. 390, ch. 39, § 16, formerly § 17; renumbered and amended June 11, 1926, 44 Stat. 731, ch. 556, § 1.)

## AMENDMENT

1926—Act June 11, 1926, substituted the Commissioners of the District of Columbia for the Secretary of the Treasury.

## TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(238) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners, of making rules and regulations for the purpose of carrying into full force and effect the provisions of this subchapter, under this section, to the District of Columbia Council, subject to the right of the Commission as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

## CROSS REFERENCES

Retirement after June 30, 1946, see §§ 31-721 to 31-739d.  
Rules and regulations generally, see § 1-226.

## § 31-718. Funds not assignable, nor subject to execution or levy.

None of the money mentioned in this subchapter shall be assignable, either in law or equity, or be subject to execution or levy by attachment, garnishment, or other legal process. (Jan. 15, 1920, 41 Stat. 390, ch. 39, § 17, formerly § 18; renumbered June 11, 1926, 44 Stat. 731, ch. 556, § 1.)

## CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739d.

## § 31-719. Subchapter not applicable to teachers receiving annuity from State or other municipality.

The provisions of this subchapter shall not apply to any teacher who receives an annuity from any State or municipality other than the District of Columbia. (Jan. 15, 1920, 41 Stat. 390, ch. 39, § 18, formerly § 19; renumbered June 11, 1926, 44 Stat. 731, ch. 556, § 1.)

## CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739d.

## § 31-720. Application of subchapter—Annuities under prior act.

The provisions of this subchapter shall apply to (A) all teachers who were on the rolls of the public schools of the District of Columbia for the month of June, 1926, if otherwise eligible; and (B) all teachers who, on June 30, 1926, were receiving an annuity under the provisions of this subchapter, the annuity to be paid each such teacher after June 30, 1926, to be computed in the manner provided herein: *Provided*, That nothing in this subchapter shall be construed to require a reduction in the amount of the annuity being paid to any teacher on July 1, 1926. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 19, formerly § 11; renumbered and amended June 11, 1926, 44 Stat. 731, ch. 556, § 1.)

## AMENDMENT

1926—Act June 11, 1926, designated existing provisions as clause A, changing "June, 1919" to "June, 1926," and added clause (B) and the proviso.

## CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739d.

## SUBCHAPTER II.—RETIREMENT AFTER JUNE 30, 1946

## SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 31-695, 31-696a, 31-1542, 31-1548, 31-1603.

## § 31-721. Deductions—Interest bearing accounts—Optional deposits—Refunds.

Beginning on the first day of the first pay period which begins after December 31, 1969, there shall be deducted and withheld from the annual salary of each teacher in the public schools of the District of Columbia an amount equal to 7 per centum of the teacher's annual salary. The amounts deducted and withheld from the annual salary of each teacher, including amounts so deducted and withheld prior to July 1, 1946, under subchapter I of this chapter, shall be credited to an individual account of the teacher from whose salary the deduction is made, together with interest at 4 per centum per annum, compounded annually up to the effective date of this



subchapter and thereafter at 3 per centum per annum, compounded annually from December 31 of the year in which the deductions are made: *Provided*, That such interest shall not be credited after December 31, 1956, except that in the case of a teacher separated before he has completed five years of eligible service interest shall be credited to the date of separation. These individual interest-bearing accounts shall be kept by the Auditor of the District of Columbia.

Any teacher may at his option and under such regulations as may be prescribed by the District of Columbia Council deposit with the Collector of Taxes, District of Columbia, additional sums in multiples of \$25 but not to exceed 10 per centum per annum of his annual salary, pay, or compensation for services rendered since March 1, 1920, which amount together with interest thereon at 3 per centum per annum compounded as of December 31 of each year, shall, at the date of his retirement, be available to purchase an annuity as he shall elect in accordance with such rules and regulations as may be prescribed by the Council, in addition to the annuity provided by this subchapter; the purchase price of such annuity shall be based upon an interest rate of 3 per centum per annum compounded annually and upon such table of mortality as shall from time to time be prescribed by the Council. In the event of death or separation from the service of such teacher before becoming eligible for retirement on annuity, the amounts so deposited with interest at 3 per centum compounded annually from December 31 of the year in which the deposits are made shall be refunded in accordance with the provisions of sections 31-729 and 31-730, respectively. A separate individual account shall be kept by the Auditor of the District of Columbia with respect to the voluntary deposits and interest of each teacher. (Aug. 7, 1946, 60 Stat. 875, ch. 779, § 1; Mar. 6, 1952, 66 Stat. 17, ch. 95, § 1; Aug. 5, 1955, 69 Stat. 530, ch. 569, title V, § 21; June 4, 1957, 71 Stat. 46, Pub. L. 85-46, § 1; Dec. 29, 1967, Pub. L. 90-231, § 1(1), 81 Stat. 747; May 22, 1970, Pub. L. 91-263, § 1(d) (1), 84 Stat. 257.)

#### CODIFICATION

In the second sentence of the first paragraph, "July 1, 1946" was substituted for "the effective date of this Act [this subchapter]" on authority of section 20 of act Aug. 7, 1946.

In the second paragraph, reference to the District of Columbia Council was substituted for "Commissioners of the District of Columbia on authority of § 402(239, 240) of Reorg. Plan No. 3 of 1967 and § 31-739c.

#### AMENDMENTS

1970—Section 1(d) (1), act May 22, 1970, Pub. L. 91-263, amended the first sentence by substituting "the first pay period which begins after December 31, 1969" for "the second month following June 4, 1957" and by increasing by one-half percent the deduction from the annual salary of each teacher to 7 percent.

1967—Section 1(1), act Dec. 29, 1967, Pub. L. 90-231, amended the proviso in the second sentence of the first paragraph by striking out "teaching service" and inserting in lieu "eligible service".

1957—Act June 4, 1957, substituted "Beginning on the first day of the second month following June 4, 1957, there shall be deducted and withheld from the annual salary of each teacher in the public schools of the District of Columbia an amount equal to 6½ per centum

of the teacher's annual salary" for "There shall be deducted and withheld from the annual salary of every teacher in the public schools of the District of Columbia an amount equal to 6 per centum of the teacher's annual salary" and inserted the proviso in the second sentence.

1955—Act Aug. 5, 1955, substituted "December 31" for "June 30" wherever appearing.

1952—Act Mar. 6, 1952, deleted from the first sentence the introductory words "Beginning as the 1st day of the September following the effective date of this subchapter"; substituted in the first sentence "amount" for "annual amount computed to the nearest tenth of a dollar" "5" and "6" for; and deleted the second, third, and fourth sentences which provided that certificates showing deductions be filed by the Commissioners with the Board of Education.

#### EFFECTIVE DATE OF 1970 AMENDMENTS

Section 5 of act May 22, 1970, Pub. L. 91-263, provided: "(a) Section 1 of this Act, except for subsection (d) [amending sections 31-725(b) (1)-(2), 31-728, 31-729 (b) (1)-(3), 31-733, and 31-739a(b), (c) (2), and enacting section 31-739d] shall be effective October 20, 1969.

"(b) Subsection (d) of section 1 of the Act [amending this section] shall be effective on the first day of the first pay period which begins after December 31, 1969.

"(c) Sections 3 and 4 of this Act [enacting section 31-721a and amending section 31-727] shall be effective on the date of enactment [May 22, 1970]."

#### EFFECTIVE DATE OF 1957 AMENDMENT

Section 4 of act June 4, 1957, provided that: "The effective date of this Act [amending sections 31-721, 31-723 to 31-725, 31-726, 31-728, 31-729 and 31-733 and enacting provisions set out as notes under sections 31-721 and 31-725] shall be October 1, 1956".

#### EFFECTIVE DATE OF 1955 AMENDMENT

Amendment of section by act Aug. 5, 1955, effective on July 1, 1955, see section 25 of act Aug. 5, 1955, set out as a note under section 31-1501.

#### EFFECTIVE DATE OF 1952 AMENDMENT

Section 11 of act Mar. 6, 1952, provided that: "This Act [enacting section 31-725a and amending sections 31-721, 31-723 to 31-725, and 31-726 to 31-730] shall take effect on the first day of the second month following its enactment [Mar. 6, 1952]."

#### EFFECTIVE DATE

Section 20 of act Aug. 7, 1946, provided that: "The provisions of this Act [this subchapter] shall take effect July 1, 1946."

#### APPLICABILITY OF 1970 AMENDMENTS

Section 1(d) (2) of act May 22, 1970, Pub. L. 91-263 provided: "the amendment made by this subsection [to the first sentence of this section] shall not apply to any persons retired or otherwise separated prior to the date of enactment of this Act [May 22, 1970]."

Section 2(a) of act May 22, 1970, Pub. L. 91-263, provided: "The amendments made by subsections (a), (b), (e) (1), (e) (3), and (f) of section 1 of this Act [amending sections 31-733, 31-728, 31-729 (b) (1), (b) (3), and 31-725 (b) (1), (b) (2), respectively] shall not apply in the case of persons retired or otherwise separated prior to October 20, 1969, and the rights of such persons and their survivors shall continue in the same manner and to the same extent as if such amendments had not been made."

#### SHORT TITLE

Section 6 of act May 22, 1970, Pub. L. 91-263, provided: "This Act [which enacted sections 31-721a and 31-739d, amended sections 31-721, 31-725(b) (1), (2), 31-727, 31-728, 31-729(b), 31-733, and 739a (b), (c) (2), and enacted provisions set out as notes under sections 31-721, 31-729, and 31-739a] may be cited as the 'District of Columbia Teachers' Retirement Amendments of 1970.'"

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(239) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the functions of the Board of Commissioners of prescribing regulations regarding the deposit of additional sums by any teacher, and prescrib-



ing table of mortality, under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

#### TRANSFER OF FUNCTIONS

The Office of the Auditor of the District of Columbia was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorg. Plan No. 5 of 1952. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorg. Plan No. 3 of 1967.

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorg. Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952. The function of keeping individual interest-bearing accounts, referred to in the first paragraph, was transferred from the Auditor to the Accounting Officer, Finance Office, Department of General Administration by Reorg. Order No. 20, dated Nov. 10, 1952. Reorg. Ord. No. 20 was superseded by Org. Ord. No. 121, dated Dec. 12, 1957. Org. Ord. No. 121 was revoked and replaced by Org. Ord. No. 3, dated Dec. 13, 1967. Part IVC of the latter Order established within the newly created Department of General Administration, a Finance Office and prescribed the functions thereof. These functions were subsequently transferred to the Director of the Department of Finance and Revenue by par. 4 of Commissioner's Order [Organization Action] No. 69-96, dated Mar. 7, 1969. Functions pertaining to centralized accounting as set forth in Commissioner's Order No. 69-96 were transferred to the Director of the Office of Budget and Financial Management by Org. Ord. No. 30, dated Apr. 5, 1972.

The Plans and Orders are set out in the Appendix to Title 1.

The Office of the Collector of Taxes was abolished and the functions thereof transferred, see note under § 47-301.

#### NONAPPLICATION TO TEACHERS RETIRED OR SEPARATED PRIOR TO OCT. 1, 1956

Section 2 of act June 4, 1957, provided that: "The amendments made by this Act [amending sections 31-721, 31-723 to 31-725, 31-726, 31-728, 31-729 and 31-733] shall not apply in the case of teachers retired or otherwise separated prior to its effective date [see Effective Date of 1957 Amendment note hereunder], and the rights of such persons and their survivors shall continue in the same manner and to the same extent as if this Act [said amendments, this note and note set out under section 31-725] had not been enacted."

#### COMPOUND INTEREST

Section 21 of act Aug. 5, 1955, provided in part that: "Interest shall not be compounded as of December 31, 1955."

#### CROSS REFERENCES

Applicability of subchapter to probationary and permanent employees of the Board of Education whose salaries are fixed under § 31-1501, see § 31-1548.

Creditability of service rendered by substitute teachers for civil service retirement, see 5 U.S.C. § 8332.

Educational employees of Teachers College, receipt of benefits provided for educational employees of Board of Higher Education, or election, within ninety days of time control of such college is assumed by such Board, to remain subject to provisions of this subchapter, see § 31-1603(a) (12).

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-634, 31-635, 31-724, 31-728, 31-729, 31-739c.

#### § 31-721a. Retirement credit for certain leave without pay—Matching retirement deposits.

(a) Any teacher who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of teachers,

for the purpose of bargaining with the District of Columbia concerning grievances, disputes, hours of employment, or conditions of work, may, within sixty days after entering on such leave without pay, file with the Board of Education of the District of Columbia an election to receive full retirement credit for his periods of that leave without pay and arrange to pay currently into the teachers' retirement fund established pursuant to this subchapter, through the Board of Education, amounts equal to the retirement deductions plus additional amounts equivalent to such amounts, in lieu of District of Columbia contributions which would be applicable if he were in pay status. A teacher who is on approved leave without pay and serving as a full-time officer or employee of such an organization on May 22, 1970, may similarly make such election within sixty days after such date. If the election and all payments herein provided are not made, the teacher shall receive no credit for such periods of leave without pay occurring on or after May 22, 1970.

(b) A teacher may deposit with interest at 4 per centum compounded annually an amount equal to retirement deductions representing any period or periods of approved leave without pay while serving, prior to May 22, 1970, as a full-time officer or employee of an organization composed primarily of teachers, and may receive full retirement credit for such period or periods of leave without pay. In the event of the death of such teacher any individual entitled to annuity under this subchapter may make such deposit. (Aug. 7, 1946, ch. 779. § 1A. as added May 22, 1970, Pub. L. 91-263, § 3, 84 Stat. 259.)

#### CODIFICATION

In the last two sentences of subsection (a) and in the first sentence of subsection (b), "May 22, 1970" was substituted for "the date of enactment of this section".

#### EFFECTIVE DATE

Section effective May 22, 1970, see section 5(c) of act May 22, 1970, set out as a note under section 31-721.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-724.

#### § 31-722. Retirement and annuity fund—Income from investments—Separate accounts.

The amounts so deducted and withheld from the annual salary of every teacher, and the amounts of additional voluntary deposits, shall be deposited in the Treasury of the United States to the credit of the teachers' retirement and annuity fund. As of the effective date of this subchapter, there shall be transferred and credited to such fund the balances of funds held for the retirement of teachers under the provisions of sections 31-702 and 31-707. The fund thus created shall be held and invested by the Secretary of the Treasury until paid out as hereinafter provided, and the income derived from such investment shall constitute a part of said fund for the purpose of carrying out the provisions of this subchapter, and for payment of administrative expenses incurred by the Commissioner of the District of Columbia in placing in effect each annuity adjustment granted under section 31-739a. Separate accounts shall be maintained by the Treasury with respect to (1) the regular operations of the retirement system, exclusive of those incident to the



voluntary deposits; and (2) the voluntary deposits and the supplementary annuities and refunds resulting from such deposits. (Aug. 7, 1946, 60 Stat. 876, ch. 779, § 2; July 5, 1966, 80 Stat. 267, Pub. L. 89-494, § 2.)

#### CODIFICATION

Reference to the Commissioner of the District of Columbia was substituted for "Board of Commissioners of the District of Columbia" on authority of § 401 of Reorg. Plan No. 3 of 1967 and § 31-739c.

#### AMENDMENT

1966—Section 2 of act July 5, 1966, at end of third sentence of this section, added ", and for payment of administrative expenses incurred by the Board of Commissioners of the District of Columbia in placing in effect each annuity adjustment granted under section 31-739a".

#### RETROACTIVE EFFECT OF 1966 AMENDMENT

Section 3 of act July 5, 1966, 80 Stat. 267, Pub. L. 89-494, provided: "This Act [amending this section and § 31-739a] shall take effect December 1, 1965."

#### TEMPORARY TEACHERS—TRANSFER OF RETIREMENT FUNDS FROM CIVIL SERVICE TO DISTRICT OF COLUMBIA TEACHERS' RETIREMENT AND ANNUITY FUND

Section 202(c) of Act Oct. 21, 1972, Pub. L. 92-518, provided:

"(c) All—

"(1) deductions for the Civil Service Retirement and Disability Fund made for annuity and retirement purposes from the salaries of temporary teachers on the rolls of the public schools of the District of Columbia on the first day of the first pay period which begins on or after the date of enactment of this Act.

"(2) contributions made for such purposes for such teachers by the government of the District of Columbia to the Fund on account of the deductions referred to in clause (1), and

"(3) deposits made in the Fund for such purposes by such teachers on account of their services as temporary teachers in such schools, are transferred from the Fund to the credit of the District of Columbia Teachers' Retirement and Annuity Fund. Any teacher with respect to whom funds are transferred by this subsection shall be deemed to have consented and agreed to such transfer. The transfer of funds under this subsection shall be a complete discharge and acquittance of all claims and demands against the Civil Service Retirement and Disability Fund on account of services rendered by such a teacher prior to the first day of the first pay period which begins on or after the date of enactment of this Act."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-724, 31-725, 31-729, 31-735.

§ 31-723. Voluntary and involuntary retirement—Minimum period of service—Eligibility for retirement—Separation from service—Computation of length of service—Computation, commencement and termination of annuity.

(a) Any teacher who completes five years of eligible service and who is separated from the service—

(1) after becoming fifty-five years of age and completing thirty years of service,

(2) after becoming sixty years of age and completing twenty years of service, or

(3) after becoming sixty-two years of age, is entitled to an annuity.

(b) Any teacher who completes five years of eligible service and who is involuntarily separated from the service, except by removal for cause on charges of misconduct or delinquency, after (1) completing twenty-five years of service, or (2) becoming fifty years of age and completing twenty years of serv-

ice, is entitled to an annuity reduced by one-sixth of 1 per centum for each full month such teacher is under the age of fifty-five years at the date of his separation from the service.

(c) Any teacher who completes five years of eligible service and who becomes sixty-two years of age may be separated from the service by the Board of Education upon the written recommendation of the Superintendent of Schools. Any teacher who becomes seventy years of age shall be separated from the service unless upon the written recommendation of the Superintendent of Schools two-thirds of the members of the Board of Education vote to retain such teacher in the public schools for the good of the service.

(d) (1) The length of a teacher's service shall be computed in accordance with section 31-728.

(2) The amount of an annuity authorized by this section shall be computed in accordance with section 31-725.

(3) Each annuity authorized by this section shall commence on the day after the teacher is separated from the service and shall terminate on the date the teacher dies. (Aug. 7, 1946, 60 Stat. 876, ch. 779, § 3; Mar. 6, 1952, 66 Stat. 17, ch. 95, § 2; June 4, 1957, 71 Stat. 46, Pub. L. 85-46, § 1; Dec. 29, 1967, Pub. L. 90-231, § 1(2), 81 Stat. 747.)

#### AMENDMENTS

1967—Section 1(2) of act Dec. 29, 1967, Pub. L. 90-231, amended section generally. For provisions of section prior to this amendment see 1967 edition of the code.

1957—Subsec. (a) amended by act June 4, 1957, which substituted "five" for "fifteen."

Subsec. (b) amended by act June 4, 1957, which substituted "one-twelfth" for "one-fourth."

Subsec. (c) amended by act June 4, 1957, which substituted "five" for "ten" in the last sentence.

Subsec. (d) added by act June 4, 1957.

1952—Subsec. (b) amended by act Mar. 6, 1952, which substituted ", computed as prescribed in section 31-725, reduced by one-twelfth of 1 per centum for each full month such teacher is under sixty years of age" for "having a value equal to the present worth of a deferred annuity at the age of sixty years computed as prescribed in section 31-725 or may elect to receive a deferred annuity beginning at the age of sixty years computed as prescribed in section 31-725."

#### EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 31-721.

#### EFFECTIVE DATE OF 1952 AMENDMENT

See note under section 31-721.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-724, 31-725, 31-729.

§ 31-724. Disability—Annual examination—Reappointment—Discontinued annuity—Voluntary deposits.

Any teacher who completes five years of eligible service, and who, before becoming eligible for retirement under the conditions defined in sections 31-721 to 31-723, becomes physically or mentally disabled and incapable of satisfactorily performing the duties of his position, by reason of disease or injury not due to vicious habits, intemperance, or willful misconduct on the part of the teacher, shall upon his own application or upon order of the Board of Education as provided later in this section be retired on an annuity computed in accordance with the provisions of sections 31-725 and 31-726 and begin-



ning on the day after his pay ceases and he meets the service and disability requirements for title to annuity. Proof of freedom from vicious habits, intemperance, or willful misconduct for a period of more than five years next prior to becoming so disabled for useful and efficient service shall not be required in any case. No claim shall be allowed under the provisions of this section unless the application for retirement shall have been executed prior to the applicant's separation from the service or within six months thereafter. No teacher shall be retired under the provisions of this section unless examined under the direction of the Director of Public Health of the District of Columbia, and as a result of said examination, in his judgment, or in the judgment of the Superintendent of Schools concurred in by two-thirds of the members of the Board of Education, shall have been found to be physically or mentally incapacitated for efficient service.

Every annuitant retired under the provisions of this section, unless the disability for which retired be permanent in character, shall at the expiration of one year from the date of such retirement and annually thereafter, until reaching retirement age as defined in section 31-723 hereof, be examined under the direction of the Director of Public Health of the District of Columbia in order to ascertain the nature and degree of the annuitant's disability, if any. If an annuitant shall recover before reaching retirement age he shall be reappointed by the Board of Education in accordance with such rules and regulations as the said Board may prescribe to the first position, equal or similar to any position in the public schools occupied by the annuitant before retirement, which becomes vacant after the date the Board of Education receives written notification from the Director of Public Health of the District of Columbia that the annuitant has recovered and is able to discharge his duties as a teacher in the public schools of the District of Columbia. Payment of the annuity shall be continued until the date of reappointment by the Board of Education. In the event that the annuitant refuses to accept the employment prescribed in this section no annuity shall be paid after the date of such refusal. Should the annuitant fail to appear for examination as required under this section payment of the annuity shall be suspended until continuance of the disability shall have been satisfactorily established. Upon written recommendation of the Superintendent of Schools the Board of Education may order or direct at any time such medical or other examination as it shall deem necessary to determine the facts relative to the nature and degree of disability of any teacher retired on an annuity under this section.

In all cases where the annuity is discontinued under the provisions of this section, so much of the annuity payments as would have been provided by an annuity whose actuarial value at the time of retirement was equal to the contributions accumulated with interest shall be charged against his individual account and, unless he shall become reemployed in a position under the purview of this subchapter, he shall be considered as having been separated from the service for other than retirement purposes and entitled to the benefits of section 31-729 hereof: *Provided, however, That if such teacher were also*

receiving an annuity because of voluntary deposits made under the provisions of section 31-721, such annuity may be continued or, at the option of the teacher, the actuarial reserve value of such annuity may be withdrawn in cash unless the teacher is reemployed in a position within the purview of this subchapter, in which case the amount of such reserve value shall be treated as a voluntary deposit under the provisions of section 31-721. (Aug. 7, 1946, 60 Stat. 877, ch. 779, § 4; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Mar. 6, 1952, 66 Stat. 17, ch. 95, § 3; June 4, 1957, 71 Stat. 46, Pub. L. 85-46, § 1; Dec. 29, 1967, Pub. L. 90-231, § 1(3), 81 Stat. 747.)

#### AMENDMENTS

1967—Section 1(3) of act Dec. 29, 1967, Pub. L. 90-231, amended section as follows:

(1) Struck out in the first paragraph "Any teacher to whom this Act (this subchapter) applies who shall have served on active duty in the public schools of the District of Columbia for a total period of not less than five years" and inserted in lieu "Any teacher who completes five years of eligible service",

(2) Struck out in the first paragraph "sections 5 and 6 hereof: *Provided, That proof*" and inserted in lieu "sections 5 and 6 (31-725 and 31-726) of this Act and beginning on the day after his pay ceases and he meets the service and disability requirements for title to annuity. *Proof*".

1957—First par. amended by act June 4, 1957, which substituted "five" for "ten".

1952—Third par. amended by act Mar. 6, 1952, which substituted "so much of the annuity payments as would have been provided by an annuity whose actuarial value at the time of retirement was equal to the contributions accumulated with interest" for "the annuity payments made under (1) of section 31-725 hereof".

#### EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 31-721.

#### EFFECTIVE DATE OF 1952 AMENDMENT

See note under section 31-721.

#### CHANGE OF NAME

"Director of Public Health" substituted for "Health Officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-725, 31-725a, 31-726, 31-729.

#### § 31-725. Computation of annuity—Options.

(a) Except as otherwise provided in this subchapter, every teacher who shall be retired under the provisions of section 31-723 or section 31-724 shall receive an annuity composed of (1) the larger of (A) 1½ per centum of the average salary as defined in section 31-733, multiplied by so much of the total service as does not exceed five years, or (B) 1 per centum of the average salary, plus \$25, multiplied by so much of the total service as does not exceed five years, plus (2) the larger of (A) 1¾ per centum of the average salary multiplied by so much of the total service as exceeds five years but does not exceed ten years, or (B) 1 per centum of the average salary, plus \$25, multiplied by so much of the total service as exceeds five years but does not exceed ten years, plus (3) the larger of (A) 2 per centum of the average salary multiplied by so much of the total service as exceeds ten years, or (B) 1 per centum of the average salary, plus \$25, multiplied by so much of the total service as exceeds ten years. Each annuity is stated as an annual amount,



one-twelfth of which, fixed at the nearest dollar, constitutes the monthly rate payable on the first business day of the month after the month or other period for which it has accrued. Annuities payable to any retired teacher who has become eligible for retirement because of age as defined in section 31-723 shall be payable during the lifetime of the annuitant. Annuities payable to any teacher retired on account of disability shall be subject to the conditions set forth under section 31-724.

(b) Any teacher retiring under the provisions of section 31-723 or 31-724 may at the time of retirement, elect to receive in lieu of the life annuity described herein one of the following:

(1) A reduced annuity and an annuity after death payable to the surviving widow or widower of such teacher. The life annuity of a teacher making such election, or any portion of such annuity designated by the teacher in writing for such purposes at the time of retirement, shall be reduced by  $2\frac{1}{2}$  per centum of so much thereof as does not exceed \$3,600 and by 10 per centum of so much thereof as exceeds \$3,600. The widow or widower of a teacher making such election shall be entitled to an annuity equal to 55 per centum of such life annuity, or designated portion thereof, except that if a retired teacher who has elected a reduced annuity as provided in this paragraph or in subsection (d) of this section dies and is survived by a widow or widower whom he or she married after retirement, such widow or widower is entitled to an annuity in an amount which would have been paid had the teacher been married to the widow or widower at the time of retirement, but only if (A) such widow or widower was married to such individual for at least two years immediately preceding the teacher's death, or is the mother or father of issue of such marriage, and (B) such widow or widower elects this annuity instead of any other survivor benefit to which he or she may be entitled under this Act or another retirement system for employees of the Federal or District Government. The annuity of a widow or widower entitled to an annuity under this paragraph shall begin on the day after the retiree dies. Such annuity and any right thereto shall terminate on the last day of the month before (A) the widow or widower dies, or (B) the widow or widower remarries before becoming sixty years of age. In the case of a surviving widow or widower whose annuity under this paragraph is terminated because of remarriage before becoming sixty years of age, annuity at the same rate shall be restored commencing on the day the remarriage is dissolved by death, annulment, or divorce, if—

(i) the surviving widow or widower elects to receive the annuity which was terminated instead of a survivor benefit to which the surviving widow or widower may be entitled, under this subchapter or another retirement system for employees of the Federal or District Government, by reason of the remarriage; and

(ii) any lump sum paid on termination of the annuity is returned to the teachers' retirement and annuity fund established under section 31-722.

(2) If unmarried and in good health, a reduced annuity payable to him during his life, and an annuity after his death payable to a survivor annuitant having an insurable interest in such teacher, duly designated in writing and filed with the Auditor of the District of Columbia at the time of retirement, during the life of such survivor annuitant equal to 55 per centum of such reduced annuity. The annuity of the survivor annuitant shall commence on the day after the retired teacher dies, and such annuity and any right thereto shall terminate on the last day of the month before the death of the survivor annuitant. The annuity hereunder payable to the teacher shall be 90 per centum of the life annuity otherwise payable if the survivor annuitant is the same age or older than the annuitant, or is less than five years younger than the annuitant; 85 per centum if the survivor annuitant is five but less than ten years younger; 80 per centum if the survivor annuitant is ten but less than fifteen years younger; 75 per centum if the survivor annuitant is fifteen but less than twenty years younger; 70 per centum if the survivor annuitant is twenty but less than twenty-five years younger; and 60 per centum if the survivor annuitant is twenty-five or more years younger. No such election shall be valid until the retiring teacher shall have satisfactorily passed a physical examination under the direction of the Director of Public Health of the District of Columbia, as prescribed by the Board of Education. No person shall be eligible to receive an annuity under subsection (b) of section 31-729 based upon the service of the same teacher covering the same period of time.

(3) A reduced annuity of equivalent value providing for a life-insurance benefit payable in a lump sum at the time of the annuitant's death. The face amount of such life insurance may be in any amount which the retiring teacher shall designate at the time of retirement but shall not exceed his contributions accumulated with interest to the date of retirement. Payment of such insurance shall be made in accordance with the provisions of section 31-730. Any annuitant who elects to receive the reduced annuity with fixed life-insurance benefits may reconvert the value of the life insurance to an additional annuity of equivalent value on any anniversary of the retirement date of said annuitant prior to reaching age seventy.

(c) (1) The annuity of any person who now or hereafter is receiving or entitled to receive an annuity from the teachers' retirement and annuity fund shall be increased, effective on October 1, 1955, or on the commencing date of the annuity, whichever is later, in accordance with the following schedule:

If annuity commences between—	Annuity not in excess of \$1,500 shall be increased by—	Annuity in excess of \$1,500 shall be increased by—
August 20, 1920, and June 30, 1955...	12 per centum...	8 per centum
July 1, 1955, and December 31, 1955...	10 per centum...	7 per centum
January 1, 1956, and June 30, 1956...	8 per centum...	6 per centum
July 1, 1956, and December 31, 1956...	6 per centum...	4 per centum
January 1, 1957, and June 30, 1957...	4 per centum...	2 per centum
July 1, 1957, and December 31, 1957...	2 per centum...	1 per centum



Such increase in annuity shall not exceed the sum necessary to increase such annuity, exclusive of annuity purchased by voluntary contributions under this section, to \$4,104. The monthly installment of each annuity so increased shall be fixed at the nearest dollar.

(2) The increases provided by this subsection, when added to the annuities of retired employees, shall not operate to increase the annuities of their survivors, except that the annuity of any such survivor who becomes entitled to annuity shall be increased by the per centum provided in subsection (c) (1) of this section appropriate to the commencing date of such survivors annuity.

(d) A teacher who is unmarried at the time of retiring under a provision of law which permits election of a reduced annuity with a survivor annuity payable to his spouse and who later marries, may irrevocably elect, in a signed writing filed with the Commissioner of the District of Columbia within one year after he or she marries, a reduction in his or her current annuity and an annuity after death payable to his or her surviving widow or widower as provided in paragraph (1) of subsection (b) of this section. The reduced annuity is effective the first day of the month after such election is received by the Commissioner. The election voids prospectively any election previously made under paragraph (2) or paragraph (3) of subsection (b) of this section. (Aug. 7, 1946, 60 Stat. 878, ch. 779, § 5; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Mar. 6, 1952, 66 Stat. 17, ch. 95, § 4; Aug. 5, 1955, 69 Stat. 530, ch. 569, title V, § 23; July 2, 1956, 70 Stat. 487, ch. 497, § 1; June 4, 1957, 71 Stat. 46, Pub. L. 85-46, § 1; Oct. 24, 1962, 76 Stat. 1237, Pub. L. 87-881, title II, § 203(a); Dec. 29, 1967, Pub. L. 90-231, § 1(4), 81 Stat. 748; May 22, 1970, Pub. L. 91-263, § 1(f), 84 Stat. 258; Oct. 21, 1972, Pub. L. 92-518, title II, § 201(1)(2), 86 Stat. 1012, 1013.)

#### AMENDMENTS

1972—Section 201(1)(2) of Act Oct. 21, 1972, Pub. L. 92-518, amended subsec. (b)(1) by striking out the first three sentences and inserting four new sentences in lieu thereof; and added subsec. (d).

1970—Section 1(f), act May 22, 1970, Pub. L. 91-263, amended subsection (b) of the section as follows:

(1) Struck out of the second sentence of paragraph (1) “, excluding any increase because of retirement under section 31-724.”.

(2) Increased survivor annuity by substituting “55 per centum” for “50 per centum” in paragraph (2).

1967—Section 1(4), Act Dec. 29, 1967, Pub. L. 90-231, amended the section as follows:

(1) The second sentence of subsection (a) was amended to read as above set out. Before this amendment the said sentence read as follows: “Annuities granted under the terms of this subchapter shall accrue monthly and shall be due and payable in monthly installments at the beginning of the month following the month for which the annuity shall have accrued, such monthly installments being computed to the nearest dollar.”

(2) By striking out the last sentence of par. (1) of subsection (b) and inserting the new matter above set out starting with the words “The annuity” and ending with “section 31-722.” The said sentence before this amendment read as follows: “The annuity of such widow or widower shall begin on the first day of the month immediately following the month in which the death of the retired teacher occurs or the first day of the month following the widow's or

widower's attainment of age fifty, whichever is the later, and such annuity or any right thereto shall terminate upon his or her death or remarriage.”

(3) By striking out in the first sentence of par. 2 of subsection (b) “and upon the death of such survivor annuitant all payments shall cease and no further annuity shall be due and payable” and by adding after such sentence the new sentence above set out beginning with the words “The annuity” and ending with the word “annuitant”.

1962—Section 203(a) of act Oct. 24, 1962, amended subsection (b)(1) by changing “50 per centum” to “55 per centum” and by changing \$2,400 to \$3,600.

1957—Subsec. (a) amended by act June 6, 1957, which inserted “except as otherwise provided in this subchapter” and substituted:

“(1) the larger of (A) 1½ per centum of the average salary as defined in section 31-733, multiplied by so much of the total service as does not exceed five years, or (B) 1 per centum of the average salary, plus \$25, multiplied by so much of the total service as does not exceed five years, plus

“(2) the larger of (A) 1¾ per centum of the average salary multiplied by so much of the total service as exceeds five years but does not exceed ten years, or (B) 1 per centum of the average salary, plus \$25, multiplied by so much of the total service as exceeds five years but does not exceed ten years, plus

“(3) the larger of (A) 2 per centum of the average salary multiplied by so much of the total service as exceeds ten years, or (B) 1 per centum of the average salary, plus \$25, multiplied by so much of the total service as exceeds ten years for “(1) a sum equal to 1 per centum of his average annual salary received during any five consecutive years of allowable service in the public schools of the District of Columbia, at the option of the teacher, multiplied by the years of service, plus a sum equal to \$25 for each year of service or (2) a sum equal to 1½ per centum of his average annual salary received during any five consecutive years of allowable service in the public schools of the District of Columbia, at the option of the teacher, multiplied by the years of service.”

Subsec. (b)(1) amended by act June 1, 1957, which substituted “The life annuity of the teacher making such election, excluding any increase because of retirement under section 31-724, shall be reduced by 2½ per centum of so much thereof as does not exceed \$2,400 and by 10 per centum of so much thereof as exceeds \$2,400.” for “The life annuity of the teacher making such election shall be reduced by 5 per centum of so much thereof as does not exceed \$1,500, plus 10 per centum of the balance of such life annuity, and shall be further reduced by three-fourths of 1 per centum of such life annuity for each full year, if any, the designated wife or husband is under age of sixty at time of retirement, but the total reduction shall in no case be more than 25 per centum of such life annuity.”

1956—Subsec. (c) added by act July 2, 1956.

1955—Subsec. (a) amended by act Aug. 5, 1955, which deleted from clause (2) the proviso reading “Provided, That with the exception of the computation of deferred annuities provided in section 31-729 no annual salary used in the computation of the average annual salary received during any five consecutive years of allowable service shall be less than the maximum salary for class 1, group A (established by the District of Columbia Teachers' Salary Act of 1947, as amended), as it was in the year the salary was received, or \$4,330, whichever is greater.”

1952—Subsec. (a), formerly the first paragraph, so designated and amended by act Mar. 6, 1952, which substituted in clause (1) “multiplied by the years of service, plus a sum equal to \$25 for each year of service or” for “for each year of his whole term of service, but in no event shall the amount of the average annual salary used to determine this portion of the annuity be less than the maximum salary for class 1, group A, established by the District of Columbia Teachers' Salary Act of 1945, as amended; and”, substituted clause (2) for former clause (2) which read “an additional sum of \$20 for each year of his whole term of service, not exceeding



forty", and substituted "Annuities granted under the terms of this subchapter shall accrue monthly and shall be due and payable in monthly installments at the beginning of the month following the month for which the annuity shall have accrued, such monthly installments being computed to the nearest dollar" for "The total annuity shall be fixed at the nearest multiple of 12 cents, and shall be payable monthly."

Subsec. (b), formerly the second paragraph, so designated and amended by act Mar. 6, 1952, which substituted the introductory paragraph reading "Any teacher retiring under the provisions of section 31-723 or 31-724 may at the time of retirement, elect to receive in lieu of the life annuity described herein one of the following" for "Any teacher retiring under the provisions of this subchapter may, at the time of his retirement elect one of the following options", substituted clauses (1) and (2) for former clause (1) which read "He may elect to receive in lieu of the life annuity described herein a reduced annuity of equivalent value providing that, in the event the annuitant shall die without having received in annuities purchased by his contributions accumulated with interest to the date of his retirement an aggregate sum equal to the total amount to his credit at time of retirement, the difference shall be paid in accordance with the provisions of section 31-730" and designated as clause (3) the provisions of former clause (2).

#### EFFECTIVE DATE AND APPLICABILITY OF 1972 AMENDMENT

Section 204(a)—(c) of title II of Act of Oct. 21, 1972, Pub. L. 92-518, provided:

"Sec. 204. (a) The provisions of the first and third sentences of section 5(b)(1) of the Act of August 7, 1946 [31-725(b)(1)], as amended by section 201(1) of this title, which entitle a widow or widower of a teacher who married the teacher after his retirement to a survivor annuity, shall not apply in the cases of teachers or annuitants who died before the date of enactment of this title. The rights of such persons shall continue in the same manner and to the same extent as if such amendments had not been enacted.

"(b) The provisions of the second and third sentences of such section 5(b)(1) [§ 31-725(b)(1)], as amended by section 201(1) of this title, which authorize a teacher to designate that portion of his life annuity which may be subject to reduction for purposes of providing a survivor annuity, shall apply only to teachers retiring after the date of enactment of this title.

"(c) The amendment made by section 201(2) of this title [adding § 31-725(d)] shall apply to a retired teacher who was unmarried at the time of retirement, but who later married, only if the election is made within one year after the date of enactment of this title."

#### EFFECTIVE DATE AND APPLICABILITY OF 1970 AMENDMENT

See sections 2(a) and 5(a) of act May 22, 1970, set out as notes under section 31-721.

#### EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 31-721.

#### EFFECTIVE DATE OF 1955 AMENDMENT

See note under section 31-1501.

#### EFFECTIVE DATE OF 1952 AMENDMENT

See note under section 31-721.

#### CHANGE OF NAME

"Director of Public Health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

#### TRANSFER OF FUNCTIONS

The Office of the Auditor of the District of Columbia was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorg. Plan No. 5 of 1952. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorg. Plan No. 3 of 1967.

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of

General Administration by Reorg. Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952. The function of receiving written designation for survivor annuity, referred to in subsec. (b)(2), was transferred from the Auditor to the Accounting Officer, Finance Office, Department of General Administration by Reorg. Order No. 20, dated Nov. 10, 1952. Reorg. Ord. No. 20 was superseded by Org. Ord. No. 121, dated Dec. 12, 1957. Org. Ord. No. 121 was revoked and replaced by Org. Ord. No. 3, dated Dec. 13, 1967. Part IVC of the latter Order established within the newly created Department of General Administration, a Finance Office and prescribed the functions thereof. These functions were subsequently transferred to the Director of the Department of Finance and Revenue by par. 4 of Commissioner's Order [Organization Action] No. 69-96, dated Mar. 7, 1969. Functions pertaining to centralized accounting as set forth in Commissioner's Order No. 69-96 were transferred to the Director of the Office of Budget and Financial Management by Org. Ord. No. 30, dated Apr. 5, 1972.

The Plans and Orders are set out in the Appendix to Title 1.

#### LIMITATIONS OF AMENDMENTS MADE BY ACT OCT. 24, 1962

Section 205 of act Oct. 24, 1962, provides in part as follows: "The amendments made by section 203 [amendments to sections 31-725 and 31-729] shall not apply in the case of employees retired or otherwise separated prior to the date of enactment of this Act [Oct. 24, 1962], and the rights of such persons and their survivors shall continue in the same manner and to the same extent as if these amendments had not been enacted."

#### PAYMENT OF BENEFITS PROVIDED BY ACT OCT. 24, 1962

Section 204 of act Oct. 24, 1962, provides as follows: "Notwithstanding any other provision of law, the benefits made payable under sections 31-721 to 31-739b, as amended, by reason of the enactment of this title [title II, enacting §§ 31-725b, 31-739a and 31-739b, amending §§ 31-725 and 31-729] shall be paid from the District of Columbia teachers' retirement and annuity fund."

#### RESTRICTIONS ON BENEFITS TO PERSONS RETIRING AFTER OCT. 1, 1956

Section 3 of act June 4, 1957, provided that:

"No person retiring subsequent to the effective date [see Effective Date of 1957 Amendment note under section 31-721] of this Act [amending sections 31-721, 31-723 to 31-725, 31-726, 31-728, 31-729 and 31-733 and note under section 31-721 and this note] and pursuant to its provisions shall be entitled to any benefits accruing by reason of the provisions of Public Law 648, Eighty-fourth Congress, approved July 2, 1956 (70 Stat. 487) [this section and section 31-740]."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-723, 31-724, 31-725b, 31-726, 31-728, 31-729, 31-739.

#### § 31-725a. Recomputation of benefits—Computation of average annual salary—Increase to be straight life annuity.

The annuities of all teachers retired prior to the effective date of this Act shall be recomputed in accordance with the provisions of section 31-724 within ninety days after Mar 6, 1952, retroactive to the effective date of this Act, and no recomputation shall be made which will reduce the annuity received by any retired teacher: *Provided*, That the average annual salary during any five consecutive years, specified in section 31-724, upon which the annuity is based shall be within the last ten years of allowable service in the public schools of the District of Columbia: *Provided further*, That the increased amount of the annuity resulting therefrom shall be a straight life annuity without any insurance or death benefits of any kind. (Mar. 6, 1952, 66 Stat. 22, ch. 95, § 10.)



## REFERENCES IN TEXT

This Act, referred to in the text, refers to act Mar. 6, 1952, which enacted this section and amended sections 31-721, 31-723 to 31-725, and 31-726 to 31-730.

## CODIFICATION

Section was not enacted as a part of the District of Columbia Teachers' Retirement Act, 1946, which comprises this subchapter.

## EFFECTIVE DATE

See note under section 31-721.

§ 31-725b. Annuity increases granted by act Oct. 24, 1962—Effective date.

(a) The annuity of each person who, on the effective date, is receiving or entitled to receive an annuity from the District of Columbia teachers' retirement and annuity fund shall be increased by 5 per centum of the amount of such annuity.

(b) The annuity of each person who receives or is entitled to receive an annuity from the District of Columbia teachers' retirement and annuity fund commencing during the period which begins on the day following the effective date of this section and ends five years after such date, shall be increased in accordance with the following table:

If the annuity commences between—	The annuity shall be increased by—
January 2, 1963, and December 31, 1963-----	4 per centum.
January 1, 1964, and December 31, 1964-----	3 per centum.
January 1, 1965, and December 31, 1965-----	2 per centum.
January 1, 1966, and December 31, 1966-----	1 per centum.

(c) In lieu of any other increase provided by this section, the annuity of a survivor of a retired employee who received an increase under this section shall be increased by a percentage equal to the percentage by which the annuity of such employee was so increased.

(d) No increase provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

(e) The limitation contained in the next to the last sentence of section 31-725(c) (1), shall not be effective on and after the effective date of this section.

(f) The increases provided by this section shall take effect on the effective date of this section, except that any increase under subsection (b) or (c) shall take effect on the beginning date of the annuity.

(g) The monthly installment of annuity after adjustment under this section shall be fixed at the nearest dollar. (Oct. 24, 1962, 76 Stat. 1235, Pub. L. 87-881, title II, § 201.)

## CODIFICATION

Section was not enacted as a part of the District of Columbia Teachers' Retirement Act, 1946, which comprises this subchapter.

## EFFECTIVE DATE

Section 205 of act Oct. 24, 1962, provided that this section "shall take effect on January 1, 1963."

## LIMITATIONS REFERRED TO IN SUBSECTION (e)

The limitations are contained in section 31-725 (c) (1) and reads as follows: "Such increase in annuity shall not exceed the sum necessary to increase such annuity exclusive of annuity purchased by voluntary contributions under this section, to \$4,104."

## PAYMENT OF BENEFITS PROVIDED BY ACT OCT. 24, 1962

See note under § 31-725.

§ 31-726. Annuity of teachers retired for disability.

The annuity of a teacher retiring under section 31-724 shall be at least (1) 40 per centum of the average salary or (2) the sum obtained under section 31-725 after increasing his total service by the period elapsing between the date of separation and the date he attains the age of sixty years, whichever is the lesser. (Aug. 7, 1946, 60 Stat. 878, ch. 779, § 6; Mar. 6, 1952, 66 Stat. 19, ch. 95, § 5; June 4, 1957, 71 Stat. 47, Pub. L. 85-46, § 1.)

## AMENDMENTS

1957—Act June 4, 1957, substituted the provision set out in the text for "In calculating, as provided in section 31-726, the second part of the annuity of a teacher retired under the provisions of section 31-724, a minimum credit of twenty years shall be used in determining the sum allowable to a teacher with less than twenty years of service: *Provided*, That such minimum credit shall not exceed the total number of years of service which the teacher might have served if continuously employed as a teacher in the public schools of the District of Columbia to age sixty."

1952—Act Mar. 6, 1952, substituted "sixty-two" for "sixty".

## EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 31-721.

## EFFECTIVE DATE OF 1952 AMENDMENT

See note under section 31-721.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-724.

§ 31-727. Appropriations calculation.

The amount of each year's appropriation shall be such amount as is necessary to maintain during such fiscal year a balance in the teachers' retirement fund approximately equal, to the nearest million dollars, to the balance in that fund on June 30, 1969, or such amount as is necessary to maintain the equity in such fund of all teachers, active and retired, whichever amount is greater. If at any time the balance in the Teachers' Retirement Fund is not sufficient to meet all obligations against such fund, the fund will have a claim on the District of Columbia revenues to the extent necessary to meet such obligations. (Aug. 7, 1946, 60 Stat. 879, ch. 779, § 7; Aug. 4, 1947, 61 Stat. 750, ch. 476; Mar. 6, 1952, 66 Stat. 19, ch. 95, § 6; May 22, 1970, Pub. L. 91-263, § 4, 84 Stat. 260.)

## AMENDMENTS

1970—Section 4, act May 22, 1970, Pub. L. 91-263, amended section generally. Before this amendment, the section read as follows:

"The amount of each year's appropriation shall be calculated, on an actuarial basis, as a level percentage of the pay roll of all participants which shall be adequate to cover the liability normally accrued plus a further amount equal to the interest on the unfunded accrued liability."

1952—Act Mar. 6, 1952, substituted "amount equal to the interest on the unfounded accrued liability" for "level amount computed to be sufficient to liquidate the unfounded accrued liability within a period of approximately fifty years after the effective date of this subchapter."

1947—Act Aug. 4, 1947, substituted "fifty" for "twenty" years.

## EFFECTIVE DATE OF 1970 AMENDMENT

See note under section 31-721.

## EFFECTIVE DATE OF 1952 AMENDMENT

See note under section 31-721.



§31-728. Term of service—Reduction of annuity—Contributions on leave—Monthly deposits.

The years of service which form the basis for determining the amount of the annuity provided in section 31-725(a) shall be computed from the date of original appointment as a teacher in the public schools of the District of Columbia, including so much of any authorized leaves of absence without pay beginning on May 1, 1952, as does not exceed six months in the aggregate in any fiscal year, plus any service credit that may be allowed under the provisions of this section: *Provided*, That deposits equal to 5 per centum of those portions of salary received between July 1, 1949, and May 1, 1952, for which service credit was not earned may be made, and service credit received accordingly. A teacher or former teacher who returns to duty after a period of separation is deemed, for the purpose of this section, to have been in a leave of absence without pay for that part of the period in which he or she was receiving benefits under subchapter I of chapter 81 of title 5, United States Code, or any earlier statute on which such subchapter is based. In computing an annuity under section 31-725(a) the total service of a teacher shall include days of unused sick leave credited to him. No deposit may be required for days of unused sick leave included in a teacher's total service under the preceding sentence. Days of unused sick leave shall not be counted in determining a teacher's average salary or his eligibility for an annuity. In computing the length of service of retiring teachers credit may be given, year for year, for (a) public-school service or its equivalent outside the District of Columbia but not to exceed ten years; (b) continuous temporary service in the public schools of the District of Columbia immediately prior to probationary appointment; (c) service in the government of the District of Columbia or the Government of the United States allowable under subchapter III of chapter 83 of title 5, U.S. Code [relating to retirement of government employees]; (d) periods of honorable active service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States (but not the National Guard except when ordered to active duty in the service of the United States) prior to the date of the separation upon which title to annuity is based; except that, if a teacher is awarded retired pay on account of military service, his military service shall not be included unless such retired pay is awarded on account of a service-connected disability (1) incurred in combat with an enemy of the United States or (2) caused by an instrumentality of war and incurred in line of duty during an enlistment or employment as provided in Veterans Regulation Numbered 1 (a), part 1, paragraph 1, or is awarded under title III of Public Law 910, Eightieth Congress; (e) all educational leaves of absence with part pay authorized by the Board of Education in accordance with sections 31-632 to 31-637; and (f) continuous temporary service as an employee of any cafeteria or lunchroom operated in the public school buildings of the District of Columbia during any period prior to the date on which such cafeteria or lunchroom is placed under

the Office of Central Management, Department of Food Services, District of Columbia, and immediately prior to appointment as a teacher in the public schools of the District of Columbia: *Provided, however*, That that portion of the annuity which results from credit for service allowable under (a) and (c) of this section shall be reduced by the amount of any annuity which the retired teacher is entitled to receive under any Federal, State, or municipal retirement or pension system in respect to such service, except that such portion of the annuity after reduction shall not be less than the annuity purchasable with the deposit which the teacher is required to make under the provisions of this section in order to obtain credit for such service: *Provided further*, That no credit for service prescribed in this section, with the exception of periods of honorable service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States and all educational leaves of absence with part pay authorized by the Board of Education in accordance with sections 31-632 to 31-637, shall be given to any teacher entering the said public schools after June 30, 1926, until he shall have deposited to the credit of the teachers' retirement and annuity fund of the District of Columbia a sum equal to the accumulated contributions and interest which he would have had credited to his individual account if such service had been rendered on active duty in the public schools of the District of Columbia, said contributions to be based on the average annual salary of the class to which the teacher is appointed: *Provided further*, That all contributions to the retirement fund made by any teacher on educational leave with part pay shall be determined in accordance with the provisions of section 31-721, but otherwise no provision of this subchapter shall be interpreted to deprive any teacher employed by the Board of Education of any rights or benefits allowable under sections 31-632 to 31-637. If the teacher so elects he may deposit the required sum in the teacher's retirement and annuity fund in monthly installments with interest at 3 per centum per annum compounded annually, upon making a claim with the Commissioner of the District of Columbia, or his designated agent. Except as otherwise provided in this paragraph, this section shall not be construed to allow any teacher more than one year's credit for all services rendered in any one fiscal year.

A teacher who during the period of any war, or of any national emergency as proclaimed by the President or declared by the Congress, has left or leaves his position to enter the military service, as defined in this section, shall not be considered, for the purposes of this subchapter, as separated from his teaching position by reason of such military service, unless he shall apply for and receive a lump-sum benefit under this subchapter, except that such teacher shall not be considered as retaining his teaching position beyond six months after the date of the approval of this Act or the expiration of five years of such military service, whichever is later.

Nothing in this subchapter shall affect the right of a teacher to retired pay, pension, or compensation in addition to the annuity herein provided.



Notwithstanding the provisions of this section, any teacher who is entitled to purchase service credit under the provisions of section 31-1532(d) shall purchase such credit based on the salary received from the Board of Higher Education during the period of service to be credited. (Aug. 7, 1946, 60 Stat. 879, ch. 779, § 8; Mar. 6, 1952, 66 Stat. 19, ch. 95, § 7; Aug. 5, 1955, 69 Stat. 536, ch. 575, § 2; June 4, 1957, 71 Stat. 47, Pub. L. 85-46, § 1; Dec. 29, 1967, Pub. L. 90-231, § 1(5), 81 Stat. 748; May 22, 1970, Pub. L. 91-263, § 1(b), 84 Stat. 257; Oct. 21, 1972, Pub. L. 92-518, title II, §§ 201(3), 202(a)(1), 203(b), 86 Stat. 1013, 1014.)

#### REFERENCES IN TEXT

Veterans Regulation Numbered 1(a), part 1, paragraph 1, referred to in the text, provided for pensions to veterans and dependents of veterans for disability or death resulting from service during Spanish-American War, Boxer Rebellion, Philippine Insurrection and World War I and II and was repealed by act June 17, 1957, 71 Stat. 167, Pub. L. 85-56, title XXII, § 2202 (129), (217), eff. Jan. 1, 1958.

Title III of Public Law 810, Eightieth Congress, referred to in the text, refers to act June 29, 1948, 62 Stat. 1087, ch. 708, title III, §§ 301-313, which was repealed by acts Aug. 10, 1956, 70A Stat. 64, ch. 1041, § 53, and Sept. 2, 1958, 72 Stat. 1569, Pub. L. 85-861, § 36A and is now covered by 10 U.S.C. §§ 101, 676, 1001, 1331-1337, 1401, 3966, 6017, 6034, 6323, 8966.

Six months after the date of the approval of this Act, referred to in the penultimate paragraph, probably refers to the date of enactment of act June 4, 1957.

#### CODIFICATION

In the first sentence, "May 1, 1952" was substituted for "the effective date of this amendatory Act" on authority of section 11 of the act Mar. 6, 1952, set out as a note under section 31-721.

In clause (c) of the second sentence "subchapter III of chapter 83 of title 5, U.S. Code" was substituted for "the Civil Service Retirement Act of 1920, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89-554, set out in note under § 1-251. The said act of 1920, as amended, although the basic act, was generally amended and substantially superseded by later acts, particularly by the Civil Service Retirement Act of May 29, 1930 (46 Stat. 468, ch. 349), which, as amended, was in turn generally amended by act July 31, 1956, 70 Stat. 743 (760), ch. 804, title IV, § 401; and § 18 of said act May 29, 1930, as renumbered and amended by said act July 31, 1956, designated the 1930 act as the "Civil Service Retirement Act". The act of 1920, as amended, and the act of May 29, 1930, as amended, were repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and are now covered by the provisions of title 5, U.S.C., cited.

#### AMENDMENTS

1972—Section 201(3) of Act Oct. 21, 1972, Pub. L. 92-518, amended section by (A) striking out in the first sentence "that the total credit granted for leaves of absence without pay shall not exceed one year: *Provided further*,"; and (B) inserting after the first sentence, a new sentence relating to teachers or former teachers returning to duty after a period of separation.

Section 202(a)(1) of the same Act amended the first paragraph by striking out "probationary" in the first sentence and in clause (f) of the fourth sentence.

Section 203(b) of the same Act added the last paragraph relating to purchase of service credit.

1970—Section 1(b), act May 22, 1970, Pub. L. 91-263, inserted in first paragraph provisions granting service credit for unused sick leave.

1967—Section 1(5), act Dec. 29, 1967, Pub. L. 90-231 struck out the following: "31-632 to 31-637: *Provided further*, That if the teacher so elects, he may deposit the required sum in the fund in any number of monthly installments not exceeding fifty with interest at 3 per

centum per annum compounded annually, upon making claim with the Auditor, District of Columbia, within one year of the effective date of this subchapter, or within one year after the original probational appointment or reinstatement in the school service, or within two years after the date of honorable discharge from the military service: *And provided further*, That nothing contained herein shall be construed" and inserted in lieu the language above set out beginning with "Act of June 12, 1940" [sections 31-632 to 31-637] and ending with "This section, shall not be construed"; relating to monthly deposits into the retirement and annuity fund.

1957—Act June 4, 1957, substituted provisions set out as clause (d) for former provisions which read: "periods of honorable service in the Army, Navy, Marine Corps, or Coast Guard of the United States in time of war", deleted "in time of war" in the fourth proviso and inserted the words "Air Force" after the word "Navy" in the same proviso and added provisions relating to separation from teaching position and affect on additional benefits.

1955—Act Aug. 5, 1955, inserted clause (f) reading: "and (f) continuous temporary service as an employee of any cafeteria or lunchroom operated in the public school buildings of the District of Columbia during any period prior to the date on which such cafeteria or lunchroom is placed under the Office of Central Management, Department of Food Services, District of Columbia, and immediately prior to probationary appointment as a teacher in the public schools of the District of Columbia."

1952—Act Mar. 6, 1952, substituted "The years of service which form the basis for determining the amount of the annuity provided in section 31-725(a) shall be computed from the date of original probationary appointment as a teacher in the public schools of the District of Columbia, including so much of any authorized leaves of absence without pay beginning on the effective date of this amendatory Act as does not exceed six months in the aggregate in any fiscal year, plus any service credit that may be allowed under the provisions of this section: *Provided*, That the total credit granted for leaves of absence without pay shall not exceed one year: *Provided further*, That deposits equal to 5 per centum of those portions of salary received between July 1, 1949, and the effective date of this amendatory Act for which service credit was not earned may be made, and service credit received accordingly." for "The whole term of service which forms the basis for determining the amount of the annuity provided in section 31-725 shall be computed from the date of original employment as a teacher, other than temporary, in the public schools of the District of Columbia, plus any service credit that may be allowed under the provisions of this section" and deleted from the act of Mar. 6, 1952, amended the second sentence preceding the first proviso: "and the first ten-year period to begin on the date of the first probationary appointment as a teacher in the public schools of the District of Columbia."

#### EFFECTIVE DATE AND APPLICABILITY OF 1972 AMENDMENT

Section 204(d)(e) of title II of Act Oct. 21, 1972, Pub. L. 92-518, provided:

"(d) The amendment made by section 201(3)(A) of this title [striking out matter in the first sentence of § 31-728] shall apply only to teachers retiring after the date of enactment of this title.

"(e) The amendment made by section 201(3)(B) of this title [adding a new second sentence to § 31-728] is effective only with respect to annuity accruing for full months beginning after the date of enactment of this title; but any part of a period of separation referred to in such amendment in which the employee or former employee was receiving benefits under subchapter I of chapter 81 of title 5, United States Code, or any earlier statute on which such subchapter is based shall be counted whether the employee returns to duty before, on, or after such date of enactment. With respect to any person retired before such date of enactment, any such part of a period of separation shall be counted only with application of the former employee."

Section 202(a) of the same Act provided that the amendment made by section 202(a)(1) [striking out "probationary" in the first sentence and in clause (f)



of the fourth sentence of § 31-728] shall be "effective on the first day of the first pay period which begins on or after the date of enactment of this Act".

EFFECTIVE DATE AND APPLICABILITY OF 1970 AMENDMENT  
See notes under section 31-721.

EFFECTIVE DATE OF 1957 AMENDMENT  
See note under section 31-721.

EFFECTIVE DATE OF 1952 AMENDMENT  
See note under section 31-721.

SECTION REFERRED TO IN OTHER SECTIONS  
This section is referred to in section 31-723.

§ 31-729. **Deferred annuity—Refunds—Deposit of amount withdrawn—Annuity to survivors—Termination and restoration of annuity—Determination of dependency and disability.**

(a) Should any teacher to whom this subchapter applies, after completing five years of eligible service and before becoming eligible for retirement, become separated from the service, such teacher may elect to receive a deferred annuity, computed as provided in section 31-725, beginning at the age of sixty-two years and terminating on the date of his death: *Provided*, That any teacher who becomes separated from the public schools of the District of Columbia for other than retirement purposes and who does not elect to receive a deferred annuity as provided for in this section, shall receive as soon as practicable after separation the refund of deductions, deposits, or redeposits with interest thereon, or any voluntary contributions made under the provisions of section 31-721, with interest: *Provided further*, That no teacher who shall withdraw the amount of his deductions, deposits, or redeposits under this section shall, after reinstatement, be entitled to credit for previous service unless he shall deposit in the fund the amount so withdrawn by him: *And provided further*, That the amount required to be so deposited may be paid by the teacher, if he so elects, in any number of monthly installments, not exceeding one hundred, with interest at 3 per centum compounded annually.

(b) (1) In the event any teacher to whom this subchapter applies shall die subsequent to March 6, 1952, after completing at least eighteen months of eligible service and is survived by a widow, or widower, such widow or widower shall be paid an annuity beginning the day after the teacher dies, equal to 55 per centum of the amount of an annuity computed as provided in subsection (a) of section 31-725 with respect to such teacher, except that in the computation of the annuity under such subsection the annuity of the teacher shall be at least the smaller of (i) 40 per centum of his average salary, or (ii) the sum obtained under such subsection after increasing his eligible service of the type last performed by the period elapsing between the date of death and the date he would have become sixty years of age. Such annuity and any right thereto shall terminate on the last day of the month before (A) the widow or widower dies, or (B) the widow or widower remarries before becoming sixty years of age. In the case of a widow or widower whose annuity under this paragraph is terminated because of remarriage before becoming sixty years of age, annuity at the same rate shall be restored commencing on the day

the remarriage is dissolved by death, annulment, or divorce, if—

(i) the widow or widower elects to receive the annuity which was terminated instead of a survivor benefit to which the widow or widower may be entitled, under this subchapter or another retirement system for employees of the Federal or District Government, by reason of the remarriage; and

(ii) any lump sum paid on termination of the annuity is returned to the teachers' retirement and annuity fund established under section 31-722.

(2) If any teacher to whom this subchapter applies shall die after completing at least eighteen months of eligible service or after having retired under the provisions of section 31-723 or section 31-724 and is survived by a wife or husband, each surviving child shall be paid an annuity equal to the smallest of (a) 60 per centum of the teacher's average salary divided by the number of children, (b) \$900, or (c) \$2,700 divided by the number of children. If such teacher is not survived by a wife or husband, each surviving child shall be paid an annuity equal to the smallest of (a) 75 per centum of the teacher's average salary divided by the number of children, (b) \$1,080, or (c) \$3,240 divided by the number of children. The child's annuity shall commence on the first day after the teacher dies. Such annuity and the right thereto terminate on the last day of the month before the child—

(A) becomes eighteen years of age unless he is then a student as described or incapable of self-support;

(B) becomes capable of self-support after becoming eighteen years of age unless he is then such a student;

(C) becomes twenty-two years of age if he is then such a student and capable of self-support;

(D) ceases to be such a student after becoming eighteen years of age unless he is then incapable of self-support; or

(E) dies or marries;  
whichever first occurs.

Upon the death of the surviving wife or husband or termination of the annuity of the child, the annuity of any other child or children shall be recomputed and paid as though such wife, husband, or child had not survived the teacher.

(3) In the event any teacher to whom this subchapter applies shall die subsequent to March 6, 1952, after completing at least eighteen months of eligible service, and is not survived by a widow, a widower, and/or children, but is survived by dependent parents or a dependent father or a dependent mother, such surviving dependent parents or parent shall be paid an annuity, beginning the first day of the month following the death of the teacher, equal to 55 per centum of the amount of an annuity computed as provided in subsection (a) of section 31-725 with respect to such teacher, except that, in the computation of the annuity under such subsection, the annuity of the teacher shall be at least the smaller of (i) 40 per centum of his average salary, or (ii) the sum obtained under such subsection after increasing his eligible service of the



type last performed by the period elapsing between the date of death and the date he would have become sixty years of age: *Provided*, That such payments shall be made jointly to surviving dependent parents and payment of such annuity shall continue after the death of either dependent parent: *Provided further*, That all such payments or any right thereto shall cease upon the death of both dependent parents.

(c) As used in this section—

(1) The term "widow" means a surviving wife of an individual, who either shall have been married to such individual for at least two years immediately preceding his death, or is the mother of issue by such marriage.

(2) The term "child" means—

(A) an unmarried child under eighteen years of age, including (i) an adopted child, and (ii) a stepchild or recognized natural child who lived with the teacher in a regular parent-child relationship;

(B) such unmarried child regardless of age who is incapable of self-support because of mental or physical disability incurred before age eighteen; or

(C) such unmarried child between eighteen and twenty-two years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution.

For the purpose of this paragraph and paragraph (2) of subsection (b) of this section, a child whose twenty-second birthday occurs before July 1 or after August 31 of a calendar year, and while he is regularly pursuing such a course of study or training, is deemed to have become twenty-two years of age on the first day of July after that birthday. A child who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than five months and if he shows to the satisfaction of the Commissioner of the District of Columbia that he has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately after the interim.

(3) The term "dependent parents" means the natural parents of a teacher who were receiving one-half or more of their total income from said teacher immediately preceding the death of said teacher.

(4) The term "dependent father" or "dependent mother" means the natural father or natural mother of a teacher who was receiving one-half or more of his or her total income from said teacher immediately preceding the death of said teacher.

(5) The term "widower" means the surviving husband of a teacher who was married to such teacher for at least two years immediately preceding her death or is the father of issue by such marriage.

(6) Questions of dependency and disability arising under this section shall be determined by the

Board of Education and its decisions with respect to such matters shall be final and conclusive and shall not be subject to review.

(Aug. 7, 1946, 60 Stat. 880, ch. 779, § 9; Mar. 6, 1952, 66 Stat. 19, ch. 95, § 8; June 4, 1957, 71 Stat. 47, Pub. L. 85-46, § 1; Oct. 24, 1962, 76 Stat. 1237, Pub. L. 87-881, title II, § 203 (b), (c), (d), (e); Sept. 2, 1964, 78 Stat. 886, Pub. L. 88-575, § 202; Dec. 29, 1967, Pub. L. 90-231, 1(6), 81 Stat. 748; May 22, 1970, Pub. L. 91-263, § 1(e), 84 Stat. 258; Oct. 21, 1972, Pub. L. 92-518, title II, § 201(4), 86 Stat. 1013.)

#### CODIFICATION

In subsec. (b) (1) (3), "March 6, 1952" was substituted for "the date of enactment of this amendatory Act".

#### AMENDMENTS

1972—Section 201(4) of Act Oct. 21, 1972, Pub. L. 92-518, amended section by (A) substituting "widower" for "dependent widower" each time it appeared in subsec. (b) (1); (B) by striking out from the second sentence of subsec. (b) (1), clause (C) which read "(C) the dependent widower becomes capable of self-support"; (C) by substituting "widower" for "dependent widower" in subsec. (b) (3); and (D) by striking out the second sentence of subsec. (c) (5) which defined "dependent widower".

1970—Section 1(e), act May 22, 1970, Pub. L. 91-263, amended the section as follows:

(1) Provided in the first sentence of subsection (b) (1) for entitlement to a survivor annuity after an 18-month rather than 5-year period of eligible service and prescribed as the annuity at least the smaller of two computations when computing the annuity under section 31-725(a).

(2) Increased the annuity of a surviving child by substituting "eighteen months" for "five years" of eligible service, by elementary requirement that surviving child must have received more than one-half of his support from the teacher, and by substituting "60 per centum", "\$900", and "\$2,700" for "40 per centum", "\$600", and "\$1,800" in the first sentence of subsection (b) (2); and by substituting "75 per centum", "\$1,080" and "\$3,240" for "50 per centum", "\$720", and "\$2,160" in the second sentence of subsection (b) (2).

(3) Increased the annuity of a dependent parent by substituting "eighteen months" for "five years" of eligible service, by substituting "55 per centum of the amount of an annuity" for "one-half the amount of an annuity", and by prescribing as the annuity at least the smaller of two computations, in subsection (b) (3).

1967—Section 1(6), act Dec. 29, 1967, amended section as follows:

(1) In subsection (a), by striking out "after having served in the public schools of the District of Columbia for a total period of not less than five years" and inserting in lieu "after completing five years of eligible service"; by striking out "beginning at the age of sixty-two computed as provided in section 31-725" and inserting in lieu "computed as provided in section 31-725, beginning at the age of sixty-two years and terminating on the date of his death."

(2) In subsection (b) (1), by striking out the language relating to at least five years of service and inserting in lieu "after completing five years of eligible service"; by striking out "first day of the month following the death of the teacher" and inserting "day after the teacher dies"; by striking out the language beginning with "teacher: *Provided*" to the end of the paragraph and inserting in lieu the new matter beginning with "teacher. Such etc." relating to termination and restoration of annuity including clauses (i) and (ii); by striking out par. (b) (2) and redesignating pars. (b) (3) as (b) (2) and (b) (4) as (b) (3); by striking out in (b) (2) as so redesignated the words "five years of service in the public schools of the District of Columbia" and inserting "five years of eligible service"; by striking out the third sentence in (b) (2) relating to the child's annuity; and inserted the new language relating to the child's annuity; by striking out the first sentence of (b) (3) the language relating to at least five years of



service and inserted in lieu "after completing five years of eligible service."

(3) Amended the 2d par. of subsec. (c) defining a child to read as above set out.

1964—Section 202 of act Sept. 2, 1964, amended the third sentence of subsection (b) (3) by striking "on the day after the employee dies", and inserting in lieu, "on the first day of the month following the teacher's death."

1962—Section 203(b) of act Oct. 24, 1962, struck out "one-half" and inserted in lieu thereof "55 per centum of" in subsection (b) (1).

Section 203(c) struck out "one-half" in three places and inserted "55 per centum of" in two places and "55 per centum" in the third place in subsection (b) (2).

Section 203(d) (1) amended the third sentence of subsection (b) (3).

Section 203(d) (2) enacted the provision set out as note entitled, "Teachers' Retirement and Annuity Fund".

Section 203(e) amended subsection (c) (2) by changing the period at the end of sentence to a comma and adding the matter beginning with the words "or such unmarried child".

1957—Subsec. (a) amended by act June 4, 1957, which substituted "five" for "ten."

Subsec. (b) (1) amended by act June 4, 1957, which inserted "or dependent widower" following "widow", wherever appearing, added the concluding words "or upon the widower's becoming capable of self-support" and deleted "or following the widow's attainment of age fifty, whichever is later" following "death of the teacher."

Subsec. (b) (2) amended by act June 4, 1957, which inserted "or dependent widower" following "widow", wherever appearing, and deleted the concluding sentences reading "There shall also be paid to or on behalf of each such child an immediate annuity equal to one-half the amount of the annuity of such widow, but not to exceed \$900 divided by the number of such children or \$360, whichever is lesser. Upon the death of such widow, the annuity of such child or children shall be recomputed and paid as provided in paragraph (3) of this subsection."

Subsec. (b) (3) added by act June 4, 1957. Former subsec. (b) (3) had provided "In the event any teacher to whom this subchapter applies shall die subsequent to March 6, 1952 after having rendered at least five years of service in the public schools of the District of Columbia, or after having retired under the provisions of section 31-723 or 31-724 subsequent to March 6, 1952 and leaves no surviving widow or widower but leaves a surviving child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the amount of the annuity to which such widow would have been entitled under paragraph (2) of this subsection had she survived, but not to exceed \$1,200 divided by the number of such children or \$480, whichever is lesser."

Subsec. (b) (4), formerly (b) (5), so redesignated by act June 4, 1957 and amended by substituting "by a widow, a dependent widower, and or children" for "by a widow, widow and children or children," Former subsec. (b) (4) had provided "The annuity payable to a child under this subsection shall be terminable upon his attaining the age of eighteen years, or his marriage, or his death, whichever occurs first, except that if such child is incapable of self-support by reason of mental or physical disability his annuity shall be terminable only upon death, marriage or recovery from such disability. In any case in which the annuity of a child, under this subsection, is terminated, the annuities of any other child or children, based upon the service of the same teacher, shall be recomputed and paid as though the child whose annuity was so terminated had not survived the teacher."

Subsec. (c) amended by act June 4, 1957, which added par. (5) and redesignated former par. (5) as par. (6).

1952—Act Mar. 6, 1952, designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

#### EFFECTIVE DATE AND APPLICABILITY OF 1972 AMENDMENT

Section 204(f) of title II of Act Oct. 21, 1972, Pub. L. 92-518, provided:

"(f) The amendments made by section 201(4) of this title [amending § 31-729] shall not apply in the cases of teachers or annuitants who died before the date of enactment of this title. The right of such persons and their

survivors shall continue in the same manner and to the same extent as if such amendments had not been enacted."

#### EFFECTIVE DATE AND APPLICABILITY OF 1970 AMENDMENT; RECOMPUTED ANNUITY OF SURVIVING CHILD

For effective date generally, see section 5(a) of act May 22, 1970, set out as a note under section 31-721.

Section 2(c) of act May 22, 1970, Pub. L. 91-263, provided:

"(c) (1) The amendment made by subsection (e) (2) of section 1 of this Act [to subsection (b) (2) of this section] shall become effective on the first day of the first month which begins after October 20, 1969.

"(2) The annuity of each surviving child who, immediately prior to the effective date of such amendment is receiving an annuity under subsection (b) (2) of section 9 of such Act (D.C. Code, sec. 31-729(b)(2)) or under a comparable provision of any prior law, or who hereafter becomes entitled to receive annuity under such Act shall be recomputed effective on such date, or computed from commencing date if later, in accordance with such amendment. No increase allowed or in force prior to such date shall be included in the computation or recomputation of any such annuity. This paragraph shall not operate to reduce any annuity."

For applicability of amendment of subsection (b) (1) and (b) (3) of this section, see section 2(a) of act May 22, 1970, set out as a note under section 31-721.

#### EFFECTIVE DATE OF ACT, SEPT. 2, 1964, TITLE II

See note under § 31-1501.

#### EFFECTIVE DATE OF 1957 AMENDMENT

See note under § 31-721.

#### EFFECTIVE DATE OF 1952 AMENDMENT

See note under § 31-721.

#### LIMITATIONS OF AMENDMENTS MADE BY ACT OCT. 24, 1962

See note under § 31-725.

#### PAYMENT OF BENEFITS PROVIDED BY ACT OCT. 24, 1962

See note under § 31-725.

#### TEACHERS' RETIREMENT AND ANNUITY FUND

Section 203(d) (2) of act Oct. 24, 1962, referring to the provisions of the 1962 amendments made to the third sentence of subparagraph (b) (3) above set out provides as follows: "Notwithstanding any other provision of law, the benefits resulting from enactment of this amendment shall be paid from the teachers' retirement and annuity fund."

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CROSS REFERENCE

Adjustment of annuities on basis of price index, see § 31-739a.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-721, 31-724, 31-725, 31-733, 31-739a.

#### § 31-730. Beneficiaries—Order of precedence for payment of lump-sum benefits—Payment of lump-sum credit—Definitions.

(a) Under regulations prescribed by the Commissioner of the District of Columbia, a present or former teacher may designate a beneficiary or beneficiaries for the purpose of this subchapter.

(b) Lump-sum benefits authorized by subsections (c), (d), and (e) of this section shall be paid in the following order of precedence, to the person or persons surviving the teacher and alive at the date title to the payment arises, and the payment bars recovery by any other person:

First, to the beneficiary or beneficiaries designated by the teacher in a signed and witnessed



writing received by the Commissioner of the District of Columbia before his death.

Second, if there is no designated beneficiary, to the widow or widower of the teacher.

Third, if none of the above, to the child or children of the teacher and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the teacher or the survivor of them.

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the teacher.

Sixth, if none of the above, to such other next of kin of the teachers as the Commissioner of the District of Columbia determines to be entitled under the laws of the domicile of the teacher at the date of his death.

For the purpose of this subsection, the term "child" includes a natural child and an adopted child, but does not include a stepchild.

(c) If—

(1) a teacher dies—

(A) without a survivor, or

(B) with a survivor or survivors and the right of all survivors terminates before a claim for survivor annuity is filed; or

(2) a former teacher not retired dies, the lump sum credit shall be paid.

(d) If all annuity rights under this subchapter based on the service of a deceased teacher terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

(e) If an annuitant dies, any annuity accrued and unpaid shall be paid.

(f) For purposes of this section, the term "lump-sum credit" means the unrefunded amount consisting of—

(1) retirement deductions made under this subchapter from the salary of a teacher;

(2) amounts deposited into the teachers' retirement and annuity fund by a teacher covering earlier service; and

(3) interest on the deductions and deposits made with respect to service which aggregates more than one year but excluding interest for the fractional part of a month in the total service. (Aug. 7, 1946, 60 Stat. 880, ch. 779, § 10; Mar. 6, 1952, 66 Stat. 21, ch. 95, § 9; Dec. 29, 1967, Pub. L. 90-231, § 1(7), 81 Stat. 750.)

#### AMENDMENTS

1967—Section 1(7), act Dec. 29, 1967, amended section generally.

1952—Act Mar. 6, 1952, designated existing provisions as subsecs. (a)–(c), inserted in such subsec. (b) the words "leaving no survivor entitled to annuity benefits under the provisions of this subchapter" and added subsec. (d).

#### EFFECTIVE DATE OF 1952 AMENDMENT

See note under section 31-721.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-721, 31-725.

#### § 31-731. Consent to deductions.

Every teacher who shall continue in the service of the public schools of the District of Columbia after the passage of this subchapter, as well as every person who hereafter may be appointed to a position as teacher in the public schools of the District of Columbia, shall be deemed to consent and agree to the deductions made and provided for herein; and the salary, pay, or compensation, which may be paid monthly or at any other time, shall be full and complete discharge and acquittance of all claims and demands whatsoever for all services rendered by such teacher during the period covered by such payment, except his claim for the benefits to which he may be entitled under the provisions of this subchapter, notwithstanding the provisions of the Act of June 20, 1906 (34 Stat. 316), and of any other law, rule, or regulation affecting the salary, pay, or compensation of the teachers employed in the service of the public schools of the District of Columbia. (Aug. 7, 1946, 60 Stat. 880, ch. 779, § 11.)

#### REFERENCES IN TEXT

See Distribution Tables for Act June 20, 1906, 34 Stat. 316, referred to in the text.

#### § 31-732. Discharge of teacher.

Nothing in this subchapter shall be construed to prevent the discharge of any teacher at any time in the discretion of the Board of Education of the District of Columbia under the provisions of law. (Aug. 7, 1946, 60 Stat. 881, ch. 779, § 12.)

#### § 31-733. Definitions.

The term "teacher," under this subchapter, shall include all teachers employed by the Board of Education in the public day schools of the District of Columbia, including other educational employees whose salaries are established in the District of Columbia Teachers' Salary Act of 1945, as amended, except the employees of the Department of School Attendance and Work Permits; whenever the pronoun "his" occurs in this subchapter it shall be construed to mean both male and female; and the term "annual salary" shall be construed to mean the total annual income received during the fiscal year for service rendered in the public day schools (not including summer schools) of the District of Columbia, including basic salary, automatic increases, and longevity allowances, provided for in the District of Columbia Teachers' Salary Act of 1945, as amended, and all wartime additional compensation or bonus, and this definition of "annual salary" shall not be construed to affect any deductions which have been made prior to the effective date of this subchapter from any teacher's "annual salary" as defined in subchapter I of this chapter.

The term "average salary" shall mean the largest annual rate resulting from averaging, over any period of three consecutive years of eligible service, or in the case of a survivor annuity under section 31-729(b) based on service of less than three years, over the total eligible service in the public schools of the District of Columbia, a teacher's rates of annual salary in effect during such period, with each rate weighted by the time it was in effect.



For purposes of this subchapter, the term "eligible service" means service in the public schools of the District of Columbia under a temporary, probationary, or permanent appointment to a position, the rate of compensation of which is prescribed in the salary schedule contained in section 31-1501. (Aug. 7, 1946, 60 Stat. 881, ch. 779, § 13; June 4, 1957, 71 Stat. 48, Pub. L. 85-46, § 1; Dec. 29, 1967, Pub. L. 90-231, § 1(8), 81 Stat. 751; May 22, 1970, Pub. L. 91-263, § 1(a), 84 Stat. 257; Oct. 21, 1972, Pub. L. 92-518, title II, § 202(a)(2), 86 Stat. 1013.)

#### REFERENCES IN TEXT

The District of Columbia Teachers' Salary Act of 1945, as amended, referred to in the text, refers to act July 21, 1945, 59 Stat. 488, ch. 321, which was repealed by act July 7, 1947, 61 Stat. 260, ch. 208, title V, § 20, eff. July 1, 1947. See District of Columbia Teachers' Salary Act of 1955, set out as chapter 15 of this title.

#### AMENDMENTS

1972—Section 202(a)(2) of Act Oct. 21, 1972, Pub. L. 92-518, amended the first sentence by substituting "employed" for "permanently employed".

1970—Section 1(a), act May 22, 1970, Pub. L. 91-263, amended definition of "average salary" by reducing the number of years of eligible service from 5 to 3 consecutive years, and by providing for averaging the rate of annual salary over the total eligible service in the public schools of the District of Columbia in the case of a survivor annuity under section 31-729(b) based on service of less than 3 years.

1967—Section 1(8), act Dec. 29, 1967, Pub. L. 90-231, amended section by striking out "creditable service" and inserting in lieu "eligible service" and by adding at the end the paragraph defining "eligible service".

1957—Act June 4, 1957, defined "average salary."

#### EFFECTIVE DATE OF 1972 AMENDMENT

Section 202(a) of Act Oct. 21, 1972, Pub. L. 92-518, provided that the amendment of § 31-733 shall be "effective on the first day of the first pay period which begins on or after the date of enactment of this Act".

#### EFFECTIVE DATE AND APPLICABILITY OF 1970 AMENDMENT

See notes under section 31-721.

#### EFFECTIVE DATE OF 1957 AMENDMENT

See note under section 31-721.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-725.

### § 31-734. Records and accounts—Report to Congress—Appropriation estimates.

The Commissioner of the District of Columbia shall prepare and keep all needful tables, records, and accounts required for carrying out the provisions of this subchapter. The records to be kept shall include data showing the mortality experience of the teachers in the service of the public schools of the District of Columbia and the rate of withdrawal from such service, and any other information pertaining to such service that may be of value and may serve as a guide for future valuations and adjustments of the plan for the retirement of teachers. The Commissioner of the District of Columbia shall make a detailed comparative report annually to Congress showing all receipts and disbursements under the provisions of this subchapter, together with the total number of persons receiving annuities and the amounts paid them. And the Treasury Department shall prepare the estimates of the annual appropriations required to be made to the teachers' re-

tirement and annuity fund, and shall make actuarial valuations of such fund at intervals of five years, or oftener if deemed necessary by the Secretary of the Treasury. (Aug. 7, 1946, 60 Stat. 881, ch. 779, § 14.)

#### CODIFICATION

References to the Commissioner of the District of Columbia were substituted for "Commissioners of the District of Columbia" on authority of § 401 of Reorg. Plan No. 3 of 1967 and § 31-739c.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

### § 31-735. Transfer of appropriations.

The Commissioner of the District of Columbia shall include in his annual estimates of appropriations a sum sufficient to carry out the provisions of this subchapter. Appropriations made for the purposes of this subchapter shall be transferred to the credit of the teachers' retirement and annuity fund established under section 31-722. (Aug. 7, 1946, 60 Stat. 881, ch. 779, § 15.)

#### CODIFICATION

Reference to the Commissioner of the District of Columbia was substituted for "Commissioners of the District of Columbia" on authority of § 401 of Reorg. Plan No. 3 of 1967 and § 31-739c.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### TRANSFER OF FUNCTIONS

For transfer of functions with respect to budgetary matters, see § 403 of 1967 Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the Appendix to title 1.

### § 31-736. Rules and regulations.

The District of Columbia Council is hereby authorized to perform, or cause to be performed, any or all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this subchapter into full force and effect. (Aug. 7, 1946, 60 Stat. 881, ch. 779, § 16.)

#### CODIFICATION

Reference to the District of Columbia Council was substituted for "Commissioners of the District of Columbia" on authority of § 402(240) of Reorg. Plan. No. 3 of 1967 and § 31-749c.

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(240) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the functions of the Board of Commissioners of making rules and regulations for the purpose of carrying the provisions of this subchapter into full force and effect under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-739c.

### § 31-737. Funds not assignable or subject to execution.

None of the money mentioned in this subchapter shall be assignable, either in law or equity, or be subject to execution or levy by attachment, garnishment, or other legal process. (Aug. 7, 1946, 60 Stat. 882, ch. 779, § 17.)



### § 31-738. Applicability.

The provisions of this subchapter shall apply to all teachers on the rolls of the public schools of the District of Columbia for the month of June 1946, or thereafter, if otherwise eligible: *Provided*, That nothing in this subchapter shall require the reduction of any annuity of any teacher on the rolls of the public schools of the District of Columbia for the month of June 1946, would be entitled to receive, under the provisions of subchapter I of this chapter, upon retirement. The said subchapter I of this chapter shall not otherwise apply to teachers on the rolls of the public schools of the District of Columbia for the month of June 1946, or thereafter, but such subchapter I of this chapter shall remain in force and effect with respect to teachers retired prior to the effective date of this subchapter, subject to the provisions of section 31-739. (Aug. 7, 1946, 60 Stat. 882, ch. 779, § 18.)

### § 31-739. Prior retirements—Salary basis—Straight life annuity.

The annuities of all teachers retired prior to the effective date of this subchapter shall be recomputed in accordance with the provisions of section 31-725 within ninety days after the approval of this subchapter retroactive to the effective date of this subchapter, and no recomputation shall be made which will reduce the annuity received by any retired teacher: *Provided*, That the average annual salary during any five consecutive years, specified in section 31-725, upon which the annuity is based shall be within the last ten years of allowable service in the public schools of the District of Columbia: *Provided further*, That the increased amount of the annuity resulting therefrom shall be a straight life annuity without any insurance or death benefits of any kind. (Aug. 7, 1946, 60 Stat. 882, ch. 779, § 19.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-738.

### § 31-739a. Adjustment of annuities on basis of price index—Computation—Definitions.

(a) Effective December 1, 1965, each annuity payable from the fund which has a commencing date not later than January 1, 1966, shall be increased by (1) the per centum rise in the price index, adjusted to the nearest one-tenth of 1 per centum, determined by the Commissioner of the District of Columbia on the basis of the annual average price index for calendar year 1962 and the price index for the month of July 1965 plus (2) 6½ per centum if the commencing date (or in the case of a survivor of a deceased annuitant the commencing date of the annuity of the retired employee) occurred on or before October 1, 1956, or 1½ per centum if the commencing date (or in the case of the survivor of a deceased annuitant the commencing date of the annuity of the retired employee) occurred after October 1, 1956. The month used in determining the increase based on the per centum rise in the price index under this subsection shall be the base month for determining the per centum change in the price index until the next succeeding increase occurs.

(b) Each month after the first increase under this section, the Commissioner of the District of Columbia shall determine the per centum change in the price index. Effective the first day of the third month which begins after the price index shall have equaled a rise of at least 3 per centum for three consecutive months over the price index for the base month, each annuity payable from the fund has a commencing date not later than such effective date shall be increased by 1 per centum plus the per centum rise in the price index (calculated on the highest level of the price index during the three consecutive months) adjusted to the nearest one-tenth of 1 per centum.

(c) Eligibility for an annuity increase under this section shall be governed by the commencing date of each annuity payable from the fund as of the effective date of an increase, except as follows:

(1) Effective from its commencing date, an annuity payable from the fund to an annuitant's survivor (other than a child entitled under section 31-729(b)(3), which annuity commences the day after the annuitant's death and after the effective date of the first increase under this section, shall be increased by the total per centum increase the annuitant was receiving under this section at death.

(2) For the purpose of computing the annuity of a child under section 31-729(b)(2) that commences after October 31, 1969, the items \$900, \$1,080, \$2,700, and \$3,240 appearing in section 31-729(b)(2) shall be increased by the total per centum increases allowed and in force under this section on or after such day and, in case of a deceased annuitant, the items 60 per centum and 75 per centum appearing in section 31-729(b)(2) shall be increased by the total per centum allowed and in force to the annuitant under this section on or after such day.

(d) No increase in annuity provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

(e) The monthly installment of annuity after adjustment under this section shall be fixed at the nearest dollar, except that such installment shall after adjustment reflect an increase of at least \$1.

(f) For purposes of this section, the term "price index" shall mean the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics. The term "base month" shall mean the month for which the price index showed a per centum rise forming the basis for a cost-of-living annuity increase. (Aug. 7, 1946, ch. 779, § 21, as added Oct. 24, 1962, 76 Stat. 1236, Pub. L. 87-881, title II, § 202, and amended July 5, 1966, Pub. L. 89-494, § 1, 80 Stat. 266; Dec. 29, 1967, Pub. L. 90-231, § 1(9), 81 Stat. 751; May 22, 1970, Pub. L. 91-263, § 1(c), 84 Stat. 257.)

#### REFERENCE IN TEXT

In subsec. (c)(1), the reference to "section 31-729(b)(3)" should be "section 31-729(b)(2)". Section 1(6)(E) of Pub. L. 90-231 redesignated "section 31-729(b)(3)" as "section 31-729(b)(2)" without making a corresponding change in this section.



## CODIFICATION

Reference to the Commissioner of the District of Columbia was substituted for "Commissioners of the District of Columbia" on authority of § 401 of Reorg. Plan No. 3 of 1967 and § 31-739c.

In subsection (c) (2), the words "after October 31, 1969" were substituted for "on or after the first day of the first month that begins on or after the effective date of the District of Columbia Teachers' Retirement Amendments of 1970" on authority of section 5(a) of act May 22, 1970, set out as a note under section 31-721.

## AMENDMENTS

1970—Section 1(c), act May 22, 1970, Pub. L. 91-263, amended the section as follows:

(1) By inserting "1 per centum plus" immediately after "shall be increased" in subsection (b).

(2) By amending paragraph (2) of subsection (c) to read as above set out. Before this amendment, the said paragraph read as follows:

(2) For purposes of computing an annuity which commences after the effective date of the first increase under this section to a child under section 31-729(b) (3), the items \$600, \$720, \$1,800, and \$2,160 appearing in section 31-729(b) (3) shall be increased by the total per centum increase allowed and in force under this section for employee annuities which commenced after October 1, 1956, and, in case of a deceased annuitant, the items 40 per centum and 50 per centum appearing in section 31-729(b) (3) shall be increased by the total per centum increase allowed and in force under this section to the annuitant at death."

1967—Section 1(9), Act Dec. 29, 1967, Pub. L. 90-231, amended the first sentence by striking out "December 30, 1965" and inserting in lieu "January 1, 1966".

1966—Section 1 of act July 5, 1966, consolidated §§ 21 and 22 of act Aug. 7, 1946, ch. 779, as added by act Oct. 24, 1962, 76 Stat. 1236, Pub. L. 87-881, Title II, § 202 (this section and former § 31-739b), into a single section (now this section), and amended the provisions generally to provide for an increase in these annuities, payable from the District of Columbia teachers' retirement and annuity fund, to revise the method of determining the cost-of-living increases in such annuities, and further, in this connection, to change the definition of "price index", in subsec. (f) by substituting "shall mean the Consumer Price Index (all items—United States city average)" for "shall mean the annual average over a calendar year of the Consumer Price Index (all items—United States city average)", and to add the definition of "base month" to such subsection. Prior to such amendment, this section contained only the above-mentioned provisions defining "price index".

## EFFECTIVE DATE OF 1970 AMENDMENT

See note under section 31-721.

## APPLICABILITY OF 1970 AMENDMENT

Section 2(b) of act May 22, 1970, Pub. L. 91-263, provided: "The amendment made by subsection (c) (1) of section 1 of this Act [to subsection (b) of this section] shall apply only to determinations of amounts of annuity increases which are made after October 20, 1969, under section 21 of the Act of August 7, 1946 (D.C. Code, sec. 31-739a)."

## RETROACTIVE EFFECT OF 1966 AMENDMENT

See note under § 31-722.

## PAYMENT OF BENEFITS PROVIDED BY ACT OCT. 24, 1962

See note under § 31-725.

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-722.

## § 31-739b. Omitted.

## CODIFICATION

Section, act Aug. 7, 1946, ch. 779, § 22, as added by act Oct. 24, 1962, 76 Stat. 1236, Pub. L. 87-881, Title II, § 202,

which provided for the adjustment of annuities on the basis of the price index, and for the computation thereof, has been omitted from the Code, inasmuch as said § 22 of the 1946 act, in the general amendment of that section and § 21 of such act, by act July 5, 1966, 80 Stat. 266, Pub. L. 89-494, § 1, was consolidated with said § 21, which is set out herein as § 31-739a. See 1966 amendment note under said § 31-739a. The provisions of this former section, as so amended, are now covered by said § 31-739a.

## § 31-739c. Construction.

Wherever the term "Commissioners of the District of Columbia" is used in sections 31-721 and 31-736, such term shall be deemed to mean the District of Columbia Council. Wherever the term "Board of Commissioners of the District of Columbia", or "Commissioners of the District of Columbia" is otherwise used in this subchapter, as amended or supplemented, such term shall be deemed to mean the Commissioner of the District of Columbia. (Aug. 7, 1946, ch. 779, § 22, as added Dec. 29, 1967, Pub. L. 90-231, § 1(10), 81 Stat. 751.)

## CODIFICATION

Section 31-725a, 31-725b, 31-740 to 31-745 were not enacted as a part of the District of Columbia Teachers' Retirement Act, 1946, which comprises this subchapter.

Pursuant to the provisions of this section, throughout this subchapter references to the Commissioner of the District of Columbia and to the District of Columbia Council were substituted for references to the Commissioners or Board of Commissioners, as appropriate.

## § 31-739d. Increased annuities for certain surviving spouses.

Effective on (a) November 1, 1969, or (b) the commencing date of annuity, whichever is later, the annuity of each surviving spouse whose entitlement to annuity payable from the District of Columbia teachers' retirement and annuity fund resulted from the death of:

(1) a teacher prior to October 24, 1962, or

(2) a retired teacher whose retirement was based on a separation from service prior to October 24, 1962, shall be increased by 10 per centum. (Aug. 7, 1946, ch. 779, § 23, as added May 22, 1970, Pub. L. 91-263, § 1(g), 84 Stat. 258.)

## CODIFICATION

In clause (a), "November 1, 1969" was substituted for "the first day of the first month which begins after October 20, 1969".

## EFFECTIVE DATE AND APPLICABILITY

See sections 2(a) and 5(a) of act May 22, 1970, set out as notes under section 31-721.

## § 31-740. Waiver of annuity—Revocation.

Any person entitled to annuity pursuant to the provisions of subchapter I of this chapter or this subchapter may decline to accept all or any part of such annuity by a waiver signed and filed with the Commissioner of the District of Columbia or his designated agent. Such waiver may be revoked in writing at any time, but no payment of the annuity waived shall be made covering the period during which such waiver was in effect. (July 2, 1956, 70 Stat. 487, ch. 497, § 2.)

## CODIFICATION

Section was not enacted as a part of the District of Columbia Teachers' Retirement Act, 1946, which comprises this subchapter.



Reference to the Commissioner of the District of Columbia was substituted for "Commissioners of the District of Columbia" on authority of § 401 of Reorg. Plan No. 3 of 1967 and § 31-739c.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 31-741. Increased annuities for certain retired employees and survivors—Amount—Maximum.

(a) The annuity of each retired employee who, on August 1, 1958, is receiving or is entitled to receive an annuity from the District of Columbia teachers' retirement and annuity fund based on service which terminated prior to October 1, 1956, shall be increased by 10 per centum, but no such increase shall exceed \$500 per annum.

(b) The annuity otherwise payable from the District of Columbia teachers' retirement and annuity fund to—

(1) each survivor who on August 1, 1958, is receiving or entitled to receive an annuity based on service which terminated prior to October 1, 1956, and

(2) each survivor of a retired employee described in subsection (a) of this section, shall be increased by 10 per centum. No increase provided by this subsection shall exceed \$250 per annum.

(c) No increase provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions. (Sept. 2, 1958, 72 Stat. 1768, Pub. L. 85-917, § 1.)

#### CODIFICATION

Section was not enacted as a part of the District of Columbia Teachers' Retirement Act, 1946, which comprises this subchapter.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-743, 21-744.

#### § 31-742. Unremarried widow or widower entitled to annuity—Conditions—Amount—Termination.

The unremarried widow or widower of an employee—

(1) who had completed at least ten years of service creditable for retirement purposes under this subchapter,

(2) who died before May 1, 1952, and

(3) who was at the time of his death (A) subject to an Act under which annuities granted before May 1, 1952, were or are now payable from the District of Columbia teachers retirement and annuity fund or (B) retired under such Act,

shall be entitled to receive an annuity. In order to qualify for such annuity, the widow or widower shall have been married to the employee for a least five years immediately prior to his death and must be not entitled to any other annuity from the District of Columbia teachers retirement and annuity fund based on the service of such employee. Such annuity shall be equal to one-half of the annuity which the employee was receiving on the date of his death if retired, or would have been receiving if he had been retired for disability on the date of his death, but shall not exceed \$750 per annum and shall not be increased by the provisions of this or any other prior law. Any annuity granted under

this section shall cease upon the death or remarriage of the widow or widower. (Sept. 2, 1958, 72 Stat. 1768, Pub. L. 85-917, § 2.)

#### CODIFICATION

Section was not enacted as a part of the District of Columbia Teachers' Retirement Act, 1946, which comprises this subchapter.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-743, 31-744.

#### § 31-743. Effective dates of annuities provided by sections 31-741 and 31-742—Computation.

(a) An increase in annuity provided by subsection (a), or clause (1) of subsection (b), of section 31-741 shall take effect on August 1, 1958. An increase in annuity provided by clause (2) of such subsection (b) shall take effect on the commencing date of the survivor annuity.

(b) An annuity provided by section 31-742 shall commence on August 1, 1958, or on the first day of the month in which application for such annuity is received by the Commissioner of the District of Columbia or his designated agent, whichever occurs later.

(c) The monthly installment of each annuity increased or provided by sections 31-741 to 31-744 shall be fixed at the nearest dollar. (Sept. 2, 1958, 72 Stat. 1769, Pub. L. 85-917, § 3.)

#### CODIFICATION

Section was not enacted as a part of the District of Columbia Teachers' Retirement Act, 1946, which comprises this subchapter.

Reference to the Commissioner of the District of Columbia was substituted for "Commissioners of the District of Columbia" on authority of § 401 of Reorg. Plan No. 3 of 1967 and § 31-739c.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-744.

#### § 31-744. Annuities under sections 31-741 to 31-743 to be paid from District of Columbia teachers retirement and annuity fund—Conditions under which annuities and increases terminate after July 1, 1960.

The annuities and increases in annuities provided by sections 31-741 to 31-743 shall be paid from the District of Columbia teachers retirement and annuity fund. Such annuities and increases in annuities shall terminate for each fiscal year beginning on or after July 1, 1960, for which the Congress has failed to make provision for the payment of like annuities and increases in annuities under the Act approved June 25, 1958 (72 Stat. 218), for such fiscal year. For any fiscal year for which such annuities and increases in annuities shall terminate for the reason set forth in this section, sections 31-741 to 31-743 shall not be in effect and annuities and increases in annuities shall be determined and paid as though such sections had not been enacted. Nothing contained in this section shall be held or considered to prevent the payment of annuities and increases in annuities provided by sections 31-741 to 31-743 for any fiscal year for which the Congress shall have made provisions for the payment of like



annuities and increases in annuities under such Act approved June 25, 1958 (72 Stat. 218). (Sept. 2, 1958, 72 Stat. 1769, Pub. L. 85-917, § 4.)

#### REFERENCES IN TEXT

Act June 25, 1958, 72 Stat. 218, Pub. L. 85-465, referred to in the text, is set out as a note under 5 U.S.C. § 8339.

#### CODIFICATION

Section was not enacted as a part of the District of Columbia Teachers' Retirement Act, 1946, which comprises this subchapter.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-743.

### § 31-745. Crediting of certain authorized leave periods for retirement purposes—Conditions.

Any teacher who, on or after June 27, 1960, retires pursuant to this subchapter, shall be entitled to have included in the years of service creditable to him for retirement purposes any period of authorized leave of absence which was taken by him without pay, and for educational purposes; except that credit for any such period shall be conditioned upon the deposit by such teacher to the credit of the teachers' retirement and annuity fund of the District of Columbia of a sum equal to the accumulated contributions and interest which would have been credited to his individual account if he had remained on active duty in the public schools of the District of Columbia during any such period: *Provided*, That in order to receive such retirement credit a teacher must produce evidence satisfactory to the Superintendent of Schools of the District of Columbia that the authorized leave of absence without pay was taken for educational purposes. (June 27, 1960, 74 Stat. 222, Pub. L. 86-525.)

#### CODIFICATION

Section was not enacted as a part of the District of Columbia Teachers' Retirement Act, 1946, which comprises this subchapter.

### § 31-746. Tax-sheltered annuity program.

(a) Notwithstanding the provisions of section 31-1501, and of any other law, or regulation affecting the salary of teachers or school officers employed in the service of the public schools of the District of Columbia, the Commissioner of the District of Columbia (hereinafter referred to as the "Commissioner") is authorized to enter into an agreement with a teacher or school officer to reduce the salary of that teacher or school officer by an amount requested by that teacher or school officer, and to contribute that amount for the purchase of an annuity contract described in section 403(b) of the Internal Revenue Code of 1954 (relating to the taxability of beneficiaries of annuity plans) for that teacher or school official.

(b) The reduction in salary effected under an agreement authorized by this section shall not be considered in computing the salary for any teacher or school officer for any other purpose including, but not limited to, the determination of benefits or contributions under chapters 81 (relating to workmen's compensation) and 87 (relating to life insurance) of title 5 of the United States Code.

(c) The Commissioner shall prescribe such regulations as he deems necessary to carry out the purposes of this section.

(d) For the purposes of this section, the term "teacher or school officer" includes all teachers, school officers, and other employees of the Board of Education of the District of Columbia who receive compensation according to the salary schedules under section 31-1501, and to whom the provisions of this subchapter are applicable.

(e) This section shall apply with respect to any pay period of any teacher or school officer beginning on or after the one hundred and eightieth day after the date of enactment of this section. (Apr. 26, 1972, Pub. L. 92-281, §§ 1-4, 86 Stat. 131.)

#### REFERENCE IN TEXT

Section 403(b) of the Internal Revenue Code of 1954, referred to in subsec. (a), is classified to 26 U.S.C. 403(b).

#### CODIFICATION

Section was not enacted as a part of the District of Columbia Teachers' Retirement Act, 1946, which comprises this subchapter.

## Chapter 8.—USE OF SCHOOL BUILDINGS

### Sec.

- 31-801. Control by Board of Education of school buildings and grounds for purposes other than use as schools—Rules and regulations.
- 31-802. Board of Education authorized to accept free services—Teachers shall not be required or solicited to give—Use of school buildings and grounds.
- 31-803. Inspector of buildings to control and supervise construction and repairs of school buildings.
- 31-804. Board of Education may use Franklin School for office purposes.
- 31-805. Restriction on lot 14 in square 263.
- 31-806. Sale of part of lot 14 in square 263 authorized—Proceeds, how invested.
- 31-807. Certain land granted for colored schools to revert to United States.
- 31-808. Certain property set apart exclusively for school purposes.
- 31-809. Business High School used for senior high and elementary school purposes.
- 31-810, 31-811. Repealed.
- 31-812. Entrances to school buildings.

### § 31-801. Control by Board of Education of school buildings and grounds for purposes other than use as schools—Rules and regulations.

The control of the public schools in the District of Columbia by the Board of Education shall extend to, include, and comprise the use of the public-school buildings and grounds by pupils of the public schools, other children and adults, for supplementary educational purposes, civic meetings for the free discussion of public questions, social centers, centers of recreation, playgrounds. The privilege of using said buildings and grounds for any of said purposes may be granted by the board upon such terms and conditions and under such rules and regulations as the board may prescribe. (Mar. 4, 1915, 38 Stat. 1190, ch. 165, § 1.)

#### CROSS REFERENCES

Authority of Recreation Board, see §§ 8-214, 8-216.  
Board of Education, general provisions, see § 31-101.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-802.

### § 31-802. Board of Education authorized to accept free services—Teachers shall not be required or solicited to give—Use of school buildings and grounds.

The Board of Education is authorized to accept, upon written recommendation of the superintendent of schools, free and voluntary services of the teachers



of the public schools, other educators, lecturers, and social workers and public officers of the United States and the District of Columbia: *Provided*, That teachers of the public schools shall not be required or compelled to perform any such services or solicited to make any contribution for such purposes: *Provided further*, That the public-school buildings and grounds of the District of Columbia shall be used for no purpose whatsoever other than those directly connected with the public-school system and as further provided for in this section and section 31-801. (Mar. 4, 1915, 38 Stat. 1190, ch. 165, § 2.)

## CROSS REFERENCES

Authority of Recreation Board, see §§ 8-214, 8-216.

General provision forbidding acceptance of voluntary services, see § 1-215.

### § 31-803. Inspector of buildings to control and supervise construction and repairs of school buildings.

The inspector of buildings of the District shall have authority and control over and supervision of the construction and repairs of all school buildings if the Commissioner of the District of Columbia deems best to delegate the same to him. (Mar. 3, 1879, 20 Stat. 408, ch. 182.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## TRANSFER OF FUNCTIONS

Transfer of powers and duties from Inspector of Buildings to Director of Inspection, see act Dec. 20, 1944, 58 Stat. 822, ch. 611, § 3, set out as § 1-246. For subsequent transfers, see notes under § 1-246.

## CROSS REFERENCES

Janitors to make minor repairs, see § 31-1105.

Testing building materials, see §§ 1-813, 1-814.

## NOTES TO DECISIONS

## Judicial notice

The court will take judicial notice that there is an executive officer, subject to the authority of the commissioners, designated as the Inspector of Buildings, and the appropriation bills of Congress for the District of Columbia have heretofore made provision for the payment of his salary from time to time, and his office and duties have been recognized by other acts. *McBride v. Ross* (1898, 13 App. D.C. 576).

### § 31-804. Board of Education may use Franklin School for office purposes.

The Board of Education is authorized to use all necessary floor and room space in the Franklin School Building for office purposes. (Mar. 3, 1917, 39 Stat. 1026, ch. 160; June 5, 1920, 41 Stat. 855, ch. 234; Feb. 26, 1925, 43 Stat. 993, ch. 342, § 5.)

## CODIFICATION

Act Feb. 26, 1925, provided for use of all space, including rooms occupied by grades one through four.

Act June 5, 1920, provided for use of all space except rooms occupied by grades one, two, three, and four.

Act Mar. 3, 1917, provided for use of top floor.

### § 31-805. Restriction on lot 14 in square 263.

The lot of land marked upon the plan of the city of Washington as lot number fourteen, in square number two hundred and sixty-three, which was conveyed to said city by the Commissioner of Public Buildings, under authority of an Act of Congress dated June fifth, eighteen hundred and sixty, for

the use of the public schools in said city, shall not be sold, assigned or conveyed or diverted, for any other purpose except as provided in section 31-806. (R. S., D. C., § 317.)

## CROSS REFERENCE

Sale of public lands and buildings, see §§ 9-301 to 9-306 and notes.

### § 31-806. Sale of part of lot 14 in square 263 authorized—Proceeds, how invested.

The proceeds of that portion of lot number fourteen, in square number two hundred and fifty-three, which was authorized to be sold by an Act of Congress dated June fourth, eighteen hundred and seventy-two, shall be invested by the authorities of the District in another lot or part of a lot in the city of Washington, and in improvements thereon; and the property so purchased shall be used for the purpose of the public schools, and for no other purpose. (R. S., D. C., § 318.)

## CODIFICATION

The words "two hundred and fifty-three" are probably a misprint in the original statute for "two hundred and sixty-three" (see 12 Stat. 27, ch. 77).

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-805.

### § 31-807. Certain land granted for colored schools to revert to United States.

The lots of land numbered one, two, and eighteen, in square number nine hundred and eighty-five, in the city of Washington, which were designated and set apart by the Secretary of the Interior to be used for colored schools, and conveyed to the trustees of colored schools for the cities of Washington and Georgetown, by the Commissioner of Public Buildings, under authority of an act of Congress dated July 28, 1866, for the sole use of schools for colored children in the District of Columbia, shall, if converted to other uses, revert to the United States. (R. S., D. C., § 319.)

### § 31-808. Certain property set apart exclusively for school purposes.

That parcel of land marked and designated upon the map of the city of Washington as part of lot number eleven, in square number one hundred and forty-one, beginning at the northwest corner of said lot, and running thence due south on the west line of said square, fifty feet; thence due east, thirty feet; thence due north, fifty feet; thence due west on the north line of said square, to the point of beginning, and also that piece of land marked and designated upon said map as a public reservation, located between Eighth and Ninth Streets and K Street and Virginia Avenue Southeast, known as the Anacostia engine house, together with the buildings and improvements thereon, are severally set apart and appropriated for the use of the public schools in the city of Washington, so long as they shall be occupied for that purpose, and no longer. (R. S., D. C., § 320.)

### § 31-809. Business High School used for senior high and elementary school purposes.

Upon completion of the Roosevelt (Business) High School the building now occupied by the Business High School shall be utilized for senior high and



elementary school purposes. (Feb. 23, 1931, 46 Stat. 1395, ch. 282, § 1.)

#### APPROPRIATION

Act Feb. 25, 1929, 45 Stat. 1280, ch. 314, appropriated funds for a new Business High School and provided for use of the old building occupied by the Business High School as an elementary school upon completion of new Business High School.

§§ 31-810, 31-811. Repealed. July 16, 1946, 60 Stat. 541, ch. 582, § 5, effective July 1, 1946.

Sections, act Dec. 22, 1942, 56 Stat. 1072, ch. 804, §§ 2, 3, provided that public school buildings and equipment may be used for day nurseries and nursery schools, and related to fees for such nurseries and nursery schools.

§ 31-812. Entrances to school buildings.

On and after June 28, 1944, appropriations for the District of Columbia shall not be used for the maintenance of school in any building unless all outside doors thereto used as exits or entrances shall open outward and be kept unlocked every school day from from one-half hour before until one-half hour after school hours. (June 28, 1944, 58 Stat. 515, ch. 300, § 1.)

### Chapter 9.—MEDICAL AND DENTAL COLLEGES

#### SUBCHAPTER I.—REGISTRATION

Sec.

31-901. Medical and dental colleges not incorporated by special act of Congress to register with Commissioner—Permit.

31-902. Application for registration and permit—Regulations—Inquiry as to equipment.

31-903. Penalty for failure to register and obtain permit.

31-904. Injunction proceedings—Duty of Commissioner—Jurisdiction of court.

31-905. Repeal provisions.

#### SUBCHAPTER II.—FINANCIAL ASSISTANCE

31-921. Purpose

31-922. Authorization of grants to Commissioner—Limitations—Appropriations authorized.

31-923. Application for grants—Time for filing—Contents.

31-924. Regulations to prescribe basis for determining number of students.

31-925. Method of paying grants under § 31-922.

31-926. Commissioner to make payments to medical and dental schools—Limitations.

31-927. Application for payments—Time for filing—Contents.

31-928. Method of making payments under § 31-926.

31-929. Definitions.

#### SUBCHAPTER I.—REGISTRATION

§ 31-901. Medical and dental colleges not incorporated by special act of Congress to register with Commissioner—Permit.

It shall be unlawful for any medical or dental college claiming the authority to confer, or actually conferring, the degree of doctor of medicine, or doctor of dental surgery, not incorporated by a special Act of Congress, to conduct its business in the District of Columbia, unless such college shall be registered by the Commissioner of the District of Columbia and granted by him a written permit to commence or continue business in said District in compliance with the requirements of this subchapter. (May 4, 1896, 29 Stat. 112, ch. 154, § 1.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CROSS REFERENCE

Institutions of learning generally, see § 29-401 et seq.

§ 31-902. Application for registration and permit—Regulations—Inquiry as to equipment.

It shall be the duty of the proper officers of any such college, before commencing or continuing business, to apply to the said Commissioner for registration and a permit to Commence or continue business; and the District of Columbia Council is hereby authorized and required to make such regulations concerning the form of such application, the evidence to be adduced in support thereof, and the method of taking such evidence as it may deem best, and shall have power, and it shall be its duty, to give public notice of all hearings upon such applications; and no registration and permit shall be granted until after the Council shall have, by the inquiry and hearing hereinbefore provided for and such other inquiry as it may see fit to make, satisfied itself that all such medical or dental colleges are fully equipped, both by the character and fitness of the faculty and the sufficiency of their appliances, to give suitable and sufficient instruction in the theory and practice of medicine or dental surgery. (May 4, 1896, 29 Stat. 113, ch. 154, § 2.)

#### REGISTRATION OF UNINCORPORATED COLLEGES DOING BUSINESS ON MAY 4, 1896

Section 3 of act May 4, 1896, required the proper officers of every medical or dental college not incorporated by a special act of Congress which was doing business in the District on May 4, 1896, to apply for such certificate and registration within thirty days of May 4, 1896, and to prohibit any such college hereafter sought to be opened in said District from commencing business without first obtaining such registration and permit.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(241) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of making regulations concerning (i) the form of application by officers of any medical or dental college for registration and a permit to commence or continue business, (ii) the evidence to be adduced in support thereof, and (iii) the method of taking such evidence, giving notice of hearings upon applications, holding hearings, and making inquiries under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

§ 31-903. Penalty for failure to register and obtain permit.

Such of the officers and of the faculty of any such medical or dental college in existence on May 4, 1896, and of every such college thereafter sought to be opened in said District, which shall continue or commence to offer instruction in such capacity without first obtaining registration and permit, as hereinbefore provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof in the Superior Court of the District of Columbia, upon an information similar to that filed in the case of violations of the police regulations made by the said Commissioners, shall be fined not less than twenty-five nor more than two hundred and fifty dollars, and in default of payment thereof shall be imprisoned in the common jail of said District not less



than thirty days nor more than ninety days; said fines when collected to be paid into the Treasury of the United States to the credit of the District of Columbia. (May 4, 1896, 29 Stat. 113, ch. 154, § 4; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Pub. L. 91-358, amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

"Municipal court" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the police court and the municipal court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded Act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

### § 31-904. Injunction proceedings—Duty of Commissioner—Jurisdiction of court.

In any case when such action shall be necessary in the opinion of the said Commissioner to give full effect to the intent of this subchapter he shall have power, and it shall be his duty, to file in the Superior Court of the District of Columbia, in the name of the said District, a petition against the proper parties praying an injunction against the opening or continuance of any such college not registered and granted a permit as aforesaid; and jurisdiction is hereby conferred upon such court to hear and determine such causes. (May 4, 1896, 29 Stat. 113, ch. 154, § 5; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91-358, title I, § 155(c) (35), 84 Stat. 572.)

#### CODIFICATION

The word "petition" has been substituted for "bill", and the words "in equity" have been omitted as obsolete.

#### AMENDMENT

1970—Section 155(c) (35) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

### § 31-905. Repeal provisions.

All acts and parts of acts enacted prior to May 4, 1896, and all charters obtained by any medical or dental college prior to Mar. 4, 1896, under the gen-

eral incorporation laws in force in said District, so far as inconsistent with this subchapter, are hereby repealed. (May 4, 1896, 29 Stat. 113, ch. 154, § 6.)

## SUBCHAPTER II.—FINANCIAL ASSISTANCE

### § 31-921. Purpose.

It is the purpose of this subchapter to assist private nonprofit medical and dental schools in the District of Columbia in their critical financial needs in meeting the operational costs required to maintain quality medical and dental educational programs and to increase the number of students in such institutions as a necessary health manpower service to the metropolitan area of the District of Columbia. (Jan. 5, 1971, Pub. L. 91-650, title III, § 302, 84 Stat. 1934.)

#### SHORT TITLE

Section 301 of title III of act Jan. 5, 1971, Pub. L. 91-650, provided: "This title (enacting §§ 31-921 to 31-929) may be cited as the 'District of Columbia Medical and Dental Manpower Act of 1970'."

#### SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91-650

See secs. 801-803 of act Jan. 5, 1971, Pub. L. 91-650, set out as a note under § 47-2501a.

### § 31-922. Authorization of grants to Commissioner—Limitations—Appropriations authorized.

(a) The Secretary of Health, Education, and Welfare (hereinafter in this subchapter referred to as the "Secretary") is authorized to make grants to the Commissioner of the District of Columbia (hereinafter in this subchapter referred to as the "Commissioner") in amounts the Secretary determines to be the minimum amounts necessary to carry out the purposes of this subchapter. The total amount of grants under this section for any fiscal year shall not exceed the sum of (1) the product of \$5,000 times the number of full-time students enrolled in private nonprofit accredited medical schools in the District of Columbia, and (2) the product of \$3,000 times the number of full-time students enrolled in private nonprofit accredited dental schools in the District of Columbia.

(b) For the purposes of this section and section 31-926, in determining eligibility for, and the amount of, grants with respect to private nonprofit medical and dental schools, consideration shall be given to any grants made to such schools pursuant to the portion of the program under section 772 of the Public Health Service Act (42 U.S.C. 295f-2) relating to financial assistance to schools which are in serious financial straits to aid them in meeting their costs of operation.

(c) There are authorized to be appropriated \$6,200,000 for the fiscal year ending June 30, 1971, and such sums as may be necessary for the fiscal year ending June 30, 1972, to make grants under this section. (Jan. 5, 1971, Pub. L. 91-650, title III, § 303, 84 Stat. 1934.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-923, 31-924, 31-925, 31-926.



**§ 31-923. Application for grants—Time for filing—Contents.**

The Secretary may from time to time set dates by which applications for grants under section 31-922 for any fiscal year must be filed by the Commissioner. A grant under section 31-922 may be made only if application therefor—

(1) is approved by the Secretary;

(2) contains such information as the Secretary may require to make the determinations required of him under this subchapter and such assurances as he may find necessary to carry out the purposes of this subchapter; and

(3) provides for such fiscal control and accounting procedures and reports and access to the records of the Commissioner and the applicant schools as the Secretary may from time to time require in carrying out his functions under this subchapter. (Jan. 5, 1971, Pub. L. 91-650, title III, § 304, 84 Stat. 1934.)

**§ 31-924. Regulations to prescribe basis for determining number of students.**

For the purposes of section 31-922 and section 31-926, regulations of the Secretary shall include provisions relating to the determination of the number of students enrolled in a school, or in a particular year-class in a school, as the case may be, on the basis of estimates, or on the basis of the number of students who were enrolled in a school, or in a particular year-class, as the case may be, in an earlier year, or on such basis as he deems appropriate for making such determinations. (Jan. 5, 1971, Pub. L. 91-650, title III, § 305, 84 Stat. 1934.)

**§ 31-925. Method of paying grants under § 31-922.**

Grants under section 31-922 may be paid in advance or by way of reimbursement at such intervals as the Secretary may find necessary and with appropriate adjustments on account of overpayments or underpayments previously made. (Jan. 5, 1971, Pub. L. 91-650, title III, § 306, 84 Stat. 1934.)

**§ 31-926. Commissioner to make payments to medical and dental schools—Limitations.**

From funds received under section 31-922, the Commissioner shall make payments (in amounts determined by the Secretary under such section 31-922) to private nonprofit schools of medicine and dentistry in the District of Columbia. The total of the payments under this section in any fiscal year to a medical school shall not exceed the product of \$5,000 times the number of full-time students enrolled in such school, and the total of payments to a dental school shall not exceed the product of \$3,000 times the number of full-time students enrolled in such school. (Jan. 5, 1971, Pub. L. 91-650, title III, § 307, 84 Stat. 1934.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 31-922, 31-924, 31-927, 31-928.

**§ 31-927. Application for payments—Time for filing—Contents.**

The Commissioner may from time to time set dates by which applications for payments by the Commissioner under section 31-926 for any fiscal

year must be filed. A payment under section 31-926 by the Commissioner may be made only if the application therefor—

(1) is approved by the Commissioner upon his determination that the applicant meets the eligibility conditions of this subchapter; and

(2) contains such information as the Commissioner and the Secretary may require to make determinations required under this subchapter and such assurances as they may find necessary to carry out the purposes of this subchapter.

(Jan. 5, 1971, Pub. L. 91-650, title III, § 308, 84 Stat. 1935.)

**§ 31-928. Method of making payments under § 31-926.**

Payments under section 31-926 by the Commissioner may be paid in advance or by way of reimbursement at such intervals as the Commissioner may find necessary and with appropriate adjustments on account of overpayments or underpayments previously made. (Jan. 5, 1971, Pub. L. 91-650, title III, § 309, 84 Stat. 1935.)

**§ 31-929. Definitions.**

For purposes of this subchapter:

(1) The term "full-time students" means students pursuing a full-time course of study in an accredited school of medicine or school of dentistry leading to a degree of doctor of medicine, doctor of dentistry, or an equivalent degree.

(2) The terms "school of medicine" and "school of dentistry" mean a school in the District of Columbia which provides training leading, respectively, to a degree of doctor of medicine and doctor of dentistry, or an equivalent degree, and which is accredited by a recognized body or bodies approved for such purpose by the Commissioner of Education of the United States.

(3) The term "nonprofit" as applied to a school of medicine or a school of dentistry means one which is owned and operated by one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual. (Jan. 5, 1971, Pub. L. 91-650, title III, § 310, 84 Stat. 1935.)

**Chapter 10.—GALLAUDET COLLEGE****SUBCHAPTER I.—CONTINUATION AND ADMINISTRATION****Sec.**

- 31-1001 to 31-1019. Repealed.
- 31-1020. Appropriation for instruction of indigent blind from District.
- 31-1021. Title to certain real estate transferred to institution.
- 31-1022. Secretary of Health, Education, and Welfare to supervise.
- 31-1023. Purchase of supplies.
- 31-1024. Report of Convention of American Instructors of the Deaf.
- 31-1025. Gallaudet College—Successor to Columbia Institution for the Deaf.
- 31-1026. Gallaudet College—Purposes.
- 31-1027. Property and property rights—Authority and legal rights—Conveyance or mortgage of property by Board of Directors.
- 31-1028. Gifts of property to Gallaudet College.
- 31-1029. Board of Directors—Appointment and composition—Terms—Power to remove members.



Sec.

31-1030. Powers of the Board of Directors.

31-1031. Financial transactions and accounts—Annual report to the Secretary of Health, Education, and Welfare.

31-1032. Appropriations.

31-1033. Grant of certain lands to Gallaudet College.

31-1034. Same—Deed and other evidence of indebtedness to be cancelled and returned to Gallaudet College.

## SUBCHAPTER II.—MODEL SECONDARY SCHOOL FOR THE DEAF

31-1051. Authorization of appropriations.

31-1052. Definitions.

31-1053. Agreement with Gallaudet College to establish model secondary school—Terms—Annual reports to Congress.

## SUBCHAPTER III.—DEMONSTRATION ELEMENTARY SCHOOL FOR THE DEAF

31-1071. Gallaudet College to operate Kendall School as demonstration elementary school.

31-1072. Definitions.

31-1073. Authorization of appropriations.

31-1074. Design and construction of facilities.

## SUBCHAPTER I.—CONTINUATION AND ADMINISTRATION

§§ 31-1001 to 31-1007. Repealed. June 18, 1954, 68 Stat. 267, ch. 324, § 9.

Section 31-1001, act Feb. 16, 1857, 11 Stat. 161, ch. 46, § 1; R.S. § 4859, concerned the establishment of the Columbia Institution for the Deaf, originally known as the Columbia Institution for the Deaf, Dumb, and Blind, provided for perpetual succession, the holding of real and personal property, a common seal, and limited the holding to necessary property and is covered by sections 31-1025, 31-1027(a), 31-1030(b).

Section 31-1002, act Apr. 8, 1864, 13 Stat. 45, ch. 52, authorized the Columbia Institute for the Deaf, originally known as the Columbia Institution for the Instruction of the Deaf and Dumb and the Blind, to confer degrees and is covered by section 31-1030(g).

Section 31-1003, R.S. § 4860, related to the obligatory nature of the terms of the deed of transfer of the funds and property of Washington's Manual Labor School and Male Orphan Asylum Society of the District of Columbia, as to the District of Columbia Institution for the Deaf, then known as the Columbia Institution for the Instruction of the Deaf and Dumb. See section 31-1027(a).

Section 31-1004, R.S. § 4861, related to the use and alienation of property of the Columbia Institution for the Deaf, then known as the Columbia Institution for the Instruction of the Deaf and Dumb. See section 31-1027.

Section 31-1005, R.S. § 4862, related to management of the Columbia Institution for the Deaf, then known as the Columbia Institution for the Instruction of the Deaf and Dumb. See section 31-1030(a).

Section 31-1006, R.S. § 4863, provided for appointment of a senator and two representatives as directors of the Columbia Institution for the Deaf, their term and reappointment and is covered by section 31-1029.

Section 31-1007, acts July 1, 1898, 30 Stat. 624, ch. 546, § 1; June 10, 1921, 42 Stat. 24, ch. 18, § 305, provided for service of the public members until appointment of their successors, authorizes the directors to control disbursement of public moneys and required the adjustment of accounts in the General Accounting Office and is covered by sections 31-1029, 31-1030(h), 31-1031(a).

§ 31-1008. Repealed. Dec. 24, 1970, Pub. L. 91-587, § 5(b), 84 Stat. 1579.

Section, based on the proviso and the last sentence in the paragraph having a side heading "Columbia Institution for the Deaf and Dumb" in the first section of the Act of Mar. 1, 1901, ch. 670, 31 Stat. 844, related to the

admission of deaf mutes from the District of Columbia and provided that the institution now known as Gallaudet College is not an institution of charity. See § 31-1071.

## NOTES TO DECISIONS UNDER PRIOR LAW

## Injunction

The District of Columbia Board of Education and Board of Commissioners were not entities and therefore were not subject to suit, although their respective members were properly sued for injunctive relief in respect to education of Negro deaf children in the District. *Miller v. Board of Education of District of Columbia* (D.C.D.C. 1952, 106 F. Supp. 988).

## Obligations and duties

The only obligation of Columbia Institute for the Deaf is to educate deaf children who are approved by District of Columbia Superintendent of Schools and whose education is made the subject of a contract between the Institution and District Board of Commissioners, and failure of Institution to accept Negro deaf children who had not been approved by superintendent and whose education had not been made the subject of a contract was not breach of duty of obligation owing Negro children by institution, and hence Negro children seeking education in Institution could not obtain injunctive relief as against Institution or its directors. *Miller v. Board of Education of District of Columbia* (D.C.D.C. 1952, 106 F. Supp. 988).

## Public or private institution

The Columbia Institution for the Deaf is a private institution and is not part of the public school system of the District of Columbia and it has the right to contract and to sue and be sued, notwithstanding Congressional appropriation of money for education of deaf-mutes taught at the institution. *Miller v. Board of Education of District of Columbia* (D.C.D.C. 1952, 106 F. Supp. 988).

## Segregation

The Congressional intent in appropriating money for instruction of deaf persons in District of Columbia was that there should be separation of races in education of deaf children of District. *Miller v. Board of Education of District of Columbia* (D.C.D.C. 1952, 106 F. Supp. 988).

## Separate but equal facilities

The separate but equal facilities doctrine requires that Negro deaf children in District of Columbia be educated in District of Columbia as are white deaf children in the District, rather than in Maryland. *Miller v. Board of Education of District of Columbia* (D.C.D.C. 1952, 106 F. Supp. 988).

§ 31-1009. Repealed. June 18, 1954, 68 Stat. 267, ch. 324, § 9.

Section, acts June 16, 1880, 21 Stat. 275, ch. 235; Aug. 30, 1890, 26 Stat. 393, ch. 837, § 1, made provision for instruction in some state institution of feeble-minded applicants for admission to the Columbia Institution for the Deaf.

§§ 31-1010, 31-1010a, 31-1011. Repealed. Dec. 24, 1970, Pub. L. 91-587, § 5(a), (c), (d), (e), 84 Stat. 1579.

Section 31-1010, based on second proviso of the first paragraph under the heading "Columbia Institution for the Deaf and Dumb" of the first section of the Act of Mar. 2, 1889, ch. 411, 25 Stat. 962, related to expenses of instruction of deaf and dumb students. See § 31-1073.

Section 31-1010a, based on the proviso under the heading "Gallaudet College, Salaries and Expenses" in title II of Act Nov. 7, 1966, Pub. L. 89-787, 80 Stat. 1399, and similar provisions in the Acts set forth below, related to advance quarterly payments to Gallaudet College for certain students and the minimum rate per school year.

## SIMILAR PROVISIONS

Provisions similar to those in the Act of Nov. 7, 1966, were contained in the following Department of Health, Education, and Welfare Appropriation Acts:

1971—Jan. 11, 1971, Pub. L. 91-667, title II, 84 Stat. 2014.



1970—Mar. 5, 1970, Pub. L. 91-204, title II, 84 Stat. 41.  
 1969—Oct. 11, 1968, Pub. L. 90-557, Title II, 82 Stat. 989.  
 1968—Nov. 8, 1967, Pub. L. 90-132, Title II, 81 Stat. 405.  
 Section 31-1011, based on the last sentence under the heading "Columbia Institution for the Deaf and Dumb" in the first section of the Act of Mar. 3, 1905, ch. 1406, 33 Stat. 901, and the last sentence of the first paragraph under the heading "Columbia Institution for the Deaf and Dumb" in the first section of the Act of June 27, 1906, ch. 3553, 34 Stat. 503, related to the education of colored deaf-mute children of the District of Columbia. See § 31-1071.

#### NOTES TO DECISIONS UNDER PRIOR SECTION 31-1011

##### Injunction

The District of Columbia Board of Education and Board of Commissioners were not entities and therefore were not subject to suit, although their respective members were properly sued for injunctive relief in respect to education of Negro deaf children in the District. *Miller v. Board of Education of District of Columbia* (D.C.D.C. 1952, 106 F. Supp. 988).

##### Obligations and duties

The only obligation of Columbia Institution for the Deaf is to educate deaf children who are approved by District of Columbia Superintendent of Schools and whose education is made the subject of a contract between the Institution and District Board of Commissioners, and failure of Institution to accept Negro deaf children who had not been approved by Superintendent and whose education had not been made the subject of a contract was not breach of duty or obligation owing Negro children by Institution, and hence Negro children seeking education in Institution could not obtain injunctive relief as against Institution or its directors. *Miller v. Board of Education of District of Columbia* (D.C.D.C. 1952, 106 F. Supp. 988).

##### Public or private institution

The Columbia Institution for the Deaf is a private institution and is not part of the public school system of the District of Columbia and it has the right to contract and to sue and be sued, notwithstanding Congressional appropriation of money for education of deaf-mutes taught at the institution. *Miller v. Board of Education of District of Columbia* (D.C.D.C. 1952, 106 F. Supp. 988).

##### Segregation

Racial discrimination in public education is unconstitutional, and all provisions of Federal, State, or local law requiring or permitting such discrimination must yield to this principle. *Brown et al. v. Board of Education of Topeka et al.* (1954, 347 U.S. 483, reheard, 349 U.S. 394).

Racial segregation in the public schools of the District of Columbia is a denial to Negro children of the due process of law guaranteed by the Fifth Amendment. *Bolling et al. v. Sharpe et al.* (1954, 347 U.S. 497).

The Congressional intent in appropriating money for instruction of deaf persons in District of Columbia was that there should be separation of races in education of deaf children of District. *Miller v. Board of Education of District of Columbia* (D.C.D.C. 1952, 106 F. Supp. 988).

##### Separate but equal facilities

The separate but equal facilities doctrine requires that Negro deaf children in District of Columbia be educated in District of Columbia as are white deaf children in the District, rather than in Maryland. *Miller v. Board of Education of District of Columbia* (D.C.D.C. 1952, 106 F. Supp. 988).

§§ 31-1012 to 31-1015. Repealed. June 18, 1954, 68 Stat. 267, ch. 324, § 9.

Section 31-1012, R.S. § 4865; acts July 1, 1918, 40 Stat. 680, ch. 113, § 1, and June 24, 1935, 49 Stat. 394, ch. 286, related to the admission of students from States and territories.

Section 31-1013, act Aug. 30, 1890, 26 Stat. 392, ch. 837, § 1, limited the number of pupils from one State or territory to be admitted to the Columbia Institution for the Deaf.

Section 31-1014, acts Aug. 30, 1890, 26 Stat. 392, ch. 837, § 1; June 10, 1921, 42 Stat. 20, ch. 18, § 214, required a statement of the number of persons employed by the

Columbia Institution for the Deaf and their compensation in the annual Budget, see section 31-1031(b).

Section 31-1015, R.S. § 4866; act Feb. 17, 1909, 35 Stat. 623, ch. 134, related to the duties of judges of the municipal court as to reporting on deaf and dumb persons in the District.

§ 31-1016. Repealed. Aug. 7, 1946, 60 Stat. 871, ch. 770, § 1 (61).

Section, R. S. § 4867, required the superintendent to report to Congress at commencement of every session in December of expenditures made. See section 31-1031.

§§ 31-1017 to 31-1019. Repealed. June 18, 1954, 68 Stat. 267, ch. 324, § 9.

Section 31-1017, R. S. § 4868; related to the annual report of the president and directors of the Columbian Institution for the Deaf to the Secretary of the Interior and is covered by section 31-1031(b).

Section 31-1018, act Mar. 3, 1883, 22 Stat. 625, ch. 143 provided for an itemized report of expenses of the Columbian Institution for the Deaf. See section 31-1031.

Section 31-1019, R. S. § 4869, related to education of indigent blind persons.

§ 31-1020. Appropriation for instruction of indigent blind from District.

The indefinite appropriation to pay for the instruction of the indigent blind children of the District of Columbia, formerly instructed in the Columbia Institution for the Deaf, shall be paid out of the revenues of the District of Columbia. (Mar. 3, 1899, 30 Stat. 1101, ch. 424, § 1; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

#### REFERENCES IN TEXT

The Columbia Institution for the Deaf, referred to in this section, is now known as Gallaudet College. See § 31-1025.

#### CODIFICATION

Section is from a paragraph in § 1 of the Sundry Civil Expense Appropriation Act for the fiscal year ending June 30, 1900, act March 3, 1899, ch. 424, cited. As specified in that paragraph, one-half of the indefinite appropriation referred to should be paid out of the revenues of the District of Columbia and one-half thereof out of the Treasury of the United States. In this section, the provisions have been reworded to eliminate the 50-50 payment plan, and to provide for full payment out of the revenue of the District of Columbia, in conformity with later enactments and developments which apparently have superseded the 50-50 plan for payment of such expenses. The Act of June 29, 1922, ch. 249, 42 Stat. 668, formed the basis of various sections of the Code which provided the 60-40 plan, and also repealed all prior inconsistent Acts. The 1922 Act was repealed by Act May 16, 1938, ch. 223, § 8, 52 Stat. 375. Under former § 47-134 (see note thereunder) and now under § 47-2501 et seq., annual payments for expenses of the District of Columbia are made by the United States.

#### CHANGE OF NAME

Act Mar. 4, 1911, changed name of Columbia Institution for the Deaf and Dumb to Columbia Institution for the Deaf.

§ 31-1021. Title to certain real estate transferred to institution.

The title to all that parcel of land lying between the west boundary of West Virginia Avenue, as said avenue was laid on July 1, 1916, with a width of sixty-six feet, and the east boundary of the grounds of the Columbia Institution for the Deaf, said parcel of land fronting on Florida Avenue about ten and one-half feet and containing one-tenth of an acre, more or less, and being formerly part of the Baltimore and Ohio Railroad right of way, shall be vested in



the Columbia Institution for the Deaf, United States of America, trustee, and the Secretary of the Interior is authorized and directed to issue a patent for the said parcel of land to the said Columbia Institution for the Deaf. (July 1, 1916, 39 Stat. 310, ch. 209.)

#### REFERENCES IN TEXT

The Columbia Institution for the Deaf, referred to in this section, is now known as "Gallaudet College"; and jurisdiction of such college is now under the Secretary of Health, Education, and Welfare, rather than the Secretary of the Interior, referred to in this section. See §§ 31-1022 and 31-1025.

#### PROPERTY PROVISIONS

*Ninth Street Northeast approach.*—In order to provide a suitable approach to the Ninth Street Northeast overpass across the tracks of the Baltimore and Ohio and Pennsylvania Railroads and furnish better access to a part of the property of the Columbia Institution for the Deaf, described in the records of the office of the assessor for the District of Columbia as parcel 141/4, the board of directors of the Columbia Institution for the Deaf are hereby authorized to dedicate to the District of Columbia a strip of land ninety feet wide traversing the north part of said property approximately as shown and designated on the revised highway plan of the District of Columbia as Mount Olivet Road Northeast. (Act of Aug. 3, 1939, 53 Stat. 1179, ch. 414, § 1.)

*Adjustment of boundaries and exchange of properties.*—In order to readjust the boundaries and exchange properties of the Columbia Institution for the Deaf, parcel 141/4, and Brentwood Park, United States Reservation Numbered 495, the board of directors of the Columbia Institution for the Deaf and the Secretary of the Interior are hereby authorized to convey fee-simple title by deeds, each to the other, to such parts of the property of the Columbia Institution for the Deaf and Brentwood Park (United States Reservation Numbered 495) as in their judgment is to the mutual advantage of both the institution and the park and playground system of the District of Columbia, provided such exchange of properties shall be approved by the National Capital Park and Planning Commission. (Act Aug. 3, 1939, 53 Stat. 1179, ch. 414, § 2.)

*Sale of lands authorized—Investment of proceeds.*—The board of directors of the Columbia Institution for the Deaf are further authorized to sell and to convey fee-simple title by deed that portion of its real estate, now owned by the Columbia Institution for the Deaf or acquired by exchange under section 2 of this act, which will lie north of the proposed location of Mount Olivet Road extended after a definite survey of such road is established, such sale to be subject to the approval of the Secretary of the Interior. Funds received by the sale of this portion of real property of the institution shall be considered a part of the capital structure of the corporation, which may be invested in securities, buildings, or other real property by the board of directors. If invested in securities, only the income from such investment shall be used for current expenses of the institution. (Act of Aug. 3, 1939, 53 Stat. 1179, ch. 414, § 3.)

#### CROSS REFERENCES

Closing or adjusting streets and highways for benefit of religious charitable organizations, see § 7-113.

§ 31-1022. Secretary of Health, Education, and Welfare to supervise.

The Secretary of Health, Education, and Welfare is charged with the supervision of public business relating to Gallaudet College. (R.S., § 441; Mar. 4, 1911, 36 Stat. 1422, ch. 285; 1940 Reorg. Plan No. IV, § 11, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1234; 1953 Reorg. Plan No. 1, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; June 18, 1954, 68 Stat. 265, ch. 324, § 1.)

#### CHANGE OF NAME

"Gallaudet College" was substituted for "Columbia Institution for the Deaf" to conform to act June 18, 1954. See § 31-1025.

"Columbia Institution for the Deaf" was substituted for "Columbia Institution for the Deaf and Dumb" to conform to act Mar. 4, 1911.

#### TRANSFER OF FUNCTIONS

The Department of Health, Education, and Welfare was established, a Secretary of Health, Education, and Welfare was designated as the head of the Department, all functions of the Federal Security Administrator were transferred to the Secretary and the Federal Security Agency and the office of the Federal Security Administrator were abolished by 1953 Reorg. Plan No. 1, made effective Apr. 11, 1953 by act Apr. 1, 1953, 67 Stat. 18, ch. 14, § 1, and set out as 42 U.S.C. § 3501 and note thereunder.

The functions of the Department of Interior relating to the administration of the Columbia Institution for the Deaf were transferred to the Federal Security Agency to be administered under the direction and supervision of the Federal Security Administrator by 1940 Reorg. Plan No. IV, § 11(d), 54 Stat. 1237.

§ 31-1023. Purchase of supplies.

#### CODIFICATION

Section, act Jan. 12, 1927, 44 Stat. 936, ch. 27, § 1 (formerly also set out as 5 U.S.C. § 496 and superseded by act Oct. 10, 1940, 54 Stat. 1110, ch. 851, § 2(g)) (formerly also set out as 41 U.S.C. § 6a(g) and repealed by act Oct. 31, 1951, 65 Stat. 705, ch. 654, § 1(107)), related to purchase of supplies and equipment and procurement of services for Columbia Institution for the Deaf and is covered by the property management provisions of 40 U.S.C. § 471 et seq.

#### SIMILAR PROVISIONS

Provisions for purchase of supplies and equipment and procurement of services for Columbia Institution for the Deaf were also contained in the following prior appropriation acts:

1927—May 10, 1926, 44 Stat. 455, ch. 277, § 1.

1926—Mar. 3, 1925, 43 Stat. 1143, ch. 462.

1925—June 5, 1924, 43 Stat. 392, ch. 264.

1924—Jan. 24, 1923, 42 Stat. 1176, ch. 42.

1923—May 24, 1922, 42 Stat. 553, ch. 199.

§ 31-1024. Report of Convention of American Instructors of the Deaf.

The Convention of American Instructors of the Deaf shall report to Congress, through the president of Gallaudet College at Washington, District of Columbia, such portions of its proceedings and transactions as its officers shall deem to be of general public interest and value concerning the education of the deaf. (Jan. 26, 1897, 29 Stat. 499, ch. 94, § 4; Mar. 4, 1911, 36 Stat. 1422, ch. 285; June 18, 1954, 68 Stat. 265, ch. 324, § 1.)

#### CHANGE OF NAME

"Columbia Institution" was substituted for "Columbia Institution for the Deaf and Dumb" to conform to act March 4, 1911.

"Gallaudet College" was substituted for "Columbia Institution for the Deaf" to conform to act June 18, 1954. See § 31-1025.

§ 31-1025. Gallaudet College—Successor to Columbia Institution for the Deaf.

The Columbia Institution for the Deaf, created a body corporate by the Act of Congress approved February 16, 1857, as amended, is hereby continued as a body corporate under the name of Gallaudet College, and on and after June 18, 1954 by such name shall be known and have perpetual succession and shall have the powers and be subject to the limitations contained in sections 31-1025 to 31-1032. (June 18, 1954, 68 Stat. 265, ch. 324, § 1.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1033.



**§ 31-1026. Gallaudet College—Purposes.**

The purposes of Gallaudet College shall be to provide education and training to deaf persons and otherwise to further the education of the deaf. (June 18, 1954, 68 Stat. 265, ch. 324, § 2.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 31-1025, 31-1033.

**§ 31-1027. Property and property rights—Authority and legal rights—Conveyance or mortgage of property by Board of Directors.**

(a) Gallaudet College is hereby invested with all the property and the rights of property, and shall have and be entitled to use all authority, privileges, and possessions and all legal rights which it has, or which it had or exercised under any former name, including the right to sue and be sued and to own, acquire, sell, mortgage, or otherwise dispose of property it may own now or hereafter acquire. Subject to the provisions of subsection (b), Gallaudet College shall also be subject to all liabilities and obligations now outstanding against said corporation under any former name.

(b) With the approval of the Secretary of Health, Education, and Welfare the Board of Directors of Gallaudet College may convey fee simple title by deed, convey by quitclaim deed, mortgage, or otherwise dispose of any or all real property title to which is vested in Gallaudet College, the Columbia Institution for the Deaf, or any predecessor corporation: *Provided*, That the proceeds of any such disposition shall be considered a part of the capital structure of the corporation, and may be used solely for the acquisition of real estate for the use of the corporation, for the construction, equipment, or improvement of buildings for such use, or for investment purposes, but if invested only the income from the investment may be used for current expenses of the corporation. (June 18, 1954, 68 Stat. 265, ch. 324, § 3; Sept. 13, 1960, 74 Stat. 917, Pub. L. 86-776, § 4.)

**AMENDMENT**

1960—Act Sept. 13, 1960, substituted "real property title to which is vested in Gallaudet College" for "property title to which is vested in the United States, as trustees, for the sole use of Gallaudet College" in subsec. (b), and inserted words "Subject to the provisions of subsection (b)", in subsec. (a).

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 31-1025, 31-1033.

**§ 31-1028. Gifts of property to Gallaudet College.**

Gallaudet College is authorized to receive by gift, devise, bequest, purchase, or otherwise, property, both real and personal, for the use of said Gallaudet College, or for the use of any of its departments or other units as may be designated in the conveyance or will, and to hold, invest, use, or dispose of such property for such purpose. (June 18, 1954, 68 Stat. 265, ch. 324, § 4.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 31-1025, 31-1033.

**§ 31-1029. Board of Directors—Appointment and composition—Terms—Power to remove members.**

Gallaudet College shall be under the direction and control of a Board of Directors, composed of twenty-one members selected as follows: (1) Three public

members of whom: one shall be a United States Senator appointed by the President of the Senate; two shall be Representatives appointed by the Speaker of the House of Representatives; (2) eighteen other members, all of whom shall be elected by the Board of Directors, who on June 18, 1954 shall include those persons serving as nonpublic members of the Board of Directors of the Columbia Institution for the Deaf immediately prior to such date, and of whom one shall be elected pursuant to regulations of the Board of Directors on nomination by the Gallaudet College Alumni Association for a term of three years. The members appointed from the Senate and House of Representatives shall be appointed for a term of two years at the beginning of each Congress, shall be eligible for reappointment, and shall serve until their successors are appointed. The Board of Directors shall have the power to fill any vacancy in the membership of the Board except for public members. Nine directors shall be a quorum to transact business. The said Board of Directors, by vote of a majority of its membership, shall have power to remove any member of their body (except the public members) who may refuse or neglect to discharge the duties of a director, or whose removal would, in the judgment of said majority, be to the interest and welfare of said corporation. (June 18, 1954, 68 Stat. 265, ch. 324, § 5; July 23, 1968, Pub. L. 90-415, §§ 1, 2, 82 Stat. 397.)

**AMENDMENTS**

1968—Sections 1 and 2 of act July 23, 1968, Pub. L. 90-415, amended section by increasing the number of directors to "twenty-one"; by increasing the number of the members to be elected as provided in clause (2) from "ten" to "eighteen"; and by increasing the number required to constitute a quorum from "Seven" to "Nine" effective with the election of the eight additional members.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 31-1025, 31-1033.

**§ 31-1030. Powers of the Board of Directors.**

The Board of Directors shall have the power to—

(a) make such rules, regulations, and bylaws, not inconsistent with the Constitution and laws of the United States, as may be necessary for the good government of Gallaudet College, for the management of the property and funds of such corporation and for the admission, instruction, care, and discharge of students;

(b) provide for the adoption of a corporate seal and for its use;

(c) fix the date of holding their annual and other meetings;

(d) appoint a president, professors, instructors, and other necessary employees for Gallaudet College, delegate to them such duties as it may deem advisable, fix their compensation, and remove them when, in their judgment, the interest of Gallaudet College shall require it;

(e) elect a chairman and other officers and prescribe their duties and terms of office, and appoint an executive committee to consist of five members, and vest the committee with such of its powers during periods between meetings of the Board as the Board deems necessary;



(f) establish such departments and other units, including a department of higher learning for the deaf, a department of elementary education for the instruction of deaf children, a graduate department, and a research department, as the Board deems necessary to carry out the purpose of Gallaudet College;

(g) confer such degrees and marks of honor as are conferred by colleges and universities generally, and issue such diplomas and certificates of graduation as, in its opinion, may be deemed advisable, and consistent with academic standards;

(h) subject to the provisions of section 31-1031, control expenditures of all moneys appropriated by Congress for the benefit of Gallaudet College; and

(i) control the expenditure and investment of any moneys or funds or property which Gallaudet College may have or may receive from sources other than appropriations by Congress. (June 18, 1954, 68 Stat. 266, ch. 324, § 6.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-1025, 31-1033.

#### § 31-1031. Financial transactions and accounts—Annual report to the Secretary of Health, Education, and Welfare.

(a) All financial transactions and accounts of the corporation in connection with the expenditure of any moneys appropriated by any law of the United States for the benefit of Gallaudet College or for the construction of facilities for its use, shall be settled and adjusted in the General Accounting Office.

(b) It shall be the duty of the Board of Directors of Gallaudet College to have made annually a report to the Secretary of Health, Education, and Welfare as soon as practicable after the first day of July of each year the condition of the corporation, embracing in said report the number of students of each description received and discharged during the preceding school year and the number remaining, also the branches and type of training and education taught and progress made therein, together with a statement showing the receipts of said corporation and from what sources, and its expenditures and for what objects. (June 18, 1954, 68 Stat. 266, ch. 324, § 7.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-1025, 31-1030, 31-1033.

#### § 31-1032. Appropriations.

There are hereby authorized to be appropriated such sums as the Congress may determine necessary for the administration, operation, maintenance, and improvement of Gallaudet College, including sums necessary for student aid and research, for the acquisition of property, both real and personal, and for the construction of buildings and other facilities for the use of said corporation. (June 18, 1954, 68 Stat. 266, ch. 324, § 8.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-1025, 31-1033.

#### § 31-1033. Grant of certain lands to Gallaudet College.

(a) As used in this section and section 31-1034, the term "Institution" means the Columbia Insti-

tution for the Instruction of the Deaf and Dumb (also known as Columbia Institution for the Deaf and Dumb and, later, as the Columbia Institution for the Deaf), which was continued as a body corporate under the name of Gallaudet College by sections 31-1025 to 31-1032.

(b) All property conveyed by the Institution to the United States, as trustee, pursuant to certain provisos under the heading "Columbia Institution for the Deaf and Dumb" in the Act of June 10, 1872, Forty-second Congress, second session (17 Stat. L. 347, at 360), by deed dated June 20, 1872, and recorded in liber 752, folio 272, of the land records for the District of Columbia, and all property otherwise made subject to such deed of trust, is hereby given, granted, remised, released, and quitclaimed unto Gallaudet College, free and clear of any trust, lien, encumbrance, or indebtedness arising out of said deed or under the said Act of June 10, 1872, and the college is forever discharged from the obligation of repayment, to the United States, of the sum referred to in said Act and in said deed, or in any note or other evidence of indebtedness executed in connection therewith. (Sept. 13, 1960, 74 Stat. 916, Pub. L. 86-776, § 1.)

#### REPEAL OF INCONSISTENT PROVISIONS

Section 5 of act Sept. 13, 1960, provided that all acts in conflict with such act Sept. 13, 1960, are repealed.

#### § 31-1034. Same—Deed and other evidence of indebtedness to be cancelled and returned to Gallaudet College.

The said deed, and any note or other evidence of indebtedness executed in connection therewith, and all original papers with respect thereto, shall be delivered by the Administrator of General Services (or any other officer of the United States having custody thereof) to the Secretary of Health, Education, and Welfare (or his designee) and shall by the Secretary (or his designee) be canceled and returned to Gallaudet College for its historical records. (Sept. 13, 1960, 74 Stat. 917, Pub. L. 86-776, § 2.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1033.

### SUBCHAPTER II.—MODEL SECONDARY SCHOOL FOR THE DEAF

#### § 31-1051. Authorization of appropriations.

For the purpose of providing day and residential facilities for secondary education for persons who are deaf in order to prepare them for college and other advanced study, and to provide an exemplary secondary school program to stimulate the development of similarly excellent programs throughout the Nation, there are authorized to be appropriated for each fiscal year such sums as may be necessary for the establishment and operation, including construction and equipment, of a model secondary school for the deaf to serve primarily residents of the District of Columbia and of nearby States, including sums necessary for the construction of buildings and other facilities for the school. (Oct. 15, 1966, 80 Stat. 1027, Pub. L. 89-694, § 2.)



## SHORT TITLE

Section 1 of act Oct. 15, 1966, 80 Stat. 1027 Pub. L. 89-694, provided: "That this Act [this subchapter] may be cited as the 'Model Secondary School for the Deaf Act'."

## § 31-1052. Definitions.

As used in this subchapter—

(a) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(b) The term "construction" includes construction and initial equipment of new buildings, expansion, remodeling, and alteration of existing buildings and equipment thereof, including architect's services, but excluding off-site improvements.

(c) The term "secondary school" means a school which provides education in grades nine through twelve, inclusive. (Oct. 15, 1966, 80 Stat. 1027, Pub. L. 89-694, § 3.)

## § 31-1053. Agreement with Gallaudet College to establish model secondary school—Terms—Annual reports to Congress.

(a) The Secretary, after consultation with the National Advisory Committee on Education of the Deaf (created by section 2495 of title 42, U.S. Code) is authorized to enter into an agreement with Gallaudet College for the establishment and operation, including construction and equipment of a model secondary school for the deaf to serve primarily residents of the District of Columbia and of nearby States.

(b) The agreement shall—

(1) provide that Federal funds appropriated for the benefit of the model secondary school will be used only for the purposes for which paid and in accordance with the applicable provisions of this Act and the agreement made pursuant thereto;

(2) provide for utilization of the National Advisory Committee on Education of the Deaf to advise the college in formulating and carrying out the basic policies governing the establishment and operation of the model secondary school;

(3) provide that the college will make an annual report to the Secretary;

(4) provide that in the design and construction of any facilities, maximum attention will be given to excellence of architecture and design, works of art, and innovative auditory and visual devices and installations appropriate for the educational functions of such facilities;

(5) include such other conditions as the Secretary, after consultation with the National Advisory Committee on Education of the Deaf, deems necessary to carry out the purposes of this subchapter; and

(6) provide that any laborer or mechanic employed by any contractor or subcontractor in the performance of work on any construction aided by Federal funds appropriated for the benefit of the model secondary school will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5); and the Secretary of Labor shall have, with respect to the labor standards specified in this paragraph, the

authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 5 U.S.C. 133z-15) and 40 U.S.C. § 276c.

(c) The Secretary shall submit the annual report of the college (required by clause (3) of subsection (b) of this section) to the Congress with such comments and recommendations as he may deem appropriate. (Oct. 15, 1966, 80 Stat. 1027, Pub. L. 89-694, § 4.)

## REFERENCES IN TEXT

Section 133z-15 of title 5, U.S.C., referred to in clause (6) of subsec. (b) of this section, was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a), and is now covered by 5 U.S.C. § 913.

SUBCHAPTER III.—DEMONSTRATION  
ELEMENTARY SCHOOL FOR THE DEAF

## § 31-1071. Gallaudet College to operate Kendall School as demonstration elementary school.

For the purpose of providing day and residential facilities for elementary education for persons who are deaf in order to prepare them for high school and other secondary study, and to provide an exemplary educational program to stimulate the development of similar excellent programs throughout the Nation, the directors of Gallaudet College are authorized to maintain and operate Kendall School as a demonstration elementary school for the deaf, to serve primarily residents of the National Capital region. (Dec. 24, 1970, Pub. L. 91-587, § 1, 84 Stat. 1579.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1073.

## § 31-1072. Definitions.

As used in this subchapter—

(a) The term "elementary school" means a school which provides education for deaf children from the age of onset of deafness to age fifteen, inclusive, but not beyond the eighth grade or its equivalent.

(b) The term "construction" includes construction and initial equipment of new buildings, and expansion, remodeling, and alteration of existing buildings and equipment thereof, including architect's services, but excluding off-site improvements. (Dec. 24, 1970, Pub. L. 91-587, § 2, 84 Stat. 1579.)

## § 31-1073. Authorization of appropriations.

(a) There are authorized to be appropriated for each fiscal year such sums as may be necessary for the establishment and operation, including construction and equipment, of the demonstration elementary school provided for in section 31-1071.

(b) Federal funds appropriated for the benefit of the school shall be used only for the purposes for which paid and in accordance with the applicable provisions of this subchapter. (Dec. 24, 1970, Pub. L. 91-587, § 3, 84 Stat. 1579.)

## § 31-1074. Design and construction of facilities.

In the design and construction of any facilities, maximum attention shall be given to excellence of architecture and design, works of art, and innovative auditory and visual devices and installations appropriate for educational functions of such facilities. (Dec. 24, 1970, Pub. L. 91-587, § 4, 84 Stat. 1579.)



## Chapter 11.—MISCELLANEOUS

Sec.

- 31-1101. Whole school-day sessions to be given.
- 31-1102. Compulsory vaccination against smallpox.
- 31-1103. Service in high school cadets compulsory—  
Excuse
- 31-1104. School officials not to profit on supplies or text-  
books purchased for schools.
- 31-1105. Janitors to do minor repair work—Selection
- 31-1106. Names of certain schools changed.
- 31-1107. John A. Chamberlain Vocational School.
- 31-1108. Title and jurisdiction over Reservation 277-F  
transferred for school purposes—Authority to  
close streets and alleys.
- 31-1109. Board of Education may accept and apply dona-  
tions for colored schools—Accounting.
- 31-1110. Education of colored children.
- 31-1111. Placement of children in schools.
- 31-1112. Proportionate amount of school moneys to be  
set apart for colored schools.
- 31-1113. Facilities for educating colored children to be  
provided.
- 31-1114. Education of children of veterans who lost lives  
during war—Appropriation authorized.
- 31-1115. Bond not required for supplies issued by De-  
partment of the Army.
- 31-1116. School cadets—Issuance of arms—Insurance.
- 31-1117. Solicitation of donations from pupils—Authori-  
zation by Board of Education required.
- 31-1118. Use of appropriated funds for transportation of  
students to change racial balance in schools—  
Education of individuals in elementary or  
secondary schools outside the District—  
Exceptions.

## § 31-1101. Whole school-day sessions to be given.

All children of school age being instructed in the schools of the District beyond the second grade shall be given a whole school-day session. (June 20, 1906, 34 Stat. 316, ch. 3446, § 1.)

## § 31-1102. Compulsory vaccination against smallpox.

No child shall be admitted into the public schools who shall not have been duly vaccinated or otherwise protected against the smallpox. (R. S., D. C., § 274.)

§ 31-1103. Service in high school cadets compulsory—  
Excuse.

Every male pupil in attendance at the high schools shall be admitted to and shall serve in the high school cadets unless excused from such service by the principal, on certificate of one of the medical inspectors of schools that he is physically disqualified for such service, or on the written request of his parent or guardian. (Mar. 2, 1907, 34 Stat. 1141, ch. 2510.)

## CROSS REFERENCE

Bond or fire insurance not required on military equipment, see §§ 31-1115, 31-1116.

§ 31-1104. School officials not to profit on supplies or  
textbooks purchased for schools.

No school official, teacher, or member of the Board of Education shall receive any pecuniary benefit on account of school supplies or textbooks purchased for the use of the public schools in the District of Columbia. (Aug. 7, 1894, 28 Stat. 254, ch. 232.)

## CROSS REFERENCE

Purchase of school books and supplies, see § 31-401 et seq.

## § 31-1105. Janitors to do minor repair work—Selection.

The janitors of the principal school buildings, in addition to their other duties, shall do all minor repairs to buildings and furniture, glazing, fixing seats

and desks, and take care of the heating apparatus, and shall be selected with reference to their qualifications to perform this work. (Feb. 25, 1885, 23 Stat. 318, ch. 145.)

## CROSS REFERENCE

Control of construction and repair of school buildings, see § 31-803.

## § 31-1106. Names of certain schools changed.

The school formerly known as the M Street High School (old) shall be known as Robert Gould Shaw Junior High School.

The school formerly known as Central High School (old) and annex shall be known as Columbia Junior High School. (June 29, 1922, 42 Stat. 689, ch. 249.)

## § 31-1107. John A. Chamberlain Vocational School.

The new school building built to replace the Lenox Vocational School shall, when occupied, be known as the John A. Chamberlain Vocational School. (July 15, 1939, 53 Stat. 1016, ch. 281, § 1.)

§ 31-1108. Title and jurisdiction over Reservation 277-F  
transferred for school purposes—Authority to  
close streets and alleys.

Title to and jurisdiction over reservation 277-F, being part of square 3526, are transferred to the District of Columbia, the said reservation to be included in the site acquired or to be acquired for the McKinley Technical High School; and the District of Columbia Council is hereby authorized and directed to close all streets and alleys in the area acquired or to be acquired for the McKinley Technical High School and the Langley Junior High School buildings and grounds, where title to the property on both sides of any such streets or alleys shall be in the District of Columbia, the title to the land in such streets or alleys so closed to revert to the District of Columbia for school purposes. (Mar. 4, 1925, 43 Stat. 1320, ch. 556.)

## TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(242) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of closing streets and alleys under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

## CROSS REFERENCES

Abandonment or readjustment of street and highways to provide land for schools, see § 7-113.

Certain streets closed or abandoned, see § 7-123.

§ 31-1109. Board of Education may accept and apply  
donations for colored schools—Accounting.

The Board of Education is authorized to receive any donations or contributions that may be made for the benefit of the schools for colored children by persons disposed to aid in the elevation of the colored population in the District, and to apply the same in such manner as in their opinion shall be best calculated to effect the object of the donors; the board of education to account for all funds so received. (R. S., D. C., § 283; June 20, 1906, 34 Stat. 316, ch. 3446, § 2.)



**§ 31-1110. Education of colored children.**

It shall be the duty of the Board of Education to provide suitable and convenient houses or rooms for holding schools for colored children, to employ and examine teachers therefor, and to appropriate a proportion of the school funds, to be determined upon number of white and colored children, between the ages of 6 and 17 years, to the payment of teachers' wages, to the building or renting of schoolrooms, and other necessary expenses pertaining to said schools, to exercise a general supervision over them, to establish proper discipline, and to endeavor to promote a thorough, equitable and practical education of colored children in the District of Columbia. (R. S., D. C., § 281; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 20, 1906, 34 Stat. 316, ch. 3446, § 2.)

**AMENDMENTS**

1906—Act June 20, 1906, gave control of the public schools of the District to the Board of Education.

1878—Act June 11, 1878, abolished the board of school trustees and transferred the powers and duties to the Commissioners of the District.

**CROSS REFERENCES**

Compulsory school attendance, see § 31-201 et seq.

General powers and duties of Board of Education, see § 31-103.

**NOTES TO DECISIONS****Racial discrimination**

Racial segregation in the public schools of the District of Columbia is a denial to Negro children of the due process of law guaranteed by the Fifth Amendment. *Bolling et al. v. Sharpe et al.* (1954, 347 U.S. 497).

Racial discrimination in public education is unconstitutional, and all provisions of Federal, State, or local law requiring or permitting such discrimination must yield to this principle. *Brown et al. v. Board of Education of Topeka et al.* (1954, 347 U.S. 483, reargued, 349 U.S. 294).

**§ 31-1111. Placement of children in schools.**

Any white resident shall be privileged to place his or her child or ward at any one of the schools provided for the education of white children in the District of Columbia he or she may think proper to select, with the consent of the Board of Education; and any colored resident shall have the same rights with respect to colored schools. (R. S., D. C., § 282; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 20, 1906, 34 Stat. 316, ch. 3446 § 2.)

**AMENDMENTS**

1906—Act June 20, 1906, gave control of the public schools of the District to the Board of Education.

1878—Act June 11, 1878, abolished the board of school trustees and transferred the powers and duties to the Commissioners of the District.

**NOTES TO DECISIONS****Racial and economic discrimination**

Board of Education will not be permitted to transfer two elementary schools from "cluster" of one junior high school to "cluster" of another junior high for purposes of pupil placement since the transfer has apparent segregatory purpose which would knowingly permit white children to escape an increasingly black school. *J. W. Hobson etc. v. C. F. Hansen etc.* (1970, 320 F. Supp. 720).

Boundary plan for assignment of pupils to schools had constitutional weaknesses since there were socio-economic differences between two areas divided by boundary and since school for one area was new and much better equipped than school for other area; and since pairing plan would give every child in areas opportunity during some part of his elementary school life to attend newer school and since two schools were only a block apart on

dividing line, school board which had approved boundary plan was directed to reconsider. *J. W. Hobson etc. v. C. F. Hansen etc.* (1970, 320 F. Supp. 409).

Since the school board made its districting decision on basis of projected enrollment figures which were proved to be significantly inaccurate and which perhaps obscured important constitutional considerations, reconsideration of such decision was necessary upon such ground alone. *Id.*

In this action alleging racial and economic discrimination and other wrong doings in the operation of the public school system, the court ordered: 1. An injunction against racial and economic discrimination. 2. Abolition of the track system. 3. Abolition of the optional zones. 4. Transportation of voluntary children in overcrowded schools to underpopulated schools. 5. The defendants to file for court approval of a plan for pupil assignment eliminating racial and economic discrimination in the public school system. 6. Substantial integration of the faculty of each school beginning with the new school year. 7. The defendants to file for court approval, a teacher assignment plan fully integrating the faculty of each school. *J. W. Hobson etc. v. C. F. Hansen etc.* (1967, 269 F. Supp. 401; remanded 132 U.S. App. D.C. 372, 408 F. 2d 175).

**§ 31-1112. Proportionate amount of school moneys to be set apart for colored schools.**

It shall be the duty of the proper authorities of the District to set apart each year from the whole fund received from all sources by such authorities applicable to purposes of public education in the District of Columbia, such a proportionate part of all moneys received or expended for school or educational purposes, including the cost of sites, buildings, improvements, furniture and books, and all other expenditures on account of schools, as the colored children between the ages of 6 and 17 years bear to the whole number of children, white and colored, between the same ages, for the purpose of establishing and sustaining public schools for the education of colored children; and such proportion shall be ascertained by the last reported census of the population made prior to such apportionment, and shall be regulated at all times thereby. (R. S., D. C., § 306; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 20, 1906, 34 Stat. 316, ch. 3446, § 2.)

**AMENDMENTS**

1906—Act June 20, 1906, gave control of the public schools of the District to the Board of Education.

1878—Act June 11, 1878, abolished the board of school trustees and transferred the powers and duties to the Commissioners of the District.

**NOTES TO DECISIONS****Racial discrimination**

Racial discrimination in public education is unconstitutional, and all provisions of Federal, State, or local law requiring or permitting such discrimination must yield to this principle. *Brown et al. v. Board of Education of Topeka et al.* (1954, 347 U.S. 483, reargued, 349 U.S. 294).

Racial segregation in the public schools of the District of Columbia is a denial to Negro children of the due process of law guaranteed by the Fifth Amendment. *Bolling et al. v. Sharpe et al.* (1954, 347 U.S. 497).

**§ 31-1113. Facilities for educating colored children to be provided.**

It is the duty of the Board of Education to provide suitable rooms and teachers for such a number of schools in the District of Columbia as, in its opinion, will best accommodate the colored children in the District of Columbia. (R. S., D. C., § 310; June 11,



1878, 20 Stat. 107, ch. 180, § 6; June 20, 1906, 34 Stat. 316, ch. 3446, § 2.)

#### AMENDMENTS

1906—Act June 20, 1906, gave control of the public schools of the District to the Board of Education.

1878—Act June 11, 1878, abolished the board of school trustees and transferred the powers and duties to the Commissioners of the District.

#### NOTES TO DECISIONS

##### Racial discrimination

Racial discrimination in public education is unconstitutional, and all provisions of Federal, State, or local law requiring or permitting such discrimination must yield to this principle. *Brown et al. v. Board of Education of Topeka et al.* (1954, 347 U.S. 483, reargued, 349 U.S. 294).

Racial segregation in the public schools of the District of Columbia is a denial to Negro children of the due process of law guaranteed by the Fifth Amendment. *Bolling et al. v. Sharpe et al.* (1954, 347 U.S. 497).

#### § 31-1114. Education of children of veterans who lost lives during war—Appropriation authorized.

##### CODIFICATION

Section, act June 19, 1934, 48 Stat. 1125, ch. 671, authorized an annual appropriation of \$3,600 for fiscal years 1935 to 1943, inclusive, to aid in the education of children of World War I veterans who lost their lives during the War.

#### § 31-1115. Bond not required for supplies issued by Department of the Army.

A bond shall not be required on account of military supplies or equipment issued by the Department of the Army for military instruction and practice by the students of high schools in the District of Columbia. (July 15, 1939, 53 Stat. 1015, ch. 281, § 1; June 12, 1940, 54 Stat. 317, ch. 333, § 1.)

##### CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

#### § 31-1116. School cadets—Issuance of arms—Insurance.

Arms authorized to be issued by the Department of the Army to high school cadets of the District of Columbia shall hereafter be issued without requiring that the same shall be insured from loss by fire. (April 27, 1904, 33 Stat. 379, ch. 1628.)

##### CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

#### § 31-1117. Solicitation of donations from pupils—Authorization by Board of Education required.

No part of any appropriation for the District of Columbia shall be paid to any person employed under or in connection with the public schools of the Dis-

trict of Columbia who shall solicit or receive, or permit to be solicited or received, on any public-school premises, any subscription or donation of money or other thing of value from any pupil enrolled in such public schools for presentation of testimonials to school officials or for any purpose except such as may be authorized by the Board of Education at a stated meeting upon the written recommendation of the Superintendent of Schools. (July 1, 1943, 57 Stat. 324, ch. 184, § 1.)

#### § 31-1118. Use of appropriated funds for transportation of students, to change racial balance in schools—Education of individuals in elementary or secondary schools outside the District—Exceptions.

No funds appropriated for the government of the District of Columbia may be used—

(1) to provide transportation for students enrolled in the public schools of the District of Columbia if the transportation is provided solely to change the racial balance in any public school in the District of Columbia, or

(2) for the cost of education (including the cost of transportation) of any individual in an elementary or secondary school located outside the District of Columbia, except (A) any handicapped individual for whom education facilities do not exist in the public school system of the District of Columbia and (B) any individual under the care, custody, or guardianship of the District of Columbia placed in a foster home or in an institution located outside the District of Columbia.

(Aug. 2, 1968, Pub. L. 90-450, title IV, § 401, 82 Stat. 615.)

#### NOTES TO DECISIONS

##### Injunction

On appeal from dismissal of complaints attacking constitutionality of this section generally prohibiting expenditure of District funds for the cost of education of any individual outside the District, injunction, pending decision of the appeal on the merits, to prevent District's board of education from discontinuing program whereby a few randomly selected Negro children had been enrolled in a predominantly white suburban Maryland elementary school at the expense of the District would not be warranted since the record demonstrated that discontinuance of the program, which had been financed by Federal Impact Aid Funds unaffected by the statutory prohibition, had been decided on for reasons unrelated to this section. *J. Bulluck et al. v. W. Washington, Commissioner, et al.* (1971, 452 F. 2d 1385, 147 U.S. App. D.C. 53.)

#### Chapter 12.—AVIATION EDUCATION IN HIGH SCHOOLS

##### Sec.

31-1201. Aviation education in high-school curricula.

31-1202. Teachers of aeronautics.

31-1203. Free textbooks, maps, and supplies.

31-1204. Annual estimates of expenses.

#### § 31-1201. Aviation education in high-school curricula.

The Board of Education is hereby authorized and directed to establish and to include in the curricula of the senior high schools of the District of Columbia, as an additional optional course, a course in aeronautics, which shall include instruction in aerodynamics, the theory of flight, the airplane and its engine, mechanics, engineering, meteorology, practical air navigation, map reading, and such other allied subjects as the Board in its discretion may deem it advisable to prescribe. Such course shall be



first offered during the high-school term beginning in 1942. Thereafter such additional courses in aeronautics may be added as deemed desirable by the Board of Education. The same credit toward graduation may be given for said course as is given for other optional courses in said schools. (Dec. 16, 1941, 55 Stat. 806, ch. 585, § 1.)

#### § 31-1202. Teachers of aeronautics.

The Board is further authorized to employ a sufficient number of teachers of aeronautics, not to exceed six, adequately to instruct those pupils who elect to pursue the said course, at the salary rates authorized for teachers in the senior high schools. (Dec. 16, 1941, 55 Stat. 807, ch. 585, § 2.)

#### § 31-1203. Free textbooks, maps, and supplies.

The Board shall provide the pupils of the senior high schools, free of charge, with the use of all aeronautical textbooks, maps, and other necessary educational supplies required for said course. (Dec. 16, 1941, 55 Stat. 807, ch. 585, § 3.)

#### § 31-1204. Annual estimates of expenses.

The Board shall on and after December 16, 1941, include in its annual estimates of money required for the public schools of the District of Columbia for the ensuing year an amount sufficient to defray the expenses herein authorized. (Dec. 16, 1941, 55 Stat. 807, ch. 585, § 5.)

#### APPROPRIATION

Section 4 of act Dec. 16, 1941, provided that: "There is hereby authorized to be appropriated a sum not to exceed \$16,000 in order to carry out the purposes of this act [this chapter]."

### Chapter 13.—EDUCATIONAL AGENCY FOR SURPLUS PROPERTY

#### Sec.

- 31-1301. Educational Agency for Surplus Property established—Functions and duties.
- 31-1302. Working capital fund provided—Rules and regulations of Agency.
- 31-1303. Termination of Agency.

#### § 31-1301. Educational Agency for Surplus Property established—Functions and duties.

There is hereby established in the municipal government of the District of Columbia the District of Columbia Educational Agency for Surplus Property, hereinafter referred to as the "Agency", which shall under the direction of the Commissioner of the District of Columbia carry out in the District of Columbia the State functions contemplated by section 484 (j) and (k) of title 40, U.S. Code, and such other duties relating to the distribution of surplus property, or other functions, as the Commissioner may in his discretion assign to such Agency, and for the purposes of section 484(j), the District of Columbia shall be deemed to be a State. The Commissioner is authorized to appoint a director for such Agency and such other personnel as may be necessary with compensation to be fixed in accordance with chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]. The Commissioner is also authorized to appoint an advisory board for such Agency to be

composed of not more than ten members: *Provided*, That the membership of such board shall include representatives of the tax-supported, tax-exempt, and nonprofit educational institutions in the District of Columbia: *And provided further*, That the members of such advisory board shall serve without compensation and at the pleasure of the Commissioner. Such advisory board may submit reports and recommendations to the Commissioner as well as to the Agency. (Aug. 16, 1950, 64 Stat. 450, ch. 720, § 1.)

#### CODIFICATION

The reference in this section to "chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1923, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89-554, set out in note under § 1-251. Although the reference in this section was to the Classification Act of 1923, as amended, at time of enactment of this section on August 16, 1950, that act (Mar. 4, 1923, 42 Stat. 1488 ch. 265, as amended) had been repealed and superseded by the Classification Act of 1949 (Oct. 28, 1949, 63 Stat. 954, ch. 782), and § 1106(a) of the latter act (63 Stat. 972) had provided that references in other laws to the Classification Act of 1923, as amended, should be deemed to refer to the Classification Act of 1949. The Classification Act of 1949, as amended, has since been repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

#### ABOLITION OF AGENCY AND TRANSFER OF FUNCTIONS

The District of Columbia Educational Agency for Surplus Property was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorg. Plan No. 5 of 1952. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by Reorg. Plan No. 3 of 1967.

All functions of the District of Columbia Educational Agency for Surplus Property including the functions of all officers, employees and subordinate agencies were transferred to Director Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952 and effective September 2, 1952. Reorganization Order No. 18 abolished the District of Columbia Educational Agency for Surplus Property and transferred its functions to the Administrative Services Office created in the Department of General Administration by that Order. Reorg. Ord. No. 18 was revoked by Org. Ord. No. 3, dated Dec. 13, 1967, and functions relative to education surplus property were assigned to the Administrative Services Office of the Department of General Administration by Part IVA of Org. Ord. No. 3. Functions stated in Parts IVA and IVD of Org. Ord. No. 3 were transferred to the Director of the Department of General Services by Commissioner's Order [Org. Action] No. 69-96, dated Mar. 7, 1969.

The Plans and Orders are set out in the Appendix to title 1.

#### § 31-1302. Working capital fund provided—Rules and regulations of Agency.

There is hereby authorized to be appropriated from any money in the Treasury to the credit of the District of Columbia not exceeding \$15,000 as a working capital fund for the operation of the Agency, which fund shall be used as a permanent revolving fund for all necessary expenses of such Agency. There shall be deposited to the credit of such fund such amounts as may be appropriated pursuant to this chapter, together with such amounts as the respective branches of the government of the District of Columbia and the private educational insti-



tutions authorized by law to participate in the distribution of surplus property shall pay as fees for services rendered by the Agency. The District of Columbia Council is authorized to promulgate rules and regulations governing the manner in which the Agency shall carry out its duties, including the fixing of reasonable fees to be charged for its services. (Aug. 16, 1950, 64 Stat. 450, ch. 720, § 2.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(243) of Reorg. Plan. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of promulgating rules and regulations governing the manner in which the District duties relating to surplus property shall be carried out, including the fixing of fees to be charged for services, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

Status of District of Columbia Educational Agency for Surplus Property, see note under section 31-1301.

#### § 31-1303. Termination of Agency.

The authority of the Agency and of the Advisory Board shall terminate upon direction of the Commissioner of the District of Columbia and in any event no later than the repeal of section 484 (j) and (k) of title 40, U.S. Code. Upon such termination, the assets of the Agency shall be disposed of as the Commissioner may direct. (Aug. 16, 1950, 64 Stat. 451, ch. 720, § 3.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### TRANSFER OF FUNCTIONS

Status of District of Columbia Educational Agency for Surplus Property, see note under section 31-1301.

### Chapter 14.—PUBLIC SCHOOL FOOD SERVICES

Sec.

31-1401. Department of food services—Establishment—Direction and control by Board of Education—Program.

31-1402. Powers of the Board.

31-1403. Service credit for retirement—Deposits.

31-1404. Food services fund—Appropriation authorized—Revenues and receipts—To be permanent revolving fund—Expenditures.

31-1405. Appropriations authorized for payment of compensation and acquisition, maintenance, and replacement of equipment.

31-1406. Payment and deposit of cafeteria and lunchroom funds—Transfer of supplies and equipment—Time limitation—Payment of obligations after transfer.

31-1407. School-lunch program—Entitlement to funds under National School Lunch Act.

31-1408. Audits of accounts—Reports to Commissioner.

31-1409. Distribution of commodities.

31-1410. Appropriations in connection with distribution of commodities.

#### § 31-1401. Department of food services—Establishment—Direction and control by Board of Education—Program.

There is hereby created in the public schools of the District of Columbia a Department of Food Services, which Department, under the direction and control of the Board of Education of the District of Co-

lumbia, hereinafter referred to as the "Board", is hereby authorized to conduct a centralized system of public school cafeterias, lunchrooms, and related services, hereinafter referred to as "food services". (Oct. 8, 1951, 65 Stat. 367, ch. 448, title I, § 1.)

#### SHORT TITLE

Section 10 of act Oct. 8, 1951, provided that: "This title [sections 31-1401 to 31-1408] may be cited as the 'District of Columbia Public School Food Services Act'."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1407.

#### § 31-1402. Powers of the Board.

For carrying out the purposes of this chapter, the Board is empowered—

(a) to establish in the Department of Food Services an Office of Central Management consisting of a Director and Assistant Directors of Food Services, whose compensation shall be fixed in accordance with the District of Columbia Teachers' Salary Act of 1947, as amended;

(b) to make and enforce such rules and regulations as it deems necessary for the government of the Department of Food Services and for the use and enjoyment of the facilities and services of such department;

(c) upon the written recommendation of the Superintendent of Schools, to employ such personnel as may be required to manage cafeterias, lunchrooms, and related services and to conduct the Office of Central Management. The compensation of such personnel, other than the Director and Assistant Directors of Food Services, shall be fixed in accordance with the chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters] *Provided*, That the salaries of persons employed to manage cafeterias, lunchrooms, and related services shall be paid in installments and computed in accordance with the provisions of sections 31-609 and 31-630: *And provided further*, That such persons shall not be entitled to leave with pay of any kind except that which is allowed teachers under sections 31-691, 31-692 to 31-694, 31-695, 31-696, 31-697;

(d) upon the written recommendation of the Superintendent of Schools, to employ on a full-time or part-time basis such personnel as may be required for the operation and maintenance of food services. The Commissioner of the District of Columbia shall fix and adjust, from time to time, the rates of pay of such personnel in accordance with the rates of pay of personnel in positions of similar levels of duties, responsibilities, and qualification requirements, as determined by the Commissioner, and with respect to part-time employees without regard to prohibitions or limitations relating to dual compensation as contained in any Act of Congress. Persons employed under the provisions of this paragraph shall be entitled to compensation for all time when and as they perform service, and, in addition thereto, shall be entitled to compensation for such holidays as fall within a regular tour of duty of not less than five days in any established workweek. Persons employed under this paragraph shall not be entitled, by reason of such service, to vacation or annual leave with pay.



Notwithstanding the provisions of any other law, such persons shall be entitled to sick leave with pay, to be cumulative at the rate of one day a month, September to June, inclusive, of each year, the total cumulation not to exceed thirty days, to be granted under such conditions as the Board may by regulation prescribe: *Provided*, That as to part-time employees such leave shall be prorated on an hourly basis. The days of sick leave with pay provided for in this section shall mean days on which employees would otherwise work and receive pay and shall be exclusive of Saturdays, Sundays, holidays, and vacation periods authorized by the Board;

(e) upon the written recommendation of the Superintendent of Schools, to accept for the benefit of the program of food services gifts of money which shall be deposited in the fund created by section 31-659<sup>1</sup>, and of personal property and volunteer personal service. (Oct. 8, 1951, 65 Stat. 367, ch. 448, title I, § 2; Oct. 25, 1968, Pub. L. 90-640, § 1, 82 Stat. 1363.)

#### REFERENCES IN TEXT

The District of Columbia Teachers' Salary Act of 1947, as amended, referred to in subsec. (a), refers to act July 7, 1947, 61 Stat. 250, ch. 208, as amended, which was repealed by act Aug. 5, 1955, 69 Stat. 530, ch. 569, title V, § 20, eff. July 1, 1955, and is covered by District of Columbia Teachers' Salary Act of 1955, set out as chapter 15 of this title.

#### CODIFICATION

In subsec. (c), the reference to "chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code, relating to the classification of government employees and related matters" was substituted for "the Classification Act of 1949", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89-554, set out in note under § 1-251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

#### AMENDMENT

1968—Section 1, act Oct. 25, 1968, Pub. L. 90-640, amended subsection (d) by striking out "at rates of pay to be fixed by said Board without reference to the Classification Act of 1949," and inserting in lieu thereof a period and the new sentence authorizing the Commissioner to fix and adjust from time to time the rates of pay of personnel as therein provided. The Classification Act of 1949 was repealed by act Sept. 6, 1966, Pub. L. 89-544 which reenacted its provisions as a part of title 5 U.S. Code.

#### EFFECTIVE DATE OF 1968 AMENDMENTS AND ENACTMENTS

Section 6(a), act Oct. 25, 1968, Pub. L. 90-640, provided: "The preceding sections of this Act [Amendments of sections 31-1402, 31-1404, 31-1405 and section 4 of the Act set out as a note to 31-1405 and section 5 of the Act set out as a note to 31-1402] shall become effective as of July 1, 1968."

#### RETROACTIVE PAY, GROUP INSURANCE AND REEMPLOYMENT PROVISIONS

Section 5, act Oct. 25, 1968, Pub. L. 90-640, provided: "(a) Retroactive pay is authorized for the period beginning on February 11, 1968, and ending on the date on which adjustments in rates of pay are officially ordered by the Commissioner of the District of Columbia as a result of the enactment of this [Amendments of sections 31-1402, 31-1404 and 31-1405 and notes to sections 31-1402 and 31-1405]; but such retroactive pay shall be paid only—

"(1) in the case of an individual in the service of the Board of Education of the District of Columbia (including service in the Armed Forces of the United States) on the date on which such adjustments in rates of pay are so ordered;

"(2) to a former employee within the classes of employees whose pay is adjusted, by official order of the Commissioner of the District of Columbia as a result of the enactment of this [Amendments of sections 31-1402, 31-1404 and 31-1405 and notes to sections 31-1402 and 31-1405], who retired during the period beginning on February 11, 1968, and ending on the date on which such adjustments in rates of pay are so ordered, for services rendered during such period; and

"(3) in accordance with subchapter VIII of chapter 55 of title 5, United States Code, relating to settlement of accounts of deceased employees, for services rendered, during the period beginning on February 11, 1968, and ending on the date on which such adjustments in rates of pay are so ordered, by a former employee within the classes of employees whose pay is adjusted by official order of the Commissioner of the District of Columbia as a result of the enactment of this [Amendments of sections 31-1402, 31-1404, 31-1405 and notes to sections 31-1402 and 31-1405], who died during such period.

"(b) For the purposes of this section, service in the Armed Forces of the United States, in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the government of the District of Columbia."

Section 6(b), act Oct. 25, 1968, Pub. L. 90-640, provided: "(b) For the purposes of determining the amount of insurance for which an individual is eligible under chapter 87 of title 5, United States Code, relating to group life insurance for Government employees, all adjustments in rates of pay, which are officially ordered by the Commissioner of the District of Columbia as a result of the enactment of this [Amendments of sections 31-1402, 31-1404, 31-1405 and notes to sections 31-1402 and 31-1405] and which become effective in any period prior to the date on which such adjustments in rates of pay are so ordered, shall be held and considered to become effective on the date on which such adjustments are so ordered."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1407.

#### § 31-1403. Service credit for retirement—Deposits.

Service rendered by any person for salary or wages as an employee of any cafeteria or lunchroom operated in the public school buildings of the District during any period prior to the date when such cafeteria or lunchroom is placed under the office of central management shall, if and when such person becomes an employee of the Department of Food Services, be deemed to be service rendered for the government of the District of Columbia for purposes of subchapter III of chapter 83 of title 5, U.S. Code [relating to the retirement of government employees], to be computed in accordance with sections 8332 and 8333 of title 5, U.S. Code: *Provided*, That such person shall make deposits covering such service as provided in section 8334 of title 5, U.S. Code: *And provided further*, That any such person may elect to make such deposits in installments in accordance with the provisions of section 8334 of title 5, U.S. Code. (Oct. 8, 1951, 65 Stat. 368, ch. 448, title I, § 3; Oct. 25, 1951, 65 Stat. 637, ch. 560, § 3; Aug. 5, 1955, 69 Stat. 536, ch. 575, § 1.)

<sup>1</sup> The original act referred to "section 4 of this Act." Section 4 of the Act was classified to § 31-659. Reference was probably intended to be to section 5 of the Act, which is set out as § 31-1404.



## CODIFICATION

The reference in this section to "subchapter III of chapter 83 of title 5, U.S. Code [relating to the retirement of government employees]" was substituted for "the Civil Service Retirement Act, approved May 29, 1930, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89-554, set out in note under § 1-251. The Civil Service Retirement Act, approved May 29, 1930 (46 Stat. 468, ch. 349), as generally amended by act July 31, 1956, 70 Stat. 743, ch. 804, title IV, § 401 (which redesignated the 1930 act as the "Civil Service Retirement Act"), and as amended by other acts, was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

For the same reasons, the reference to "sections 8332 and 8333 of title 5, U.S. Code" was substituted for "section 5 of such act [meaning the said act of May 29, 1930]", and the references to "section 8334 of title 5, U.S. Code" were substituted for the references to "section 9 of such Act". Sections 5 and 9 of the said act of May 29, 1930, were renumbered "3" and "4", respectively, by act July 31, 1956, mentioned above, and are now covered by §§ 8332, 8333 and 8334 of title 5, U.S.C.

## REPEAL AND REVIVAL

Section was revived and act Oct. 25, 1951, 65 Stat. 637, ch. 560, § 3 (which had repealed the section effective Oct. 8, 1951) was repealed by act Aug. 5, 1955, 69 Stat. 536, ch. 575, § 1, effective Oct. 8, 1951.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1407.

**§ 31-1404. Food services fund—Appropriation authorized—Revenues and receipts—To be permanent revolving fund—Expenditures.**

There is hereby created in the Treasury of the United States a fund to be known as "District of Columbia Public School Food Services Fund", hereinafter referred to as the "Food Services Fund", and there is authorized to be appropriated, out of the revenues of the District of Columbia, \$25,000 which shall be credited to the Food Services Fund. All revenues and receipts of any nature whatever derived from the operation of food services, or as provided otherwise by this chapter, shall, under regulations of the Board, be paid over to the Collector of Taxes of the District of Columbia not less often than once each week and by him deposited in the Treasury of the United States to the credit of the Food Services Fund. Such fund shall be used as a permanent revolving fund and expenditures therefrom shall be made only upon vouchers certified by the Superintendent of Schools or his designated agent and approved before payment by the auditor of the District of Columbia, and shall be disbursed in the same manner as other District of Columbia funds are disbursed. The Food Services Fund shall be available for the payment of all expenses, other than personal services, necessary for the operation of the Department of Food Services, to the extent that appropriations, other than appropriations for personal services, are not available or are insufficient to pay such expenses in the fiscal year concerned. (Oct. 8, 1951, 65 Stat. 369, ch. 448, title I, § 5; Oct. 25, 1968, Pub. L. 90-640, § 2, 82 Stat. 1363.)

## REFERENCE IN TEXT

This section is erroneously referred to in section 31-1402 of this title as section 31-659. See Reference in Text note under section 31-1402.

## AMENDMENT

1968—Section 2, act Oct. 25, 1968, Pub. L. 90-640, amended the last sentence generally. Prior to this amendment the sentence read as follows: "The Food Services

Fund shall be available for the purchases of foods, supplies, and all other services and expenditures of whatever nature which are necessary for the conduct of the Department of Food Services, including personal services, the operation and maintenance of motor trucks, and the expenses of conducting the Office of Central Management."

## EFFECTIVE DATE OF 1968 AMENDMENT

See note under § 31-1402.

## TRANSFER OF FUNCTIONS

The Office of the Collector of Taxes was abolished and the functions thereof transferred, see note under § 47-301.

The Office of the Auditor was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorg. Plan No. 5 of 1952. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorg. Plan No. 3 of 1967.

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952 and effective September 2, 1952.

The function of approving vouchers before payment as described in the foregoing section was transferred from the Auditor of the District of Columbia to the Accounting officer, Finance Office, Department of General Administration by Reorganization Order No. 20 dated November 10, 1952. Reorganization Order No. 20 was replaced by Organization Order No. 121. Reorganization Order No. 3 and Organization Order No. 121 were revoked by Organization Order No. 3 of the Commissioner of the District of Columbia dated Dec. 13, 1967. Parts III and IVC of the latter Order established within the newly created Department of General Administration, a Finance Office and prescribed the functions thereof. This function was subsequently transferred to the Director of the Department of Finance and Revenue by Commissioner's Order [Organization Action] No. 69-96, dated Mar. 7, 1969. Functions pertaining to centralized accounting (including approving vouchers before payment) as set forth in C.O. No. 69-96 were transferred to the Director of the Department of Budget and Financial Management by Org. Ord. No. 30, dated Apr. 5, 1972.

The Plans and Orders are set out in the appendix to title 1.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-1402 (See footnote to § 31-1402), 31-1407.

**§ 31-1405. Appropriations authorized for payment of compensation and acquisition, maintenance and replacement of equipment.**

Appropriations are authorized for the payment of compensation for all personal services necessary for the operation of the Department of Food Services and for the acquisition, maintenance, and replacement of equipment for use in that operation. (Oct. 8, 1951, 65 Stat. 369, ch. 448, title I, § 6; Sept. 2, 1958, 72 Stat. 1735, Pub. L. 85-901, § 1; Oct. 25, 1968, Pub. L. 90-640, § 3, 82 Stat. 1363.)

## AMENDMENTS

1968—Section 3, act Oct. 25, 1968, Pub. L. 90-640, amended section to read as above set out. The prior provision did not authorize appropriations for payment of compensation; contained provisions for reimbursement of the School Food Services Fund for lunches in certain cases. The section prior to this amendment is set out in the 1967 main edition.

1958—Act Sept. 2, 1958, added provisions relating to reimbursement for school lunches.

## EFFECTIVE DATE OF 1968 AMENDMENT

See note under § 31-1402.



## USE OF UNOBLIGATED FUNDS

Section 4, act Oct. 25, 1968, Pub. L. 90-640, provided: "Unobligated funds, not to exceed \$148,000, appropriated to the general fund of the government of the District of Columbia for the fiscal year ending June 30, 1968, may be used to increase the compensation of employees in the Department of Food Services in the public schools of the District of Columbia, for the period beginning February 11, 1968, and ending June 30, 1968."

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1407.

**§ 31-1406. Payment and deposit of cafeteria and lunchroom funds—Transfer of supplies and equipment—Time limitation—Payment of obligations after transfer.**

(a) All funds, whether in cash or other form, in the custody or possession of the person or persons operating cafeterias and lunchrooms in public school buildings of the District of Columbia which funds have been derived from such operations shall, on the date such cafeterias and lunchrooms are placed under the Office of Central Management, be paid to the Collector of Taxes, District of Columbia, and deposited by him in the Treasury of the United States to the credit of the Food Services Fund, and all supplies and equipment of whatever nature acquired for use in such cafeterias and lunchrooms shall, by the person or persons having custody or possession of such supplies and equipment, be returned or transferred to the Board of Education, together with all books and records pertaining to the same: *Provided*, That the Board of Education shall place all such cafeterias and lunchrooms under the Office of Central Management not more than one year after the Department of Food Services is established by said Board.

(b) All obligations incurred for food, supplies, and equipment used or usable in the conduct of cafeterias and lunchrooms unsatisfied on the day the respective cafeterias and lunchrooms are placed under the Office of Central Management, shall be paid from the Food Services Fund. (Oct. 8, 1951, 65 Stat. 369, ch. 448, title I, § 7.)

## TRANSFER OF FUNCTIONS

The Office of the Collector of Taxes was abolished and the functions thereof transferred, see note under § 47-301.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1407.

**§ 31-1407. School-lunch program—Entitlement to funds under National School Lunch Act.**

Insofar as the Board shall conduct a school-lunch program under the authority of sections 31-1401 to 31-1408, it shall be considered a "school" within the meaning of the National School Lunch Act (42 U.S.C. 1751 et seq.), and all funds to which it may thus become entitled as a participating school under the National School Lunch Act shall be deposited in the fund created by section 31-1404. (Oct. 8, 1951, 65 Stat. 370, ch. 448, title I, § 8.)

**§ 31-1408. Audits of accounts—Reports to Commissioner.**

It shall be the duty of the auditor of the District of Columbia to audit at least quarterly the accounts of

the Department of Food Services and make reports thereof to the Commissioner of the District of Columbia. (Oct. 8, 1951, 65 Stat. 370, ch. 448, title I, § 9.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## TRANSFER OF FUNCTIONS

The Office of the Auditor of the District of Columbia was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorg. Plan No. 5 of 1952. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorg. Plan No. 3 of 1967.

Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952 and effective Sept. 2, 1952, established, under the direction and control of the Board of Commissioners, a Department of General Administration headed by a Director. The order transferred to the Director of General Administration all of the functions of the Office of Auditor. Reorganization Order No. 19 established the Internal Audit Office headed by an Internal Audit Officer in the Department of General Administration. The function of the quarterly audit and report to the Commissioner of the accounts of the Department of Food Services was transferred to the Internal Audit Office. Reorganization Order Nos. 3 and 19 were revoked by Organization Order No. 3 of the Commissioner of the District of Columbia, dated Dec. 13, 1967, Parts III and IVB of the latter Order established within the newly created Department of General Administration, an Internal Audit Office and prescribed the functions thereof. These functions were subsequently transferred to the Director of the Department of Finance and Revenue by par. 4 of Commissioner's Order [Organization Action] No. 69-96, dated Mar. 7, 1969, Part IVB of Organization Order No. 3 and that portion of par. 4 of Commissioner's Order No. 69-96 pertaining to a transfer of audit functions to the Department of Finance and Revenue, were revoked by Organization Order No. 33, dated July 14, 1972. The latter Order established an Office of Municipal Audit and Inspection and prescribed the functions thereof.

The Plans and Orders are set out in the appendix to title 1.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1407.

**§ 31-1409. Distribution of commodities.**

The Board of Education of the District of Columbia is authorized (a) to enter into a contract or contracts from time to time with the United States Department of Agriculture for the distribution to schools and to public and charitable institutions of commodities made available by said Department, and (b) to carry out, under regulations of the said Board, a program or programs of furnishing milk to school children in the District, including the purchase and distribution of milk under agreement with the United States Department of Agriculture: *Provided*, That all moneys collected under such program or programs shall be paid to the Collector of Taxes of the District of Columbia for deposit into the Treasury of the United States to the credit of the District. (Oct. 8, 1951, 65 Stat. 370, ch. 448, title II, § 201.)

## TRANSFER OF FUNCTIONS

The Office of the Collector of Taxes was abolished and the functions thereof transferred, see note under § 47-301.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1410.



§ 31-1410. Appropriations in connection with distribution of commodities.

Appropriations are hereby authorized to enable the Board of Education to carry out the contracts and programs authorized by section 31-1409. (Oct. 8, 1951, 65 Stat. 370, ch. 448, title II, § 202.)

Chapter 15.—SALARIES OF TEACHERS, SCHOOL OFFICERS AND OTHER EMPLOYEES

SUBCHAPTER I.—SALARY SCHEDULE

- Sec.
- 31-1501. Salaries of teachers, school officers and other employees—Service steps.
- 31-1502. Repealed.

SUBCHAPTER II.—CLASSIFICATION AND ASSIGNMENT OF EMPLOYEES

- 31-1511. Board of Education to establish eligibility requirements—Methods of appointment, promotion and salary classification—Definitions.
- 31-1512. Probationary period.

SUBCHAPTER III.—METHOD OF ASSIGNMENT OF EMPLOYEES TO SALARY SCHEDULES

- 31-1521. Assignment of certain employees to salary classes.
- 31-1522. Types of positions to which chapter applies—Authority of Board to determine which positions meet established criteria and other matters—Teacher-aide positions—Initial assignment of school principal positions and periodic evaluation of duties and responsibilities.

SUBCHAPTER IV.—METHOD OF ADVANCEMENT AND PROMOTION OF EMPLOYEES

- 31-1531. Method of assignment to service steps—Promotion of employees.
- 31-1532. Assignment of new employees to service steps—Evaluation of past experience—Adjustment of salary steps of existing employees—Absence because of military or naval service.
- 31-1533. Salary increases of probationary employees—Termination of employment.

- Sec.
- 31-1534. Temporary employees—Assignment, salaries, and termination of employment—Limitations on number of years of employment—Advancement of temporary employees receiving permanent appointments—Employees on temporary status because of age limitations.
- 31-1535. Effective date of promotions to groups A-1, B, C, and D—Assignment to numerical service steps—Retroactive correction of administrative error.
- 31-1536. Promotions—Assignment to numerical service step.

SUBCHAPTER V.—ACCOMPANYING LEGISLATION

- 31-1541. Repealed.
- 31-1542. Evening, summer, and Americanization schools—Salaries—Extra-duty pay.
- 31-1543. Salary payable in semimonthly installments—Employee election.
- 31-1544. Authority of Board to regulate vacation period and annual leave applicable to certain employees.
- 31-1545. Sick and emergency leave provisions applicable to certain employees.
- 31-1546. Sabbatical leave provisions applicable to certain employees.
- 31-1547. Foreign teacher exchange program applicable to certain employees.
- 31-1548. Teacher retirement provisions applicable to certain employees.

CHAPTER REFERRED TO IN U.S. CODE

This chapter is referred to in title 5 sections 5102, 5541 of the U.S. Code.

SUBCHAPTER I.—SALARY SCHEDULE

§ 31-1501. Salaries of teachers, school officers and other employees—Service steps.

The following is the salary schedule for teachers, school officers, and certain other employees of the Board of Education whose positions are covered under this chapter:

TEACHERS AND SCHOOL OFFICERS SALARY SCHEDULE

Salary class and group	Service step—													Longevity step Y
	1	2	3	4	5	6	7	8	9	10	11	12	13	
Class 1A -----	39,500													
Class 1B -----	35,000													
Class 2A -----	33,000													
Class 2B -----	31,000													
Class 3 -----	23,745	24,310	24,875	25,440	26,005	26,570	27,135	27,700	28,265					
Class 4 -----	20,845	21,335	21,825	22,315	22,805	23,295	23,785	24,275	24,765					
Class 5:														
Group B, master's degree -----	19,665	20,135	20,605	21,075	21,545	22,015	22,485	22,955	23,425					
Group C, master's degree plus 30 -----	20,085	20,555	21,025	21,495	21,965	22,435	22,905	23,375	23,845					
Group D, doctor's -----	20,500	20,970	21,440	21,910	22,380	22,850	23,320	23,790	24,260					
Class 6:														
Group B, master's degree -----	19,100	19,565	20,020	20,475	20,930	21,385	21,840	22,295	22,750					
Level IV principal -----	19,110	19,565	20,020	20,475	20,930	21,385	21,840	22,295	22,750					
Level III principal -----	18,560	19,015	19,470	19,925	20,380	20,835	21,290	21,745	22,200					
Level II principal -----	18,010	18,465	18,920	19,375	19,830	20,285	20,740	21,195	21,650					
Level I principal -----	17,455	17,910	18,365	18,820	19,275	19,730	20,185	20,640	21,095					
Group C, master's degree plus 30 -----	19,530	19,985	20,440	20,895	21,350	21,805	22,260	22,715	23,170					
Level IV principal -----	19,530	19,985	20,440	20,895	21,350	21,805	22,260	22,715	23,170					
Level III principal -----	18,975	19,430	19,885	20,340	20,795	21,250	21,705	22,160	22,615					
Level II principal -----	18,425	18,880	19,335	19,790	20,245	20,700	21,155	21,610	22,065					
Level I principal -----	17,875	18,330	18,785	19,240	19,695	20,150	20,605	21,060	21,515					
Group D, doctor's degree -----	19,945	20,400	20,855	21,310	21,765	22,220	22,675	23,130	23,585					
Level IV principal -----	19,945	20,400	20,855	21,310	21,765	22,220	22,675	23,130	23,585					
Level III principal -----	19,395	19,850	20,305	20,760	21,215	21,670	22,125	22,580	23,035					
Level II principal -----	18,840	19,295	19,750	20,205	20,660	21,115	21,570	22,025	22,480					
Level I principal -----	18,290	18,745	19,200	19,655	20,110	20,565	21,020	21,475	21,930					
Class 7:														
Group B, master's degree -----	17,304	17,755	18,170	18,585	19,000	19,415	19,830	20,245	20,660					
Group C, master's degree plus 30 -----	17,755	18,170	18,585	19,000	19,415	19,830	20,245	20,660	21,075					
Group D, doctor's -----	18,170	18,585	19,000	19,415	19,830	20,245	20,660	21,075	21,490					



## TEACHERS AND SCHOOL OFFICERS SALARY SCHEDULE—Continued

Salary class and group	Service step—													Longevity step Y
	1	2	3	4	5	6	7	8	9	10	11	12	13	
Class 8:														
Group B, master's degree	15,835	16,240	16,645	17,050	17,455	17,860	18,265	18,670	19,075					
Group C, master's degree plus 30	16,255	16,660	17,065	17,470	17,875	18,280	18,685	19,090	19,495					
Group D, doctor's	16,670	17,075	17,480	17,885	18,290	18,695	19,100	19,505	19,910					
Class 9:														
Group B, master's degree	15,685	16,070	16,455	16,840	17,225	17,610	17,995	18,380	18,765					
Group C, master's degree plus 30	16,105	16,490	16,875	17,260	17,645	18,030	18,415	18,800	19,185					
Group D, doctor's	16,502	16,905	17,290	17,675	18,060	18,445	18,830	19,215	19,600					
Class 10:														
Group B, master's degree	15,080	15,455	15,830	16,205	16,580	16,955	17,330	17,705	18,080					
Group C, master's degree plus 30	15,500	15,875	16,250	16,625	17,000	17,375	17,750	18,125	18,500					
Group D, doctor's	15,915	16,290	16,665	17,040	17,415	17,790	18,165	18,540	18,915					
Class 11:														
Group B, master's degree	14,625	14,985	15,345	15,705	16,065	16,425	16,785	17,145	17,505					
Group C, master's degree plus 30	15,045	15,405	15,765	16,125	16,485	16,845	17,205	17,565	17,925					
Group D, doctor's	15,460	15,820	16,180	16,540	16,900	17,260	17,620	17,980	18,340					
Class 12:														
Group B, master's degree	14,125	14,470	14,815	15,160	15,505	15,850	16,195	16,540	16,885					
Group C, master's degree plus 30	14,540	14,885	15,230	15,575	15,920	16,265	16,610	16,955	17,300					
Group D, doctor's	14,960	15,305	15,650	15,995	16,340	16,685	17,030	17,375	17,720					
Class 13:														
Group B, master's degree	12,925	13,340	13,775	14,170	14,585	15,000	15,415	15,830	16,245					
Group C, master's degree plus 30	13,345	13,760	14,175	14,590	15,005	15,420	15,835	16,250	16,665					
Group D, doctor's	13,760	14,175	14,590	15,005	15,420	15,835	16,250	16,665	17,080					
Class 14:														
Group A, bachelor's degree	9,900	10,335	10,770	11,205	11,640	12,075	12,510	12,945	13,380	13,815	14,250	14,685	15,120	
Group B, master's degree	10,730	11,165	11,600	12,035	12,470	12,905	13,340	13,775	14,210	14,645	15,080	15,515	15,950	
Group C, master's degree plus 30	11,150	11,585	12,020	12,455	12,890	13,325	13,760	14,195	14,630	15,065	15,500	15,935	16,370	
Group D, doctor's	11,565	12,000	12,435	12,870	13,305	13,750	14,175	14,610	15,045	15,480	15,915	16,350	16,785	
Class 15:														
Group A, bachelor's degree	8,350	8,685	9,020	9,355	9,690	10,025	10,445	10,865	11,285	11,705	12,125	12,545	12,965	13,965
Group A-1, bachelor's degree plus 15	8,770	9,105	9,440	9,775	10,110	10,445	10,865	11,285	11,705	12,125	12,545	12,965	13,385	14,800
Group B, master's degree	9,190	9,610	10,030	10,480	10,870	11,290	11,810	12,330	12,850	13,370	13,890	14,410	14,930	16,300
Group C, master's degree plus 30	9,610	10,030	10,450	10,870	11,290	11,710	12,230	12,750	13,270	13,790	14,310	14,830	15,350	16,730
Group D, master's degree plus 60 or doctor's	10,030	10,450	10,870	11,290	11,710	12,130	12,650	13,170	13,690	14,210	14,730	15,250	15,770	17,270

(Aug. 5, 1955, 69 Stat. 521, ch. 569, title I, § 1; July 25, 1958, 72 Stat. 414, Pub. L. 85-552, § 1; Aug. 28, 1958, 72 Stat. 1004, Pub. L. 85-838, § 1; Sept. 13, 1960, 74 Stat. 913, Pub. L. 87-773, § 1; Oct. 24, 1962, 76 Stat. 1229, Pub. L. 87-881, title I, § 101(1); Aug. 14, 1964, 78 Stat. 431, Pub. L. 88-426, title III, § 306 (1) (5); Sept. 2, 1964, 78 Stat. 882, Pub. L. 88-575, title II, § 201(1); Nov. 13, 1966, 80 Stat. 1594, Pub. L. 89-810, title II, § 202(1); May 27, 1968, Pub. L. 90-319, § 2(1), 82 Stat. 132, eff. Oct. 1, 1967; May 27, 1968, Pub. L. 90-319, § 2(2), 82 Stat. 135, eff. July 1, 1968; June 30, 1970, Pub. L. 91-297, title III, § 302(1), 84 Stat. 358; Oct. 21, 1972, Pub. L. 92-518, title I, § 102(a), 86 Stat. 1005.)

## AMENDMENTS

1972—Section 102(a) of Act Oct. 21, 1972, Pub. L. 92-518, amended the salary schedule generally.

1970—Section 302(1), act June 30, 1970, Pub. L. 91-297, amended the salary schedules generally.

1968—Section 2(1), act May 27, 1968, Pub. L. 90-319, amended the salary schedules generally, effective Oct. 1, 1967. Section 2(2) of the same act also amended the salary schedules generally effective July 1, 1968.

1966—Section 202(1) of act Nov. 13, 1966, amended section by increasing salaries of professional personnel of the public school system, except those of the superintendent and the deputy superintendent, by approximately 8.9 percent; and added group D, relating to doctor's degree.

1964—Section 201(1) of act, Sept. 2, 1964, amended section by inserting new salary schedules.

Section 306(1) (5) of act, Aug. 14, 1964, amended the Salary Schedule relating to the Superintendent and Deputy Superintendent of Schools.

1962—Section 101(1) of act, Oct. 24, 1962, amended the section by substituting new schedules.

1960—Act Sept. 13, 1960, substituted "4,800", "5,300", and "5,500" for "4,500", "5,000", and "5,200" in step 1 of Class 18.

1958—Act Aug. 28, 1958, amended the salary schedule of teachers, school officers and other employees of the Board of Education.

Act July 25, 1958, increased the compensation of superintendent of schools in Class 1 from \$14,000, \$16,000 and \$18,000 when in possession of a bachelor's, master's or doctor's degree, respectively, to \$19,000.

## EFFECTIVE DATE OF 1972 AMENDMENTS

Section 105 of title I of Act Oct. 21, 1972, Pub. L. 92-518, provided: "The effective date of this title (other than section 102(c) thereof) and the amendments made by this title [amending §§ 31-609, 31-630, 31-1501, 31-1511 (a), 31-1521, 31-1522(c), 31-1532(a) (1), 31-1535, 31-1542, 31-1543, 31-1544, 31-1545, and enacting sections 101, 102(c), and 105 set out as notes under § 31-1501] shall be the first day of the first pay period beginning on or after September 1, 1972."

## EFFECTIVE DATE OF 1970 AMENDMENTS

Section 306 of title III of act June 30, 1970, Pub. L. 91-297, provided:

"The provisions of this title [amending §§ 31-609, 31-630, 31-1501, 31-1511(c) (2), 31-1512, 31-1521, 31-1522,



31-1531(a) (1), (b), 31-1535 (a), (b), 31-1542 (a), (d) (1), (d) (2), and 31-1543, and enacting sections 301 and 305 set out as notes to § 31-1501] shall take effect on the first day of the first pay period which begins on or after September 1, 1969."

#### EFFECTIVE DATE OF 1966 AMENDMENTS

Section 205 of act Nov. 13, 1966, provided:

"(a) Except as provided in subsection (b) of this section, this title and the amendments made by this title [to § 31-1501, 31-1511(c) (1) (2), 31-1521, 31-1522, 31-1532(a), 31-1534, 31-1535 and 31-1542(a) (4)] shall take effect on July 1, 1966.

"(b) Paragraph 2 of section 7(a) of the District of Columbia Teachers Salary Act of 1955 [par. (2) of subsec. (a) of § 31-1532] (as added by paragraph (5) of section 202 of this title) shall take effect with respect to appointments made by the Board of Education of the District of Columbia after July 1, 1965."

#### EFFECTIVE DATE OF ACT, SEPT. 2, 1964, TITLE II

Section 205 of act, Sept. 2, 1964, provided: "The provisions of this title [amending sections 31-1501, 31-729, 31-1531, and 31-1542] shall take effect on the first day of the first pay period beginning on or after July 1, 1964."

#### EFFECTIVE DATE OF ACT, AUG. 14, 1964

See note under § 4-823.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Section 103 of act, Oct. 24, 1962, provided that: "Sections 101 [amending sections 31-1501, 31-1511, 31-1521, 31-1531, 31-1532, 31-1533, 31-1536, 31-1542, 31-1543, 31-1544 and 31-1545] and 102 [repealing section 31-1502] of this title shall take effect as of January 1, 1963."

#### EFFECTIVE DATE OF 1960 AMENDMENT

Section 5 of act Sept. 13, 1960, provided that: "The provisions of this Act [enacting section 31-1502, amending this section, and enacting provisions set out as notes under this section and section 31-1502] shall become effective as of July 1, 1960."

#### EFFECTIVE DATE OF 1958 AMENDMENTS

Section 4(a) of act Aug. 28, 1958, provided that:

"(a) The effective date of this Act [enacting section 31-680 and amending sections 31-1501, 31-1511, 31-1521, 31-1522, 31-1531, 31-1532, 31-1542 to 31-1545] shall be January 1, 1958.

Section 4 of act July 25, 1958, provided:

(a) This section shall take effect on the date of enactment of this Act.

(b) The first section of this Act [amending § 31-1501] shall take effect on the first day of the first pay period which begins after the date of enactment of this Act.

(c) Sections 2 and 3, inclusive, of this Act [enacting §§ 1-204a, 1-204b] shall take effect on the first day of the first month which begins after the date of enactment of this Act.

#### EFFECTIVE DATE

Section 25 of act Aug. 5, 1955, provided that: "This Act [enacting this chapter, amending section 31-696 and repealing sections 31-659, 31-660, 31-661, 31-662, 31-663, 31-664, 31-665, 31-666, 31-667, 31-668, 31-669, 31-670, 31-671, 31-672, 31-673, 31-674, 31-675, 31-677 to 31-679] shall become effective on July 1, 1955."

#### APPLICABILITY OF 1970 SALARY INCREASE FOR SUPERINTENDENT OF SCHOOLS

Section 303 of title III of act June 30, 1970, Pub. L. 91-297, provided:

"The increase provided in this title for the position of Superintendent of Schools under salary class 1 of the salary schedule shall be effective only with respect to individuals employed in that position on or after the date of the enactment of this title."

#### 1973 INCREASE IN SALARY RATES

Section 102(c) of title I of Act Oct. 21, 1972, Pub. L. 92-518, provided:

"(c) (1) (A) Effective on the first day of the first pay period beginning on or after September 1, 1973, each rate of compensation in the salary schedule in section 1 of

the District of Columbia Teachers' Salary Act of 1955 (D.C. Code, sec. 31-1501) in effect on the day next preceding such first day shall be increased by 5 per centum unless the Pay Board prescribes under subparagraph (B) an increase of less than 5 per centum, in which case each such rate of compensation shall be increased on such first day by the per centum increase so prescribed by the Pay Board.

"(B) Before the effective date of the compensation increase provided by this paragraph, the Pay Board shall determine whether an increase of 5 per centum in each rate of compensation in such salary schedule, effective as prescribed by subparagraph (A), meets the criteria established by the Pay Board for the stabilization of wages and salaries. If the Pay Board determines that such an increase does not meet such criteria, the Pay Board shall, in accordance with such criteria and subject to subparagraph (C), prescribe the per centum increase in each such rate of compensation to take effect as prescribed in subparagraph (A).

"(C) Notwithstanding the compensation increase provided by this paragraph, the rate of compensation for salary class 1A in such salary schedule may not be increased under this paragraph to a rate of compensation in excess of the rate of basic pay in effect for level III of the Executive Schedule contained in subchapter II of chapter 53 of title 5, United States Code, on the effective date of the increase provided by this paragraph; and the rate of compensation for any other salary class in such salary schedule may not be increased under this paragraph to a rate of compensation in excess of the rate of basic pay in effect on such date for level V of such Executive Schedule.

"(D) Any increase under this paragraph in a rate of compensation shall be fixed to the nearest \$5.00.

"(2) Effective on the effective date of the increase authorized by paragraph (1) of this subsection, each pay rate in the schedule in section 13(a) of the District of Columbia Teachers' Salary Act of 1955 (D.C. Code, sec. 31-1542(a)) in effect on the day next preceding such effective date shall be increased by the same percentage rate as the rates of compensation in the salary schedule in section 1 of such Act (other than the rate for salary class 1A) are increased under paragraph (1).

"(3) For purposes of this subsection, the term 'Pay Board' means the Pay Board established under section 7 of Executive Order 11640 of January 27, 1972 (37 Fed. Reg. 1213), or any other entity to which is transferred, or in which is vested, the functions of the Board established under such section."

#### GROUP INSURANCE PROVISIONS OF ACT JUNE 30, 1970, PUB. L. 91-297

See § 111 of title I of Act June 30, 1970, set out as a note § 4-823.

#### GROUP INSURANCE PROVISIONS OF ACT APR. 15, 1970, PUB. L. 91-231

See § 9(c) of Act Apr. 15, 1970, set out as a note under § 4-823.

#### GROUP INSURANCE PROVISIONS OF ACT MAY 27, 1968, PUB. L. 90-319

Section 4 of Act May 27, 1968, provided:

SEC. 4. For the purpose of determining the amount of insurance for which an individual is eligible under the provisions of chapter 87 of title 5, United States Code (relating to Government employees group life insurance), all changes in rates of compensation or salary which result from the enactment of this Act shall be held and considered to be effective as of the date of the enactment of this Act.

#### GROUP INSURANCE PROVISIONS OF ACT NOV. 13, 1966

Section 204 of act Nov. 13, 1966, provided:

"For the purpose of determining the amount of insurance for which an individual is eligible under the provisions of chapter 87 of title 5, United States Code (relating to Government employees group life insurance), all changes in rates of compensation or salary which result from the enactment of this title [amending §§ 31-1501, 31-1511(c) (1) (2), 31-1521, 31-1522, 31-1532(a), 31-1534, 31-1535, 31-1542(a) (d)] shall be held and considered to be effective as of the date of enactment of this Act.



## GROUP INSURANCE PROVISIONS OF ACT, SEPT. 2, 1964

Section 204 of act, Sept. 2, 1964, provided: "For the purpose of determining the amount of insurance for which an individual is eligible under the Federal Employees' Group Life Insurance Act of 1954 as amended, all changes in rates of compensation or salary which result from the enactment of this title shall be held and considered to be effective as of the date of enactment of this Act."

GROUP INSURANCE PROVISIONS OF ACT, AUG. 14, 1964  
See note under § 4-823.

## GROUP INSURANCE PROVISIONS OF ACT, SEPT. 13, 1960

Section 4 of Act Sept. 13, 1960, provided: "For the purpose of determining the amount of insurance for which an individual is eligible under the Federal Employees' Group Life Insurance Act of 1954, as amended, all changes in rates of compensation or salary which result from the enactment of this Act shall be held and considered to be effective as of the date of enactment of this Act."

## GROUP INSURANCE PROVISIONS OF ACT, AUG. 28, 1958

Section 4(b) of act Aug. 28, 1958, provided that:

(b) For the purpose of determining the amount of insurance for which an individual is eligible under the Federal Employees' Group Life Insurance Act of 1954, as amended [U.S. Code, title 5, chapter 24], all changes in rates of compensation or salary which result from the enactment of this Act [enacting section 31-680 and amending sections 31-1501, 31-1511, 31-1521, 31-1522, 31-1531, 31-1532, 31-1542 to 31-1545] shall be held and considered to be effective as of the first day of the first pay period which begins on or after the date of enactment."

The Federal Employees' Group Life Insurance Act of 1954, as amended, referred to in the above-quoted provisions, was, for the most part, repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a), and the repealed provisions are now covered by 5 U.S.C. §§ 1308, 8701 et seq. For construction in other laws (such as the above-quoted provisions) of references to laws replaced by such act Sept. 6, 1966, see § 7(b) of such act, set out in note under § 1-251.

RETROACTIVE COMPENSATION UNDER ACT JUNE 30, 1970,  
PUB. L. 91-297

Section 305 of act June 30, 1970, provided:

SEC. 305. (a) Retroactive compensation or salary shall be paid by reason of this title only in the case of an individual in the service of the Board of Education of the District of Columbia (including service in the Armed Forces of the United States) on the date of enactment of this title, except that such retroactive compensation or salary shall be paid (1) to any employee covered in this title who, as of June 29, 1970, is in the service of the Board of Education, (2) to any employee covered in this title who retired during the period beginning on the first day of the first pay period which began on or after September 1, 1969, and ending on the date of enactment of this title, for services rendered during such period, and (3) in accordance with the provisions of subchapter VIII of chapter 55 of title 5, United States Code (relating to settlement of accounts of deceased employees), for services rendered during the period beginning on the first day of the first pay period which began on or after September 1, 1969, and ending on the date of enactment of this Act, by any such employee who dies during such period.

(b) For purposes of this section, service in the Armed Forces of the United States in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the municipal government of the District of Columbia.

RETROACTIVE COMPENSATION UNDER ACT APR. 15, 1970,  
PUB. L. 91-231

See § 5 of Act Apr. 15, 1970, set out as a note under § 4-823.

RETROACTIVE COMPENSATION UNDER ACT MAY 27, 1968,  
PUB. L. 90-319

Section 3 of the act of May 27, 1968, provided:

SEC. 3. (a) Retroactive compensation or salary shall be paid by reason of this Act only in the case of an individual in the service of the Board of Education of the District of Columbia (including service in the Armed Forces of the United States) on the date of enactment of this Act, except that such retroactive compensation or salary shall be paid (1) to any employee covered in this Act who retired during the period beginning on October 1, 1967, and ending on the date of enactment of this Act, for services rendered during such period, and (2) in accordance with the provisions of subchapter VIII of chapter 55 of title 5, United States Code (relating to settlement of accounts of deceased employees), for services rendered during the period beginning on October 1, 1967, and ending on the date of enactment of this Act, by any such employee who dies during such period.

(b) For purposes of this section, service in the Armed Forces of the United States in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the municipal government of the District of Columbia.

RETROACTIVE COMPENSATION UNDER ACT  
NOV. 13, 1966, TITLE II

Section 203 of act Nov. 13, 1966, provided:

"(a) Retroactive compensation or salary shall be paid by reason of this title [amending §§ 31-1501, 31-1511(c) (1) (2), 31-1521, 31-1522, 31-1532(a), 31-1534, 31-1535 and 31-1542(a) (d)] only in the case of an individual in the service of the Board of Education of the District of Columbia (including service in the Armed Forces of the United States) on the date of enactment of this Act, except that such retroactive compensation or salary shall be paid (1) to any employee covered in this title who retired during the period beginning on July 1, 1966, and ending on the date of enactment of this Act, for services rendered during such period, and (2) in accordance with the provisions of subchapter 8 of chapter 55 of title 5, United States Code (relating to settlement of accounts of deceased employees), for services rendered during the period beginning on July 1, 1966, and ending on the date of enactment of this Act, by any such employee who dies during such period.

"(b) For purposes of this section, service in the Armed Forces of the United States in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the municipal government of the District of Columbia."

RETROACTIVE COMPENSATION UNDER ACT, SEPT. 2, 1964,  
TITLE I

Section 203 (a) and (b) of act, Sept. 2, 1964, provided: (a) Retroactive compensation or salary shall be paid by reason of this title only in the case of an individual in the service of the Board of Education of the District of Columbia (including service in the Armed Forces of the United States) on the date of enactment of this Act, except that such retroactive compensation or salary shall be paid (1) to any employee covered in this Act who retired during the period beginning on the day following the first day of the first pay period which began on or after July 1, 1964, and ending on the date of enactment of this Act for services rendered during such period, and (2) in accordance with the provisions of the Act of August 3, 1950 (Public Law 636, Eighty-first Congress), [5 U.S.C. § 61f-61k], as amended, for services rendered during the period beginning on the first day of the first pay period which began on or after July 1, 1964, and ending on the date of enactment of this Act by any such employee who dies during such period.

(b) For purposes of this section, service in the Armed Forces of the United States in the case of an individual relieved from training and service in the Armed Forces



of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the municipal government of the District of Columbia.

The act of August 3, 1950, 81st Congress (ch. 518), referred to in the above-quoted provisions, was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by title 5, U.S.C., §§ 5581-5583.

#### RETROACTIVE COMPENSATION UNDER ACT SEPT. 13, 1960

Section 3 of act Sept. 13, 1960, provided that:

"(a) Retroactive compensation or salary shall be paid by reason of this Act [amending this section and enacting former § 31-1502] only in the case of an individual in the service of the Board of Education of the District of Columbia (including service in the Armed Forces of the United States) on the date of enactment of this Act [Sept. 13, 1960], except that such retroactive compensation or salary shall be paid (1) to any employee covered in this Act who retired during the period beginning on the day following the first day of the first pay period which began on or after July 1, 1960, and ending on the date of enactment of this Act [Sept. 13, 1960], for services rendered during such period and (2) in accordance with the provisions of the Act of August 3, 1950 (Public Law 636, 81st Congress), as amended, for services rendered during the period beginning on the first day of the first pay period which began on or after July 1, 1960, and ending on the date of enactment of this Act [Sept. 13, 1960], by any such employee who dies during such period.

"(b) For the purposes of this section, service in the Armed Forces of the United States in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the municipal government of the District of Columbia."

The act of August 3, 1950, Pub. L. 636, 81st Congress (ch. 518), referred to in the above-quoted provisions, was repealed by act Sept. 6, 1966, Pub. L. 89-554, § 8(a), 80 Stat. 632 (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by title 5, U.S.C., §§ 5581-5583.

#### RETROACTIVE COMPENSATION UNDER ACT AUG. 28, 1958

Section 2 of act Aug. 28, 1958, provided as follows with respect to payment of retroactive compensation:

"Retroactive compensation or salary shall be paid by reason of this Act [enacting section 31-680 and amending sections 31-1501, 31-1511, 31-1521, 31-1522, 31-1531, 31-1532, 31-1542 to 31-1545] only in the case of an individual in the service of the Board of Education of the District of Columbia (including service in the Armed Forces of the United States on the date of enactment of this Act, except that such retroactive compensation or salary shall be paid (1) to any employee covered in section 1 of this Act [amending sections 31-1501, 31-1511, 31-1521, 31-1522, 31-1531, 31-1532, 31-1542 to 31-1545] who retired during the period beginning on the day following the first day of the first pay period which began on or after January 1, 1958, and ending on August 28, 1958, for services rendered during such period and (2) in accordance with the provisions of the Act of August 3, 1950 (Public Law 636, Eighty-first Congress), as amended [U.S. Code, title 5, §§ 61f to 61k], for services rendered during the period beginning on the first day of the first pay period which began on or after January 1, 1958, and ending on August 28, 1958, by any such employee who dies during such period."

#### RETROACTIVE SALARY PROVISIONS OF ACT, AUG. 14, 1964

See note under § 4-823.

#### SHORT TITLE

Section 101 of title I of Act Oct. 21, 1972, Pub. L. 92-518, provided: "This title [amending §§ 31-609, 31-630, 31-1501, 31-1511(a), 31-1521, 31-1522(c), 31-1532(a) (1), 31-1535, 31-1542, 31-1543, 31-1544, 31-1545, and enacting sections 101, 102(c), and 105 set out as notes under § 31-1501] may

be cited as the 'District of Columbia Teachers' Salary Act Amendments of 1972'."

Section 301 of title III of act June 30, 1970, Pub. L. 91-297, provided:

"This title [amending §§ 31-609, 31-630, 31-1501, 31-1511(c) (2), 31-1512, 31-1521, 31-1522, 31-1531(a) (1), (b), 31-1535(a), (b), 31-1542(a), (d) (1), (d) (2), and 31-1543, and enacting sections 305 and 306 set out as notes to § 31-1501] may be cited as the 'District of Columbia Teachers' Salary Act Amendments of 1970'."

Section 1 of act May 27, 1968, Pub. L. 90-319, provided:

"This Act [Amending §§ 31-691, 31-1501, 31-1522(c), 31-1532(a) (1), 31-1533(a), 31-1535(a), 31-1542(a) and enacting sections 3 and 4 set out as a note to § 31-1501], may be cited as the 'District of Columbia Teachers' Salary Act Amendments of 1968'."

Section 201 of act Nov. 13, 1966, Pub. L. 89-810, title II, provided: "This title [amending §§ 31-1501, 31-1511(c) (1) (2), 31-1521, 31-1522, 31-1532(a), 31-1534, 31-1535 and 31-1542(a) (d)] may be cited as the 'District of Columbia Teachers' Salary Act Amendments of 1966'."

Section 24 of act Aug. 5, 1955, provided that: "This Act [enacting this chapter, amending section 31-696 and repealing sections 31-659, 31-660, 31-661, 31-662, 31-663, 31-664, 31-665, 31-666, 31-667, 31-668, 31-669, 31-670, 31-671, 31-672, 31-673, 31-674, 31-675, 31-677 to 31-679] may be cited as 'District of Columbia Teachers' Salary Act of 1955.'"

#### SALARY RATES FIXED BY ADMINISTRATIVE ACTION

For provisions of sections 3(d) and 4(b) of Act, Apr. 15, 1970, Pub. L. 91-231, 84 Stat. 197, see note to section 4-823.

For provisions of section 211 (b), (c), (d) of Act, Dec. 16, 1967, Pub. L. 90-206, see note to section 4-823.

For provisions of section 108(b), (c), (d) of Act July 18, 1966, Pub. L. 89-504, see note to section 4-823.

#### CROSS REFERENCE

Teachers employed on a temporary basis, qualification for group and health insurance, see, 5 U.S.C. §§ 8701, 8716, 8901, 8913.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-609, 31-632 note, 31-634, 31-635, 31-691a note, 31-733, 31-746, 31-1511, 31-1512, 31-1521, 31-1522, 31-1531 to 31-1536, 31-1542 to 31-1548.

#### SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 5 sections 8716, 8913 of the U.S. Code.

#### NOTES TO DECISIONS

##### Promotion of teachers without master's degrees

Teachers' Salary Act amendment, which in effect provided that incumbent teachers in senior high schools, who did not possess master's degrees, should be placed in same salary classification as those who had such degrees, included incumbent teachers of academic subjects in vocational high schools having only bachelor's degrees. *R. B. Thompson, Jr. v. Board of Education etc.* (1962, 299 F.2d 920, 112 U.S. App. D.C. 89).

Teacher, who filed complaint seeking to be placed in higher salary bracket, slightly more than 60 days after being informed that his application to Board of Education for such relief had been denied, and that he had no further administrative relief, was not guilty of laches. *Id.*

Teachers' Salary Act provision that no senior high school teacher and no non-shop teacher in vocational high school should be appointed or promoted to any position specified unless he possessed master's degree, was applicable to new appointees only, and did not disturb status of teachers without master's degrees who had been placed on same salary basis as those with master's degrees by prior amendment. *Id.*

§ 31-1502. Repealed. Oct. 24, 1962, 76 Stat. 1235, Pub. L. 87-881, Title I, § 102.

Section of act Sept. 13, 1960, 74 Stat. 913, Pub. L. 86-773, § 2 granted a salary increase of 7.5 per centum.

Effective date of repeal is January 1, 1963, see note under § 31-1501.



## SUBCHAPTER II.—CLASSIFICATION AND ASSIGNMENT OF EMPLOYEES

### §31-1511. Board of Education to establish eligibility requirements—Methods of appointment, promotion and salary classification—Definitions.

(a) The Board of Education on written recommendation of the Superintendent of Schools is authorized to establish the eligibility requirements and prescribe methods of appointment and promotion for teachers, school officers, and other employees. The Board of Education is authorized and directed on written recommendation of the Superintendent of Schools, to classify and assign all teachers, school officers, and other employees to the salary classes and groups in section 31-1501. Teachers, school officers, and other employees on probationary or permanent status shall not be required to take any examinations, either mental or physical, to be continued in the positions in which they are employed on December 31, 1962, or to which they may be transferred and assigned under the provisions of section 31-1521 and section 31-1522. No teacher, school officer, or other employee shall be appointed or promoted to any position covered by section 31-1501 on probationary or permanent status unless he possesses a master's degree, except that (1) a person possessing a bachelor's degree may be appointed on probationary or permanent status as a teacher in the elementary or secondary schools or as a coordinator of practical nursing; (2) a person possessing a bachelor's degree may be promoted to the position of census supervisor or coordinator of practical nursing; (3) a person not possessing a bachelor's degree may be appointed on probationary or permanent status as a—

(A) shop teacher in the vocational education program,

(B) teacher of military science and tactics,

(C) teacher of driver training,

(D) attendance officer, or

(E) child labor inspector,

if he submits acceptable evidence of equivalent training and experience in accordance with the rules of the Board; and (4) a person not possessing a bachelor's degree may be appointed on a probationary or permanent status as a census supervisor, or promoted to that position, if he submits acceptable evidence of equivalent training and experience in accordance with the rules of the Board.

(b) Notwithstanding any provision of this chapter the Board is authorized, on the written recommendation of the Superintendent of Schools, to appoint or promote shop teachers in the vocational education program to salary class 15, group B, without a master's degree if they submit acceptable evidence of equivalent training and experience in accordance with the rules of the Board, and to appoint or promote such teachers to salary class 15, Group C, without a master's degree if they submit acceptable evidence of equivalent training and experience in accordance with the rules of the Board, plus thirty credit hours. The Board is further authorized, on the written recommendation of the Superintendent of Schools, to appoint or promote vocational shop

teachers with the training and experience required for placement in salary class 15, group B, to administrative or supervisory positions in the vocational education program.

(c) When used in this chapter—

(1) The terms "master's degree" and "doctor's degree" mean, respectively, a master's degree and a doctor's degree granted in course by an accredited higher educational institution.

(2) The terms "plus fifteen credit hours" and "plus thirty credit hours" means the equivalent of not less than fifteen graduate semester hours beyond the bachelor's degree or thirty graduate semester hours beyond the master's degree as the case may be in academic, vocational, or professional courses, representing a definite educational program satisfactory to the Board, except that in the case of a shop teacher in the vocational education program the fifteen or thirty semester hours need not be graduate semester hours. Graduate credit hours beyond thirty which were earned prior to obtaining a master's degree may be applied in computing such thirty credit hours. The term "plus sixty credit hours" means the equivalent of not less than sixty graduate semester hours in academic, vocational, or professional courses beyond a master's degree, representing a definite educational program satisfactory to the Board, except that in the case of a shop teacher in the vocational education program the sixty semester hours need not be graduate semester hours. Graduate credit hours beyond thirty which were earned prior to obtaining a master's degree may be applied in computing such sixty credit hours.

(3) The terms "Board" and "Board of Education" mean the Board of Education of the District of Columbia.

(4) The term "Salary Act of 1947" means the District of Columbia Teachers' Salary Act of 1947, as amended.

(Aug. 5, 1955, 69 Stat. 523, ch. 569, title II, § 2; Aug. 28, 1958, 72 Stat. 1007, Pub. L. 85-838, § 1; Oct. 24, 1962, 76 Stat. 1231, Pub. L. 87-881, title I, § 101(2)(3); Nov. 13, 1966, 80 Stat. 1597, Pub. L. 89-810, title II, § 202(2)(A)(B); June 30, 1970, Pub. L. 91-297, title III, § 302(2), 84 Stat. 361; Oct. 21, 1972, Pub. L. 92-518, title I, § 103(1), 86 Stat. 1009.)

#### REFERENCES IN TEXT

The District of Columbia Teachers' Salary Act of 1947, as amended, referred to in subsec. (c)(4), was formerly classified to sections 31-659, 31-660, 31-662, 31-663, 31-664, 31-665, 31-666, 31-667, 31-668, 31-669, 31-670, 31-671, 31-672, 31-673, 31-674, 31-675, 31-677 to 31-679, was repealed by act Aug. 5, 1955, 69 Stat. 530, ch. 569, title V, § 20, eff. July 1, 1955, and is covered by this chapter. Section 31-676 (section 18 of the District of Columbia Teachers' Salary Act of 1947, as amended, had previously been repealed by act Oct. 13, 1949, 63 Stat. 844, ch. 686, § 9(b), eff. July 1, 1949, and is covered by sections 31-691, 31-694.

#### AMENDMENTS

1972—Section 103(1) of Act Oct. 21, 1972, Pub. L. 92-518, amended the fourth sentence of subsec. (a) generally, and repealed the fifth sentence. For provisions of subsec. (a) prior to this amendment, see 1967 ed. of the Code.

1970—Subsec. (c)(2). Section 302(2) of Pub. L. 91-297 amended the first sentence by inserting definition of "plus fifteen credit hours".



1966—Section 202(2) (A) of act Nov. 13, 1966, amended subsec. (c) (1), by inserting the definition of “doctor’s degree”.

Section 202(2) (B) of the act Nov. 13, 1966, amended subsec. (c) (2), by adding sentences defining “plus sixty credit hours”, and authorizing application, in computing sixty credit hours, graduate credit hours beyond thirty which were earned prior to obtaining a master’s degree.

1962—Section 101(2) of act Oct. 24, 1962, made the following amendments to the section: In subsection (a) third sentence, struck out “December 31, 1957” and inserted “December 31, 1962”. In the fourth sentence struck out the words “counselor in the vocational high schools, counselor in the junior high schools” and the words, “school social worker,” and at the end of the sentence by inserting before the period, and following the word “Board” the matter beginning with “and except” and continuing to end of that sentence. In the fifth sentence it struck out “December 31, 1957” and inserted “December 31, 1962”.

Section 101(3) of the same act amended subsection (b) by striking the figure “18” wherever same appeared in subsection (b) and changed to “15”.

1958—Subsec. (a) amended by act Aug. 28, 1958, which substituted “December 31, 1957” for “June 30, 1955” in two instances, inserted in the exception clause a reference to school social worker and the provision for appointment as shop teacher in the vocational education program and substituted in such exception clause “shop teacher in the vocational education program” for “shop teacher in the vocational high schools.”

Subsec. (b) amended by act Aug. 28, 1958, which substituted new provisions for “Notwithstanding any provision of this chapter the Board is authorized on a written recommendation of the Superintendent of Schools, to appoint or promote vocational high school shop teachers to salary class 18, group B, without a master’s degree if they submit evidence of equivalent training and experience in accordance with the rules of the Board. A vocational high school shop teacher may not be appointed, assigned, or promoted to salary class 18, group C, who does not possess a master’s degree granted in course plus thirty credit hours.”

Subsec. (c) amended by act Aug. 28, 1958, to delete from par. (1) the definition of doctor’s degree and to add to par. (2) the exception clause and to delete therefrom the concluding sentence: “Graduate credit hours beyond thirty which were earned prior to obtaining a master’s degree may be applied in computing such thirty credit hours.”

EFFECTIVE DATE OF 1972 AMENDMENT

See note under § 31-1501.

EFFECTIVE DATE OF 1970 AMENDMENT

See note under § 31-1501.

EFFECTIVE DATE OF 1966 AMENDMENT

See note under § 31-1501.

EFFECTIVE DATE OF 1962 AMENDMENT

See note under § 31-1501.

EFFECTIVE DATE OF 1958 AMENDMENT

See note under § 31-1501.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1521.

NOTES TO DECISIONS

Promotion of teachers without master’s degrees

Teachers’ Salary Act amendment, which in effect provided that incumbent teachers in senior high schools, who did not possess master’s degrees, should be placed in same salary classification as those who had such degrees, included incumbent teachers of academic subjects in vocational high schools having only bachelor’s degrees. *R. B. Thompson, Jr. v. Board of Education etc.* (1962, 299 F. 2d 920, 112 U.S. App. D.C. 89).

Teacher, who filed complaint seeking to be placed in higher salary bracket, slightly more than 60 days after being informed that his application to Board of Education for such relief had been denied, and that he had no further administrative relief, was not guilty of laches. *Id.*

Teachers’ Salary Act provision that no senior high school teacher and no non-shop teacher in vocational high school should be appointed or promoted to any position specified unless he possessed master’s degree, was applicable to new appointees only, and did not disturb status of teachers without master’s degrees who had been placed on same salary basis as those with master’s degrees by prior amendment. *Id.*

§ 31-1512. Probationary period.

(a) Except as provided in subsection (b), for other than temporary employees and the Superintendent of Schools, the first two years of service in each position or salary class covered by section 31-1501 shall be probationary regardless of any change in title or numbers used in classifying the position or salary class. Teachers, school officers, and other employees who have satisfactorily completed the probationary period in any position or salary class covered by section 31-1501 and whose permanent appointments have been approved by the Board shall be considered employees of the Board on permanent tenure.

(b) The Board of Education may place in a permanent status any fully qualified employee in salary class 15 having three or more years of satisfactory service, including service in an educational system or institution of recognized standing outside the District of Columbia, as determined by the Board, at any time beginning one year after the commencement of the probationary period of such employee. Any employee appointed to permanent status under this subsection shall be considered an employee of the Board on permanent tenure. (Aug. 5, 1955, 69 Stat. 524, ch. 569, title II, § 3; June 30, 1970, Pub. L. 91-297, title III, § 302(3), 84 Stat. 362.)

AMENDMENT

1970—Section 302(3) of Pub. L. 91-297, struck out the first word “For” and inserted “(a) Except as provided in subsection (b), for” in lieu thereof; inserted immediately after “position” each time it appeared “or salary class”; and inserted subsection (b).

EFFECTIVE DATE OF 1970 AMENDMENT

See note to section 31-1501.

SUBCHAPTER III.—METHOD OF ASSIGNMENT OF EMPLOYEES TO SALARY SCHEDULES

§ 31-1521. Assignment of certain employees to salary classes.

(a) Each teacher, school officer, or other employee in the service of the Board of Education on the effective date of the District of Columbia Teachers’ Salary Act Amendments of 1972 who occupies a position covered by this chapter and listed in this subsection shall be placed in a salary class in the salary schedule contained in section 31-1501 as follows:

Title	Class
Superintendent .....	1A
Vice superintendent.....	1B
Deputy superintendent.....	2A
Associate superintendent.....	2B
Assistant superintendent.....	3
Executive assistant to superintendent.....	3
Director of curriculum.....	4
Chief examiner.....	5
Executive assistant (to deputy and associate superintendents) .....	5
Director, career development.....	5
Director, vocational high schools.....	5
Director, Spingarn instructional unit.....	5
Assistants to assistant superintendents.....	6



Title	Class
Director, elementary education (supervision and instruction) -----	6
Director, elementary education (administration) -----	6
Director, health, physical education, athletics, and safety -----	6
Assistants to superintendent, vice superintendent, and deputy superintendents -----	6
Director, staff development -----	6
Director, special education -----	6
Director, elementary education (language arts) -----	6
Principal -----	6
Supervising director -----	7
Assistant for Federal programs -----	7
Research associate -----	7
Planning associate -----	7
Director, school attendance -----	7
Director, elementary education -----	7
Director, adult education -----	7
Director, summer schools and continuing education -----	7
Area coordinator -----	7
Assistant principal -----	8
Assistant director -----	8
Director, group measurement -----	8
Director, Project 400 -----	8
Youth Act coordinator -----	8
Assistant chief examiner -----	8
Recruitment coordinator -----	8
Budget analyst -----	9
Assistant director -----	10
Research associate -----	10
Planning associate -----	10
Assistant recruitment coordinator -----	10
Elementary supervisor -----	10
Coordinator (aides) -----	10
Director of reading -----	10
Coordinator of Widening Horizons program -----	10
Teacher aide coordinator, title I -----	10
Cultural enrichment coordinator -----	10
Curriculum specialist -----	11
Clinical psychologist -----	12
Chief attendance officer -----	12
Educational specialist -----	13
Psychiatric social worker -----	13
Clinical social worker -----	13
Project coordinator -----	13
Coordinator of practical nursing -----	14
Census supervisor -----	14
Teacher, elementary and secondary schools -----	15
Attendance officer -----	15
Counselor, placement -----	15
Counselor, elementary and secondary schools -----	15
Librarian, elementary and secondary schools -----	15
School social worker -----	15
School psychologist -----	15
Speech therapist -----	15
Hearing therapist -----	15
Job coordinator -----	15
Pupil personnel worker -----	15
Child labor inspector -----	15.

(b) The Board of Education, in accordance with sections 31-1511(a) and 31-1522(b), shall place in a salary class in the salary schedule contained in section 31-1501 each teacher, school officer, or other employee in the service of the Board of Education on the effective date of the District of Columbia Teachers' Salary Act Amendments of 1972 who occupies a position covered by this chapter but not listed in subsection (a) of this section.

(c) The classifications prescribed by subsection (a) of this section of positions to salary classes in the salary schedule contained in section 31-1501 do not affect the authority of the Board of Education under sections 31-1511(a) and 31-1522(b) to make adjustments in the classification of any position under the Board or to take any other action au-

thorized by those sections. (Aug. 5, 1955, 69 Stat. 524, ch. 569, title III, § 4; Aug. 28, 1958, 72 Stat. 1007, Pub. L. 85-838, § 1; Oct. 24, 1962, 76 Stat. 1232, Pub. L. 87-881, title I, § 101(4); Nov. 13, 1966, 80 Stat. 1598, Pub. L. 89-810, title II, § 202(3); June 30, 1970, Pub. L. 91-297, title III, § 302(4), 84 Stat. 362; Oct. 21, 1972, Pub. L. 92-518, title I, § 103(2), 86 Stat. 1009.)

#### REFERENCE IN TEXT

The words "the effective date of the District of Columbia Teachers' Salary Act Amendments of 1972" mean the effective date of title I of Act Oct. 21, 1972, Pub. L. 92-518, as prescribed by section 105 thereof, which section is set out as a note under § 31-1501.

#### AMENDMENTS

1972—Section 103(2) of Act Oct. 21, 1972, Pub. L. 92-518, amended section generally. Prior to this amendment, section read: "Any employee of the Board of Education in group A of salary class 15 who possesses a bachelor's degree plus fifteen credit hours shall be transferred in accordance with section 31-1535 (a) and (b) to group A-1 of salary class 15."

1970—Section 302(4) of act June 30, 1970, amended section generally. For provisions of section prior to this amendment, see 1967 edition of the Code.

1966—Section 202(3) of act Nov. 13, 1966, amended the section by substituting provisions for assignment of certain employees holding doctor's and master's degrees to salary class for provisions relating to assignment, to salary classes, of "Each teacher, school officer, or other employee in the service of the Board on January 1, 1963, who occupies a position held by him on December 31, 1962, under the provisions of this chapter" and to assignment of "Any employee in group A, B or C of his salary class on December 31, 1962" to the same letter group of the salary class to which he was transferred on January 1, 1963; and (2) for provisions setting out comparative tables, the two columns of which were headed "Title and Class of Position on January 1, 1963".

1962—Section 101 (4) of act Oct. 24, 1962, amended the section by changing "1958" to "1963", "1957" to "1962" in the first sentence; by changing "1957" to "1962," "1958" to "1963" in the second sentence and by eliminating the balance of the sentence beginning with the word "except"; and by eliminating the last sentence in the section. It also amended the section by substituting new comparative tables.

1958—Act Aug. 28, 1958, amended the section generally.

#### EFFECTIVE DATE OF 1972 AMENDMENTS

See note under § 31-1501.

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note under § 31-1501.

#### EFFECTIVE DATE OF 1966 AMENDMENT

See note under § 31-1501.

#### EFFECTIVE DATE OF 1962 AMENDMENT

See note under § 31-1501.

#### EFFECTIVE DATE OF 1958 AMENDMENT

See note under § 31-1501.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-1511, 31-1533.

§ 31-1522. Types of positions to which chapter applies—Authority of Board to determine which positions meet established criteria and other matters—Teacher-aide positions—Initial assignment of school principal positions and periodic evaluation of duties and responsibilities.

(a) This chapter applies to all positions under the Board which require at least a bachelor's degree in an appropriate field, and in addition—

(1) involve classroom or other instruction or the supervision and direction of classroom and other instructional activities; or



(2) involve activities, other than teaching, which require the incumbents to possess academic credits in educational theory and practice at least equivalent to those required of a teacher with a bachelor's degree; or

(3) involve activities which are so directly related to the educational process that the positions have characteristics of the educational field to a marked degree, even though academic credits in educational theory and practice are not required; or

(4) involve the management or direction of organizational units or school services which, though not directly involved in the educational process, require the incumbent to deal so extensively with employees who are directly involved in the educational process in problems that require an understanding of the aims, methods and points of view of educators and educational philosophy, that it becomes impractical, insofar as salary treatment is concerned, to attempt to distinguish between them and positions covered under paragraphs (1), (2), or (3) of this subsection. This paragraph (4) shall apply only to such positions as are necessary to coordinate such non-educational units or services with the educational activities of the school system.

(b) The Board, with the concurrence of the District of Columbia Council, is authorized to determine which positions meet the criteria specified in subsection (a) of this section and to establish or transfer positions covered under other wage or salary fixing acts or authorities to the coverage of this chapter. Similarly, the Board, with the concurrence of the said Council, is authorized to determine that positions covered under this chapter do not meet the criteria specified in subsection (a) of this section and to remove any such position from the coverage of this chapter: *Provided*, That any employee occupying any position covered by this chapter on July 1, 1955, but which is later determined not to meet the criteria specified in subsection (a) of this section, shall continue to be entitled to the salary and other benefits of this chapter as long as he remains in such position. The Board, subject to the concurrence of the said Council, is authorized to specify for any position to be brought under this chapter, the class and group as established in this chapter which shall apply to such position: *Provided*, That such class shall be selected on the basis of the difficulty, responsibility, and qualification requirements of such position. Positions brought under this chapter in accordance with this section shall be subject to the provisions of this chapter to the same degree and in all respects as if such positions were specifically named in this chapter. The Board is authorized to conduct such studies as are required to apply the criteria specified in subsection (a) of this section. The Board of Education of the District of Columbia, with the cooperation of the Council, is authorized to make a study of the classification of the positions covered under this chapter for the purpose of determining what classification adjustments may be necessary or desirable to provide a classification alignment based on the difficulty, re-

sponsibility, and qualification requirements of the positions and to take such appropriate corrective action as is concurred in by the Council: *Provided*, That any such adjustments shall be made within the classes established by this chapter: *Provided further*, That no adjustment resulting from this study shall decrease the existing rate of compensation of any present employee, but when a position becomes vacant any subsequent appointee to such position shall be compensated in accordance with the rate of pay determined to be applicable to such position. If a position is placed in a lower salary class and the present salary of the incumbent falls between two step rates for the newly assigned class he shall receive the higher of such rates. If a position is placed in a higher salary class, placement for salary purposes shall be made in accordance with section 31-1536.

(c) The Board of Education, with the concurrence of the Commissioner of the District of Columbia, is authorized to establish a position which shall be designated "teacher-aide (noninstructional)". Such positions shall be classified, in accordance with sections 5102 and 5106 of title 5, United States Code, at a grade not higher than GS-4, and shall be compensated in accordance with the General Schedule in section 5332(a) of title 5, United States Code. The Board of Education shall prescribe minimum qualifications for appointment to such position. A person appointed to such position shall be a noninstructional employee, and his primary duty shall be to assist the instructional staff in tasks related to instruction.

(d) The initial assignment of each position of school principal in the public school system of the District of Columbia to one of the four principal levels within salary class 6 of the salary schedule in section 31-1501 shall be made in accordance with the following provisions:

(1) Within 60 days following the date of enactment of this subsection [November 13, 1966], the Board of Education, with the cooperation of the Commissioner of the District of Columbia, shall assign each position of school principal to one of the four principal levels within salary class 6 of the salary schedule in section 31-1501. Such assignment shall be made on the basis of an evaluation by the Board of Education, with the cooperation of the Commissioner of the District of Columbia, of the duties and responsibilities of each position of school principal in the school administered by the person holding such position. Such evaluation shall be based on (A) such workload factors as (i) the academic program, (ii) the number of teachers, nonteaching personnel, and other professional and nonprofessional personnel supervised, (iii) school enrollment, (iv) cocurricular activities, (v) extracurricular activities, and (vi) community activities; and (B) such other factors as the Board of Education deems appropriate. The initial assignment of a position of school principal to a principal level within salary class 6 shall be effective on July 1, 1966.

(2) In the case of a person holding the position of school principal on July 1, 1966, the initial assignment of the position held by such person to



one of the four principal levels within salary class 6 shall not (A) affect the group and service step occupied by such person, or (B) for the period during which such person holds such position, reduce his rate of compensation below the rate of compensation to which he was entitled immediately prior to July 1, 1966.

(3) During the period beginning on July 1, 1966, and ending on the date of such initial assignment, each person holding the position of school principal on July 1, 1966, shall have his compensation fixed in accordance with the rate of compensation prescribed for that service step, corresponding to his creditable years of service, of principal level I in that group within salary class 6 which corresponds to his academic qualifications. Each such person shall be paid for such period the difference, if any, between the amount of compensation he received during such period and the amount of compensation that he would have been paid during such period if his compensation had been fixed in accordance with the rate of compensation prescribed for the principal level in salary class 6 to which his position was assigned.

(e) On July 1, 1967, and on July 1 of each year thereafter, the Board of Education, with the cooperation of the Commissioner of the District of Columbia, shall evaluate the duties and responsibilities of each position of school principal on the basis of the factors prescribed in paragraph (1) of subsection (d) of this section to determine whether the principal level within salary class 6 to which such position is assigned is commensurate to the duties and responsibilities of such position. The Board of Education may assign a position of school principal to a different principal level within salary class 6 only if it determines on the basis of three consecutive annual evaluations that such assignment should be made. A person holding a position of school principal which the Board of Education has assigned to a different principal level shall not be placed in a lower service step in the new principal level than the service step he occupied immediately prior to such assignment.

(f) Whenever a teacher or school officer is changed to a lower salary class or to a lower level in the same salary class as in the case of school principals in the public school system, the Superintendent of Schools is authorized to fix the rate of compensation at a rate provided for in the salary class or level to which the employee is changed which does not exceed his existing rate of compensation, except that if his existing rate falls between two service steps provided in such lower salary class or level, he shall receive the higher of such rates; if he is receiving a rate of basic compensation in excess of the maximum rate provided in such lower salary class or level in which he is to be placed, he will retain his existing rate of compensation and receive one-half of any future increases granted his new salary class or level until such time as his rate of basic compensation is no longer in excess of the maximum rate provided in such lower salary class or level. This subsection shall not apply if such reduction to a lower salary class or level is (1) for personal cause, (2) at the request of

such teacher or school officer, (3) as a condition of a previous temporary promotion to a higher grade, or (4) because of a reduction in force brought about by lack of funds or curtailment of work. (Aug. 5, 1955, 69 Stat. 525, ch. 569, title III, § 5; Aug. 28, 1958, 72 Stat. 1009, Pub. L. 85-838; § 1; Nov. 13, 1966, 80 Stat. 1598, Pub. L. 89-810, title II, § 202(4); May 27, 1968, Pub. L. 90-319, § 2(8), 82 Stat. 139; June 30, 1970, Pub. L. 91-297, title III, § 302(5), 84 Stat. 362; Oct. 21, 1972, Pub. L. 92-518, title I, § 103(3), 86 Stat. 1010.)

#### AMENDMENTS

1972—Section 103(3) of Act Oct. 21, 1972, Pub. L. 92-518, amended subsec. (c) by substituting "5332(a)" for "5333(a)".

1970—Subsection (f). Added by section 302(5) of Pub. L. 91-297.

1968—Section 2(8), act May 27, 1968, Pub. L. 90-319, amended subsection (c) by striking out the third sentence and inserting in lieu thereof: "The Board of Education shall prescribe minimum qualifications for appointment to such positions", and by striking out the fifth sentence. For provisions of these struck sentences see 1967 edition of the code.

1966—Section 202(4) of act Nov. 13, 1966, amended section by adding subsecs. (c), (d) and (e).

1958—Subsec. (b) amended by act Aug. 28, 1958, to add provisions respecting the making of a study of classification of positions and adjustments thereof.

#### EFFECTIVE DATE OF 1972 AMENDMENTS

See note under § 31-1501.

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note under § 31-1501.

#### EFFECTIVE DATE OF 1966 AMENDMENT

See note under § 31-1501.

#### EFFECTIVE DATE OF 1958 AMENDMENT

See note under § 31-1501.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(244) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred all functions of the Board of Commissioners under subsection (b) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-1511, 31-1521, 31-1531.

### SUBCHAPTER IV.—METHOD OF ADVANCEMENT AND PROMOTION OF EMPLOYEES

#### § 31-1531. Method of assignment to service steps—Promotion of employees.

(a) (1) On July 1 of each year, following the effective date of the District of Columbia Teachers' Salary Act Amendments of 1970, each permanent employee in salary class 15 who is on service step 13 and has completed 15 years of creditable service shall be assigned to longevity step Y. Each permanent employee in salary class 15 who is in longevity step X, on such effective date, shall be assigned to longevity step Y. In determining years of creditable service in salary classes 3 through 15 for placement on service steps, credit shall be given for previous service in accordance with the provisions of this chapter governing the placement of employees who are newly ap-



pointed, reappointed, or reassigned or who are brought under this chapter in accordance with the provisions of this section.

(2) Any teacher who was promoted from the salary class originally designated Salary Class 18 under this chapter (redesignated as Salary Class 15 by amendments effective on January 1, 1963 [act Oct. 24, 1962, Pub. L. 87-881]), if such promotion occurred after June 30, 1958, and prior to January 1, 1963, and who on the effective date of this paragraph occupies the same position to which he was promoted during such period shall be assigned to the numerical service step in his class, or class and group to which he would have been assigned had he been promoted on or after January 1, 1963.

(b) As soon as such reevaluation is completed for all employees involved, each such employee shall be assigned to the numerical service step for his salary class, or class and group, under this chapter next above the step corresponding to the number of his years of creditable service rendered prior to July 1, 1958, as determined by such re-evaluation, but no employee shall receive a salary above the top step for his class, or class and group, or below the step already occupied by him. If such re-evaluation places the employee on a higher numerical service step than the one already occupied by him he shall receive the full annual salary at the higher step for the year beginning July 1, 1958. On July 1 of each year, following the effective date of the District of Columbia Teachers' Salary Act Amendments of 1970, each permanent employee who has not reached the highest service step for his group, or, if his salary class has no group, the highest service step for such salary class, shall advance one such service step until he reaches the highest service step for such group or salary class. However, the Board of Education, on the written recommendation of the Superintendent of Schools, is authorized to deny any such salary advancement following any school year in which the employee fails to receive a performance rating of "satisfactory" from his superior officer.

(c) The Superintendent of Schools, salary class 1, shall be assigned as of the date of his appointment as Superintendent to the salary step provided for that position in section 31-1501.

(d) Any permanent employee serving in a position which is not covered by this chapter but which may later be established under section 31-1522 shall be given service credit for the purpose of salary placement under this chapter equivalent to the number of years of satisfactory service rendered within the school system in the position then occupied by the employee, and shall be assigned to the numerical service step on the schedule for his class, or class and group, under this chapter next above the numerical service step corresponding to his years of creditable service in such position. If the employee has already attained a service step in such position which is numerically as high or higher than the top service step provided for his salary class, or class and group, under this chapter, he shall be assigned to the highest service step provided for his class, or class and group, under this chapter. (Aug. 5, 1955, 69 Stat. 526, ch. 569, title IV, § 6; Aug. 28, 1958, 72 Stat. 1009, Pub. L. 85-838, § 1; Oct. 24, 1962, 76 Stat. 1233, Pub. L.

87-881, title I, § 101(5)(6); Sept. 2, 1964, 78 Stat. 885, Pub. L. 78-885, title II, § 201(2); June 30, 1970, Pub. L. 91-297, title III, § 302(6), (7), 84 Stat. 362, 363.)

#### REFERENCE IN TEXT

In subsecs. (a)(1) and (b), the words "the effective date of the District of Columbia Teachers' Salary Act Amendments of 1970" mean the effective date of title III of Pub. L. 91-297 as prescribed by section 306 thereof, which section is set out as a note to section 31-1501.

#### AMENDMENTS

1970—Subsec. (a)(1). Amended generally by section 302(6) of Pub. L. 91-297.

Subsec. (b). Section 302(7) of Pub. L. 91-297 amended the third sentence to read as above set out.

1964—Section 201(2) of act Sept. 2, 1964, amended section by designating subparagraph (a) as (a)(1), and by adding (a)(2) thereto.

1962—Section 101(5) of act Oct. 29, 1962, amended subsection (a) generally. Subsection (b) was amended, by section 101(6) of the same act, by striking the period at the end thereof and inserting the matter following the word "group" beginning with word "except" to the end of the paragraph.

1958—Act Aug. 28, 1958, amended the section generally and designated the provisions as subsecs. (a)-(d).

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note to section 31-1501.

#### EFFECTIVE DATE OF ACT, SEPT. 2, 1964, TITLE II

See note to § 31-1501.

#### EFFECTIVE DATE OF 1962 AMENDMENT

See note to § 31-1501.

#### EFFECTIVE DATE OF 1958 AMENDMENT

See note to § 31-1501.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1533.

§ 31-1532. Assignment of new employees to service steps—Evaluation of past experience—Adjustment of salary steps of existing employees—Absence because of military or naval service.

(a)(1) Each employee who is newly appointed or reappointed to any position in salary classes 3 to 15, inclusive, of the salary schedule in section 31-1501 shall be assigned to the service step numbered next above the number of years of service with which he is credited for the purpose of salary placement. The Board, on the written recommendation of the Superintendent of Schools, is authorized to evaluate the previous experience of each such employee to determine the number of years with which he may be so credited. Employees newly appointed, reappointed, or reassigned to any position in salary class 15 shall receive one year of such placement credit for each year of satisfactory service, not exceeding nine years, in the District of Columbia in salary class 15, or in any type of position covered in salary class 15 regardless of school level, in an educational system or recognized standing outside the District of Columbia public schools, as determined by the Board. Employees newly appointed, reappointed, or reassigned to any position in salary classes 3 to 14, inclusive, shall receive no placement credit for educational service or trade experience outside the District of Columbia public schools. In the case of a person who is newly appointed to any position in salary class 3, 4, 5, or 6, who is determined by the Board of Education to possess unique or unusually high qualifications of special need to the school system, and whose annual



salary immediately prior to such appointment was higher than the rate of compensation prescribed for service step 1 of his salary class, such person may, in the discretion of the Board of Education, have his compensation fixed at the rate of compensation prescribed for service step 2 or 3 of his salary class. Employees reappointed or reassigned to positions in salary classes 3 to 14, inclusive, shall receive one year of placement credit for each year of satisfactory service in the same salary class or in a position of equivalent or higher rank within the District of Columbia public schools, except that no such employee shall receive more than five years of placement credit for previous service rendered as a temporary employee within such system. Persons appointed to the position of shop teacher in the vocational education program shall receive one year of placement credit for each year of approved experience in the trades, as determined by the Board but not in excess of nine years for any combination of trade experience and educational service outside the school system.

(2) Salary placement credit for service rendered either inside or outside the public school system of the District of Columbia shall be effective on the date of appointment or on the first day of the twelfth month prior to the date of approval of such placement credit by the Board, whichever is later.

(3) Each probationary or permanent employee in salary class 15 who is in the employ of the Board of Education on the effective date of this paragraph [July 1, 1966] shall move to the numerical service step or longevity step, as the case may be, commensurate with the additional creditable service allowed such employee under the amendments made by the District of Columbia Teachers' Salary Act Amendments of 1966.

(b) In crediting previous experience of any teacher who has been absent from his duties because of naval or military service in the armed forces of the United States or its allies, the Board is hereby authorized to include such naval or military service as the equivalent of approved experience.

(c) No provision in this chapter shall be interpreted as preventing any teacher, school officer, or other employee of the Board who has been granted leave to enter the armed forces of the United States or its allies from receiving any annual service increment or increments to which he would have been entitled had he remained continuously in the service of the public schools.

(d) Notwithstanding the provisions of subsection (a) (1) of this section, any educational employee who was employed by the Board of Education at the District of Columbia Teachers' College and who was transferred to the Board of Higher Education pursuant to the authority conferred by section 31-1603(a) (12), and who wishes to be reappointed to a position under the Board of Education shall receive salary placement credit for the intervening years of service at the District of Columbia Teachers College as if he had had continuous service with the Board of Education if—

(1) there is no break in service between the termination of employment by the Board of Higher

Education and the reappointment by the Board of Education; and

(2) such service is credited to the District of Columbia Teachers' Retirement and Annuity Fund, either by deductions made for such retirement system or by the purchase of credit for such service for deposit in such fund.

(Aug. 5, 1955, 69 Stat. 527, ch. 569, title IV, § 7; Aug. 28, 1958, 72 Stat. 1010, Pub. L. 85-838, § 1; Oct. 24, 1962, 76 Stat. 1234, Pub. L. 87-881, title I, § 101(7); Nov. 13, 1966, 80 Stat. (1599, Pub. L. 89-810, title II, § 202(5); May 27, 1968, Pub. L. 90-319, § 2(3), 82 Stat. 138; Oct. 21, 1972, Pub. L. 92-518, title I, § 103(4), title II, § 203(a); 86 Stat. 1010, 1014.)

#### REFERENCES IN TEXT

The District of Columbia Teachers' Salary Act Amendments of 1966, referred to in par. (3) of subsec. (a), constitute title II of act Nov. 13, 1966, cited to the text, which, in addition to amending subsec. (a) of this section, amended §§ 31-1501, 31-1511(c) (1) (2), 31-1521, 31-1522, 31-1534, 31-1535 and 31-1542(a) (d), and enacted provisions set out as notes under § 31-1501.

#### AMENDMENTS

1972—Section 103(4) of Act Oct. 21, 1972, Pub. L. 92-518, amended subsec. (a) (1) by (A) striking out "except the positions of chief librarian and assistant professor, associate professor, and professor," in the fourth sentence; (B) by inserting immediately after the fourth sentence a new sentence, relating to persons newly appointed to positions in salary class 3, 4, 5, or 6; and (C) by striking out the last sentence. For provisions of subsection prior to this amendment, see 1967 ed. of the Code and Supplement V thereto.

Section 203(a) of the same Act added subsec. (d).

1968—Section 2(3), act May 27, 1968, Pub. L. 90-319, amended the third sentence of subsection (a) (1) by striking out "the same type of position" and inserting in lieu thereof "any type of position covered in salary class 15".

1966—Section 202(5) of act Nov. 13, 1966, amended subsec. (a) generally, principally to give prospective teachers placement credit for as much as nine years' teaching experience (in place of former maximum of five years' teaching experience); to adjust the placement credits and salary steps of teachers then in the District school system, accordingly; to provide that salary placement credit for service rendered either inside or outside the public school system of the District shall be effective on date of appointment or on first day of twelfth month prior to date of approval of such placement credit by Board, whichever is later; and to subdivide the subsection into numbered paragraphs.

1962—Section 101(7) of act Oct. 24, 1962, amended subsection (a) by striking the figure "18" in two places and changing it to "15"; by striking the figure "17" and changing it to "14", and by striking out the fourth sentence and substituting a new fourth sentence for the old fourth sentence which reads as follows: "Employees newly appointed or reappointed to the positions of chief librarian and assistant professor (class 16), associate professor (class 13), and professor (class 8), shall receive one year of placement credit for each year of satisfactory service, not in excess of five years, in a position of the same or higher rank in a college or university of recognized standing outside the District of Columbia public schools, as determined by the Board".

1958—Subsec. (a) amended generally by act Aug. 28, 1958. Prior to amendment, subsec. (a) read: "Each employee appointed under this chapter who has not had prior service under the Board or who may be reappointed or reinstated, shall be assigned to the service step numbered next above the number of years of service with which he is credited for the purpose of salary placement. The Board, on the written recommendation of the Superintendent of Schools, is authorized to evaluate the previous experience of each new appointee to determine the number of years with which he may be credited for the purpose of salary placement. Credit for service rendered



either inside or outside of public schools of the District of Columbia shall be effective on the date of the regular Board meeting immediately preceding the date of approval by the Board or on the date of appointment, whichever is later. Such credit shall apply to all positions in salary classes 18 and 19, and to the positions of chief librarian and assistant professor, salary class 14; and to the position of associate professor, salary class 11; and to the position of professor, salary class 8. Such placement credit shall not be granted in excess of five years."

#### EFFECTIVE DATE OF 1972 AMENDMENT

See note under § 31-1501.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Section 6 of act May 27, 1968, Pub. L. 90-319, provided: "The amendments made by paragraphs (3) [31-1532(a) (1)], (4) [31-1533(a)], and (5) [31-1535(a)] of section 2 of this Act shall take effect on the first day of the first month beginning after the date of enactment of this Act" [May 27, 1968].

#### EFFECTIVE DATE OF 1966 AMENDMENT

See note under § 31-1501.

#### EFFECTIVE DATE OF 1962 AMENDMENT

See note under § 31-1501.

#### EFFECTIVE DATE OF 1958 AMENDMENT

See note under § 31-1501.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-728, 31-1533, 31-1534.

### § 31-1533. Salary increases of probationary employees—Termination of employment.

(a) Each teacher, school officer, and other employee appointed or promoted on probationary tenure to a position or salary class covered by section 31-1501 shall receive his first increase in salary in that position or salary class on the beginning day of his second year of probationary service in the position or salary class; he shall receive his second increase in salary in that position or salary class on the date when his appointment or promotion to the position or salary class is made permanent; and he shall receive all subsequent increases in salary to which he is entitled in that position or salary class on July 1 of each year, beginning with the July 1 next after the date of his permanent appointment or promotion to the position or salary class in accordance with section 31-1531 and section 31-1532, except that beginning with any such step increase normally due subsequent to June 30, 1963, the Board of Education, on written recommendation of the Superintendent of Schools, is authorized to deny any such increase in salary for the year immediately following any year in which the employee fails to receive a performance rating of "satisfactory" from his superior officer.

(b) Any employee in the service of the Board on July 1, 1955, appointed or promoted on probationary tenure during the period from July 1, 1952, to June 30, 1955, inclusive, to a position covered by section 31-1521 shall be compensated for salary increases in accordance with subsection (a) of this section and shall receive his first increase effective as of the first date of his second year of probationary service based upon the rates of pay currently in effect on that date and such employee shall be assigned on July 1, 1955, to the numerical service step in the salary schedule for his class, or class and group, in section 31-1501

corresponding to his number of years of creditable service.

(c) The Board is authorized to terminate the services of any probationary employee in the class to which appointed, upon the written recommendation of the Superintendent of Schools, at any time during the two year probationary period: *Provided*, That if an employee so terminated has permanent status within the school system he shall be returned to the salary class he last occupied on permanent status, and placed on the step which would have been occupied by him. (Aug. 5, 1955, 69 Stat. 528, ch. 569, title IV, § 8; Oct. 24, 1962, 76 Stat. 1234, (Pub. L. 87-881, title I, § 101(8); May 27, 1968, Pub. L. 90-319, § 2(4), 82 Stat. 138.)

#### AMENDMENTS

1968—Section 2(4), act May 27, 1968, Pub. L. 90-319, amended subsection (a) by inserting "or salary class" immediately after "position" each time the word appears in the subsection.

1962—Section 101(8) of act Oct. 24, 1962, amended subsection (a) by striking the period at the end of the section and adding thereto the matter beginning with the word "except" and ending with the word "officer".

#### EFFECTIVE DATE OF 1968 AMENDMENT

See note under § 31-1532.

#### EFFECTIVE DATE OF 1962 AMENDMENT

See note under § 31-1501.

### § 31-1534. Temporary employees—Assignment, salaries, and termination of employment—Limitations on number of years of employment—Advancement of temporary employees receiving permanent appointments—Employees on temporary status because of age limitations.

(a) The Board is hereby authorized to appoint and assign temporary employees within the salary structure of section 31-1501, whenever such action is necessary and recommended in writing by the Superintendent of Schools. Such appointments shall be for periods not to extend beyond June 30 of the fiscal year in which the appointments are made and the Board is authorized to terminate the appointment of any temporary employee at any time upon the written recommendation of the Superintendent of Schools. Each temporary employee shall be assigned to a numerical service step and receive an annual rate of compensation in accordance with section 31-1532, but he shall receive no annual service increments and may be credited with not more than five years of service either inside or outside the public schools of the District of Columbia for the purpose of salary placement.

(b) The following provisions shall apply to all temporary employees in salary class 15:

(A) Each temporary employee in salary class 15 employed cumulatively as such an employee in such salary class less than three full years as of July 1, 1966, must qualify as a probationary employee within five years after the date of employment or July 1, 1966, whichever date is later, or his employment shall be terminated as of the date of completion of the then current school year.

(B) Each temporary employee in salary class 15 employed cumulatively as of July 1, 1966, for more than three but less than ten full years as such an employee in such salary class, must qualify as a probationary employee within seven years after



July 1, 1966, or his employment shall be terminated as of the date of completion of the then current school year.

(C) Each temporary employee in salary class 15 who has accumulated more than ten full years of satisfactory service as of July 1, 1966, as such an employee in such salary class, may be continued as temporary teacher contingent upon satisfactory service.

(c) (1) A temporary employee in salary class 15 who receives a permanent appointment shall be advanced on and after the date of such appointment in double annual increments to the place in the salary schedule which he would have occupied if he had been employed as a probationary employee from the date of his appointment as a temporary employee. A temporary employee in salary class 15 who receives a probationary appointment within two years of the date of his appointment as a temporary employee shall receive full placement credit on the date of his appointment as a probationary employee as if he had been employed as a probationary employee from the date of his appointment as a temporary employee.

(2) Temporary employees in salary class 15 with fifteen or more total years of satisfactory service in the District of Columbia public schools shall be advanced to service step 10, effective July 1, 1966.

(d) An employee who is on temporary status only because of the age limitation, but is otherwise qualified, shall receive salary placement on the same basis as a probationary or permanent teacher, and may continue as temporary teacher contingent upon satisfactory service. (Aug. 5, 1955, 69 Stat. 528, ch. 569, title IV, § 9; Nov. 13, 1966, 80 Stat. 1600, Pub. L. 89-810, title II, § 202(6).)

#### AMENDMENT

1966—Section 202(6) of act Nov. 13, 1966, amended section by designating section, formerly entire section, subsec. (a) and adding subsec. (b), (c) and (d).

#### EFFECTIVE DATE OF 1966 AMENDMENT

See note under § 31-1501.

§ 31-1535. Effective date of promotions to groups A-1, B, C, and D—Assignment to numerical service steps—Retroactive correction of administrative error.

(a) On and after the effective date of the District of Columbia Teachers' Salary Act Amendments of 1970, each promotion to group A-1, group B, group C, or group D within a salary class shall become effective—

(1) on the first day of the twelfth month prior to the date of approval of promotion by the Board, or

(2) on the effective date of the master's degree or doctor's degree or on the completion of thirty or sixty credit hours beyond the master's degree or on the completion of fifteen credit hours beyond the bachelor's degree, as the case may be, whichever is later.

(b) Any employee in a position in a salary class in the salary schedules in section 31-1501 who is promoted to group A-1, group B, group C, or group D of such salary class shall be placed in the same

numerical service step in his new group which he would have occupied in the group from which he was promoted.

(c) Notwithstanding subsection (a) or any other provision of this or any other law, the Board of Education is authorized to correct on a retroactive basis any administrative error occurring in the application of subsection (a). (Aug. 5, 1955, 69 Stat. 528, ch. 569, title IV, § 10, eff. July 1, 1955; Nov. 13, 1966, 80 Stat. 1601, Pub. L. 89-810, title II, § 202(7); May 27, 1968, Pub. L. 90-319, § 2(5), 82 Stat. 138; June 30, 1970, Pub. L. 91-297, title III, § 302(8), 84 Stat. 363; Oct. 21, 1972, Pub. L. 92-518, title I, § 103(5), 86 Stat. 1011.)

#### REFERENCE IN TEXT

In subsec. (a), the words "the effective date of the District of Columbia Teachers' Salary Act Amendments of 1970" mean the effective date of title III of Pub. L. 91-297 as prescribed by section 306 thereof, which section is set out as a note to section 31-1501.

#### AMENDMENTS

1972—Section 103(5) of Act Oct. 21, 1972, Pub. L. 92-518, amended section by (A) striking out "date of the regular Board meeting" in subsec. (a) (1) and inserting "first day" in lieu thereof; and (B) adding subsec. (c).

1970—Section 302(8) of Pub. L. 91-297, amended section generally to substitute reference to the effective date of the District of Columbia Teachers' Salary Act Amendments of 1970" for the Salary Act Amendments of 1966; and to insert reference to "group A-1".

1968—Section 2(5), act May 27, 1968, Pub. L. 90-319, amended subsection (a) generally to substitute reference to the D.C. Teacher's Salary Act Amendments of 1968, in lieu of 1966, and made the effective date of promotions as provided in clause (1) thereof.

1966—Section 202(7) of Pub. L. 89-810 amended section generally to substitute reference to effective date of the District of Columbia Teachers' Salary Act Amendments of 1966, for "July 1, 1955"; and to insert references to group D and to the doctor's degree and to "sixty credit hours". See rate schedule in § 31-1501, also see § 31-1511 (c) (1) (2).

#### EFFECTIVE DATE OF 1972 AMENDMENT

See note under § 31-1501.

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note to section 31-1501.

#### EFFECTIVE DATE OF 1968 AMENDMENT

See note under § 31-1532.

§ 31-1536. Promotions—Assignment to numerical service step.

Any employee in a salary class covered by section 31-1501, when promoted to a higher-paid salary class, shall be assigned to the lowest numerical service step on the schedule for his new class, or class and group, which will give him an immediate increase in annual salary rate at least equal to the sum of the following:

(1) Any annual service increment or longevity increment to which the employee would have been entitled in his former salary class at the time of his promotion; and

(2) The annual service increment scheduled for new class and group: *Provided*, That no such employee shall be assigned to a higher numerical service step on the schedule for his new class, or class group, than he would have occupied on the schedule from which promoted.



(Aug. 5, 1955, 69 Stat. 528, ch. 569, title IV, § 11, eff. July 1, 1955; Oct. 24, 1962, 76 Stat. 1234, Pub. L. 87-881, title I, § 101(11).)

AMENDMENT

1962—Section 101(9) of act Oct. 24, 1962, amended clause (1) by inserting after the word “increment” the words “or longevity increment.”

EFFECTIVE DATE OF 1962 AMENDMENT

See note under § 31-1501.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1522.

SUBCHAPTER V.—ACCOMPANYING  
LEGISLATION

§ 31-1541. Repealed. Aug. 19, 1964, 78 Stat. 495, Pub. L. 88-448, title IV, § 402(a)(32).

Section, Act Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 12, related to the employment of retired members of the armed services as teachers of military science and tactics in public high schools of the District. See 5 U.S.C. § 5533.

EFFECTIVE DATE OF REPEAL

Section 403 of the act of Aug. 19, 1964, provides as follows: “(a) Except as provided in subsection (b) of this section, this Act shall become effective on the first day of the first month which begins later than the ninetieth day following the date of enactment of this Act [Aug. 19, 1964].

“(b) This section and sections 201(g) and 201(h) shall become effective on the date of enactment of this Act.”

§ 31-1542. Evening, summer, and Americanization schools—Salaries—Extra-duty pay.

(a) The Board is authorized to conduct as part of its public school system the following: summer school programs, extended school year programs, adult education programs, and Americanization schools. The pay for teachers, officers, and other education employees in the summer school programs, adult education school programs, and veterans’ summer high school centers shall be as follows:

Classification	Per period		
	Step 1	Step 2	Step 3
Summer school (regular):			
Teacher, elementary and secondary schools; counselor, elementary and secondary schools; librarian, elementary and secondary schools; school social worker; speech correctionist; school psychologist.....	\$7.39	\$8.38	\$9.44
Psychiatric social worker.....	8.50	9.64	10.86
Veterans’ summer school centers: Teacher.....	7.39	8.38	9.44
Adult education schools:			
Teacher.....	8.13	9.22	10.38
Assistant principal.....	11.38	12.91	14.53
Principal.....	12.60	14.29	16.09

(b) Beginning on January 1, 1963, each teacher, officer, and other educational employee serving in the summer or adult education schools shall be paid at the rate specified for his position under step 1 of the schedule in subsection (a) of this section while serving his first, second, and third years in such position; he shall be paid at the rate specified under step 2 while serving his fourth, fifth, and sixth years in such position; and he shall be paid at the rate specified in step 3 while serving his seventh and any subsequent years in such position.

(c) When an employee covered by the pay schedule in subsection (a) of this section is promoted to a higher paid position in this same schedule, he

shall be paid at the next higher scheduled rate for in such position at the scheduled rate for such position which is next above the rate he would have received if continued in his previous position; he shall be paid at the next higher scheduled rate for his position during his second three years of service in such position; and he shall be paid at the scheduled rate above that (if any) during his subsequent years in such position.

(d) (1) The Board is authorized to pay to any employee in salary class 15 who performs an extra duty activity, on a continuing basis, in addition to the standard work assignment; the additional annual compensation prescribed for such extra duty activity by the Board in accordance with this subsection. The Board may, with the approval of the Commissioner of the District of Columbia and on the written recommendation of the Superintendent of Schools, prescribe the amount of additional compensation for such employee who performs an extra duty activity, except that the amount of additional compensation for each such activity may not in any school year exceed \$1,000.

(2) The additional compensation authorized by this subsection shall be in addition to the compensation prescribed by the salary schedule in section 31-1501 for employees in salary class 15. Payment of such additional compensation shall be made following the performance of such extra duty activity. Such additional compensation shall not be subject to deduction or withholding for retirement or insurance, and such additional compensation shall not be considered as salary (A) for the purpose of computing annuities pursuant to subchapter II of chapter 7 of this title, and the provisions of section 3323 and subchapter III of chapter 83 of title 5, United States Code, or (B) for the purpose of computing insurance coverage under the provisions of chapter 87 of title 5, United States Code. Such additional compensation may be paid for more than one activity assigned to such an employee so long as such activities are not performed concurrently.

(3) The Board may make such regulations as may be necessary to carry out the purposes of this subsection. (Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 13; Aug. 28, 1958, 72 Stat. 1011, Pub. L. 85-838, § 1; Oct. 24, 1962, 76 Stat. 1234, Pub. L. 87-881, title I, § 101(10) (11), Sept. 2, 1964, 78 Stat. 886, Pub. L. 88-875, title II, § 201(3); Nov. 13, 1966, 80 Stat. 1601, Pub. L. 89-810, title II, § 202(8); May 27, 1968, Pub. L. 90-319, § 2(6), 82 Stat. 138; May 27, 1968, Pub. L. 90-319, § 2(7), 82 Stat. 139; June 30, 1970, Pub. L. 91-297, title III, § 302(9), (10), 84 Stat. 363, 364; Oct. 21, 1972, Pub. L. 92-518, title I, §§ 102(b), 103(6), 86 Stat. 1008, 1011.)

AMENDMENTS

1972—Section 102(b) of Act Oct. 21, 1972, Pub. L. 92-518, amended the schedule of pay rates contained in subsec. (a) generally.

Section 103(6) of the same Act amended subsec. (d) (2) by striking out “in the same manner as regular pay” at the end of the second sentence, and by substituting “83” for “81” in the third sentence.



1970—Subsec. (a). Section 302(9) of Pub. L. 91-297 amended the subsection generally, including the salary schedule.

Subsec. (d) (1). Amended by section 302(10) (A) of Pub. L. 91-297 which substituted "any employee" for "a classroom teacher", "work assignment" for "teaching load assigned for a regular day school teacher at his particular school level", and "such an employee" for "a teacher".

Subsec. (d) (1). Amended by section 302(10) (B) of Pub. L. 91-297 which substituted "employees" for "classroom teachers", struck out "monthly", inserted "in the same manner as regular pay" after "extra duty activity", and substituted "such an employee" for "a classroom teacher".

1968—Subsec. (a). Section 2(6) of Pub. L. 90-319 amended the subsection generally, including the salary schedule, effective Oct. 1, 1967. Section 2(7) also amended the subsection, including the salary schedule, effective July 1, 1968.

1966—Section 202(8) (A) amended subsec. (a), by inserting reference to extended school year programs, and increased the salary rates in the schedule.

Section 202(8) (B), added subsec. (d) relating to extra-duty pay.

1964—Section 201(3) amended section by striking out "evening schools" wherever same appeared in section and inserted in lieu, "adult education schools," and by amending the schedule of pay rates in subsection (a).

1962—Section 101(10) of act Oct. 24, 1962, amended subsection (a) by striking the classification and pay rates tables and inserting new tables.

Section 101(11) amended subsection (b) by striking "January 1, 1958" and inserting "January 1, 1963".

1958—Act Aug. 28, 1958, designated existing provisions as subsec. (a), substituting the present provisions for "The Board is hereby authorized to conduct as parts of the public school system, evening schools, summer schools, and Americanization School, under and within appropriations made by Congress, and on the written recommendation of the Superintendent of Schools to fix and prescribe the salaries of teachers in the evening and summer schools", and added subssecs. (b) and (c).

#### EFFECTIVE DATE OF 1972 AMENDMENT

See note under § 31-1501.

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note to section 31-1501.

#### EFFECTIVE DATE OF 1966 AMENDMENT

See note under § 31-1501.

#### EFFECTIVE DATE OF ACT, SEPT. 2, 1964, TITLE II

See note under § 31-1501.

#### EFFECTIVE DATE OF 1962 AMENDMENT

See note under § 31-1501.

#### EFFECTIVE DATE OF 1958 AMENDMENT

See note under § 31-1501.

#### 1973 INCREASE IN SALARY RATES

See section 102(c) of title I of Act Oct. 21, 1972, Pub. L. 92-518, set out as a note under § 31-1501.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CROSS REFERENCES

For provisions relating to retroactive compensation and group insurance under Act June 30, 1970, Pub. L. 91-297, see note to section 31-1501.

For provisions relating to retroactive compensation and group insurance under Act May 27, 1968, Pub. L. 90-319, see note to section 31-1501.

§ 31-1543. Salary payable in semimonthly installments—Employee election.

Except as otherwise provided in this section, each employee whose annual salary is prescribed by the salary schedule contained in section 31-1501 shall have his annual salary paid in twenty-four semi-

monthly installments. Semimonthly installment payments of the salaries of such employees shall be made on the first and sixteenth days of the month (or as near those days as is practicable); except that in lieu of receiving on such days the first semimonthly installment payment of salary payable in August and the three succeeding semimonthly installment payments of salary, an employee in salary class 15 of such salary schedule may elect, under regulations prescribed by the Commissioner of the District of Columbia, to receive on the date of the second semimonthly installment payment of his salary in July an amount equal to the sum of (1) the amount of such payment, and (2) the amounts of the four succeeding semimonthly installment payments of salary payable to him. (Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 14; Aug. 28, 1958, 72 Stat. 1011, Pub. L. 85-838, § 1; Oct. 24, 1962, 76 Stat. 1235, Pub. L. 87-881, title I, § 101(12); June 30, 1970, Pub. L. 91-297, title III, § 302(11), 84 Stat. 364; Oct. 21, 1972, Pub. L. 92-518, title I, § 103(7), 86 Stat. 1011.)

#### AMENDMENTS

1972—Section 103(7) of Act Oct. 21, 1972, Pub. L. 92-518, amended section generally. Prior to amendment, the section read as follows: "On July 1, 1970, each employee assigned to salary class 15 shall be classified as a teacher for payroll purposes and his annual salary shall be paid in twenty or twenty-four semimonthly installments, at the discretion of such employee (and under such rules and regulations as the Board of Education may prescribe), in accordance with existing law. All other employees covered by the provision of this chapter shall have their annual salaries paid in twenty-four semimonthly installments in accordance with existing law. Annual salaries for employees paid in twenty-four semimonthly installments means calendar year for purposes of this section."

1970—Section 302(11) of Pub. L. 91-297, amended section generally. Prior to amendment, the section read as follows: "Each employee assigned to salary class 15 in the schedule provided in section 31-1501, each assistant professor in salary class 13, each associate professor and chief librarian in salary class 11 and each professor in salary class 8 shall be classified as a teacher for payroll purposes and his annual salary shall be paid in ten monthly installments in accordance with existing law."

1962—Section 101(12) of act Oct. 24, 1962, amended section generally. Prior to amendment, the section read as follows: "Each employee assigned to salary class 18 in the schedule provided in section 31-1501, each chief librarian and each assistant professor in salary class 16, each associate professor in class 13, and each professor in class 8 shall be classified as a teacher for payroll purposes and his annual salary shall be paid in ten monthly installments in accordance with existing law."

1958—Act Aug. 28, 1958, substituted "Each employee assigned to salary class 18 in the schedule provided in section 31-1501, each chief librarian and each assistant professor in salary class 16, each associate professor in class 13," for "Each employee assigned to salary class 18 in the foregoing schedules, and to the position of attendance officer, salary class 19; each chief librarian and each assistant professor in class 14; each associate professor in class 11;"

#### EFFECTIVE DATE OF 1972 AMENDMENT

See note under § 31-1501.

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note under § 31-1501.

#### EFFECTIVE DATE OF 1962 AMENDMENT

See note under § 31-1501.

#### EFFECTIVE DATE OF 1958 AMENDMENT

See note under section 31-1501.



## CROSS REFERENCES

For installment payment of salaries of certain other school teachers and employees, see sections 31-609 and 31-609a.

Rules for division of time and computation of pay, see § 31-630.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-609, 31-630.

### § 31-1544. Authority of Board to regulate vacation period and annual leave applicable to certain employees.

On and after September 1, 1972, sections 31-698 and 31-698a (relating to vacation periods and annual leave) shall apply to employees of the Board of Education whose salaries are fixed in salary classes 1 through 14, inclusive, of the salary schedule contained in section 31-1501. (Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 15, Aug. 28, 1958, 72 Stat. 1012, Pub. L. 85-838, § 1; Oct. 24, 1962, 76 Stat. 1235, Pub. L. 87-881, title I, § 101(13); Oct. 21, 1972, Pub. L. 92-518, title I, § 103(8), 86 Stat. 1011.)

## AMENDMENTS

1972—Section 1(8) of Act Oct. 21, 1972, Pub. L. 92-518, amended section generally. Prior to amendment, the section read as follows: "On and after January 1, 1963, sections 31-698 and 31-698a shall apply to employees of the Board of Education whose salaries are fixed in salary classes 6 through 14, inclusive, under this chapter, except the following: Executive assistant to deputy superintendent and assistants to assistant superintendents in salary class 6; dean of students, District of Columbia Teachers College, professor, District of Columbia Teachers College, director, school attendance, and registrar, District of Columbia Teachers College, in salary class 8; assistant director, department of food services, in salary class 9; statistician, in salary class 10; associate professor, District of Columbia Teachers College, and chief librarian, District of Columbia Teachers College, in salary class 11; and assistant professor, District of Columbia Teachers College, in salary class 13."

1962—Section 101(13) of act Oct. 24, 1962, amended section generally. Prior to amendment, the section read as follows: "On and after January 1, 1958, sections 31-698 and 31-698a shall apply to employees of the Board of Education whose salaries are fixed in salary classes 7-17, inclusive, under section 31-1501, except the following: Chief examiner, administrative assistant to deputy superintendent, and registrar, teachers college, in class 7; professor in class 8; Director, Department of School Attendance and Work Permits, in class 9; Assistant Director, Department of Food Services, class 11; associate professor, in class 13; statistician, in class 15; assistant professor and chief librarian, in class 16."

1958—Act Aug. 28, 1958, substituted "January 1, 1958", for "effective date of this chapter", added the exception clause and deleted the second sentence which read: "However, such sections shall not apply to the following employees: Chief examiner, class 7; and professor, class 8; associate professor, class 11; Assistant Director, Department of Food Services, class 12; assistant professor and chief librarian, class 14."

## EFFECTIVE DATE OF 1972 AMENDMENT

See note under § 31-1501.

## EFFECTIVE DATE OF 1962 AMENDMENT

See note under § 31-1501.

## EFFECTIVE DATE OF 1958 AMENDMENT

See note under § 31-1501.

### § 31-1545. Sick and emergency leave provisions applicable to certain employees.

On and after September 1, 1972, sections 31-691, 31-692 to 31-694, 31-695, 31-696, 31-697 (relating to sick and emergency leave) shall apply to employees

of the Board whose salaries are fixed in salary class 15 of the salary schedule contained in section 31-1501. (Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 16; Aug. 28, 1958, 72 Stat. 1012, Pub. L. 85-838, § 1; Oct. 24, 1962, 76 Stat. 1235, Pub. L. 87-881, title I, § 101(14); Oct. 21, 1972, Pub. L. 92-518, title I, § 103(9), 86 Stat. 1011.)

## AMENDMENTS

1972—Section 103(9) of Act Oct. 21, 1972, Pub. L. 92-518, amended section generally. Prior to this amendment, section read: "On and after January 1, 1963, sections 31-691, 31-692 to 31-694, 31-695, 31-696, 31-697 shall apply to employees of the Board whose salaries are fixed in salary class 15, and to the following employees in the salary classes indicated: Professor, class 8; associate professor, class 11; assistant professor, salary class 13; and chief librarian, salary class 11, under this chapter."

1962—Section 101(14) amended section by striking "1958" and inserting "1963"; by striking "18" and changing to "15"; by striking "chief librarian and assistant professor, salary class 14" and inserting in lieu thereof "assistant professor, salary class 13; and chief librarian salary class 11."

1958—Act Aug. 28, 1958, substituted "January 1, 1958", for "the effective date of this chapter" and deleted "and the position of attendance officer, salary class 19" "following salary class 18".

## EFFECTIVE DATE OF 1972 AMENDMENT

See note under § 31-1501.

## EFFECTIVE DATE OF 1962 AMENDMENT

See note under § 31-1501.

## EFFECTIVE DATE OF 1958 AMENDMENT

See note under § 31-1501.

### § 31-1546. Sabbatical leave provisions applicable to certain employees.

On and after July 1, 1955, sections 31-632 to 31-637 shall apply to employees of the Board whose salaries are fixed under section 31-1501. (Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 17.)

### § 31-1547. Foreign teacher exchange program applicable to certain employees.

On and after July 1, 1955, section 31-699 to 31-699b shall apply to employees of the Board whose salaries are fixed under section 31-1501. (Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 18.)

### § 31-1548. Teacher retirement provisions applicable to certain employees.

On and after July 1, 1955, subchapter II of chapter 7 of this title shall apply to employees of the Board whose salaries are fixed under section 31-1501, and all references in subchapter II of chapter 7 of this title to the Salary Act of 1947 shall be interpreted to apply to this chapter. Nothing in this subsection shall require the recomputation of the annuity of any person retired under subchapter II of chapter 7 of this title prior to the effective date of this chapter, or of any person retired prior to the effective date of subchapter II of chapter 7 of this title, whose annuity is computed in accordance with the provisions of subchapter II of chapter 7 of this title. (Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 19; Oct. 21, 1972, Pub. L. 92-518, title II, § 202(b), 86 Stat. 1013.)

## AMENDMENT

1972—Section 202(b) of Act Oct. 21, 1972, Pub. L. 92-518, struck out "probationary and permanent" immediately before "employees" in the first sentence.



## CROSS REFERENCE

Creditability of service rendered by substitute teachers for civil service retirement, see 5 U.S.C. § 8332.

## Chapter 16.—PUBLIC HIGHER EDUCATIONAL INSTITUTIONS

### SUBCHAPTER I.—FEDERAL CITY COLLEGE

## Sec.

- 31-1601. Definitions.
- 31-1602. Board of Higher Education—Composition—Appointment of Members—Chairman—Tenure—Vacancies—Compensation—Removal—Immunity from liability.
- 31-1603. Powers and duties of Board—Development of plans, establishment of College, and administration, generally.
- 31-1604. Space and facilities.
- 31-1605. Fiscal accountability.
- 31-1606. Authorization of appropriations for purposes of subchapters I and II.
- 31-1607. Federal City College and Washington Technical Institute considered established as land-grant colleges.
- 31-1608. Lump sum appropriation in lieu of donation of public lands or land scrip.
- 31-1609. Federal City College and Washington Technical Institute administered as land-grant colleges—Appropriations—Allocations to Federal Extension Service of Department of Agriculture.
- 31-1610. Federal City College and Washington Technical Institute to share grants and earnings equally.
- 31-1611. Construction of §§ 31-1607 and 31-1609.
- 31-1612. Satisfaction of State requirement of consent.

### SUBCHAPTER II.—WASHINGTON TECHNICAL INSTITUTE

- 31-1621. Definitions.
- 31-1622. Board of Vocational Education—Composition—Appointment of members—Chairman—Tenure—Vacancies—Compensation—Removal—Immunity from liability.
- 31-1623. Powers and duties of Board—Development of plans, establishment of Institute, and administration, generally.
- 31-1624. Space and facilities.
- 31-1625. Fiscal accountability.

## CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 9-220.

### SUBCHAPTER I.—FEDERAL CITY COLLEGE

## SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 29-420.

## § 31-1601. Definitions.

As used in this subchapter—

(1) The term "Federal City College" means the public college of arts and sciences established pursuant to this subchapter. Such college shall be organized and administered to provide (A) a four-year program in the liberal arts and sciences acceptable toward a bachelor of arts degree, including courses in teacher education; (B) a two-year program (i) which is acceptable for full credit toward a bachelor's degree or for a degree of associate in arts, and which may include courses in business education, secretarial training, and business administration, or (ii) in engineering, mathematics or the physical and biological sciences which is designed to prepare a student to work as a technician or at a semiprofessional level in engineering, sciences, or other technical fields which require the understanding and application of basic engineering, scientific, or mathe-

matical principles or knowledge; (C) educational programs of study as may be acceptable for a master's degree; and (D) courses on an individual, non-credit basis to those desiring to further their education without seeking a degree.

(2) The term "Commissioner" means the Commissioner of the District of Columbia.

(3) The term "Board" means the Board of Higher Education established in section 31-1602.

(4) The term "Board of Education" means the Board of Education of the District of Columbia established by section 31-101. (Nov. 7, 1966, 80 Stat. 1426, Pub. L. 89-791, title I, § 101.)

## SHORT TITLE

Section 1 of act Nov. 7, 1966, 80 Stat. 1426, Pub. L. 89-791, provided: "That this Act [this chapter and § 29-420 and amendments to §§ 9-220(b) and 29-415 to 29-418] may be cited as the 'District of Columbia Public Education Act'."

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

### § 31-1602. Board of Higher Education—Composition—Appointment of members—Chairman—Tenure—Vacancies—Compensation—Removal—Immunity from liability.

(a) The Federal City College shall be under the control of a Board of Higher Education, which shall consist of nine members of whom not less than five shall have been residents of the District of Columbia for a period of not less than three years immediately prior to their appointments. The members of the Board (including all members appointed to fill vacancies on such Board) shall be appointed by the Commissioner. The members of the Board shall select a chairman from among their number. Such members shall be appointed for terms of three years; except that the terms of office of the members first taking office shall expire, as designated by the Commissioner at the time of appointment, three at the end of one year, three at the end of two years, and three at the end of three years. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of that term. Members of the Board shall serve without compensation, but may be reimbursed for their travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons serving the Government without compensation.

(b) The Commissioner shall have the power to remove any member of the Board at any time for adequate cause, which relates to his character or to his efficiency as a member, after notice and opportunity for hearing.

(c) The members of the Board shall not be personally liable in damages for any official action of the Board in which such members participate, nor shall they be liable for any costs that may be taxed against them or the Board on account of any such official action by them as members of the Board, but such costs shall be charged to the District of Columbia and paid as other costs are paid in suits against the municipality; nor shall the Board or any



of its members be required to give any bond or security for costs or damages on any apparel whatever. (Nov. 7, 1966, 80 Stat. 1426, Pub. L. 89-791, title I, § 102.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1601.

### § 31-1603. Powers and duties of Board—Development of plans, establishment of College, and administration, generally.

(a) The Board is vested with the following powers and duties:

(1) To develop detailed plans for and to establish, organize, and operate in the District of Columbia the Federal City College.

(2) To establish policies, standards, and requirements governing admission, programs, graduation (including the award of degrees) and general administration of the Federal City College.

(3) To appoint and compensate, without regard to the civil service laws or chapter 51 and subchapter III of chapter 53 of title 5, United States Code, a president for the Federal City College.

(4) To employ and compensate such officers as it determines necessary for the Federal City College, and such educational employees for the Federal City College, as the president thereof may recommend in writing. Such officers and educational employees may be employed and compensated without regard to—

(A) the civil service laws,

(B) chapter 51 and subchapter III of chapter 53 of title 5, United States Code (relating to classification of positions in Government service),

(C) sections 6301 through 6305 and 6307 through 6311 of title 5, United States Code (relating to annual and sick leave for Federal employees),

(D) chapter 15 and sections 7324 through 7327 of title 5, United States Code (relating to political activities of Government employees),

(E) section 3323 and subchapter III of chapter 81<sup>1</sup> of title 5, United States Code (relating to civil service retirement), and

(F) sections 3326, 3501, 3502, 5531 through 5533, and 6303 of title 5, United States Code (relating to dual pay and dual employment),

but the employment and compensation of such officers and educational employees shall be subject to—

(i) sections 7902, 8101 through 8138, and 8145 through 8150 of title 5, United States Code, and sections 292 and 1920 through 1922 of title 18,

United States Code (relating to compensation for work injuries),

(ii) chapter 87 of title 5, United States Code (relating to Government employees group life insurance),

(iii) chapter 89 of title 5, United States Code (relating to health insurance for Government employees), and

(iv) sections 1302, 2108, 3305, 3306, 3308 through 3320, 3351, 3363, 3364, 3501 through 3504, 7511, 7512, and 7701 of title 5, United States Code (relating to veteran's preference). Subject to the approval of the Commissioner, the compensation schedules for such officers and employees shall be fixed and adjusted from time to time consistent with the public interest and in accordance with rates for comparable types of positions in like institutions of higher education. Salary levels shall be determined based on duties, responsibilities, and qualifications. The Board, upon the recommendations of the president of the college, shall establish, with the approval of the Commissioner and without regard to the provisions of any other law, retirement and leave systems for such officers and employees which shall be comparable to such systems in like institutions of higher education.

(5) To employ and compensate noneducational employees of the Board and of the Federal City College in accordance with—

(A) the civil service laws,

(B) chapter 51 and subchapter III of chapter 53 of title 5, United States Code (relating to classification of positions in government service),

(C) section 3323 and subchapter III of chapter 81<sup>1</sup> of title 5, United States Code (relating to civil service retirement),

(D) sections 7902, 8101 through 8138, and 8145 through 8150 of title 5, United States Code, and sections 292 and 1920 through 1922 of title 18, United States Code (relating to compensation for work injuries),

(E) chapter 87 of title 5, United States Code (relating to government employees group life insurance),

(F) chapter 89 of title 5, United States Code (relating to health insurance for government employees),

(G) sections 1302, 2108, 3305, 3306, 3308 through 3320, 3351, 3363, 3364, 3501 through 3504, 7511, 7512, and 7701 of title 5, United States Code (relating to veteran's preference), and

(H) any other laws applicable to noneducational employees of the Board of Education.

(6) To fix, from time to time, tuition to be paid by students attending the Federal City College. Tuition charged nonresidents shall be fixed in such amounts as will, to the extent feasible, approximate the cost to the District of Columbia of the services for which such charge is imposed. Receipts from the tuition charged students attending

<sup>1</sup> So in original. There is no subchapter III of chapter 81 of title 5, United States Code. For civil service retirement, see subchapter III of chapter 83 of that title.



the college shall be deposited to the credit of the General Fund of the District of Columbia.

(7) To fix, from time to time, fees to be paid by students attending the Federal City College. Receipts from such fees shall be deposited into a revolving fund in a private depository in the District, which fund shall be available, without fiscal year limitation, for such purposes as the Board shall approve. The Board is authorized to make necessary rules respecting deposits into and withdrawals from such fund.

(8) To transmit annually to the Commissioner estimates of the appropriation required for the Federal City College for the ensuing year.

(9) To accept services and moneys, including gifts or endowments, from any source whatsoever, for use in carrying out the purposes of this subchapter. Such moneys shall be deposited in the Treasury of the United States to the credit of a trust fund account which is hereby authorized and may be invested and reinvested as trust funds of the District of Columbia. The disbursement of the moneys from such trust funds shall be in such amounts, to such extent, and in such manner as the Board, in its judgment, may determine necessary to carry out the purposes of this subchapter.

(10) To submit to the Commissioner recommendations relating to legislation affecting the administration and programs of the Federal City College.

(11) To make such rules and regulations as the Board deems necessary to carry out the purposes of this subchapter.

(12) To assume control of the District of Columbia Teachers College established pursuant to section 31-118, from the Board of Education at such time as may be mutually agreed upon by such Boards and approved by the Commissioner. At such time, the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available for such Teachers College are authorized to be transferred to, and brought under the control of, such Board of Higher Education, except that the laboratory schools shall remain under the control and management, and the employees assigned to such schools shall remain subject to the supervision of, the Board of Education. The noneducational employees of the Teachers College at the time the control of such Teachers College is assumed by the Board of Higher Education, shall retain all benefits provided by any law applicable to noneducational employees of the Board of Education, and shall be subject to any benefits provided for noneducational employees of the Board of Higher Education. The educational employees of the Teachers College at the time the control of such College is assumed by the Board of Higher Education shall be subject to the same benefits provided for all educational employees of the Board of Higher Education pursuant to paragraph (4) of this subsection, except that such educational employees may elect, within ninety days of

such time, to remain subject to the provisions of subchapter II of chapter 7 of this title.

(13) To provide for the crediting to educational employees of the Teachers College, pursuant to the leave system established for educational employees of the Board of Higher Education under this title, leave accumulated pursuant to the provisions of sections 31-691, 31-692 to 31-694, 31-695, 31-696, 31-697.

(b) A person shall, at the time of his registration to attend the Federal City College, be considered to be a legal resident of the District of Columbia for purposes of paragraph (6) of subsection (a) of this section if—

(1) such person is domiciled in the District of Columbia on the date of such registration and has been so domiciled during all of the three-month period immediately preceding such date; and

(2) in case such person on such date—

(A) has not attained twenty-one years of age,

(B) has not been relieved of the disabilities of minority by order of a court of competent jurisdiction, and

(C) has a living parent or a court-appointed guardian or custodian, there is domiciled in the District of Columbia on such date an individual who is the parent or court-appointed guardian or custodian of such person, and who has been so domiciled for all of the three-month period immediately preceding such date. (Nov. 7, 1966, 80 Stat. 1427, Pub. L. 89-791, title I, § 103.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-1532, 31-1605.

#### § 31-1604. Space and facilities.

The Commissioner and the Board of Education may furnish to the Board, upon request of such Board, such space and facilities in private buildings or in public buildings of the government of the District of Columbia, records, information, services, personnel, offices, and equipment as may be available and which are necessary to enable the Board properly to perform its functions under this subchapter. (Nov. 7, 1966, 80 Stat. 1429, Pub. L. 89-791, title I, § 104.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 31-1605. Fiscal accountability.

All obligations and disbursements for the purpose of this subchapter shall be incurred, made, and accounted for in the same manner as other obligations and disbursements for the District of Columbia and, except as provided in paragraph (9) of section 31-1603, under the direction and control of the Commissioner. (Nov. 7, 1966, 80 Stat. 1430, Pub. L. 89-791, title I, § 105.)



## REFERENCE IN TEXT

The reference in this section to paragraph (9) of section 31-1603 presumably refers to paragraph (9) of subsection (a) of the latter section.

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## § 31-1606. Authorization of appropriations for purposes of subchapters I and II.

There is authorized to be appropriated from the revenues of the District of Columbia not to exceed \$50,000,000 to carry out the purposes of this subchapter and subchapter II of this chapter. The authorization made by this section shall include any amounts made available pursuant to section 9-220 (b). (Nov. 7, 1966, 80 Stat. 1433, Pub. L. 89-791 title III, § 301(a).)

## CODIFICATION

Section constitutes subsec. (a) of § 301 of act Nov. 7, 1966, cited, of which subsec. (b) amended § 9-220(b).

In the original, the reference "pursuant to section 9-220 (b)" read "pursuant to the amendment made by subsection (b) of this section". As stated subsec. (b) of § 301 of act Nov. 7, 1966, amended § 9-220(b).

## § 31-1607. Federal City College and Washington Technical Institute considered established as land-grant colleges.

In the administration of—

(1) the Act of August 30, 1890 (7 U.S.C. 321-326, 328) (known as the Second Morrill Act),

(2) the tenth paragraph under the heading "EMERGENCY APPROPRIATIONS" in the Act of March 4, 1907 (7 U.S.C. 322) (known as the Nelson Amendment),

(3) section 22 of the Act of June 29, 1935 (7 U.S.C. 329) (known as the Bankhead-Jones Act),

(4) the Act of March 4, 1940 (7 U.S.C. 331),

(5) the Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1629), and

(6) section 31-1608,

the Federal City College and the Washington Technical Institute shall each be considered to be a college established for the benefit of agriculture and the mechanic arts in accordance with the provisions of the Act of July 2, 1862 (7 U.S.C. 301-305, 307, 308) (known as the First Morrill Act); and the term "State" as used in the laws and provisions of law listed in the preceding paragraphs of this section shall include the District of Columbia. (Nov. 7, 1966, Pub. L. 89-791, title I, § 107, as added June 20, 1968, Pub. L. 90-354, § 1, 82 Stat. 241; Jan. 5, 1971, Pub. L. 91-650, title IV, § 401(a), 84 Stat. 1935.)

## REFERENCE IN TEXT

The Agricultural Marketing Act of 1946, referred to in par. (4), is classified to 7 U.S.C. 1621-1627 rather than as cited in the text.

## AMENDMENT

1971—Section 401(a) of Act Jan. 5, 1971, Pub. L. 91-650, amended section—

(1) by striking out "and" at the end of paragraph (4);

(2) by adding "and" at the end of paragraph (5);

(3) by adding after paragraph (5) the following new paragraph:

"(6) section 31-1608,"; and

(4) by striking out "Federal City College shall" and inserting in lieu thereof the following: "Federal City College and the Washington Technical Institute shall each".

## APPLICABILITY OF 1971 AMENDMENTS

Section 401(d) of Act Jan. 5, 1971, Pub. L. 91-650, provided: "The amendments made by this section [amending §§ 31-1607, 31-1609, 31-1610 and enacting §§ 31-1611, 31-1612] shall apply with respect to (1) grants made to the District of Columbia under the Acts referred to in section 107 of the District of Columbia Public Education Act [§ 31-1607] and under section 109(b) of such Act [§ 31-1609(b)] for fiscal years beginning after June 30, 1971, and (2) any earnings, on and after July 1, 1971, of sums heretofore appropriated to the District of Columbia pursuant to section 108(b) of such Act [§ 31-1608]."

## EFFECTIVE DATE

Section 2 of act June 20, 1968, Pub. L. 90-354, provided: "Sections 107 and 108 [31-1607, 31-1608 and amendment of 7 U.S.C. 329] of the District of Columbia Public Education Act (added by section 1 of this Act) shall take effect with respect to appropriations for fiscal years beginning after June 30, 1968."

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91-650

See secs. 801-803 of act Jan. 5, 1971, Pub. L. 91-650, set out as a note under § 47-2501a.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-1610—31-1612.

## § 31-1608. Lump-sum appropriation in lieu of donation of public lands or land scrip.

In lieu of extending to the District of Columbia those provisions of the Act of July 2, 1862 (7 U.S.C. 301-305, 307, 308), relating to donations of public lands or land scrip for the endowment and maintenance of colleges for the benefit of agriculture and the mechanic arts, there is authorized to be appropriated to the District of Columbia the sum of \$7,241,706. Amounts appropriated under this subsection shall be held and considered to have been granted to the District of Columbia subject to those provisions of that Act applicable to the proceeds from the sale of land or land scrip. (Nov. 7, 1966, Pub. L. 89-791, title I, § 108(b); as added June 20, 1968, Pub. L. 90-354, § 1, 82 Stat. 241.)

## CODIFICATION

The text of this section as above set out consists of subsection (b) of section 108 of the Act of June 20, 1968. Subsection (a) of the section is classified to 7 U.S.C. 329.

## EFFECTIVE DATE

See note under section 31-1607.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-1607, 31-1610, 31-1611.

## § 31-1609. Federal City College and Washington Technical Institute administered as land-grant colleges—Appropriations—Allocations to Federal Extension Service of Department of Agriculture.

(a) In the administration of the Act of May 8, 1914 (7 U.S.C. 341-346, 347a-349) (known as the Smith-Lever Act)—

(1) the Federal City College and the Washington Technical Institute shall each be considered to be a college established for the benefit of agriculture and the mechanic arts in accordance with the provisions of the Act of July 2, 1862 (7 U.S.C. 301-305, 307, 308); and

(2) the term "State" as used in such Act of May 8, 1914, shall include the District of Columbia,



except that the District of Columbia shall not be eligible to receive any sums appropriated under section 7 U.S.C. 343.

(b) In lieu of an authorization of appropriations for the District of Columbia under section 7 U.S.C. 343, there is authorized to be appropriated to the District of Columbia such sums as may be necessary to provide cooperative agricultural extension work in the District of Columbia under such Act. For the fiscal years ending June 30, 1969, and June 30, 1970, sums appropriated under this subsection may be used to pay the total cost of providing such extension work; and for each fiscal year thereafter such sums may be used to pay no more than one-half of such cost. Any reference in such Act (other than section 7 U.S.C. 343) to funds appropriated under such Act shall in the case of the District of Columbia be considered a reference to funds appropriated under this subsection.

(c) Four per centum of the sums appropriated under subsection (b) for each fiscal year shall be allotted to the Federal Extension Service of the Department of Agriculture for administrative, technical, and other services provided by the Service in carrying out the purposes of this section. (Nov. 7, 1966, Pub. L. 89-791, title I, § 109; as added June 20, 1968, Pub. L. 90-354, § 1, 82 Stat. 241; and amended Jan. 5, 1971, Pub. L. 91-650, title IV, § 401(b), 84 Stat. 1935.)

#### REFERENCE IN TEXT

"Such Act" referred to in subsection (b) means the Act of May 8, 1914, set out in sections 341 to 346, 347a to 349 of title 7, U.S. Code.

#### AMENDMENT

1971—Section 401(b) of act Jan. 5, 1971, Pub. L. 91-650, amended subsec. (a) (1) by striking out "Federal City College shall" and inserting in lieu thereof the following: "Federal City College and the Washington Technical Institute shall each".

#### APPLICABILITY OF 1971 AMENDMENTS

See section 401(d) of act Jan. 5, 1971, Pub. L. 91-650, set out as a note under § 31-1607.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-1610—31-1612.

§ 31-1610. Federal City College and Washington Technical Institute to share grants and earnings equally.

Grants to the District of Columbia under the Acts referred to in section 31-1607 and under section 31-1609(b) and the earnings of sums appropriate under section 31-1608 shall be shared equally between the Federal City College and the Washington Technical Institute. (Nov. 7, 1966, Pub. L. 89-791, title I, § 110; as added Jan. 5, 1971, Pub. L. 91-650, title IV, § 401(c), 84 Stat. 1935.)

#### APPLICABILITY OF 1971 AMENDMENTS

See section 401(d) of act Jan. 5, 1971, Pub. L. 91-650, set out as a note under § 31-1607.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1611.

§ 31-1611. Construction of §§ 31-1607 and 31-1609.

Sections 31-1607 and 31-1609 provide that the Washington Technical Institute shall be considered to be a college established for the benefit of agriculture and the mechanic arts in accordance with

the provisions of the Act of July 2, 1862, for the purpose of enabling the Washington Technical Institute to share, under section 31-1610, with the Federal City College (1) grants under the Acts referred to in section 31-1607, (2) grants under section 31-1609(b), and (3) earnings of sums appropriated under section 31-1608. (Nov. 7, 1966, Pub. L. 89-791, title I, § 111; as added Jan. 5, 1971, Pub. L. 91-650, title IV, § 401(c), 84 Stat. 1936.)

#### REFERENCE IN TEXT

The act of July 2, 1862, referred to in text, is known as the First Morrill Act and is classified to 7 U.S.C. 301—305, 307, 308.

#### APPLICABILITY OF 1971 AMENDMENTS

See section 401(d) of act Jan. 5, 1971, Pub. L. 91-650, set out as a note under § 31-1607.

§ 31-1612. Satisfaction of State requirement of consent.

The enactment of sections 31-1607 and 31-1609 of this title shall, as respects the District of Columbia, be deemed to satisfy any requirement of State consent contained in any of the laws or provisions of law referred to in such sections. (Nov. 7, 1966, Pub. L. 89-791, title I, § 112, formerly § 110; as added June 20, 1968, Pub. L. 90-354, § 1, 82 Stat. 242; and renumbered Jan. 5, 1971, Pub. L. 91-650, title IV, § 401(c), 84 Stat. 1935.)

#### AMENDMENT

1971—Section 401(c) of act Jan. 5, 1971, Pub. L. 91-650, redesignated section 110 of the source statute (District of Columbia Public Education Act) as section "112", and inserted new sections numbered "110" and "111" which are classified to sections 31-1610 and 31-1611 of the code.

#### APPLICABILITY OF 1971 AMENDMENTS

See section 401(d) of act Jan. 5, 1971, Pub. L. 91-650, set out as a note under § 31-1607.

## SUBCHAPTER II.—WASHINGTON TECHNICAL INSTITUTE

### SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 31-1606.

§ 31-1621. Definitions.

As used in this subchapter—

(1) The term "Washington Technical Institute" means the vocational and technical school established pursuant to this subchapter. Such institute shall provide (A) vocational and technical education designed to fit individuals for useful employment in recognized occupations; and (B) vocational and technical courses on an individual, noncredit basis.

(2) The term "Commissioner" means the Commissioner of the District of Columbia.

(3) The term "Vocational Board" means the Board of Vocational Education established by section 31-1622.

(4) The term "Board of Education" means the Board of Education of the District of Columbia established by section 31-101. (Nov. 7, 1966, 80 Stat. 1430, Pub. L. 89-791, title II, § 201.)

### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.



## CROSS REFERENCES

Authorization of appropriations for carrying out purpose of this subchapter and subchapter I of this chapter, see § 31-1606.

Provisions of subchapter I applicable to Washington Technical Institute, see §§ 31-1607 to 31-1612.

**§ 31-1622. Board of Vocational Education—Composition—Appointment of members—Chairman—Tenure — Vacancies — Compensation — Removal — Immunity from liability.**

(a) The Washington Technical Institute shall be under the control of a Board of Vocational Education which shall consist of nine members appointed by the President of the United States. Of the nine members, at least six shall be selected from industry. The members of the Vocational Board shall select a chairman from among their own number. The members of the Vocational Board shall be appointed for terms of three years; except that the terms of office of the members first taking office shall expire, as designated by the President at the time of appointment, three at the end of one year, three at the end of two years, and three at the end of three years. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of that term. A vacancy in the Vocational Board shall be filled in the same manner as the original appointment was made. Members of the Vocational Board shall serve without compensation, but may be reimbursed for their travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons serving the Government without compensation.

(b) The President of the United States may remove, in accordance with the provisions of this subsection, any member of the Vocational Board for adequate cause affecting his character and efficiency as a member. If the President determines that, with respect to any such member, there is adequate cause affecting his character and efficiency as a member, the President may appoint a special investigating board, consisting of not more than three members, to consider the matter. The investigating board, in considering such matter, shall hold public hearings and, on the basis thereof, report to the President with respect to their findings of fact and recommendations. Following the receipt by him of such report, the President may remove such member from office.

(c) The members of the Vocational Board shall not be personally liable in damages for any official action of the Vocational Board in which such members participate, nor shall they be liable for any costs that may be taxed against them or the Vocational Board on account of any such official action by them as members of the Vocational Board, but such costs shall be charged to the District of Columbia and paid as other costs are paid in suits against the municipality; nor shall the Vocational Board or any of its members be required to give any bond or security for costs or damages on any appeal whatever. (Nov. 7, 1966, 80 Stat. 1430, Pub. L. 89-791, title II, § 202.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1621.

**§ 31-1623. Powers and duties of Board—Development of plans, establishment of Institute, and administration, generally.**

(a) The Board is hereby vested with the following powers and duties:

(1) To develop detailed plans for and to establish, organize, and operate in the District of Columbia the Washington Technical Institute.

(2) To establish policies, standards, and requirements governing admission, programs, graduation (including the award of degrees) and general administration of the Washington Technical Institute.

(3) To appoint and compensate, without regard to the civil service laws or chapter 51 and subchapter III of chapter 53 of title 5, United States Code, a president for the Washington Technical Institute.

(4) To employ and compensate such officers as it determines necessary for the Washington Technical Institute, and such educational employees for the Washington Technical Institute as the president thereof may recommend in writing. Such officers and educational employees may be employed and compensated without regard to—

(A) the civil service laws,

(B) chapter 51 and subchapter III of chapter 53 of title 5, United States Code (relating to classification of positions in Government service),

(C) sections 6301 through 6305 and 6307 through 6311 of title 5, United States Code (relating to annual and sick leave for Federal employees),

(D) chapter 15 and sections 7324 through 7327 of title 5, United States Code (relating to political activities of Government employees),

(E) section 3323 and subchapter III of chapter 81<sup>1</sup> of title 5, United States Code (relating to civil service retirement), and

(F) sections 3326, 3501, 3502, 5531 through 5533, and 6303 of title 5, United States Code (relating to dual pay and dual employment), but the employment and compensation of such officers and educational employees shall be subject to—

(i) sections 7902, 8101 through 8138, and 8145 through 8150 of title 5, United States Code, and sections 292 and 1920 through 1922 of title 18, United States Code (relating to compensation for work injuries),

(ii) chapter 87 of title 5, United States Code relating to Government employees group life insurance),

(iii) chapter 89 of title 5, United States Code (relating to health insurance for Government employees), and

(iv) sections 1302, 2108, 3305, 3306, 3308

<sup>1</sup> So in original. There is no subchapter III of chapter 81 of title 5, United States Code. For civil service retirement, see subchapter III of chapter 83 of that title.



through 3320, 3351, 3363, 3364, 3501 through 3504, 7511, 7512, and 7701 of title 5, United States Code (relating to veteran's preference). Subject to the approval of the Commissioner, the compensation schedules for such officers and employees shall be fixed and adjusted from time to time consistent with the public interest and in accordance with rates for comparable types of positions in like technical institutes. Salary levels shall be determined based on duties, responsibilities, and qualifications. The Vocational Board, upon the recommendations of the president of the Washington Technical Institute, shall establish, with the approval of the Commissioner and without regard to the provisions of any other law, retirement and leave systems for such officers and employees which shall be comparable to such systems in like technical institutes.

(5) To employ and compensate noneducational employees of the Vocational Board and the Washington Technical Institute in accordance with—

(A) the civil service laws,

(B) chapter 51 and subchapter III of chapter 53 of title 5, United States Code (relating to classification of positions in Government service).

(C) section 3323 and subchapter III of chapter 81<sup>1</sup> of title 5, United States Code (relating to civil service retirement),

(D) sections 7902, 8101 through 8138, and 8145 through 8150 of title 5, United States Code, and sections 292 and 1920 through 1922 of title 18, United States Code (relating to compensation for work injuries),

(E) chapter 87 of title 5, United States Code (relating to Government employees group life insurance),

(F) chapter 89 of title 5, United States Code (relating to health insurance for Government employees),

(G) sections 1302, 2108, 3305, 3306, 3308 through 3320, 3351, 3363, 3364, 3501 through 3504, 7511, 7512, and 7701 of title 5, United States Code (relating to veteran's preference), and

(H) any other laws applicable to noneducational employees of the Board of Education.

(6) To fix, from time to time, tuition to be paid by students attending the Washington Technical Institute. Tuition charged nonresidents shall be fixed in such amounts as will, to the extent feasible, approximate the cost to the District of Columbia of the services for which such charge is imposed. Receipts from the tuition charged students attending the institute shall be deposited to the credit of the general fund of the District of Columbia.

(7) To fix, from time to time, fees to be paid by students attending the Washington Technical Institute. Receipts from such fees shall be deposited into a revolving fund in a private depository in the District, which fund shall be avail-

able, without fiscal year limitation, for such purposes as the Vocational Board shall approve. The Vocational Board is authorized to make necessary rules respecting deposits into and withdrawals from such fund.

(8) To transmit annually to the Commissioner estimates of the appropriation required for the Washington Technical Institute for the ensuing year.

(9) To accept services and moneys, including gifts or endowments, from any source whatsoever, for use in carrying out the purposes of this subchapter. Such moneys shall be deposited in the Treasury of the United States to the credit of a trust fund account which is hereby authorized and may be invested and reinvested as trust funds of the District of Columbia. The disbursement of the moneys from such trust funds shall be in such amounts, to such extent, and in such manner as the Vocational Board, in its judgment, may determine necessary to carry out the purposes of this subchapter.

(10) To submit to the Commissioner recommendations relating to legislation affecting the administration and programs of the Washington Technical Institute.

(11) To make such rules and regulations as the Vocational Board deems necessary to carry out the purposes of this subchapter.

(b) A person shall, at the time of his registration to attend the Washington Technical Institute, be considered to be a legal resident of the District of Columbia for purposes of paragraph (6) of subsection (a) of this section if—

(1) such person is domiciled in the District of Columbia on the date of such registration and has been so domiciled during all of the three-month period immediately preceding such date; and

(2) in case such person on such date—

(A) has not attained twenty-one years of age,

(B) has not been relieved of the disabilities of minority by order of a court of competent jurisdiction, and

(C) has a living parent or a court-appointed guardian or custodian,

there is domiciled in the District of Columbia on such date an individual who is the parent or court-appointed guardian or custodian of such person, and who has been so domiciled for all of the three-month period immediately preceding such date.

(Nov. 7, 1966, 80 Stat. 1431, Pub. L. 89-791, title II, § 203.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CROSS REFERENCE

Provisions of subchapter I applicable to Washington Technical Institute, see §§ 31-1607 to 31-1612.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1625.

#### § 31-1624. Space and facilities.

The Commissioner and the Board of Education may furnish to the Vocational Board, upon request of such Board, such space and facilities in private

<sup>1</sup>So in original. There is no subchapter III of chapter 81 of title 5, United States Code. For civil service retirement, see subchapter III of chapter 83 of that title.



buildings or in public buildings of the government of the District of Columbia, records, information, services, personnel, offices, and equipment as may be available and which are necessary to enable the Vocational Board properly to perform its functions under this subchapter. (Nov. 7, 1966, 80 Stat. 1433, Pub. L. 89-791, title II, § 204.)

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 31-1625. Fiscal accountability.

All obligations and disbursements for the purpose of this subchapter shall be incurred, made, and accounted for in the same manner as other obligations

and disbursements for the District of Columbia and, except as provided in paragraph (9) of section 31-1623, under the direction and control of the Commissioner. (Nov. 7, 1966, 80 Stat. 1433, Pub. L. 89-791, title II, § 205.)

REFERENCES IN TEXT

The reference in this section to paragraph (9) of section 31-1623 presumably refers to paragraph (9) of subsection (a) of the latter section.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

CROSS REFERENCE

Provisions of subchapter I applicable to Washington Technical Institute, see §§ 31-1607 to 31-1612.







## TITLE 32.—ELEEMOSYNARY, CURATIVE, CORRECTIONAL, AND PENAL INSTITUTIONS

Chap.	Sec.	
1. Association for Works of Mercy -----	32-101	
2. Washington Humane Society -----	32-201	
3. Hospitals and Asylums—General Provisions -----	32-301	
4. Saint Elizabeths Hospital -----	32-401	
5. Industrial Home School -----	32-501	
6. Forest Haven -----	32-601	
7. Home Care for Dependent Children -----	32-701	
7A. Aid to Dependent Children -----	32-751	
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### Chapter 1.—ASSOCIATION FOR WORKS OF MERCY

Sec.	
32-101. Custody and control of girls under 18 years of age—How obtained—Approval by probate court.	
32-102. Girls under 18 years of age convicted of crime—Commission to custody of association.	
32-103. Custody and discharge of inmates.	
32-104. Probate court may appoint association as guardian—Term of guardianship.	

#### § 32-101. Custody and control of girls under 18 years of age—How obtained—Approval by probate court.

The Association for Works of Mercy, a charitable corporation in the District of Columbia, is hereby authorized and empowered to receive and have the custody and control of, and to suitably maintain, teach, employ, and discipline girls under the age of eighteen years, resident in the District of Columbia, until they attain the age of eighteen years. The right to the custody and control of any such girl shall be obtained in the manner following:

First. By a written instrument executed by the father of such girl, giving such custody and control to said association and renouncing parental rights.

Second. If the father be not living, or is unknown, or not resident in the District of Columbia, by a written instrument executed by the mother of such girl, giving such custody and control to said association and renouncing parental rights.

Third. By a written instrument executed by the guardian of the person of such girl, giving such custody and control to said association and renouncing the rights of guardianship.

Fourth. If there be no father, or mother, or guardian of such girl living, or known, resident in the District of Columbia, by an instrument in writing executed by such girl, surrendering herself to the custody, control, and maintenance of said association.

Fifth. No such instrument shall be effectual in law until it shall be approved by a judge of the court having probate jurisdiction by an indorsement of such approval thereon signed by such judge. (Oct

12, 1888, 25 Stat. 554, ch. 1095, § 1; Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 116; July 29, 1970, Pub. L. 91-358, title I, § 158(b)(1), 84 Stat. 576.)

#### AMENDMENT

1970—Section 158(b)(1) of Act July 29, 1970, Public Law 91-358 amended section by striking out "the judge of the orphans' court of the District of Columbia" and inserting in lieu thereof "a judge of the court having probate jurisdiction".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

Act Mar. 3, 1901, designated orphans court as the probate court.

#### CROSS REFERENCE

Powers and duties of Board of Public Welfare, see § 3-101 et seq.

#### § 32-102. Girls under 18 years of age convicted of crime—Commission to custody of association.

When any girl under the age of eighteen years shall be duly convicted of any offense punishable by fine or imprisonment for a term less than two years before any court in the District of Columbia, if it shall appear to the satisfaction of the court that such girl is a suitable subject for the custody of said association, the court may, instead of imposing such fine or imprisonment, and with the assent of said association, cause such girl to be committed to the custody and control of said association, there to remain until she shall attain the age of eighteen years, or be otherwise discharged in due course of law. (Oct. 12, 1888, 25 Stat. 554, ch. 1095, § 2.)

#### § 32-103. Custody and discharge of inmates.

A girl, duly received into the institution of the said association, shall be kept there, disciplined, instructed, employed, and governed under the direction of said association until she is either reformed and discharged or has attained the age of eighteen years; but the association shall have the right to discharge and return to the parents, guardian, or protector any girl who, in its judgment, ought, for any cause, to be removed from the institution, and in such case the association shall enter upon its minutes the reasons for her discharge; and in case such girl was received under the order of any criminal court, a copy of the minute of such reasons shall be forthwith transmitted to the court under whose order she was received. (Oct. 12, 1888, 25 Stat. 554, ch. 1095, § 3.)

#### § 32-104. Probate court may appoint association as guardian—Term of guardianship.

The court having probate jurisdiction shall have power to appoint the said association the guardian of the person of any girl under the age of eighteen years, in the same manner and with the same effect that it has power to appoint guardians of the person of female infants. And such guardianship shall continue until such girl shall attain the age of eighteen



years, unless the probate court shall discharge the same or otherwise direct. (Oct. 12, 1888, 25 Stat. 554, ch. 1095, § 4; Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 116; July 29, 1970, Pub. L. 91-358, title I, § 158(b) (2), 84 Stat. 576.)

#### AMENDMENT

1970—Section 158(b) (2) of Act July 29, 1970, Public Law 91-358 amended section by striking out "orphans' court of the District of Columbia" and inserting in lieu thereof "court having probate jurisdiction".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

Act Mar. 3, 1901, designated orphans court as the probate court.

#### CROSS REFERENCE

Court having probate jurisdiction, see §§ 11-501, 11-921.

### Chapter 2.—WASHINGTON HUMANE SOCIETY

#### Sec.

- 32-201. Incorporation—Name.
- 32-202. Officers.
- 32-203. Officers to be chosen from members.
- 32-204. By-laws.
- 32-205. Police to arrest law violators at request of member of society—Evidence of membership.
- 32-206. Disposition of fines.
- 32-207. Law effective throughout District.
- 32-208. Society authorized to prevent cruelty to children.
- 32-209. Commissioner to aid in enforcing laws affecting children—Detailing of police to assist society—Arrest of offenders—Children in house of ill-fame.
- 32-210. Detailing of police to aid in enforcement of laws relating to cruelty to animals.
- 32-211. Right to alter, amend or repeal reserved.

#### § 32-201. Incorporation—Name.

N. P. Chipman, J. P. Newman, B. Peyton Brown, John A. L. Morrell, Mathew G. Emery, Joseph H. Bradley, senior, William R. Woodward, E. Whittlesey, Warren Choate, Andrew B. Duvall, A. S. Solomons, W. G. Metzgerott, Alexander R. Shepperd, S. J. Bowen, H. M. Sweeney, Benjamin E. Gittings, William Tucker, Charles H. Lane, W. Burris, William McPheeters, E. F. N. Faecht, J. L. Gatchel, John R. Elvans, Edgar I. Booraem, L. H. Hopkins, Thomas P. Keene, W. D. Blackford, F. H. Day, J. Sayles Brown, William Lanborn, E. L. Corbin, N. A. West, John R. Arrison, W. A. Farlee, Benjamin F. Fuller, Robert A. Slater, Alonzo Bell, A. T. Kinney, John J. Jett, A. M. Scott, A. C. White, A. E. Newton, A. S. Taylor, William H. Rowe, Robert Reyburn, W. H. Slater, John C. Parker, William J. Wilson, S. S. Baker, A. Jones, S. R. Bond, John F. Cook, D. W. Anderson, George A. Hall, Charles H. Moulton, John Edwin Mason, Allison Nailor, junior, David A. Burr, T. C. Grey, R. H. Marsh, Thomas Perry, George F. Gulick, and Theodore F. Gatchel, all of the District of Columbia, and such other persons as were associated with them in conformity to this chapter, and their successors duly chosen, were constituted and created a body corporate in the District of Columbia, to be known as the Washington Humane Society. (June 21, 1870, 16 Stat. 158, ch. 135, § 1; Feb. 13, 1885, 23 Stat. 302, ch. 58, § 1.)

#### CHANGE OF NAME

"Washington Humane Society" was substituted for "Association for the Prevention of Cruelty to Animals"

to conform to change of name effected by act Feb. 13, 1885.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32-207, 32-211.

#### § 32-202. Officers.

The officers of said corporation shall consist of a president, five vice-presidents, one secretary, one treasurer, an executive committee of eleven members, and such other officers as shall from time to time seem necessary to this society. (June 21, 1870, 16 Stat. 158, ch. 135, § 2.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32-207, 32-211.

#### § 32-203. Officers to be chosen from members.

The foregoing officers shall be chosen from among the members of the society. (June 21, 1870, 16 Stat. 158, ch. 135, § 3.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32-207, 32-211.

#### § 32-204. By-laws.

The said society, for fixing the terms of admission of its members, for the government of the same, for the election, changing, and altering the officers above named, and for the general regulation and management of its affairs, shall have power to form a code of by-laws, not inconsistent with the laws of the District of Columbia, or of the United States, which code, when formed and adopted at a regular meeting, shall, until modified or rescinded, be equally binding as this chapter upon the society, its officers, and members. (June 21, 1870, 16 Stat. 158, ch. 135, § 4.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32-207, 32-211.

#### § 32-205. Police to arrest law violators at request of member of society—Evidence of membership.

Members of the Metropolitan Police force of the District of Columbia, upon application of a member of the Washington Humane Society who has viewed a violation of a law or regulation of the District for the prevention of cruelty to animals, shall arrest the offending party without a warrant, and take him before the Superior Court of the District of Columbia for trial. Proper evidence of membership to a police officer shall be the exhibition of a badge or certificate of membership in the Society. (June 21, 1870, 16 Stat. 158, ch. 135, § 5; R.S. D.C., § 998; Mar. 3, 1901, 31 Stat. 1196, ch. 854, § 43; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; Dec. 23, 1963, 77 Stat. 618, Pub. L. 88-241, § 12; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### AMENDMENTS

1970—Section 155(a) of act July 29, 1970, Pub. L. 91-358, amended section by striking out "District of Columbia Court of General Session" and inserting in lieu thereof "Superior Court of the District of Columbia".

1963—Section 12 of act Dec. 23, 1963, amended the section by changing the phraseology.

1901—Act Mar. 3, 1901, substituted "police court" for "justice of the peace court".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.



## EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 23, 1963, was made effective on Jan. 1, 1964. See note preceding ch. 1, Title 11 in 1967 edition of the Code.

## CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

## CROSS REFERENCES

Arrest of persons keeping animals or fowls for fighting or baiting, see § 22-809.

Arrest without warrant, generally, see 23-581.

Arrests under statutes relating to the prevention of cruelty to children and animals, see § 22-804.

Criminal prosecution, see § 22-801 et seq.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22-804, 22-809, 32-207, 32-211.

## § 32-206. Disposition of fines.

One-half of all the fines collected through the instrumentality of the society or its agents, for violations of such laws, shall accrue to the benefit of said society. (June 21, 1870, 16 Stat. 158, ch. 135, § 6; Mar. 3, 1901, 31 Stat. 1198, ch. 854, § 48.)

## AMENDMENT

1901—Act Mar. 3, 1901, eliminated provision for payment of one half of fines collected to the school fund of city or district in which offense committed.

## CROSS REFERENCE

Association entitled to fines and forfeitures levied in prosecution of laws to prevent cruelty to animals, see § 22-806.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32-207, 32-211.

## § 32-207. Law effective throughout District.

The provisions of sections 32-201 to 32-207 shall be general within the boundaries of the District of Columbia. (June 21, 1870, 16 Stat. 159, ch. 135, § 7.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32-207, 32-211.

## § 32-208. Society authorized to prevent cruelty to children.

The Washington Humane Society is authorized to extend its operations to the protection of children as well as animals from cruelty and abuse. In pursuance thereof the said society may cause its proper officers or agents to prefer complaints, before any court in the District of Columbia having jurisdiction, for the violation of any law relating to or affecting the protection of children in said District, and by its proper attorney may aid in bringing the facts before such court in any proceeding taken. (Feb. 13, 1885, 23 Stat. 302, ch. 58, § 1.)

## CODIFICATION

Section 1 of act Feb. 13, 1885, provided in part: "From and after the passage of this act the Association for the Prevention of Cruelty to Animals for the District of Columbia shall be known as the 'Washington Humane Society'".

## NOTES TO DECISIONS

## Powers of society

This section and § 32-209 gave the Washington Humane Society authority to prefer complaints before any court of the District of Columbia having jurisdiction in any case where the welfare of a child was involved. They also gave authority and power to the agents of said society to take before said courts dependent and delinquent children, and to prosecute those responsible for such dependency or delinquency. *Richardson v. Browning* (1927, 18 F. 2d 1008, 57 App. D. C. 186).

## § 32-209. Commissioner to aid in enforcing laws affecting children—Detailing of police to assist society—Arrest of offenders—Children in house of ill-fame.

The Commissioner of the District of Columbia shall, by the police force of said District, aid the said society, its officers and agents, in the enforcement of all laws relating to or affecting the protection of children; and the Commissioner of the said District, and his successors, are authorized, in their discretion, to detail, from time to time, an officer or officers to aid specially in the work of said society, or they may commission any duly appointed agents of said society special police officers, without compensation; and such agents or officers shall have power to arrest, without warrant, all persons violating in their presence or sight any law relating to or affecting the protection of children, or other parties so offending by virtue of a warrant issued by the Family Division of the Superior Court, which offenders shall be taken by such agents or officers before the said Family Division of the Superior Court for trial. Said agents or officers are also hereby empowered to bring before the said court any child who is subjected to cruel treatment, willful abuse, or neglect, or any child under seventeen years of age found in a house of ill-fame; and said court may commit such child to an orphan asylum or other public charitable institution in the District of Columbia, with the consent of the constituted authorities of such asylum or institution, or make such other disposition thereof as provided by law in cases of vagrant, destitute, or abandoned children. (Feb. 13, 1885, 23 Stat. 302, ch. 58, § 2; Mar. 19, 1906, 34 Stat. 73, ch. 960, § 8; July 29, 1970, Pub. L. 91-358, title I, § 159(h), 84 Stat. 578.)

## AMENDMENTS

1970—Section 159(h) of Act July 29, 1970, Public Law 91-358 amended section by striking out "police court" and inserting in lieu thereof "Family Division of the Superior Court" and by striking out the proviso at the end thereof [this proviso is not in the Code].

1906—Act Mar. 19, 1906, changed the authority from police court to the "juvenile court" and raised age limit to "seventeen."

## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3-116.

## NOTES TO DECISIONS

## In general

The objective of legislation dealing with juvenile offenders is rehabilitation, not punishment. *In re Kroll* (D. C. Mun. App. 1945, 43 A. 2d 706).



**Marriage of ward of court**

The marriage of an incorrigible girl does not automatically terminate the control of the juvenile court over such minor. *Richardson v. Browning* (1927, 18 F. 2d 1008, 57 App. D. C. 186).

**§ 32-210. Detailing of police to aid in enforcement of laws relating to cruelty to animals.**

The Commissioner of the District of Columbia is authorized, in his discretion, to detail from time to time one or more members of the Metropolitan police force to aid the Washington Humane Society in the enforcement of laws relating to cruelty to animals as well as of the laws relating to cruelty to children. (June 25, 1892, 27 Stat. 60, ch. 135, § 2.)

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**§ 32-211. Right to alter, amend, or repeal reserved.**

Congress shall have power to alter, amend, or repeal sections 32-201 to 32-207 at any time. (June 21, 1870, 16 Stat. 159, ch. 135, § 8.)

**Chapter 3.—HOSPITALS AND ASYLUMS—GENERAL PROVISIONS****Sec.**

- 32-301. Private hospitals and asylums—To be licensed.
- 32-302. Director of Public Health to enforce regulations—Inspection.
- 32-303. Penalties for violation of sections 32-301, 32-302 or regulations.
- 32-304. District of Columbia Council to make regulations.
- 32-305. Prosecutions in Superior Court.
- 32-306. Smallpox hospital—Regulations.
- 32-307. Washington Asylum Hospital continued.
- 32-308. Admission of pay patients to psychopathic ward of Gallinger Hospital.
- 32-309. Admission of pay patients to contagious-disease ward of Gallinger Hospital.
- 32-310. Admission of pay patients to Tuberculosis Hospital.
- 32-311. Limitation on erection of hospital for contagious diseases.
- 32-312. Children's Tuberculosis Sanatorium—Construction and equipping authorized.
- 32-313. Admission of pay patients to Children's Tuberculosis Sanatorium.
- 32-314, 32-315. Repealed.
- 32-316. Providence and Garfield Memorial Hospitals to accept contagious-disease cases sent by Commissioner.
- 32-316a. Providence Hospital authorized to conduct medical and nursing school—Examinations—Certificate awards.
- 32-317. Omitted.
- 32-318. Omitted.
- 32-318a. Charges for treatment of patients.
- 32-319. Omitted.
- 32-320. Omitted.
- 32-321. Availability of appropriations.
- 32-322. Availability of appropriations to furnish medical services to non-indigent persons.
- 32-323. Conveyance of property to Columbia Hospital.
- 32-324. Restriction on use of property.
- 32-325. Creation of lien in favor of the United States.
- 32-326. Standards of indigency—Emergency patients.
- 32-327. Volunteer services in connection with medical services in Health Department.
- 32-328. Volunteer services in connection with Glenn Dale Tuberculosis Sanatorium.
- 32-329. Volunteer services in connection with Gallinger Municipal Hospital and the Tuberculosis Hospital.
- 32-330. Repealed.

**§ 32-301. Private hospitals and asylums—To be licensed.**

No person shall in the District of Columbia establish or maintain any private hospital or asylum, either for the reception of human beings or of domestic animals, unless or until licensed by the Commissioner of said District. (Apr. 20, 1908, 35 Stat. 64, ch. 148, § 1.)

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**GRANTS AND LOANS FOR CONSTRUCTION AND MODERNIZATION OF HOSPITALS**

Pub. L. 90-457, act Aug. 3, 1968, 82 Stat. 631, section 1 provided: That this Act may be cited as the "District of Columbia Medical Facilities Construction Act of 1968".

**AUTHORIZATION OF APPROPRIATIONS FOR GRANTS**

SEC. 2. There are authorized to be appropriated for the fiscal year ending June 30, 1969, and for each of the next three fiscal years, such sums as may be necessary, not to exceed in the aggregate \$40,052,000, to enable the Secretary of Health, Education, and Welfare (hereafter in this Act referred to as the "Secretary"), to make grants to assist in meeting the cost of projects for the modernization of public or nonprofit private hospitals and in meeting the cost of projects for the construction or modernization of public health centers, long-term care facilities, including extended care facilities, diagnostic or treatment centers, rehabilitation facilities, facilities for the mentally retarded, and community mental health centers in the District of Columbia. Sums so appropriated shall remain available until expended.

**LOANS FOR THE CONSTRUCTION OR MODERNIZATION OF HOSPITALS AND OTHER HEALTH FACILITIES**

SEC. 3. (a) The Secretary may make loans to assist in meeting the cost of projects for the construction or modernization of any hospital or other facility referred to in section 2 of this Act. The Secretary may make a loan under this section only if he determines that the applicant for the loan is unable to obtain the amount of such loan for the project from other public or private sources at reasonable rates of interest. The amount of any loan made under this section may not exceed 50 per centum of the cost of the project for which the loan is sought.

(b) Any such loan may be made only on the basis of an application submitted to the Secretary in such form and containing such information and assurances as he may prescribe.

(c) Each such loan shall bear interest at the rate of 2½ per centum per annum on the unpaid balance thereof and shall be repaid over a period determined by the Secretary to be appropriate, but not exceeding 50 years.

(d) There is authorized to be appropriated \$40,575,000 to carry out the provisions of this section.

**APPROVAL OF APPLICATIONS**

SEC. 4. (a) An application for a grant or loan with respect to any project may be approved by the Secretary under this Act only if an application for a grant with respect to such project has been filed under a Medical Facilities Act (which for purposes of this Act means title VI of the Public Health Service Act or, where appropriate, title II or part C of title I of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963) and—

(1) has been approved under a Medical Facilities Act and the application filed under this Act is for additional funds in connection therewith, or

(2) has been denied under a Medical Facilities Act because insufficient funds are available from the allotments of the District of Columbia under the applicable Medical Facilities Act to permit approval of the application.

In determining whether to approve an application for a grant under Medical Facilities Act for any project in the



District of Columbia, the availability of additional funds for such project under this Act shall be taken into consideration. Approval of such application may be made contingent upon the approval of an application or applications with respect to such project under this Act and upon such additional funds being made so available.

(b) The Secretary shall establish criteria for determining the order in which to approve, under this Act, applications for grants and loans with respect to projects. Such criteria with respect to construction projects for the same type of facility (or for modernization projects) shall be the criteria developed by the State Agency of the District of Columbia pursuant to the State plan approved under the applicable Medical Facilities Act.

(c) In the case of any project with respect to which an application for a grant or loan is filed under this Act and with respect to which an application for a grant has been denied under a Medical Facilities Act, such application under this Act may be approved only if there is compliance with the same terms and conditions (including determination, in accordance with the applicable State plan, that the project is needed) as are applicable to applications for grants under the Medical Facilities Act, other than the availability of sufficient funds in the appropriate allotment of the District of Columbia.

(d) An application for a grant or loan under this Act with respect to any project may not be approved unless an opportunity to review the application has been afforded to a body, found by the Secretary to be a responsible metropolitan areawide planning body, and any recommendations of such body that were timely made have been considered by the appropriate State agency of the District of Columbia and have been submitted to the Secretary in connection with the application.

#### PAYMENTS

SEC. 5. (a) Payments under this Act with respect to any project shall be made in the manner provided under the applicable Medical Facilities Act for payment of the Federal share of the cost of projects for which applications are approved under such Act; except that payments under this Act shall also be subject to such reasonable conditions as the Secretary deems appropriate to safeguard the Federal interest.

(b) The total of the payments of grants made under this Act with respect to any project, together with any payments made with respect thereto under a Medical Facilities Act, may not exceed—

(1) in the case of a construction project for a long-term care facility, including extended care facilities, a diagnostic or treatment center, or a rehabilitation facility, 66⅔ per centum of the cost of such project; and

(2) in the case of any other project (including a modernization project), 50 per centum of the cost of such project.

#### RECOVERY OF PAYMENTS

SEC. 6. (a) Payments of grants under this Act shall be subject to recovery or recapture under the same conditions and to the same extent as is provided under the applicable Medical Facilities Act with respect to payments made thereunder.

(b) If, at any time before a loan made under this Act has been repaid in full, an event occurs for which (if a grant had been made under a Medical Facilities Act) recovery by the United States would be authorized, the unpaid balance of the loan shall become immediately due and payable by the applicant, and any transferee of the facility for which such loan was made shall be liable to the United States for such repayment.

#### MEANING OF TERMS

SEC. 6. The terms used in this Act shall have the same meaning as when used in the applicable Medical Facilities Act.

#### CROSS REFERENCES

D.C. Council may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

Exemption from provisions of Alcoholic Beverage Control Act, see § 25-109.

Powers and duties of Board of Public Welfare concerning charitable, corrective, and penal institutions, see § 3-101 et seq.

Revocation or suspension of license for violation of Uniform Narcotic Drug Act, see § 33-418.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-253, 32-302, 32-303, 32-305.

#### NOTES TO DECISIONS

##### Liability for torts

Employees of charitable hospital are not "beneficiaries" but are strangers to the charity, and the hospital's immunity from liability for torts of its employees or agents does not preclude recovery by them for injuries. *Hughes v. President and Directors of Georgetown College* (1940, 33 F. Supp. 867).

#### § 32-302. Director of Public Health to enforce regulations—Inspection.

It shall be the duty of the Director of Public Health of the District of Columbia, and of such agents and employees in the service of the health department of said District as he may designate for that purpose, to enforce the provisions of sections 32-301 to 32-305 and of all regulations made by authority thereof; and said director of public health and agents and employees are hereby authorized, in the performance of the duty aforesaid, to enter and inspect during all reasonable hours all private hospitals and asylums in said District. No person shall interfere with said director of public health, or with any agent or employee aforesaid, in the performance of his official duty, nor hinder, prevent, or refuse to permit any inspection authorized by said sections. (Apr. 20, 1908, 35 Stat. 64, ch. 148, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

#### CHANGE OF NAME

"Director of Public Health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under § 6-101.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32-303, 32-305.

#### § 32-303. Penalties for violation of sections 32-301, 32-302 or regulations.

Any person who, for himself or as the employee or agent of another person, or as a member, officer, or employee or a firm or corporation, violates any of the provisions of sections 32-301, 32-302, or any regulations made hereunder by the District of Columbia Council, or aids in the violation thereof, shall be punished by a fine not exceeding two hundred dollars or by imprisonment for not more than thirty days, or by both fine and imprisonment, in the discretion of the court. (Apr. 20, 1908, 35 Stat. 65, ch. 148, § 3.)

#### CODIFICATION

In the phrase "regulations made hereunder by the . . .", reference to the District of Columbia Council was substituted for "commissioners of the District of Columbia" on authority of § 32-304 of this chapter and § 402(245) of Reorg. Plan No. 3 of 1967, under which the regulations are made by the Council.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32-302, 32-305.

#### § 32-304. District of Columbia Council to make regulations.

The District of Columbia Council be, and it is hereby, authorized and empowered to promulgate



from time to time such regulations as in its judgment public interests require to govern the establishment and maintenance of private hospitals and asylums, whether for human beings or for domestic animals, and to regulate the issue, suspension, and revocation of licenses aforesaid. (Apr. 20, 1908, 35 Stat. 65, ch. 148, § 4.)

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(245) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of promulgating regulations to govern the establishment and maintenance of private hospitals and asylums, and regulating the issuance, suspension, and revocation of licenses, under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

#### CROSS REFERENCES

D.C. Council may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

Rules and regulations generally, see § 1-226 and notes.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32-302, 32-305.

### § 32-305. Prosecutions in Superior Court.

All prosecutions under sections 32-301 to 32-304 shall be in the Superior Court of the District of Columbia upon information signed by the corporation counsel of said District or by one of his assistants. (Apr. 20, 1908, 35 Stat. 65, ch. 148, § 5; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Pub. L. 91-358, amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-253, 32-302.

### § 32-306. Smallpox hospital—Regulations.

The District of Columbia Council is hereby authorized to make rules and regulations for the government of the smallpox hospital. (June 8, 1896, 29 Stat. 281, ch. 373.)

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(246) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of making rules and regulations under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

#### CROSS REFERENCE

Power of D.C. Council to make rules and regulations to prevent and control spread of communicable diseases, see § 6-118.

### § 32-307. Washington Asylum Hospital continued.

The hospital service being rendered on June 29, 1922, by the Washington Asylum Hospital, in so far as it is not provided for in the new buildings of the Gallinger Municipal Hospital, may be continued in the old buildings occupied on June 29, 1922. (June 29, 1922, 42 Stat. 702, ch. 249, § 1.)

#### TRANSFER OF FUNCTIONS

See note under § 32-308 concerning Gallinger Municipal Hospital and the Health Department.

#### NOTES TO DECISIONS

##### In general

Mere change of location of the Gallinger Hospital served to repeal the original dedication of the Upshur tract for municipal hospital purposes. *Rudolph v. Hunt* (1923, 286 F. 1007, 52 App. D.C. 343).

### § 32-308. Admission of pay patients to psychopathic ward of Gallinger Hospital.

Pay patients may be admitted to the psychopathic ward of the Gallinger Municipal Hospital for care and treatment at such rates and under such regulations as may be established by the District of Columbia Council, in so far as such admissions will not interfere with admission of indigent patients. (June 7, 1924, 43 Stat. 568, ch. 302, § 1.)

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(247) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the functions of the Board of Commissioners of establishing rates and regulations respecting the admission of pay patients under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

#### TRANSFER OF FUNCTIONS

Gallinger Municipal Hospital was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorg. Plan No. 5 of 1952. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorg. Plan No. 3 of 1967.

Reorganization Order No. 57 of the Board of Commissioners dated June 30, 1953, combined with Reorganization Order No. 52, District of Columbia Pound, dated June 30, 1953, and redesignated Organization Order No. 141, dated Feb. 11, 1964, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and para-medical functions. Prior to its redesignation the order abolished the previously existing Gallinger Municipal Hospital and Health Department and transferred all of their positions and functions to the new department. It further provided that within the department, the District of Columbia General Hospital performs all functions previously performed by Gallinger Municipal Hospital. Functions as stated in Org. Ord. No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order [Org. Action] No. 69-96, dated Mar. 7, 1969, as amended by Commissioner's Order No. 70-83, dated Mar. 6, 1970.

The Plans and Orders are set out in the Appendix to Title 1.

#### NOTES TO DECISIONS

##### In general

The District of Columbia government was not included in the Federal Tort Claims Act. *Calomeris adm'tx.*, etc.



v. *District of Columbia* (1955, 226 F. 2d 266, 96 U.S. App. D.C. 364).

#### Governmental function

District of Columbia General Hospital is not immune from suit for injuries sustained by paying patient allegedly as result of negligent treatment on theory that the District is a governmental entity. *J. R. Spencer v. General Hospital of the District of Columbia et al.* (1969, 425 F. 2d 479, 138 U.S. App. D.C. 48).

Purpose of District of Columbia general hospital is care of indigent sick, a governmental function, and District was not liable for alleged negligent injury to a patient, irrespective of whether injured patient was a pay patient. *Calomeris admix., etc. v. District of Columbia* (1955, 226 F. 2d 266, 96 U.S. App. D.C. 364).

Care for the indigent sick is a "governmental function". *Id.*

### § 32-309. Admission of pay patients to contagious-disease ward of Gallinger Hospital.

Pay patients may be admitted to the contagious-disease ward of the Gallinger Municipal Hospital for care and treatment at such rates and under such regulations as may be established by the District of Columbia Council, in so far as such admissions will not interfere with admission of indigent patients. (Apr. 14, 1932, 47 Stat. 79, ch. 98, § 1.)

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(248) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the functions of the Board of Commissioners of establishing rates and regulations respecting the admission of pay patients under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

#### TRANSFER OF FUNCTIONS

See note under section 32-308 concerning Gallinger Municipal Hospital and the Health Department.

#### NOTES TO DECISIONS

##### In general

The District of Columbia government was not included in the Federal Tort Claims Act. *Calomeris admix., etc. v. District of Columbia* (1955, 226 F. 2d 266, 96 U. S. App. D. C. 364).

##### Governmental function

District of Columbia General Hospital is not immune from suit for injuries sustained by paying patient allegedly as result of negligent treatment on theory that the District is a governmental entity. *J. R. Spencer v. General Hospital of the District of Columbia et al.* (1969, 425 F. 2d 479, 138 U.S. App. D.C. 48).

Purpose of District of Columbia general hospital is care of indigent sick, a governmental function, and District was not liable for alleged negligent injury to a patient, irrespective of whether injured patient was a pay patient. *Calomeris admix., etc. v. District of Columbia* (1955, 226 F. 2d 266, 96 U. S. App. D. C. 364).

Care for the indigent sick is a "governmental function". *Id.*

### § 32-310. Admission of pay patients to Tuberculosis Hospital.

Pay patients may be admitted to the Tuberculosis Hospital for care and treatment at such rates and under such regulations as may be established by the District of Columbia Council, in so far as such admissions will not interfere with admission of indigent patients. (June 7, 1924, 43 Stat. 568, ch. 302, § 1.)

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(249) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the functions of the Board

of Commissioners of establishing rates and regulations respecting the admission of patients under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

#### CROSS REFERENCE

Jurisdiction and control of Tuberculosis Hospital, see § 6-117 and note thereunder.

#### NOTES TO DECISIONS

##### In general

The District of Columbia government was not included in the Federal Tort Claims Act. *Calomeris admix., etc. v. District of Columbia* (1955, 226 F. 2d 266, 96 U.S. App. D.C. 364).

##### Governmental function

In this case, the court held that the District of Columbia in expending public moneys for public purpose in connection with treatment of patient for tuberculosis was asserting public right in attempting to recover that amount, though suit was based on contract to pay for the services. *L. E. Weiss v. District of Columbia* (D.C. App. 1970, 263 A. 2d 638).

District of Columbia General Hospital is not immune from suit for injuries sustained by paying patient allegedly as result of negligent treatment on theory that the District is a governmental entity. *J. R. Spencer v. General Hospital of the District of Columbia et al.* (1969, 425 F. 2d 479, 138 U.S. App. D.C. 48).

Purpose of District of Columbia general hospital is care of indigent sick, a governmental function, and District was not liable for alleged negligent injury to a patient, irrespective of whether injured patient was a pay patient. *Calomeris admix., etc. v. District of Columbia* (1955, 226 F. 2d 266, 96 U.S. App. D.C. 364).

Care of the indigent sick is a "governmental function". *Id.*

##### Statute of limitations

The statute of limitations does not apply to suit brought by District of Columbia to recover moneys expended on treating patient for tuberculosis though suit was based on contract to pay for those services. *L. E. Weiss v. District of Columbia* (D.C. App. 1970, 263 A. 2d 638).

### § 32-311. Limitation on erection of hospital for contagious diseases.

No building for use as a public or private hospital for contagious diseases shall be erected in the District of Columbia within three hundred feet of any building owned by a private individual or any other party than the one erecting the building. (Mar. 2, 1895, 28 Stat. 758, ch. 176.)

#### CROSS REFERENCE

D.C. Council may make rules and regulations to control and prevent spread of communicable diseases, see § 6-118.

### § 32-312. Children's Tuberculosis Sanatorium—Construction and equipping authorized.

The Commissioner of the District of Columbia is authorized to acquire, by purchase, condemnation, or otherwise, a site, and to cause to be constructed thereon, in accordance with plans and specifications approved by such Commissioner, suitable buildings and structures for use as a children's tuberculosis sanatorium, including necessary approaches and roadways, heating and ventilating apparatus, furniture, equipment, and accessories. (Mar. 1, 1929, 45 Stat. 1425, ch. 422, § 1.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.



## APPROPRIATIONS

Act Apr. 18, 1930, 46 Stat. 218, ch. 186, increased the authorized appropriation for the children's tuberculosis sanatorium from \$500,000 to \$625,000 or so much thereof as may be necessary.

Section 2 of act Mar. 1, 1929, 45 Stat. 1425, ch. 422, authorized an appropriation of \$500,000, or so much thereof as might be necessary to construct and equip a children's tuberculosis sanatorium, to be appropriated in like manner as other appropriations for the District of Columbia.

## ACQUISITION OF LAND

Act Apr. 18, 1930, 46 Stat. 218, ch. 186, provided in part: "That if the land proposed to be acquired as a site for the said sanatorium is without the District of Columbia the title to said property shall be taken directly to and in the name of the United States, and in case a satisfactory price cannot be agreed upon for the purchase of said land, the Attorney General of the United States, at the request of the Commissioners of the District of Columbia, shall institute condemnation proceedings to acquire such land as may be selected for said site either in the State of Maryland or in the State of Virginia in accordance with the laws of said States, and expenses of procuring evidence of title or of condemnation, or both, shall be paid out of the appropriation herein made for the purchase of said site."

## § 32-313. Admission of pay patients to Children's Tuberculosis Sanatorium.

Pay patients may on and after June 23, 1936, be admitted to the Children's Tuberculosis Sanatorium for care and treatment at such rates and under such regulations as may be established by the District of Columbia Council, insofar as such admissions will not interfere with admission of indigent patients. (June 23, 1936, 49 Stat. 1880, ch. 726, § 1.)

## TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(250) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the functions of the Board of Commissioners of establishing rates and regulations respecting the admission of pay patients under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

## CROSS REFERENCE

Jurisdiction and control of Tuberculosis Sanatoria, see § 6-117 and note thereunder.

## §§ 32-314, 32-315. Repealed. June 28, 1952, 66 Stat. 288, ch. 486, § 4(a)(2), (3).

Section 32-314, act Mar. 4, 1915, 38 Stat. 1147, ch. 147, related to improvements or repairs to Columbia Hospital for Women and Lying-in Asylum buildings and grounds.

Section 32-315, act Mar. 3, 1893, 27 Stat. 551, ch. 199, § 1, related to filling of vacancies among trustees of Columbia Hospital for Women and Lying-in Asylum by District Commissioners.

## SAVINGS PROVISION

Section 4 (b) of act June 28, 1952, provided that: "the repeals \* \* \* shall not affect the current term of office of any trustee or director of the Columbia Hospital for Women and Lying-in Asylum appointed prior to the date of the enactment of this Act [June 28, 1952], and the existing directors and their successors shall have all the powers and authority of the original incorporators named in the Act of Incorporation of said hospital \* \* \* and the power to fill vacancies on the board of directors".

## § 32-316. Providence and Garfield Memorial Hospitals to accept contagious-disease cases sent by Commissioner.

Providence Hospital and Garfield Memorial Hospital shall receive at any time such patients suffering

with minor contagious diseases as may be sent by the Commissioner of the District of Columbia at the request of the Director of Public Health of the District. (July 1, 1898, 30 Stat. 635, ch. 546; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

## CHANGE OF NAME

"Director of Public Health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## CROSS REFERENCE

Rules and regulations by D.C. Council to prevent spread of communicable diseases, see §§ 6-118, 32-306.

## § 32-316a. Providence Hospital authorized to conduct medical and nursing school—Examinations—Certificate awards.

The Providence Hospital is authorized to conduct not only a hospital, clinic, and all the departments, staffs, and services usually connected therewith, but also a school for the education and training of nurses and interns with full power to examine the said nurses and interns and to issue suitable certificates evidencing the completion of their courses of training. (Oct. 29, 1945, 59 Stat. 551, ch. 439, § 2.)

## CHANGE OF NAME

Section 1 of act Oct. 29, 1945, provided: "The corporate name of the said corporation shall be 'Providence Hospital' instead of 'The Directors of Providence Hospital.'"

## § 32-317. Omitted.

Section, based on R.S. § 2038 and Act June 23, 1874, 18 Stat. 223, ch. 455, § 1, related to direction of and expenditures for Freedmen's Hospital, and was omitted by reason of the provisions of act Sept. 21, 1961, 75 Stat. 542, Pub. L. 87-262 (hereinafter set out in full) transferring the hospital to Howard University. Section 7 of the act repeals all laws specifically applicable to Freedmen's Hospital, effective with the transfer of the Hospital pursuant to section 1 of the act.

## ACT SEPT. 21, 1961, TRANSFERRING FREEDMEN'S HOSPITAL TO HOWARD UNIVERSITY

## TRANSFER OF FREEDMEN'S HOSPITAL

SECTION 1. (a) For the purpose of assisting in the provision of teaching hospital resources for Howard University, thereby assisting the university in the training of medical and allied personnel and in providing hospital services for the community, the Secretary of Health, Education, and Welfare shall, pursuant to agreement with the board of trustees of Howard University, transfer to Howard University, without reimbursement, all right, title, and interest of the United States in certain lands in the District of Columbia, together with the buildings and improvements thereon, and the personal property used in connection therewith (as determined by the Secretary), commonly known as Freedmen's Hospital.

(b) It is the intent of Congress (1) that the transfer of Freedmen's Hospital to Howard University be effected as soon as practicable, (2) to assure the well-being of patients at Freedmen's Hospital during the period of transition, and (3) that the transfer be effected with minimum dislocation of the present hospital staff and maximum consideration of their interests as employees.

(c) The Secretary of Health, Education, and Welfare shall report to the Congress the terms of the agreement for such transfer.

## PROVISION FOR EMPLOYEES OF HOSPITAL

SEC. 2. (a) The agreement for transfer of Freedmen's Hospital referred to in section 1 shall include provisions to assure that—



(1) all individuals who are career or career-conditional employees of the hospital on the day preceding the effective date of the transfer of the hospital, except those in positions with respect to which they have been notified not less than six months prior to the effective date of such transfer that their positions are to be abolished, will be offered an opportunity to transfer to Howard University;

(2) Howard University—

(A) will not reduce the salary levels for such employees who transfer,

(B) will deposit currently (i) in the civil service retirement and disability fund created by the Act of May 22, 1920, the employee deductions and agency contributions required by the Civil Service Retirement Act, and (ii), in the fund created by section 5(c) of the Federal Employees' Group Life Insurance Act of 1954 the employee deductions and agency contributions required by the Federal Employees' Group Life Insurance Act of 1954,

[The Civil Service Retirement Act and the Federal Employees' Group Life Insurance Act of 1954, referred to in the above-quoted provisions, were repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a), and are now covered by various provisions in title 5, U.S. Code. See codification notes under §§ 31-635 and 31-1403].

(C) will provide other benefits for such employees as nearly equivalent as may be practicable to those generally applicable, on the effective date of the transfer of the hospital, to civilian employees of the United States, and

(D) in determining the seniority rights of its employees, Howard University will credit service with Freedmen's Hospital performed by such employees who transfer, on the same basis as it would credit such service had it been performed for such University;

(3) the transfer will become effective not later than the beginning of the second month which begins after construction of the new hospital facilities authorized by section 3 is commenced.

(b) The Department of Health, Education, and Welfare shall make every reasonable effort to place in other comparable Federal positions all individuals who are career or career-conditional employees of Freedmen's Hospital on the date of enactment of this Act and who do not transfer to Howard University.

(c) Each individual who is an employee of Freedmen's Hospital on the date of enactment of this Act and who transfers to Howard University shall, so long as he is continuously in the employ of Howard University, be regarded as continuing in the employ of the United States for the purposes of the Civil Service Retirement Act, the Federal Employees' Group Life Insurance Act of 1954. For purposes of section 3121(b) of the Internal Revenue Code of 1954 and section 210 of the Social Security Act, service performed by such individual during the period of his employment at Howard University shall be regarded as though performed in the employ of the United States.

[The Civil Service Retirement Act and the Federal Employees' Group Life Insurance Act of 1954, referred to in the above-quoted provisions, were repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a), and are now covered by various provisions in title 5, U.S. Code. See codification notes under §§ 31-635 and 31-1403].

#### AUTHORIZATION OF CONSTRUCTION OF HOSPITAL FACILITIES

SEC. 3. For the purpose specified in section 1, there are hereby authorized to be appropriated such sums as may be necessary for the construction of a building or buildings and facilities, including equipment, and for remodeling of existing buildings (including repair and replacement of equipment) which are to be combined with the building or buildings and facilities so constructed, to provide a hospital with a capacity of not to exceed five hundred beds.

#### CONTINUED OPERATION OF FACILITIES

SEC. 4. If, within twenty years after the completion of construction (as determined by the Secretary of Health, Education, and Welfare) of the new hospital facilities

authorized by section 3, any of such facilities, or of the facilities transferred pursuant to section 1 and combined with such new facilities, are transferred by Howard University to any other person or entity (except a transfer to the United States) or cease to be operated by the university as teaching hospital facilities, the United States shall be entitled to recover from the transferee or the university, in the case of a transfer, or from the university, if there is no transfer, an amount equal to the then value of such facilities (or so much thereof as is involved in the transfer, as the case may be), such value to be determined by agreement of the parties or by action brought in the United States District Court for the District of Columbia.

#### AUTHORIZATION OF APPROPRIATIONS FOR OPERATION

SEC. 5. In order to facilitate operation of teaching hospital facilities at Howard University, there are authorized to be appropriated annually to the university such sums as the Congress may determine, for the partial support of the operation of such facilities giving consideration to the cost imposed by the provisions of section 2 and the portion of the agreement under this Act relating to such provisions. The cost of operating such facilities, the appropriations pursuant to this section, and any other income derived from such operation or available for such purpose shall be identified and accounted for separately in the accounts of the university.

#### FINANCIAL POLICY

SEC. 6. It is hereby declared to be the policy of the Congress that, to the extent consistent with good medical teaching practice, the Howard University Hospital facilities shall become progressively more self-supporting. In order to further this policy, the President shall submit to the Congress a report, based on a study of the financing of the operation of the hospital, containing his recommendations on the rate at which, consistent with the above policy, Federal financial participation in such cost of operation shall be reduced. Such report shall be submitted not later than the end of the second calendar year following the year in which the construction of the new hospital facilities, authorized by section 3, is completed.

#### REPEAL OF LAWS

SEC. 7. All laws heretofore applicable specifically to Freedmen's Hospital are, to the extent of such applicability, repealed, effective with the transfer of Freedmen's Hospital pursuant to section 1.

#### TRANSFER OF FUNDS

SEC. 8. All unexpended balances of appropriations, allocations, and other funds, available or to be made available, of Freedmen's Hospital are, effective with the transfer of Freedmen's Hospital pursuant to section 1, transferred to Howard University for use in the operation of the Howard University Hospital facilities, except to the extent (determined by the Director of the Bureau of the Budget) required to meet obligations already incurred and not assumed by the university.

(Sept. 21, 1961, 75 Stat. 542, Pub. L. 87-262, §§ 1-8.)

#### § 32-318. Omitted.

Section, based on Acts June 26, 1912, 37 Stat. 172, ch. 182, § 1; May 29, 1928, 45 Stat. 992, ch. 901, § 1, par. 78, related to admission of patients to Freedmen's Hospital, charges, and disposition of money collected, and is omitted by reason of the provisions of act Sept. 21, 1961, 75 Stat. 542, Pub. L. 87-262 (set out under § 32-317) transferring the hospital to Howard University. Section 7 of the act repeals all laws specifically applicable to Freedmen's Hospital, effective with the transfer of the Hospital pursuant to section 1 of the act.

#### § 32-318a. Charges for treatment of patients.

The amounts to be charged the District of Columbia and other establishments of the Government for the treatment of patients for which they are responsible shall be calculated on the basis of a per diem rate approved by the Office of Management and



Budget. (July 3, 1945, 59 Stat. 366, ch. 263, title II, § 201; July 26, 1946, 60 Stat. 687, ch. 672, title II, § 201; July 8, 1947, 61 Stat. 265, ch. 210, title II, § 201.)

#### AMENDMENTS

1947—Act July 8, 1947, substituted "Bureau of the Budget" in lieu of "the President."

1946—Act July 26, 1946, amended section by omitting "recommended annually in advance by the Federal Board of Hospitalization and" preceding "approved."

#### CHANGE OF NAME

The "Bureau of the Budget" was changed to "Office of Management and Budget" by section 102(a) of Reorganization Plan No. 2 of 1970, 84 Stat. 2085.

#### § 32-319. Omitted.

Section, based on Acts Mar. 3, 1905, 33 Stat. 1190, ch. 1483, § 1; Mar. 16, 1926, 44 Stat. 208, ch. 58, related to authority to contract for the care and treatment of persons from the District admitted to Freedmen's Hospital, and is omitted by reason of the provisions of act Sept. 21, 1961, 75 Stat. 542, Pub. L. 87-262 (set out under § 32-317) transferring the hospital to Howard University. Section 7 of the act repeals all laws specifically applicable to Freedmen's Hospital, effective with the transfer of the Hospital pursuant to section 1 of the act.

#### § 32-320. Omitted.

Section, based on Act July 1, 1916, 39 Stat. 311, ch. 209, § 1, related to disposition of unclaimed money left at Freedmen's Hospital by deceased patients, and is omitted by reason of the provisions of act Sept. 21, 1961, 75 Stat. 542, Pub. L. 87-262 (set out under § 32-317) transferring the hospital to Howard University. Section 7 of the act repeals all laws specifically applicable to Freedmen's Hospital, effective with the transfer of the Hospital pursuant to section 1 of the act.

#### § 32-321. Availability of appropriations.

On and after June 30, 1945, no District of Columbia appropriations shall be available for the care of persons, except in emergency cases, where the person has been a resident of the District of Columbia for less than one year at the time of application for admission. (June 30, 1945, 59 Stat. 282, ch. 209, § 1.)

#### SIMILAR PROVISIONS

1945—June 28, 1944, 58 Stat. 519, ch. 300, § 1.

1944—July 1, 1943, ch. 184, § 1, 57 Stat. 328.

1943—June 27, 1942, ch. 452, § 1, 56 Stat. 441.

1942—July 1, 1941, ch. 271, § 1, 55 Stat. 517.

1941—June 12, 1940, ch. 333, § 1, 54 Stat. 323.

#### CROSS REFERENCE

Emergency cases and standards of indigency, see § 32-326.

#### § 32-322. Availability of appropriations to furnish medical services to non-indigent persons.

On and after July 9, 1946, no part of any appropriation for Gallinger Municipal Hospital or the Health Department shall be used for furnishing, other than at rates prescribed by the District of Columbia Council, clinical services, drugs, pharmaceutical preparations, or X-ray service, to persons who are not indigent, except in emergency cases or where the Council determines it to be necessary in the public interest. (July 9, 1946, 60 Stat. 511, ch. 544, § 1.)

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(251) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the functions of the Board of Commissioners of prescribing rates for furnishing clinical services, drugs, pharmaceutical preparations, or

x-ray service, and determining the necessity of using appropriations without regard to the rates prescribed, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

#### TRANSFER OF FUNCTIONS

See note under section 32-308 concerning Gallinger Municipal Hospital and the Health Department.

#### SIMILAR PROVISIONS

Similar provisions were contained in the District of Columbia Appropriation Act, 1946, act June 30, 1945, 59 Stat. 282, ch. 209, § 1.

#### NOTES TO DECISIONS

##### In general

The District of Columbia government was not included in the Federal Tort Claims Act. *Calomeris admtr., etc. v. District of Columbia* (1955, 226 F. 2d 266, 96 U. S. App. D. C. 364).

##### Governmental function

District of Columbia General Hospital is not immune from suit for injuries sustained by paying patient allegedly as result of negligent treatment on theory that the District is a governmental entity. *J. R. Spencer v. General Hospital of the District of Columbia et al.* (1969, 425 F. 2d 479, 138 U.S. App. D.C. 48).

Purpose of District of Columbia general hospital is care of indigent sick, a governmental function, and District was not liable for alleged negligent injury to a patient, irrespective of whether injured patient was a pay patient. *Calomeris admtr., etc. v. District of Columbia* (1955, 226 F. 2d 266, 96 U. S. App. D. C. 364).

Care for the indigent sick is a "governmental function". *Id.*

#### § 32-323. Conveyance of property to Columbia Hospital.

Subject to the provisions of section 32-324, the Administrator of General Services and the Commissioner of the District of Columbia are directed to convey, without monetary consideration, to the Columbia Hospital for Women and Lying-in Asylum, Washington, District of Columbia, a corporation created by the Act of June 1, 1866 (14 Stat. 55), all right, title, and interest of the United States and of the District of Columbia in and to those pieces or parcels of land in the District of Columbia, described as follows, together with all improvements thereon and appurtenances thereto:

(a) All that piece or parcel of land situate and lying in the city of Washington in the District of Columbia and known as part of square numbered 25, as laid down and distinguished on the plat or plan of said city, as follows: Beginning at the southeast corner of said square and running thence north with Twenty-fourth Street two hundred and thirty-one feet and seven inches; thence west two hundred and thirty feet and six inches; thence north to M Street two hundred and thirty-one feet and ten inches; thence west with M Street two hundred and fifteen feet and six inches to Twenty-fifth Street; thence south with Twenty-fifth Street two hundred and sixty-three feet and five inches; thence east two hundred feet; thence south to L Street two hundred feet; thence east with L Street two hundred and forty-six feet to the beginning; and being the property conveyed to the United States of America by deed dated October 17, 1876, from the Columbia Hospital for Women and Lying-in Asylum, recorded in liber 836, folio 159, of the land records of the District of Columbia.



(b) All that piece or parcel of land situate and lying in the city of Washington in the District of Columbia on the northeast corner of L and Twenty-fifth Streets Northwest, being a part of original square numbered 25, as follows: Beginning at the southwest corner of said square and running thence east with the line of said L Street two hundred feet for a corner; thence north two hundred feet for a corner; thence west two hundred feet for a corner; and thence south two hundred feet to the place of beginning; containing forty thousand square feet of ground, more or less, and being the property conveyed to the United States of America by deed dated July 6, 1872, from the Columbia Hospital for Women and Lying-in Asylum and Edward Maynard, recorded in liber 811, folio 481 of the land records of the District of Columbia. (June 28, 1952, 66 Stat. 287, ch. 486, § 1.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32-324, 32-325.

#### § 32-324. Restriction on use of property.

The deed conveying the property described in section 32-323 shall provide that no part of said property shall, without the consent of the United States, be devoted to any other purpose than a hospital for women. (June 28, 1952, 66 Stat. 288, ch. 486, § 2.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32-323.

#### § 32-325. Creation of lien in favor of the United States.

The provisions of the paragraph following the appropriation for the Washington Hospital for Foundlings in section 32-1003, creating a lien in favor of the United States with respect to the appropriations referred to therein, shall also apply to the appropriations in the aggregate amount of \$50,000, granted in the Act of June 10, 1872 (17 Stat. 360), and in the Act of March 3, 1875 (18 Stat. 386), for the purchase by the United States of the property described in section 32-323, and the acceptance by the Columbia Hospital for Women and Lying-in Asylum of the conveyance of said property shall be deemed an acceptance of and agreement to this provision. (June 28, 1952, 66 Stat. 288, ch. 486, § 3.)

#### § 32-326. Standards of indigency—Emergency patients.

The District of Columbia Council shall establish from time to time reasonable standards of indigency for admission of patients to municipal hospitals of the District of Columbia: *Provided*, That emergency and semi-indigent patients may be admitted to the general ward and tuberculosis ward of Gallinger Municipal Hospital on a full- or part-pay basis at such rates and under such regulations as may be established by the Council insofar as such admissions will not interfere with the admission of indigent patients: *Provided further*, That the Commissioner of the District of Columbia may enter into agreements with the States of Maryland and Vir-

ginia, or the political subdivisions thereof, for the care and treatment in such municipal hospitals of emergency patients who are indigent residents of such States or political subdivisions. (June 27, 1942, 56 Stat. 441, ch. 452, § 1.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(252) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of establishing standards of indigency for admission of patients to municipal hospitals, and establishing rates at which, and regulations under which, emergency and semi-indigent patients may be admitted to wards of Gallinger Municipal Hospital on a full- or part-time basis, under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### TRANSFER OF FUNCTIONS

See note under section 32-308 concerning Gallinger Municipal Hospital.

#### NOTES TO DECISIONS

##### In general

The District of Columbia government was not included in the Federal Tort Claims Act. *Calomeris adm'tx., etc. v. District of Columbia* (1955, 226 F. 2d 266, 96 U. S. App. D. C. 364).

##### Governmental function

District of Columbia General Hospital is not immune from suit for injuries sustained by paying patient allegedly as result of negligent treatment on theory that the District is a governmental entity. *J. R. Spencer v. General Hospital of the District of Columbia et al.* (1969, 425 F. 2d 479, 138 U.S. App. D.C. 48).

Purpose of District of Columbia general hospital is care of indigent sick, a governmental function, and District was not liable for alleged negligent injury to a patient, irrespective of whether injured patient was a pay patient. *Calomeris adm'tx., etc. v. District of Columbia* (1955, 226 F. 2d 266, 96 U. S. App. D. C. 364).

Care for the indigent sick is a "governmental function". *Id.*

#### § 32-327. Volunteer services in connection with medical services in Health Department.

On and after Aug. 3, 1951, the Commissioner of the District of Columbia may without creating any obligation for the payment of money on account thereof, accept such volunteer services as he may deem expedient in connection with the maintenance of medical services in the Health Department. (Aug. 3, 1951, 65 Stat. 161, ch. 292, § 1.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### TRANSFER OF FUNCTIONS

See note under section 32-308 concerning the Health Department.

#### SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation acts:

- 1951—July 18, 1950, 64 Stat. 356, ch. 467, § 1.
- 1950—June 29, 1949, 63 Stat. 312, ch. 279, § 1.
- 1949—June 19, 1948, 62 Stat. 546, ch. 555, § 1.
- 1948—July 25, 1947, 61 Stat. 436, ch. 324, § 1.
- 1947—July 9, 1946, 60 Stat. 511, ch. 544, § 1.
- 1946—June 30, 1945, 59 Stat. 282, ch. 209, § 1.
- 1945—June 28, 1944, 58 Stat. 518, ch. 300, § 1.
- 1944—July 1, 1943, 57 Stat. 327, ch. 184, § 1.
- 1943—June 27, 1942, 56 Stat. 439, ch. 542, § 1.



**§ 32-328. Volunteer services in connection with Glenn Dale Tuberculosis Sanatorium.**

On and after Aug. 3, 1951, the Commissioner of the District of Columbia may, without creating any obligation for the payment of money on account thereof, accept such volunteer services as he may deem expedient in connection with the operation of the Glenn Dale Tuberculosis Sanatorium. (Aug. 3, 1951, 65 Stat. 161, ch. 292, § 1.)

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**TRANSFER OF FUNCTIONS**

See note under § 6-117 concerning Glenn Dale Sanatorium.

**§ 32-329. Volunteer services in connection with Gallinger Municipal Hospital and the Tuberculosis Hospital.**

On and after Aug. 3, 1951, the Commissioner of the District of Columbia may without creating any obligation for the payment of money on account thereof, accept such volunteer services as he may deem expedient in connection with the operation of Gallinger Municipal Hospital and the Tuberculosis Hospital. (Aug. 3, 1951, 65 Stat. 161, ch. 292, § 1.)

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**TRANSFER OF FUNCTIONS**

See note under section 32-308 concerning Gallinger Municipal Hospital.

**§ 32-330. Repealed. Sept. 14, 1965, 79 Stat. 784, Pub. L. 89-183, § 8; eff. Jan. 1, 1966.**

Section, act Feb. 23, 1905, 33 Stat. 740, ch. 738, § 2, as amended dealt with discharge of patients from Saint Elizabeths Hospital, or other institutions who have been cured, the statement required to be filed by the superintendent of the hospital with the Clerk of the United States District Court for the District of Columbia and the restoration of the discharged person to legal status by the court. The matter is now covered by section 21-590.

**Chapter 4.—SAINT ELIZABETHS HOSPITAL**

**Sec.**

32-401. Expense of indigent insane admitted to Saint Elizabeths Hospital from District of Columbia—Admission.

32-401a. Repealed.

32-402. Payment by Federal Treasury of part of expense from appropriations for District.

32-403. Payments to superintendent to be credited to appropriations for care and maintenance of patients.

32-404. Reimbursements on account of expenditures for care of insane to be credited to the District of Columbia.

32-405. Admission of indigent insane of District of Columbia—"Indigent insane person" defined.

32-406. Private patients—Rate of board—Friends to comply with regulations.

32-406a. Patients of District of Columbia or Federal Government—Payment for care—Accounting.

32-407. Admission of insane convicts.

32-408. Authorization to accept gifts.

32-409. Same—Custody and investment of gifts.

32-410. Same—Gifts of intangible personal property.

32-411. Same—Gifts of real property.

32-412 to 32-414. Repealed.

32-415. Regulations—Approval of Secretary of Health, Education, and Welfare.

**Sec.**

32-416. Regulations relating to Board of Public Welfare—District of Columbia.

32-417 to 32-417g. Repealed.

**§ 32-401. Expense of indigent insane admitted to Saint Elizabeths Hospital from District of Columbia—Admission.**

The expense of the indigent persons who may be admitted to Saint Elizabeths Hospital from the District of Columbia shall be paid from the revenues of said District, provided that such indigent persons shall be admitted only upon the order of the executive authority of said District. (Mar. 3, 1877, 19 Stat. 347, ch. 105; July 1, 1916, 39 Stat. 309, ch. 209, § 1.)

**CODIFICATION**

Provision was made for payment of expenses of indigent persons from revenues of the District instead of payment of one half of such expenses from the treasury of the District of Columbia to conform to later enactments and developments which apparently have superseded the 50-50 plan for payment of such expenses. The Act of June 29, 1922, ch. 249, 42 Stat. 668, formed the basis of various sections of the Code which provided the 60-40 plan, and also repealed all prior inconsistent Acts. The 1922 Act was repealed by Act May 16, 1938, ch. 223, § 8, 52 Stat. 375. Under former § 47-134 (see note thereunder) and now under § 47-2501 et seq., annual payments for expenses of the District of Columbia are made by the United States. See, also, note under § 47-126.

**CHANGE OF NAME**

"Government Hospital for the Insane" changed to "Saint Elizabeths Hospital" to conform to act July 1, 1916.

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**CROSS REFERENCES**

Annual payment by United States, appropriations, see §§ 47-2501a and 47-2501b.

Commitment of substantially retarded persons, see § 21-1116.

Hospitalization of United States nationals adjudged insane or found mentally ill in foreign countries, see 24 U.S.C. §§ 321-329.

Other provisions concerning insane persons, see title 21, ch. 5.

Saint Elizabeths Hospital, see 24 U.S.C. § 161 et seq.

**NOTES TO DECISIONS**

**In general**

St. Elizabeths Hospital is a United States government institution, but under appropriate statutes indigent insane persons and insane persons of dangerous tendencies residing in the District of Columbia are admitted to its benefits, and the expense of their support and treatment is chargeable to the District of Columbia. *Fitzhugh v. District of Columbia* (1940, 109 F. 2d 837, 71 App. D.C. 290).

**§ 32-401a. Repealed, Sept. 15, 1964, 78 Stat. 954, Pub. L. 88-597, § 19(i).**

Section 1 of act June 19, 1948, 62 Stat. 549, provided that the funds of the District of Columbia shall not be available for the care of person admitted on and after June 19, 1948, to Saint Elizabeths Hospital who has not lived in the District of Columbia for more than one year, etc. See new sections 21-501 et seq.

**§ 32-402. Payment by Federal Treasury of part of expense from appropriations for District.**

The expense of the indigent patients admitted to Saint Elizabeths Hospital from the District of Columbia shall be reported to the treasury department, and charged against the appropriations to be paid



toward the expenses of the District by the general government, without regard to the date of their admission. (Mar. 3, 1879, 20 Stat. 395, ch. 182, § 1; July 1, 1916, 39 Stat. 309, ch. 209, § 1.)

#### CODIFICATION

Provision was made for payment of expenses of indigent persons from revenues of the District instead of payment of one half of such expenses from the treasury of the District of Columbia to conform to later enactments and developments which apparently have superseded the 50-50 plan for payment of such expenses. The Act of June 29, 1922, ch. 249, 42 Stat. 668, formed the basis of various sections of the Code which provided the 60-40 plan, and also repealed all prior inconsistent Acts. The 1922 Act was repealed by Act May 16, 1938, ch. 223, § 8, 52 Stat. 375. Under former § 47-134 (see note thereunder) and now under § 47-2501 et seq., annual payments for expenses of the District of Columbia are made by the United States. See, also, note under § 47-126.

#### CHANGE OF NAME

"Government Hospital for the Insane" changed to "Saint Elizabeths Hospital" to conform to act July 1, 1916.

#### CROSS REFERENCES

Annual payment by United States, appropriations, see §§ 47-2501a and 47-2501b.

Saint Elizabeths Hospital, see 24 U.S.C. § 161 et seq.

### § 32-403. Payments to superintendent to be credited to appropriations for care and maintenance of patients.

All sums paid to the Superintendent of Saint Elizabeths Hospital for the care of patients shall be deposited in the Treasury to the credit of the appropriation for the care of patients at the hospital for the year in which such care is provided. (Aug. 4, 1947, 61 Stat. 751, ch. 478, § 3.)

#### CODIFICATION

Section is also classified to 24 U.S.C. § 169.

#### SIMILAR PROVISIONS

1948—July 8, 1947, 61 Stat. 272, ch. 210, title II, § 201.  
 1947—July 26, 1946, 60 Stat. 693, ch. 672, title II, § 201.  
 1946—July 3, 1945, 59 Stat. 372, ch. 263, title II.  
 1945—June 28, 1944, 58 Stat. 561, ch. 302, title II, § 1.  
 1944—July 12, 1943, 57 Stat. 509, ch. 221, title II.  
 1943—July 2, 1942, 56 Stat. 585, ch. 475, title II.  
 1942—July 1, 1941, 55 Stat. 493, ch. 269, title II.  
 1941—June 18, 1940, 54 Stat. 460, ch. 395, § 1.  
 1940—May 10, 1939, 53 Stat. 737, ch. 119, § 1.  
 1939—May 9, 1938, 52 Stat. 341, ch. 187, § 1.  
 1938—Aug. 9, 1937, 50 Stat. 615, ch. 570, § 1.  
 1937—June 22, 1936, 49 Stat. 1802, ch. 691, § 1.  
 1936—May 9, 1935, 49 Stat. 215, ch. 101, § 1.  
 1935—Mar. 2, 1934, 48 Stat. 394, ch. 38, § 1.  
 1934—Feb. 17, 1933, 47 Stat. 856, ch. 98, § 1.  
 1933—Apr. 22, 1932, 47 Stat. 131, ch. 125, § 1.  
 1932—Feb. 14, 1931, 46 Stat. 1159, ch. 187, § 1.  
 1931—May 14, 1930, 46 Stat. 324, ch. 273, § 1.  
 1930—Mar. 4, 1929, 45 Stat. 1605, ch. 705, § 1.  
 1929—Mar. 7, 1928, 45 Stat. 242, ch. 137, § 1.  
 1928—Jan. 12, 1927, 44 Stat. 970, ch. 27, § 1.  
 1927—May 10, 1926, 44 Stat. 494, ch. 277, § 1.  
 1926—Mar. 3, 1925, 43 Stat. 1183, ch. 462.  
 1925—June 5, 1924, ch. 264, 43 Stat. 429.

#### CROSS REFERENCE

Saint Elizabeths Hospital, see 24 U.S.C. § 161 et seq.

### § 32-404. Reimbursements on account of expenditures for care of insane to be credited to the District of Columbia.

All collections or reimbursements on account of charges paid or payable by the District of Columbia for the care and support of the insane of said District at Saint Elizabeths Hospital shall be made to

the Commissioner of the District of Columbia and covered into the treasury of the United States to the credit of the general fund of the District of Columbia. (Mar. 4, 1913, 37 Stat. 917, ch. 149; July 1, 1916, 39 Stat. 309, ch. 209, § 1; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; June 28, 1944, ch. 300, § 18, 58 Stat. 533.)

#### CODIFICATION

This section is a composite of credits cited in the history line.

#### CHANGE OF NAME

"Government Hospital for the Insane" changed to "Saint Elizabeths Hospital" to conform to act July 1, 1916.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CROSS REFERENCES

Annual payment by United States, appropriations, see §§ 47-2501a and 47-2501b.

Saint Elizabeths Hospital, see 24 U.S.C. § 161 et seq.

#### NOTES TO DECISIONS

##### District not a voluntary creditor

District of Columbia was entitled to reimbursement for expenses of treatment of incompetent veteran from committee of the veteran from date of her appointment until the veteran was transferred to the rolls of the Veterans Administration which now bears the costs involved, since the District was not a voluntary "creditor" within the statute exempting from claims of "creditors" payments of benefits due or to become due under any law administered by the Veterans Administration. *T. Savoid, Committee etc. v. District of Columbia* (1961, 288 F. 2d 851, 110 U.S. App. D.C. 39).

### § 32-405. Admission of indigent insane of District of Columbia—"Indigent insane person" defined.

All indigent insane persons residing in the District of Columbia at the time they became insane shall be entitled to the benefits of Saint Elizabeths Hospital. An indigent insane person within the meaning of this section shall be one who is insane and unable to support himself and family, or himself, if he has no family, under the visitation of insanity. (R. S., § 4844; Mar. 3, 1877, 19 Stat. 347, ch. 105; July 1, 1916, 39 Stat. 309, ch. 209, § 1.)

#### CHANGE OF NAME

"Government Hospital for the Insane" changed to "Saint Elizabeths Hospital" to conform to act July 1, 1916.

#### CROSS REFERENCES

Annual payment by United States, appropriations, see §§ 47-2501a and 47-2501b.

Saint Elizabeths Hospital, see 24 U.S.C. § 161 et seq.

#### NOTES TO DECISIONS

##### In general

The estate of a patient committed to St. Elizabeths Hospital while a resident of the District of Columbia is liable to the District for his maintenance, and statute of limitations does not run against the District in its claim for such maintenance. *Hart v. Commissioners of District of Columbia* (1946, 155 F. 2d 877, 81 U.S. App. D.C. 154).

Where court committing patient to St. Elizabeths Hospital was of view that patient's estate should be used for support of his family in preference to his own support, when patient's wife and child died and other children became of age or married, that primary obligation ceased and patient's estate thereupon became available for his own maintenance. *Id.*

### § 32-406. Private patients—Rate of board—Friends to comply with regulations.

Whenever there are vacancies, private patients from the District may be received at a rate of board



to be determined by the visitors, to be in no case less than the actual cost of their support, and may remain until restored to reason.

The friends of the patient shall comply with the regulations of the hospital in respect to payment of board and in all other respects. (R. S., §§ 4853, 4854.)

#### CROSS REFERENCE

Saint Elizabeths Hospital, see 24 U.S.C. § 161 et seq.

#### NOTES TO DECISIONS

##### Effective date of act

The provision that the committee or trustee of an insane person shall reimburse the District for care and expenses up to the time of appointment was intended to relate back to the date of the passage of the act. *Fitzhugh v. District of Columbia* (1940, 109 F. 2d 837, 71 App. D.C. 290).

#### § 32-406a. Patients of District of Columbia or Federal Government—Payment for care—Accounting.

Any executive department of the Federal Government (including any agency, independent establishment, or wholly owned instrumentality thereof, and including the District of Columbia) requiring Saint Elizabeths Hospital to care for patients for whom such department is responsible, shall, except to the extent that the expense of such care is authorized to be paid from appropriations to the hospital for the care of patients, pay by check to Saint Elizabeths Hospital, upon the Superintendent's request, either in advance or by way of reimbursement at the end of each calendar month or calendar quarter, such amounts as the Superintendent calculates to be due for such care on the basis of a per diem rate approved by the Office of Management and Budget. Bills rendered by the Superintendent on the basis of such calculations shall not be subject to audit or certification in advance of payment; but proper adjustment of amounts which have been paid in advance on the basis of such calculations shall be made monthly or quarterly, as may be agreed upon by the Superintendent of the hospital and the executive department concerned. (Aug. 4, 1947, 61 Stat. 751, ch. 478, § 2.)

#### CODIFICATION

Section is also classified to 24 U.S.C. § 168a.

Previous provisions which were set out under this section were contained in appropriation acts of July 26, 1946, 60 Stat. 693, ch. 672, title II, and July 8, 1947, 61 Stat. 271, ch. 210, title II. The provisions above set out are later in time and appear to have superseded the earlier provisions.

#### CHANGE OF NAME

The "Bureau of the Budget" was changed to "Office of Management and Budget" by section 102(a) of Reorganization Plan No. 2 of 1970, 84 Stat. 2085.

#### CROSS REFERENCE

Sections 1, 3, 4 and 5 of act Aug. 4, 1947, are classified to 24 U.S.C. §§ 195, 169, 169a, and 185, respectively.

#### § 32-407. Admission of insane convicts.

Any person becoming insane during the continuance of his sentence in the United States penitentiary shall have the same privilege of treatment in Saint Elizabeths Hospital during the continuance of his mental disorder as is granted in section 211 of title 24, U.S. Code, to persons who escape the consequences of criminal acts by reason of insanity, unless it be the opinion, both of the physician to the

penitentiary and the superintendent of the hospital, that such insane convict is so depraved and furious in his character as to render his custody in the hospital insecure, and his example pernicious. (R.S., § 4852; July 1, 1916, 39 Stat. 309, ch. 209, § 1.)

#### CODIFICATION

Section is also classified to 24 U.S.C. § 211a.

#### CHANGE OF NAME

"Government Hospital for the Insane" changed to "Saint Elizabeths Hospital" to conform to act July 1, 1916.

#### § 32-408. Authorization to accept gifts.

The Secretary of Health, Education, and Welfare is authorized to accept on behalf of the United States gifts made unconditionally by will or otherwise for the improvement, maintenance, or operation of Saint Elizabeths Hospital in the District of Columbia. Conditional gifts may be so accepted if recommended by the Surgeon General of the Public Health Service, and the principal of and income from any such conditional gift shall be held, invested, reinvested, and used in accordance with its conditions, but no gift shall be accepted which is conditioned upon any expenditure not to be met therefrom or from the income thereof unless such expenditure has been approved by Act of Congress. (Nov. 7, 1941, 55 Stat. 760, ch. 469, § 1; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.)

#### CODIFICATION

Section is also classified to 24 U.S.C. § 181.

#### TRANSFER OF FUNCTIONS

The office of Federal Security Administrator was abolished and the functions of that office transferred to the Secretary of the Department of Health, Education, and Welfare by 1953 Reorg. Plan No. 1, 18 F.R. 2053, 67 Stat. 631, which was made effective Apr. 11, 1963, by act Apr. 1, 1953, 67 Stat. 18, ch. 14, § 1, and which established the Department of Health, Education, and Welfare. For classification of such Plan, as amended by act Aug. 14, 1964, 78 Stat. 28, Pub. L. 88-426, title II, § 305(44), in the U.S. Code, see tables following title 50, U.S.C., Appendix.

#### ABOLITION OF OFFICE OF SURGEON GENERAL

The Office of Surgeon General was abolished and the functions thereof transferred to the Secretary of Health, Education, and Welfare by sections 1 and 3 of Reorganization Plan No. 3 of 1966, 80 Stat. 1610.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32-409 to 32-411.

#### § 32-409. Same—Custody and investment of gifts.

Any unconditional gift of money accepted pursuant to the authority granted in section 32-408, the net proceeds from the liquidation (pursuant to section 32-410 or section 32-411) of any other property so accepted, and the proceeds of insurance on any such gift property not used for its restoration, shall be deposited in the Treasury of the United States and are hereby appropriated and shall be held in trust by the Secretary of the Treasury for the benefit of Saint Elizabeths Hospital, and he may invest and reinvest such funds in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. The income from such investments shall be available for expenditure in the improvement, maintenance, or operation of Saint Elizabeths Hospital, subject to



the same examination and audit as provided for appropriations made for Saint Elizabeths Hospital by Congress. (Nov. 7, 1941, 55 Stat. 760, ch. 469, § 2.)

#### CODIFICATION

Section is also classified to 24 U.S.C. § 182.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32-411.

### § 32-410. Same—Gifts of intangible personal property.

The evidences of any unconditional gift of intangible personal property, other than money, accepted pursuant to the authority granted in section 32-408 shall be deposited with the Secretary of the Treasury and he, in his discretion, may hold them or may liquidate them whenever in his judgment the purposes of the gifts will be served thereby. The income from any such property held by the Secretary of the Treasury shall be available for expenditure as is provided in section 32-411. (Nov. 7, 1941, 55 Stat. 761, ch. 469, § 3.)

#### CODIFICATION

Section is also classified to 24 U.S.C. § 183.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32-409.

### § 32-411. Same—Gifts of real property.

The Secretary of Health, Education, and Welfare shall hold any real property or any tangible personal property accepted unconditionally pursuant to the authority granted in section 32-408 and he shall permit such property to be used for the improvement, maintenance, or operation of Saint Elizabeths Hospital or he may lease or hire such property, and may insure such property, and deposit the income thereof with the Secretary of the Treasury to be available for expenditure as provided in section 32-409: *Provided*, That the income from any such real property or tangible personal property shall be available for expenditure in the discretion of the Secretary of Health, Education, and Welfare for the maintenance, preservation, or repair and insurance of such property and that any proceeds from insurance may be used to restore the property insured. Any such property when not required for the improvement or operation of the Saint Elizabeths Hospital may be liquidated by the Secretary of Health, Education, and Welfare whenever in his judgment the purposes of the gifts will be served thereby. (Nov. 7, 1941, 55 Stat. 761, ch. 469, § 4; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.)

#### CODIFICATION

Section is also classified to 24 U.S.C. § 184.

#### TRANSFER OF FUNCTIONS

The office of Federal Security Administrator was abolished and the functions of that office transferred to the Secretary of the Department of Health, Education, and Welfare by 1953 Reorg. Plan No. 1, 18 F.R. 2053, 67 Stat. 631, which was made effective Apr. 11, 1963, by act Apr. 1, 1953, 67 Stat. 18, ch. 14, § 1, and which established the Department of Health, Education, and Welfare. For classification of such Plan, as amended by act Aug. 14, 1964, 78 Stat. 28, Pub. L. 88-426, title II, § 305(44), in the U.S. Code, see tables following title 50, U.S.C., Appendix.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32-409, 32-410.

### §§ 32-412 to 32-414. Repealed. Sept. 15, 1964, 78 Stat. 954, Pub. L. 88-597, § 19(h).

Section 1 of act June 22, 1948, 62 Stat. 572, ch. 597, dealt with procedures for admission of applicants to Saint Elizabeths Hospital for mental care, and the payment for his care.

Section 2 of the same act dealt with the applicants' rights of release from the hospital and procedures for his detention.

Section 3 of the same act dealt with the cost of board, medical care and treatment of persons admitted to the hospital. See § 21-501 et seq.

#### SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 32-415, 32-416.

### § 32-415. Regulations—Approval of Secretary of Health, Education, and Welfare.

The Superintendent of Saint Elizabeths Hospital, with the approval of the Secretary of Health, Education, and Welfare, is authorized to prescribe such regulations as he shall deem necessary to carry out the provisions of sections 32-412 to 32-416 [sections 32-412 to 32-414 have been repealed] relating to the hospital. (June 22, 1948, 62 Stat. 574, ch. 597, § 4; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.)

#### REFERENCES IN TEXT

Sections 32-412 to 32-414, referred to in text, were repealed by act Sept. 15, 1964, and transferred to § 21-501 et seq.

#### EFFECTIVE DATE

Section 6 of Act June 22, 1948, 62 Stat. 574, provided: "This Act [enacting §§ 32-412 to 32-416] shall become effective sixty days after enactment."

#### TRANSFER OF FUNCTIONS

The office of Federal Security Administrator was abolished and the functions of that office transferred to the Secretary of the Department of Health, Education, and Welfare by 1953 Reorg. Plan No. 1, 18 F.R. 2053, 67 Stat. 631, which was made effective Apr. 11, 1963, by act Apr. 1, 1953, 67 Stat. 18, ch. 14, § 1, and which established the Department of Health, Education, and Welfare. For classification of such Plan, as amended by act Aug. 14, 1964, 78 Stat. 28, Pub. L. 88-426, title II, § 305(44), in the U.S. Code, see tables following title 50, U.S.C., Appendix.

#### CROSS REFERENCE

Saint Elizabeths Hospital, see 24 U.S.C. § 161 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32-416.

### § 32-416. Regulations relating to Board of Public Welfare—District of Columbia.

The Commissioner of the District of Columbia is authorized to prescribe such regulations as he shall deem necessary to carry out the provisions of sections 32-412 to 32-416 [sections 32-412 to 32-414 have been repealed] relating to the Board of Public Welfare and the District of Columbia. (June 22, 1948, 62 Stat. 574, ch. 597, § 5.)

#### REFERENCES IN TEXT

Sections 32-412 to 32-414, referred to in text, were repealed by act Sept. 15, 1964, and transferred to § 21-501 et seq.

#### EFFECTIVE DATE

Section effective sixty days after June 22, 1948, see section 6 of act June 22, 1948, set out as a note under section 32-415.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.



## TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and functions transferred, see note under § 3-102.

Organization Order No. 141 of the Board of Commissioners, dated Feb. 11, 1964, made the Director of Public Health responsible for investigation of and payment for all indigent District residents admitted to St. Elizabeths Hospital. Functions stated in Org. Ord. No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order [Org. Action] No. 69-96, dated Mar. 7, 1969, as amended by Commissioner's Order No. 70-83, dated Mar. 6, 1970. The Orders are set out in the Appendix to Title 1.

## CROSS REFERENCE

Saint Elizabeths Hospital, see 24 U.S.C. § 161 et seq.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32-415.

§§ 32-417 to 32-417g. Repealed. Sept. 14, 1965, 79 Stat. 785, Pub. L. 89-183, § 8; eff. Jan. 1, 1966.

Section 32-417, act of Oct. 11, 1949, 63 Stat. 759, ch. 672, § 1, as amended, dealt with the commitment to Saint Elizabeths Hospital of persons found in certain areas over which the United States has exclusive or concurrent jurisdiction, by specially designated commissioners by the United States District Court for the Eastern District of Virginia or for the District of Maryland. Matter is now covered by section 21-902.

Section 32-417a, act Oct. 11, 1949, 63 Stat. 760, ch. 672, § 2, conferred authority upon officers and employees of the United States authorized to make arrests, to apprehend and detain persons he believes to be of unsound mind and to bring such persons for a hearing before a United States Commissioner. It also authorized the officer, if an immediate hearing was not possible, to take such person to Saint Elizabeths Hospital, where the Superintendent was authorized to detain such person for a period not exceeding 72 hours. It also contained other provisions regarding hearings and transportation of the detained person. Matter is now covered by section 21-903.

Section 32-417b, act Oct. 11, 1949, 63 Stat. 760, ch. 672, § 3, dealt with the admission of persons situated in the places described in § 32-417, upon their written application for observation and diagnosis for a period not exceeding 30 days and for their release. Matter is now covered by section 21-904.

Section 32-417c, act Oct. 11, 1949, 63 Stat. 761, ch. 672, § 4, authorized the Superintendent of Saint Elizabeths Hospital to receive for observation and diagnosis the persons committed or apprehended as provided in §§ 32-417 and 32-417a. Matter is now covered by section 21-905.

Section 32-417d, act Oct. 11, 1949, 63 Stat. 761, ch. 672, § 5; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, dealt with examination by the Superintendent of committed person, discharge of persons found to be sane, return of persons of unsound mind to the State of his residence or relatives; proceedings for adjudication. It also provided that the laws of the District of Columbia should be applicable and made provisions regarding expenses of care and treatment. Matter is now covered by section 21-906.

Section 32-417e, act Oct. 11, 1949, 63 Stat. 761, ch. 672, § 6, provided for the transfer of persons belonging to the Army, Navy, Air Force, Marine Corps, or Coast Guard, to the custody of department of the service to which he belongs. Matter is now covered by section 21-907.

Section 32-417f, act Oct. 11, 1949, 63 Stat. 761, ch. 672, § 7, provided for the commitment by the United States District Court for the District of Columbia of persons entitled to care and treatment in a Veterans' Administration facility to the custody of the Administration of Veterans' Affairs. It also authorized the Superintendent to make the transfer. Matter is now covered by section 21-908.

Section 32-417g, act Oct. 11, 1949, 63 Stat. 761, ch. 672, § 8, authorized the Superintendent to pay the cost of transfers of persons committed or admitted to the Hospital. Matter is now covered by section 21-909.

## Chapter 5.—INDUSTRIAL HOME SCHOOL

## Sec.

- 32-501. Control and management—Board of Public Welfare—Supplies—Disposition of income.
- 32-502. Abolishment of Board of Trustees—Duties transferred to Board of Public Welfare.
- 32-503. Exchange of portion of Naval Observatory grounds for portion of Industrial Home School site—Sale of balance of tract—Use of land if not sold—Funds available for new school site.
- 32-504. Receipts from Industrial Home School for Colored Children—Credit.

§ 32-501. Control and management—Board of Public Welfare—Supplies—Disposition of income.

The Board of Public Welfare shall have complete and exclusive control and management of the Industrial Home School. All supplies for said school shall be obtained by requisition upon the Commissioner of the District of Columbia and all moneys received at said school as income thereof from sale of products and from payments for board and instruction, or otherwise, shall be paid over to said Commissioner to be expended by him for the support of the school. (June 11, 1896, 29 Stat. 410, ch. 419; Feb. 28, 1923, 42 Stat. 1361, ch. 148; § 1; Mar. 16, 1926, 44 Stat. 209, ch. 58, § 6.)

## CODIFICATION

The Industrial Home School was established as a "private benevolent charity," and incorporated under the general corporation laws of the District on May 5, 1870, according to "Charitable and Reformatory Institutions in the District of Columbia," by Dr. George M. Kober (Sen. Doc. No. 207, 69th Congress, 2d Session, p. 244 et seq.).

## AMENDMENTS

1926—Act Mar. 16, 1926, established the Board of Public Welfare, and placed the Industrial Home School under its control and management.

1923—Act Feb. 28, 1923, abolished Board of Trustees and transferred its powers to Board of Children's Guardians.

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and functions transferred, see note under § 3-102.

## CROSS REFERENCES

Appointment of superintendent of Industrial Home School, see § 3-107.

Powers and duties of Board of Public Welfare in general, see § 3-101 et seq.

§ 32-502. Abolishment of Board of Trustees—Duties transferred to Board of Public Welfare.

Board of Children's Guardians, successors of trustees of the Industrial Home School of the District of Columbia, is abolished, and the powers and duties of such board as specified and restricted by law are transferred to the Board of Public Welfare. (Feb. 28, 1923, 42 Stat. 1361, ch. 148, § 1; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1, 2.)

## CODIFICATION

This section is a composite of credits in the history line.

## TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and functions transferred, see note under § 3-102.



## CROSS REFERENCE

Officers, trustees, or directors of charitable institutions may not deal with the institution for financial gain, see § 32-1007.

§ 32-503. Exchange of portion of Naval Observatory grounds for portion of Industrial Home School site—Sale of balance of tract—Use of land if not sold—Funds available for new school site.

The Secretary of the Navy is hereby authorized and empowered to convey to the District of Columbia, free from all encumbrances and without costs to the District of Columbia, all right, title, and interest of the United States of America to that portion of the Naval Observatory grounds, with the improvements thereon, lying outside of Naval Observatory Circle and east of Massachusetts Avenue Northwest, Washington, District of Columbia, containing fourteen and four hundred and forty-nine one-thousandths acres, more or less, and also that other portion lying outside of and adjoining said Naval Observatory Circle on the south, containing one and seven hundred and six one-thousandths acres, more or less, in consideration of which the Commissioner of the District of Columbia is authorized and empowered to convey to the United States of America, free from all encumbrances and without cost to the United States of America, all right, title, and interest of the District of Columbia to that portion of the Industrial Home School site, with the improvements thereon, lying within said Naval Observatory Circle, containing approximately six and seventy-six one-hundredths acres: *Provided*, That the said Commissioner is further authorized and empowered on behalf of the District of Columbia to utilize or sell, as he sees fit, all of that remaining portion of the said Industrial Home School site with the improvements thereon lying outside of the said Observatory (one-thousand-foot radius) Circle, and also all of the land and improvements thereon east of Massachusetts Avenue and south of said Naval Observatory Circle, hereunder authorized to be acquired from the United States of America: *Provided further*, That if utilized the land shall be used for school, playground, or highway purposes or transferred to the Director of the National Park Service to become part of the park system of the District of Columbia: *Provided further*, That all of the proceeds from the sale of the aforesaid Industrial Home School property and one-half of the proceeds from the sale of any of said lands mentioned as lying east of Massachusetts Avenue and south of said Naval Observatory Circle shall be deposited in the Treasury of the United States to the credit of the District of Columbia and are made available for the purchase of a site and the erection thereon of suitable buildings for a new Industrial Home School: *Provided further*, That the remaining half of the proceeds from the sale of any of said land lying east of Massachusetts Avenue and south of said Naval Observatory Circle shall be deposited in the Treasury of the United States to the credit of the Naval Observatory: *And provided further*, That the said Commissioner of the District of Columbia shall be permitted to continue to use all of the Industrial Home School property herein mentioned until such time as it may have acquired

another site and constructed suitable buildings thereon in which to house the inmates of said Industrial Home School. The Secretary of the Navy, on behalf of the United States, and the Commissioner, on behalf of the District of Columbia, are hereby authorized to execute and deliver all instruments necessary to accomplish the aforesaid purposes. (Mar. 3, 1927, 44 Stat. 1386, ch. 354, §§ 1, 2.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## TRANSFER OF FUNCTIONS

Office of Public Buildings and Parks has been abolished and its functions transferred to the National Park Service, see note to § 8-108.

All functions of all officers of the Department of the Interior and all functions of all agencies and employees of such Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, U.S. Code.

## CROSS REFERENCE

Execution of instruments generally, see § 1-214.

§ 32-504. Receipts from Industrial Home School for Colored Children—Credit.

All moneys received at the Industrial Home School for Colored Children as income from sale of products and from payment of board or of instruction or otherwise shall be paid into the Treasury of the United States to the credit of the District of Columbia. (Feb. 25, 1929, 45 Stat. 1292, ch. 314.)

## Chapter 6.—FOREST HAVEN

Sec.

- 32-601. Authority to acquire site, erect buildings for home and school—Title to land—Property under jurisdiction of Commissioner of the District of Columbia.
- 32-602. Control and supervision of institution—Name.
- 32-603. "Substantially retarded person" defined.
- 32-604. Rules and regulations to be prescribed—Annual reports—Inventory.
- 32-605. Superintendent—Appointment and qualifications.
- 32-606. Sale of products—Disposition of proceeds.
- 32-607 to 32-628. Repealed.
- 32-629. Separability of provisions.

## CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 21-1102.

§ 32-601. Authority to acquire site, erect buildings for home and school—Title to land—Property under jurisdiction of Commissioner of the District of Columbia.

The Commissioner of the District of Columbia is authorized and directed to acquire a site for a home and school for feeble-minded persons, said site to be located in the District of Columbia or in the State of Maryland or in the State of Virginia, and to erect thereon suitable buildings for a home and school for feeble-minded persons. The title to said land is to be taken directly to and in the name of the United States. But the land so acquired shall be under the jurisdiction of the Commissioner of the District of Columbia as agent of the United States. The persons to be admissible to said home and school



and the proceedings with reference to securing such admission to be in accordance with law. (Feb. 28, 1923, 42 Stat. 1360, ch. 148, § 1.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21-1101, 32-602.

### § 32-602. Control and supervision of institution—Name.

The institution for the custody, care, education, training, and treatment of substantially retarded persons, established by section 32-601, shall be under the control and supervision of the Department of Public Welfare of the District, and shall be known as Forest Haven. (Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 1; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1, 2; Oct. 22, 1970, Pub. L. 91-490, § 1(1), 84 Stat. 1087.)

#### AMENDMENT

1970—Section 1(1) of Act Oct. 22, 1970, Pub. L. 91-490, amended section as follows:

(A) by striking out "feeble-minded" and inserting "substantially retarded",

(B) by striking out "Board" and inserting "Department", and

(C) by striking out "The District Training School" and inserting "Forest Haven".

#### TRANSFER OF FUNCTIONS

Act Mar. 16, 1926, transferred powers and duties of Board of Charities of District of Columbia to Board of Public Welfare.

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare and subsequently to Department of Human Resources, see note under § 3-102.

Reorganization Order No. 58, dated June 30, 1953, as amended [set out in the Appendix to Title 1, 1961 edition of the Code], designated the District Training School [now Forest Haven] a component of the Children's Center, and limited its functions to feeble-minded persons not over 45 years of age at time of commitment, including parole supervision of those released. Reorg. Ord. No. 58 was amended and redesignated Org. Ord. No. 140, Feb. 11, 1964. Functions stated in Org. Ord. No. 140 were transferred to the Director of the Department of Human Resources by Commissioner's Order [Org. Action] No. 69-96, dated Mar. 7, 1969, as amended by Commissioner's Order No. 70-83, dated Mar. 6, 1970. These Orders are set out in the Appendix to Title 1.

#### CROSS REFERENCES

General provisions concerning powers and duties of Board of Public Welfare, see § 3-101 et seq.

Officers, trustees, or directors of charitable institutions may not deal with the institution for financial gain, see § 32-1007.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21-1101.

### § 32-603. "Substantially retarded person" defined.

For the purpose of this chapter, the term "substantially retarded persons" means persons afflicted with mental defectiveness from birth or from an early age, so pronounced that they are incapable of managing themselves and their affairs, and who require supervision, control, and care for their own welfare, for the welfare of others, or for the welfare of the community, and who are not insane nor of unsound mind to such an extent as to require their commitment to a hospital for the mentally ill.

(Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 2; Oct. 22, 1970, Pub. L. 91-490, § 1(2), 84 Stat. 1087.)

#### AMENDMENT

1970—Section 1(2) of act Oct. 22, 1970, Pub. L. 91-490, amended section generally. For provisions of this section prior to this amendment, see 1967 edition of the code.

#### CROSS REFERENCE

Other provisions concerning incompetent persons, see title 21.

### § 32-604. Rules and regulations to be prescribed—Annual reports—Inventory.

The District of Columbia Council shall make all necessary rules and regulations for enforcing discipline, for imparting instruction or preserving health, and for the physical, intellectual, and moral training of the patients of said institution. The Department of Public Welfare shall make annually to the Commissioner of the District of Columbia a report for the preceding fiscal year ending the 30th day of June. Said report shall show for such period the number and names of the superintendent, officers, teachers, and all other regular employees, and the salaries paid to each, and what, if any, other emoluments are allowed and to whom. Said Department shall also cause a full and accurate inventory to be taken at the close of each fiscal year, showing the number of acres of land and the value thereof, the number, kind, and value of buildings, the various kinds of personal property and the value thereof, and a copy of said inventory, duly verified on oath by the officer making said inventory, shall accompany said report. (Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 3; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1, 2; Oct. 22, 1970, Pub. L. 91-490, § 1(3), 84 Stat. 1087.)

#### AMENDMENT

1970—Section 1(3) of act Oct. 22, 1970, Pub. L. 91-490, amended section as follows:

(A) by striking out "Board" and inserting "Department",

(B) by striking out "inmates" and inserting "patients", and

(C) by striking out "board" each place it appears and inserting "Department".

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(253) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of making rules and regulations under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### TRANSFER OF FUNCTIONS

Act Mar. 16, 1926, abolished the Board of Charities of the District of Columbia and Board of Public Welfare was substituted therefor.

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare and subsequently to Department of Human Resources, see note under § 32-602.

#### CROSS REFERENCES

Powers and duties of Board of Public Welfare, see § 3-101 et seq.

Rules and regulations for protection of life, health, and property, generally, see § 1-226.



### § 32-605. Superintendent—Appointment and qualifications.

The Department of Public Welfare shall appoint a superintendent, who shall be experienced in the care, training, and treatment of the substantially retarded. He shall be the chief executive officer of the institution and may be removed by the Commissioner of the District of Columbia upon recommendation of the Department. (Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 4; Mar. 16, 1926, 44 Stat. 208, 209, ch. 58, §§ 1, 2, and 5; Oct. 22, 1970, Pub. L. 91-490, § 1(4), 84 Stat. 1087.)

#### AMENDMENT

1970—Section 1(4) of act Oct. 22, 1970, Pub. L. 91-490, amended section as follows:

(A) by striking out "Board" and inserting "Department",

(B) by striking out "feeble-minded" and inserting "substantially retarded", and

(C) by striking out "board" and inserting "Department".

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### TRANSFER OF FUNCTIONS

Act Mar. 16, 1926, abolished Board of Charities of the District of Columbia and substituted Board of Public Welfare therefor.

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare and subsequently to Department of Human Resources, see note under § 32-602.

#### CROSS REFERENCE

Other provisions giving Board of Public Welfare power to appoint superintendent, see § 3-107.

### § 32-606. Sale of products—Disposition of proceeds.

The superintendent of the said institution may sell such of the farm, greenhouse, and garden products, and the products of the industrial shops as may not be required in the maintenance and conduct of the home and school, and the funds so secured shall be paid into the treasury of the United States to the credit of the general fund of the District of Columbia. (Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 5; June 28, 1944, ch. 300, § 18, 58 Stat. 533.)

#### CODIFICATION

This section is a composite of the credits cited in the history line.

This section as originally enacted provided that the funds from sale of produce should be paid into the Treasury "to the credit of the United States and the District of Columbia in the proportion required by law." The several appropriation acts cited in the note under § 47-130a provided for crediting of such income wholly to the United States.

Act June 29, 1922, 42 Stat. 668, ch. 249, which formed the basis for various sections of the code which provided for the 60% payment by the District of certain expenses, was repealed by act May 16, 1938, 52 Stat. 375, ch. 223, § 8, adding title X to act August 17, 1937, 50 Stat. 673, ch. 690. The aforesaid 1922 act, p. 671, contains a provision repealing all prior inconsistent acts, and, therefore, the prior acts which were the bases for these various sections no longer apply. See, also, note under § 47-126.

§§ 32-607 to 32-628. Repealed. Sept. 14, 1965, 79 Stat. 784, Pub. L. 89-183, § 8; eff. Jan. 1, 1966.

Section 32-607, § 6, act Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 6, authorized the admission into the District Train-

ing School, feeble-minded persons of not more than 45 years of age. The matter is now covered by section 21-1102.

Section 32-608, § 7 of the same act, outlined the procedures to be followed in securing admission of a feeble-minded person, the contents of the petition to be filed, verification of the same, notice required to be given and the issuance of process. Matter is now covered by section 21-1103.

Section 32-609, § 8 of the same act, prescribed the requirements of the summons, a direction requiring the feeble-minded person to be brought into court, the return day of the summons and that no written answer was required. It also provided that no service of process was required where the parties appeared voluntarily and it also provided by whom the summons could be served. The matter is now covered by section 21-1104.

Section 32-610, § 9 of the same act, provided for the appointments of two physicians to examine the feeble-minded person, one of whom to be skilled in the diagnosis and treatment of mental diseases. The physicians were authorized to go to the patient wherever he was located and they were required to file a certificate of their findings. The matter is now covered by § 21-1105.

Section 32-611, § 10 of the same act, authorized the issuance of a warrant to take the feeble-minded person into custody, where it was in the interest of the patient or the public. Pending a hearing it authorized his detention or the placing him under temporary guardianship. He was, however, not to be confined with criminals. The matter is now covered by section 21-1106.

Section 32-612, § 11 of the same act, authorized the continuance of the hearing from time to time, examination into the financial condition of the patient and his relatives, the taking of proof as to his mental condition and the determination thereof. Upon demand a jury trial was authorized. The matter is now covered by § 21-1107.

Section 32-613, § 12 of the same act, provided for determination of the issue of feeble-mindedness, if he was not feeble-minded the petition was to be dismissed and the patient discharged. If he was found to be feeble-minded the court was to enter a decree placing the patient in the institution. The matter is now covered by § 21-1108.

Section 32-614, § 13 of the same act, provided the circumstances under which a patient could be admitted either as a public or private patient, posting of bond, conditions thereof, etc. The matter is now covered by § 21-1109.

Section 32-615, § 14 of the same act, as amended, outlined the circumstances under which a public patient's estate could be charged for his maintenance. The matter is now covered by § 21-1110.

Section 32-616, § 15 of the same act, as amended, outlined the proceedings that could be taken to charge the relatives of a public patient for his maintenance, enforcement of the order of the court, etc. The matter is now covered by section 21-1111.

Section 32-617, § 16 of the same act, provided that a public patient could change to a private patient by posting the required bond. The matter is now covered by § 21-1112.

Section 32-618, § 17 of the same act, as amended, outlined the proceedings to be taken for the discharge of the patient and provided that the denial or variation of one petition was no bar to another petition within a reasonable time. Matter is now covered by § 21-1113.

Section 32-619, § 18 of the same act, provided a penalty for unlawfully having a person adjudged feeble-minded. Matter is now covered by § 21-1123.

Section 32-620, § 19 of the same act, outlines the procedure to be followed when a child, who appears to be feeble-minded, is brought into Juvenile Court. The matter is now covered by § 21-1114.

Section 32-621, § 20 of the same act, dealt with the procedure to be followed in the case of feeble-minded persons who are convicted of crimes, misdemeanor or violations of ordinances. Matter is now covered by § 21-1115.

Section 32-622, § 21 of the same act, provided for the transfer of patients to Saint Elizabeths Hospital in the event they became insane while confined to the institution. Matter is now covered by § 21-1116.

Section 32-623, § 22 of the same act, directed the United States District Court for the District of Columbia to keep



a separate docket of feeble-minded cases and required the court to complete and preserve a detailed record of such cases. Matter is now covered by § 21-1117.

Section 32-624, § 23 of the same act, provided for the transfer from the National Training School for Boys or the National Training School for Girls, to this institution in the event they became feeble-minded. Matter is now covered by § 21-1118.

Section 32-625, § 24 of the same act, as amended, provided for the transfer of nonresident patients to the state in which they belong. Matter is now covered by § 21-1119.

Section 32-626, § 25 of the same act, as amended, authorized the granting of paroles to patients, prescribed conditions, provided how the expenses were to be borne and provided for the return of the patient in the event of violation of parole. Matter now covered by § 21-1120.

Section 32-627, § 26 of the same act, provided for the manner of service of citations, orders or process upon inmates and for the return thereof to the court. Matter is now covered by § 21-1121.

Section 32-628, § 27 of the same act, prescribed the manner in which patients would be permitted to execute contracts, deeds, wills or other instruments, under court supervision. Matter is now covered by § 21-1122.

#### § 32-629. Separability of provisions.

The invalidity of any part of this chapter shall not be construed to affect the validity of any other part capable of having practical operation and effect without the invalid part. (Mar. 3, 1925, 43 Stat. 1141, ch. 460, § 28.)

### Chapter 7.—HOME CARE FOR DEPENDENT CHILDREN

Sec.

32-701 to 32-710. Repealed.

§§ 32-701 to 32-710. Repealed. June 14, 1944, 58 Stat. 278, ch. 257, § 17.

Sections, act June 22, 1926, 44 Stat. 758, ch. 647, §§ 1-10, related to the furnishing of home care for dependent children under the age of sixteen years provided for applications for assistance by parent or guardian, empowered the Board of Public Welfare to make investigations, findings, and orders for allowances, conditions, duration, and review of such allowances, visitation by board representatives, the keeping of records, penalties for receiving allowances by fraud or deceit, submission of annual estimates, and appointment, salaries, and removal of employees. See chapter 7A of this title, and chapter 2 or title 3.

### Chapter 7A.—AID TO DEPENDENT CHILDREN

Sec.

32-751 to 32-765. Repealed.

§§ 32-751 to 32-765. Repealed. Oct. 15, 1962, 76 Stat. 919, Pub. L. 87-807, § 24.

Sections of act June 14, 1944, 58 Stat. 277, ch. 257, §§ 1-18, related to aid to dependent children under eighteen years of age. It defined a dependent child as one who has been deprived of parental support by reason of death, continued absence from the home, or physical or mental incapacity of a parent. The sections defined the eligibility of a child for aid, provided for administration of the sections by the Board of Public Welfare, investigation by said Board and determination of amount and starting date of assistance, review of the Board's action, provided for cooperation between the Board and Social Security Board of the United States, and prescribed penalties for procuring assistance by fraud, and contained other implementing provisions. Subject matter is now covered by title 3, chapter 2.

#### EFFECTIVE DATE OF REPEAL

See note to sections 3-201 and 3-204.

#### SAVINGS PROVISIONS

Section 24, act Oct. 15, 1962, provided in part as follows: "Notwithstanding such repeal, all claims of the Dis-

trict of Columbia for recovery of amounts expended for aid or assistance granted under such repealed Acts [32-751 to 32-756] which it now has, or which would have accrued had such Acts not been repealed, shall be recoverable in the same manner and to the same extent as such amounts would be recoverable had such aid or assistance been granted under the provisions of this Act" [Title 3, ch. 2].

### Chapter 7B.—PLACEMENT OF CHILDREN IN FAMILY HOMES

Sec.

32-781. Purpose of chapter.

32-782. Child-placing agency—License.

32-783. Appointment of supervisory committee by Commissioner—Composition and tenure—Chairman—Promulgation of rules and regulations.

32-784. Application for license—Form—Investigation by Board—Provisional license—Term and renewal.

32-785. Persons authorized to place children—Custody, control, supervision, and visitation by agency—Confidential records.

32-785a. Agreements with child placement agencies outside of the District—Authority of Commissioner.

32-786. Agency vested with parental rights—Consent to adoption—Adoption petition—Parents' relinquishment of rights—Recordation.

32-787. Revocation of license of child-placing agency—Notice—Reinstatement.

32-788. Penalty for operation as child-placing agency without license—Jurisdiction.

32-789. Investigations and inspections by Board.

32-790. Compensation for services in connection with child placement.

32-791. "Commissioner" defined—Delegation of functions.

#### § 32-781. Purpose of chapter.

The purpose of this chapter is to secure for each child under sixteen years of age who is placed in a family home, other than his own or that of a relative within the third degree, such care and guidance as will serve the child's welfare and the best interests of the District of Columbia; and to secure for him custody and care as near as possible to that which should have been given him by his parents. (Apr. 22, 1944, 58 Stat. 193, ch. 174, § 1.)

#### EFFECTIVE DATE

Section 11 of act Apr. 22, 1944, provided that: "This Act [adding this chapter and repealing §§ 36-101 to 36-111] shall become effective four months after date of the approval of this Act [April 22, 1944], except section 3 hereof [§ 32-783], which shall become effective on the date of the approval of this Act [April 22, 1944]."

#### CROSS REFERENCE

Adoption, generally, see title 16, ch. 3.

#### NOTES TO DECISIONS

##### Constitutionality

Baby Broker Act is not unconstitutional as vague and indefinite. *A. Dobkin v. District of Columbia* (D.C. App. 1963, 194 A. 2d 657).

##### Evidence, sufficiency of

Evidence sustained conviction for violation of Baby Broker Act. *A. Dobkin v. District of Columbia* (D.C. App. 1963, 194 A. 2d 657).

##### Purpose

The purpose of this chapter is to regulate procedure for placing children for adoption to protect children and parents from corrupt, irresponsible, careless, or untrained intermediaries. *Goodman v. District of Columbia* (D. C. Mun. App. 1947, 50 A. 2d 812).



### § 32-782. Child-placing agency—License.

Any person, firm, corporation, association, or public agency that receives or accepts a child under sixteen years of age and places or offers to place such child for temporary or permanent care in a family home other than that of a relative within the third degree shall be deemed to be maintaining a child-placing agency. No child-placing agency shall be maintained in the District of Columbia without a license issued by the Commissioner of the District of Columbia: *Provided*, That notwithstanding any provisions of section 32-784 such a license shall be issued forthwith to any corporation or association chartered by special Act of Congress and having under its charter the purposes or powers of a child-placing agency as herein defined. (Apr. 22, 1944, 58 Stat. 193, ch. 174, § 2.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### NOTES TO DECISIONS

##### Attorneys

Where defendant was requested by adopting mother to handle adoption, defendant arranged with doctor for examination of child, defendant presented natural mother with paper identified as consent to adoption and gave natural mother \$50 obtained from adopting mother, stating that such was a loan, and defendant did not possess a license which authorized him to place or arrange or assist in placing or arranging for placement of any child for adoption, defendant was guilty of violation of Baby Broker Act. *Anderson v. District of Columbia* (D.C. Mun. App. 1959, 154 A. 2d 717).

A lawyer is within his rights under this chapter so long as he gives only legal advice, appears in court in adoption proceedings representing either relinquishing or adopting parents, and refrains from serving as an intermediary, go-between, or placing agent and leaves or refers placement of children and arrangements for their placement to agencies duly licensed for that purpose. *Goodman v. District of Columbia* (D. C. Mun. App. 1947, 50 A. 2d 812).

A lawyer, as such in placing children for adoption, is not exempt from this chapter notwithstanding he acts without compensation and with humane motives, and, to place babies for adoption, he must have a license as a child-placing agency. *Id.*

### § 32-783. Appointment of supervisory committee by Commissioner—Composition and tenure—Chairman—Promulgation of rules and regulations.

Within sixty days after June 8, 1954, the Commissioner shall appoint, after consultation with the Department of Public Welfare, a committee to formulate and adopt rules and regulations, subject to the approval of the District of Columbia Council, prescribing standards of placement, care, and services to be required of child-placing agencies, pursuant to the intent and purposes of this chapter. The committee shall be composed of two representatives of the Department of Public Welfare of the District of Columbia, one of whom shall act as chairman, a member of the staff of the Department of Health of the District of Columbia, two representatives from each of the charitable organizations of the District of Columbia licensed to place children in family homes, a member of the legal profession, and a member of the medical profession. The terms of office of each member of the committee shall be three years, except that—

(1) the terms of office of the members first taking office shall expire, as designated by the Commissioner at the time of appointment, approximately one-third at the end of one year, approximately one-third at the end of two years, and approximately one-third at the end of three years, after June 8, 1954;

(2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

(3) upon the expiration of his term of office a member shall continue to serve until his successor is appointed and has qualified.

The rules and regulations prescribing standards of placement, care, and services to be required of child-placing agencies shall be reviewed by the committee annually and, subject to the approval of the Council, may be amended when deemed necessary." (Apr. 22, 1944, 58 Stat. 193, ch. 174, § 3; June 8, 1954, 68 Stat. 246, ch. 273, § 1.)

#### AMENDMENT

1954—Act June 8, 1954, amended section generally, and, among other changes, increased the representatives from the Department of Public Welfare from one to two, provided for two representatives from each of the charitable organizations of the District licensed to place children in homes, for one representative from both the legal and medical professions, increased terms for the members of the committee from one to three years, staggered such terms, and in the last sentence, following the words "rules and regulations" and preceding "shall be reviewed" inserted "prescribing standards of placement, care, and services to be required of child-placing agencies".

#### EFFECTIVE DATE OF 1954 AMENDMENT

Section 7 of act June 8, 1954, provided that: "The amendments made by this Act [adding §§ 32-785a and 32-790, and amending this section and §§ 32-784, 32-785, and 32-786] shall take effect four months after the date of its enactment [June 8, 1954], except that the amendment made by the first section [to this section] shall take effect on the date of the enactment of this Act [June 8, 1954]."

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(254) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of approving rules and regulations, and approving amendments of rules and regulations prescribing standards of placement, care, and services to be required of child-placing agencies under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### TRANSFER OF FUNCTIONS

Department of Public Welfare and Department of Health abolished and functions transferred, see notes under §§ 3-102 and 6-101.

#### ORDER ESTABLISHING THE ADVISORY GROUP TO THE COMMITTEE ON REGULATIONS FOR CHILD-PLACING AGENCIES

(Commissioner's Order No. 71-13, Jan. 19, 1971.)

By virtue of the authority vested in me by Reorganization Plan 3 of 1967, it is hereby ordered that:

1. There shall be established in the Government of the District of Columbia a body of individuals to be known as the Advisory Group to the committee on regulations for child-placing agencies established by Public Law 78-292 of April 22, 1944, as amended [D.C. Code § 32-783].

2. The function of the Advisory Group shall be to advise the Committee in the Committee's function of assisting



the Commissioner in the formulation of rules and regulations prescribing standards of placement, care, and services to be required of child-placing agencies.

3. The Advisory Group shall comprise at least three residents of the District of Columbia who have a background of experience with the programs of child-placing agencies, who shall serve without compensation. They shall be appointed by the Commissioner and shall serve at his pleasure.

4. The Director of the Department of Human Resources shall provide administrative assistance to the Advisory group.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32-790.

#### § 32-784. Application for license—Form—Investigation by Board—Provisional license—Term and renewal.

An application for a license as a child-placing agency shall be made to the Commissioner on forms provided by him and in the manner prescribed. Before such license is issued the Board of Public Welfare shall arrange to have an investigation made of the activities and standards of care of the agency and shall consult with persons having official connection with the agency. If the Board is satisfied as to the good character and intent of the applicant, and that the agency is adequately financed, and that its staff, procedures, and services conform to the established standards of care, said Board shall recommend to the Commissioner that a license be issued.

A provisional license may be issued to any agency which is temporarily unable to conform to all the provisions of the established standards of care upon terms and conditions prescribed by the Commissioner upon recommendation of the Board of Public Welfare.

All licenses shall be issued for one year from the date thereof and may be renewed annually on the application of the agency, except that provisional licenses may be issued for not more than three successive years. (Apr. 22, 1944, 58 Stat. 193, ch. 174, § 4; June 8, 1954, 68 Stat. 247, ch. 273, § 2.)

#### AMENDMENT

1954—Act June 8, 1954, deleted the words "from the date of the passage of sections 32-781 to 32-789" following the words "successive years" in the last sentence.

#### EFFECTIVE DATE OF 1954 AMENDMENT

See note under § 32-783.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and functions transferred, see note under § 3-102.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32-782.

#### § 32-785. Persons authorized to place children—Custody, control, supervision, and visitation by agency—Confidential records.

No person other than the parent, guardian, or relative within the third degree, and no firm, corporation, association, or agency, other than a licensed child-placing agency, may place or arrange or assist in placing or arranging for the placement of a child under sixteen years of age in a family home or for

adoption. In accordance with the rules and regulations promulgated hereunder, any licensed child-placing agency may accept children for placement in family homes and shall have and maintain care, custody, and control of any such child until returned to the person from whom received or until responsibility for the child is transferred to another child-welfare agency or terminated by the order of a court of competent jurisdiction.

Every such agency shall keep and maintain careful supervision of all children under its care, including those placed in family homes, and its officers or agents shall visit all such homes and families as often as may be necessary to promote the welfare of such child: *Provided*, That legally adopted children shall not be subject to such supervision and visitation, or other supervision or visitation. Every such agency shall keep such records as shall be required by the rules and regulations promulgated hereunder and all records regarding children and all facts learned about children and their parents or relatives shall be deemed confidential.

Records which are deemed confidential shall not be available for inspection by nor disclosed to any person, firm, corporation, association, or public agency, except that such records shall be available for inspection by authorities authorized by law to license child-placing agencies. Such records shall not be subject to judicial subpoena in collateral proceedings, except that the licensed child-placing agency and the Commissioner in accordance with rules and regulations promulgated hereunder, may make such records, or any information contained in such records, available (1) when the Commissioner or such agency determines that any information contained in such records shall promote or protect the interest and welfare of any child the Commissioner or such agency has served, and (2) for the purpose of research if adequate safeguards are taken against the disclosure or publication in any manner of the identity of any person contained in such records." (Apr. 22, 1944, 58 Stat. 194, ch. 174, § 5; June 8, 1954, 68 Stat. 247, ch. 273, § 3.)

#### AMENDMENT

1954—Act June 8, 1954, amended section by eliminating the last paragraph relating to prohibited compensation and substituting a new paragraph concerning confidential records.

#### EFFECTIVE DATE OF 1954 AMENDMENT

See note under § 32-783.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### NOTES TO DECISIONS

##### Attorneys

Where defendant was requested by adopting mother to handle adoption, defendant arranged with doctor for examination of child, defendant presented natural mother with paper identified as consent to adoption and gave natural mother \$50 obtained from adopting mother, stating that such was a loan, and defendant did not possess a license which authorized him to place or arrange or assist in placing or arranging for placement of any child for adoption, defendant was guilty of violation of Baby Brokers Act. *Anderson v. District of Columbia* (D.C. Mun. App. 1959, 154 A. 2d 717).



**§ 32-785a. Agreements with child placement agencies outside of the District—Authority of Commissioner.**

Notwithstanding the provisions of this chapter, the Commissioner is authorized to enter into agreements with any person, firm, corporation, association, or public agency licensed or authorized by a State or country for the care and placement of minors, permitting such person, firm, corporation, association, or public agency to place nonresident children in foster or adopting homes in the District of Columbia. The Commissioner shall act pursuant to regulations promulgated as provided in section 32-783. (Apr. 22, 1944, ch. 174, § 5A, as added June 8, 1954, 68 Stat. 247, ch. 273, § 4.)

**EFFECTIVE DATE**

See note under § 32-783.

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**§ 32-786. Agency vested with parental rights—Consent to adoption—Adoption petition—Parents' relinquishment of rights—Recordation.**

(a) Whenever a licensed child-placing agency shall have been given the permanent care and guardianship of any child and the rights of the parent or parents of such child shall have been terminated by order of a court of competent jurisdiction or by a legally executed relinquishment of parental rights, the agency is vested with parental rights and may consent to the adoption of the child pursuant to the statutes regulating adoption procedure. Minority of a natural parent shall not be a bar to such parent's relinquishment to a licensed agency. Any relinquishment of parental rights other than by court order as provided in this subsection may be revoked upon the written consent of all the parties to said relinquishment and any such relinquishment may be transferred from one licensed child-placing agency to another licensed child-placing agency, in which case the second agency shall assume all the rights and duties of the first agency. For the purposes of this section, "licensed child-placing agency" shall mean any child-placing agency licensed pursuant to this chapter or any child-placing agency licensed or authorized by any State, Territory, or possession of the United States, by the Commonwealth of Puerto Rico, or by any foreign country or any state, province, or other governmental division of any foreign country for the care and placement of minors. Such transfer or relinquishment shall be filed in the Family Division of the Superior Court for the District of Columbia, as hereinafter provided in this section. Except in proceedings for adoption, no parent may voluntarily assign or otherwise transfer to another his rights and duties with respect to the permanent care and control of a child under sixteen years of age unless such relinquishment of parental rights is made to a licensed child-placing agency. Such relinquishment of parental rights shall be a statement in writing signed by the person relinquishing such parental rights who shall subscribe his name thereto and acknowledge the same before

a representative of the licensed child-placing agency in the presence of at least one witness. Said relinquishment of parental rights shall be recorded and filed in a properly sealed file in the Family Division of the Superior Court for the District of Columbia. The seal of said file shall not be broken except for good cause shown and upon the written order of a judge of said court.

(b) The Commissioner or his designated agents are empowered to accept permanent care and guardianship of any child by a legally executed relinquishment of parental rights and when vested with such parental rights shall exercise them in the same manner as prescribed herein for a licensed child-placing agency. Such parental relinquishment taken by the Commissioner or his designated agents shall be subject to the same rights and requirements as to form, transfer, and disposition as are prescribed herein for a licensed child-placing agency. (Apr. 22, 1944, 58 Stat. 194, ch. 174, § 6; June 8, 1954, 68 Stat. 248, ch. 273, § 5; Apr. 11, 1956, 70 Stat. 113, ch. 204, § 107(c); Aug. 21, 1959, 73 Stat. 413, Pub. L. 86-177, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 159(i), 84 Stat. 578.)

**AMENDMENTS**

1970—Section 159(i) of Act July 29, 1970, Public Law 91-358 amended section by striking out "Domestic Relations Branch of the Municipal Court" and inserting in lieu thereof "Family Division of the Superior Court."

1959—Act Aug. 21, 1959, amended fourth sentence in subsection (a) by substituting "by any state, Territory, or possession of the United States, by the Commonwealth of Puerto Rico, or by any foreign country or any state, province, or other governmental division of any foreign country for the care and placement of minors" for "by another state or country for the care and placement of minors".

1956—Act Apr. 11, 1956, struck out "Office of the Clerk of the District Court of the United States for the District of Columbia", and "Office of the Clerk of the United States District Court for the District of Columbia" and inserted in lieu of each such phrases "Domestic Relations Branch of the Municipal Court for the District of Columbia" (now District of Columbia Court of General Sessions).

1954—Act June 8, 1954, amended section by deleting the second sentence relating to the inapplicability of section 16-201 (now § 16-301) concerning petitions for adoption, inserting in lieu thereof four new sentences relating to relinquishment of a child to a licensed agency as therein defined, filing of such relinquishment, added provision that the minority of a parent would not be a bar to relinquishment of a child to a licensed agency, added subsection (b) and designated the original section, as amended, subsection (a).

**EFFECTIVE DATE OF 1970 AMENDMENT**

See note preceding section 11-101.

**EFFECTIVE DATE OF 1956 AMENDMENT**

Section 115 of act April 11, 1956, provided that: "This Act, except sections 105, 106 and 107, shall take effect upon its approval [April 11, 1956]. Sections 105, 106 and 107 shall take effect thirty days after the appointment and qualification of the three additional judges authorized by this Act to be appointed to the court".

**EFFECTIVE DATE OF 1954 AMENDMENT**

See note under section 32-783.

**CHANGE OF NAME**

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded Act



Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions. See section 11-101.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CROSS REFERENCE

Family Division of the Superior Court, see § 11-1101.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16-304.

### § 32-787. Revocation of license of child-placing agency—Notice—Reinstatement.

The Commissioner may refuse to reissue or may revoke or suspend the license of any child-placing agency after full hearing on proof of violation of any provisions of this chapter or the rules and regulations promulgated hereunder. Before any license shall be suspended or revoked the holder thereof shall have notice in writing of the charge or charges and shall, at the date and place specified in said notice, which shall be at least five days after the service thereof, be given a hearing by said Commissioner, or his designated agents, with a full opportunity to produce testimony in his, her, or its behalf. Any licensee whose license has been suspended or revoked may, after the expiration of ninety days, on application to the said Commissioner, have the same reinstated or reissued upon satisfactory proof that the disqualification has ceased. (Apr. 22, 1944, 58 Stat. 195, ch. 174, § 7.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CROSS REFERENCES

Administrative procedure, see § 1-1501 et seq.

Judicial review, see §§ 1-1510, 11-722.

### § 32-788. Penalty for operation as child-placing agency without license—Jurisdiction.

Any person, firm, corporation, association, or public agency who conducts a child-placing agency without a license as provided for in this chapter or who violates any of the provisions of this chapter shall, upon conviction, be fined not more than \$300 or imprisoned for not more than ninety days, or both. Prosecution for violations of such sections shall be upon information in the criminal division of the Superior Court of the District of Columbia by the corporation counsel of the District of Columbia. (Apr. 22, 1944, 58 Stat. 195, ch. 174, § 8; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Pub. L. 91-358, amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded Act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

#### NOTES TO DECISIONS

##### Evidence

Evidence authorized conviction of violation of this chapter. *Goodman v. District of Columbia* (D. C. Mun. App. 1947, 50 A. 2d 812).

##### Jury trial

Defendant charged with violating Baby Broker Act for which maximum penalty was fine of up to \$300 or imprisonment up to ninety days, or both, was not entitled to jury trial. *A. Dobkin v. District of Columbia* (D.C. App. 1963, 194 A. 2d 657).

### § 32-789. Investigations and inspections by Board.

The Board of Public Welfare is authorized to make such investigations and inspections as are necessary to carry out the provisions of this chapter. (Apr. 22, 1944, 58 Stat. 195, ch. 174, § 9.)

#### TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and functions transferred, see note under § 3-102.

### § 32-790. Compensation for services in connection with child placement.

Neither the Commissioner nor any child-placing agency authorized to perform services in connection with placing a child in a family home for adoption may make or receive any charge or compensation whatsoever for such services, except that a licensed child-placing agency which is organized and operated exclusively for religious or charitable purposes and no part of the net earnings of which can inure to the benefit of any private shareholder or individual, may be allowed to charge adoptive parents, within prescribed limits, for such services an amount not to exceed the average costs incurred; such average costs and prescribed limits to be determined in accordance with rules and regulations promulgated by the committee created by section 32-783. Inability of adoptive applicants to pay for all or any part of such costs shall not be a disqualifying factor in determining whether applicants are suitable parents for the child. (April 22, 1944, ch. 174, § 12, as added June 8, 1954, 68 Stat. 248, ch. 273, § 6.)

#### EFFECTIVE DATE

See note under § 32-783.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

### § 32-791. "Commissioner" defined—Delegation of functions.

As used in this chapter, the term "Commissioner" means the Commissioner of the District of Columbia or his designated agents. The performance of any function vested by this chapter in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). (Apr. 22, 1944, ch. 174, § 13, as added Aug. 21, 1959, 73 Stat. 413, Pub. L. 86-177, § 2.)

#### REFERENCES IN TEXT

Reorganization Plan Numbered 5, referred to in text, is set out in Appendix to Title 1, Administration.



## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## CROSS REFERENCE

Authority of District Commissioner to delegate functions vested in him by Reorg. Plan No. 3 of 1967, see § 305 of the Plan set forth in the Appendix to Title 1.

## Chapter 8.—NATIONAL TRAINING SCHOOL FOR BOYS

## CODIFICATION

This chapter was omitted as obsolete. The National Training School for Boys was governed and managed by a Board of Trustees until July 1, 1939, at which time 1939 Reorg. Plan No. 2 (4 F.R. 2731, 53 Stat. 1431) abolished the Board of Trustees and transferred the School and its functions (including the functions of the Board of Trustees) to the Department of Justice, to be administered by the Director of the Bureau of Prisons, under the direction and supervision of the Attorney General. The School was so operated until May 15, 1968, when it was closed pursuant to order of the Attorney General. The site of the School is now a part of the Fort Lincoln New Town project.

For current provisions relating to proceedings regarding delinquency, neglect, or need of supervision of children, see § 16-2301 et seq.

Also, see 18 U.S.C. § 5025, authorizing the Commissioner of the District of Columbia to provide facilities and personnel for the treatment and rehabilitation of youth offenders or to contract with the Bureau of Prisons for their treatment and rehabilitation.

Youth facilities now operated by the District of Columbia include the Receiving Home for Children, located within the District, and Maple Glen School, Cedar Knoll School, and Oak Hill Youth Center, located in Laurel, Maryland.

## §§ 32-801 to 32-816. Omitted.

Section 32-801, act May 27, 1908, ch. 200, § 1, 35 Stat. 380, provided that the District reform school for boys should be known as the National Training School for Boys.

Section 32-802, acts May 3, 1876, ch. 90, § 1, 19 Stat. 49; May 27, 1908, ch. 200, § 1, 35 Stat. 380, dealt with appointment of a board of trustees to govern and manage the school.

Section 32-803, act June 4, 1880, ch. 121, § 1, 21 Stat. 156, provided that one of the District commissioners should be a trustee of the school.

Section 32-804, act May 3, 1876, ch. 90, § 16, 19 Stat. 52, provided for appointment of two consulting trustees of the school.

Section 32-805, acts May 3, 1876, ch. 90, § 2, 19 Stat. 49; May 27, 1908, ch. 200, § 1, 35 Stat. 380, dealt with corporate capacity and powers of the board of trustees.

Section 32-806, acts May 3, 1876, ch. 90, § 15, 19 Stat. 52; June 5, 1900, ch. 715, 31 Stat. 267, authorized the board of trustees to make by-laws, rules, and regulations.

Section 32-807, act May 3, 1876, ch. 90, § 14, 19 Stat. 51, dealt with contracts and purchases, the executive officer, and annual reports.

Section 32-808, act May 3, 1876, ch. 90, § 3, 19 Stat. 49, dealt with appointment and compensation of a superintendent and other employees of the school.

Section 32-809, acts May 3, 1876, ch. 90, § 4, 19 Stat. 49; June 10, 1921, ch. 18, § 304, 42 Stat. 24, dealt with appointment, bonding, and duties of a treasurer of the school.

Section 32-810, act May 3, 1876, ch. 90, § 5, 19 Stat. 50, dealt with bonding of the superintendent.

Section 32-811, act May 3, 1876, ch. 90, § 6, 19 Stat. 50, dealt with powers and duties of the superintendent and subordinate employees.

Section 32-812, act May 3, 1876, ch. 90, § 7, 19 Stat. 50, provided that superintendent be in charge of lands

and other property of the school, books of accounts, register of boys, and examination of school and accounts.

Section 32-813, act Mar. 3, 1881, ch. 134, § 1, 21 Stat. 459, dealt with a report of school officers to the District commissioners.

Section 32-814, act Mar. 3, 1905, ch. 1483, 33 Stat. 1211, dealt with disposition of proceeds of the school farm and shops.

Section 32-815, act May 3, 1876, ch. 90, § 8, 19 Stat. 50, dealt with commitment of boys under age 17 to the school. For current provisions, see § 16-2301 et seq.

Section 32-816, acts May 3, 1876, ch. 90, § 9, 19 Stat. 51; June 5, 1900, ch. 715, 31 Stat. 267, related to the period of detention. For current provisions, see § 16-2322.

## NOTES TO DECISIONS UNDER PRIOR § 32-816

## In general

Attempts at escape from institutions are forbidden to all inmates, and if they consider their confinement improper, they are bound to take other means to test the question. *Aderhold v. Soileau* (C.C.A. 5, 1933, 67 F. 2d 259).

## §§ 32-817 to 32-820. Omitted.

Section 32-817, acts May 3, 1876, ch. 90, § 10, 19 Stat. 51; Mar. 19, 1906, ch. 960, § 8, 34 Stat. 73, limited the number of boys at the school to number that can be properly accommodated.

Section 32-818, act May 3, 1876, ch. 90, § 11, 19 Stat. 51, dealt with penalties for enticing boy from school or harboring escaped boy, and for arrest and return of escapees.

Section 32-819, act May 3, 1876, ch. 90, § 12, 19 Stat. 51, dealt with employment and instruction of boys, apprenticing, and indentures of apprenticeship.

Section 32-820, act Feb. 26, 1909, ch. 217, § 1, 35 Stat. 657, dealt with release on parole of juvenile offenders committed to the school.

## NOTES TO DECISIONS UNDER PRIOR § 32-820

## Conditional parole

Under the statute providing for parole from the National Training School as provided in statute authorizing the Board of Trustees in its discretion to parole under such conditions as the Board deems proper, a boy may be paroled from the training school on condition subsequent that he obey the laws of the community and such a parole may be revoked. *Kautter v. Reid* (D.C.D.C. 1960, 183 F. Supp. 352).

## §§ 32-821, 32-822. Omitted.

Section 32-821, act Feb. 26, 1909, ch. 217, § 2, 35 Stat. 657, authorized the board of trustees to parole boys, subject to the approval of the Attorney General in certain cases.

Section 32-822, acts May 3, 1876, ch. 90, § 13, 19 Stat. 51; Aug. 1, 1914, ch. 223, § 1, 38 Stat. 657; Mar. 28, 1918, ch. 28, § 1, 40 Stat. 494, dealt with District support of boys committed, accounts, payment, and rates.

## Chapter 9.—NATIONAL TRAINING SCHOOL FOR GIRLS

## CODIFICATION

This chapter was omitted as obsolete. Section 1 of act Aug. 3, 1951, ch. 291, 65 Stat. 154 (§ 32-908a) provided that no new commitments to the National Training School for Girls should be made after Aug. 3, 1951.

The act of July 31, 1953, Pub. L. 173, 67 Stat. 286, gave authorization for the National Training School for Girls to be known as the Industrial Home for Colored Girls. The same act authorized the construction of a new Industrial Home School for Colored Children near Laurel, Maryland. The act of July 1, 1954, Pub. L. 468, 68 Stat. 385, authorized the Industrial Home School for Colored Girls to be combined with and become a part of the Industrial Home School for Colored Children and finally the act of September 4, 1957, Pub. L. 85-285, authorized the disposition of "so much of the land of the United



States reserved for a site for the National Training School for Girls by the act of July 14, 1892 (27 Stat. 165)."

For current provisions relating to proceedings regarding delinquency, neglect, or need of supervision of children, see § 16-2301 et seq.

Also, see 18 U.S.C. § 5025, authorizing the Commissioner of the District of Columbia to provide facilities and personnel for the treatment and rehabilitation of youth offenders or to contract with the Bureau of Prisons for their treatment and rehabilitation.

Youth facilities now operated by the District of Columbia include the Receiving Home for Children, located within the District, and Maple Glen School, Cedar Knoll School, and Oak Hill Youth Center, located in Laurel, Maryland.

#### §§ 32-901 to 32-904. Omitted.

Section 32-901, act June 26, 1912, ch. 182, § 1, 37 Stat. 171, provided that the District reform school for girls should be known as the National Training School for Girls.

Section 32-902, acts July 9, 1888, ch. 595, § 2, 25 Stat. 245; June 6, 1912, ch. 182, § 1, 37 Stat. 171; Mar. 16, 1926, ch. 58, § 1, 44 Stat. 208, dealt with authority of the Board of Public Welfare, as the successor to the board of trustees of the school, to establish and maintain a training school for girls within the District.

Section 32-903, acts July 9, 1888, ch. 595, § 3, 25 Stat. 246; May 27, 1908, ch. 200, § 1, 35 Stat. 380; Mar. 16, 1926, ch. 58, § 1, 44 Stat. 208, provided that the Board of Public Welfare would have the same power and authority of the school as the board of trustees of the National Training School for Boys had in relation to boys.

Sections 32-904, acts May 3, 1876, ch. 90, § 15, 19 Stat. 52; July 9, 1888, ch. 595, § 5, 25 Stat. 246; Feb. 25, 1901, ch. 478, 31 Stat. 809; Mar. 16, 1926, ch. 58, § 1, 44 Stat. 208, authorized the Board of Public Welfare to make by-laws, rules, and regulations.

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402 (255) of Reorg. Plan No. 3, of 1967, effective November 3, 1967, transferred to regulatory and other functions of the Board of Commissioners under § 32-904, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan.

#### §§ 32-905 to 32-907. Omitted.

Section 32-905, act July 9, 1888, ch. 595, § 4, 25 Stat. 246; Mar. 16, 1926, ch. 58, § 1, 44 Stat. 208, dealt with appointment and compensation of officers and employees.

Section 32-905a, acts Sept. 29, 1943, 57 Stat. 569, ch. 249, § 2; June 28, 1944, 58 Stat. 521, ch. 300, § 1; June 30, 1945, 59 Stat. 285, ch. 209, § 1; July 9, 1946, 60 Stat. 513, ch. 544, § 1; July 25, 1947, 61 Stat. 439, ch. 324, § 1; June 19, 1948, 62 Stat. 548, ch. 555, § 1; June 29, 1949, 63 Stat. 303, ch. 279, § 1; which related to compensation of superintendent of National Training School for Girls, was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a).

Section 32-906, acts Feb. 28, 1923, ch. 148, § 1, 42 Stat. 1358; Mar. 16, 1926, ch. 58, § 1, 44 Stat. 208, dealt with control over inmates and segregation of white and colored.

Section 32-907, acts July 9, 1888, ch. 595, § 6, 25 Stat. 246; June 26, 1912, ch. 182, § 1, 37 Stat. 171, dealt with applicability of laws relating to the National Training School for Boys to the school for girls.

#### NOTES TO DECISIONS UNDER PRIOR § 32-907

##### In general

Under this section, a reform school for girls of the District was authorized, the powers thereof to be exercised by a Board of Trustees, which board was given the same powers and duties relative to girls as were given with respect to boys, by act of May 3, 1876. *Richardson v. Browning* (1927, 18 F. 2d 1008, 57 App. D.C. 186).

#### § 32-908. Omitted.

Section 32-908, acts May 3, 1876, ch. 90, § 8, 19 Stat. 50; July 9, 1888, ch. 595, § 6, 25 Stat. 245; Feb. 25, 1901, ch. 478, 31 Stat. 809; Mar. 19, 1906, ch. 960, § 8, 34 Stat.

73; Mar. 16, 1926, ch. 58, § 1, 44 Stat. 208; Aug. 3, 1951, ch. 291, § 3, 65 Stat. 154, related to commitment of girls under 17 years of age. For current provisions, see § 16-2301 et seq.

#### NOTES TO DECISIONS UNDER PRIOR § 32-908

##### In general

This section and acts amendatory thereto, were obviously framed to operate according to the age of the individual who comes within its purview, and without consideration of either the property rights of the child or her social status. *Richardson v. Browning* (1927, 18 F. 2d 1008, 57 App. D.C. 186).

##### Marriage of child

Marriage of a female child, in itself, does not automatically terminate the control of delinquent or dependent children. *Richardson v. Browning* (1927, 18 F. 2d 1008, 57 App. D.C. 186).

#### §§ 32-908a to 32-909. Omitted.

Section 32-908a, act Aug. 3, 1951, ch. 291, § 1, 65 Stat. 154, provided that no girl should be committed to the National Training School for Girls after Aug. 3, 1951, and authorized new commitments to be made to the Board of Public Welfare. For current provisions, see § 16-2301 et seq.

Section 32-908b, act Aug. 3, 1951, ch. 291, § 2, 65 Stat. 154, dealt with availability of property and equipment of the school to the Board of Public Welfare for care of children committed to the Board.

Section 32-909, acts May 3, 1876, ch. 90, § 9, 19 Stat. 51; July 9, 1888, ch. 595, § 6, 25 Stat. 245; Feb. 25, 1901, ch. 478, 31 Stat. 810; June 26, 1912, ch. 182, § 1, 37 Stat. 171, related to the period of detention. For current provisions, see § 16-2322.

#### NOTES TO DECISIONS UNDER PRIOR § 32-909

##### Attempts to escape

Attempts at escape from institution are forbidden to all inmates, and if they consider their confinement improper, they are bound to take other means to test the question. *Aderhold v. Soileau* (C.C.A. 1933, 67 F. 2d 259).

#### §§ 32-910 to 32-913. Omitted.

Section 32-910, act Apr. 15, 1910, ch. 164, § 1, 36 Stat. 300, dealt with release on parole of juvenile offenders committed to the school.

Section 32-911, acts Apr. 15, 1910, ch. 164, § 2, 36 Stat. 300; Mar. 16, 1926, ch. 58, § 1, 44 Stat. 208, authorized the board of public welfare to parole girls, subject to the approval of the Attorney General in certain cases.

Section 32-912, act June 5, 1920, ch. 234, § 1, 41 Stat. 865, dealt with disbursement of appropriations for the school.

Section 32-913, act July 9, 1888, ch. 595, § 8, 25 Stat. 246, reserved to Congress the right to alter, amend, or repeal this chapter.

#### Chapter 10.—MISCELLANEOUS

##### Sec.

- 32-1001. Visitation of charities supported in whole or in part by District revenues by Commissioner of the District of Columbia.
- 32-1002. Visitorial power of Commissioner over certain designated organizations.
- 32-1003. Appropriations for charitable and reformatory institutions to be lien on property.
- 32-1004. Terms of Members of Congress while acting as trustees of charitable institutions.
- 32-1005. Compensation of physicians to the poor.
- 32-1006. Voluntary medical service for charitable institutions.
- 32-1007. Trustees of charitable institutions supported by congressional appropriations not to traffic therewith for gain.
- 32-1008. Congressional policy as to appropriations to institutions under sectarian control.
- 32-1009. Sale of products of Home for Aged and Infirm.
- 32-1010. Admission of pay patients to Home for Aged and Infirm.



**§ 32-1001. Visitation of charities supported in whole or in part by District revenues by Commissioner of the District of Columbia.**

The Commissioner of the District of Columbia is required to visit and investigate the management of all institutions of charity within the District which may be appropriated for out of the District revenues, in whole or in part, and shall require an itemized report of receipts and expenditures to be made to him, to be transmitted with his annual report to Congress, which report shall also include such recommendations as the Commissioner may deem proper concerning the necessity for such institutions, together with a plan for their organization and management, and estimates of appropriations necessary for their maintenance. (July 5, 1884, 23 Stat. 127, ch. 227, § 1.)

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**CROSS REFERENCE**

Supervision by Board of Public Welfare over institutions supported by congressional appropriations, see § 3-111.

**§ 32-1002. Visitorial power of Commissioner over certain designated organizations.**

The Commissioner of the District of Columbia is authorized to visit, investigate the management of, and have a report of the receipts and expenditures of the Columbia Hospital for Women and Lying-in Asylum, the Children's Hospital, Saint Ann's Infant Asylum, National Association for Colored Women and Children, Women's Christian Association, Little Sisters of the Poor, and the German Orphan Asylum, so long as they respectively accept money appropriated by Congress for their aid. (June 4, 1880, 21 Stat. 157, ch. 121, § 1.)

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**CROSS REFERENCE**

Supervision by Board of Public Welfare over institutions supported by congressional appropriations, see § 3-111.

**§ 32-1003. Appropriations for charitable and reformatory institutions to be lien on property.**

All sums of money appropriated and expended in aid of the purchase of real estate for charitable or reformatory institutions in the District of Columbia, or for buildings or for permanent improvements to buildings thereon, shall (subject to any trust deed, mortgage, or other security or encumbrance existing on such property at the time of its purchase, or created at the time of its purchase) be a lien upon such property, and in case of the dissolution of any such corporation owning such property, or in case of the disposal of such property, by such corporation, entitle the United States to reimbursement in proportion to any other contributions or funds used for such purposes; and the acceptance by any such corporation of any sum of money appropriated for the foregoing purposes shall be deemed an acceptance of and agreement to this provision. (Mar. 3, 1893, 27 Stat. 552, ch. 199, § 1.)

**CROSS REFERENCE**

General provisions concerning sale of public lands, see § 9-301 et seq.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 32-325.

**§ 32-1004. Terms of Members of Congress while acting as trustees of charitable institutions.**

In all cases where Members of Congress or Senators are appointed to represent Congress on any board of trustees or board of directors of any corporation or institution to which Congress makes any appropriation, the term of said Members or Senators, as such trustee or director, shall continue until the expiration of two months after the first meeting of the Congress chosen next after their appointment. (Mar. 3, 1893, 27 Stat. 553, ch. 199, § 1.)

**CODIFICATION**

Section is also classified to 31 U.S.C. § 722.

**CROSS REFERENCES**

Term of office of Members of Congress or Senators acting as directors of Gallaudet College, see § 31-1029.

**§ 32-1005. Compensation of physicians to the poor.**

The compensation of the physicians to the poor shall not exceed forty dollars per month each. (Feb. 25, 1885, 23 Stat. 314, ch. 145, § 1.)

**§ 32-1006. Voluntary medical service for charitable institutions.**

The Commissioner of the District of Columbia is authorized to accept voluntary medical service for public charitable institutions. (May 18, 1910, 36 Stat. 409, ch. 248, § 1.)

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**CROSS REFERENCE**

General provision forbidding acceptance of voluntary services, see § 1-215.

**§ 32-1007. Trustees of charitable institutions supported by congressional appropriations not to traffic therewith for gain.**

No member or members of any board or boards of trustees or directors of any charitable institution, organization or corporation in the District of Columbia, which is supported in whole or in part by appropriations made by Congress, shall engage in traffic with said institution, organization or corporation for financial gain, and any member or members of such board of trustees or directors who shall so engage in such traffic shall be deemed legally disqualified for service on said board or boards. (June 11, 1896, 29 Stat. 410, ch. 419, § 1.)

**CROSS REFERENCE**

Members or employees of Board of Public Welfare may not deal with any institution under its control, inspection, or supervision for financial gain, see § 3-113.

**§ 32-1008. Congressional policy as to appropriations to institutions under sectarian control.**

It is hereby declared to be the policy of the Government of the United States to make no appropriation of money or property for the purpose of founding, maintaining, or aiding by payment for services, expenses, or otherwise, any church or religious denom-



ination, or any institution or society which is under sectarian or ecclesiastical control; and no money appropriated for charitable purposes in the District of Columbia, shall be paid to any church or religious denomination, or to any institution or society which is under sectarian or ecclesiastical control. (June 11, 1896, 29 Stat. 411, ch. 419, § 1; Mar. 3, 1897, 29 Stat. 663, ch. 387, § 1.)

#### NOTES TO DECISIONS

##### Secular corporation

Appropriation for Providence Hospital, a secular corporation created by act of Congress, was not unconstitutional as a law respecting the establishment of religion, even though all the members of the corporation belonged to one religious body. *Bradfield v. Roberts* (1900, 20 S. Ct. 121, 175 U.S. 291, 44 L. Ed. 168).

#### § 32-1009. Sale of products of Home for Aged and Infirm.

The Commissioner is authorized, under such regulations as the District of Columbia Council may prescribe, to sell the surplus products of the Home for the Aged and Infirm. All moneys derived from such sales shall be paid into the Treasury of the United States to the credit of the general fund of the District of Columbia. (June 5, 1920, 41 Stat. 865, ch. 234, § 1; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; June 28, 1944, ch. 300, § 18, 58 Stat. 533.)

#### CODIFICATION

This section is a composite of credits cited in the history line.

##### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402 (256) of Reorg. Plan 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of prescribing regulations under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### § 32-1010. Admission of pay patients to Home for Aged and Infirm.

Pay patients may be admitted to the Home for the Aged and Infirm for care and treatment at such rates and under such regulations as may be established by the District of Columbia Council, insofar as such admissions will not interfere with admission of indigent patients: *Provided, however*, That the rates shall not exceed the estimated per capita cost for the current year. (June 14, 1950, 64 Stat 212, ch. 235.)

#### TRANSFER OF FUNCTIONS

The Board of Public Welfare was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorg. Plan No. 5 of 1952. See note under § 3-102.

Section 402 (257) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the functions of the Board of Commissioners of establishing rates and regulations respecting the care and treatment of any patients under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

## Chapter 11.—INTERSTATE COMPACT ON JUVENILES

### Sec.

- 32-1101. Findings and purpose.
- 32-1102. Authority to enter into compact.
- 32-1103. Compact administrator—Appointment—Authority—Duties—Supplementary agreements—Payments.
- 32-1104. Enforcement of compact.
- 32-1105. Construction of compact.
- 32-1106. Congressional authority.

#### § 32-1101. Findings and purpose.

(a) The Congress finds that (1) juveniles who are not under proper supervision and control, or who have absconded, escaped, or run away, are likely to endanger their own health, morals, and welfare, and the health, morals, and welfare of others, and (2) the cooperation of the District of Columbia with the States is necessary to provide for the welfare and protection of juveniles and other persons in the District of Columbia.

(b) The Congress intends, in authorizing the District of Columbia to adopt the Interstate Compact on Juveniles, to have the District of Columbia cooperate fully with the States (1) in returning juveniles to those States requesting their return, and (2) in accepting and providing for the return of juveniles who are residents of the District of Columbia and who are found or apprehended in a State. (July 29, 1970, Pub. L. 91-358, § 401, title IV, 84 Stat. 657.)

#### EFFECTIVE DATE

Section 901(b) (2) of Act July 29, 1970, Pub. L. 91-358 provided in part:

"Title IV [Secs. 32-1101 to 32-1106] shall take effect on the date of the enactment of this Act." [July 29, 1970]

#### § 32-1102. Authority to enter into compact.

(a) The Commissioner of the District of Columbia (hereafter in this title referred to as the "Commissioner") is authorized to enter into and execute on behalf of the District of Columbia a compact with any State or States legally joining therein in the form substantially as follows [Subsection (b) follows Article XV of Compact]:

#### "THE INTERSTATE COMPACT ON JUVENILES

"The contracting states solemnly agree:

#### "ARTICLE I—Findings and Purposes

"That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to (1) cooperative supervision of delinquent juveniles on probation or parole; (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return, from one state to another, of non-delinquent juveniles who have run away from home; and (4) additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively. In carrying out the provisions of this compact the party states shall be guided by the non-criminal, reformatory and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provi-



sions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

#### "ARTICLE II—Existing Rights and Remedies

"That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

#### "ARTICLE III—Definitions

"That, for the purposes of this compact, 'delinquent juvenile' means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of any agency or institution pursuant to an order of such court; 'probation or parole' means any kind of conditional release of juveniles authorized under the laws of the states party hereto; 'court' means any court having jurisdiction over delinquent, neglected or dependent children; 'state' means any state, territory or possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and 'residence' or any variant thereof means a place at which a home or regular place of abode is maintained.

#### "ARTICLE IV—Return of Runaways

"(a) That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that<sup>1</sup> the juvenile should be returned, he shall present the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to

the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

"Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding 90 days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such State, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

"(b) That the state to which a juvenile is returned under this Article shall be responsible for payment of the transportation costs of such return.

"(c) That 'juvenile' as used in this Article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.

#### "ARTICLE V—Return of Escapees and Absconders

"(a) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be sub-

<sup>1</sup>So in original. Probably should read "hearing that".



mitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

"Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding 90 days, as will enable his detention under a detention order issued on a requisition pursuant to this Article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

"(b) That the state to which a delinquent juvenile is returned under this Article shall be responsible for the payment of the transportation costs of such return.

#### "ARTICLE VI—Voluntary Return Procedure

"That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of Article IV(a) or of Article V(a), may consent to his immediate return to the state from which he absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or

subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

#### "ARTICLE VII—Cooperative Supervision of Probationers and Parolees

"(a) That the duly constituted judicial and administrative authorities of a state party to this compact (herein called 'sending state') may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called 'receiving state') while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probational or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

"(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

"(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

"(d) That the sending state shall be responsible under this Article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.



**"ARTICLE VIII—Responsibility for Costs**

"(a) That the provisions of Articles IV(b), V(b) and VII(d) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

"(b) That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV(b), V(b) or VII(d) of this compact.

**"ARTICLE IX—Detention Practices**

"That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

**"ARTICLE X—Supplementary Agreements**

"That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment, and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall (1) provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished; (2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody; (3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile; (4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state; (5) provide for reasonable inspection of such institutions by the sending state; (6) provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and (7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

**"ARTICLE XI—Acceptance of Federal and Other Aid**

"That any state party to this compact may accept any and all donations: gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

**"ARTICLE XII—Compact Administrators**

"That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

**"ARTICLE XIII—Execution of Compact**

"That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form or execution to be in accordance with the laws of the executing state.

**"ARTICLE XIV—Renunciation**

"That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same au-

thority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six months' renunciation notice of the present Article.

**"ARTICLE XV—Severability**

"That the provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstances shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

[Subsec. (a) precedes Article I of the Compact]

(b) The Commissioner may enter into and execute on behalf of the District of Columbia the following additional articles to the Interstate Compact on Juveniles:

**"ARTICLE XVI—Additional Provision Relating to Return of Minor Children**

"This article shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

"For the purposes of this article, 'child', as used herein, means any minor within the jurisdictional age limits of any court in the home state.

"When any child is brought before a court of a state of which such child is not a resident, and such state is willing to permit such child's return to the home state of such child, such home state, upon being so advised by the state in which such proceeding is pending, shall immediately institute proceedings to determine the residence and jurisdictional facts as to such child in such home state, and upon finding that such child is in fact a resident of said state and subject to the jurisdiction of the court thereof, shall within five days authorize the return of such child to the home state, and to the parent or custodial agency legally authorized to accept such custody in such home state, and at the expense of such home state, to be paid from such funds as such home state may procure, designate, or provide, prompt action being of the essence.

**"ARTICLE XVII—Additional Provision Concerning Interstate Rendition of Juveniles Alleged to be Delinquent**

"This article shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

"All provisions and procedures of Articles V and VI of the Interstate Compact on Juveniles shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile, charged with being a delinquent by reason of violating any criminal law shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in Article V of the compact shall be forwarded by the judge of the court in which the petition has been filed."

(July 29, 1970, Pub. L. 91-358, § 402, title IV, 84 Stat. 658.)



**§ 32-1103. Compact administrator—Appointment—Authority—Duties—Supplementary agreements—Payments.**

(a) The Commissioner shall appoint or designate an officer of the government of the District of Columbia (hereinafter in this section referred to as the "compact administrator") to administer the compact. The compact administrator shall serve at the pleasure of the Commissioner.

(b) The compact administrator, acting jointly with like officers of party States, shall promulgate rules and regulations to carry out more effectively the terms of the compact. The compact administrator shall cooperate with all departments, agencies, and officers of the government of the District of Columbia in facilitating the proper administration of the compact or of any supplementary agreement entered into by the compact administrator under subsection (c) of this section.

(c) Subject to the approval of the Commissioner, the compact administrator may enter into supplementary agreements with appropriate State officials for the purpose of administering the compact.

(d) Subject to the approval of the Commissioner, the compact administrator may make or arrange for any payments necessary to discharge any financial obligations imposed upon the District of Columbia

by the compact or by any supplementary agreement entered into under subsection (c) of this section. (July 29, 1970, Pub. L. 91-358, § 403, title IV 84 Stat. 665.)

**CROSS REFERENCE**

Jurisdiction of the Family Division of the Superior Court, see § 11-1101.

**§ 32-1104. Enforcement of compact.**

The courts, departments, agencies, and officers of the District of Columbia shall enforce the compact and shall take such action as may be necessary to carry out the purposes and intent of the compact which may be within their respective jurisdictions. (July 29, 1970, Pub. L. 91-358, § 402, title IV, 84 Stat. 666.)

**§ 32-1105. Construction of compact.**

The compact shall not be construed to prohibit the adoption of any other plan or procedure for the District of Columbia for the return of any runaway juvenile. (July 29, 1970, Pub. L. 91-358, § 405, title IV, 84 Stat. 666.)

**§ 32-1106. Congressional authority.**

The right to alter, amend, or repeal this title is expressly reserved by the Congress. (July 29, 1970, Pub. L. 91-358, § 406, title IV, 84 Stat. 666.)



## TITLE 33.—FOOD AND DRUGS

Chap.	Sec.
1. Adulteration .....	33-101
2. Candy .....	33-201
3. Milk, Cream, and Ice Cream.....	33-301
4. Narcotic Drugs.....	33-401
5. Meats and Meat Products.....	33-501
6. Restaurants .....	33-601
7. Regulation and Control of Certain Drugs Other Than Narcotics.....	33-701

### Chapter 1.—ADULTERATION

Sec.
33-101. Adulterated foods or drugs not to be sold or exposed for sale.
33-102. Definition of "drug" and "food"—Best quality to be furnished.
33-103. Adulterated article defined.
33-104. Rules and regulations for collecting and examining drugs and food.
33-105. Complaints to be investigated.
33-106. Drug and food samples furnished to agents of health department.
33-107. Portion of sample analyzed to be sealed and retained for defendant.
33-108. Representative of health department not to be interfered with.
33-109. Prosecutions—Penalties.
33-110. Repeal—Certain prior laws unaffected.
33-111. Special services for detection of adulteration.

#### § 33-101. Adulterated foods or drugs not to be sold or exposed for sale.

No person shall, within the District of Columbia, by himself or by his servant or agent, or as the servant or agent of any other person, sell, exchange, or deliver, or have in his custody or possession with the intent to sell or exchange, or expose or offer for sale or exchange, any article of food or drug which is adulterated within the meaning of this chapter. (Feb. 17, 1898, 30 Stat. 246, ch. 25, § 1.)

#### CROSS REFERENCES

Adulteration of candy, see § 33-201.  
Federal Food, Drug and Cosmetic Act, see 21 U.S.C. § 321 et seq.  
Implied warranties, see § 28: 2-315.  
Uniform Narcotic Drug Act, see § 33-401 et seq.  
Weights and measures, see § 10-101 et seq.

#### NOTES TO DECISIONS

##### Defense

It is no defense for a druggist prosecuted for selling an adulterated drug to show simply that he was at the time of sale ignorant of the fact that the drug was adulterated, as he must know what he sells, or proposes to sell, and that it conforms to the standard prescribed by law. *District of Columbia v. Lynham* (1900, 16 App. D.C. 85).

#### § 33-102. Definition of "drug" and "food"—Best quality to be furnished.

The term "drug," as used in this chapter, shall include all medicines for external or internal use, antiseptics, disinfectants, and cosmetics. The term "food," as used in this chapter, shall include confectionery, condiments, and all articles used for food

or drink by man, and if there be more than one quality of any article of food or drug known by the same name the best quality thereof shall be furnished to the purchaser, unless he otherwise requests at the time of making such purchase, or unless he be notified at such time of the inferior quality of the article delivered. (Feb. 17, 1898, 30 Stat. 246, ch. 25, § 2.)

#### § 33-103. Adulterated article defined.

An article shall be deemed to be adulterated within the meaning of this chapter:

(a) In the case of drugs: First, if, when sold under or by a name recognized in the United States Pharmacopoeia, it differs from the standard of strength, quality, or purity laid down in the edition thereof at the time official; second, if when sold under or by a name not recognized in the United States Pharmacopoeia, but which is found in the German, French, or English Pharmacopoeia, it differs from the strength, quality, or purity laid down therein; third, if, when sold as a patented medicine, compounded drug, or mixture, it is not composed of all of the ingredients advertised or printed or written on the bottles, wrappers, or labels of or on or with the patented medicine, compounded drug, or mixture: *Provided*, That if the defendant in any prosecution under this chapter, in respect to the sale of any such patented medicine, compounded drug, or mixture, shall prove to the satisfaction of the court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the purchaser, and with a written warranty to that effect; that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution.

(b) In the case of food: First, in the case of cheese, if it is not made exclusively from milk or cream, or both, with or without common salt; second, in the case of coffee, if it is not composed entirely of the seed of the *Coffea arabica*; third, in the case of lard, if it is not made exclusively from the rendered fat of the healthy hog; fourth, in the case of tea, if it is not composed entirely of the genuine leaf of the tea plant not exhausted; fifth, in the case of all kinds of vinegar, if it contains an acidity equivalent to the presence of less than four per centum of absolute acetic acid; and cider vinegar, if it is not made from the pure apple juice and contains less than one and five-tenths per centum of total solids; sixth, in the case of cider, if it is not made from the legitimate product of pure apple juice; in the case of wines and fruit juices, if not made from the pure fruit as represented; and in the case of cider, wines, fruit juices, and malt liquors, if not free from salicylic acid or other preservatives; and in the case of malt liquors, if not free from pruric acid, *coccus indicus*, *colchicine*, *colo-*



cynth, aloes, and wormwood; seventh, in the case of glucose, if it contains more than five one-hundredths per centum of ash; eighth, in the case of flour, if it is not composed entirely of one single ground cereal; ninth, in the case of bread, if there is any addition of alum, sulphate of copper, borax, or sulphate of zinc, or other poisonous or harmful ingredient, and if it contains more than thirty-one per centum of moisture, more than two per centum of ash, and less than six and twenty-five one-hundredths per centum of albuminoids; tenth, in the case of olive oil, if it is not made exclusively from the olive berry (*Olea europæa*), and its specific gravity at fifteen and six-tenths degrees centigrade (sixty degrees Fahrenheit) "actual density" to be not more than nine hundred and seventeen one-thousandths nor less than nine hundred and fourteen one-thousandths: *Provided*, That an offense shall not be deemed to be committed under this section in the following cases, that is to say, first, where the order calls for an article of food or drug inferior to such standard, or where such difference is made known by being plainly written or printed on the package; second, where the article of food or drug is mixed with any matter or ingredient not injurious to health and not intended fraudulently to increase its bulk, weight, or measure or conceal its inferior quality, if at the time such article is delivered to the purchaser it is made known to him that such article of food or drug is so mixed. (Feb. 17, 1898, 30 Stat. 246, ch. 25, § 3; June 30, 1906, 34 Stat. 768, ch. 3915; Feb. 27, 1925, 43 Stat. 1006, ch. 358, § 13.)

#### CODIFICATION

Provisions of subsec. (b), formerly designated as ninth through eighteenth, were redesignated first through tenth in view of acts June 30, 1906, and Feb. 27, 1925. Provision formerly designated as eighth deeming milk to be adulterated when it contains less than three and one-half per centum of fat, less than nine per centum of solids not fat, and contains more than eighty-seven and one-half per centum of water, and cream when it contains less than twenty per centum of butter fat, and part of provision formerly designated as ninth, now designated first, reading "butter or" preceding "cheese" were omitted from the Code as now covered by act Feb. 27, 1925, as amended, regulating the sale of milk, cream and ice cream, which is classified to sections 33-301 et seq. Provisions formerly designated as first through eighth deeming food to be adulterated when there is a mixture, extraction, or substitution of substances affecting quality or strength, it is an imitation of or sale under the name of another article, it contains putrid, deceased, decomposed or rotten animal or vegetable matter, it is colored, polished, coated or powdered to conceal damage, it is made to appear better or of greater value than it actually is, it contains poisonous or injurious ingredients, were omitted from the Code as covered by section 7 of the Federal Food and Drugs Act of June 30, 1906, 34 Stat. 769, ch. 3915, and section 402 of the Federal Food, Drug, and Cosmetic Act of June 25, 1938, 52 Stat. 1046, ch. 675, as amended, which is classified to U.S. Code, title 21, § 342, upon repeal of act June 30, 1906 by section 902(a) of act June 25, 1938.

#### CROSS REFERENCE

Regulation and control of production and sale of milk and milk products, see, also, § 33-301 et seq.

#### NOTES TO DECISIONS

##### Construction

It was never intended that this act should hold manufacturers liable for misstatements as to the curative merits of his goods, and as this is a criminal statute creating a

new offense, should be liberally construed. *United States v. Johnson* (D.C. Mo. 1910, 177 F. 313).

##### Defenses

It is no defense for party prosecuted for selling adulterated foods to show that he was ignorant of such fact, as he must know what he sells and that it conforms with the law. *District of Columbia v. Lynham* (1900, 16 App. D.C. 85).

##### Interstate commerce

There is nothing in the act to regulate the traffic of foods within the States. Its main purpose was to prevent inferior goods from being sold in interstate commerce *United States v. Charles L. Heinle Specialty Co.* (D. C. Pa. 1910, 175 F. 299).

##### Labels

Under this act the label on drugs must state the substance from which such derivative is produced. *United States v. Antikamnia Chemical Co.* (1914, 34 S. Ct. 222, 231 U. S. 654, 58 L. Ed. 419).

Where food product is labeled "Compound: pure comb and strained honey and corn syrup," it is not misbranded merely because the percentage of corn syrup is much greater. *United States v. Boeckmann* (C.C.N.Y. 1910, 176 F. 382).

If the labels on the goods are, in fact, true, then there is no violation of the act, the object of the statute being to protect the public from fraud in the purchase of food. *United States v. Sixty-eight Cases of Syrup* (D.C. Ill. 1909, 172 F. 781).

##### Review

Where decree in favor of the United States condemning certain food has been fully executed, and costs against claimant voluntarily paid, the appellate court will not review the case. *Charles v. United States* (C.C.A. 5, 1911, 183 F. 566).

#### § 33-104. Rules and regulations for collecting and examining drugs and food.

It shall be the duty of the Director of Public Health of the District of Columbia, under the direction of the Commissioner of said District, to adopt such measures as may be necessary to facilitate the enforcement of this chapter, and of the District of Columbia Council prepare rules and regulations with regard to the proper method of collecting and examining drugs and articles of food in said District. (Feb. 17, 1898, 30 Stat. 247, ch. 25, § 4; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

##### CHANGE OF NAME

"Director of Public Health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

##### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(258) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of preparing rules and regulations with regard to the proper method of collecting and examining drugs and articles of food, under this section, with respect to the preparation of rules and regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

##### CROSS REFERENCE

Rules and regulations generally, see § 1-226.

#### § 33-105. Complaints to be investigated.

It shall be the duty of the Director of Public Health to investigate a complaint for a violation of



any of the provisions of this chapter on the information of any person who lays before him satisfactory evidence by which to substantiate such complaint. (Feb. 17, 1898, 30 Stat. 247, ch. 25, § 5; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

#### CHANGE OF NAME

"Director of Public Health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

### § 33-106. Drug and food samples furnished to agents of health department.

Every person offering for sale or delivering to any purchaser any drug or article of food included in the provisions of this chapter shall furnish to any analyst or other officer or agent of the health department, who shall apply to him for the purpose and shall tender him the value of the same, a sample sufficient for the purpose of analysis of any such drug or article of food which is in his possession. (Feb. 17, 1898, 30 Stat. 247, ch. 25, § 6.)

#### CROSS REFERENCE

Regulation and control of production and sale of milk and milk products, see § 33-301 et seq.

### § 33-107. Portion of sample analyzed to be sealed and retained for defendant.

In all cases where any drug or article of food shall be taken as a sample to be examined and analyzed the person making the analysis shall reserve a portion of the sample, which shall be sealed, for a period of thirty days from the time of taking such sample, and in case of a complaint the reserved portion alleged to be adulterated shall, upon application, be delivered to the defendant or his attorney. (Feb. 17, 1898, 30 Stat. 248, ch. 25, § 7.)

#### CROSS REFERENCE

Regulation of production and sale of milk and milk products, see § 33-301 et seq.

### § 33-108. Representative of health department not to be interfered with.

No person shall hinder, obstruct, or in any way interfere with any inspector, analyst, or other person of the health department in the performance of his duty in carrying out the provisions of this chapter. (Feb. 17, 1898, 30 Stat. 248, ch. 25, § 8.)

### § 33-109. Prosecutions—Penalties.

All prosecutions under this chapter shall be in the Superior Court of the District of Columbia, on information brought in the name of the District of Columbia, and on its behalf; and any person or persons violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five dollars nor more than one hundred dollars. (Feb. 17, 1898, 30 Stat. 248, ch. 25, § 9; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### AMENDMENT

Section 155(a) of Act July 29, 1970, Pub. L. 91-358, struck out "District of Columbia Court of General Sessions" and inserted in lieu thereof "Superior Court of the District of Columbia".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding § 11-101.

#### CHANGE OF NAME

"Municipal Court of said District" was substituted for "police court of said District" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

### § 33-110. Repeal—Certain prior laws unaffected.

All acts and parts of acts inconsistent with this chapter are hereby repealed: *Provided*, That nothing in this chapter contained shall be construed as modifying or repealing any of the provisions of "An Act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine," approved August 2, 1886, or of "An Act defining cheese, and also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of 'filled cheese,'" approved June 6, 1896. (Feb. 17, 1898, 30 Stat. 248, ch. 25, § 10.)

#### REFERENCES IN TEXT

Act June 6, 1896, referred to in text, was act June 6, 1896, 29 Stat. 253, ch. 337.

Act Aug. 3, 1886, referred to in text, was act Aug. 2, 1886, 24 Stat. 209, ch. 840.

### § 33-111. Special services for detection of adulteration.

Amounts to be determined by the Commissioner of the District of Columbia may be expended for special services in detecting adulteration of drugs and foods, including candy and milk and other products and services subject to inspection by the Department of Public Health. (Apr. 8, 1960, 74 Stat. 21, Pub. L. 86-412, § 1.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SIMILAR PROVISIONS

Section is a part of the District of Columbia Appropriation Act, 1961 (act April 8, 1960 cited to the text). Similar provisions were contained in the following prior appropriation acts:

- 1960—July 23, 1959, 73 Stat. 229, Pub. L. 86-104, § 1.
- 1959—Aug. 6, 1958, 72 Stat. 502, Pub. L. 85-594, § 1.
- 1958—June 27, 1957, 71 Stat. 197, Pub. L. 85-61, § 1.
- 1957—June 29, 1956, 70 Stat. 445, ch. 479, § 1.
- 1956—July 5, 1955, 69 Stat. 251, ch. 272, § 1.
- 1955—July 1, 1954, 68 Stat. 383, ch. 499, § 1.
- 1954—July 31, 1953, 67 Stat. 284, ch. 299, § 1.
- 1953—July 5, 1952, 66 Stat. 380, ch. 576, § 1.
- 1952—Aug. 3, 1951, 65 Stat. 161, ch. 292, § 1.
- 1951—July 18, 1950, 64 Stat. 347, ch. 467, § 1.
- 1950—June 29, 1949, ch. 279, § 1, 63 Stat. 303.
- 1949—June 19, 1948, ch. 555, § 1, 62 Stat. 546.
- 1948—July 25, 1947, ch. 324, § 1, 61 Stat. 436.
- 1947—July 9, 1946, ch. 544, § 1, 60 Stat. 511.
- 1946—June 30, 1945, ch. 209, § 1, 59 Stat. 282.
- 1945—June 28, 1944, ch. 300, § 1, 58 Stat. 519.
- 1944—July 1, 1943, ch. 184, § 1, 57 Stat. 327.
- 1943—June 27, 1942, ch. 452, § 1, 56 Stat. 439.
- 1942—July 1, 1941, ch. 271, § 1, 55 Stat. 517.
- 1941—June 12, 1940, ch. 333, § 1, 54 Stat. 323.



## CONTINUATION OF 1960 ACT

Section 11 of the District of Columbia Appropriation Act, 1973, approved July 10, 1972, Pub. L. 92-344, 86 Stat. 455, provided in part:

"Except as otherwise provided herein, limitations and legislative provisions contained in the District of Columbia Appropriation Act, 1961, shall be applicable during the current fiscal year."

Similar provisions were contained in the following prior appropriation acts:

1972—Dec. 18, 1971, Pub. L. 92-202, 85 Stat. 687.  
 1971—July 16, 1970, Pub. L. 91-337, § 14, 84 Stat. 437.  
 1970—Dec. 24, 1969, Pub. L. 91-155, § 15, 83 Stat. 433.  
 1969—Aug. 10, 1968, Pub. L. 90-473, § 15, 82 Stat. 700.  
 1968—Nov. 13, 1967, Pub. L. 90-134, § 15, 81 Stat. 441.  
 1967—Nov. 2, 1966, 80 Stat. 1173, Pub. L. 89-743, § 15.  
 1966—July 16, 1965, 79 Stat. 242, Pub. L. 89-75, § 15.  
 1965—Aug. 22, 1964, 78 Stat. 593, Pub. L. 88-479, § 15.  
 1964—Dec. 30, 1963, 77 Stat. 840, Pub. L. 88-252, § 15.  
 1963—Oct. 23, 1962, 76 Stat. 1155, Pub. L. 87-867, § 15.  
 1962—Sept. 21, 1961, 75 Stat. 564, Pub. L. 87-265, § 15.  
 See note under § 9-501.

## Chapter 2.—CANDY

Sec.

- 33-201. Adulterated candy not to be made or sold.  
 33-202. Penalty.  
 33-203. Prosecuting attorneys to appear.

## § 33-201. Adulterated candy not to be made or sold.

No person or corporation shall, by himself, his servant, or agent, or as the servant or agent of any other person or corporation, manufacture for sale or knowingly sell or offer to sell any candy adulterated by the admixture of terra alba, barytes, talc, or any other mineral substance, by poisonous colors or flavors, or other ingredients deleterious or detrimental to health. (May 5, 1898, 30 Stat. 398, ch. 241, § 1.)

## CROSS REFERENCE

Adulteration generally, see § 33-101 et seq.

## NOTES TO DECISIONS

## Warranty

Complaint alleging that injury to plaintiff, caused by biting a stone contained in a confection, was caused by defendant's breach of warranty, stated a good cause of action and would not be dismissed on motion. *Saunders v. Goldstein* (D.C.D.C. 1940, 30 F. Supp. 150).

## § 33-202. Penalty.

Any person or corporation convicted of violating any of the provisions of this chapter shall be punished by a fine not exceeding one hundred dollars. The candy so adulterated shall be forfeited and destroyed under the direction of the court. (May 5, 1898, 30 Stat. 398, ch. 241, § 2.)

## § 33-203. Prosecuting attorneys to appear.

It is hereby made the duty of the prosecuting attorneys of the District of Columbia to appear for the people and to attend to the prosecution of all complaints under this chapter in all the courts of said District. (May 5, 1898, 30 Stat. 398, ch. 241, § 3.)

## EFFECTIVE DATE

Section 4 of act May 5, 1898, provided "That this Act [this chapter] shall take effect upon its passage [May 5, 1898]."

## Chapter 3.—MILK, CREAM, AND ICE CREAM

Sec.

- 33-301. Production and transportation—Restriction.  
 33-302. Definitions.  
 33-303. Dairy requirements—Permit—Application.

Sec.

- 33-304. Suspension of permit—Statement of reasons—Notice.  
 33-305. Shipment of dairy products into District permitted under certain conditions.  
 33-306. Pasteurization requirement.  
 33-307. Dairy products to be seized if brought into District illegally—Owner to be notified of seizure—Destruction.  
 33-308. Rules and regulations to protect supply—Publication.  
 33-309. Seller of dairy products in District to determine that shipper has permit.  
 33-310. Penalties—Prosecution.  
 33-311 to 33-319. Omitted.  
 33-320. No officer or employee of health department to be employee of a dairy or dealer in dairy supplies—"Dairy" defined.  
 33-321. Rules relative to milk supply applicable to States shipping to District.  
 33-322. Automobile allowance for inspectors.

## CODIFICATION

The act entitled "An Act to regulate within the District of Columbia the sale of milk, cream, and ice cream, and for other purposes", approved Feb. 27, 1925, as amended by Act Aug. 8, 1946, 60 Stat. 936 (§§ 33-301 to 33-319 of this Code), was amended generally by section 601(a) of act Jan. 5, 1971, Pub. L. 91-650. The amendment reduced the number of sections to 10, which sections are classified as §§ 33-301 to 33-310. The effect of the amendment was to substitute, effective as of Dec. 31, 1971, a new dairy products law for the provisions that were contained in the 1925 Act. Sections 33-301 to 33-319, containing the 1925 Act as amended, but prior to its amendment by said act of Jan. 5, 1971, are set out in the 1967 edition of the Code.

## § 33-301. Production and transportation—Restriction.

None but pure, clean, and wholesome milk, cream, milk products, or frozen desserts conforming to standards established by the District of Columbia Council, not inconsistent with standards established by the United States Government, shall be produced in, or be shipped into, the District of Columbia. (Feb. 27, 1925, ch. 358, § 1, 43 Stat. 1004; Jan. 5, 1971, Pub. L. 91-650, title VI, § 601(a), 84 Stat. 1937.)

## AMENDMENT

1971—Section 601(a) of act Jan. 5, 1971, Pub. L. 91-650, amended section generally. For provisions of section before this amendment, see 1967 edition of the code.

## EFFECTIVE DATE OF 1971 AMENDMENT

Section 601(b) of Act. Jan. 5, 1971, Pub. L. 91-650, provided: "The amendment made by subsection (a) of this section [amending this chapter generally] shall take effect on December 31, 1971."

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91-650

See secs. 801-803 of Act Jan. 5, 1971, Pub. L. 91-650, set out as a note under § 47-2501a.

## PRIOR LAW

Act Mar. 2, 1895, 28 Stat. 709, ch. 164.

## CROSS REFERENCES

District of Columbia Council may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

Filled milk, see 21 U.S.C. §§ 61-64.

Importation of milk and cream, see 21 U.S.C. §§ 141-149.

Milk containers, see § 10-114.

Registration of milk containers, see §§ 48-201 et seq., 48-301 et seq.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 33-302, 33-304, 33-305, 33-307, 33-308, 33-310.



## NOTES TO DECISIONS

**In general**

Moving consideration in the passage of this act was to safeguard the public health, and it is of course within the power of Congress, in the exercise of its police powers in the District, to say how this shall be accomplished. *Leaman v. District of Columbia* (1932, 55 F. 2d 1020, 60 App. D. C. 395).

**Hermetically sealed cans**

Sterilized cream sold in hermetically sealed cans is cream within this section. *Leaman v. District of Columbia* (1932, 55 F. 2d 1020, 60 App. D.C. 395).

**Historical**

The act of 1895 was not in conflict with the Federal Pure Food Act of 1906. The act of 1895 looked primarily to the regulation of the source of supply, while the act of 1906 dealt with the sale of misbranded and adulterated foods, and the later act dealt with it when placed in the market. The former aimed at the regulation of the source of supply to secure sanitary additions and surroundings; the latter operated when the milk reached the District and was subject to tests as to misbranding and adulteration. *District of Columbia v. Simpson* (1917, 47 App. D.C. 6).

The act of 1895 is only impliedly repealed by the subsequent act of 1898, so far as the provisions of the latter act are repugnant to it, or so far only as the latter statute, making new provisions is plainly intended as a substitute for provisions contained in the former act. *Weigand v. District of Columbia* (1903, 22 App. D.C. 559).

Upon comparing the provisions of the act of 1895 with those of the later act of 1898, it is clear beyond reasonable doubt that section 3 of the former act has been repealed by operation and fair intendment of sections 4, 6, 7, and 8 of the latter act of 1898; and this was affirmed by the last section of the act of 1898, when it declared that all acts and parts of acts inconsistent therewith were thereby repealed. It is conceded that section 7 of the act of 1895 was repealed by the provision of the subsequent act changing the marketable standard of milk, and we think that section 13 of the act of 1895 is also repealed, because inconsistent with the provisions of the latter act and because the provisions of the latter act were intended to furnish the one general and sole rule upon the subject. *Id.*

**§ 33-302. Definitions.**

As used in sections 33-101 to 33-310—

(1) The term "person" includes firms, associations, partnerships, and corporations in addition to individuals.

(2) The term "Commissioner" means the Commissioner of the District of Columbia or his designated agents.

(3) The term "District" means the District of Columbia. (Feb. 27, 1925, ch. 358, § 2, 43 Stat. 1004; Aug. 1, 1950, ch. 513, § 1, 64 Stat. 393; Jan. 5, 1971, Pub. L. 91-650, title VI, § 601(a), 84 Stat. 1937.)

**AMENDMENT**

1971—Section 601(a) of act Jan. 5, 1971, Pub. L. 91-650, amended section generally. For provisions of section before this amendment, see 1967 edition of the code.

**EFFECTIVE DATE OF 1971 AMENDMENT**

See note under § 33-301.

**CHANGE OF NAME**

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

**§ 33-303. Dairy requirements—Permit—Application.**

No person shall keep or maintain within the District a dairy farm, milk plant, or frozen dessert plant producing, as the case may be, milk, cream, milk products, or frozen desserts for sale in the District,

or bring or send into the District for sale any milk, cream, milk product, or frozen dessert, without a permit so to do from the Commissioner, and then only in accordance with the terms of such permit. Such permit shall be valid only for the calendar year in which it is issued, and shall be renewable annually on or before the 1st day of January of each calendar year thereafter. Application for such permit shall be in writing upon a form prescribed by the Commissioner. (Feb. 27, 1925, ch. 358, § 3, 43 Stat. 1004; Aug. 1, 1950, ch. 513, § 1, 64 Stat. 393; Jan. 5, 1971, Pub. L. 91-650, title VI, § 601(a), 84 Stat. 1937.)

**AMENDMENT**

1971—Section 601(a) of act Jan. 5, 1971, Pub. L. 91-650, amended section generally. For provisions of section before this amendment, see 1967 edition of the code.

**EFFECTIVE DATE OF 1971 AMENDMENT**

See note under § 33-301.

**CHANGE OF NAME**

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

**§ 33-304. Suspension of permit—Statement of reasons—Notice.**

The Commissioner is authorized to suspend any permit issued under the authority of sections 33-301 to 33-310 whenever, in his opinion, the public health is endangered by the impurity or unwholesomeness of milk, cream, milk product, or frozen dessert supplied by the holder of the permit, and the suspension shall remain in force until the Commissioner finds the danger no longer continues. Whenever any permit is suspended the Commissioner shall in writing furnish to the holder of such permit his reasons for such suspension, and each dealer receiving milk, cream, milk product, or frozen dessert from such holder shall also be promptly notified by the Commissioner in writing of the suspension of the permit. (Feb. 27, 1925, ch. 358, § 4, 43 Stat. 1005; Jan. 5, 1971, Pub. L. 91-650, title VI, § 601(a), 84 Stat. 1937.)

**AMENDMENT**

1971—Section 601(a) of act Jan. 5, 1971, Pub. L. 91-650, amended section generally. For provisions of section before this amendment, see 1967 edition of the code.

**EFFECTIVE DATE OF 1971 AMENDMENT**

See note under § 33-301.

**CROSS REFERENCES**

Administrative procedure, see § 1-1501 et seq.  
Judicial review, see §§ 1-1510, 11-722.

**§ 33-305. Shipment of dairy products into District permitted under certain conditions.**

Nothing in sections 33-301 to 33-310 shall be construed to prohibit (1) the shipment into the District of milk, cream, or milk products from shipping stations or plants having a sanitation compliance and enforcement rating of 90 per centum or better as determined by a milk sanitation rating officer certified by the Secretary of Health, Education, and Welfare, or (2) the shipment into the District of milk or cream for manufacture into frozen desserts and frozen desserts containing milk or cream which has been produced and transported in accordance with specifications established by a State or Federal regulatory or certifying agency and approved by the



Commissioner. (Feb. 27, 1925, ch. 358, § 5, 43 Stat. 1005; Aug. 1, 1950, ch. 513, § 1, 64 Stat. 393; Jan. 5, 1971, Pub. L. 91-650, title VI, § 601(a), 84 Stat. 1937.)

#### AMENDMENT

1971—Section 601(a) of act Jan. 5, 1971, Pub. L. 91-650, amended section generally. For provisions of section before this amendment, see 1967 edition of the code.

#### EFFECTIVE DATE OF 1971 AMENDMENT

See note under § 33-301.

#### CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

### § 33-306. Pasteurization requirement.

No milk, cream, milk product, or frozen dessert shall be sold or offered for sale to a consumer in the District unless it has been pasteurized by a method acceptable to the Secretary of Health, Education, and Welfare. (Feb. 27, 1925, ch. 358, § 6, 43 Stat. 1005; Aug. 1, 1950, ch. 513, § 1, 64 Stat. 1005; Jan. 5, 1971, Pub. L. 91-650, title VI, § 601(a), 84 Stat. 1937.)

#### AMENDMENT

1971—Section 601(a) of act Jan. 5, 1971, Pub. L. 91-650, amended section generally. For provisions of section before this amendment, see 1967 edition of the code.

#### EFFECTIVE DATE OF 1971 AMENDMENT

See note under § 33-301.

#### CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

### § 33-307. Dairy products to be seized if brought into District illegally—Owner to be notified of seizure—Destruction.

The Commissioner is authorized to seize all milk, cream, milk products, or frozen desserts which may be brought into the District in violation of the provisions of sections 33-301 to 33-310. The owner of any such milk, cream, milk product, or frozen dessert shall immediately be notified of such seizure, and if he shall fail within twenty-four hours from the time such notice is given to him to remove or cause to be removed from the District the seized milk, cream, milk product, or frozen dessert, the Commissioner is authorized to destroy or otherwise dispose of it. (Feb. 27, 1925, ch. 358, § 7; 43 Stat. 1005; Aug. 1, 1950, ch. 513, § 1, 64 Stat. 393; Jan. 5, 1971, Pub. L. 91-650, title VI, § 601(a), 84 Stat. 1937.)

#### AMENDMENT

1971—Section 601(a) of act Jan. 5, 1971, Pub. L. 91-650, amended section generally. For provisions of section before this amendment, see 1967 edition of the code.

#### EFFECTIVE DATE OF 1971 AMENDMENT

See note under § 33-301.

#### CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

### § 33-308. Rules and regulations to protect supply—Publication.

The District of Columbia Council is hereby authorized to make from time to time all such reasonable regulations or standards consistent with sections 33-301 to 33-310 as it deems necessary to

protect the milk, cream, milk product, and frozen dessert supply of the District. Such regulations or standards shall be published once in a daily newspaper of general circulation in the District at least thirty days before any penalty may be exacted for violation thereof. (Feb. 27, 1925, ch. 358, § 8, 43 Stat. 1005; Jan. 5, 1971, Pub. L. 91-650, title VI, § 601(a), 84 Stat. 1938.)

#### AMENDMENT

1971—Section 601(a) of act Jan. 5, 1971, Pub. L. 91-650, amended section generally. For provisions of section before this amendment, see 1967 edition of the code.

#### EFFECTIVE DATE OF 1971 AMENDMENT

See note under § 33-301.

#### CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402 (259, 260, 261) of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, transferred the functions of the Board of Commissioners of making regulations to protect the milk, cream, and ice cream supply of the District of Columbia under former § 33-307, prescribing regulations under which milk and cream shall be pasteurized under former § 33-315, and, by regulation, including places other than creameries or receiving stations under the second sentence of former § 33-317, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions established the District of Columbia Council, see § 201 of the Plan, set out in the Appendix to Title 1.

#### CROSS REFERENCES

District of Columbia Council may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

Other provisions relating to publication of rules and regulations, see § 1-1506.

Protection of life, health, and property rules and regulations generally, see § 1-226.

### § 33-309. Seller of dairy products in District to determine that shipper has permit.

No person in the District shall sell or offer for sale any milk, cream, milk product, or frozen dessert from any source until he shall have first determined that the person providing such milk, cream, milk product, or frozen dessert holds a permit from the Commissioner to ship milk, cream, milk products, or frozen desserts into the District. (Feb. 27, 1925, ch. 358, § 9, 43 Stat. 1005; Aug. 1, 1950, ch. 513, § 1, 64 Stat. 393; Jan. 5, 1971, Pub. L. 91-650, title VI, § 601(a), 84 Stat. 1938.)

#### AMENDMENT

1971—Section 601(a) of act Jan. 5, 1971, Pub. L. 91-650, amended section generally. For provisions of section before this amendment, see 1967 edition of the code.

#### EFFECTIVE DATE OF 1971 AMENDMENT

See note under § 33-301.

#### NOTES TO DECISIONS

##### Construction

Former section 33-318, providing that no person in District of Columbia, licensed under act, shall receive any milk or cream from any source until he shall have first ascertained from health department that person from whom milk is obtained holds license from Director of Public Health of District of Columbia to send milk or cream into District of Columbia, does not prohibit importation of milk, which is sold outside District of Columbia. *Embassy Dairy, Inc. v. Camalier et al.* (1954, 211 F. 2d 41, 93 U.S. App. D.C. 364).



### § 33-310. Penalties—Prosecution.

Any person who violates any provision of sections 33-301 to 33-310 or the regulations or standards promulgated hereunder shall be punished by a fine of not more than \$300 or imprisonment for not more than thirty days, or both. Prosecution shall be conducted in the Superior Court of the District of Columbia in the name of the District of Columbia by the Corporation Counsel or any of his assistants. (Feb. 27, 1925, ch. 358, § 10, 43 Stat. 1005; Jan. 5, 1971, Pub. L. 91-650, title VI, § 601(a), 84 Stat. 1938.)

#### AMENDMENT

1971—Section 601(a) of act Jan. 5, 1971, Pub. L. 91-650, amended section generally. For provisions of section before this amendment, see 1967 edition of the code.

#### EFFECTIVE DATE OF 1971 AMENDMENT

See note under § 33-301.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 33-302, 33-304, 33-305, 33-307, 33-308.

#### NOTES TO DECISIONS

##### Jurisdiction

In action by dairy company against Commissioners of District of Columbia and Director of Health for declaratory and injunctive relief challenging order of commissioners requiring District of Columbia inspection and licensing under Milk Act in connection with processing of milk brought into District of Columbia for processing, though milk is destined for sale to consumers outside District of Columbia, allegations of complaint stated cause for equitable relief, which federal District Court of District of Columbia had jurisdiction to entertain. *Embassy Dairy, Inc. v. Camalier et al.* (1954, 211 F. 2d 41 93 U. S. App. D. C. 364).

### §§ 33-311 to 33-319. Omitted.

Sections, based on secs. 11 to 19 of act Feb. 27, 1925, as amended, were superseded by the general amendment of that act by act Jan. 5, 1971. See Codification note preceding § 33-301.

### § 33-320. No officer or employee of health department to be employee of a dairy or dealer in dairy supplies—"Dairy" defined.

No officer or employee of the health department shall, during his continuance in office, serve in his private capacity, for fee, gift, or reward, any person licensed to keep or maintain a dairy or dairy farm in said District or to bring or to send milk into said District, or any person who has applied or is about to apply for such license, or any manufacturer or dealer in foods, drugs, or disinfectants, or similar materials: *Provided further*, That every place where milk is sold shall be deemed a dairy under the law for purposes of inspection. (Mar. 2, 1907, 34 Stat. 1145, ch. 2510, § 1.)

#### TRANSFER OF FUNCTIONS

Health department abolished and functions transferred, see note under § 6-101.

### § 33-321. Rules relative to milk supply applicable to States shipping to District.

The examinations, inspection, rules and regulations concerning the milk supply of the District of Columbia shall be applied alike to each state shipping milk into said District. (Mar. 3, 1915, 38 Stat. 915, ch. 80, § 1.)

#### CROSS REFERENCE

Interstate shipments of dairy products into District, see § 33-305.

### § 33-322. Automobile allowance for inspectors.

Inspectors of dairy farms may receive an allowance for furnishing privately owned motor vehicles in the performance of official duties at the rate of not to exceed \$312 per annum for each inspector. (June 12, 1940, 54 Stat. 323, ch. 333, § 1.)

## Chapter 4.—NARCOTIC DRUGS

#### Sec.

- 33-401. Definitions.
- 33-402. Acts declared unlawful.
- 33-403. Manufacturers and wholesalers—License required.
- 33-404. Qualifications for licenses—Revocation and suspension.
- 33-405. Use of official written orders.
- 33-406. Sale on written orders—Vendees—"Lawful possession" defined.
- 33-407. Authorized uses.
- 33-408. Sales by apothecaries.
- 33-409. Professional use of narcotic drugs—Return of unused drugs.
- 33-410. Preparations exempted—Conditions—Paregoric.
- 33-411. Records to be kept—Form—Preservation.
- 33-412. Labels.
- 33-413. Authorized possession of narcotic drugs by individuals.
- 33-414. Search warrants—Requirements—Form—Contents—Return—Penalty for interfering with service.
- 33-415. Persons and corporations exempted.
- 33-416. Common nuisances.
- 33-416a. Vagrancy—Narcotic drug user—Penalties—Conditions imposed.
- 33-417. Forfeiture by unlawful possession—Disposition.
- 33-418. Notice of conviction to be sent to licensing board—Revocation, suspension, and reinstatement of license.
- 33-419. Inspection of records—Divulging information contained in records.
- 33-420. Obtaining a narcotic drug unlawfully—Communication to physician not privileged—False statements or false personation in procurement—False label—Application to section 33-410.
- 33-421. Prosecution—Burden of proof on defendant of any exception, excuse, proviso, exemption.
- 33-422. Enforcement—Employees of Board of Pharmacy—Salaries—Cost of forms.
- 33-423. Penalties.
- 33-424. Effect of acquittal or conviction under Federal narcotic laws.
- 33-425. Separability of provisions.

### § 33-401. Definitions.

The following words and phrases, as used in this chapter, shall have the following meanings, unless the context otherwise requires:

(a) "Person" includes any corporation, association, copartnership, or one or more individuals.

(b) "Physician" means a person authorized by law to practice medicine or osteopathy in the District of Columbia.

(c) "Dentist" means a person authorized by law to practice dentistry in the District of Columbia.

(d) "Veterinarian" means a person authorized by law to practice veterinary medicine in the District of Columbia.

(e) "Manufacturer" means a person who by compounding, mixing, cultivating, growing, or other process produces or prepares narcotic drugs, but does



not include an apothecary who compounds narcotic drugs to be sold or dispensed on prescription.

(f) "Wholesaler" means a person who supplies narcotic drugs that he himself has not produced nor prepared on official written orders but not on prescription.

(g) "Apothecary" means a licensed pharmacist as defined by the laws of the District of Columbia and, where the context so requires, the owner of a store or other place of business where narcotic drugs are compounded or dispensed by a licensed pharmacist; but nothing in this chapter shall be construed as conferring on a person who is not registered nor licensed as a pharmacist any authority, right, or privilege that is not granted to him by the pharmacy laws of the District of Columbia.

(h) "Hospital" means an institution or clinic for the care and treatment of the sick and injured, approved by the Director of Public Health of the District of Columbia as proper to be entrusted with the custody of narcotic drugs and the professional use of narcotic drugs under the direction of a physician, dentist, or veterinarian.

(i) "Laboratory" means a laboratory approved by the Director of Public Health of the District of Columbia as proper to be entrusted with the custody of narcotic drugs and the use of narcotic drugs for scientific and medical purposes and for purposes of instruction.

(j) "Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee.

(k) "Coca leaves" includes cocaine and any compound, manufacture, salt, derivative, mixture, or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ecgonine, or substances from which cocaine or ecgonine may be synthesized or made.

(l) "Opium" includes morphine, codeine, and heroin, and any compound, manufacture, salt, derivative, mixture, or preparation of opium.

(m) "Cannabis" includes all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin, including specifically the drugs known as American hemp, marihuana, Indian hemp or hasheesh, as used in cigarettes or in any other articles, compounds, mixtures, preparations, or products whatsoever, but shall not include the mature stalks of such plant; fiber produced from such stalks; oil or cake made from the seeds of such plant; any compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom); fiber, oil or cake; or the sterilized seed of such plant which is incapable of germination.

(n) "Narcotic drugs" means coca leaves, opium, cannabis, isonipecaine, and opiate, and every substance not chemically distinguishable from them, and any compound, manufacture, salt, derivative, or preparation of coca leaves, opium, cannabis, isonipecaine, or opiate, whether produced directly or in-

directly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

(o) "Federal narcotic laws" means the laws of the United States and the regulations promulgated thereunder relating to opium, coca leaves, cannabis, and other narcotic drugs.

(p) "Official written order" means an order written on a form provided for that purpose by the Attorney General, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law and, if no such order form is provided, then on an official form provided for that purpose by the Board of Pharmacy.

(q) "Dispense" includes distribute, leave with, give away, dispose of, or deliver.

(r) "Registry number" means the number assigned to each person registered under the federal narcotic laws.

(s) "Board of Pharmacy" means the Board of Pharmacy of the District of Columbia as provided by section 2-607.

(t) "Isonipecaïne" and "opiate" shall have the same meaning as that given to such terms by section 4731 of the Internal Revenue Code of 1954. (June 20, 1938, 52 Stat. 785, ch. 532, § 1; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; July 24, 1956, 70 Stat. 618, ch. 676, title III, § 301 (a).)

#### REFERENCES IN TEXT

Section 4731 of the Internal Revenue Code of 1954, referred to in par. (t), was repealed by section 1101(b) (3) (A) of Pub. L. 91-513, 84 Stat. 1292. For current definition of "opiate", see section 102(17) of the Controlled Substances Act, Pub. L. 91-513, 84 Stat. 1244 (21 U.S.C. 802(17)).

#### AMENDMENT

1956—Act July 24, 1956, amended subsec. (n) by including isonipecaine and opiate within the definition of narcotic drugs, and any compound, manufacture, salt, derivative or preparation of the drugs listed, amended subsec. (o) to include regulations, and added subsec. (t).

#### CHANGE OF NAME

"Director of Public Health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

The Board of Pharmacy of the District of Columbia was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorg. Plan No. 5 of 1952. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorg. Plan No. 3 of 1967. See note under § 2-607.

#### TRANSFER OF FUNCTIONS

The Bureau of Narcotics in the Department of the Treasury, including the office of the Commissioner of Narcotics (21 U.S.C. 161) was abolished and functions transferred to the Attorney General by Reorg. Plan No. 1 of 1968, 82 Stat. 1367, 28 U.S.C. 509 note.

#### REPEAL OF INCONSISTENT LAWS

Section 26 of Act June 20, 1938, 52 Stat. 796, provided: "All Acts or parts of Acts which are inconsistent with the provisions of this Act [enacting this chapter] are hereby repealed."

#### SHORT TITLE

Section 27 of Act June 20, 1938, 52 Stat. 796, provided: "This Act [enacting this chapter] may be cited as the 'Uniform Narcotic Drug Act'."



## CROSS REFERENCES

Controlled Substances Act, see 21 U.S.C. § 801 et seq.  
 Federal Food, Drug, and Cosmetic Act, see 21 U.S.C. § 321 et seq.  
 Other provisions concerning sale of dangerous drugs, see §§ 2-610 to 2-615.

## NOTES TO DECISIONS

## Constitutionality

Statutes which made it unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense or compound any narcotic drug and which defined narcotic drug as including marijuana were constitutional. *S. V. Scott v. United States* (1968, 395 F. 2d 619, 129 U.S. App. D.C. 396).

## § 33-402. Acts declared unlawful.

(a) It shall be unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense, or compound any narcotic drug, except as authorized in this chapter.

(b) Arrests without a warrant, and searches of the person and seizures pursuant thereto, may be made for a violation of subsection (a) hereof by police officers, as in the case of a felony, upon probable cause that the person arrested is violating such subsection at the time of his arrest.

(c) No evidence discovered in the course of any such arrest, search, or seizure authorized by subsection (b) hereof, shall be admissible in any criminal proceeding against the person arrested unless at the time of such arrest he was violating the provisions of this section. (June 20, 1938, 52 Stat. 787, ch. 532, § 2; July 24, 1956, 70 Stat. 618, ch. 676, title III, § 301 (b).)

## AMENDMENT

1956—Act July 24, 1956, amended section by designating the original paragraph as subsec. (a), and adding subsecs. (b) and (c).

## CROSS REFERENCES

Arrest without warrant, generally, see § 23-581.  
 Controlled Substances Act, see 21 U.S.C. § 801 et seq.  
 Exemptions, see §§ 33-409, 33-410, 33-415.  
 Presence or employment in illegal establishments, see § 22-1515.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23-546.

## NOTES TO DECISIONS

## Abuse of discretion

Even if defendant knowingly and voluntarily waived his right to be present initially, it was an abuse of discretion to have proceeded without him, where case began with a single count information charging possession of heroin, and where it took less than two months for case to reach trial, and trial, including Miranda hearing, took less than a day. *N. K. Campbell v. United States* (D.C. App. 1972, 295 A. 2d 498).

## Acquittal on appeal

Court of Appeals, on reversing convictions for narcotic vagrancy, maintaining common nuisance, and possession of narcotics, for failure of evidence to show that defendants had in their possession more than trace of heroin, would not remand for new trial, where there was no showing that government had additional proof that actual amounts involved were more than mere traces that were actually usable or saleable as narcotics. *L. Marshall and K. Watkins v. United States* (D.C. App. 1967, 229 A. 2d 449).

## Appeal and error

Conviction of possession of narcotics was required to be reversed for new trial where it was unclear whether the court, that had reserved pretrial motion to suppress, in stating that it put no credence in arresting officer's trial

testimony concerning officer's knowledge of arrest warrant at time officer and another stopped defendant, meant literally, that the officer was not telling the truth or whether trial court disregarded trial testimony because it disapproved of failure of officer, who stated that he didn't want to bring out knowledge of warrant at motions court and possibly destroy case, to take all reasonable steps to assure that his testimony accurately reflected what occurred; officer's trial testimony should not have been ignored. *G. C. Kinard v. United States* (D.C. App. 1972, 288 A. 2d 233).

## Arrest

Action of one police officer in remaining behind open passenger door of police car with pistol drawn and pointed downward as other officer approached driver's side of parked automobile, that matched description of automobile reported to be occupied by gun-carrying narcotics users, for purpose of "covering" his partner, did not constitute an arrest. *F. W. Green v. United States* (D.C. App. 1971, 275 A. 2d 555).

## Choice between local and federal statute by accused

Defendant was not entitled to choose to be prosecuted under District of Columbia Code which provided lesser penalty rather than under federal narcotics statutes. *L. R. Hutcherson v. United States* (1965, 345 F. 2d 964, 120 U.S. App. D.C. 274).

## Concurrent sentences

Where defendants received concurrent sentences in prosecution for possession of narcotics, possession of implements of crime, unlawful entry and narcotics vagrancy and evidence was sufficient to support conviction of possession of narcotics and possession of implements of crime, District of Columbia Court of Appeals would not pass upon sufficiency of evidence to support other convictions. *S. Keith, R. L. Payne and T. J. Walker v. United States* (D.C. App. 1967, 232 A. 2d 92).

## Constitutionality

Statutes which made it unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense or compound any narcotic drug and which defined narcotic drug as including marijuana were constitutional. *S. V. Scott v. United States* (1968, 395 F. 2d 619, 129 U.S. App. D.C. 396).

## — Standing to challenge

Neither proof of prior narcotics convictions nor admission at time of arrest that defendant used narcotics and that he was participating in a methadone treatment program is sufficient to establish that defendant is an addict; thus, he has no standing to claim that this section is unconstitutional as applied to him or that punishing him for possession of narcotics would be cruel and unusual punishment in violation of the Eighth Amendment. *F. Lyles v. United States* (D.C. App. 1970, 271 A. 2d 793).

## Cross-examination

Where former narcotics agent was principal government witness in a narcotics prosecution and testified to facts which, if believed, would justify guilty verdict without additional evidence, and where witness had admitted to counsel that police authorities suspected that test conducted almost immediately before he was dismissed for allegedly being "under weight" showed that he had been using narcotics, defense counsel had right to cross-examine the agent as to the true reasons for his dismissal and as to whether he was using narcotics at time he observed defendant commit the alleged offense, for purposes of determining the witness' credibility and his powers of observation at the time he observed the offense. *United States v. L. E. Fowler* (1972, 465 F. 2d 664, 151 U.S. App. D.C. 79).

Since prior discovery is necessarily limited in a criminal case, a reasonable amount of exploratory cross-examination by defense counsel should be allowed, based on slight suspicion, even if he cannot state to the court what precise facts his cross-examination will develop, especially where the Government's principal witness is involved. *Id.*

Where gist of defense in prosecution for possession of narcotic drugs was that though a passenger in the automobile defendant did not have seized narcotics in his possession and was not guilty of offense charged but it



was due to a mistake by arresting officers at scene that he was charged with the offense and police sergeant was only government witness who testified that he saw the defendant drop package to ground and his credibility on that point was crucial, the defendant was entitled to cross-examination for purpose of establishing prior inconsistent statements by witness and should have been permitted opportunity to make proffer, and it was prejudicial error to deny the defendant such cross-examination. *L. Holmes v. United States* (D.C. App. 1971, 277 A. 2d 93).

#### Custodial interrogation

Questions addressed to three defendants by arresting officers seeking an explanation for defendants' being in condemned house were noncoercive and not "custodial interrogation" within rule of *Miranda v. State of Arizona*. *S. Keith, R. L. Payne and T. J. Walker v. United States* (D.C. App. 1967, 232 A. 2d 92).

#### Defense of addiction

Since the quantity of narcotics found in defendant's possession is not suggestive of nontrafficking possession, conviction for possession of heroin is not improper on theory that defendant is an addict and not a trafficker in narcotics. *F. W. Green v. United States* (D.C. App. 1971, 275 A. 2d 555).

#### Due process

Right of defendant to a fair trial, his Sixth Amendment right to counsel, and the use of compulsory process for witnesses, did not require finding that Government's failure to extend immunity, to defendant's uncle, who allegedly owned pistol found in possession of defendant, who was convicted of carrying a pistol without a license and of unlawful possession of marihuana, amounted to a deprivation of due process of law. *J. Terrell v. United States* (D.C. App. 1972, 294 A. 2d 860; cert. denied 93 S. Ct. 1398, 410 U.S. 938).

#### Duty to arrest

When police detectives saw narcotics paraphernalia in possession of defendants, officers were under statutory duty to arrest offenders immediately. *S. Keith, R. L. Payne and T. J. Walker v. United States* (D.C. App. 1967, 232 A. 2d 92).

#### Evidence—Admissibility

Where defendant, who was convicted of carrying a pistol without a license, and of unlawful possession of marihuana, testified that he had been beaten by police and desired hospitalization, Government could rebut such testimony with evidence that defendant's purpose of seeking hospital treatment was that he was a heroin addict, and admission of such evidence did not require a mistrial, as had occurred on previous occasion when such evidence was admitted, where tactical choice of defense counsel was in all probability to proceed. *J. Terrell v. United States* (D.C. App. 1972, 294 A. 2d 860; cert. denied 93 S. Ct. 1398, 410 U.S. 938).

Where the defendant and his companion were in area in which narcotics traffic was substantial and were engaged in transaction in which number of small flat tinfoil packets were passed, and arresting officer, throughout his experience on narcotics squad for period of 18 months during which he was involved in over 200 arrests, had seen similar packets and had always found narcotics in them, the arrest was based on probable cause, and the tinfoil packets, seized in search pursuant to such arrest and later found to contain heroin, were admissible in prosecution for possession of heroin. *W. G. Munn v. United States* (D.C. App. 1971, 283 A. 2d 28).

In a prosecution for possession of narcotic drugs under this section, no substance should be received in evidence unless it is first properly identified as being narcotics for reason that it is not probative of charge absent the identification and could result in misleading the jury. *L. Holmes v. United States* (D.C. App. 1971, 277 A. 2d 93).

Though regulation required police officers after impounding automobile that had been stolen, abandoned or left unattended to inventory contents, remove any valuables for safekeeping and put automobile in place of safety, and though compliance with the regulation necessarily involves some search and seizure, marihuana found under seat of vehicle outside station while driver, whose license was under suspension, was inside being booked on traffic charge is not admissible in prosecution for possession

of the marihuana. *R. G. Mayfield v. United States* (D.C. App. 1971, 276 A. 2d 123).

Police officer's reasonable suspicions, resulting from radio call advising that occupants of white automobile at intersection bearing specific license plate number were using narcotics and carrying gun and corroborated by matching details of white automobile at the intersection bearing the same license plate number, matured into probable cause to arrest when he saw vial that he believed to contain narcotics on floor of the automobile, and the narcotics found in ensuing search of the automobile are admissible. *F. W. Green v. United States* (D.C. App. 1971, 275 A. 2d 555).

Officers, who had entered premises under warrant authorizing a search for narcotics and who observed the defendant seated on side of a bed with one hand tightly closed, had probable cause to suppose that at least some of the narcotics were being secreted in her closed hand and were likely to be destroyed and seizure of narcotics from defendant's hand and from box beneath bed upon which she was seated was within scope of authority conferred by the search warrant and was not violative of defendant's Fourth Amendment rights, and narcotics thus seized were properly received into evidence. *E. Nicks v. United States* (D.C. App. 1971, 273 A. 2d 256).

Where defendant, while driving automobile, was recognized by police officer who knew that the defendant was a narcotics violator and that he did not possess a valid driver's license, and where officer waved defendant to curb and asked to see his license, whereupon defendant admitted that he was unlicensed, the officer's arrest of defendant is not a sham, and heroin seized during search incident to arrest is not subject to suppression. *F. Lyles v. United States* (D.C. App. 1970, 271 A. 2d 793).

Even if the arrest of defendant without warrant was invalid, capsules which the police officers recovered from trash pile in corner of fire-gutted pool hall after defendant and another person had been permitted by officers to leave the room were not seized in violation of defendant's Fourth Amendment rights and were admissible in prosecution for unlawful possession of narcotics. *United States v. E. L. Hayes* (D.C. App. 1970, 271 A. 2d 701).

In this case, since the police officer received reliable information in early morning hours that a large supply of heroin was to be transported in a few hours from a certain to an uncertain location for processing, and no magistrate was available so that officers were warranted in effecting entry without search warrant, and upon forcing entry found the apartment empty, the significant possibility of removal of contraband was an exceptional circumstance justifying search for the narcotics, and thus narcotics seized were properly admitted in prosecution for violation of this section. *C. E. Hailes v. United States* (D.C. App. 1970, 267 A. 2d 363).

Where defendants' arrest for narcotics violations was legal, narcotics paraphernalia seized at time of the arrest was properly admitted in defendants' joint trial for narcotics violations. *S. Keith, R. L. Payne and T. J. Walker v. United States* (D.C. App. 1967, 232 A. 2d 92).

Where defendant was a frequenter of an establishment where intoxicating liquor was being illegally sold and by doing so was guilty of a misdemeanor being committed in presence of officers, officers were within their proper duty in arresting defendant without a warrant, and as incident of arrest search of defendant was lawful, and narcotics then and there seized were properly admitted in evidence against him in prosecution for narcotics violations. *M. T. Smith, Jr. v. United States* (1965, 353 F. 2d 877, 122 U.S. App. D.C. 339).

#### — Sufficiency

Evidence sustained conviction of possession of cocaine found on ledge of building where the defendant had been standing. *United States v. J. Weaver* (1972, 458 F. 2d 825, 148 U.S. App. D.C. 3).

Evidence on issue whether defendant, who was charged with unlawful possession of marihuana, had been in possession of usable quantity was not sufficient to warrant submission of case to jury. *F. L. Payne v. United States* (D.C. App. 1972, 294 A. 2d 501).

Evidence was insufficient to sustain conviction for possession of marihuana, even assuming that defendant was a tenant of the apartment in which marihuana was found



in envelope on table in living room, where, at time of search, defendant was in bedroom while four or five other persons were in the living room, and where there was no evidence that defendant was aware of the existence of the marihuana in the living room or could have exercised control over it; such evidence was insufficient to show constructive possession of the marihuana by defendant. *M. Thompson v. United States* (D.C. App. 1972, 293 A. 2d 275).

Evidence in prosecution for being present in illegal establishment is sufficient to prove beyond reasonable doubt the nonexistence of license to dispense narcotics even though Government offered no testimony as to nonexistence of license. *A. Geddie v. United States* (D.C. App. 1971, 284 A. 2d 668).

Where as a matter of reasonable probability there was no possibility for misidentification and adulteration of certain narcotic evidence, missing link in government's chain of possession of the narcotics evidence does not warrant reversal of convictions of unlawful possession of narcotic drug, narcotic vagrancy and presence in illegal establishment. *B. Spade v. United States* (D.C. App. 1971, 277 A. 2d 654).

Absence of any proof that defendants had in their possession more than trace of heroin or that such trace could be used or dispensed as narcotic required reversal of convictions for narcotic vagrancy, maintaining common nuisance, and possession of narcotics. *L. Marshall and K. Watkins v. United States* (D.C. App. 1967, 229 A. 2d 449).

Where there is only trace of substance, a chemical constituent not quantitatively determined because of minuteness, and there is no additional proof of its usability as narcotic, there can be no conviction under statute making it illegal for person to maintain place resorted to by drug addicts for purpose of using narcotic drugs or used for illegal keeping or sale of same. *Id.*

Where there is only a trace of substance, a chemical constituent not quantitatively determined because of minuteness, and there is no additional proof of its usability as a narcotic, there can be no conviction for unlawful possession of a narcotic. *R. M. Edlin v. United States* (D.C. App. 1967, 227 A. 2d 395).

Evidence that microscopic chemical analysis of narcotics paraphernalia disclosed traces of heroin was insufficient, in absence of any additional proof as to usability of traces as a narcotic, to show illegal possession of a narcotic drug. *Id.*

#### — Suppression

Heroin found in the defendant's pocket during search incident to an arrest for grand larceny should not have been suppressed on theory that the search which brought heroin to light infringed Fourth Amendment rights. *United States v. C. E. Bynum* (D.C. App. 1971, 283 A. 2d 649).

In this case, the court held that the trial judge did not err in denying motion to suppress heroin properly seized from defendant, one judge being of the opinion that the defendant was properly "seized" in rapidly moving on-street investigation and discarding of narcotics was not product of illegal police action, and second judge being of the opinion that the officer had probable cause to arrest defendant for disorderly conduct and seizure of heroin was therefore lawful. *W. Von Slichter v. United States* (D.C. App. 1970, 267 A. 2d 336).

#### Fair hearing

Since the trial court granted motion to suppress narcotics seized in course of on-the-street encounter before all the evidence had been presented, and testimony of police officer who approached passenger side of automobile where defendant was sitting was not taken, and during cross-examination of officer who did testify court interrupted with comments and leading questions, the government was deprived of fair hearing. *United States v. J. F. Crickenberger* (D.C. App. 1971, 275 A. 2d 232).

#### Guilty plea

Absent any showing that the defendant was induced to plead guilty solely because of advice given by counsel that an appeal would lie to review the denial of motion to suppress evidence, there was no manifest injustice, and it thus was not error to deny motion to withdraw the plea.

*M. A. Shuler v. United States* (D.C. App. 1971, 278 A. 2d 116).

#### Inferences

Fact that the probable holder of any license to dispense drugs testified that no drugs were dispensed or used on premises with his permission together with other facts of case permitted the jury to infer that no license existed despite fact that Government offered no testimony as to nonexistence of license. *A. Geddie v. United States* (D.C. App. 1971, 284 A. 2d 668).

#### Instructions

Where, in prosecution for unlawful possession of narcotic drug, judge read from indictment, which charged that the defendant "knowingly" possessed narcotic drug and instructed that one of elements of crime was that defendant "knowingly" had cocaine in his possession, judge adequately instructed jury on the defendant's knowledge as element of the crime. *United States v. J. Weaver* (1972, 458 F. 2d 825, 148 U.S. App. D.C. 3).

Since the defendant did not request instruction on her theory that she had only borrowed coat in which heroin was found, failure to so instruct was not reversible error in prosecution for possession of heroin. *B. Spade v. United States* (D.C. App. 1971, 277 A. 2d 654).

Instructions were adequate to present to jury the issue of whether there was knowing possession by defendant of heroin that was found in jacket she was wearing and that she claimed was borrowed. *Id.*

Defendant was not entitled, in prosecution for facilitating the concealment or sale of narcotics, to alternative instruction permitting jury to find him guilty of unlawful possession of narcotics as a lesser included offense on theory that in his particular case possession was a necessary element of the prosecution's case on facilitation. *C. S. Kelly v. United States* (1966, 370 F. 2d 227, 125 U.S. App. D.C. 205).

#### Intent

In this case, the court held that defendant's admission of his intent to use hypodermic and needle for criminal purpose was sufficiently corroborated and statement was sufficiently trustworthy for admission on proof of intent in prosecution for possession of implements of a crime, since although possession of a wet needle, needle holder and syringe but not the cooker, might not be sufficient to establish corpus delicti, it did constitute substantial independent evidence which would tend to establish trustworthiness of admission by defendant, a nonmedical person, to arresting officer. *L. F. McKoy v. United States* (D.C. App. 1970, 263 A. 2d 649).

#### Knowledge

Although this section pertaining to unlawful possession of narcotic drug does not contain the term "knowing," the offense prohibited by the law is a knowing possession of the drug. *United States v. J. Weaver* (1972, 458 F. 2d 825, 148 U.S. App. D.C. 3).

#### Narcotics paraphernalia

Defendant could be convicted of possession of narcotics paraphernalia under section 22-3601 rendering unlawful a possession of instruments of a crime, even though no criminal statute prohibited use or consumption of narcotics, as this section makes it unlawful for any person to manufacture, possess, or have under his control, sell, prescribe, administer, disburse, or compound any narcotic drug. *A. L. Wheeler v. United States* (D.C. App. 1971, 276 A. 2d 722).

#### Possession

In order to have constructive possession of marihuana, it was necessary that defendant be in a position to exercise dominion and control over it. *M. Thompson v. United States* (D.C. App. 1972, 293 A. 2d 275).

#### Probable cause

After police officers found ammunition and marihuana on person of defendant, earlier occupancy by defendant of vehicle, his assault of police officer, his flight and his resistance to being taken into custody, were sufficient to establish probable cause to search the vehicle for further related evidence, such as ammunition, guns, or drugs. *J. Terrell v. United States* (D.C. App. 1972, 294 A. 2d 860; cert. denied 93 S. Ct. 1398, 410 U.S. 938).



**Redirect examination**

In prosecution for violations of federal narcotics laws, where on cross-examination of government's expert chemist, the defense elicited the fact that heroin is actually a morphine derivative, and that morphine can be legally imported into the United States, permitting witness on redirect to testify that in his opinion the narcotics involved were produced outside the United States was not improper on grounds that question was beyond qualifications of witness, since defense counsel's initial voyage into area of drug's source permitted full exploration by the government. *R. E. Green v. United States* (1967, 383 F. 2d 199, 127 U.S. App. D.C. 272).

**Review**

Court of Appeals could not review alleged excessiveness of sentence of 180 days straight time imposed upon conviction of possession of narcotics where sentence was within limits prescribed by statute. *J. Williams v. United States* (D.C. App. 1972, 293 A. 2d 484).

**Search and seizure**

Warrantless search of vehicle in which defendant was found, based on probable cause, which would have been valid immediately, was not rendered invalid merely because it became necessary to move the vehicle from a hostile crowd which gathered after defendant was taken into custody, especially where defendant asked a friend to take the vehicle to defendant's fiancée, who was later shown to be the owner of the vehicle. *J. Terrell v. United States* (D.C. App. 1972, 294 A. 2d 860; cert. denied 93 S. Ct. 1398, 410 U.S. 938).

Right of privacy to which one using toilet stall in public restroom may be entitled is necessarily a limited one. *United States v. R. Smith* (D.C. App. 1972, 293 A. 2d 856).

If pouch that was found on floor of toilet stall in public restroom as defendant and his companion departed belonged to either of them, it became abandoned property by their knowing action in leaving it there, and its examination by police officer was permissible. *Id.*

Where officers who had no complaint or report of crime in area, had never seen defendant before and did not observe him engaged in unlawful conduct detained defendant, who was on street at early hour in morning, for period of time and then asked him to accompany them to apartment building where he had previously been but did not tell defendant that he was free to ignore their request, the search of leather pouch that hung from defendant's belt and into which defendant had reached and seizure of narcotics found therein were invalid and the narcotics recovered should have been suppressed. *E. O. Robinson v. United States* (D.C. App. 1971, 278 A. 2d 458).

Even if detention for failure to display operator's permit constituted arrest and such arrest was a subterfuge to allow police officers to search automobile and its occupants, seizure of narcotics was not invalid since narcotics were observed in plain view by officer when defendant occupant unsuccessfully attempted to conceal narcotics. *H. L. Wise v. United States* (D.C. App. 1971, 277 A. 2d 476).

Record on appeal from conviction of possession of narcotics did not support contention that the arrest, assertedly made when occupants of automobile were detained when defendant failed to produce operator's permit; was merely pretext for gathering evidence. *Id.*

That police officers who searched automobile outside police station while driver, whose license was under suspension, was being booked on traffic charge had seen driver slip envelope under automobile seat, but any inference that attempt to conceal narcotics was thereby suggested was negated by their expressed willingness to let passenger take vehicle if he had possessed requisite permit, officers' observation of such act on part of driver did not furnish probable cause for such search, which disclosed marijuana under the front seat. *R. G. Mayfield v. United States* (D.C. App. 1971, 276 A. 2d 123).

In this case, the court held that since there was probable cause for arrest without a warrant prior to search of defendant, who was suspected of robbing liquor store, seizure of heroin disclosed by search was valid. *R. Harrison v. United States* (D.C. App. 1970, 267 A. 2d 368).

**Search warrant**

Where affidavit stated that a police informant had purchased on several occasions from the defendant on de-

fendant's premises a substance that later proved to be hashish, magistrate could reasonably infer that alleged transfers were not made in pursuance of proper order forms, and affidavit supporting government's application for search warrant is not insufficient for failure to allege that informant-purchaser lacked written order forms required of a transferee of marijuana. *A. R. Rutledge v. United States* (D.C. App. 1971, 283 A. 2d 213).

Evidence disclosing that detective was informed by a reliable person as to place where large quantity of narcotics were stored but was unable to obtain a search warrant because he could find no one available to issue it and went to building and knocked on door which was then forced open was insufficient to show exceptional circumstances authorizing a search without a warrant or probable cause for an arrest without a warrant. *Townsley v. United States* (D.C. Mun. App. 1965, 215 A. 2d 482).

**Seizure of "means and instrumentality"**

Narcotics paraphernalia is not the fruit of a crime, a weapon, or property the mere possession of which constitutes a crime; it is, however, the "means and instrumentality" by which narcotics may be illegally used, so that it is within exception permitting lawful seizure of certain articles even though not described in search warrant. *R. M. Edelin v. United States* (D.C. App. 1967, 227 A. 2d 395).

Hypodermic needle, syringe, bent spoon usable as a narcotics "cooker" and tissue paper, all wrapped in a stocking and found under pillow on bed, were an apparent narcotics user's "kit" and were the "means and instrumentality" by which narcotics might be illegally used, so that seizure of such paraphernalia under warrant authorizing seizure of check writing machine and undetermined number of blank checks was valid under exception permitting instrumentalities and means by which a crime is committed to be seized even though not described in search warrant, and such evidence was not subject to suppression in narcotics prosecution. *Id.*

**Sentence**

A defendant's Fifth Amendment rights may not be subordinated to misplaced zeal of trial judge who seeks to discover, prior to sentencing of defendant who has been convicted of possession of narcotics, source of the narcotics found in return for a different sentence than otherwise might be imposed. *J. Williams v. United States* (D.C. App. 1972, 293 A. 2d 484).

Where trial judge improperly considered, in sentencing defendant, defendant's refusal to disclose source of narcotics he had been found guilty of possessing and where refusal of trial judge, who declared that he had heard nothing for 45 seconds with respect to source of narcotics and that case, therefore, would not be sent to probation office, to obtain a presentence probation report was highly questionable, trial judge had failed to exercise discretion in sentencing process, and although sentence imposed was only one-half statutory maximum, error in sentencing process was so egregious as to require that sentence be vacated. *Id.*

Although trial judge had improperly considered, in sentencing defendant, defendant's refusal to disclose source of narcotics he had been found guilty of possessing, and had, under questionable circumstances, refused to obtain a presentence report, error in sentencing process required that sentence be vacated, but resentencing by another judge was not required. *Id.*

If a defendant who had been permitted to proceed in forma pauperis is indigent, so much of judgment of conviction for possession of heroin as provided for imprisonment in default of payment of \$1,000 fine should be vacated. *J. A. Simms v. United States* (D.C. App. 1971, 276 A. 2d 434).

**Stipulations**

Refusal of the trial court to allow defense to question admissibility, on ground of an illegal search and seizure, of heroin found on the defendant on theory that the stipulation between prosecution and defense that material removed from defendant was heroin and that chain of custody need not be proved, removed necessity of introducing substance into evidence and in turn precluded



opportunity for objection to its admission, constitutes reversible error. *F. Purvis v. United States* (D.C. App. 1970, 270 A. 2d 501).

#### Warning of constitutional rights

The case was remanded to determine whether defendant who was convicted of possession of implements of crime had been warned of his constitutional rights by arresting officers before he made incriminating statements. *W. J. Johnson v. United States* (D.C. App. 1969, 255 A. 2d 494).

#### § 33-403. Manufacturers and wholesalers—License required.

No person shall manufacture, compound, mix, cultivate, grow, or by any other process produce or prepare narcotic drugs, and no person as a wholesaler shall supply the same, without having first obtained a license so to do from the Board of Pharmacy. Licenses shall be issued for a period of one year and may be renewed for a like period. A fee of \$10 shall be paid to the Board of Pharmacy for any license so issued or renewed. The said Board of Pharmacy is authorized to have printed such licenses as may be necessary and to be paid for out of the money collected by it for the issuance of licenses. At the close of each fiscal year any funds unexpended in excess of the sum of \$100 shall be paid into the treasury of the United States to the credit of the District of Columbia. (June 20, 1938, 52 Stat. 787, ch. 532, § 3.)

#### CROSS REFERENCES

D.C. Council may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

Refund of fees when license refused, see § 47-1017.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33-404.

#### § 33-404. Qualifications for licenses—Revocation and suspension.

No license shall be issued under section 33-403 unless and until the applicant therefor has furnished proof satisfactory to the Board of Pharmacy of the following:

(a) That the applicant is of good moral character or, if the applicant be an association or corporation, that the managing officers are of good moral character.

(b) That the applicant is equipped as to land, buildings, and paraphernalia properly to carry on the business described in his application.

No license shall be granted to any person who has been convicted of a wilful violation of any law of the United States, or of any state, relating to opium, coca leaves, cannabis, or other narcotic drugs, or to any person who is a narcotic-drug addict.

The Board of Pharmacy may suspend or revoke any license issued by said board under the provisions of this chapter for cause. (June 20, 1938, 52 Stat. 787, ch. 532, § 4.)

#### CROSS REFERENCE

Administrative procedure, see § 1-1501 et seq.

Judicial review, see §§ 1-1510, 11-722.

#### § 33-405. Use of official written orders.

An official written order for any narcotic drug shall be signed in duplicate by the person giving said order or by his duly authorized agent. The original shall be presented to the person who sells or dispenses the narcotic drug or drugs named therein.

In event of the acceptance of such order by said person, each party to the transaction shall preserve his copy of such order for a period of two years in such a way as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this chapter. It shall be unlawful for a manufacturer or wholesaler to sell, barter, exchange, or give away any preparation or remedy described in section 4702 of the Internal Revenue Code of 1954, which contains not more than two grains of opium, or not more than one-fourth of a grain of morphine, or not more than one-eighth of a grain of heroin, or not more than one grain of codeine, or any salt or derivative of any of them in one fluid or avoirdupois ounce, except in pursuance of a written order, on a form to be issued in blank by the District of Columbia Board of Pharmacy. Every person who shall accept any such order, and in pursuance thereof shall sell, barter, exchange, or give away any of the aforesaid preparations shall preserve such order for a period of two years in such a way as to be readily accessible to inspection by any officer or agent authorized for that purpose.

The Board of Pharmacy shall cause suitable written order forms to be prepared for the purchase of narcotics for which no form is provided by the Attorney General, and shall cause the same to be for sale by said board at cost, to those persons who shall have registered under the federal narcotic laws. The Board of Pharmacy shall keep an account of the number of forms sold and the names and addresses of the purchasers and the serial numbers of such forms sold to each purchaser. Whenever the Board of Pharmacy shall sell any such forms it shall cause the name and address of the purchaser thereof to be plainly written or stamped thereon before delivering the same. The District of Columbia Council is authorized and directed to make such rules and regulations, not inconsistent with law, as it may deem necessary for the administration and enforcement of this chapter.

It shall be deemed a compliance with this section if the parties to the transaction have complied with the Federal narcotic laws respecting official order forms if such order forms are authorized and required by Federal laws, or, if no such order form is required by Federal law and if no such order form is available for purchase as provided in the preceding paragraph of this section, then the parties to the transaction shall comply with the rules and regulations made pursuant to this chapter respecting official order forms and such other records as may be required. (June 20, 1938, 52 Stat. 787, ch. 532, § 5; July 24, 1956, 70 Stat. 618, ch. 676, title III, § 301(c).)

#### REFERENCES IN TEXT

Section 4702 of the Internal Revenue Code of 1954, referred to in text, was repealed by section 1101(b)(3)(A) of Pub. L. 91-513, 84 Stat. 1292. For current provisions, see the Controlled Substances Act, Pub. L. 91-513, 84 Stat. 1242 (21 U.S.C. 801 et seq.).

#### AMENDMENT

1956—Act July 24, 1956, amended section by substituting "section 4702 of the Internal Revenue Code of 1954," for "section 1041, Title 26, U.S. Code," in the first paragraph, eliminated the words "not to exceed \$1 a hundred" following the word "cost" in the first sentence of the second paragraph, and substituted "required by Federal law and if no such order form is available for purchase as



provided in the preceding paragraph of this section, then the parties to the transaction shall comply with the rules and regulations made pursuant to this chapter respecting official order forms and such other records as may be required." for "is provided, then with the rules and regulations of the Board of Pharmacy respecting official order forms." in the third paragraph.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

The Board of Pharmacy was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorg. Plan No. 5 of 1952.

Section 402(262) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of making rules and regulations for the administration and enforcement of this chapter, under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### TRANSFER OF FUNCTIONS

The Bureau of Narcotics in the Department of the Treasury, including the office of the Commissioner of Narcotics (21 U.S.C. 161) was abolished and functions transferred to the Attorney General by Reorg. Plan No. 1 of 1968, 82 Stat. 1367, 28 U.S.C. 509 note.

#### CROSS REFERENCE

Rules and regulations for the protection of life, health, and property, generally, see § 1-226 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33-410.

### § 33-406. Sale on written orders—Vendees—"Lawful possession" defined.

(a) A duly-licensed manufacturer or wholesaler may sell and dispense narcotic drugs to any of the following persons, but only on official written orders:

- (1) To a manufacturer, wholesaler, or apothecary;
- (2) To a physician, dentist, or veterinarian;
- (3) To a hospital, but only for use by or in that hospital: *Provided*, That the official written order is signed by a physician, dentist, veterinarian, or pharmacist connected with that hospital; and
- (4) To a person in charge of a laboratory, but only for use in that laboratory for scientific and medical purposes.

(b) A duly-licensed manufacturer or wholesaler may also sell narcotic drugs to any of the following persons:

- (1) On a special written order accompanied by a certificate of exemption, as required by the federal narcotic laws, to a person in the employ of the United States Government or of the District of Columbia, or of any state, territorial, district, county, municipal, or insular government, purchasing, receiving, possessing, or dispensing narcotic drugs by reason of his official duties.
- (2) To master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, or to a physician or surgeon duly licensed in some state, territory, or the District of Columbia to practice his profession, or to a retired commissioned medical officer of the United States Army, Navy, Air Force, or Public Health Service employed upon such ship or aircraft, for the actual medical needs of persons on board such ship or aircraft, when not in port: *Provided*, That such nar-

cotic drugs shall be sold to the master of such ship or person in charge of such aircraft, or to a physician, surgeon, or retired commissioned medical officer of the United States Army, Navy, Air Force, or Public Health Service employed upon such ship or aircraft only in pursuance of a special order form approved by a commissioned medical officer or acting assistant surgeon of the United States Public Health Service.

(3) To a person in a foreign country if the provisions of the federal narcotic laws are complied with.

(c) Possession of or control of narcotic drugs obtained as authorized by this section shall be lawful only if obtained and used in the regular course of business, occupation, profession, employment, or duty of the possessor. (June 20, 1938, 52 Stat. 788, ch. 532, § 6.)

#### CODIFICATION

Air Force was added on authority of Act of July 26, 1947, § 207(a) (f), 61 Stat. 502.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 33-407, 33-410, 33-413.

### § 33-407. Authorized uses.

A person in charge of a hospital or of a laboratory, or in the employ of the District of Columbia or of any state, or of any political subdivision thereof, or a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, or a physician or surgeon duly licensed in some state, territory, or the District of Columbia, to practice his profession, or a retired commissioned medical officer of the United States Army, Navy, Air Force, or Public Health Service employed upon such ship or aircraft who obtains narcotic drugs under the provisions of section 33-406, or otherwise, shall not administer, nor dispense, nor otherwise use such drugs, within the District of Columbia, except within the scope of his employment or official duty, and then only for scientific or medical purposes and subject to the provisions of this chapter. (June 20, 1938, 52 Stat. 789, ch. 532, § 7.)

#### CODIFICATION

Air Force was added on authority of Act of July 26, 1947, § 207(a) (f), 61 Stat. 502.

### § 33-408. Sales by apothecaries.

(a) An apothecary, in good faith, may sell and dispense narcotic drugs to any person upon a written prescription of a physician, dentist, or veterinarian, dated and signed, in ink or indelible pencil, on the day when issued, by the physician, dentist, or veterinarian prescribing said narcotic drugs. The prescription when issued shall also state the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address, and registry number under the federal narcotic laws of the person prescribing, if he is required by those laws to be so registered. If the prescription be for an animal, it shall state the species of animal for which the drug is prescribed. The person filling the prescription shall write the date of filling and his own signature on the face of the prescription.



(b) An apothecary, in good faith, may sell and dispense on oral prescription of a physician, dentist, or veterinarian such narcotic drugs or compounds thereof as are found by the Secretary of the Treasury or his delegate, pursuant to section 4705 (c) (2) of the Internal Revenue Code of 1954, to possess relatively little or no addiction liability. The oral prescription shall be reduced to a written record by the apothecary before filling, with said written record containing the same information as is required by law or regulation in the case of a written prescription except for the requirement of the written signature of the prescriber.

(c) A written prescription or a written record of an oral prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two years, so as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this chapter. The prescription shall not be refilled.

(d) The legal owner of any stock of narcotic drugs in a pharmacy, upon discontinuance of dealing in said drugs, may sell said stock to a manufacturer, wholesaler, or apothecary, but only on an official written order.

(e) An apothecary, only upon an official written order, may sell to a physician, dentist, or veterinarian, in quantities not exceeding one ounce at any one time, aqueous or oleaginous solutions of which the content of narcotic drugs does not exceed a proportion greater than 20 per centum of the complete solution, to be used for medical purposes. (June 20, 1938, 52 Stat. 789, ch. 532, § 8; July 24, 1956, 70 Stat. 619, ch. 676, title III, § 301 (d).)

#### REFERENCES IN TEXT

Section 4705(c)(2) of the Internal Revenue Code of 1954, referred to in subsec. (b), was repealed by section 1101(b)(3)(A) of Pub. L. 91-513, 84 Stat. 1292. For current provisions, see the Controlled Substances Act, Pub. L. 91-513, 84 Stat. 1242 (21 U.S.C. 801 et seq.).

#### AMENDMENT

1956—Act July 24, 1956, deleted provisions requiring pharmacy proprietors to retain prescriptions on file for two years and prohibiting the refilling of said prescriptions from subsec. (a), added subsecs. (b) and (c), and redesignated former subsecs. (b) and (c) as subsecs. (d) and (e).

Subsecs. (d) and (e), formerly (b) and (c), so redesignated by act July 24, 1956.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33-410.

### § 33-409. Professional use of narcotic drugs—Return of unused drugs.

(a) Physicians and dentists.—A physician or a dentist, in good faith and in the course of his professional practice only, may prescribe by a written or oral prescription, administer, and dispense narcotic drugs, or he may cause the same to be administered by a nurse or interne under his direction and supervision. Each written prescription shall be dated and signed by the person prescribing on the day when issued and shall bear the full name and address of the patient for whom the narcotic drug is prescribed and the full name, address, and registry number under the federal narcotic laws of the person prescribing, provided he is required by those laws to be so registered. In issuing an oral prescription,

the physician or dentist shall furnish the apothecary with the same information as is required by law or regulation in the case of a written prescription for narcotic drugs and compounds, except for the requirement of the written signature of the prescriber.

(b) Veterinarians.—A veterinarian, in good faith and in the course of his professional practice only and not for use by a human being, may prescribe by a written or oral prescription, administer, and dispense narcotic drugs, and he may cause them to be administered by an assistant or orderly under his direction and supervision. Each written prescription shall be dated and signed by the person prescribing on the day when issued and shall bear the full name and address of the owner of the animal; the species of the animal for which the narcotic is prescribed; and the full name, address, and registry number under the federal narcotic laws of the person prescribing, provided he is required by those laws to be so registered. In issuing an oral prescription, the veterinarian shall furnish the apothecary with the same information as is required by law in the case of a written prescription for narcotic drugs and compounds, except for the written signature of the prescriber.

(c) Nothing contained in subsections (a) and (b) of this section shall be construed as authorizing an oral prescription to be furnished by the physician, dentist, or veterinarian to the apothecary, for a narcotic drug or compound other than those narcotic drugs or compounds determined by the Secretary of the Treasury, or his delegate, pursuant to the provisions of section 4705 (c) (2) of the Internal Revenue Code of 1954, to possess little or no addiction liability.

(d) Return of unused drugs.—Any person who has obtained from a physician, dentist, or veterinarian any narcotic drug for administration to a patient during the absence of such physician, dentist, or veterinarian shall return to such physician, dentist, or veterinarian any unused portion of such drug, when it is no longer required by the patient. (June 20, 1938, 52 Stat. 790, ch. 532, § 9; July 24, 1956, 70 Stat. 619, ch. 676, title III, § 301 (e), (f), (g).)

#### REFERENCES IN TEXT

Section 4705(c)(2) of the Internal Revenue Code of 1954, referred to in subsec. (c), was repealed by section 1101(b)(3)(A) of Pub. L. 91-513, 84 Stat. 1292. For current provisions, see the Controlled Substances Act, Pub. L. 91-513, 84 Stat. 1242 (21 U.S.C. 801 et seq.).

#### AMENDMENT

1956—Act July 24, 1956, amended section to include oral prescriptions in subsecs. (a) and (b), added the last sentence in said subsecs., requiring the furnishing of the same information in oral prescriptions as in written prescriptions, added subsec. (c), and redesignated former subsec. (c) as subsec. (d).

Subsec. (d), formerly (c), so redesignated by act July 24, 1956.

### § 33-410. Preparations exempted—Conditions—Paregoric.

Except as otherwise in this chapter specifically provided, said sections shall not apply to the following cases:

(a) Prescribing, administering, dispensing, or selling at retail of any medicinal preparation that contains in one fluid ounce or, if a solid or semisolid



preparation, in one avoirdupois ounce (1) not more than two grains of opium, (2) not more than one-quarter of a grain of morphine or of any of its salts, (3) not more than one grain of codeine or of any of its salts, (4) not more than one-eighth of a grain of heroin or of any of its salts.

(b) Prescribing, administering, dispensing, or selling at retail of liniments, ointments, and other preparations that are susceptible of external use only and that contain narcotic drugs in such combinations as prevent their being readily extracted from such liniments, ointments, or preparations, except that this chapter shall apply to all liniments, ointments, and other preparations that contain coca leaves in any quantity or combination.

(c) Prescribing, administering, dispensing, or selling at retail of any medicinal preparation containing not in excess of 25 per centum of paregoric, in combination with some drug or drugs which confer upon it medicinal properties other than those possessed by paregoric.

The exemptions authorized by this section shall be subject to the following conditions:

(1) The medicinal preparation, or the liniment, ointment, or other preparation susceptible of external use only, prescribed, administered, dispensed, or sold, shall contain in addition to the narcotic drug in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the narcotic drug alone.

Such preparation shall be prescribed, administered, dispensed, and sold in good faith as a medicine, and not for the purpose of evading the provisions of this chapter.

Nothing in this section shall be construed to limit the kind and quantity of any narcotic drug that may be prescribed, administered, dispensed, or sold to any person, or for the use of any person or animal, when it is prescribed, administered, dispensed, or sold in compliance with the general provisions of this chapter.

Manufacturers or wholesalers shall sell tincture opii camphorata, commonly known as paregoric, only in accordance with the provisions of sections 33-405, 33-406, on official written order forms provided for that purpose by the Board of Pharmacy. It shall be unlawful for any person to bring into or have in his possession for sale in the District of Columbia any paregoric unless an official written order form has been issued therefor. No person shall dispense or sell any paregoric at retail to any person without a written or oral prescription from a duly licensed physician, dentist, veterinarian, or other duly authorized person. Prescriptions shall be retained and filed as provided in section 33-408. (June 20, 1938, 52 Stat. 790, ch. 532, § 10; July 24, 1956, 70 Stat. 619, ch. 676, title III, § 301(h); Aug. 25, 1959, 73 Stat. 430, Pub. L. 86-206, § 1; July 14, 1960, 74 Stat. 536, Pub. L. 86-668, § 1.)

#### AMENDMENTS

1960—Act July 14, 1960, eliminated provisions which related to preparations containing in one ounce not more than one-sixth of a grain of dihydrocodeinone or any of its salts.

1959—Act Aug. 25, 1959, amended last par. of section by substituting "without a written or oral prescription" for "without a written prescription."

1956—Act July 24, 1956, amended subsec. (a) by adding "(5) not more than one-sixth of a grain of dihydrocodeinone or any of its salts." following the matter in numeral (4), added subsec. (c), pertaining to the prescribing, administering, dispensing, or selling of medicinal drugs containing paregoric, and in the third sentence of the last para, substituted the words "without a written prescription" for the words "without a prescription."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 33-411, 33-420.

#### § 33-411. Records to be kept—Form—Preservation.

(a) Physicians, dentists, veterinarians, and other authorized persons.—Every physician, dentist, veterinarian, or other person who is authorized to administer or professionally use narcotic drugs shall keep a record of such drugs received by him, and a record of all such drugs administered, dispensed, or professionally used by him otherwise than by prescription in accordance with the provisions of subsection (e) of this section. It shall, however, be deemed a sufficient compliance with this subsection if any such person using small quantities of solutions or other preparations of such drugs for local application shall keep a record of the quantity, character, and potency of such solutions or other preparations purchased or made up by him, and of the dates when purchased or made up, without keeping a record of the amount of such solution or other preparation applied by him to individual patients.

(b) Manufacturers and wholesalers.—Manufacturers and wholesalers shall keep records of all narcotic drugs compounded, mixed, cultivated, grown, or by any other process produced or prepared, and of all narcotic drugs received and disposed of by them, in accordance with the provisions of subsection (e) of this section.

(c) Apothecaries.—Apothecaries shall keep records of all narcotic drugs received and disposed of by them, in accordance with the provisions of subsection (e) of this section.

(d) Vendors of exempted preparations.—Every person who purchases for resale, or who sells narcotic drug preparations exempted by section 33-410 shall keep a record showing the quantities and kinds thereof received and sold, or disposed of otherwise, in accordance with the provisions of subsection (e) of this section.

(e) Form and preservation of record.—The form of record shall be prescribed by the Board of Pharmacy. The record of narcotic drugs received shall in every case show the date of receipt, the name and address of the person from whom received, and the kind and quantity of drugs received; the kind and quantity of narcotic drugs produced or removed from process of manufacture, and the date of such production or removal from process of manufacture; and the record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or cocoa leaves received or produced, and the proportion of resin contained in or producible from the plant *Cannabis sativa* L., received, or produced. The record of all narcotic drugs sold, administered, dispensed, or otherwise disposed of, shall show the date of selling, administering, or dispensing, the name and address of the person to whom, or for whose use, or the owner and species of animal for which the drugs



were sold, administered, or dispensed, and the kind and quantity of drugs. Every such record shall be kept for a period of two years from the date of the transaction recorded. (June 20, 1938, 52 Stat. 791, ch. 532, § 11; July 24, 1956, 70 Stat. 620, ch. 676, title III, § 301 (i).)

#### AMENDMENT

1956—Act July 24, 1956, struck out the last sentence in subsec. (e) which stated that the keeping of records required by federal narcotic laws constituted compliance with section.

#### § 33-412. Labels.

(a) Whenever a manufacturer sells or dispenses a narcotic drug, and whenever a wholesaler sells or dispenses a narcotic drug in a package prepared by him, he shall securely affix to each package in which that drug is contained a label showing in legible English the name and address of the vendor and the quantity, kind, and form of narcotic drug contained therein. No person, except an apothecary for the purpose of filling a written or oral prescription under this chapter, shall alter, deface, or remove any label so affixed.

(b) Whenever an apothecary sells or dispenses any narcotic drug on a written or oral prescription issued by a physician, dentist, or veterinarian he shall affix to or place in the container in which such drug is sold or dispensed a label showing his own name, address, and registry number, or the name, address, and registry number of the apothecary for whom he is lawfully acting; the name and address of the patient, or, if the patient is an animal, the name and address of the owner of the animal, and the species of the animal; the name, address, and registry number of the physician, dentist, or veterinarian, by whom the prescription was written; and such directions as may be stated on the prescription. No person shall alter, deface, or remove any label so affixed as long as any of the original contents remain. (June 20, 1938, 52 Stat. 792, ch. 532, § 12; July 24, 1956, 70 Stat. 620, ch. 676, title III, § 301(j).)

#### AMENDMENT

1956—Act July 24, 1956, substituted "a written or oral prescription" for "prescription" in subsecs. (a) and (b), and "affix to or place in" for "affix to", in subsec. (b).

#### § 33-413. Authorized possession of narcotic drugs by individuals.

A person to whom or for whose use any narcotic drug has been prescribed, sold, or dispensed by a physician, dentist, apothecary, or other person authorized under the provisions of section 33-406, and the owner of any animal for which any such drug has been prescribed, sold, or dispensed, by a veterinarian, may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the same. (June 20, 1938, 52 Stat. 792, ch. 532, § 13.)

#### § 33-414. Search warrants—Requirements—Form—Contents—Return—Penalty for interfering with service.

(a) A search warrant may be issued by any judge of the Superior Court of the District of Columbia or by a United States commissioner for the District of Columbia when any narcotic drugs are manufac-

tured, possessed, controlled, sold, prescribed, administered, dispensed, or compounded, in violation of the provisions of this chapter, and any such narcotic drugs and any other property designed for use in connection with such unlawful manufacturing, possession, controlling, selling, prescribing, administering, dispensing, or compounding, may be seized thereunder, and shall be subject to such disposition as the court may make thereof and such narcotic drugs may be taken on the warrant from any house or other place in which they are concealed.

(b) A search warrant cannot be issued but upon probable cause supported by affidavit particularly describing the property and the place to be searched.

(c) The judge or commissioner must, before issuing the warrant, examine on oath the complainant and any witnesses he may produce, and require their affidavits or take their depositions in writing and cause them to be subscribed by the parties making them.

(d) The affidavits or depositions must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

(e) If the judge or commissioner is thereupon satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence, he must issue a search warrant, signed by him, to the major and superintendent of police of the District of Columbia or any member of the Metropolitan police department, stating the particular grounds or probable cause for its issue and the names of the persons whose affidavits have been taken in support thereof, and commanding him forthwith to search the place named for the property specified and to bring it before the judge or commissioner.

(f) A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

(g) The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

(h) The judge or commissioner shall insert a direction in the warrant that it may be served at any time in the day or night.

(i) A search warrant must be executed and returned to the judge or commissioner who issued it within ten days after its date; after the expiration of this time the warrant, unless executed, is void.

(j) When the officer takes property under the warrant, he must give a copy of the warrant together with a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or in the absence of any person, he must leave it in the place where he found the property.

(k) The officer must forthwith return the warrant to the judge or commissioner and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose



possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory and taken before the judge or commissioner at the time, to the following in effect: "I, ———, the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

(l) The judge or commissioner must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken and to the applicant for the warrant.

(m) The judge or commissioner must annex the affidavits, search warrant, return, inventory, and evidence, and at once file the same, together with a copy of the record of his proceedings, with the clerk of the Superior Court of the District of Columbia.

(n) Whoever shall knowingly and willfully obstruct, resist, or oppose any such officer or person in serving or attempting to serve or execute any such search warrant, or shall assault, beat, or wound any such officer or person, knowing him to be an officer or person so authorized, shall be fined not more than \$1,000 or imprisoned not more than two years. (June 20, 1938, 52 Stat. 792, ch. 532, § 14; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 24, 1956, 70 Stat. 620, ch. 676, title III, § 301(k); July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### REFERENCE IN TEXT

The Act of Oct. 17, 1968, Pub. L. 90-578, terminated the office of United States commissioner and established in place thereof the office of United States magistrate. The Act became operative in the District of Columbia on June 27, 1969, when two United States magistrates assumed the office pursuant to appointment by order of the District Court dated June 20, 1969. See §§ 401(a) and 402(a) (b) of said Act (28 U.S.C. 631 note).

#### AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Pub. L. 91-358, amended subsecs. (a) and (m) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

1956—Act July 24, 1956, amended subsec. (h), which formerly read: "The judge or commissioner must insert a direction in the warrant, that it be served in the daytime unless the affidavit is positive that the property is in the place to be searched in which case he must insert a direction that it be served at any time in the day or night.", to read "The judge or commissioner shall insert a direction in the warrant that it may be served at any time in the day or night."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding § 11-101.

#### CHANGE OF NAME

"Municipal court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

#### CROSS REFERENCE

Search warrants, generally, see §§ 23-521 to 23-525.

#### NOTES TO DECISIONS

##### Construction

The laws dealing with narcotics and drug problems are controlling over the general search warrant provisions of the United States and District of Columbia Codes. *United States v. C. Thomas et al.* (D.C. App. 1972, 294 A. 2d 164; cert. denied 93 S.Ct. 341, 448, 409 U.S. 992).

##### Delay in execution

In this case, the court held that defendant failed to show that eight-day delay in executing search warrant after it was issued had prejudiced him. *J. E. Curtis v. United States* (D.C. App. 1970, 263 A. 2d 653).

Even an unreasonable time lag in execution of search warrant must prejudice defendant to render search invalid. *Id.*

Under this section which provides that the warrant command the search "forthwith" and that the warrant must be executed within 10 days after its date, delay within 10-day limitation does not, standing alone, vitiate warrant. *W. J. Johnson v. United States* (D.C. App. 1969, 255 A. 2d 494).

Since prejudice was not claimed by reason of failure to execute search warrant until six days after its issuance, the delay did not vitiate the warrant and did not require suppression of evidence obtained pursuant to the warrant. *Id.*

##### Description of premises

In an appeal from an order of District of Columbia Court of General Sessions granting motion to suppress evidence, the court held that a warrant ordering search of "Entire Premises, 2nd Floor Front" at specified address described the place to be searched with sufficient particularity to be valid, and thus motion to suppress evidence seized should have been denied, though second floor of the premises was divided into two apartments, each fronting on street, where affidavit, referring to specific apartment number, was attached to the warrant and sufficiently referred to therein to enable officer executing warrant to look at affidavit and determine place intended. *United States v. S. H. Moore et al.* (D.C. App. 1970, 263 A. 2d 652; aff'd 461 F. 2d 1236, 149 U.S. App. D.C. 150).

##### Evidence

Evidence supported finding of intent necessary for convictions of petit larceny of meperidine and unlawful possession of meperidine and biphentamine. *D. A. Fisher v. United States* (D.C. Mun. App. 1962, 183 A. 2d 553).

##### Execution of search warrant

This section providing that "the judge or commissioner shall insert a direction in the warrant that it may be served at any time in the day or night.", qualifies sections 23-521 to 23-523 permitting a nighttime execution of the search warrant if, and only if, there is an express authorization therefor pursuant to statute; the latter sections are applicable to nonnarcotic cases only. *United States v. H. Green* (1971, 331 F. Supp. 44).

Search warrant and its execution during the nighttime hours is proper in narcotics case where there is a showing of probable cause both as to its existence for its service at such time, and where it is accompanied by a supporting affidavit as well as by an insertion within the warrant as to when it could be served. *Id.*

Where none of the grounds set forth in § 23-522 for search warrant authorizing execution at night were included in either application or warrant, search made pursuant to warrant well after ending of daylight hours is invalid and evidence seized is subject to suppression, though warrant was issued in connection with alleged violations of federal narcotics laws. *United States v. L. Gooding* (1971, 328 F. Supp. 1005).

Requirement of this section that search warrant command search "forthwith" is to insure that probable cause existing when warrant issued also exists when it is executed. *J. E. Curtis v. United States* (D.C. App. 1970, 263 A. 2d 653).

Search warrant was properly executed, though police allegedly tricked defendant by allowing defendant to think that only janitor was at door of apartment, where door was opened three or four inches by defendant, and one of the officers thrust his badge and search warrant through aperture and stated that he had a search warrant, and when defendant started to run, the officer



pulled door open, and night chain slipped off, and that officer then entered and placed defendant under arrest. *C. Jones v. United States* (1962, 304 F. 2d 381, 113 U.S. App. D.C. 14).

#### Search and seizure

Defendant's cooperation, before arrest, with police was voluntary where he did not deny involvement of disappearance of meperidine and biphethamine but gave purported explanation thereof, voluntarily told police officer that packages in his automobile trunk were from employer, and repeated such statements to employer in officer's presence. *D. A. Fisher v. United States* (D.C. Mun. App. 1962, 183 A. 2d 553).

A defendant charged with violation of narcotics laws had standing to contend that entry and subsequent seizure were unlawful notwithstanding he testified that property seized was not his and that place of arrest was not his home, where to hold that defendant's failure to acknowledge interest in narcotics or premises prevented his attack upon search, would be to permit the Government to have advantage of contradictory positions as basis for conviction, since conviction flowed from defendant's possession of narcotics at time of search, yet fruits of that search, upon which conviction depended, were admitted into evidence on ground that defendant did not have possession of narcotics at that time, so that prosecution subjected defendant to penalties meted out to one in lawless possession while refusing him remedies designed for one in that situation. *Jones v. United States* (1960, 80 S. Ct. 725, 362 U.S. 257, 4 L. Ed. 2d 697).

In prosecution for narcotics violation, evidence disclosing that experienced narcotic officer received information from an informant whom he knew to be a narcotics user that defendant and another person had a large quantity of narcotics at a certain address to which defendant would drive in a certain type of automobile and officer went to location and noticed automobile and defendant whom he recognized as one involved in narcotics traffic and saw him enter the premises described, there was probable cause for issuance of search warrant by commissioner. *Brandon v. United States* (1959, 270 F. 2d 311, 106 U.S. App. D.C. 118, certiorari denied 80 S. Ct. 808, 362 U.S. 943, 4 L. Ed. 2d 771).

In prosecution for violation of narcotics statute, trial judge properly denied defendant's motion to suppress evidence on ground of illegal arrest and subsequent search of premises, where articles which defendant desired to be suppressed for use as evidence were not enumerated or described in motion, and where they were not identified at hearing on motion. *O'Neal v. United States of America* (1955, 222 F. 2d 411, 95 U. S. App. D. C. 386).

Where police had warrant for drug peddler's arrest, had reason to believe that peddler lived in certain apartment building, had refrained from arresting peddler earlier only so as to make his arrest coincide with others, did not force any doors to defendant's apartment, were recognized as police without their announcing the fact, and, immediately upon entering defendant's apartment, announced their purpose of seeking peddler, their presence in defendant's apartment did not violate her constitutional rights, and police had right to arrest defendant for narcotics violations committed in their presence, and to seize evidence of those crimes. *O'Neal v. United States* (D. C. Mun. App. 1954, 105 A. 2d 739, affirmed 222 F. 2d 411, 95 U. S. App. D. C. 386).

#### Sentences

Defendant's assignment of error relating to sentences imposed for conviction of petit larceny and unlawful possession of meperidine would not be considered, where such sentences were each less than sentence imposed for conviction of unlawful possession of biphethamine, and the conviction involving biphethamine was valid. *D. A. Fisher v. United States* (D.C. Mun. App. 1962, 183 A. 2d 553).

#### Subject of search

Under the circumstances of this case, it was not unreasonable for officers to seize pistol which, as convicted felon, defendant was forbidden to possess, incidental to authorized search of his apartment for narcotics, in absence of showing that presence of pistol on premises was

attributable to eight-day delay in execution of search warrant *J. E. Curtis v. United States* (D.C. App. 1970, 263 A. 2d 653).

Where, in searching defendant's premises under a valid search warrant authorizing search for alcoholic beverages or any property designed for use in connection with violation of Alcoholic Beverage Control Act, police officer looked behind a movable partition closing off a fireplace and discovered two large clean paper bags in the midst of rubble, and although the feel and weight of such bags indicated to him that they did not contain bottles, the officer looked into the bags and discovered therein a quantity of marihuana, the officer's action in looking into the bags did not constitute an unreasonable search, but was lawful. *United States v. White* (D.C.D.C. 1954, 122 F. Supp. 664).

#### Issuance of search warrant

Affidavit reciting that confidential informant whose reliability had been proven told narcotics agents that defendant was selling heroin in his apartment, that agents furnished him with funds to purchase narcotics, and that informant was observed to enter the apartment building and then emerge, surrendering to agents a narcotic substance purchased from defendant, disclosed probable cause for issuance of the warrant. *Jones v. United States* (1965, 353 F. 2d 908, 122 U.S. App. D.C. 370).

Where officers searched informant and found him to be without money or drugs, supplied him with money, watched him enter premises of defendant and leave premises, and then searched informant and found that money had been spent and that drugs had been obtained, there was probable cause for issuance of search warrant. *United States v. McKethan* (D.C.D.C. 1965, 247 F. Supp. 324).

Affidavit for search warrant reciting that previously reliable sources had informed affiant that defendant and others were selling narcotics out of a certain apartment, that affiant had personally observed narcotics purchase taking place in building in question and that the suspects had been involved with narcotics in the past was sufficient to authorize issuance of search warrant. *Siler v. United States* (D.C. Mun. App. 1965, 215 A. 2d 478).

Failure of United States Commissioner, who granted application of narcotics agents for a search warrant, to take affidavit or deposition in writing of informant of narcotics agents was not fatal, where evidence before United States Commissioner from trained narcotics agents, who had personally observed known drug addicts and drug peddlers entering and leaving residence of defendant, and who had received information from reliable sources, was ample to support search warrant, without reference to oral statements of informant. *Ward v. United States* (1960, 281 F. 2d 917, 108 U.S. App. D.C. 282).

Where United States narcotics agents had residence of defendant under surveillance for some time prior to certain date, and on that date narcotics agents and detectives observed known drug addicts and peddlers entering and leaving defendant's residence, and at 9 p.m. on that date known drug peddler, shortly after leaving defendant's residence, was arrested and found to have heroin in his possession, and he admitted purchasing the heroin at defendant's residence, a search warrant was properly issued for search of defendant's residence. *Id.*

Where narcotics agents sought search warrant from United States Commissioner, issue was whether narcotics agents were fully warranted as men of reasonable caution in believing that an offense against narcotics laws had been and was being committed, and not whether they had information or evidence which would sustain a conviction or even a charge. *Id.*

If United States Commissioner is satisfied of existence of grounds of application for search warrant or that there is probable cause to believe their existence, he must issue a search warrant. *Id.*

#### § 33-415. Persons and corporations exempted.

The provisions of this chapter restricting the possession and having control of narcotic drugs shall not apply to common carriers or to warehousemen, while



engaged in lawfully transporting or storing such drugs, or to any employee of the same acting within the scope of his employment; or to public officers or their employees in the performance of their official duties requiring possession or control of narcotic drugs; or to temporary incidental possession by employees or agents of persons lawfully entitled to possession, or by persons whose possession is for the purpose of aiding public officers in performing their official duties. (June 20, 1938, 52 Stat. 794, ch. 532, § 15.)

#### § 33-416. Common nuisances.

Any store, shop, warehouse, dwelling-house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by narcotic drug addicts for the purpose of using narcotic drugs or which is used for the illegal keeping or selling of the same, shall be deemed a common nuisance. No person shall keep or maintain such a common nuisance. (June 20, 1938, 52 Stat. 794, ch. 532, § 16.)

#### CROSS REFERENCE

Presence or employment in illegal establishments, see § 22-1515.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23-546.

#### NOTES TO DECISIONS

##### Elements of offense

In order to convict a defendant of keeping a place to which drug addicts resort for the purpose of using narcotic drugs, it is unnecessary to prove that drugs were or had been kept on the premises; however, such proof is essential to sustain a conviction of maintaining a place used for the illegal keeping or selling of narcotic drugs; and there must in addition be proof that the narcotic drugs kept or sold on the premises were of a usable or salable quantity. *L. E. Gantt v. United States* (D.C. App. 1970, 267 A. 2d 350).

##### Evidence

In prosecution for violation of narcotics law, admission of testimony of officer that he found capsules of heroin hydrochloride on ground outside house and beneath open window of second story apartment where defendant and other persons were assembled, was not grounds for reversal, where there was nothing in record to show that any objection was made to such evidence. *O'Neal v. United States of America* (1955, 222 F. 2d 411, 95 U. S. App. D. C. 386).

This section declaring any place resorted to by narcotic drug addicts for purpose of using such drugs a common nuisance, which no person shall keep or maintain, does not impliedly require evidence that narcotic drugs were or had been kept on premises resorted to by addicts for such purpose in order to prove crime of keeping or maintaining such a nuisance. *United States v. Williams* (1954, 210 F. 2d 687, 93 U. S. App. D. C. 120).

There may be a conviction under this section of keeping a place resorted to by narcotic addicts for purpose of using narcotics, but not of keeping a place used for illegal keeping or selling of such drugs, without proof that narcotics had been kept on premises. *Williams v. United States* (D. C. Mun. App. 1954, 101 A. 2d 843).

##### — Sufficiency

In this case the court agreed that at the time the motion for judgment of acquittal was made there existed sufficient evidence, including fact that narcotic paraphernalia was present in apartment and that rent receipts indicated defendant lived in the apartment, to present to a jury the question of whether defendant kept or maintained a place resorted to by drug addicts for the purpose of using drugs; and since, though it was doubtful whether a jury question existed on alternative charge that the defendant maintained a place used for the illegal

keeping or selling of drugs, there was sufficient evidence to support a verdict of guilt of maintaining a common nuisance, and the trial court properly denied the acquittal motion. *L. E. Gantt v. United States* (D.C. App. 1970, 267 A. 2d 350).

##### New trial

Under this section, defining as nuisance a place resorted to by narcotic addicts for purpose of using narcotics, or used for illegal keeping or selling of narcotics, where there was no evidence that narcotics had been kept on premises, but jury were led to believe that they might find defendant guilty of violating either or both provisions of this section, by argument of prosecuting attorney and by trial court's reading entire statute to jury without attempting to differentiate the two features, and where it could not be determined upon which feature verdict of guilty was based, conviction could not stand and would be reversed for new trial. *Williams v. United States* (D. C. Mun. App. 1954, 101 A. 2d 843).

##### Prejudicial error

In a trial involving the owner of a rooming house for permitting marijuana to be smoked on his premises, it was not prejudicial error to a quash subpoena ad testificandum for a material defense witness who was awaiting trial on charges relating to the very transactions to which he would be requested to testify in owner's trial where trial court was familiar with evidence to which witness was to testify and witness' attorney had informed court that witness would invoke privilege against self-incrimination if he were called to testify. *D. G. Harris v. United States* (D.C. App. 1969, 255 A. 2d 489).

##### Probable cause for arrest

Police, who were cruising area, had probable cause to arrest defendant, whom they had previously arrested for narcotics violation, when they saw him with known narcotics user, and evidence seized from person of defendant who, upon request, produced capsules from hand and pocket was admissible. *A. O. Freeman v. United States* (1963, 322 F. 2d 426, 116 U.S. App. D.C. 213).

Admission of testimony, at trial judge's request, that police officer had previously arrested defendant for narcotics violation was error which was prejudicial to defendant who did not take stand during his prosecution for narcotics violation. *Id.*

Police officers who were on routine investigation of report that heroin was being "capped" at rooming house and who saw paraphernalia used by narcotics addicts in room from public hallway to which they had been properly admitted had probable cause to enter the room to arrest defendant, and having done so, properly seized heroin found in envelope and the paraphernalia. *Jennings v. United States* (1957, 247 F. 2d 784, 101 U.S. App. D. C. 198).

##### Reversible error

In view of the evidence in this case, including witness' testimony that he had lived with defendant for about three months prior to his arrest and had used heroin in the apartment over five times, the trial court did not err in accepting a general verdict of guilt after instructing the jurors that they could find the defendant guilty of violating either or both alternative provisions of this section making it a common nuisance to maintain a place resorted to by narcotic drug addicts for the purpose of using narcotic drugs or to maintain a place used for the illegal keeping or selling of drugs. *L. E. Gantt v. United States* (D.C. App. 1970, 267 A. 2d 350).

##### Sentence

Alternative sentence of 30 days in jail and fine of \$500 or 90 days in jail is not invalid on the ground of denial of equal justice in assessing sentence without permitting fine to be collected through installment plan or suspending execution of sentence for fine on condition that defendant do specified daytime work to satisfy fine since the record does not show that the trial judge was aware of defendant's alleged indigency and the defendant made no postsentence motion to vacate or modify judgment of fine or imprisonment in lieu of paying fine. *D. G. Harris v. United States* (1971, 440 F. 2d 240, 142 U.S. App. D.C. 212).



**Warrant of arrest**

Where police officers received information from reliable informant in afternoon that person for whom arrest warrant was outstanding could be found at defendant's house, but officers made no attempt to serve warrant until 8:30 the next day, delay between time that officers received tip and time they went to defendant's house to make arrest did not negate their bona fide, reasonable belief that accused was still in the house, and narcotic drugs, which were found in a closet by police officers while making a search for persons sought after identifying themselves and forcing entry, were admissible against defendant. *I. M. Palmer v. United States* (D.C. App. 1963, 192 A.2d 801).

Where police had warrant for drug peddler's arrest, had reason to believe that peddler lived in certain apartment building, had refrained from arresting peddler earlier only so as to make his arrest coincide with others, did not force any doors to defendant's apartment, were recognized as police without their announcing the fact, and, immediately upon entering defendant's apartment, announced their purpose of seeking peddler, their presence in defendant's apartment did not violate her constitutional rights and police had right to arrest defendant for narcotics violations committed in their presence, and to seize evidence of those crimes. *O'Neal v. United States of America* (D. C. Mun. App. 1954, 105 A.2d 739, affirmed 222 F.2d 411, 95 U. S. App. D. C. 386).

**§ 33-416a. Vagrancy—Narcotic drug user—Penalties—Conditions imposed.**

(a) The purpose of this section is to protect the public health, welfare, and safety of the people of the District of Columbia by providing safeguards for the people against harmful contact with narcotic drug users who are vagrants within the meaning of this section and to establish, in addition to sections 24-601 to 24-611, further procedures and means for the care and rehabilitation of such narcotic drug users.

(b) For the purpose of this section—

(1) the term "vagrant" shall mean any person who is a narcotic drug user or who has been convicted of a narcotic offense in the District of Columbia or elsewhere and who—

(A) having no lawful employment or visible means of support realized from a lawful occupation or source, is found mingling with others in public or loitering in any park or other public place and fails to give a good account of himself; or

(B) is found in any place, abode, house, shed, dwelling, building, structure, vehicle, conveyance, or boat, in which any illicit narcotic drugs are kept, found, used, or dispensed; or

(C) wanders about in public places at late or unusual hours of the night, either alone or in the company of or association with a narcotic drug user or convicted narcotic law violator, and fails to give a good account of himself; or

(D) is included within one of the classes of persons defined in paragraphs (1) through (9), inclusive, of section 22-3302;

(2) the term "narcotic drug user" shall mean any person who takes or otherwise uses narcotic drugs, except a person using such narcotic drug as a result of sickness or accident or injury, and to whom such narcotic drugs are being furnished, prescribed, or administered in good faith by a duly licensed physician in the course of his professional practice.

(c) Whenever any law-enforcement officer has probable cause to believe that any person is a vagrant within the meaning of this section, he is authorized to place that person under arrest and to confine him in any place in the District of Columbia designated by the Commissioner thereof.

(d) Pending arraignment and without unnecessary delay the person arrested as a vagrant within the meaning of this section shall have the opportunity to be examined by a physician designated by the Commissioner of the District of Columbia, who shall determine whether there is evidence of narcotic drug usage.

(e) If the physician designated by the Commissioner of the District of Columbia is satisfied that the person examined is not a narcotic drug user, or if there is insufficient evidence of narcotic drug usage, the United States Attorney shall, if the said person is not otherwise chargeable as a vagrant within the meaning of this section, bring such matter to the attention of the Corporation Counsel for the District of Columbia for determination as to whether there shall be a prosecution under the provisions of section 22-3302.

(f) Upon affirmative determination that the person arrested is a narcotic drug user, or if the person has been convicted of a narcotic offense in the District of Columbia or elsewhere, and if such person is also a vagrant as hereinbefore defined, he shall be charged with the offense of vagrancy within the meaning of this section and arraigned in the Superior Court of the District of Columbia where the prosecution shall be conducted in the name of the United States by the United States attorney.

(g) Any person convicted of being a vagrant under the provisions of this section shall be punished by fine of not more than \$500 or imprisonment for not more than one year, or by both such fine and imprisonment.

(h) The court, in sentencing any person found guilty under the provisions of this section, may in its own discretion or upon the recommendation of the probation officer, impose conditions upon the service of any such sentence. Conditions thus imposed by the court may include submission to medical and mental examination, and treatment by proper public health and welfare authorities; confinement at such place as may be designated by the Commissioner of the District of Columbia, and such other terms and conditions as the court may deem best for the protection of the community and the punishment, control, and rehabilitation of the defendant.

(i) In all prosecutions under the provisions of this section, the burden of proof shall be upon the defendant to show that he has lawful employment or has lawful means of support realized from a lawful occupation or source. (June 20, 1938, ch. 532, § 16A, as added July 24, 1956, 70 Stat. 620, ch. 676, title III, § 301 (1); July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 157(d), 84 Stat. 574.)

**AMENDMENT**

1970—Section 157(d) of Act July 29, 1970, Public Law 91-358, amended subsection (f) by striking out "United States branch of the municipal court" and inserting in lieu thereof "Superior Court of the District of Columbia."



## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

## EFFECTIVE DATE

Section 304 of act July 24, 1956, provided that: "Sub-section (1) of section 301 of this title [this section] shall take effect thirty days after the date of its enactment [July 24, 1956]."

## CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded Act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions. See section 11-101.

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## NOTES TO DECISIONS

## Acquittal on appeal

Court of Appeals, on reversing convictions for narcotic vagrancy, maintaining common nuisance, and possession of narcotics, for failure of evidence to show that defendants had in their possession more than trace of heroin, would not remand for new trial, where there was no showing that government had additional proof that actual amounts involved were more than mere traces that were actually usable or saleable as narcotics. *L. Marshall and K. Watkins v. United States* (D.C. App. 1967, 229 A. 2d 449).

## Burden of proof as to lawful employment

In prosecution for narcotics vagrancy under statute defining vagrant as any person who is a narcotic drug user or who has been convicted of a narcotic offense and who is found in any place or vehicle in which any illicit narcotic drugs are kept, found, used, or dispensed, mere presence of defendant as passenger in back seat of automobile in which narcotics paraphernalia was found did not impose on defendant burden of proof under statutory provision that burden of proof shall be on defendant to show that he has lawful employment or has lawful means of support realized from lawful occupation or source. *H. C. Wilson v. United States* (1966, 366 F. 2d 666, 125 U.S. App. D.C. 87).

## Concurrent sentences

Where defendant received identical concurrent sentences in prosecution for illegal possession of narcotics and narcotics vagrancy, failure to charge scenter in narcotics vagrancy information did not require vacation of judgment on such charge, absent collateral consequences warranting vacation. *J. D. Williams v. United States* (D.C. App. 1970, 263 A. 2d 659).

Where defendants received concurrent sentences in prosecution for possession of narcotics, possession of implements of crime, unlawful entry and narcotics vagrancy and evidence was sufficient to support conviction of possession of narcotics and possession of implements of crime, District of Columbia Court of Appeals would not pass upon sufficiency of evidence to support other convictions. *S. Keith, R. L. Payne and T. J. Walker v. United States* (D.C. App. 1967, 232 A. 2d 92).

## Constitutionality

Burden put upon prior narcotics offenders and narcotics users by this section, as those most likely to engage in illicit narcotics traffic, of absenting themselves from places where the narcotics are kept or used is not impermissible deprivation of freedom of movement. *United States v. M. C. McClough et al.* (D.C. App. 1970, 263 A. 2d 48).

This section which defines as a vagrant any unemployed narcotic user or who has been convicted as a narcotic offender without lawful and visible means of support who is found in public place and fails to give good account of himself did not enable citizens of ordinary intellect to distinguish wrong from right and was unconstitutional. *H. M. Ricks and J. N. Williams v. United States* (1968, 414 F. 2d 1111, 134 U.S. App. D.C. 215).

The Court is not at liberty to ignore shortcomings of statutory language, or rationalize its validity, simply on basis of methods associated with its administration. *Id.*

This section which was vague and indefinite could not be rendered constitutional by the unpublicized scope limitations which its enforcement plan espouses. *Id.*

Since under the Narcotics Vagrancy and General Vagrancy Statutes anyone using street for a lawful business in a lawful manner may do so without restriction, statutes are not an unreasonable restriction on freedom of movement in violation of due process clause of Fifth Amendment. *H. M. Ricks and J. N. Williams v. United States; H. M. Ricks v. District of Columbia* (D.C. App. 1967, 228 A. 2d 316; rev'd 414 F. 2d 1111, 134 U.S. App. D.C. 215).

Convictions for violation of Narcotics Vagrancy and General Vagrancy Statutes were not invalid on ground that defendants were being punished solely for their status as vagrants. *Id.*

Convictions of defendants for violation of Narcotics Vagrancy and General Vagrancy Statutes on proof showing defendants' associations with known narcotics users and prostitutes did not violate Eighth Amendment's prohibition against cruel and unusual punishment despite claim that there was an absence of any overt criminal act. *Id.*

Narcotic vagrancy statute defining vagrant as any person who is narcotic drug user or has been convicted of narcotic offense and is found in any vehicle in which illicit narcotic drugs are found is not void for vagueness on theory that it could be applied unreasonably in hypothetical situations. *H. C. Wilson v. United States* (D.C. App. 1965, 212 A. 2d 805).

Narcotic vagrancy statute is not unconstitutional on theory that it imposes cruel and unusual punishment, in view of requirement under the statute of something more than mere showing of status of narcotic addiction in order to establish violation. *Id.*

Narcotic vagrancy statute is constitutional although it does not require proof of intent. *Id.*

Statute providing for greater punishment for acts of vagrancy by narcotics users than by nonusers did not in violation of constitution impose cruel and inhuman punishment on narcotics users. *J. E. Rucker, Jr. v. United States* (D.C. App. 1965, 212 A. 2d 766).

Whether narcotic vagrancy statute could be applied unreasonably in certain hypothetical situations so as to be unconstitutional for vagueness would not be considered where it was reasonably applied to defendants in possession of narcotics and narcotic paraphernalia. *A. B. Brooke and James S. Goodman v. United States* (D.C. App. 1965, 208 A. 2d 726).

This section, defining "vagrant" as any person who is a narcotic drug user or who has been convicted of narcotic offense and who, having no lawful employment, etc., is found mingling with other narcotic users, etc., which places the burden upon such defendant to show that he has lawful employment or lawful means of support, as construed to require the government first to prove preliminary elements of offense before placing burden of proof upon defendant, is not unconstitutional as restricting a defendant's freedom of movement in stating with whom he can or cannot associate, since it does not unreasonably interfere with any citizen's freedom of movement or association. *Jenkins v. United States* (D.C. Mun. App. 1958, 146 A. 2d 444).

## Construction

Without requirement of knowledge by defendant that he is in place wherein narcotics are kept, found, used, or dispensed, this section would violate due process; but this section is construed to require knowledge on part of defendant, and, so construed, is constitutionally valid; overruling in part *Harris v. United States*, D.C. Mun. App., 162 A. 2d 503. *United States v. M. C. McClough et al.* (D.C. App. 1970, 263 A. 2d 48).

This section was designed in large part to punish participants in narcotics traffic, and as such does not fit into class of offenses in which absolute criminal liability is imposed. *Id.*

When an individual is unable to give a good account to police when wandering at late and unusual hours and is associated with criminals or narcotics addicts and is not lawfully employed, these factors, together with others enumerated in statutes, constitute probable cause for



arrest for vagrancy. *H. M. Ricks and J. N. Williams v. United States*; *H. M. Ricks v. District of Columbia* (D.C. App. 1967, 228 A. 2d 316; rev'd 414 F. 2d 1111, 134 U.S. App. D.C. 215).

Vagrancy statutes were not invalid on ground that they were "catch-alls" used when other crimes could not be proven or that they allegedly required a lesser quantum of proof to convict. *Id.*

Word "loitering" as used in Narcotics Vagrancy and General Vagrancy Statutes was not unconstitutionally vague, particularly where additional conditions were necessary to constitute offense. *Id.*

Reference to "failure to give a good account" as used in Narcotics Vagrancy and General Vagrancy Statutes restricts rather than enlarges application of statutes and allows suspected vagrant to dissipate probable cause by satisfactorily explaining his conduct, and the arresting officer is not the only one who must evaluate account given by person questioned. *Id.*

Narcotics Vagrancy and General Vagrancy Statutes delineate with specificity what vagrancy is, and the definitions are neither numerous nor susceptible to widely divergent interpretations. *Id.*

#### Custodial interrogation

Questions addressed to three defendants by arresting officers seeking an explanation for defendants' being in condemned house were noncoercive and not "custodial interrogation" within rule of *Miranda v. State of Arizona*. *S. Keith, R. L. Payne and T. J. Walker v. United States* (D.C. App. 1967, 232 A. 2d 92).

#### Duty to arrest

When police detectives saw narcotics paraphernalia in possession of defendants, officers were under statutory duty to arrest the offenders immediately. *S. Keith, R. L. Payne and T. J. Walker v. United States* (D.C. App. 1967, 232 A. 2d 92).

#### Elements of offense

Presence of narcotics is not essential element of common nuisance offense when addicts are shown to frequent premises for purpose of using narcotics, but there can be no conviction for maintaining place used for illegal keeping or sale of narcotics without also showing that such drugs were or had been kept on premises. *L. Marshall and K. Watkins v. United States* (D.C. App. 1967, 229 A. 2d 449).

#### Evidence

In prosecution for narcotics vagrancy, evidence failed to establish that house in which the narcotics were found was actually a rooming house rather than a notorious gambling and drinking house. *Harris v. United States* (D.C. Mun. App. 1960, 162 A. 2d 503).

Mere fact that certain narcotics were found outside a house in which defendant, who was charged with narcotics vagrancy, was arrested did not prevent a finding that he was in a house or place where narcotics were kept, in view of fact the narcotics were seen being thrown out of and falling from a window in the house, and in view of fact one metal cap with traces of heroin was found in the house. *Id.*

In vagrancy prosecution under this section, defining "vagrant" as one who is a narcotic drug user or who has been convicted of narcotic offense, evidence was sufficient for jury or issue of defendant's guilt. *Jenkins v. United States* (D.C. Mun. App. 1958, 146 A. 2d 444).

In vagrancy prosecution under this section, defining "vagrant" as one who is a narcotic drug user or one who wanders around in company with narcotic drug user or convicted narcotic law violator, failure to show that defendant knew that the three men with whom he was found were drug users or convicted drug law violators did not preclude conviction, since statute makes no reference to guilty knowledge and it would be wrong for courts to require such proof in such a case. *Id.*

#### Admissibility

Where defendants' arrest for narcotics violations was legal, narcotics paraphernalia seized at time of the arrest was properly admitted in defendants' joint trial for narcotics violations. *S. Keith, R. L. Payne and T. J. Walker v. United States* (D.C. App. 1967, 232 A. 2d 92).

#### Sufficiency

Where as a matter of reasonable probability there was no possibility for misidentification and adulteration of certain narcotic evidence, missing link in government's chain of possession of the narcotics evidence does not warrant reversal of convictions of unlawful possession of narcotic drug, narcotic vagrancy and presence in illegal establishment. *B. Spade v. United States* (D.C. App. 1971, 277 A. 2d 654).

Absence of any proof that defendants had in their possession more than trace of heroin or that such trace could be used or dispensed as narcotic required reversal of convictions for narcotic vagrancy, maintaining common nuisance, and possession of narcotics. *L. Marshall and K. Watkins v. United States* (D.C. App. 1967, 229 A. 2d 449).

Where there is only trace of substance, a chemical constituent not quantitatively determined because of minuteness, and there is no additional proof of its usability as narcotics, there can be no conviction under statute making it illegal for person to maintain place resorted to by drug addicts for purpose of using narcotic drugs or used for illegal keeping or sale of same. *Id.*

Evidence was insufficient to support conviction for violation of Narcotics Vagrancy Statute. *N. Baker v. United States* (D.C. App. 1967, 228 A. 2d 323).

#### Government's burden of proof

To prove violation of statute making it illegal for any person to keep or maintain any place resorted to by drug addicts for purpose of using narcotic drugs or used for illegal keeping or sale of same, government must show either that addicts resort to such premises for use of narcotics or that premises are maintained or used for illegal sale, use or possession of narcotics. *L. Marshall and K. Watkins v. United States* (D.C. App. 1967, 229 A. 2d 449).

In absence of proof of contemporaneous use, conviction for narcotic vagrancy necessitates additional showing of presence of quantity of narcotics sufficient to be used or dispensed, not mere immeasurable trace. *Id.*

#### Guilty plea

That defendant's family advised him to plead guilty to charges of possessing narcotic drugs, narcotic drug vagrancy, and driving without permit did not make guilty plea, entered after consultation with counsel, involuntary although defendant's father, who advised a guilty plea, was helping to support defendant's family. *J. P. Thomas, Jr. v. United States and District of Columbia* (D.C. App. 1964, 201 A. 2d 520).

#### Identity of names

In vagrancy prosecution wherein the government was required to prove that defendant was "a narcotic drug user or [one] who has been convicted of a narcotic offense", record of defendant's drug-act conviction was not improperly admitted because his character was not in issue and though there was no verbal testimony that he was the same "William Jenkins" named in certified record of conviction the identity of names will be accepted as prima facie evidence of identity of persons. *Jenkins v. United States* (D.C. Mun. App. 1958, 146 A. 2d 444).

#### Information—Sufficiency

Information charging defendant with narcotics vagrancy is insufficient for failure to allege knowledge of presence of illicit narcotics in basement in which defendant was found. *F. L. Brooks v. United States* (D.C. App. 1970, 263 A. 2d 45).

#### Joinder

In this case, the court held the offenses of possession of narcotics and of narcotics vagrancy, largely based on same transaction, were of "similar character," such that joinder of the charges was permissible. *J. D. Williams v. United States* (D.C. App. 1970, 263 A. 2d 659).

#### Knowledge

Proof of knowledge of presence of narcotics, required in prosecutions under this section, will usually take form of inference to be drawn from defendant's proximity to or connection with narcotics, and not merely from presence in one part of large building in which narcotics are found. *United States v. M. C. McClough et al.* (D.C. App. 1970, 263 A. 2d 48).



Charges of narcotics vagrancy violations under this section would be dismissed without prejudice, where information failed to allege knowledge on part of defendants of presence of illicit narcotics in residence in which narcotic drugs were found. *Id.*

Scienter or guilty knowledge is not a necessary element of the crime of narcotics vagrancy, and court, in a prosecution for such crime, did not err in charging jury to that effect. *Harris v. United States* (D.C. Mun. App. 1960, 162 A. 2d 503; overruled in part by 263 A. 2d 48).

The government need not prove guilty knowledge as an element of the crime of narcotics vagrancy. *Id.*

In proscribing the activities of narcotics vagrants, the law places the burden upon the violator to know the character of his associates and the nature of the places where he visits, and requires him to exercise a degree of care so that narcotics violations are thereby made impossible or improbable. *Id.*

#### Narcotics Users

Statute providing for greater punishment for acts of vagrancy by narcotics users than by nonusers did not in violation of constitution impose cruel and inhuman punishment on narcotics users. *J. E. Rucker, Jr. v. United States* (D.C. App. 1965, 212 A. 2d 766).

#### Prior convictions

One can be found guilty of violating either Narcotics Vagrancy Statute or the General Vagrancy Statute without having been previously convicted. *H. M. Ricks and J. N. Williams v. United States*; *H. M. Ricks v. District of Columbia* (D.C. App. 1967, 228 A. 2d 316; rev'd 414 F. 2d 1111, 134 U.S. App. D.C. 215).

Both the Narcotics Vagrancy Statute and General Vagrancy Statute employ separate paragraphs which disjunctively set up criteria amounting to vagrancy and both require factors, other than prior convictions, which conjunctively amount to violation, so that prior convictions are not essential to all subsections of the statutes. *Id.*

Prior convictions of accused are admissible in prosecution for violation of vagrancy statutes. *Id.*

Narcotics Vagrancy and General Vagrancy Statutes do not improperly require presentation and proof of prior convictions, and do not deny due process and fair trial. *Id.*

#### Probable cause for arrest

Probable cause for arrest of defendant under this section, which defines a "vagrant" as any unemployed narcotic user or convicted narcotic offender without lawful means of support who is found in a public place and who fails to give a good account of himself, was not made out simply by conduct ostensibly within the purview of the section, which was later declared unconstitutional on ground of vagueness, so that defendant, who was convicted after his arrest of violation of the federal narcotics law, was deprived of his Fourth Amendment rights since he was a victim of a search based upon such arrest. *L. A. Hall v. United States* (1972, 459 F. 2d 831, 148 U.S. App. D.C. 42).

Arrest for vagrancy without warrant was justified under evidence, including testimony of experienced police officers that they had observed defendant in company of known prostitutes and narcotics violators on four occasions during two nights, defendant's warrantless arrest for vagrancy was not without probable cause. *J. L. Worthy v. United States* (1968, 409 F. 2d 1105, 133 U.S. App. D.C. 188).

Sale of narcotics made by defendant and witnessed by police earlier in day furnished probable cause for arrest of defendant when search of apartment under warrant disclosed capsules similar to those used for storing narcotics and containing traces of white powder and one of searching officers observed "tracks or needle marks" on defendant's arm. *W. E. Hogan v. United States* (1966, 364 F. 2d 669, 124 U.S. App. D.C. 276).

Even if arrest of one automobile occupant who was recognized by officer as thief and narcotic user and who was found to have narcotics was lawful, that did not constitute probable cause for arresting defendant, another occupant of automobile, as narcotics vagrant, arrest was illegal and evidence of needle marks on defendant's arms and his statement after arrest that he was narcotic user were not admissible against him, in prosecution under narcotic

vagrancy statute. *A. Lyons v. United States* (D.C. App. 1966, 221 A. 2d 711).

Arrest by police officer after entering defendant's room without first announcing purpose for such entry was lawful and seizure following arrest was valid, where officer, on looking through a crack in a door, had seen defendant, surrounded by illegal narcotics accessories, injecting himself. *P. C. Reid v. United States*, D.C. App. 1964, 201 A. 2d 867).

Police, who were cruising area, had probable cause to arrest defendant, whom they had previously arrested for narcotics violation, when they saw him with known narcotics user, and evidence seized from person of defendant who, upon request, produced capsules from hand and pocket was admissible. *A. O. Freeman v. United States* (1963, 322 F. 2d 462, 116 U.S. App. D.C. 213).

Admission of testimony, at trial judge's request, that police officer had previously arrested defendant for narcotics violation was error which was prejudicial to defendant who did not take stand during his prosecution for narcotics violation. *Id.*

#### Purpose of statute

A course of conduct rather than an overt act is prohibited by the Narcotics Vagrancy and General Vagrancy Statutes. *H. M. Ricks and J. N. Williams v. United States*; *H. M. Ricks v. District of Columbia* (D.C. App. 1967, 228 A. 2d 316; rev'd 414 F. 2d 1111, 134 U.S. App. D.C. 215).

Purpose of Narcotics Vagrancy and General Vagrancy Statutes is to prevent crimes which may likely flow from the vagrant's mode of life. *Id.*

#### Remarks of court

In prosecution for vagrancy wherein jury informed court that it would like to know whether a woman, who was married, by fact of her marriage had a lawful means of support, court's reply that some of world's best known bums were married women was uncalled-for, not responsive to question asked by jury, could well have had a prejudicial effect and required reversal. *Moore v. United States* (D.C. Mun. App. 1959, 156 A. 2d 461).

#### Review

Defendant convicted of federal narcotics offenses was entitled to reversal where he was the first litigant to prevail on the claim that Fourth Amendment deficiencies of this section, which defines a "vagrant" as any unemployed narcotic user or convicted narcotic offender without lawful and visible means of support who is found in a public place and who fails to give a good account of himself, nullified an arrest and search under such statute, under rule that parties establishing new constitutional precepts uniformly enjoy the gain therefrom as an unavoidable consequence of the necessity that constitutional adjudications shall not stand as mere dictum. *L. A. Hall v. United States* (1972, 459 F. 2d 831, 148 U.S. App. D.C. 42).

On appeal from judgment of conviction under this section defining a "vagrant" as a narcotic user, etc., who among other things associates with narcotic users or narcotic law violators, where jury charge was not in record and no error had been assigned with reference thereto. Court of Appeals would assume that in instructing jury judge covered the matter of defendant's alleged lack of knowledge that associates were narcotic law violators accurately and satisfactorily. *Jenkins v. United States* (D.C. Mun. App. 1958, 146 A. 2d 444).

#### Search

Although it is incident to an arrest for vagrancy the search was not for that reason required to be limited to a frisk. *J. L. Worthy v. United States* (1968, 409 F. 2d 1105, 133 U.S. App. D.C. 188).

#### Vagrancy defined

"Vagrancy" is a status or condition declared wrong by law, and punishment is directed against one who places himself in such status. *Jenkins v. United States* (D.C. Mun. App. 1958, 146 A. 2d 444).

#### Warrant of arrest

Four-month old warrant for arrest under which police officers forced entry to apartment was not stale where there was no evidence that officer had deliberately refrained from executing it and evidence showed that unsuccessful attempts had been made to locate defendant



subsequently convicted for possession of narcotics and that prompt steps were taken to make arrest when officers learned where he could be found. *A. B. Brooke and J. S. Goodman v. United States* (D.C. App. 1965, 208 A. 2d 726).

**§ 33-417. Forfeiture by unlawful possession—Disposition.**

All narcotic drugs, the lawful possession of which is not established or the title to which cannot be ascertained, which come into the custody of a peace officer shall be delivered promptly to the Secretary of the Treasury or his delegate for disposal in accordance with the provisions of section 4733 of the Internal Revenue Code of 1954, except that narcotic drugs which may be needed as evidence in any criminal or administrative proceeding pursuant to the provisions of this chapter or the provisions of any Federal narcotic law shall, upon delivery to the Secretary of the Treasury, not be so disposed of until the United States attorney for the District of Columbia or any assistant United States attorney shall certify that such narcotic drugs are no longer needed as evidence. (June 20, 1938, 52 Stat. 794, ch. 532, § 17; July 24, 1956, 70 Stat. 621, ch. 676, title III, § 301 (m).)

**REFERENCES IN TEXT**

Section 4733 of the Internal Revenue Code of 1954, referred to in text, was repealed by section 1101(b)(3) (A) of Pub. L. 91-513, 84 Stat. 1292. For current provisions, see the Controlled Substances Act, Pub. L. 91-513, 84 Stat. 1242 (21 U.S.C. 801 et seq.).

**AMENDMENT**

1956—Act July 24, 1956, amended section to substitute provisions requiring delivery of forfeited narcotic drugs to Secretary of Treasury for disposal according to the provisions of section 4733 of the Internal Revenue Code of 1954 [26 U.S.C. § 4733] except for such as may be needed as evidence in criminal or administrative proceedings, for provisions requiring forfeiture and destruction of such drugs on the order of a court or magistrate, records of the place of seizure, kinds and quantities of such drugs, a return under oath reporting destruction by the officer destroying them, delivery to the Board of Pharmacy for destruction or distribution to hospitals not operated for private gain and for the keeping of records by the Board of Pharmacy concerning the drugs received and disposed.

**CROSS REFERENCE**

Disposition of goods seized under search warrants generally, see § 23-525.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 33-711.

**§ 33-418. Notice of conviction to be sent to licensing board—Revocation, suspension, and reinstatement of license.**

On the conviction of any person of the violation of any provision of this chapter, a copy of the judgment and sentence, and of the opinion of the court or magistrate, if any opinion be filed, shall be sent by the clerk of the court, or by the magistrate, to the board or officer, if any, by whom the convicted defendant has been licensed or registered to practice his profession or to carry on his business, and the said board or officer may in its or his discretion suspend or revoke the license of the convicted defendant to practice his profession or to carry on his business. On the application of any person whose license or registration has been suspended or revoked, and upon proper showing for good cause, said board or officer may reinstate such license or registration. (June 20, 1938, 52 Stat. 795, ch. 532, § 18.)

**§ 33-419. Inspection of records—Divulging information contained in records.**

Prescriptions, orders, and records, required by this chapter, and stocks of narcotic drugs, shall be open for inspection only to federal and District of Columbia officers whose duty it is to enforce the laws of the District of Columbia, or of the United States relating to narcotic drugs. No officer having knowledge by virtue of his office of any such prescription, order, or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders, or records relate is a party. (June 20, 1938, 52 Stat. 795, ch. 532, § 19.)

**§ 33-420. Obtaining a narcotic drug unlawfully—Communication to physician not privileged—False statements or false personation in procurement—False label—Application to section 33-410.**

(a) No person shall obtain or attempt to obtain a narcotic drug, or procure or attempt to procure the administration of a narcotic drug, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the forgery or alteration of a prescription or of any written order; or (3) by the concealment of a material fact; or (4) by the use of a false name or the giving of a false address.

(b) Information communicated to a physician in an effort unlawfully to procure a narcotic drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

(c) No person shall wilfully make a false statement in any prescription, order, report, or record, required by this chapter.

(d) No person shall, for the purpose of obtaining a narcotic drug, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person.

(e) No person shall make or utter any false or forged prescription or false or forged written order.

(f) No person shall affix any false or forged label to a package or receptacle containing narcotic drugs.

(g) The provisions of this section shall apply to all transactions relating to narcotic drugs under the provisions of section 33-410, in the same way as they apply to transactions under all other sections. (June 20, 1938, 52 Stat. 795, ch. 532, § 20.)

**§ 33-421. Prosecution—Burden of proof on defendant of any exception, excuse, proviso, exemption.**

In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provision of this chapter, it shall not be necessary to negative any exception, excuse, proviso, or exemption, contained in this chapter, and the burden of proof of any such exception, excuse, proviso, or exemption, shall be upon the defendant. (June 20, 1938, 52 Stat. 796, ch. 532, § 21.)

**NOTES TO DECISIONS**

**Government's burden of proof**

Part of government's *prima facie* case in prosecution for unlawful possession of narcotics is to prove that a substance in defendant's possession is proscribed as a



narcotic drug under the statutory scheme of narcotics control. *R. M. Edelin v. United States* (D. C. App. 1967, 227 A. 2d 395).

**§ 33-422. Enforcement—Employees of Board of Pharmacy—Salaries—Cost of forms.**

It is hereby made the duty of the major and superintendent of police of the District of Columbia to enforce all provisions of this chapter, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States relating to narcotic drugs.

The Commissioner of the District of Columbia is authorized to employ such personal services for the clerical work of the Board of Pharmacy as may be necessary to carry out the provisions of this chapter and to provide for the expenses of said board, including the cost of preparation and distribution of such official order forms as may be provided by the regulations of the Board of Pharmacy. Salaries of employees shall be fixed in accordance with chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]. The Commissioner of the District of Columbia shall include in his annual estimates such amounts as may be required for the salaries and expenses herein authorized. (June 20, 1938, 52 Stat. 796, ch. 532, § 22; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a).)

**CODIFICATION**

The reference in this section to "chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of employees and related matters]" was substituted for "the Classification Act of 1949", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89-554, set out in note under § 1-251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

**AMENDMENT**

1949—Act Oct. 28, 1949, § 1106(a), which was a part of the Classification Act of 1949, and which has since been repealed, substituted "Classification Act of 1949" for "Classification Act of 1923". See codification note above.

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**TRANSFER OF FUNCTIONS**

For transfer of functions with respect to budgetary matters, see § 403 of 1967 Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the Appendix to title 1.

**§ 33-423. Penalties.**

(a) Except as hereinafter provided, a person violating any provision of this chapter, or any regulation made by the Commissioner of the District of Columbia or the District of Columbia Council under authority of this chapter, for which no specific penalty is otherwise provided, shall be fined not less than \$100 nor more than \$1,000, or imprisoned for not more than one year, or both.

(b) A person convicted of an offense punishable pursuant to this section, who shall have previously been convicted in the District of Columbia of such an offense, or who shall have previously been convicted, either in the District of Columbia or elsewhere, of a violation of the laws of the United States

or of a State or subdivision thereof which would have been a violation of this chapter and punishable pursuant to this section if committed in the District of Columbia and prosecuted pursuant to this chapter, shall be fined not less than \$500 nor more than \$5,000 or imprisoned for not more than ten years, or both.

(c) For additional penalties for two or more violations of this chapter, see sections 22-104 and 22-104a. (June 20, 1938, 52 Stat. 796, ch. 532, § 23; July 24, 1956, 70 Stat. 622, ch. 676, title III, § 301 (n); July 29, 1970, Pub. L. 91-358, § 208, title II, 84 Stat. 603.)

**AMENDMENTS**

1970—Section 208 of Act July 29, 1970, Public Law 91-358, amended section generally. For provisions of this section prior to this amendment, see 1967 edition of the code.

1956—Act July 24, 1956, substituted "Commissioners of the District of Columbia" for "Board of Pharmacy" and added the words "for which no specific penalty is otherwise provided" preceding the words "shall upon conviction."

**EFFECTIVE DATE OF 1970 AMENDMENT**

See note preceding section 11-101.

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**CROSS REFERENCE**

Controlled Substances Act, see 21 U.S.C. § 801 et seq.

**NOTES TO DECISIONS**

**Sentence**

In prosecution for possession of heroin, action of the trial court in demanding, before imposing sentence, that defendant reveal in open court the name of his drug supplier is inappropriate, but is not basis for disturbing sentence of six months' imprisonment, despite contention that trial court imposed sentence of imprisonment rather than probation solely to penalize defendant for failure to name his supplier, since the defendant had acknowledged his guilt and had three prior convictions, including narcotics felony, and sentence imposed was but one-half of what could have been imposed. *V. M. Wilson v. United States* (D.C. App. 1971, 278 A. 2d 461).

**§ 33-424. Effect of acquittal or conviction under Federal narcotic laws.**

No person shall be prosecuted for a violation of any provision of this chapter if such person has been acquitted or convicted under any United States statute governing the sale or distribution of narcotic drugs, of the same act or omission which, it is alleged, constitutes a violation of this chapter. (June 20, 1938, 52 Stat. 796, ch. 532, § 24.)

**§ 33-425. Separability of provisions.**

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. (June 20, 1938, 52 Stat. 796, ch. 532, § 25.)

**Chapter 5.—MEATS AND MEAT PRODUCTS**

**Sec.**

33-501. Horse meat and horse meat products—Labeling or marking—Notification to consumer.

33-502. Same—District of Columbia Council to make regulations.

33-503. Same—Penalties.



### § 33-501. Horse meat and horse meat products—Labeling or marking—Notification to consumer.

After thirty days after the date of enactment of this chapter, it shall be unlawful for any person, firm, or corporation, or any officer, agent, or employee thereof, to sell or offer for sale within the District of Columbia to any person any horse meat or food product thereof unless such meat or food product is plainly and conspicuously labeled, marked, branded, or tagged "horse meat" or "horse-meat product", as the case may be, or, in the case of any horse meat or food product thereof which is sold or offered for sale to any consumer at a hotel, restaurant, or similar establishment, unless such consumer is notified that the food which he receives contains horse meat or food products thereof. (July 3, 1943, 57 Stat. 372, ch. 188, § 1.)

#### REFERENCES IN TEXT

The date of enactment of this chapter referred to in the text means the date of enactment of ch. 188 of act July 3, 1943, approved July 3, 1943.

### § 33-502. Same—District of Columbia Council to make regulations.

The District of Columbia Council, subject to the approval of the Commissioner of the District of Columbia, is authorized to make such regulations as may be necessary to carry out the purposes of this chapter. (July 3, 1943, 57 Stat. 372, ch. 188, § 3; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

#### CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

#### TRANSFER OF FUNCTIONS

The Health Department, including the head thereof, was abolished and the functions transferred to the Board of Commissioners of the District of Columbia by Reorg. Plan No. 5 of 1952. See, also, notes under § 6-101.

Section 402 (263) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of making rules and regulations to carry out the purposes of this chapter under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

### § 33-503. Same—Penalties.

Any person who willfully violates any provision of this chapter, or any regulation prescribed thereunder, shall, upon conviction thereof, be fined not more than \$500, or imprisoned for not more than one year, or both. (July 3, 1943, 57 Stat. 372, ch. 188, § 2.)

## Chapter 6.—RESTAURANTS

### §§ 33-601 to 33-607. Transferred.

Sections transferred to §§ 47-2905 to 47-2911, respectively.

## Chapter 7.—REGULATION AND CONTROL OF CERTAIN DRUGS OTHER THAN NARCOTICS

#### Sec.

- 33-701. Definitions.
- 33-702. Prohibited Acts.
- 33-703. Drugs exempted.
- 33-704. Exemption of persons.
- 33-705. Records.

#### Sec.

- 33-706. Inspection.
- 33-707. Regulations.
- 33-708. Penalties.
- 33-709. Search warrants.
- 33-710. Arrests without warrant.
- 33-711. Forfeiture.
- 33-712. Separability of provisions.

### § 33-701. Definitions.

For the purposes of this chapter—

(1) The term "dangerous drug" means—

(A) amphetamine, desoxyephedrine, or compounds or mixtures thereof, including all derivatives of phenylethylamine or any of the salts thereof which have a stimulating effect on the central nervous system, except preparations intended for use in the nose and unfit for internal use;

(B) barbituric acid, also known as malonylurea, and its salts and derivatives, and compounds, preparations, and mixtures thereof;

(C) other drugs or compounds, preparations, or mixtures thereof which the District of Columbia Council shall find and declare by rule or regulation duly promulgated, after reasonable public notice and opportunity for a hearing, to be habit-forming, excessively stimulating, or to have a dangerously toxic, or hypnotic or somnifacient effect on the body of a human or animal; except that the term "dangerous drug" shall not include any drug the manufacture or delivery of which is regulated by Federal narcotic drug laws, or by the narcotic drug laws of the District of Columbia.

(2) The terms "delivery" and "furnish" mean the selling, dispensing, giving away, sampling, or supplying in any other manner.

(3) The term "patient" means, as the case may be—

(A) the individual for whom a dangerous drug is prescribed, administered, or supplied in the course of professional practice for a legitimate medical purpose; or

(B) the owner or the agent of the owner of the animal for whom a dangerous drug is prescribed or to which or on which a dangerous drug is administered or used in the course of professional practice for a legitimate medical purpose.

(4) The term "person" includes any corporation, partnership, association, or one or more individuals, acting either as principal or agent.

(5) The term "practitioner" means any person duly licensed by appropriate authority and, in conformance with the law, licensed to prescribe dangerous drugs, and to administer and use dangerous drugs in the course of his professional practice.

(6) The term "pharmacist" means a person duly licensed as a pharmacist pursuant to chapter 6 of title 2.

(7) The term "prescription" means a written or oral order by a practitioner to a pharmacist for a dangerous drug for a particular patient, which specifies the date of issue, the name and address of the patient (and, in the case of prescription for an animal, the species of such animal), the name and



quantity of the dangerous drug prescribed, the directions for use of such drug, and in case of a written order, the signature and office address of such practitioner, and in the case of an oral order, the District of Columbia or State registration number and office address of such practitioner (and if the practitioner be a member of the Armed Forces of the United States, then he shall give his rank, serial number, and station). Each oral order by a practitioner for a dangerous drug must be promptly reduced to writing by the pharmacist.

(8) The term "hospital" means an institution or dispensary or clinic for the care and treatment of the sick and injured, approved by the Commissioner as proper to be entrusted with the custody of dangerous drugs and the professional use of dangerous drugs under the direction of a physician, dentist, or veterinarian.

(9) The term "laboratory" means a laboratory approved by the Commissioner as proper to be entrusted with the custody of dangerous drugs and their use for medical and scientific purposes, and for purposes of instruction.

(10) The term "manufacturer" means a person or persons, other than pharmacists and practitioners who manufacture dangerous drugs, and includes persons who prepare such drugs in dosage forms by mixing, compounding, encapsulating, entablating, or other process, or who repackage such drugs.

(11) The term "wholesaler" means a person or persons engaged in the business of distributing dangerous drugs to persons included in any of the classes named in subdivisions (A) and (D), inclusive, of section 33-704.

(12) The term "drug salesman" or "manufacturer's representative" means any person who, acting in the course of his regular duties, calls upon or visits practitioners or pharmacists in the interest of demonstrating, selling, or detailing the use and sale of dangerous drugs.

(13) The term "warehouseman" means a person, who, in the usual course of business, stores drugs for others lawfully entitled to possess them, and who has no control over the disposition of such drugs except for the purpose of such storage.

(14) The term "Commissioner" means the Commissioner of the District of Columbia, sitting as a board, or his designated agent or agents. (July 24, 1956, 70 Stat. 612, ch. 676, title II, § 202.)

#### EFFECTIVE DATE

Section 214 of act July 24, 1956, provided that: "This title [this chapter] shall take effect ninety days after the date of its enactment [July 24, 1956]."

#### SHORT TITLE

Section 201 of act July 24, 1956, provided that: "This title [enacting this chapter] may be cited as the 'Dangerous Drug Act for the District of Columbia'."

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402 (264) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board

of Commissioners under subsection (1) (C) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

#### CROSS REFERENCES

Controlled Substances Act, see 21 U.S.C. 801 et seq.

Narcotic Drugs, see §§ 33-401 to 33-425.

Rehabilitation of users of narcotics, see §§ 24-601 to 24-615.

#### NOTES TO DECISIONS

##### Phenobarbital

Possession of phenobarbital, unless obtained on proper prescription or under certain conditions prescribed by statute, was prohibited. *W. W. Reed v. United States* (D.C. App. 1965, 210 A. 2d 845).

#### § 33-702. Prohibited acts.

(a) Except as otherwise provided by sections 33-703 and 33-704, the following acts, the failure to act as hereinafter set forth, and the causing of any such act or failure are hereby declared unlawful:

(1) The delivery of any dangerous drug unless—

(A) such dangerous drug is delivered by a pharmacist, upon a prescription, and there is affixed to the immediate container of such or in which such drug is delivered a label bearing (i) the name and address of the owner of the establishment from which such drug was delivered; (ii) the date on which the prescription for such drug was filled; (iii) the number of such prescription as filed in the prescription files of the pharmacist who filled such prescription; (iv) the name of the practitioner who prescribed such drug; (v) the name and address of the patient, and if such drug was prescribed for an animal, a statement of the species of the animal; and (vi) the directions for the use of the drug, as contained in the prescription; or

(B) such dangerous drug is delivered to a practitioner by a pharmacist for his professional use in his practice; in which case the pharmacist may deliver the drug without affixing any additional label to the original package of such drug and must immediately record such sale and delivery by filing a suitable record of such sale and delivery in the prescription file as maintained for prescriptions for such drugs; or

(C) such dangerous drug is delivered by a manufacturer's representative or drug salesman to a practitioner in the course of calling upon the practitioner; in which case the manufacturer's representative or drug salesman shall immediately record, in a suitable bound notebook (i) the name and quantity of the drug delivered, (ii) the date such drug was delivered, and (iii) the name and address of the practitioner to whom the drug was delivered; or

(D) such dangerous drug is delivered by a practitioner in the course of his practice and the immediate container in which such drug is delivered bears a label on which appears the directions for use of such drug, the name and address of such practitioner, the name and address of the patient, and, if such drug is prescribed for an animal, a statement of the species of the animal.



(2) The refilling of any prescription for a dangerous drug except as designated on the prescription, or by the consent of the practitioner.

(3) The delivery of a dangerous drug upon prescription unless the pharmacist who filled such prescription files and retains it as required by section 33-705.

(4) The possession of a dangerous drug by any person, unless such person obtained such drug on the prescription of a practitioner or in accordance with subparagraph (D) of paragraph (1) of this subsection.

(5) The making or uttering by any person of any false or forged prescription, or false or forged written order for the purpose of obtaining any dangerous drug.

(6) The delivery of any dangerous drug to any person in the District of Columbia not lawfully entitled to receive such drug.

(7) The willful making of or concealment of any material false statement or representation in any prescription, order, report, or record required by this title.

(8) The refusal to make available and to accord full opportunity to check any record or file as required by section 33-706.

(9) The failure to keep records as required by subsections (a) and (b) of section 33-705.

(10) The using by any person to his own advantage, or the revealing, other than to any officer of the Metropolitan Police Department of the District of Columbia in the performance of his official duties, the Commissioner, acting pursuant to authority vested in him, or to a court when relevant in a judicial proceeding under this title, of any information required under the authority of section 33-706, concerning any method or process which as a trade secret is entitled to protection.

(b) Nothing in this section shall be construed to relieve any person with respect to dangerous drugs, from any requirement prescribed by or under the authority of sections 352 and 353 (b)) of title 21, U. S. Code. (July 24, 1956, 70 Stat. 613, ch. 676, title II, § 203.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23-546, 33-704, 33-710.

#### NOTES TO DECISIONS

##### Amendment of information

Granting government's motion to amend information, after presentation of all evidence and after government had rested its case, to read "make or utter" rather than "make and utter" a forged prescription for purpose of obtaining dangerous drug did not change nature of offense or charge additional violation and constituted proper exercise of judicial discretion. *G. D. Bobrow v. United States* (D.C. App. 1967, 225 A. 2d 311).

##### Assistance of counsel

Where the essential element of the government's proof was that two defendants, either jointly or severally, were in position to exercise dominion over two-room basement apartment in which narcotic paraphernalia and danger-

ous drug were found, but counsel representing both defendants jointly made no effort to develop on direct examination testimony, elicited by government on cross-examination, that one defendant's residence in apartment had been of temporary nature and in closing argument failed to comment on that testimony, that defendant was prejudiced by joint representation and was denied the effective assistance of counsel. *P. D. McIver v. United States* (D.C. App. 1971, 280 A. 2d 527).

Where defense counsel, jointly representing defendant and codefendant, elicited testimony that defendant was a resident in two-room apartment in which narcotic paraphernalia and dangerous drug were found and defense counsel opened door to testimony that defendant had been seen to use heroin at apartment thereby involving defendant with narcotics in very substantial way, since obviously someone must have had such control at apartment as to give rise to presumption of constructive possession of articles seized, the defendant was prejudiced by joint representation and was denied effective assistance of counsel. *Id.*

##### Basis for search warrant

Quantitatively, the information in support of a search warrant in narcotics case must be that from which a reasonable man could conclude that there probably are illicit paraphernalia on the premises to be searched. Logically this is less evidence than that required to convict. *United States v. J. D. Kuch* (1969, 301 F. Supp. 965).

##### Burden of proving statutory exception

When exception to statutory crime is not so incorporated in its enacting clause, burden of showing that exception applies is upon one asserting its applicability. *W. W. Reed v. United States* (D.C. App. 1965, 210 A. 2d 845).

Defendant found in possession of phenobarbital had burden of proving that his possession fell within some statutory exception to prohibition against possession of such drug. *Id.*

##### Evidence—Admissibility

Police officers who observed, from ten feet away, the defendant giving something out of a vial to codefendant in exchange for an amount of cash in "high narcotic area" neighborhood had probable cause to arrest defendants, and desoxyn tablets seized in search incident to such arrest were properly admitted into evidence in prosecution for possession of desoxyn tablets in violation of this section. *A. J. Peterkin v. United States* (D.C. App. 1971, 281 A. 2d 567; cert. denied 92 S.Ct. 1788, 406 U.S. 922).

##### — Sufficiency

Testimony of officer that he saw defendant, who was being booked in cell block, reach into defendant's pocket and remove white napkin containing pills which were stipulated to be phenobarbital sustained conviction for possession of dangerous drug. *W. W. Reed v. United States* (D.C. App. 1965, 210 A. 2d 845).

##### Voir dire examination

In prosecution for violation of statutes relating to marihuana and dangerous drugs, where defendant's conviction was based on the testimony of an undercover police officer who had befriended him, trial court committed reversible error in refusing defense counsel's request that court ask, on voir dire examination, whether any of the jurors were inclined to give more weight to testimony of a police officer merely because he is a police officer than any other witness in the case. *Sellers v. United States* (1959, 271 F. 2d 475, 106 U.S. App. D.C. 209).

#### § 33-703. Drugs exempted.

Nothing in this chapter shall apply to a compound, mixture, or preparation which is delivered or acquired in good faith for the purpose for which it is intended and not for the purpose of evading the provisions of this chapter if—

(1) such compound, mixture, or preparation of barbituric acid, its salts and derivatives shall be



declared by rule or regulation duly promulgated by the District of Columbia Council after reasonable public notice and opportunity for hearing to have or to contain no habit-forming properties and not to have a dangerously toxic or hypnotic or somnifacient effect on the body of a human or animal; or

(2) such compound, mixture, or preparation of amphetamine, desoxyephedrine, phenylethylamine, or their salts or derivatives shall be found and declared by rule or regulation duly promulgated by the District of Columbia Council after reasonable public notice and opportunity for hearing to contain in addition to such drug or its salts and derivatives some other drug or drugs causing it to possess other than an excessively stimulating effect upon the central nervous system and to have no habit-forming properties or dangerously toxic effect upon the body of a human or animal.

(July 24, 1956, 70 Stat. 614, ch. 676, title II, § 204.)

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(265 and 266) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsections (1) and (2) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33-702.

#### § 33-704. Exemption of persons.

The provisions of subparagraphs (1) (A) and (1) (D) and paragraph (4) of section 33-702 (a) shall not be applicable (1) to the delivery of dangerous drugs to persons included in any of the classes hereinafter named, or to agents or employees of such persons, for use in the normal or usual course of their business or practice or in the performance of their official duties, as the case may be; or (2) to the possession of dangerous drugs by such persons or their agents or employees for such use:

(A) Pharmacists.

(B) Practitioners.

(C) Persons who procure dangerous drugs (i) for handling by or under the supervision of pharmacists or practitioners, or (ii) for the purpose of lawful research, teaching, or testing and not for resale.

(D) Hospitals which procure dangerous drugs for lawful administration or use by practitioners.

(E) Laboratories which procure dangerous drugs for lawful medical and scientific purposes.

(F) Officers or employees of appropriate enforcement agencies of Federal, State, District of Columbia, or local governments, pursuant to their official duties.

(G) Manufacturers and wholesalers.

(H) Manufacturers' representatives and drug salesmen.

(I) Carriers and warehousemen.

(July 24, 1956, 70 Stat. 615, ch. 676, title II, § 205.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 33-701, 33-702, 33-705.

#### § 33-705. Records.

(a) Persons (other than carriers and practitioners) listed in paragraphs (A) through (I) of section 33-704 shall—

(1) make, within thirty days after the effective date of this chapter, and biennially thereafter, a complete record of all stocks of dangerous drugs on hand, such records to be held for a period of two years, and

(2) retain all such commercial or other records, including invoices, relating to dangerous drugs received or maintained by them in the course of their business or occupation, or as required by this title, for not less than two calendar years immediately following the date of such record.

(b) Pharmacists shall, in addition to complying with the provisions of subsection (a) hereof, retain each prescription or notation of sale to practitioners for a dangerous drug received by them, for not less than two calendar years immediately following the date of the filling of the order or prescription and a complete record of each refilling of such prescription. (July 24, 1956, 70 Stat. 615, ch. 676, title II, § 206.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 33-702, 33-706.

#### § 33-706. Inspection.

Prescriptions, orders and records, required by section 33-705, and stocks of dangerous drugs shall be opened for inspection—

(1) upon written request, to any officer or employee duly designated by the Commissioner at all reasonable hours for the purpose of inspection and copying; and, any person upon whom such request is served shall accord to such officer or employee full opportunity to check the correctness of such files or records, including the opportunity to make inventory of all stocks of dangerous drugs on hand; and it shall be unlawful for any such person to fail to make such files or records available or to accord such opportunity to check their correctness, or

(2) to District of Columbia officers whose duty it is to enforce the laws of the District of Columbia, or of the United States, relating to dangerous drugs. No officer having knowledge by virtue of his office of any such prescription, order, or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, in which such prescriptions, orders, or records may be pertinent.

(July 24, 1956, 70 Stat. 616, ch. 676, title II, § 207.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33-702.



**§ 33-707. Regulations.**

The District of Columbia Council is hereby authorized to promulgate necessary regulations for the administration and enforcement of this chapter. (July 24, 1956, 70 Stat. 616, ch. 676, title II, § 208.)

**TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL**

Section 402(267) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory function of the Board of Commissioners under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

**§ 33-708. Penalties.**

(a) Any person violating any provision of this chapter, or of any regulation made by the District of Columbia Council under the authority of this chapter shall upon conviction be punished, for the first offense, by a fine of not less than \$100 nor more than \$1,000, or by imprisonment for not exceeding one year, or by both such fine and imprisonment; and for any subsequent offense by a fine of not less than \$500 nor more than \$5,000, or by imprisonment for not exceeding ten years, or by both such fine and imprisonment.

(b) The conviction of any person for a violation of this chapter, or of any regulation made under the authority of this chapter, involving any dangerous drug shall constitute ground for suspension or revocation or denial of renewal of the professional license of such person. Proceedings for such suspension or revocation or denial of renewal shall be had in accordance with the statutes relating to the issuance, revocation, suspension, and denial of renewal of such licenses and in accordance with statutes relating to judicial review of administrative action in connection with the revocation, suspension, or denial of renewal of such licenses.

(c) As used in this section the term "professional license" means a license issued under the following provisions of title 2: subchapter I of chapter 1, chapter 3, subchapter I of chapter 4, and chapters 6, 7, and 8. (July 24, 1956, 70 Stat. 616, ch. 676, title II, § 209.)

**CODIFICATION**

In subsec. (a), reference to the District of Columbia Council was substituted for "Commissioners" on authority of §§ 33-701(1) (C), 33-703(1) (2), 33-707 of this chapter and § 402 (264, 265, 266, 267) of Reorg. Plan No. 3 of 1967, under which the regulations are prescribed by the Council.

**§ 33-709. Search warrants.**

(a) A search warrant may be issued upon probable cause, supported by affidavit particularly describing the property to be seized and place to be searched, by any judge of the Superior Court of the District of Columbia or by the United States Commissioner for the District of Columbia, to any officer of the Metropolitan Police Department when any dangerous drugs are manufactured, possessed, prescribed, and delivered in violation of the provisions of this chapter, and any such dangerous drugs and any

other property designed for use in connection with such unlawful manufacturing, possession, prescribing, or delivery, may be seized thereunder and shall be subject to such disposition as the court may make thereof, and such dangerous drugs may be taken on the warrant from any house or other place in which they are concealed.

(b) Any search warrant issued in accordance with the provisions of subsection (a) of this section may be served at any time in the day or night and must be executed and returned to the issuing authority within ten days after its date. (July 24, 1956, 70 Stat. 617, ch. 676, title II, § 210; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

**REFERENCE IN TEXT**

The Act of Oct. 17, 1968, Pub. L. 90-578, terminated the office of United States commissioner and established in place thereof the office of United States magistrate. The Act became operative in the District of Columbia on June 27, 1969, when two United States magistrates assumed the office pursuant to appointment by order of the District Court dated June 20, 1969. See §§ 401(a) and 402(a) (b) of said Act (28 U.S.C. 631 note).

**AMENDMENT**

1970—Section 155(a) of Act July 29, 1970, Pub. L. 91-358, amended subsec. (a) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

**EFFECTIVE DATE OF 1970 AMENDMENT**

See note preceding section 11-101.

**CHANGE OF NAME**

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded Act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

**CROSS REFERENCE**

Search warrants, generally, see §§ 23-521 to 23-525.

**§ 33-710. Arrests without warrant.**

(a) Arrests without a warrant, and searches of the person and seizures pursuant thereto, may be made for a violation of any of the provisions of section 33-702 by police officers, as in the case of a felony, upon probable cause that the person arrested is violating such section at the time of his arrest.

(b) No evidence discovered in the course of any such arrest, search, or seizure authorized by this section shall be admissible in any criminal proceeding against the person arrested, unless at the time of such arrest he was violating section 33-702. (July 24, 1956, 70 Stat. 617, ch. 676, title II, § 211.)

**CROSS REFERENCE**

Arrest without warrant, generally, see § 23-581 et seq.

**NOTES TO DECISIONS****Arrest without warrant**

Defendant was not under arrest on day he was informed of conduct of investigation, was questioned for five minutes in his employer's presence, and went voluntarily to police headquarters to take polygraph test, nor on following day, when he returned to take test and, almost immediately after it, took police officer to automobile and gave him package containing employer's drug. *D. A. Fisher v. United States* (D.C. Mun. App. 1962, 183 A. 2d 553).



**§ 33-711. Forfeiture.**

Any dangerous drug seized pursuant to any lawful search or which may have come into the custody of any peace officer, the lawful possession of which cannot be established or the title to which cannot be ascertained, shall be forfeited and destroyed in the same manner provided for narcotic drugs in section 33-417. (July 24, 1956, 70 Stat. 617, ch 676, title II, § 212.)

**§ 33-712. Separability of provisions.**

If any provision of this chapter is declared unconstitutional or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby. (July 24, 1956, 70 Stat. 618, ch. 676, title II, § 213.)



## TITLE 34.—HOTELS AND LODGING-HOUSES

Chap.		Sec.
1. Rights and Liabilities.....		34-101

### Chapter 1.—RIGHTS AND LIABILITIES

- Sec.  
 34-101 to 34-105. Repealed.  
 34-106. Hotels, motels, and innkeepers furnishing depository or checkroom and giving notice to guests—Limitation on liability for loss or damage to property—Exceptions.  
 34-107. Lien of hotels, motels, and innkeepers—Retention of property of guest or patron—Satisfaction of lien by public sale—Notice—Application of proceeds.  
 34-108. Sale by hotels, motels, and innkeepers of unclaimed property—Notice—Application of proceeds.

§ 34-101. Repealed. Dec. 8, 1970, Pub. L. 91-537, § 4(b), 84 Stat. 1397.

Section, act Dec. 21, 1920, 41 Stat. 1081, ch. 2, § 1, limited the liability of hotel proprietors and innkeepers for injury or loss to guests' property when a safe or vault was furnished and notice given. For current provisions, see § 34-106.

#### NOTES TO DECISIONS

"Guest" defined

Hotel patron who had stated to hotel desk clerk in the morning that she was checking out but would leave her belongings in the room until 3:00 P.M. until check-out time and was told that this was permissible and who discovered at about 2:30 P.M. that her fur coat was missing from the room was a "guest" of the hotel at the time of the loss, and the common-law doctrine of *infra hospitium* was applicable. *Hotel Corporation of America v. The Travelers Indemnity Company* (D.C. App. 1967, 229 A. 2d 158).

§ 34-102. Repealed. Dec. 8, 1970, Pub. L. 91-537, § 4(b), 84 Stat. 1397.

Section, act Dec. 21, 1920, 41 Stat. 1082, ch. 2, § 2, limited the liability of hotel proprietors and innkeepers for baggage stolen from rooms when certain notice was posted on inside or door. For current provisions, see § 34-106.

§§ 34-103 to 34-105. Repealed. Dec. 8, 1970, Pub. L. 91-537, § 4(a), 84 Stat. 1397.

Sections, act Mar. 3, 1901, 31 Stat. 1388, ch. 854, §§ 1261, 1263, 1264, provided for lien of boarding-house and innkeepers, and for enforcement of lien by sale and by bill in equity. For current provisions, see § 34-107.

§ 34-106. Hotels, motels, and innkeepers furnishing depository or checkroom and giving notice to guests—Limitation on liability for loss or damage to property—Exceptions.

(a) If a hotel, motel, or similar establishment in the District of Columbia which provides lodging to transient guests (1) provides a suitable depository (other than a checkroom) for the safekeeping of personal property (other than a motor vehicle), and (2) displays conspicuously in the guest and public rooms of that establishment a printed copy of this section (or summary thereof), that establishment shall not be liable for the loss or destruction of, or damage to, any personal property of a guest or patron not deposited for safekeeping, except that

this sentence shall not apply with respect to the liability of that establishment for loss or destruction of, or damage to, any personal property retained by a guest in his room if the property is such property as is usual, common, or prudent for a guest to retain in his room. In the case of any personal property of a guest or patron deposited in such a depository for safekeeping, that establishment shall be liable for the loss or destruction of, or damage to, that property to the extent of the lesser of \$1,000 or the fair market value of the property at the time of its loss, destruction, or damage.

(b) If a hotel, motel, or similar establishment in the District of Columbia which provides lodging to transient guests maintains a checkroom (conspicuously designated as such) where guests and patrons may deposit personal property, that establishment shall, if it conspicuously posts a printed copy of this section (or summary thereof), be liable for the loss or destruction of, or damage to, that property only to the extent of the lesser of \$200 or the fair market value of the property at the time of its loss, destruction, or damage unless the destruction or damage is caused by its agent or servant. (Dec. 8, 1970, Pub. L. 91-537, § 1, 84 Stat. 1395.)

#### CROSS REFERENCES

Defrauding hotel, see § 22-1301.  
 Embezzlement by proprietor, see § 22-1205.  
 License fee, building containing living or lodging quarters, see § 47-2328.

§ 34-107. Lien of hotels, motels, and innkeepers—Retention of property of guest or patron—Satisfaction of lien by public sale—Notice—Application of proceeds.

(a) A hotel, motel, or similar establishment in the District of Columbia which provides lodging to transient guests, has a lien upon, and may retain possession of, any personal property belonging to, or under the control of, a guest or patron of that establishment, for the amount due that establishment from that guest or patron for lodging, food, or other item of value, except that the amount of the lien authorized by this subsection may not exceed \$1,000.

(b) If, within 30 days after his property has been retained under subsection (a), a guest or patron fails to pay the establishment retaining that property any amount due that establishment for lodging, food, or other item of value, that establishment may sell that property at a public sale. Prior to that sale, the establishment shall send, by registered or certified mail, to the last known address of that guest or patron a demand for payment of the amount due, and shall publish a notice of sale once a week for three successive weeks in a daily newspaper of general circulation published in the District of Columbia. That notice shall state—



(1) that the purpose of the sale is to satisfy the lien granted by subsection (a);

(2) the amount for which that lien is granted, including storage charges;

(3) the day, time, and place of sale; and

(4) a description of the property including, in the case of the sale of a motor vehicle, the make, type, year, model number, serial number, engine number, and the year and license registration number of that motor vehicle.

In the case of the sale of a motor vehicle, a notice shall be given to any person whose security interest, lien, or other claim upon that motor vehicle is recorded with the motor vehicle registry of the State (including the District of Columbia) of registration of that motor vehicle. That notice shall be given at least 15 days prior to the date of sale.

(c) The proceeds of a sale of property made under subsection (b) shall be applied as follows:

(1) first, to cover the expenses of the storage and sale of the property, and

(2) second, to discharge any security interest, lien, or other claim upon the property in the order of priority provided for by law.

Any amount remaining after the application provided for by paragraphs (1) and (2) shall be paid to the party entitled to the remainder if that party is known and can be located. If that party is not known or cannot be located within one year after the date of the sale, the establishment shall pay, within a reasonable time, the remainder to the government of the District of Columbia. (Dec. 8, 1970, Pub. L. 91-537, § 2, 84 Stat. 1395.)

#### CROSS REFERENCE

Fraudulent representations to obtain accommodations, fraudulent removal of baggage, criminal penalty, see § 22-1301.

§ 34-108. Sale by hotels, motels, and innkeepers of unclaimed property—Notice—Application of proceeds.

(a) A hotel, motel, or similar establishment in the District of Columbia which provides lodging to transient guests may sell at public auction any per-

sonal property that has been deposited for safekeeping, checked, or left unclaimed at that establishment for more than 90 days. If the owner of that property is known, the establishment shall, at least 15 days before that sale is held, send, by registered or certified mail, a notice to the owner at his last known address stating—

(1) that the purpose of the sale is to dispose of unclaimed property;

(2) the amount of storage and other charges (including interest on those charges) against that property;

(3) the day, time, and place of sale; and

(4) a description of the property including, in the case of the sale of a motor vehicle, the make, type, year, model number, serial number, engine number, and the year and license registration number of that motor vehicle.

In the case of the sale of a motor vehicle, a notice shall be given to any person whose security interest, lien, or other claim upon that motor vehicle is recorded with the motor vehicle registry of the State (including the District of Columbia) of registration of that motor vehicle. That notice shall be given at least 15 days prior to the date of sale.

(b) The proceeds of a sale of property made under subsection (a) shall be applied as follows:

(1) first, to cover the expenses of the storage and sale of the property (including interest on those charges), and

(2) second, to discharge any security interest, lien, or other claim upon the property in the order of priority provided for by law.

Any amount remaining after the application provided for by paragraphs (1) and (2) shall be paid to the party entitled to the remainder if that party is known and can be located. If that party is not known or cannot be located within one year after the date of the sale, the establishment shall pay, within a reasonable time, the remainder to the government of the District of Columbia. (Dec. 8, 1970, Pub. L. 91-537, § 3, 84 Stat. 1396.)



## TITLE 35.—INSURANCE

Chap.	Sec.
1. Insurance Department—General Provisions .....	35-101
2. Provisions Applicable to More Than One Kind of Insurance.....	35-201
3. Life Insurance—Definitions.....	35-301
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13. Fire, Casualty, and Marine Insurance....	35-1301
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### Chapter 1.—INSURANCE DEPARTMENT — GENERAL PROVISIONS

Sec.
35-101. Department of Insurance created—Superintendent of Insurance—Subject to supervision of Commissioner.
35-102. Duties of Superintendent—Copy of charters to be filed—Foreign companies to file power of attorney—Service of process—Superintendent to make rules and regulations.
35-103. Annual statements—Statement to be published in newspaper.
35-104. Companies organized outside of United States to file and publish statements.
35-105. Statement of business in District of Columbia.
35-106. Superintendent to make annual report.
35-107. Superintendent's reports to be bound.
35-108. Inquiries as to District companies.

§ 35-101. Department of Insurance created—Superintendent of Insurance—Subject to supervision of Commissioner.

There shall be, and is hereby, established in the District a Department of Insurance, under the direction of the Commissioner of the District of Columbia. The said Commissioner is authorized and directed to appoint a Superintendent of Insurance and one clerk. The said superintendent and clerk shall devote their services exclusively to the business of said department. Said superintendent shall have supervision of all matters pertaining to insurance, insurance companies, and beneficial orders and associations, subject only to the general supervision of the Commissioner. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 645; June 30, 1902, 32 Stat. 534, ch. 1329.)

#### CODIFICATION

Act June 30, 1902, increased the salary of the superintendent to \$3,500, which provisions were omitted as superseded by the Classification Act of 1949, which pre-

scribed the salary of many employees of the District of Columbia. That act (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended) was later repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by chapter 51 and subchapter III of chapter 53 of title 5, U.S.C.

#### ABOLITION OF DEPARTMENT AND TRANSFER OF FUNCTIONS

The Department of Insurance, including the Superintendent, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorg. Plan No. 5 of 1952. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorg. Plan No. 3 of 1967.

Reorg. Order No. 43 dated June 23, 1953, as amended, established under the direction and control of a Commissioner, a Department of Insurance headed by a Superintendent. The order provided for the organization of the Department, abolished the previously existing Department of Insurance, and provided that all functions and positions of the previous Department would be transferred to the new Department of Insurance, including the duties, powers, and authorities of all officers and employees; and that all personnel, property, records and unexpended balances relating to the functions and positions transferred would also be transferred to the new Department. This order was issued pursuant to Reorg. Plan No. 5 of 1952. Commissioner's Order [Org. Action] No. 69-96, dated Mar. 7, 1969, provided in part that the Director of the Department of Economic Development is responsible for maintaining cooperative relationships and liaison with the Department of Insurance.

The Plans and Orders are set out in the Appendix to Title 1.

#### LIFE INSURANCE ACT

Any provision of this chapter conflicting with the Life Insurance Act, classified to chapters 3 to 8 of this title, has been repealed by § 4, Ch. VI of said act which is set out as a note under § 35-301.

#### FIRE AND CASUALTY ACT

Any provisions of this chapter in conflict with the "Fire and Casualty Act", classified to chapter 13 of this title, have been repealed by § 46 of said act which is set out as a note under § 35-1301.

#### CROSS REFERENCES

Application of this chapter to marine insurance companies, see § 35-1102.

Department of Insurance and its powers and duties with respect to,

Fire, casualty, and marine insurance, see §§ 35-1301 to 35-1350.

Life insurance, see §§ 35-401 to 35-532.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-902, 35-1202.

#### NOTES TO DECISIONS

##### Superintendent

Superintendent of insurance is a subordinate official, appointed by and under the supervision and control of the Commissioners of the District. *Griffith v. Rudolph* (1924, 298 F. 672, 54 App. D.C. 350).

§ 35-102. Duties of Superintendent—Copy of charters to be filed—Foreign companies to file power of attorney—Service of process—Superintendent to make rules and regulations.

It shall be the duty of said superintendent to see that all laws of the United States relating to insur-



ance or insurance companies, benefit orders, and associations doing business in the District are faithfully executed; to keep on file in his office copies of the charters, declarations of organization, or articles of incorporation of every insurance company, benefit association, or order, including life, fire, marine, accident, plate-glass, steam-boiler, burglary, cyclone, casualty, livestock, credit, and maturity companies or associations doing business in the District; and before any such insurance company, association, or order shall be licensed to do business in the District it shall file with said superintendent a copy of its charter, declaration of organization, or articles of incorporation, duly certified in accordance with law by the insurance commissioners or other proper officers of the state, territory, or nation where such company or association was organized; also a certificate setting forth that it is entitled to transact business and assume risks and issue policies of insurance therein, and such other information as said superintendent may require; and if its principal office is located outside the District it shall appoint some suitable person, resident in said District, as its attorney, upon whom legal process may be served: *Provided, however,* That should said company or association neglect or refuse to appoint such attorney, or should such attorney absent himself from the District, said legal process may be served upon the Superintendent of Insurance of the District of Columbia. The District of Columbia Council shall have power to make such rules and regulations, not inconsistent with law, as to make the conduct of each company in the same line of insurance conform in doing business in the District. (Mar. 3, 1901, 31 Stat. 1290, ch. 854, § 646; Jan. 17, 1912, 37 Stat. 53, ch. 11.)

#### CODIFICATION

This section as enacted also contained at the end of the first sentence "and the fees for filing with the superintendent such papers as are required by this section shall be ten dollars, to be paid to the collector of taxes, and no other license fee shall be required of such insurance companies or associations except as provided in sections six hundred and fifty-four (§ 35-1201) and six hundred and fifty-five (§ 35-1202) of this subchapter", which provisions were omitted as superseded by § 35-1113 providing for fees of marine insurance companies, § 35-1345 providing for fees of fire, marine, and casualty insurance companies, § 35-402 providing for fees of life insurance companies, and § 47-1801 providing for an annual license fee upon all insurance companies.

#### AMENDMENT

1912—Act Jan. 17, 1912, inserted "and such other information as said superintendent may require" following "a certificate setting forth that it is entitled to transact business and assume risks and issue policies of insurance therein," and added the proviso authorizing service of process upon the Superintendent.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

The Department of Insurance, including the Superintendent, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorg. Plan No. 5 of 1952.

Section 402(268) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of making rules and regulations to make the conduct of each company in the same line of insurance conform in doing business in the District under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan,

set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### CROSS REFERENCES

##### IN GENERAL

Enlargement of department for purpose of administering laws regulating marine insurance, see § 35-1130.

Insurance under Employees' Compensation Act, see § 35-205.

Liability policy or bond for motor carriers, see § 44-301.

#### REVOCATION OR SUSPENSION OF LICENSES, CERTIFICATES, AND PERMITS

Failure of domestic company to keep books, records, and files within the District, see § 35-204.

Failure to file annual statements, see §§ 35-103, 47-1805.

Failure to pay taxes, see § 35-105

Impairment of capital, see § 35-202.

License or certificate of authority of life insurance companies, see § 35-405.

Life insurance agents, see § 35-425 et seq.

Marine insurance agents, see § 35-1124.

Revocation or suspension of

Certificate of authority of fire, casualty, or marine insurance company, see § 35-1306.

License of fire, casualty, or marine insurance agent, see § 35-1340.

Revocation or suspension of organization permits, see § 35-506 et seq.

#### RULES AND REGULATIONS

Administration of the "Fire and Casualty Act," see § 35-1304.

Governing annual statements, see § 35-103.

Governing election to convert stock to mutual company, see § 35-519.

Liquidation of life insurance companies, see § 35-419.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-201, 35-1202.

#### NOTES TO DECISIONS

##### Authority of District Council

District of Columbia City Council does not have authority under either its police power or the Insurance Code to pass insurance regulations designed to prohibit geographic discrimination and arbitrary cancellation of policies within the District. *Firemen's Insurance Company of Washington v. W. E. Washington et al.* (1971, 333 F. Supp. 951).

##### Domestic corporations

Sections 646 and 647 of 1901 code (§§ 35-102, 35-103), "were intended to apply to companies organized without the District and doing business within the District." *American Home Life Ins. Co. v. Drake* (30 App. D.C. 263).

##### Engaging in insurance

Statutes regulating business of insurance were not intended for application to all organizations having some element of risk assumption or distribution in their operations. *Metropolitan Police Retiring Ass'n Inc. v. W. N. Tobriner et al.* (1962, 306 F. 2d 775, 113 U.S. App. D.C. 168).

The legislation relating to insurance in District of Columbia is so elaborate that court is not inclined to strain its coverage to include an activity left uncovered by the ordinary meaning of language used. *Id.*

The absence of a profit motive and facts that Metropolitan Police Retiring Association possesses a representative government and engages in no solicitation of the public, add some though not controlling support to review that its activities are not within scope of statute primarily designed to protect insured vis-a-vis the insurer. *Id.*

Where Metropolitan Police Retiring Association was incorporated as a charitable organization, membership was limited to members of Metropolitan Police Department, the White House Police, and Park Police, purpose of association was to furnish financial relief to members in case of their retirement from police force, payments upon retirement were principally the amounts of retirees'



own contributions with some increment of interest from investments which were required to be approved by majority of board of directors and by majority vote of membership in regular session, association was not engaged in "insurance" and hence was not required to obtain certificate of authority from Superintendent of Insurance. *Id.*

#### Group health association

When Group Health Association was not engaged in the business of insurance or indemnity, and not specifically exempted from the regulations pertaining to them, the superintendent could not challenge generally and without regard to features of insurance or indemnity as to validity of the incorporation. *Jordan v. Group Health Assn.* (1940, 107 F. 2d 239, 71 App. D.C. 38).

Apart from any specific exemption, the business of a Group Health Association was not that of insurance so as to bring it within meaning of this act. *Id.*

#### Interpretation of laws

"No provision of the law conferred or attempted to confer upon the superintendent of insurance the power to make and enforce an interpretation of the laws relating to insurance companies, agents, or brokers. Such power is a judicial one, that can be exercised by the courts alone." *Drake v. United States ex rel. Bates* (1908, 30 App. D.C. 312).

#### Rules and regulations

There is neither express nor implied authority in the superintendent to make rules or to apply the drastic provisions of those rules solely to mutual companies, and without such authority, the limit of his power is to make rules consistent with the provisions of the law. *Hutchins Mut. Ins. Co. v. Hazen* (1939, 105 F. 2d 53, 70 App. D.C. 174).

Superintendent's power to promulgate regulations for the proper enforcement of the law. *Drake v. United States ex rel. Bates* (1908, 30 App. D.C. 312).

#### § 35-103. Annual statements—Statement to be published in newspaper.

The said superintendent shall furnish, in December of each year, to every insurance company or association, local, domestic, and foreign, doing business in the District of Columbia, or its agent or attorney in the District, the necessary blank forms for the annual statements for such company or association, which shall be returned to the superintendent on or before the first day of March in each year, signed and sworn to by the president or vice-president and secretary or assistant secretary, or, if a foreign company, by its manager or proper representative within the United States, showing its true financial condition as of the next preceding 31st day of December, which shall include a statement of its assets and liabilities classified according to regulations made by the Superintendent of Insurance on that day, the amount and character of business transacted, losses sustained, and money received and expended during the year, and such other information as the said superintendent may deem necessary. Such annual statements shall be printed in at least one daily newspaper published in the District of Columbia, in the month of March in each year; and any such company or association failing to comply with the provisions aforesaid shall have its license to do business in the District revoked. (Mar. 3, 1901, 31 Stat. 1290, ch. 854, § 647; June 30, 1902, 32 Stat. 534, ch. 1329; Aug. 18, 1911, 37 Stat. 22, ch. 26.)

#### AMENDMENTS

1911—Act Aug. 18, 1911, substituted "local, domestic, and foreign, doing business in the District of Columbia" for "hereinafter mentioned", and omitted "classified" following "include a."

1902—Act June 30, 1902, substituted "classified" for "detailed" following "include a", and inserted "or vice-president" after "president" and "or assistant secretary" after "secretary."

#### CROSS REFERENCES

Fire, casualty, and marine insurance companies, see § 35-1311.

Health, accident, and life insurance companies, see § 35-202.

Lloyd's plan, companies operating upon, see § 35-1324.

Revocation or suspension of license, see § 35-102.

Rules and regulations, see § 35-102.

Taxation and fiscal affairs of insurance companies, see § 47-1801 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29-105, 35-1202.

#### NOTES TO DECISIONS

##### Instructions

In action by insured, an insurance company, on employees' fidelity policy to recover consequential losses resulting from payments made under surplus risk policies by reason of fraudulent or dishonest acts of general manager who had failed to disclose surplus risk policies in an annual statement of financial position required to be filed by District of Columbia statute, giving of instruction that referred to possible criminal prosecution of general manager was prejudicially erroneous. *Imperial Insurance, Inc. v. Employers' Liability Assurance Corporation* (1970, 442 F. 2d 1197, 143 U.S. App. D.C. 173).

##### Revocation of license

Under this section, there is authority in the Superintendent to revoke a company's license for failure on its part promptly to furnish him with an annual statement of its true financial condition. *Hutchins Mut. Ins. Co. v. Hazen* (1939, 105 F. 2d 53, 70 App. D. C. 174).

#### § 35-104. Companies organized outside of United States to file and publish statements.

The financial statements of insurance companies or associations, required hereby to be filed annually with the Superintendent of Insurance, shall set forth specifically the assets, liabilities, and conduct of the affairs within the United States of companies or associations organized outside of the territorial limits of the United States, and such statement shall be verified under oath by the manager and assistant manager or other proper officers of such companies or associations within the United States; and so much of this chapter as requires the publication of annual statements shall only extend to the statements respecting the affairs of such foreign companies or associations within the United States. (Mar. 3, 1901, 31 Stat. 1291, ch. 854, § 649.)

#### CODIFICATION

This section as enacted contains at the beginning the following provision: "No insurance company or association organized outside the territorial limits of the United States shall be licensed to do business in the District until it shall have complied with the laws of some one of said States requiring a deposit of not less than one hundred thousand dollars, or deposited in the registry of the supreme court of the District, United States or municipal bonds, the market value of which shall not be less than one hundred thousand dollars, to be approved by the superintendent of insurance and the Commissioners of the District, to be held and maintained unimpaired in the registry of said court as a reserve fund for the liquidation of any judgment or judgments that may be obtained against such insurance company or association in said court or any inferior court of competent jurisdiction in said District." However, § 35-1105 of this code provides for deposits by foreign marine insurance companies, § 35-601 provides that foreign life insurance companies should have investments of a specified quality, and if stock companies, a specified surplus, and § 35-1326



provides the requirements for issuance of a certificate of authority to foreign fire, marine, and casualty insurance companies.

#### CROSS REFERENCES

Annual statement and taxes, see §§ 35-103, 35-202.  
Revocation or suspension of license, see note under § 35-102.  
Taxation and fiscal affairs of insurance companies, see § 47-1801 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1202.

### § 35-105. Statement of business in District of Columbia.

Every insurance company and association doing business in the District of Columbia shall, through its local agents or representatives, furnish to the superintendent, during the month of January of each year, a statement of its business in said District, setting forth specifically the net amount of its premium receipts, the amount of losses paid, the amount of expenses incurred, respecting the business done in the District during the calendar year next preceding, and said superintendent shall preserve a separate record of the same in his office for convenient reference, showing the ratio of such losses and expenses, respectively, to said premium receipts, and all insurance companies of every description, except mutual fire insurance companies, shall pay to the collector of taxes before March first of each year a sum equal to two per centum of said premium receipts of the last preceding calendar year, in lieu of all other taxes, except taxes upon real estate and any license fees provided for in sections 35-1201 and 35-1202; and upon the failure of any company to pay said taxes before March first, as aforesaid, the license of said company shall be revoked and a penalty of eight per centum per month shall be charged against the company, which, together with said taxes, shall be collected before said company shall be allowed to resume business. (Mar. 3, 1901, 31 Stat. 1291, ch. 854, § 650; June 30, 1902, 32 Stat. 534, ch. 1329; Aug. 71, 1937, 50 Stat. 676, ch. 690, title II, § 6.)

#### CODIFICATION

"Two per centum" was substituted for "one and one-half per centum" to conform to act Aug. 17, 1937, relating to taxation of insurance companies. See § 47-1806.

#### TRANSFER OF FUNCTIONS

The Office of the Collector of Taxes was abolished and the functions thereof transferred, see note under § 47-301.

#### CROSS REFERENCES

Annual statement and taxes, see §§ 35-103, 35-202.  
Taxation and fiscal affairs of insurance companies, see § 47-1801 et seq.  
Taxation of marine insurance companies, see § 35-1111.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1202.

#### NOTES TO DECISIONS

##### Assessment companies

This section does not apply to assessment companies organized solely for mutual protection. *American Home Life Ins. Co. v. Drake* (1908, 30 App. D.C. 263).

##### Engaging in insurance

Statutes regulating business of insurance were not intended for application to all organizations having some element of risk assumption or distribution in their operations. *Metropolitan Police Retiring Ass'n Inc. v. W. N. Tobriner et al.* (1962, 306 F. 2d 775, 113 U.S. App. D.C. 168).

The legislation relating to insurance in District of Columbia is so elaborate that court is not inclined to strain its coverage to include an activity left uncovered by the ordinary meaning of language used. *Id.*

The absence of a profit motive and facts that Metropolitan Police Retiring Association possesses a representative government and engages in no solicitation of the public, add some though not controlling support to review that its activities are not within scope of statute primarily designed to protect insured vis-a-vis the insurer. *Id.*

Where Metropolitan Police Retiring Association was incorporated as a charitable organization, membership was limited to members of Metropolitan Police Department, the White House Police, and Park Police, purpose of association was to furnish financial relief to members in case of their retirement from police force, payments upon retirement were principally the amounts of retirees' own contributions with some increment of interest from investments which were required to be approved by majority of board of directors and by majority vote of membership in regular session, association was not engaged in "insurance" and hence was not required to obtain certificate of authority from Superintendent of Insurance. *Id.*

##### Group health association

Apart from any specific exemption, the business of appellee Group Health Association is not that of insurance to bring it within this section of statute. *Jordan v. Group Health Assn.* (1940, 107 F. 2d 239, 71 App. D.C. 38).

##### Section construed

Section construed relative to taxation of banks, gas, electric, and telephone companies, and continuing taxation on insurance companies. *District of Columbia v. Georgetown Gas Light Co.* (1916, 45 App. D.C. 63).

### § 35-106. Superintendent to make annual report.

The Superintendent of Insurance shall report annually to the Commissioner of the District, on or before the thirty-first day of March, the financial condition of each insurance company and association doing business in said District, as of the thirty-first day of December next preceding. (Mar. 3, 1901, 31 Stat. 1292, ch. 854, § 651.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See notes under §§ 35-101, 35-102.

#### SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 35-1202.

### § 35-107. Superintendent's reports to be bound.

After May 18, 1910, the annual reports of the Superintendent of Insurance shall be printed and bound in one volume, and shall be ready for distribution not later than the first day of the next regular session of Congress thereafter. (May 18, 1910, 36 Stat. 379, ch. 248, § 1.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1202.

### § 35-108. Inquiries as to District companies.

It shall be the duty of the said Superintendent of Insurance to ascertain whether the capital required by law or the charter of each insurance company or association organized under the laws of the District of Columbia has been actually paid up in cash and is held by its board of directors subject to their control, according to the provisions of their charter, or has been invested in property worth not less than the full amount of the capital stock required by its charter; or, if a mutual company, that it has received and is in actual possession of securities, as the case may be, to the full extent of the value required by its charter; and the president and secretary of such



company or association shall make a declaration under oath to said superintendent, who is hereby empowered to administer oaths when hereby required, that the tangible assets exhibited to him represent bona fide the property of the company or association, which sworn declaration shall be filed and preserved in the office of said superintendent; and any such officer swearing falsely in regard to any of the provisions hereof shall be deemed guilty of perjury and shall be subject to all the penalties prescribed by law in the District of Columbia for that crime. (Mar. 3, 1901, 31 Stat. 1292, ch. 854, § 652.)

#### CROSS REFERENCES

Capital stock to be fully paid in cash, amount of capital, see § 35-202.

Impairment of capital, see § 35-201.

Inspection and examination of insurance companies, see §§ 35-201, 35-202, 35-418, 35-903, 35-1313.

Perjury, see § 22-2501.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1202.

## Chapter 2.—PROVISIONS APPLICABLE TO MORE THAN ONE KIND OF INSURANCE

### SUBCHAPTER I.—GENERAL PROVISIONS

Sec.

- 35-201. Life and fire insurance companies to maintain reinsurance reserves—Suspension of license upon impairment of capital stock—Penalty for acting for unlicensed company—Superintendent may make examination to determine impairment in capital, or insolvency.
- 35-202. Health, accident, and life insurance companies defined—Assets and capital stock required—Amount of policies—Taxation—Reports to Superintendent of Insurance—Examination by Superintendent of Insurance—Appeal to Commissioner—Fraternal beneficial and certain other organizations exempt.
- 35-203. Copy of application to be delivered with policy—Statements in application as defense.
- 35-204. Principal office to be in District of Columbia—Keeping and removing of records—Reincorporation of companies chartered by special acts—Penalties—Prosecutions.
- 35-205. Compensation insurance regulations—Facts to be filed with Superintendent of Insurance—Approval required—Withdrawal of approval—Petition for review—Time for filing.

### SUBCHAPTER II.—DOMESTIC STOCK INSURANCE COMPANIES

- 35-221. Definition.
- 35-222. Rules and regulations—Revocation or suspension of certificate—Notice and hearing—Penalties—Exemption of certain companies.
- 35-223. Registration requirements of beneficial owners, directors, etc.—Sales restriction—Definition—Exemption—Rules and regulations—Penalty—Effective date of section.
- 35-224. Preservation of authority—Delegation of functions.

### SUBCHAPTER I.—GENERAL PROVISIONS

§ 35-201. Life and fire insurance companies to maintain reinsurance reserves—Suspension of license upon impairment of capital stock—Penalty for acting for unlicensed company—Superintendent may make examination to determine impairment in capital, or insolvency.

All life and fire insurance companies or associations licensed to do business in said District shall be required to maintain a reinsurance reserve fund; and

whenever any such company or association not excepted from the operations hereof shall become insolvent or impaired to the extent of twenty-five per centum of its capital stock it shall be the duty of the superintendent to suspend its license; and unless such impairment or insolvency shall be made good within sixty days thereafter, it shall be the duty of the Superintendent of Insurance to revoke its license to do business in the District; and it shall be unlawful for any insurance company, association, or order to do business in the District without a license, or to continue business after the revocation of its license, and any such company or association violating this provision shall be liable to a penalty of twenty dollars for each day it transacts business without such license to be recovered by the Commissioner of the District by an action of debt in any court of the District of competent jurisdiction. And any person who shall aid in carrying on the business of any such company, or shall act as agent or solicitor for any company not licensed to do business in said District, or whose license is revoked, shall be guilty of a misdemeanor, and on conviction thereof in the Superior Court of the District of Columbia shall be punished by a fine not exceeding one hundred dollars, or, in default of payment thereof, by imprisonment in the jail of the District for not less than ten nor more than sixty days. And the Superintendent of Insurance shall issue such license to any such insurance company or association whenever it shall have complied with the provisions of section 35-102, subject, however, to the provisions of sections 35-1201, 35-1202: *Provided*, That the Superintendent of Insurance shall have power to make an official examination into the affairs of any insurance company or association organized under the laws of the District of Columbia, or having its principal office therein, at his discretion, for the purpose of ascertaining whether such company is impaired or insolvent, as aforesaid. (Mar. 3, 1901, 31 Stat. 1290, ch. 854, § 648; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### CODIFICATION

This section as enacted contains the following at the beginning: "No fire insurance company, except mutual fire insurance companies organized in the District of Columbia under special act of Congress or the general laws of said District, or mutual companies of other States licensed to do business in the said District, which has a paid-up capital of less than one hundred thousand dollars, shall be permitted to do business therein, and." Sections 35-1103 and 35-1316, provide for the paid-in capital stock of fire insurance companies.

#### AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended section by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### LIFE INSURANCE ACT

Provisions of this chapter conflicting with the Life Insurance Act, classified to chapters 3 to 8 of this title, are repealed by section 4 of chapter VI of said act which is set out as a note under § 35-301.



## FIRE AND CASUALTY ACT

Any provision of this chapter in conflict with the "Fire and Casualty Act," classified to chapter 13 of this title, has been repealed by § 46 of said act which is set out as a note under § 35-1301.

## CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court of said District" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan, and note under § 35-201.

## CROSS REFERENCES

Administrative procedure, see § 1-1501 et seq.

Application of this chapter to marine insurance companies, see § 35-1102.

Benefits from health and accident insurance are not subject to claims of creditors, see § 35-717.

Capital and surplus of fire, casualty, and marine insurance companies, see § 35-1316.

Capital, reserves, and deposits of life insurance companies, see §§ 35-415 to 35-417.

D.C. Council may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

Impairment of capital, see § 35-202.

Insolvency or impairment of capital or surplus of fire, casualty, or marine companies, receivership, see §§ 35-1306, 35-1308 to 35-1310.

Inspection and examination of insurance companies, see §§ 35-108, 35-202, 35-418, 35-903, 35-1313.

Judicial review, see §§ 1-1510, 11-722.

Licensing fire, casualty, and marine insurance companies, see § 35-1305.

Life insurance companies may reinsure, see § 35-537.

Minors may contract for health and accident insurance, see § 35-430.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-1201, 35-1202.

§ 35-202. Health, accident, and life insurance companies defined—Assets and capital stock required—Amount of policies—Taxation—Reports to Superintendent of Insurance—Examination by Superintendent of Insurance—Appeal to Commissioner—Fraternal beneficial and certain other organizations exempt.

Every corporation, joint-stock company, or association not exempt herein, transacting business in the District of Columbia, which collects premiums, dues, or assessments from its members or from holders of its certificates or policies, and which provides for the payment of indemnity on account of sickness or accident, or a benefit in case of death, shall be known as "health, accident, and life insurance companies or associations." No such company or association shall transact business within the District of Columbia unless it shall have in assets or in capital stock fully paid up in cash, or in both together, not less than twenty-five thousand dollars as a capital or guarantee fund; which assets may be invested in United States, State, county, municipal bonds, and bonds of the District of Columbia, or railroad bonds; but investments in the bonds of railroads shall be limited to the bonds of those railroads which have paid dividends on their capital stock for the ten

years immediately previous to the date of the investment; or in improved real estate, or in first mortgages on improved real estate; but no loan on real estate shall be made for an amount exceeding seventy per centum of its assessed value, such investments to be approved by the Superintendent of Insurance of the District of Columbia. No such health, accident, and life insurance company or association, transacting on August 15, 1911, or thereafter the business of health, accident, and life insurance, or either or all said kinds of insurance, in the District of Columbia shall issue policies or certificates providing, either singly or in aggregate, a greater accident or death benefit than five hundred dollars, or a greater weekly indemnity than twenty dollars, on any one person unless such company or association has in assets or in capital stock fully paid up in cash, or in both together, not less than one hundred thousand dollars invested and approved as aforesaid. Every such company or association shall pay to the collector of taxes for the District of Columbia a sum of money, as tax, equal to one per centum of all moneys received from members of policy or certificate holders within the District of Columbia, said tax to be paid on or before the 1st day of March of each year on the amount of such income for the year ending December 31st next preceding; and shall also file annually with said Superintendent of Insurance, on or before the 1st day of March of each year, a sworn statement, on blanks furnished by said Superintendent of Insurance, showing its true financial condition, income, disbursements, assets, and liabilities on the 31st day of December next preceding, and such other information as said Superintendent of Insurance may require; and shall pay to the said collector of taxes ten dollars for filing such statement. Said Superintendent of Insurance shall examine from time to time and at least as often as once a year all companies or associations described herein; and when he finds the capital stock of any such company impaired or its assets reduced in value to an amount less than required by the provisions hereof he shall at once give notice of said fact to said company or association, and unless said impairment is made good within sixty days after said notice, it shall be the duty of said superintendent to revoke or suspend the license of said company or association until such impairment shall have been made good; and any company or association that issues policies or certificates of insurance as described herein without a license from said superintendent or during a suspension thereof, as herein provided, shall be fined not less than twenty dollars nor more than one hundred dollars per day: *Provided*, That if any such company or association shall feel aggrieved by the decision of said superintendent concerning the investment or impairment of its assets or capital stock, it shall have the right to appeal, within ten days, from the decision of said superintendent to the Commissioner of the District of Columbia, and the District of Columbia Council shall prescribe rules and regulations for the hearing of said appeal, and the Commissioner's decision shall be final: *Provided also*, That when any such company or association shall have complied with the



provisions contained herein, the Superintendent of Insurance shall issue to it a license to transact its business in the District of Columbia: *Provided, however*, That nothing contained herein shall interfere with or abridge the rights of any fraternal beneficial association licensed to transact business under sections 35-901 to 35-917, or incorporated by special act of Congress: *And provided further*, That nothing contained herein shall apply to any relief association, not conducted for profit, composed solely of officers and enlisted men of the United States Army, Navy, or Air Force, or solely of employees of any other branch of the United States government service, or solely of employees of any individual, company, firm, or corporation. (Mar. 3, 1901, 31 Stat. 1292, ch. 854, § 653; Aug. 15, 1911, 37 Stat. 16, ch. 12, § 1.)

#### CODIFICATION

A provision making the prohibition against doing business in the District without meeting the asset and capital stock requirements effective ninety days after Aug. 15, 1911, was omitted as obsolete.

In the last proviso, "Air Force" was added on authority of Act July 26, 1947, § 207(a) (f), 61 Stat. 502.

#### AMENDMENT

1911—Act Aug. 15, 1911, amended section generally, and among other changes defined health, accident, and life insurance companies, stated asset and capital stock requirements, limited the amounts of policies, set a tax on monies received, provided for reports to, and examination by, the Superintendent of Insurance, and for appeal from the Superintendent's decision to the Commissioners, exempted certain fraternal beneficial and other organizations, and struck out the former section which related to companies transacting insurance on the assessment plan, exempted them from the provisions of § 35-108, and provided that they furnish annual statements to the Superintendent.

#### REPEAL OF INCONSISTENT PROVISIONS

Section 2 of act Aug. 15, 1911, provided: "That all Acts and parts of Acts inconsistent herewith be and the same are hereby repealed: *Provided*, That nothing herein contained shall repeal or affect the other provisions of subchapter five of chapter eighteen of the Code of Law for the District of Columbia [§§ 35-101 to 35-108, 35-201, 35-203, 35-1133, 35-1201, and 35-1202] regulating foreign corporations, or corporations, associations, or companies who are nonresidents of the District of Columbia (to whom the provisions of this Act shall also be applicable), or the provisions of section six hundred and fifty-two of said code [§ 35-108] relating to inquiry into the affairs of District companies."

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

The Department of Insurance, including the Superintendent, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorg. Plan No. 5 of 1952.

Section 402(269) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners under this section with respect to prescribing rules and regulations for the hearing of appeals, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### TRANSFER OF FUNCTIONS

The Office of the Collector of Taxes was abolished and the functions thereof transferred, see note under § 47-301.

#### CROSS REFERENCES

- Administrative procedure, see § 1-1501 et seq.
- Annual statement and taxes, see §§ 35-103 to 35-105, 35-1311, 47-1801 et seq.
- Appeals under Fire and Casualty Act, see §§ 35-1348, 35-1349.
- Capital and surplus of fire, casualty, and marine insurance companies, see § 35-1316.
- Capital, reserves, and deposits of life insurance companies, see §§ 35-415 to 35-417.
- Excepted from application of marine insurance provisions, see § 35-1103.
- Health and accident insurance may be written under the Fire and Casualty Act, see § 35-1314.
- Inspection and examination of insurance companies, see §§ 35-108, 35-201, 35-418, 35-903, 35-1313.
- Investments,
  - Fire, casualty and marine insurance companies, see § 35-1321.
  - Life insurance companies, see § 35-535.
  - Marine insurance companies, see §§ 35-1118, 35-1119.
- Judicial review, see §§ 1-1510, 11-722.
- Provisions for formation of companies, see § 35-501.
- Required policy provisions for health and accident insurance, see §§ 35-712, 35-1332.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-1103, 35-1202.

#### NOTES TO DECISIONS

##### Benefit order

The 1940 act requiring that all fire, marine and casualty companies doing business in District of Columbia must obtain certificate of authority expressly repealed earlier statute exempting nonprofit relief associations composed of government employees from licensing and regulation, and consequently unincorporated nonprofit labor organization composed exclusively of postal clerks employed by United States Post Office Department must obtain from superintendent of insurance certificate of authority to operate program of health insurance. *National Federation of Post Office Clerks, etc. v. District of Columbia* (D.C. Mun. App. 1961, 173 A. 2d 483).

Grand Lodge of Brotherhood of Railroad Trainmen is a benefit order, within the meaning of the section, as amended, and subject to its provisions. *Brotherhood of Railroad Trainmen v. Groves* (1918, 48 App. D.C. 151, certiorari denied 39 S. Ct. 184, 248 U.S. 587, 63 L. Ed. 434).

##### Engaging in insurance

Statutes regulating business of insurance were not intended for application to all organizations having some element of risk assumption or distribution in their operations. *Metropolitan Police Retiring Ass'n Inc. v. W. N. Tobriner et al.* (1962, 306 F. 2d 775, 113 U.S. App. D.C. 168).

The legislation relating to insurance in District of Columbia is so elaborate that court is not inclined to strain its coverage to include an activity left uncovered by the ordinary meaning of language used. *Id.*

The absence of a profit motive and facts that Metropolitan Police Retiring Association possesses a representative government and engages in no solicitation of the public, add some though not controlling support to review that its activities are not within scope of statute primarily designed to protect insured vis-a-vis the insurer. *Id.*

Where Metropolitan Police Retiring Association was incorporated as a charitable organization, membership was limited to members of Metropolitan Police Department, the White House Police, and Park Police, purpose of association was to furnish financial relief to members in case of their retirement from police force, payments upon retirement where principally the amounts of retirees' own contributions with some increment of interest from investments which were required to be approved by majority of board of directors and by majority vote of membership in regular session, association was not engaged in "insurance" and hence was not required to obtain certificate of authority from Superintendent of Insurance. *Id.*



**Group health association**

Apart from any specific exemption, the business of appellee Group Health Association is not that of insurance to bring it within this section of statute. *Jordan v. Group Health Assn.* (1940, 107 F. 2d 239, 71 App. D.C. 38).

The appellee Group Health Association held to be a distributing, not an accumulating agency, and to require it to maintain a guarantee fund was not the intent of Congress. *Id.*

It is not necessary to decide whether the exemption or definition of health and accident insurance companies has any effect upon the regulations prescribed by other sections of the code. Apart from any specific exemption the business of the Group Health Association is not that of insurance so as to bring it within those sections. *Id.*

**Payment of indemnity**

This provision does not include all "insurance" companies, but only those which provide for the "payment of indemnity on account of sickness." The statute does not include necessarily contracts "to indemnify," but is limited to those which provide for the "payment" of indemnity. The word "payment" is not used as equivalent to "indemnity." *Group Health Assn. v. Moor* (D.C.D.C. 1938, 24 F. Supp. 445).

**Report by receivers**

Where business of insurance association has been so injured by ill will and protracted litigation among the stockholders that it has become insolvent, and its capital and reserve have been seriously impaired, receivers pendente lite were properly appointed to take possession of its assets and to report on the condition of its affairs. *Provident Relief Assn. v. Vernon* (1927, 19 F. 2d 709, 57 App. D.C. 235).

**Reserves**

There is no provision of the general law broad enough to cover regulations governing in the minutest detail the operation and business of an insurance company, but the statute itself makes a clear distinction between stock companies and mutual companies with respect to maintaining a reserve. *Hutchins Mut. Ins. Co. v. Hazen* (1939, 105 F. 2d 53, 70 App. D.C. 174).

**§ 35-203. Copy of application to be delivered with policy—Statements in application as defense.**

Each life insurance company, benefit order, and association doing a life insurance business in the District of Columbia shall deliver with each policy issued by it a copy of the application made by the insured so that the whole contract may appear in said application and policy, in default of which no defense shall be allowed to such policy on account of anything contained in, or omitted from, such application. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 657; June 30, 1902, 32 Stat. 534, ch. 1329.)

**AMENDMENT**

1902—Act June 30, 1902, inserted "benefit order and association" following "life insurance company", "life insurance" before "business", and added "In default of which no defense shall be allowed to such policy on account of anything contained in, or omitted from, such application."

**CROSS REFERENCES****Standard provisions,**

Annuities and pure endowment contracts, see § 35-705.

Group life insurance policies, see § 35-711.

Life insurance policies, see § 35-703.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 35-1002, 35-1202.

**NOTES TO DECISIONS****In general**

Where voidability provision of life policy required company to prove that applicant had received medical treatment, but insurer did not attach written application, if any, to policy, insurer could not defend on account of

anything contained in or omitted from application, and was barred from declaring policy void on account of alleged nondisclosure in application. *Walton et ano. v. Sun Life Insurance Company of America* (D. C. Mun. App. 1955, 115 A. 2d 310).

Prior to the amendment by the act of June 30, 1902, this section "did not cover policies (certificates) issued by fraternal beneficial associations." *Brotherhood of Railroad Trainmen v. Groves* (1928, 48 App. D.C. 151, certiorari denied 39 S. Ct. 184, 248 U.S. 587, 63 L. Ed. 434).

"This section was intended to remedy a mischief and is to be given a liberal interpretation to that end." *Metropolitan Life Ins. Co. v. Burch* (1912, 39 App. D.C. 397).

**Defense not based on application**

In action on an industrial life policy declaring that it expressed the entire agreement between the parties, where insurer used testimony of the agent as to answers given or evaded by claimant to prove bad faith in making an application for the policy and questions relating to policy provisions that had no relation to the application not attached to the policy, a defense based on such questions and on the claimant's responses thereto would not be disallowed under this section. *Walton et ano. v. Sun Life Insurance Company of America* (D. C. Mun. App. 1955, 115 A. 2d 310).

**Entire application**

Copy of entire application must be attached; "It is not left to the discretion of the insurer to select such parts of the application as it may deem material for delivery with its policy." *Metropolitan Life Inc. Co. v. Hawkins* (31 App. D.C. 493).

**Fraudulent representations**

This section applies to fraudulent representations in application for previous policy made part of second policy. *Northwestern Mut. Life Ins. Co. v. Gott* (1934, 68 F. 2d 426, 62 App. D.C. 379).

**Incorporation by reference**

This section could not be satisfied by making a section of the constitution of the insurer a part of the contract by reference, for it requires an actual incorporation in the certificate and application of every element of the agreement "so that the whole contract may appear in said application and policy." *Brotherhood of Railroad Trainmen v. Groves* (48 App. D.C. 151, certiorari denied 39 S. Ct. 184, 248 U.S. 587, 63 L. Ed. 434).

**Misstatement of age**

Misstatement of age is no defense where copy of application was not delivered "with the policy or at any other time." *Brotherhood of Railroad Trainmen v. Groves* (1918, 48 App. D.C. 151, certiorari denied 39 S. Ct. 184, 248 U.S. 587, 63 L. Ed. 434).

**Oral application**

In action on industrial life policy declaring that it expressed the entire agreement between the parties, a defense open to insurer if no written application existed was not precluded by this section and the insurer could defend on violation of policy provisions having no relation to the application. *Ferguson v. Quaker City Life Ins. Co.* (D. C. Mun. App. 1957, 129 A. 2d 189).

This provision does not extend to an oral application. *Washington Fidelity Nat. Ins. Co. v. Burton* (1932, 53 S. Ct. 26, 287 U. S. 97, 77 L. Ed. 196).

**Policy constituting contract**

Where a life policy by its terms constitutes the entire agreement, this section does not prevent an insurer from basing a defense on a policy provision stating that if within two years of date of issue insured has received treatment or has been attended by any physician for any serious disease, the policy should be voidable unless reference to such treatment is endorsed on the policy, even though the policy was issued on a written application and no copy of the application was delivered with the policy. *Pullen v. Sun Life Ins. Co. of America* (1941, 121 F. 2d 110, 74 App. D. C. 197, certiorari denied 62 S. Ct. 112, 314 U. S. 613, 86 L. Ed. 494).

Where written application, if there was one, was not delivered with industrial life policy, but policy by its terms constituted the entire agreement, this section did not pre-



vent insurer from making any defense that it had under the terms of the policy. *Eureka-Maryland Assur. Co. v. Gray*, (1941, 121 F. 2d 104, 74 App. D. C. 191, certiorari denied 62 S. Ct. 114, 314 U. S. 613, 86 L. Ed. 494).

#### Preliminary report of agent

A preliminary report, signed only by the agent, intended for the general information of the company and not referred to in the policy, is no part of the contract of insurance and need not be attached thereto. *Griffin v. Metropolitan Life Ins. Co.* (1910, 36 App. D.C. 8).

#### Provisions outside contract

"No provision in the rules or elsewhere of an insurance company or fraternal order which was not physically embodied in the policy or application should be regarded as a part of the contract." *Brotherhood of Railroad Trainmen v. Groves* (48 App. D. C. 151, certiorari denied 39 S. Ct. 184, 248 U. S. 587, 63 L. Ed. 434).

#### Purpose

Purpose in adopting this section was to compel insurance companies, whether old line or fraternal, to state the entire contract either in the policy or the policy and application, so that the insured would be able to find the terms defining his obligations and rights as a policyholder in not more than two papers. *Brotherhood of Railroad Trainmen v. Groves* (1918, 48 App. D.C. 151, certiorari denied 39 S. Ct. 184, 248 U.S. 587, 63 L. Ed. 434).

#### Reinstatement of policies

This provision applies to an application for the reinstatement of a lapsed policy. *Metropolitan Life Ins. Co. v. Burch* (1912, 39 App. D.C. 397).

### § 35-204. Principal office to be in District of Columbia—Keeping and removing of records—Reincorporation of companies chartered by special acts—Penalties—Prosecutions.

Any corporation now or hereafter formed or organized under any provision of law in force and effect in the District of Columbia to engage in an insurance business shall maintain its principal office within said District and shall keep its books, records, and files therein, and shall not remove from said District either its principal office or its books, records, or files without the permission of the Commissioner of the District of Columbia first had and obtained: *Provided, however*, That nothing contained in this section shall be construed to apply to the books, records, and files of any such corporation kept in a branch-office agency of such corporation, which books, records, and files relate solely to the business transacted by the said branch-office agency: *And provided further*, That any insurance corporation created by special Act of Congress is authorized upon resolution of its board of directors or trustees to reincorporate under the laws of any State of the United States, a certified copy of such resolution of such board of directors or trustees having first been filed in the office of the Superintendent of Insurance of the District of Columbia and recorded in the office of the Recorder of Deeds of the District of Columbia. Upon compliance with the above conditions, the assets of the said corporation shall thereby become vested in the new corporation. Said new corporation shall faithfully carry out any and every right, obligation, and liability of said original corporation.

Any corporation violating any of the provisions of this section shall forthwith forfeit its charter, which forfeiture shall operate as a revocation of its license to do business within said District.

Any officer, agent, or employee of any such corporation who shall violate any of the provisions of this section shall be guilty of a misdemeanor and

upon conviction shall pay a fine of not less than \$300 or be imprisoned for not more than ninety days, or by both such fine and imprisonment. All prosecutions under this section shall be upon information filed in the Superior Court of the District of Columbia in the name of the District of Columbia by the corporation counsel thereof or any of his assistants. (Mar. 3, 1901; ch. 854, § 657a, as added; May 17, 1932, 47 Stat. 158, ch. 189; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### CODIFICATION

These provisions were added to Chapter 18 of the Code of Law of the District of Columbia, act Mar. 3, 1901, ch. 854, without section designation. Designation as § 657a supplied by codifier.

#### AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Pub. L. 91-358, struck out "District of Columbia Court of General Sessions" and inserted in lieu thereof "Superior Court of the District of Columbia".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding § 11-101.

#### CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan, and note under § 35-202.

#### TRANSFER OF FUNCTIONS

Reorg. Ord. 43, Part VIII, set out in the appendix to title 1, delegates to the Superintendent of Insurance the function of granting or denying permission to remove from the District of Columbia, the principal office, books, records and files of an insurance company.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1202.

### § 35-205. Compensation insurance regulations—Facts to be filed with Superintendent of Insurance—Approval required—Withdrawal of approval—Petition for review—Time for filing.

Every insurance corporation or association authorized to transact business in the District of Columbia, which insures employers against liability for compensation under the Employees' Compensation Act, shall file with the Superintendent of Insurance its manual of classifications and underwriting rules, together with basic rates for each class, and also merit rating plans designed to modify the class rates, none of which shall take effect until the Superintendent of Insurance shall have approved the same as adequate and reasonable for the group of risks to which they respectively apply. The Superintendent of Insurance may withdraw his approval of any premium rate or schedule made by any insurance corporation or association, if, in his judgment, such premium rate or schedule is inadequate or unreasonable: *Provided*, That upon petition of the company or association or any other party aggrieved the opinion of the



Superintendent of Insurance shall be subject to review by the Superior Court of the District of Columbia: *Provided further*, That any petition for review shall be filed with said court within thirty days after the rendition of opinion by the Superintendent of Insurance. (Mar. 3, 1901, ch. 854, § 657b, as added; April 16, 1934, 48 Stat. 592, ch. 144; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91-358, title I, § 155 (c) (36), 84 Stat. 572.)

#### REFERENCE IN TEXT

Employees' Compensation Act, referred to in the text, probably refers to §§ 36-501, 36-502, which made the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) applicable in the District of Columbia.

#### CODIFICATION

These provisions were added to Subchapter 5 of Chapter 18 of the Code of Law of the District of Columbia, act Mar. 3, 1901, ch. 854, without section designation. Designation as § 657b supplied by codifier.

#### AMENDMENT

1970—Section 155(c) (36) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1202.

### SUBCHAPTER II.—DOMESTIC STOCK INSURANCE COMPANIES

#### § 35-221. Definition.

As used in this subchapter, unless the context otherwise requires, "domestic stock insurance company" means a stock insurance company incorporated or organized under the laws of the District of Columbia. (Apr. 18, 1966, 80 Stat. 123, Pub. L. 89-402, § 1.)

#### § 35-222. Rules and regulations—Revocation or suspension of certificate—Notice and hearing—Penalties—Exemption of certain companies.

(a) The District of Columbia Council shall promulgate rules and regulations with respect to the solicitation and voting of proxies, consents, and authorizations of domestic stock insurance companies in conformity, as nearly as may be practicable, with those prescribed by the National Association of Insurance Commissioners. The Superintendent of Insurance (hereinafter "Superintendent") shall have power to revoke or suspend the certificate of authority to transact business in the District of Columbia of any such company which has failed or refused to comply with the rules and regulations promulgated by the Council.

(b) The Superintendent shall not revoke nor suspend the certificate of authority of any such company until he has given the company not less than thirty days' notice of the proposed revocation or suspension and of the grounds alleged therefor, and has afforded the company an opportunity for a full hearing: *Provided*, That if the Superintendent shall find upon examination that the further transaction of business by the company would be hazardous to the public or to the policyholders or creditors of the company in the District, he may suspend such authority without giving notice as herein required: *Provided further*, That in lieu of revoking or suspending the certificate of authority of any company, after hearing as herein provided, the Superintendent may subject such company to a penalty of not more than \$500 when, in his judgment, he finds that the public interest would be best served by the continued operation of the company. The amount of any such penalty shall be paid by the company through the office of the Superintendent to the Commissioner of the District of Columbia. At any hearing provided by this section, the Superintendent shall have authority to administer oaths to witnesses. Anyone testifying falsely after having been administered such an oath shall be subject to the penalties of perjury.

(c) The provisions of subsections (a) and (b) of this section shall not apply to securities of a domestic stock insurance company if such securities shall be registered, or shall be required to be registered, pursuant to section 12 of the Securities Exchange Act of 1934, as amended (15 U.S.C. § 78l). (Apr. 18, 1966, 80 Stat. 123, Pub. L. 89-402, § 2.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(418) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners under subsection (a) with respect to promulgating rules and regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### CROSS REFERENCES

Administrative procedure, see § 1-1501 et seq.  
Judicial review, see § 1-1510, 11-722.

#### § 35-223. Registration requirements of beneficial owners, directors, etc.—Sales restriction—Definition—Exemption—Rules and regulations—Penalty—Effective date of section.

(a) Every person who is directly or indirectly the beneficial owner of more than 10 per centum of any class of any equity security of a domestic stock insurance company, or who is a director or an officer of such company, shall file in the office of the Superintendent on or before the 31st day of December 1965, or within ten days after he becomes such beneficial owner, director, or officer, a statement, in such form as the Superintendent may prescribe, of the amount of all equity securities of such company of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file in the office of the



Superintendent a statement, in such form as the Superintendent may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

(b) For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to such company, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such company within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company, or by the owner of any security of the company in the name and in behalf of the company if the company shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two years after the date such profit was realized. This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the District of Columbia Council by rules and regulations may exempt as not comprehended within the purpose of this section.

(c) It shall be unlawful for any such beneficial owner, director, or officer, directly or indirectly, to sell any equity security of such company if the person selling the security or his principal (i) does not own the security sold, or (ii) if owning the security, does not deliver it against such sale within twenty days thereafter, or does not within five days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this section if he proves that, notwithstanding the exercise of good faith, he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

(d) The provisions of subsection (b) of this section shall not apply to any purchase and sale, or sale and purchase, and the provisions of subsection (c) of this section shall not apply to any sale, of an equity security of a domestic stock insurance company not then or theretofore held by him in an investment account, by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security. The District of Columbia Council may, by such rules and regulations as it deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to

securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

(e) The provisions of subsections (a), (b), and (c) of this section shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the District of Columbia Council may adopt in order to carry out the purposes of this section.

(f) The term "equity security" when used in this section means any stock or similar security; or any security convertible with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the District of Columbia Council shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security.

(g) The provisions of subsections (a), (b), and (c) of this section shall not apply to securities of a domestic stock insurance company if (i) such securities shall be registered, or shall be required to be registered, pursuant to section 12 of the Securities Exchange Act of 1934, as amended (15 U.S.C. § 78l), or if (ii) such domestic stock insurance company shall not have any class of its equity securities held of record by one hundred or more persons on the last business day of the year next preceding the year in which equity securities of the company would be subject to the provisions of subsections (a), (b), and (c) of this section except for the provisions of this subsection (g) (ii).

(h) The District of Columbia Council shall make such rules and regulations as may be necessary for the execution of the functions vested in the Superintendent by subsections (a) through (g) of this section, and may for such purpose classify domestic stock insurance companies, securities, and other persons or matters within his jurisdiction. No provisions of subsection (a), (b), or (c) of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the Council notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

(i) Any person who willfully violates any provision of this section, or any rule or regulation thereunder the violation of which is made unlawful by this section or the observance of which is required under the terms of this section, or any person who willfully and knowingly makes, or causes to be made, any statement in any application, report, or document required to be filed under this section, which statement was false or misleading with respect to any material fact, shall upon conviction be fined not more than \$1,000, or be imprisoned not more than thirty days, or both.

(j) This section shall take effect thirty days after April 18, 1966. (Apr. 18, 1966, 80 Stat. 123, Pub. L. 89-402, § 3.)



## REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (d) of this section, is classified to 15 U.S.C. §§ 77b—77e, 77j, 77k, 77m, 77o, 77s, 78a—78o, 78o-3, and 78p—78hh. The definition of an exchange appears in 15 U.S.C. § 78c.

## TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(419 to 421) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the functions of the Board of Commissioners of, by rules and regulations, exempting a transaction or transactions, under the last sentence of subsec. (b); of, by rules and regulations, defining and prescribing terms and conditions under the last sentence of subsec. (d); and of adopting, prescribing, and making the rules and regulations referred to in subsecs. (e), (f), and (h); to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

## § 35-224. Preservation of authority—Delegation of functions.

Nothing in this subchapter shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this subchapter in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan. (Apr. 18, 1966, 80 Stat. 125, Pub. L. 89-402, § 4.)

## REFERENCES IN TEXT

Reorganization Plan No. 5 of 1952 (66 Stat. 824), referred to in this section, is also set out in the Appendix to title 1.

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## CROSS REFERENCE

Authority of District Commissioner to delegate functions vested in him by Reorg. Plan No. 3 of 1967, see § 305 of the Plan set forth in the Appendix to Title 1.

## Chapter 3.—LIFE INSURANCE—DEFINITIONS

Sec.

35-301. Short title—Application of law.  
35-302. Definitions.

## CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 26-610, 35-301, 35-302, 35-405, 35-412, 35-415 to 35-417, 35-426, 35-428, 35-431, 35-503, 35-508, 35-511, 35-513, 35-518 to 35-523, 35-528, 35-529, 35-534, 35-540, 35-601, 35-602, 35-709, 35-719, 35-801, 35-803, 35-1612.

§ 35-301. Short title—Application of law.

Chapters 3 to 8 of this title shall be known as the "Life Insurance Act." All life-insurance companies now or hereafter incorporated or formed by authority of any general or special law of this District or by other Act of Congress, and all foreign and alien companies authorized to do business in this District, shall be subject to said chapters. (June 19, 1934, 48 Stat. 1127, ch. 672, Ch. I, § 1.)

## EFFECTIVE DATE

Section 5 of Ch. VI of act June 19, 1934, provided that: "This Act [chapters 3 to 8 of this title] shall become effective immediately upon passage and approval [June 19, 1934]."

## REPEAL OF INCONSISTENT PROVISIONS

Section 4 of Ch. VI of act June 19, 1934, provided that: "All laws or parts of laws insofar as they relate to life insurance companies and the conduct of life insurance business, and in conflict with any of the provisions of this Act [chapters 3-8 of this title] are hereby repealed."

## CROSS REFERENCE

Application to existing companies, see § 35-520.

## NOTES TO DECISIONS

## Navy Mutual Aid Association

The Navy Mutual Aid Association formed to aid families of deceased members, by providing a substantial sum for their relief at as near actual net cost of insurance as possible, and by securing for them without cost, pensions to which they may be entitled, was subject to the provisions of the Life Insurance Act, chapters 3 to 8 of this title, but not subject to the tax on insurance companies. *Fechtelner et al. v. Jordan* (1955, 218 F. 2d 865, 95 U. S. App. D. C. 54).

## § 35-302. Definitions.

In chapters 3-8 of this title, unless the context otherwise requires—

"District" means the District of Columbia;

"Commissioner" means the Commissioner of the District of Columbia;

"Superintendent" means the Superintendent of Insurance of the District of Columbia, or the officer or officers, agency or agencies succeeding to his functions under Reorganization Plan Numbered 5 of 1952.

"Department" means the Department of Insurance of the District of Columbia;

"Company" means any life insurance company and includes a corporation, company, or association of persons engaged in or proposing to engage in the business of life insurance;

"Domestic company" means an insurance company organized under the laws of the District, or formed or organized under an Act of Congress;

"Foreign company" means an insurance company organized under the laws of any State of the United States, or of any Territory or insular possession of the United States;

"Alien company" means a company organized under the laws of any country other than the United States or a Territory or insular possession thereof;

"Person" includes individuals, corporations, associations, and partnerships; personal pronouns include all genders; the singular includes the plural, and the plural includes the singular;

The term "general agent" in chapters 3-8 of this title shall include an individual, copartnership, or corporation authorized in writing by a company, association, or exchange to solicit risks and collect premiums, and/or issue policies in its behalf.

The term "agent" in chapters 3-8 of this title shall include an individual, copartnership, or corporation authorized in writing by a company, association, or exchange to solicit risks and collect premiums in its behalf.

The term "solicitor" in chapters 3-8 of this title shall include any individuals authorized in writing by a duly-licensed agent to solicit risks and collect premiums in behalf of said agent.



The terms "agent" and "solicitor" shall not include officers or salaried employees of any company, association, or exchange which is authorized to transact business in the District, who do not solicit, negotiate, or place risks.

The term "broker" in chapters 3-8 of this title shall include consultant, surveyor and/or any person, partnership, association, or corporation who, for money, commission, or anything of value, acts or aids in any manner on behalf of the insured in negotiating contracts of insurance or placing risks or taking out insurances, including surety bonds;

"Net premium receipts" means gross premiums received less the sum of the following:

1. Premiums returned on policies canceled or not taken;

2. Premiums paid for reinsurances where the same are paid to companies duly licensed to do business in the District; and

3. Dividends paid in cash or used by policyholders in payment of renewal premiums or in purchase of paid-up additional insurance.

"Surplus" means the excess of admitted assets over liabilities and capital, in the case of a company with capital stock, and the excess of admitted assets over liabilities in the case of a company without capital stock;

"Liabilities" means all debts, due or to become due, contingent or otherwise, of which the company has knowledge, and includes the reserves required by chapters 3-8 of this title;

"Industrial life insurance" means that form of life insurance, either (a) under which the premiums are payable weekly, or (b) under which the premiums are payable monthly or oftener, if the face amount of insurance provided in the policy is less than \$1,000, and the words "industrial policy" are plainly printed upon the policy as a part of the descriptive matter. (June 19, 1934, 48 Stat. 1128, ch. 672, ch. I, § 2; July 16, 1953, 67 Stat. 172, ch. 196, § 2.)

#### AMENDMENT

1953—Act July 16, 1953, included in the definition of "Superintendent", officers or agencies succeeding to his functions under Reorg. Plan Numbered 5 of 1952.

#### EFFECTIVE DATE OF 1953 AMENDMENT

Section 3 of act July 16, 1953, provided that: "This Act [amending §§ 35-302 and 35-712] shall take effect ninety days after approval [July 16, 1953]. A policy, rider, or endorsement, which could have been lawfully used or delivered or issued for delivery to any person in the District immediately before the effective date of this Act, may be used or delivered or issued for delivery to any such person during three years after the effective date of this Act without being subject to the provisions of subsection (2), (3), or (4) of section 12 [§ 35-712]; *Provided, however*, That when any provision in such policy is in conflict with any provision of such section, the obligations of the insurer shall be governed by the provisions of such section."

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

### Chapter 4.—DEPARTMENT OF INSURANCE WITH RESPECT TO LIFE COMPANIES

Sec.

35-401. Insurance department—Superintendent of Insurance—Oath—Bond—Assistants—Seal—Sealed instruments as evidence—Annual report—Attendance at conventions—Visits—Expenses.

Sec.

- 35-402. Fees and charges.
- 35-403. Refunds of excess in fees, charges, or taxes.
- 35-404. Certificate of authority—Investigation of Qualifications—Effect—Issuance.
- 35-405. Revocation or suspension of certificate of authority—Notice—Alternate Penalty—Oaths.
- 35-406. Annual statement forms to be furnished by superintendent.
- 35-407. Annual statement—Verification—Failure to make.
- 35-408. Penalty for false statement.
- 35-409. Deceptive statements prohibited.
- 35-410. Contents of advertisements of alien companies—Penalty for violation.
- 35-411. Defamation of companies—Penalty.
- 35-412. Superintendent to have power to issue subpoenas—Enforcement.
- 35-413. Enforcement of superintendent's orders or actions.
- 35-414. False statements in application for insurance.
- 35-415. General deposit—Amount—Deposits outside District.
- 35-416. Custody of general deposits—Collection of income—Substitution of securities—Required securities.
- 35-417. Withdrawal of general deposits—Notice—Examination—Bond—Reinsurance—Notice.
- 35-418. Examinations—Reports—Verification—Hearing upon—Publication—Expense.
- 35-419. Superintendent may take possession of property of company and conduct its business—Conditions precedent—Procedure—Injunction—Resumption of possession by company—Order for liquidation—Appointment of deputies—Expense of liquidation—Bond—Annual report.
- 35-420. When company to be deemed insolvent.
- 35-421. Reinsurance by superintendent.
- 35-422. Valuation of assets—Rule—Discretion of superintendent.
- 35-423. Superintendent as attorney for service of process—Superintendent to mail process to company—Acceptance of certificate is appointment—Failure—Penalty.
- 35-424. Political contributions prohibited—Penalty—Immunity of witnesses.
- 35-425. General agent, agent, solicitor—License required—Application—Contents—Applicant vouched for by company—Placement of excess or rejected risks—Expiration and renewal of license—Officers and traveling salaried employees excepted—Notice of termination of employment—Information privileged.
- 35-426. Suspension or revocation of license—Grounds for—Hearing—Penalty.
- 35-427. Appeal from rulings of superintendent—Procedure—Costs and supersedeas bond—Liability of superintendent.
- 35-428. Brokers—License—Application—Contents—Person vouched for—Examination—Issuance—Effect of revocation—Appeal from refusal to issue—Renewal annually—Penalty for violation.
- 35-429. Premiums paid to agent—Agent trustee—Embezzlement—Penalty.
- 35-430. Contract of minors for life, health, and accident insurance—Beneficiaries—Surrender and discharge.
- 35-431. Assessment companies shall not be formed, admitted, or licensed.
- 35-432. Appeal from superintendent to Commissioner.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 26-610, 35-301, 35-302, 35-405, 35-412, 35-415 to 35-417, 35-426, 35-428, 35-431, 35-503, 35-508, 35-511, 35-513, 35-518 to 35-523, 35-528, 35-529, 35-534, 35-540, 35-601, 35-602, 35-709, 35-719, 35-801, 35-803, 35-1612.

§ 35-401. Insurance department—Superintendent of Insurance—Oath—Bond—Assistants—Seal—Sealed instruments as evidence—Annual report—Attendance at conventions—Visits—Expenses.

There shall be continued in the District a department charged with the execution of the laws relating



to insurance, to be called the "Department of Insurance of the District of Columbia." At the head of such department there shall be a Superintendent of Insurance, who shall devote his entire service to the department. He shall be appointed by and hold his office at the pleasure of the Commissioner. The superintendent, during his term of office, shall not be interested in the business of any insurance company except as a policyholder. He shall take and subscribe an oath of office which shall be filed with the Commissioner. In said department there shall be also two deputy superintendents and such other personnel as may be necessary within appropriations annually made by Congress for said department. The compensation of the superintendent, deputy superintendents, and other personnel shall be fixed in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters].

In case of the absence or inability of the superintendent, or in the event of the removal of the superintendent, and pending the appointment of his successor, one of the deputy superintendents shall perform the duties of the superintendent.

The Commissioner shall provide the department with an official seal, which shall be the seal of the District of Columbia surrounded by a border in which shall appear "Department of Insurance of the District of Columbia."

Every certificate and other document or paper executed by such superintendent, or his deputies, in pursuance of any authority conferred upon him by law and sealed with the seal of his office, and all copies of papers certified by him or by his deputies and authenticated by said seal, shall, in all cases, be evidence equally and in like manner as the original thereof and shall have the same force and effect as would the original in any suit or proceeding in any court of this District.

The office of the superintendent shall be a public office, and the records, books, and papers thereof on file therein shall be public records of the District, except as it may be provided otherwise herein.

The superintendent shall report annually to the Commissioner his official transactions, and shall include in such report abstracts of the annual statements of the several companies and an exhibit of the financial condition and business transactions of the same as shown by their annual statements. He shall also include therein a statement of the receipts and expenditures of the department for the preceding year and such recommendations relative to insurance and the insurance laws of the District as he shall deem proper.

The superintendent is authorized to attend and participate in the meetings of the national convention of insurance commissioners and of the committees thereof; he is also authorized to visit the insurance departments of the various states when in his judgment such visits are necessary for the proper conduct of his official office; and he may require such of his assistants as he may designate to attend and participate in such meetings, all subject to the prior approval of the Commissioner. The actual expense

of such attendance by the superintendent and his assistants shall be paid in like manner as other expenses of the District are paid. (June 19, 1934, 48 Stat. 1129, ch. 672, ch. II, § 1; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a).)

#### CODIFICATION

The reference in this section to "chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89-554, set out in note under § 1-251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

#### AMENDMENT

1949—Act Oct. 28, 1949, § 1106(a), which was a part of the Classification Act of 1949, and which has since been repealed, substituted "Classification Act of 1949" for "Classification Act of 1923". See codification note above.

#### EFFECTIVE DATE

Chapter effective June 19, 1934, see section 5 of Ch. VI of act June 19, 1934, set out as a note under section 35-301.

#### ABOLITION OF DEPARTMENT AND TRANSFER OF FUNCTIONS

See note under § 35-101.

#### CROSS REFERENCE

Application to existing companies, see § 35-520.

#### § 35-402. Fees and charges.

All charges and fees provided for in this section shall be paid to the collector of taxes of the District of Columbia and deposited in the treasury of the United States to the credit of the District.

For filing charter or articles of incorporation or association, or deed of settlement or copy thereof, required by law, \$10; for each company certificate of authority, \$10; for license of each general agent, \$50; for license of each agent or solicitor, \$5; for license of each broker, \$50. All licenses for brokers, insurance companies, their agents or solicitors, who may apply for permission to do business in the District of Columbia, shall date from the first of the month in which application is made and expire on the 30th day of April following, and payment shall be made in proportion. (June 19, 1934, 48 Stat. 1130, ch. 672, Ch. II, § 2.)

#### TRANSFER OF FUNCTIONS

The Office of the Collector of Taxes was abolished and the functions thereof transferred, see note under § 47-301.

#### CROSS REFERENCES

Licensing,

Agents, see § 35-425 et seq.

Brokers, see § 35-428.

Taxation and fiscal affairs of insurance companies, see § 47-1801 et seq.

#### § 35-403. Refunds of excess in fees, charges, or taxes.

Whenever it appears to the satisfaction of the superintendent that because of some error, mistake, or erroneous interpretation of a statute, a company has paid fees, charges, or taxes in excess of the amount legally chargeable against it, the superintendent shall, on application of the company, present the matter to the Commissioner, with the view of refunding to such company any such excess, or apply-



ing the excess or portion thereof toward the payment of fees, charges, or taxes already due from such company. (June 19, 1934, 48 Stat. 1131, ch. 672, Ch. II, § 4.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan and note under § 35-101.

#### CROSS REFERENCE

Tax refunds, general provisions, see § 47-1016 et seq.

### § 35-404. Certificate of authority—Investigation of Qualifications—Effect—Issuance.

It shall be the duty of the Superintendent to issue a certificate of authority to a company when it shall have complied with the requirements of the laws of the District so as to be entitled to do business therein. The Superintendent may, however, satisfy himself by such investigation as he may deem proper or necessary that such company is duly qualified under the laws of the District to transact business therein, and may refuse to issue or renew any such certificate to a company if the issuance or renewal of such certificate would adversely affect the public interest. In each case the certificate shall be issued under the seal of the Superintendent, authorizing and empowering the company to transact the kind or kinds of business specified in the certificate, and each such certificate shall be made to expire on the thirtieth day of April next succeeding the date of its issuance. No company shall transact any business of insurance in or from the District until it shall have received a certificate of authority as authorized by this section and no company shall transact any business of insurance not specified in such certificate of authority. (June 19, 1934, 48 Stat. 1131, ch. 672, Ch. II, § 5; Feb. 22, 1958, 72 Stat. 19, Pub. L. 85-334, § 1.)

#### AMENDMENT

1958—Act Feb. 22, 1958, authorized the Superintendent to refuse issuance or renewal of certificates, set an annual expiration date for such certificates, and made the section apply to business transacted from the District.

#### OFFICE OR AGENCY ABOLISHED BY REORGANIZATION PLAN NUMBER 5 OF 1952

Section 11 of act Feb. 22, 1958, Pub. L. 85-334, provides as follows:

"Where any provision of this Act [§§ 35-404, 35-415, 35-426, 35-1306, 35-1334, 35-1336, 35-1339, 35-1340, 35-1342, 35-1343] or any amendment made by this Act refers to an office or agency abolished by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), such provision or amendment shall be deemed to refer to the Commissioners of the District of Columbia or to the office, officer, or agency which the Commissioners have heretofore designated or may hereafter designate to perform the functions of the office or agency so abolished."

#### CROSS REFERENCES

Assessment companies forbidden, see § 35-431.

D.C. Council may regulate, modify, or eliminate license requirements and promulgate regulations, see § 47-2344.

Revocation of certificate of authority, see § 35-405.

#### NOTES TO DECISIONS

##### Engaging in insurance

Statutes regulating business of insurance were not intended for application to all organizations having some element of risk assumption or distribution in their operations. *Metropolitan Police Retiring Ass'n Inc. v. W. N. Tobriner et al.* (1962, 306 F. 2d 775, 113 U.S. App. D.C. 168).

The legislation relating to insurance in District of Columbia is so elaborate that court is not inclined to strain its coverage to include an activity left uncovered by the ordinary meaning of language used. *Id.*

The absence of a profit motive and facts that Metropolitan Police Retiring Association possesses a representative government and engages in no solicitation of the public, add some though not controlling support to review that its activities are not within scope of statute primarily designed to protect insured vis-a-vis the insurer. *Id.*

Where Metropolitan Police Retiring Association was incorporated as a charitable organization, membership was limited to members of Metropolitan Police Department, the White House Police, and Park Police, purpose of association was to furnish financial relief to members in case of their retirement from police force, payments upon retirement were principally the amounts of retirees' own contributions with some increment of interest from investments which were required to be approved by majority of board of directors and by majority vote of membership in regular session, association was not engaged in "insurance" and hence was not required to obtain certificate of authority from Superintendent of Insurance. *Id.*

##### Jurisdiction

The United States District Court for District of Columbia, as local court of general jurisdiction, had jurisdiction without express statutory authorization to review administrative action by trial de novo. *A. F. Jordan, Sup't of Insurance etc. v. United Insurance Co. of America* (1961, 288 F. 2d 778, 110 U.S. App. D.C. 112).

##### License requirements

Insurer who seeks licenses under the Life Insurance Act and the Fire and Casualty Act bears responsibility of satisfying the more stringent requirement regardless of which statute prescribes it, and if two certificates are issued, each must stand on its own feet. *Travelers Insurance Co. v. A. F. Jordan, Dep't of Insurance etc.* (1961, 287 F. 2d 347, 109 U.S. App. D.C. 308).

Life Insurance Act of District of Columbia and Fire and Casualty Act do not prohibit issuance of certificate or certificates authorizing a single insurer to do both life and casualty insurance business. *Id.*

##### Superintendent's authority

Statute authorizing District of Columbia Superintendent of Insurance, upon satisfying himself by such investigation as he may deem proper or necessary, to refuse to issue or renew certificate, does not authorize superintendent to hold hearing, and grant of hearing by him on question of renewal of certificate was gratuitous. *A. F. Jordan, Sup't of Insurance etc. v. United Insurance Co. of America* (1961, 289 F. 2d 778, 110 U.S. App. D.C. 112).

##### Trial de novo

It was proper for District Court to grant trial de novo, rather than merely reviewing administrative record, in insurer's action against District of Columbia Superintendent of Insurance to set aside ruling denying renewal of certificate of authority, where statutes did not provide for administrative hearing, notwithstanding fact that superintendent had granted one. *A. F. Jordan, Sup't of Insurance etc. v. United Insurance Co. of America* (1961, 289 F. 2d 778, 110 U.S. App. D.C. 112).

### § 35-405. Revocation or suspension of certificate of authority—Notice—Alternate Penalty—Oaths.

The Superintendent shall have power to revoke or suspend the certificate of authority to transact business in the District of any company which has failed or refused to comply with any provision or requirement of chapters 3—8, or which—

(a) is impaired in capital or surplus;

(b) is insolvent;

(c) is in such a condition that its further trans-action of business in the District would be hazardous to its policyholders or creditors or to the public;



(d) has refused or neglected to pay a valid final judgment against such company within thirty days after such judgment shall have become final either by expiration without appeal within the time when such appeal might have been perfected, or by final affirmation on appeal;

(e) has violated any law of the District or has in the District violated its charter or exceeded its corporate powers;

(f) has refused to submit its books, papers, accounts, records, or affairs to the reasonable inspection or examination of the Superintendent, his deputies, or duly appointed examiners;

(g) has an officer who has refused upon reasonable demand to be examined under oath touching its affairs;

(h) fails to file with the Superintendent a copy of an amendment to its charter or articles of association within thirty days after the effective date of such amendment;

(i) has had its corporate existence dissolved or its certificate of authority revoked in the State in which it was organized;

(j) has had all its risks reinsured in their entirety in another company, without prior approval of the Superintendent; or

(k) has made, issued, circulated, or caused to be issued or circulated any estimate, illustration, circular, or statement of any sort misrepresenting either its status or the terms of any policy issued or to be issued by it, or the benefits or advantages promised thereby, or the dividends or shares of the surplus to be received thereon, or has used any name or title of any policy or class of policies misrepresenting the true nature thereof.

The Superintendent shall not revoke or suspend the certificate of authority of any company until he has given the company not less than thirty days' notice of the proposed revocation or suspension and of the grounds alleged therefor, and has afforded the company an opportunity for a full hearing: *Provided*, That if the Superintendent shall find upon examination that the further transaction of business by the company would be hazardous to the public or to the policyholders or creditors of the company in the District, he may suspend such authority without giving notice as herein required: *Provided further*, That in lieu of revoking or suspending the certificate of authority of any company for causes enumerated in this section, after hearing as herein provided, the Superintendent may subject such company to a penalty of not more than \$200 when in his judgment he finds that the public interest would be best served by the continued operation of the company. The amount of any such penalty shall be paid by the company through the office of the Superintendent to the Collector of Taxes of the District of Columbia. At any hearing provided by this section, the Superintendent shall have authority to administer oaths to witnesses. Anyone testifying falsely after having been administered such an oath shall be subject to the penalties of perjury. (June 19, 1934, 48 Stat. 1131, ch. 672, Ch. II, § 6; May 4, 1950, 64 Stat. 103, ch. 157, §1; Feb. 22, 1958, 72 Stat. 20, Pub. L. 85-334, § 2.)

#### AMENDMENTS

1958—Act Feb. 22, 1958, amended section generally, and among other changes, authorized suspension as well as revocation, and added provisions relating to transaction of business in the District when hazardous to policyholders, creditors or the public, refusal or neglect to pay final judgments, failure to file amendment to charter or articles of association, dissolution or revocation of certificate of authority in State in which organized, reinsurance of all risks in their entirety, misrepresentations of company status or the terms, name or title of any policy or class of policy issued or to be issued, or of dividends or shares of surplus distributable thereon, authorized the Superintendent to administer oaths to witnesses at hearings, and made violation of such oath punishable as perjury.

1950—Act May 4, 1950, added the proviso relating to penalties in lieu of revoking certificate.

#### EFFECTIVE DATE OF 1950 AMENDMENT

Section 8 of act May 4, 1950, provided that: "This Act [amending §§ 35-405, 35-426, 35-431, 35-508, 35-601(h), 35-722 to 35-724, and repealing § 35-532] shall take effect ninety days after the date of enactment [May 4, 1950]."

#### TRANSFER OF FUNCTIONS

The Office of the Collector of Taxes was abolished and the functions thereof transferred, see note under § 47-301.

#### OFFICE OR AGENCY ABOLISHED BY REORGANIZATION PLAN NUMBER 5 OF 1952

References in act Feb. 22, 1958, to any office or agency abolished by Reorg. Plan No. 5 of 1952 are deemed to refer to the Commissioners of the District, or to any office, officer or agency designated by them, see note under § 35-404.

#### CROSS REFERENCES

Administrative procedure, see § 1-1501 et seq.

Judicial review, see § 1-1510, 11-722.

Perjury, see § 22-2501.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1611.

#### NOTES TO DECISIONS

##### Evidence—Sufficiency

Evidence was insufficient to support finding of Superintendent of Department of Insurance, in revoking insurer's certificate of authority to transact business, that the insurer through its principal officers caused issuance of printed material misrepresenting status of corporation which they had organized for declared purpose of assisting senior citizens in acquiring low cost hospital insurance. *Union Fidelity Life Insurance Company v. District of Columbia Department of Insurance* (D.C. App. 1972, 295 A. 2d 62).

#### § 35-406. Annual statement forms to be furnished by superintendent.

The superintendent shall, annually, in the month of December, furnish to each of the companies authorized to do business in the District and required to make an annual statement to the Department two or more blanks in form adapted for such statements, and which shall conform as nearly as may be practicable to the form of statement from time to time adopted by the national convention of insurance commissioners. (June 19, 1934, 48 Stat. 1132, ch. 672, Ch. II, § 7.)

#### CROSS REFERENCE

Taxation and fiscal affairs of insurance companies, see § 47-1801 et seq.

#### § 35-407. Annual statement—Verification—Failure to make.

Every company doing business in the District shall file with the superintendent before March 1 in each



year a financial statement for the year ending December 31, immediately preceding, on forms furnished by the superintendent. Such statement shall be verified by the oaths of the president and secretary of the company, or, in their absence, by two other principal officers. The statement of an alien company shall embrace only its condition and transactions in the United States and shall be verified by the oath of its resident manager or principal representative in the United States. If any such company shall fail to file the annual statement herein required, the Superintendent may thereupon revoke its certificate of authority to transact business in the District of Columbia. The District of Columbia Council shall also have power to require that at least once in the month of March in each year a summary of such annual statement shall be published by the company in a daily newspaper published in the District. (June 19, 1934, 48 Stat. 1132, ch. 672, Ch. II, § 8; Dec. 5, 1963, 77 Stat. 347, Pub. L. 88-193, § 1.)

#### AMENDMENT

1963—Act Dec. 5, 1963, amended section by striking the last sentence and adding thereto two new sentences beginning with the words "If any" and ending with the word "District."

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(270) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of requiring, under this section, that at least once in the month of March in each year a summary of the annual financial statement filed thereunder be published in a daily newspaper, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

#### CROSS REFERENCES

Reports by companies issuing variable contracts, see § 35-541.

Taxation and fiscal affairs of insurance companies, see § 47-1801 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-419, 35-541.

#### § 35-408. Penalty for false statement.

A director, officer, agent, or employee of any company who wilfully and knowingly subscribes, makes, or concurs in making or publishing any annual or other statement required by law, containing any material statement which is false, shall, upon conviction thereof, be punished by imprisonment in the penitentiary for not less than two nor more than ten years. A person who wilfully and knowingly makes oath to any such false statement shall be guilty of perjury. (June 19, 1934, 48 Stat. 1132, ch. 672, Ch. II, § 9.)

#### CROSS REFERENCE

Taxation and fiscal affairs of insurance companies, see § 47-1801 et seq.

#### § 35-409. Deceptive statements prohibited.

No company doing business in the District or agent thereof shall state or represent by advertisement in any newspaper, periodical, or magazine, or by any sign, circular, card, policy of insurance, or certificate of renewal thereof or otherwise that any funds or

assets are in possession of such company which are not actually possessed by it and available for the payment of losses and claims and held for the protection of its policyholders and creditors. (June 19, 1934, 48 Stat. 1132, ch. 672, Ch. II, § 10.)

#### CROSS REFERENCES

Penalties for violation, see § 35-410.

Taxation and fiscal affairs of insurance companies, see § 47-1801 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-410.

#### § 35-410. Contents of advertisements of alien companies—Penalty for violation.

Every advertisement or public announcement and every sign, circular, or card issued by an alien company doing business in the District, representing its financial standing shall exhibit as capital stock and assets only the capital stock and assets held by its United States branch, the liabilities, including therein the premium and loss reserves required by law, and the amount of surplus, and shall correspond to the next preceding verified statement made by such company to the superintendent: *Provided, however,* That this section shall not be deemed to prevent an alien company from furnishing to its policyholders in the District of Columbia its annual report to policyholders of its domicile. This paragraph shall not apply to an alien company which maintains in the United States as required by law, assets held in trust for the benefit of the United States policyholders in an amount not less than the sum of its required capital deposit and the amount of its outstanding liabilities arising out of its insurance transactions in the United States.

Any violation of this section or section 35-409 shall be a misdemeanor, and any person convicted of such violation shall, for the first offense, be liable to a fine of not more than \$500, and for each subsequent offense shall be liable to a fine of not more than \$1,000. (June 19, 1934, 48 Stat. 1132, ch. 672, Ch. II, § 11; Dec. 5, 1963, 77 Stat. 347, Pub. L. 88-193, § 2; Sept. 7, 1966, 80 Stat. 705, Pub. L. 89-559, § 1; Aug. 8, 1968, Pub. L. 90-467, § 1, 82 Stat. 662.)

#### AMENDMENTS

1968—Act Aug. 8, 1968, Pub. L. 90-467, amended the first paragraph adding thereto the last sentence above set out beginning with the words "This paragraph shall not apply to an alien company etc..".

1966—Act Sept. 7, 1966, struck out first sentence of first paragraph, which required domestic, foreign, and alien insurance companies, in advertisements, public announcements, etc., to publish financial information which was from 1 year old to 14 months old, and thus to permit the publication of interim reports of operations and financial standings.

1963—Act Dec. 5, 1963, amended the section by adding at the end of the first paragraph the proviso clause.

#### § 35-411. Defamation of companies—Penalty.

It shall be unlawful for any company now or hereafter doing business in the District, or any officer, director, clerk, employee, general agent, agent, or solicitor thereof, broker or any other person, to make, verbally or otherwise, publish, print, distribute, or circulate, or cause the same to be done, or in any way to aid, abet, or encourage the making, printing, publishing, distributing, or circulating of, any pamphlet, circular, article, literature, or statement of any



kind which is defamatory of any company now or hereafter doing business in the District, or which contains any false criticism or false statement calculated to injure such company in its reputation or business; and any officer, director, clerk, employee, general agent, agent, or solicitor of any company, broker or any other person, violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than \$100. (June 19, 1934, 48 Stat. 1133, ch. 672, Ch. II, § 12.)

**§ 35-412. Superintendent to have power to issue subpoenas—Enforcement.**

In the examination of any company as provided for in chapters 3-8 of this title the superintendent shall have power to issue subpoenas in the name of the Chief Judge of the Superior Court of the District of Columbia to compel witnesses to appear and testify and/or to produce all books, records, papers, or documents before said superintendent.

If any witness having been personally summoned shall neglect or refuse to obey the subpoena issued as herein provided, then and in that event the superintendent may report that fact to the Superior Court of the District of Columbia, or one of the judges thereof, and said court, or any judge thereof, hereby is empowered to compel obedience to said subpoena to the same extent as witnesses may be compelled to obey the subpoenas of that court. (June 19, 1934, 48 Stat. 1133, ch. 672, Ch. II, § 13; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91-358, title I, § 155(c) (37) (A), 84 Stat. 572.)

**AMENDMENT**

1970—Section 155(c) (37) (A) of Act July 20, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

**EFFECTIVE DATE OF 1970 AMENDMENT**

See note preceding section 11-101.

**CHANGE OF NAME**

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia"; and "Chief Judge" for "Chief Justice", "judges" for "justices", and "judge" for "justice."

**§ 35-413. Enforcement of superintendent's orders or actions.**

The superintendent may, through the corporation counsel of the District, invoke the aid of any court of competent jurisdiction to enforce any order made or action taken by him in pursuance of law. (June 19, 1934, 48 Stat. 1133, ch. 672, Ch. II, § 14.)

**§ 35-414. False statements in application for insurance.**

The falsity of a statement in the application for any policy of insurance shall not bar the right to recovery thereunder unless such false statement was made with intent to deceive or unless it materially affected either the acceptance of the risk or the haz-

ard assumed by the company. (June 19, 1934, 48 Stat. 1133, ch. 672, Ch. II, § 15.)

**CROSS REFERENCES**

Form and contents of insurance contracts, see §§ 35-703 to 35-712.

Special provisions governing industrial policies, see § 35-1001 et seq.

**NOTES TO DECISIONS**

**Generally**

Where the insured stated in his application that he had not consulted a physician for any ailment or disease not included in his previous answers and that he had not consulted or been treated by a physician within the preceding five years, he was making a misrepresentation. Evidence shows as a matter of law that these misrepresentations materially affected either the acceptance of the risk or the hazard assumed by the company, or both. *Kaitlin v. Metropolitan Life Insurance Co.* (D. C. Mun. App. 1949, 65 A. 2d 188).

To avoid life policy under this section, the statement must be both false and made with intent to deceive or material to risk or its acceptance, unless possibly both intent to deceive and materiality are required in addition to falsity. *Prudential Ins. Co. of America v. Saxe* (1943, 134 F. 2d 16, 77 U. S. App. D. C. 144, certiorari denied 63 S. Ct. 1033, 319 U. S. 745, 87 L. Ed. 1701).

A misstatement in application for life policy to be "material to hazard assumed" within this section must be shown in some way to have affected the hazard assumed or contributed to the loss in a substantial manner. *Id.*

To void a life insurance policy on the ground of false representation, the answer must not only have been untrue, but it must have been with reference to a material matter. *Kaplan v. Manhattan Life Ins. Co.* (1940, 109 F. 2d 463, 71 App. D.C. 250).

**Burden of proof**

Under this section insurer has burden of proof as to elements indicated in order to avoid life policy. *Metropolitan Life Ins. Co. v. Adams* (D. C. Mun. App. 1944, 37 A. 2d 345).

Where insurer charged that insured prior to application for life policy had had duodenal ulcer, abnormal blood pressure, dizziness, loss of consciousness and kidney disease, and that in application he falsely denied their existence, to avoid life policy for material misrepresentation on account of answers, insurer had burden of proving one or more of them false. *Prudential Ins. Co. of America v. Saxe* (1943, 134 F. 2d 16, 77 U. S. App. D. C. 144, certiorari denied 63 S. Ct. 1033, 319 U. S. 745, 87 L. Ed. 1701).

**Change of beneficiary**

An erroneous statement in an application for change of beneficiary which does not relate to a material matter and is not made with intent to deceive, does not void a life policy. *Carter v. Provident Ins. Co.* (1941, 122 F. 2d 960, 74 App. D. C. 348).

**Conditions precedent**

The effect of this section enacted to prevent innocent and immaterial misrepresentations in application from avoiding insurance cannot be escaped by device of contracting to the contrary or labeling a contractual attempt to do so a condition to the attaching of the risk. *Prudential Ins. Co. of America v. Saxe* (1943, 134 F. 2d 16, 77 U. S. App. D. C. 144, certiorari denied 63 S. Ct. 1033, 319 U. S. 745, 87 L. Ed. 1701).

The purpose of this section regarding effect of false statement in application for insurance was to nullify contractual provisions contrary to its terms, and therefore a so-called condition precedent is invalid to extent that it is more broadly effective than this section allows. *Id.*

Where application for life policy contained clause that policy should not take effect until received by insured and full first premium thereon was paid while conditions material to risk represented by statements in application remained same as described therein, and insurer contended that the clause made truth of statements conditions precedent to attaching of risk, the so-called "condition precedent" was invalid to extent that it was more broadly effective than permitted by this section regarding false statements in application for insurance. *Id.*



**Evidence**

In action on life policy defended on ground of misrepresentations in application, objection to testimony of physician who attended insured as to what he treated insured for on ground of privilege was properly sustained. *Metropolitan Life Ins. Co. v. Adams* (D. C. Mun. App. 1944, 37 A. 2d 345).

Where insured stated "Don't remember when last ill" in answer to question in application for life policy, and undisputed evidence established that three months previously to applying for policy insured was so sick that he had to be carried out of bathroom and immediately thereafter was treated by two different physicians on not less than six occasions, insured's statement as matter of law constituted a false misrepresentation, preventing recovery on policy. *Id.*

Where evidence was conflicting whether hospitalization of insured and hospital record disclosing diagnosis of duodenal ulcer were genuine or fictitious, excluding evidence that insurance companies generally, and defendant insurer usually declined risk on finding a hospital record disclosing diagnosis of duodenal ulcer, was not error. *Prudential Ins. Co. of America v. Saxe* (1943, 134 F. 2d 16, 77 U.S. App. D.C. 144, certiorari denied 63 S. Ct. 1033, 319 U.S. 745, 87 L. Ed. 1701).

Where insured's wife and companion testified that wife informed insurer's representative of insured's hospitalization not disclosed by application for life policy, refusing to permit insurer to cross-examine the wife and her companion concerning what was said in conversation with the representative as to change in beneficiary was not error, where insurer sought to avoid liability on ground of false statements in application. *Id.*

Evidence concerning insured's statements informing his wife, who was beneficiary of life policy, of hospitalization not disclosed by application was not objectionable on ground that statements were "self-serving declarations" and "hearsay", where evidence disclosed facts leading up to the wife's visit to insurer's representative the following day and reason for visit and were admissible to show that full disclosure of facts had been made to insurer's representative. *Id.*

Where insurer sought to avoid liability on life policy on ground that insured, prior to application, had had duodenal ulcer, abnormal blood pressure, dizziness, loss of consciousness, kidney disease, and in application falsely denied existence thereof, evidence sustained verdict against insurer. *Id.*

**Instructions**

In action on life policy defended on ground of misrepresentations in application which denied knowledge of heart trouble and medical attendance, instructions which submitted only issue as to whether there were misrepresentations as to heart trouble, and which failed to submit issue as to whether there were misrepresentations in regard to medical attendance, were erroneous. *Metropolitan Life Ins. Co. v. Adams* (D. C. Mun. App. 1944, 37 A. 2d 345).

**Misrepresentation—By beneficiary**

Misrepresentation by beneficiary, in his application for a life policy on his month-old daughter of fact that he had applied to another insurer for a similar policy, even if participated in by insurer's agent, was material and constituted a valid defense to recovery on the policy. *R. L. Jannenga v. National Life Ins. Co.* (1961, 288 F. 2d 169, 109 U.S. App. D.C. 385).

**—Material**

A misstatement in an application for an insurance policy, to be material to the hazard assumed, must be shown in some way to have affected it or contributed to the loss, and in a substantial manner. *L. Haubner a/k/a etc. v. Aetna Life Insurance Co.* (D.C. App. 1969, 256 A. 2d 414).

The court held that it is clear that the facts suppressed by the life insurance applicant concerning her consultations with and examinations by physicians prior to time she applied for policy and her previous history of cancer affected in a substantial manner the hazard assumed by insurer and would certainly have influenced insurer's decision to insure her, and such false statements by insured were material to issuance of the policy. *Id.*

Insured's failure to reveal information to the life insurer that she was consulting with physicians at time of policy application and that she had previous history of cancer constituted sufficient cause to justify insurer's refusal to pay proceeds of policy. *Id.*

**—Waiver**

Even if life insurer's doctor knew or should have known that tumor causing removal of breast in 1953 was malignant and that recurrence of malignancy in the future was a definite possibility, this did not operate as a waiver by the insurer of a defense based on false statements allegedly contained in an application for life insurance policy, where applicant concealed information, concerning present consultations, that was clearly material to issuance of life insurance policy. *L. Haubner a/k/a etc. v. Aetna Life Insurance Co.* (D.C. App. 1969, 256 A. 2d 414).

**Notice to insurer**

Where insured's wife informed insurer's representative of hospitalization of insured not disclosed by application for life policy, in determining question of waiver by insurer, the representative's knowledge was to be considered "notice" to the insurer regardless of provision of policy that the representative had no power to bind the insurer by accepting any information. *Prudential Ins. Co. of America v. Saxe* (1943, 134 F. 2d 16, 77 U.S. App. D.C. 144, certiorari denied 63 S. Ct. 1033, 319 U.S. 745, 87 L. Ed. 1701).

**Purpose**

This section providing that falsity of statement in application shall not bar right to recovery under policy unless statement was made with intent to deceive or unless it materially affected either acceptance of risk or hazard assumed by insurer, was intended to prevent innocent and immaterial misrepresentations in application from avoiding insurance. *Prudential Ins. Co. of America v. Saxe* (1943, 134 F. 2d 16, 77 U.S. App. D.C. 144, certiorari denied 63 S. Ct. 1033, 319 U.S. 745, 87 L. Ed. 1701).

**Questions for jury**

Where evidence was conflicting as to whether hospitalization of insured and hospital record disclosing diagnosis of duodenal ulcer were genuine or were fictitious, whether insured's answers in application for life policy which failed to disclose hospitalization and diagnosis were material to acceptance of risk was for jury. *Prudential Ins. Co. of America v. Saxe* (1943, 134 F. 2d 16, 77 U.S. App. D.C. 144, certiorari denied 63 S. Ct. 1033, 319 U.S. 745, 87 L. Ed. 1701).

Where insurer contended that life policy did not take effect because of false statements in application regarding hospitalization and consultation of physician, evidence as to whether hospitalization was genuine or was fictitious for purpose of covering up alleged "social lapse" of insured caused by overdrinking at a wedding party, was for jury. *Id.*

Where evidence was conflicting regarding whether insured's hospitalization was genuine or fictitious, whether misstatements in application for life policy regarding hospitalization and consultation of physician were made with intent to deceive, and were material to hazard assumed or false within meaning of this section regarding effect of false statements in application, was for jury. *Id.*

**Test of materiality**

Test of materiality of a statement in an insurance application is whether the representation would reasonably influence insurer's decision as to whether it should insure. *R. L. Jannenga v. Nationwide Life Ins. Co.* (1961, 288 F. 2d 169, 109 U.S. App. D.C. 385).

**Waiver**

Where insured's wife informed insurer's representative of the fact, time and place of insured's hospitalization that had not been disclosed by application for life policy, and that wife thought insured was going to die, but representative informed wife that policy was not affected and that she should continue premium payments, the disclosure was adequate to form basis for waiver. *Prudential Ins. Co. of America v. Saxe* (1943, 134 F. 2d 16, 77 U.S. App. D.C. 144, certiorari denied 63 S. Ct. 1033, 319 U.S. 745, 87 L. Ed. 1701).



Where insurer's representative with authority to receive information on insurer's behalf and to forward complaints and controversies concerning matters affecting policy to insurer's home office received knowledge of existence of ground of forfeiture of life policy and failed to communicate it promptly to insurer's home office, insurer became charged with "notice" thereof so that where insurer received premiums and allowed matter to rest for nearly a month until insured's death "waiver" of ground of forfeiture was effectually completed. *Id.*

Where insurer's representative having authority to solicit risks and collect premiums was informed by insured's wife of hospitalization of insured not disclosed by application, and thereafter premiums were accepted and insurer and representative stood idle for nearly a month until insured's death, there was a "waiver", precluding insurer from avoiding liability because of insured's failure to disclose the hospitalization, notwithstanding provision of policy prohibiting the representative from waiving any forfeiture. *Id.*

#### § 35-415. General deposit—Amount—Deposits outside District.

Every company desiring to transact business in the District shall, as a prerequisite to the issuance of a certificate of authority, deposit, as herein provided, approved securities of not less than \$100,000 market value. In the case of domestic companies, such deposit shall be made in the District as prescribed under section 35-416: *Provided*, That the deposit of every domestic company heretofore organized under the provisions of the laws of the District or other Act of Congress may, in the discretion of the superintendent, be limited (1) for stock companies, to an amount equal to the capital stock outstanding on June 19, 1934; (2) for nonstock companies, to such amount as in the opinion of the superintendent would be required from stock companies of comparable size. In no case shall the deposit of a domestic company be less than \$25,000 in value. In the case of foreign or alien companies, the deposit may be made as provided under section 35-416, or may be made with the supervising official of any State, Territory, or insular possession of the United States authorized to accept such deposit, which shall be held for the benefit of all policyholders.

In the case of a deposit made with an official outside the District, a certificate of deposit from said official shall be filed with the superintendent, showing the character of the deposit, before a certificate of authority to transact business in the District may be issued, and, if the securities so deposited are not of the class authorized by chapters 3-8 of this title for investments of companies, the superintendent may require an additional deposit in approved securities. (June 19, 1934, 48 Stat. 1133, ch. 672, Ch. II, § 16; May 20, 1940, 54 Stat. 217, ch. 204.)

#### AMENDMENT

1940—Act May 20, 1940, substituted "Every company desiring to transact business in the District shall, as a prerequisite to the issuance of a certificate of authority, deposit, as herein provided, approved securities of not less than \$100,000 market value. In the case of domestic companies, such deposit shall be made in the District as prescribed under section 35-416;" for "Every company desiring to transact business in the District shall before being licensed, deposit approved securities of not less than \$100,000 market value with the superintendent or the supervising official of any State, Territory, or insular possession of the United States authorized to accept such deposit, which shall be held for the benefit of all

policyholders;" "In the case of a deposit made with an official outside the District" for "If such deposit is made with an official other than the superintendent", "a certificate of authority" for "a license", inserted "in the discretion of the superintendent" in the proviso, "in value" after "\$25,000", and added provisions relating to deposits of foreign or alien companies.

#### CROSS REFERENCES

Assessment companies forbidden, see § 35-431.

Reserves and capital, generally, see § 35-201 et seq.

#### § 35-416. Custody of general deposits—Collection of income—Substitution of securities—Required securities.

When any company is required by chapters 3-8 of this title to make a deposit in the District, such deposit shall be in securities of the class authorized by chapters 3-8 of this title for investments of companies, and shall be delivered by the company to the secretary of the Board of Commissioners of the District and the auditor of the District, who shall receive and hold the same subject to the lawful orders of the superintendent, and who shall be responsible for the safe-keeping of all securities deposited or delivered under the authority of this section. The company shall have the right to collect the income on deposited securities so long as it continues solvent and complies with the laws of the United States and of the District, and it shall have the right to substitute for such securities other securities, provided such substituted securities are of the character, amount, and value required by this section, and are approved by the superintendent: *Provided*, That not less than \$25,000 of such deposit shall at all times consist of bonds or other evidences of indebtedness of the United States or of any state of the United States, or of any county or incorporated city of any state of the United States, and that securities of a class different from such bonds or other evidences of indebtedness shall not in any case be accepted for deposit except with the specific approval of and at values determined by the superintendent.

If the value of securities deposited by any company shall decline, the superintendent may require the company to make a further deposit, in order that the amount and value of the deposit required by chapters 3-8 of this title shall at all times be maintained. (June 19, 1934, 48 Stat. 1134, ch. 672, Ch. II, § 17; May 20, 1940, 54 Stat. 217, ch. 204.)

#### AMENDMENT

1940—Act May 20, 1940, amended section generally. Prior to such amendment, section read as follows: "When any company is required by the laws of the District, or of any State or county, or by other competent authority, to make a deposit with an insurance supervising official, or other financial officer, and where said deposit is made by the company in bonds or other evidence of indebtedness of the United States, or of any State of the United States, or of any county or incorporated city of any State of the United States, the said securities shall be delivered to the Secretary of the Board of Commissioners of the District of Columbia, and the Auditor of the District of Columbia, who shall receive and hold the same, subject to the lawful orders of the Superintendent of Insurance, and who shall be responsible for the safekeeping of all securities deposited or delivered under the authority of this section, so long as the company continues solvent and complies with the laws of the United States and of the District of Columbia, and it may in that event collect the income on such securities. The



company shall have the right to substitute therefor other securities, required by this section as lawful investment, provided such substitute securities are of the character, amount, and value called for by this section and are approved by the Superintendent of Insurance. If the value of the securities deposited by any company shall decline below the amounts so required, the company shall make a further deposit and maintain the deposit in the amount and value so required."

#### TRANSFER OF FUNCTIONS

The Office of the Secretary to the Board of Commissioners of the District of Columbia was abolished and the functions thereof transferred to the Commissioner of the District of Columbia, see note to § 1-214.

The Office of the Auditor of the District of Columbia was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorg. Plan No. 5 of 1952. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorg. Plan No. 3 of 1967.

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorg. Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952. Reorg. Order No. 19, dated Nov. 10, 1952, established in the Department of General Administration an Internal Audit Office headed by an Internal Office Auditor.

Reorg. Order No. 23 dated Dec. 30, 1952, transferred the functions relating to the delivery of securities required to be deposited by insurance companies transacting business in the District of Columbia from the Secretary of the Board of Commissioners and the Auditor of the District to the Internal Audit Officer or his deputy and the Disbursing Officer or his deputy, Department of General Administration.

Reorg. Orders No. 3 and 19 were revoked by Org. Ord. No. 3 of the Commissioner of the District of Columbia, dated Dec. 13, 1967. Parts III and IVB of the latter Order established within the newly created Department of General Administration, an Internal Audit Office headed by an Internal Audit Officer and prescribed the functions thereof. These functions were subsequently transferred to the Director of the Department of Finance and Revenue by par. 4 of Commissioner's Order [Org. Action] No. 69-96, dated Mar. 7, 1969. Part IVB of Org. Ord. No. 3 and that portion of par. 4 of Commissioner's Order No. 69-96 pertaining to a transfer of audit functions to the Department of Finance and Revenue, were revoked by Org. Ord. No. 33, dated July 14, 1972. The latter Order established an Office of Municipal Audit and Inspection and prescribed the functions thereof.

The Disbursing Office, referred to in Reorg. Order No. 23 above, was established in the Finance Office of the Department of General Administration by Reorg. Ord. No. 20, dated Nov. 10, 1952. Reorg. Ord. No. 20 was superseded by Org. Ord. No. 121, dated Dec. 12, 1957, which placed disbursing functions in the Treasury Division of the Office of the Finance Officer. Org. Ord. No. 121 was revoked by Org. Ord. No. 3, dated Dec. 23, 1967, under Part IVC of which disbursing functions were continued in the Treasury Division of the Finance Office. These functions were subsequently transferred to the Director of the Department of Finance and Revenue by Commissioner's Order [Org. Action] No. 69-96, dated Mar. 7, 1969.

The Plans and Orders are set out in the Appendix to Title 1.

#### CROSS REFERENCES

Investment permitted, see § 35-535.

Reserves and capital, generally, see § 35-201 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-415.

#### § 35-417. Withdrawal of general deposits—Notice—Examination—Bond—Reinsurance—Notice.

When a company determines to discontinue its business or to cease to do business in the District and desires to withdraw its deposit made in the Dis-

trict pursuant to chapters 3-8 of this title the superintendent shall, upon the application of the company, and at its expense, give notice of such intention in a newspaper of general circulation in the District once a week for three consecutive weeks. After such publication he shall deliver to such company or its assigns the securities so deposited when he is satisfied upon examination and investigation made by him or under his authority and upon the oaths of the president and secretary or other chief officers of the company that all debts and liabilities of every kind due and to become due which the deposit was made to secure are paid and extinguished: *Provided*, That the superintendent may require any company so withdrawing from the District to furnish bond to cover any undisclosed or contingent liabilities.

Upon a company being wholly reinsured the superintendent may deliver to it or to its assigns all securities deposited by it upon compliance with the following condition: The reinsuring company shall assume and agree to discharge all liabilities of every kind due and to become due which the deposit of the reinsured company was made to secure. Such reinsuring company shall have a deposit in the District or with some State official in the United States in securities recognized by this law as lawful investments of the company in an amount and value not less than the deposit required of the reinsured company. The deposit of the reinsuring company shall be such that it will subsist for the security of the obligations of the reinsured company assumed by the reinsuring company. The superintendent shall give notice of such reinsurance agreement and of the application for the deposit once a week for three consecutive weeks in a newspaper of general circulation in the District before the delivery of such securities to the reinsuring company. (June 19, 1934, 48 Stat. 1134, ch. 672, Ch. II, § 18.)

#### CROSS REFERENCE

Reserves and capital, generally, see § 35-201 et seq.

#### § 35-418. Examinations—Reports—Verification—Hearing upon—Publication—Expense.

The superintendent may examine the books, papers, property, and the affairs of any insurance company organized or doing business in the District and of any company engaged in or professing to be engaged in organizing, promoting, or soliciting stock or capital contributions to or aiding in the formation of an insurance company or of any company which holds the capital stock of an insurance company for the purpose of controlling the management thereof as voting trustees or otherwise. The superintendent, his deputy, or any examiner may examine under oath the officers and agents of such company and all persons deemed to have material information regarding the company's property or business. Every such company, its officers and agents, shall produce at the home office of the company at the time designated by the superintendent, its books of original entry and all records and papers in its or their possession relating to its business or affairs, and any other person may be required to produce any book, record, or paper in his custody relevant to the examination, for the inspection of the superintendent, his deputy or examiners, whenever required; and the officers and agents of such company shall facilitate



such examination and aid the examiners in making the same so far as it is in their power to do so. Every such examiner shall make a full and true report of every examination made by him, verified by his oath, which shall comprise only facts appearing upon the books, papers, records, or documents of such company, or ascertained from the sworn testimony of its officers or agents or other persons examined under oath concerning its affairs, and said report so verified shall be presumptive evidence in any action or proceeding in the name of the District against the company, its officers or agents, of the facts therein stated. The superintendent shall grant a hearing to the company examined, or he shall furnish it a copy of his report, in tentative form, requesting that the statements and items therein contained be checked, and the report be returned to the superintendent within the time specified by him, before filing any such report and before making public such report or any matters relating thereto; and may withhold any such report from public inspection for such time as he may deem proper; and may, after so filing, if he deems it for the interest of the public to do so, publish any such report or the result of any such examination as contained therein in one or more newspapers in the District without expense to the company. It shall be the duty of the superintendent to examine every domestic insurance company at least once in three years.

The expense of every such examination, not to include salaries, shall be paid by the company examined, and such company shall pay to the superintendent, his deputies, and/or his examiners the actual expense of such examination upon itemized bills furnished by the superintendent. (June 19, 1934, 48 Stat. 1135, ch. 672, Ch. II, § 19.)

#### CROSS REFERENCE

Inspection and examination of insurance companies, generally, see §§ 35-108, 35-201, 35-202, 35-903, 35-1313.

§ 35-419. Superintendent may take possession of property of company and conduct its business—Conditions precedent—Procedure—Injunction—Resumption of possession by company—Order for liquidation—Appointment of deputies—Expense of liquidation—Bond—Annual report.

The superintendent may, the corporation counsel of the District representing him, apply to the court having jurisdiction of civil actions wherein the amount in controversy exceeds \$50,000 for a rule directing any company doing business in the District, any company organized under the laws of the District or other Acts of Congress, or any company in course of organization, to show cause why the superintendent should not take possession of its property and conduct its business and for such other relief as the nature of the case and the interests of its policyholders, creditors, stockholders, or the public may require, whenever any such company (a) is insolvent; or (b) in the case of a stock company, has neglected or refused to observe a lawful order of the superintendent to make good within the time prescribed by law any deficiency of its capital or surplus, or in the case of a mutual company, if its assets have not become equal to its liabilities within ninety days from the date of notification thereof by

the superintendent; or (c) has by contract or reinsurance, or otherwise transferred or attempted to transfer substantially its entire property or business, or entered into any transaction the effect of which is to merge substantially its entire property or business, in the property or business of any other company, association, society, or order, without having first obtained the written approval of the superintendent; or (d) is found, after an examination by the superintendent, his deputy or examiners, to be in such condition that its further transaction of business will be hazardous to its policyholders; or (e) has willfully violated its charter; or (f) is carrying on activities against public policy.

On such application, or any time thereafter, such court may, in its discretion, issue an injunction restraining such company from the transaction of its business or disposition of its property pending further order of the court. On the return of such rule to show cause, the court shall hear, try, and determine the issues forthwith and shall either deny the application or direct the superintendent to take possession of the property and conduct the business of such company, and retain such possession and conduct such business until on the application either of the superintendent, the corporation counsel representing him, or of the company, it shall, after a like hearing, appear to the court that the ground for the order directing the superintendent to take possession has been removed and that the company can properly resume possession of its property and the conduct of its business.

If, on the like application and rule to show cause, and after a hearing, the court shall order the liquidation of the business of such company, such liquidation shall be made by and under the direction of the superintendent, who may deal with the property and business of such company in his own name as superintendent or in the name of the company, as the court may direct, and shall be vested by operation of law with title to all of the property, contracts, and rights of action of such company as of the date of the order so directing him to liquidate. The filing or recording of such order in the office of the recorder of deeds for the District shall impart the same notice that a deed, bill of sale, or other evidence of title duly filed or recorded by such company would have imparted.

For the purpose of this section the superintendent shall have power to appoint under his hand and official seal one or more special deputy superintendents of insurance as his agent or agents, and to employ clerks and assistants as may by him be deemed necessary, and give each of such persons such powers to assist him as he may consider wise. The fair and reasonable compensation of such special deputy superintendents, clerks, and assistants and all expenses of taking possession of and conducting the business of liquidating any such company shall be recommended by the superintendent, subject to the approval of the court, and shall on certificate of the superintendent be paid out of the funds or assets of such company.

For the purpose of this section the District of Columbia Council shall have power, subject to the



approval of the court, to make and prescribe such rules and regulations as to it shall seem proper.

The superintendent shall transmit to the Commissioner, in his annual report, the names of the companies so taken possession of, whether the same have resumed business or have been liquidated, and such other facts as shall acquaint the policyholders, creditors, stockholders, and the public with his proceedings under this section; and, to that end, the special deputy superintendent in charge of any such company shall file annually with the superintendent a report of the affairs of such company similar to that required by section 35-407. The court may require corporate surety bond from the superintendent or any assistant appointed by him, in such amount as it may deem necessary, the cost of which bond shall be paid as other expenses provided under this section. (June 19, 1934, 48 Stat. 1135, ch. 672, Ch. II, § 20; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91-358, § 168(f), title I, 84 Stat. 589.)

#### AMENDMENT

1970—Section 168(f) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court having jurisdiction of civil actions wherein the amount in controversy exceeds \$50,000".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(271) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of making and prescribing rules and regulations (subject to the approval of the court), as provided in the penultimate par. of the section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### CROSS REFERENCES

Court having jurisdiction of civil actions wherein the amount in controversy exceeds \$50,000, see §§ 11-501, 11-921.

Rules and regulations generally, see § 35-102 et seq.

#### § 35-420. When company to be deemed insolvent.

Every insurance company whose assets and credits are not sufficient to reinsure its outstanding risks in a solvent insurance company, shall be deemed insolvent and may be proceeded against as an insolvent company. (June 19, 1934, 48 Stat. 1137, ch. 672, Ch. II, § 21.)

#### § 35-421. Reinsurance by superintendent.

The superintendent may reinsure all of the policy obligations of any domestic insurance company, of which he is a receiver, in any solvent company au-

thorized to do business in the District, if the assets of the company are sufficient to effect such reinsurance. If such assets are insufficient for that purpose, the superintendent, upon like consent, may reinsure a percentage of each outstanding policy obligation of such company to the extent that its assets may be sufficient for that purpose. No contract of reinsurance shall be entered into by the superintendent, except in pursuance of an order of the court in which he was appointed receiver directing the reinsurance and establishing the general form of the contract for the same. (June 19, 1934, 48 Stat. 1137, ch. 672, Ch. II, § 22.)

#### § 35-422. Valuation of assets—Rule—Discretion of superintendent.

All bonds or other evidences of debt having a fixed term and rate held by any company authorized to do business in the District, if amply secured and if not in default as to principal or interest, shall be valued as follows: If purchased at par, at the par value; if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield meantime the effective rate of interest at which the purchase was made: *Provided*, That the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase: *Provided further*, That the superintendent shall have full discretion in determining the method of calculating values according to the foregoing rule, and the values found by him in accordance with such method shall be final and binding: *And provided further*, That any such company may return such bonds or other evidences of debt at their market value or their book value, but in no event at an aggregate value exceeding the aggregate of the values calculated according to the foregoing rule. (June 19, 1934, 48 Stat. 1137, ch. 672, Ch. II, § 23.)

#### CROSS REFERENCE

Investments permitted, see §§ 35-416, 35-535.

#### § 35-423. Superintendent as attorney for service of process—Superintendent to mail process to company—Acceptance of certificate is appointment—Failure—Penalty.

Every domestic company not having its home office in the District and every foreign or alien company now or hereafter transacting business in the District, and every foreign or alien company now or hereafter soliciting, selling, or writing insurance on any resident of the District, through the medium of the United States mails, shall file with the superintendent a duly executed instrument appointing and constituting him and his successors the true and lawful attorney of such company upon whom all lawful process in any action or legal proceeding against it may be served and therein shall agree that any lawful process against it which may be served upon its said attorney, as herein provided, shall be of the same force and validity as if served upon the company and the authority thereof shall continue in force irrevocably so long as any liability of the company in the District shall remain outstanding. Such process shall be served by leaving the same with the superintendent or his deputy, and service thereof



upon such attorney shall be deemed service upon the principal. The superintendent shall forthwith forward such process by mail to the company, or, in the case of an alien company, to the resident manager or last appointed general agent of the company in the United States. The deposit, by the superintendent or his deputy, of such process sent by registered mail or by certified mail in a sealed envelope, postage prepaid, in the United States mail and service of such process, shall not be effectual until the same has been so mailed and received by the company and the return receipt for such registered or certified mail shall be prima facie evidence of the notice of service to a company, or to the resident manager in the case of an alien company.

Failure of any such company to file such instrument, or failure on the part of any such company to authorize such filing, shall not invalidate any service made by serving the superintendent. By accepting a certificate of authority to transact business in the District, every such company shall be held to have appointed the superintendent its true and lawful attorney. Any such insurance company transacting business or soliciting, selling, or writing insurance on any resident of the District without designating an attorney for service of process, incident to adjustment of claims and kindred matters, shall, upon complaint filed by the superintendent in the Superior Court of the District of Columbia, be fined, upon conviction of violating any provision of this section, not to exceed \$200 a day for such violation. (June 19, 1934, 48 Stat. 1137, ch. 672, Ch. II, § 24; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; June 11, 1960, 74 Stat. 203, Pub. L. 86-507, § 1(48); July 29, 1970, Pub. L. 91-358, title I, § 155(c) (37) (B), 84 Stat. 572.)

#### AMENDMENTS

1970—Section 155(c) (37) (B) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

1960—Act June 11, 1960, inserted words "or by certified mail" following "registered mail" and substituted "the return receipt for such registered or certified mail" for "registered receipt."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

#### CROSS REFERENCE

Certified mail receipts as prima facie evidence of delivery, see § 14-506.

#### NOTES TO DECISIONS

##### In general

Where an individual certificate of insurance was mailed to insured, although master policy of group insurance plan was delivered in Missouri to representative of association having group policy, and premiums were paid to association, and association mailed check to insurer, insurer was subject to substituted service in action by

beneficiary on policy by service upon Superintendent of Insurance of District of Columbia under this section providing that every foreign company soliciting, selling, or writing insurance on any resident of the District through medium of United States mails may be served by service upon Superintendent. *Security National Life Insurance Co. v. Washington* (D. C. Mun. App. 1955, 113 A. 2d 749).

#### Constitutionality

Congress, legislating for the District of Columbia, has power to protect the interest of District residents for whom out of town companies write insurance policies, and such protective legislation is effective even though it may have repercussions beyond the geographical boundaries of the District. *Security National Life Insurance Co. v. Washington* (D. C. Mun. App. 1955, 113 A. 2d 749).

This section, providing that every foreign company soliciting, selling, or writing insurance on any resident of District of Columbia through medium of United States mails can be served by service upon District Superintendent of Insurance is constitutional and does not violate due process of law requirements. *Id.*

#### § 35-424. Political contributions prohibited—Penalty—Immunity of witnesses.

No company doing business in the District shall directly or indirectly pay or use, or offer, consent, or agree to pay or use any money or property for or in aid of any political party, committee, or organization, or for or in aid of any corporation, joint-stock, or other association organized or maintained for political purposes, or for or in aid of any candidate for political office or for nomination for such office, or for any political purpose whatsoever, or for the reimbursement or indemnification of any person for money or property so used. Any officer, director, stockholder, attorney, or agent of any company which violates any of the provisions of this section, who participates in, aids, abets, or advises, or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of this section shall be guilty of a misdemeanor and be punished by imprisonment for not more than one year and a fine of not more than \$1,000, and any officer aiding or abetting in any contribution made in violation of this section shall be liable to the company for the amount so contributed.

No person shall be excused from testifying or from producing books, accounts, and papers in any proceeding based upon or growing out of any violation of the provisions of this section, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may have testified or produced any documentary evidence: *Provided*, That no person so testifying shall be exempted from prosecution or punishment for perjury: *Provided further*, That the immunity hereby conferred shall extend only to a natural person who, in obedience to a subpoena gives testimony under oath or produces evidence, documentary or otherwise, under oath. (June 19, 1934, 48 Stat. 1138, ch. 672, Ch. II, § 25.)

#### CROSS REFERENCE

Perjury, generally, see § 22-2501.



**§ 35-425. General agent, agent, solicitor—License required—Application—Contents—Applicant vouched for by company—Placement of excess or rejected risks—Expiration and renewal of license—Officers and traveling salaried employees excepted—Notice of termination of employment—Information privileged.**

No person shall act within the District for any life-insurance company as a general agent, agent, or solicitor in the solicitation or procurement of applications for insurance unless he has complied with the provisions of this section and has secured a license from the superintendent of insurance. Each applicant for such license shall file with the superintendent of insurance his written application therefor on blanks furnished by the superintendent, which application shall be signed and sworn to by the applicant and shall give his name, age, residence, place of business, and occupation for five years next prior to the date of application and also set forth his qualifications for such license, namely, his familiarity with the life-insurance laws of the District and with the provisions of the contracts to be negotiated; what insurance experience he has had, if any; what insurance instruction he has had or expects to receive; whether he has been refused or has had suspended or revoked a license to solicit insurance by the insurance department or supervising officials of the District of Columbia or of any State; whether any insurance company or any general agent claims such applicant is indebted under any agency contract or otherwise, and if so, the name of the claimant, the nature of the claim and the applicant's defense thereto, if any; whether he has had an agency contract canceled, and if so, when, by what company, or general agent and the reason for such action, and such other information as the District of Columbia Council may require. Any such applicant who willfully files with or otherwise submits to the Superintendent, orally or in writing, any material statement, knowing such statement to be false, shall, in addition to any other penalty prescribed by law, be guilty of perjury and subject to the penalties thereof. The applicant shall be vouched for by an official or a licensed representative of the company for which he proposes to act, who shall certify whether the applicant is personally known to him, whether the applicant has been appointed a general agent, agent, or solicitor to represent such company, and that such company has duly investigated the character and record of such person, and has satisfied itself that he is trustworthy and qualified to act as its general agent, agent, or solicitor and intends to hold himself out in good faith as a life insurance general agent, agent, or solicitor. If, upon the showing made, the superintendent of insurance is reasonably satisfied that the applicant is a trustworthy person he shall promptly issue the license applied for. A general agent, agent, or solicitor licensed to represent any life insurance company doing business in the District shall be entitled to place excess or rejected risks in any other company lawfully doing business in the District, with the knowledge and approval of his own company without additional or separate license. Every license issued under this section shall expire annually on the 30th day of April next after its issue unless prior thereto it is

revoked or suspended by the Superintendent of Insurance or the authority of the general agent, agent, or solicitor to act for the company is terminated.

In the absence of a contrary ruling by the superintendent in a given case, license renewals shall be issued from year to year upon the request of the company without further action on the part of the general agent, agent, or solicitor.

No officer or traveling salaried employee of any insurance company not compensated on a commission basis shall be required to obtain a license under this section.

Every life insurance company shall, upon the termination of the employment of any general agent, agent, or solicitor, file with the Superintendent of Insurance a statement of the facts relative to the termination of such employment and the cause thereof. Any information, document, record, statement, or thing required to be made or disclosed to the Superintendent of Insurance by this section, shall be privileged and shall not be used as evidence in any action or proceeding instituted against the company or any representative thereof by or in behalf of any person who has been licensed under the provisions of this section. (June 19, 1934, 48 Stat. 1139, ch. 672, Ch. II, § 26; July 8, 1963, 77 Stat. 76, Pub. L. 88-57, § 1.)

#### AMENDMENT

1963—Act July 8, 1963, amended the section by adding the above sentence starting with the words "Any such applicant" to follow the second sentence in the section.

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(272) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of requiring information, in addition to that specified in the statute, to be included in applications filed for licensing as life insurance general agent, agent, or solicitor, under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

#### CROSS REFERENCES

Agents other than life, see § 35-1201, 35-1202.

Brokers, see § 35-428.

D.C. Council may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

License fees, see § 35-402.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-1336, 47-1591.

#### NOTES TO DECISIONS

##### Predication of indictment

A perjury indictment could not be grounded upon a knowingly false answer to a question placed by superintendent of insurance, in an application for a license to act as an insurance solicitor. *C. S. Nelson v. United States* (1961, 288 F. 2d 376, 109 U.S. App. D.C. 392).

##### Propriety of regulation

Superintendent of insurance does not have power to promulgate regulations, and was not authorized to make felonious even a knowingly false answer to a question which Congress had not made material. *C. S. Nelson v. United States* (1961, 288 F. 2d 376, 109 U.S. App. D.C. 392).

##### Sufficiency of indictment

Indictment charging defendant generally in statutory language, with three counts of perjury, would be deemed sufficient, especially where record indicated that defendant had not been misled or prejudiced in his defense, and had not moved for a bill of particulars. *C. S.*



*Nelson v. United States* (1961, 288 F. 2d 376, 109 U.S. App. D.C. 392).

#### Weight of Superintendent's decisions

Decision of superintendent of insurance for District of Columbia as to whether general insurance agent's license should be renewed must be given weight because of superintendent's special position in congressional regulatory plan. *A. F. Jordan, Superintendent of Insurance etc. v. J. Silverman* (1961, 294 F. 2d 916, 111 U.S. App. D.C. 132).

District Court's conclusion on appeal that action of superintendent of insurance for District of Columbia in refusing to renew general insurance agent's license should not be sustained was not in derogation of statutory responsibility of superintendent. *Id.*

Notwithstanding weight to be given decision of superintendent of insurance for District of Columbia to deny renewal of general insurance agent's license, evidence as a whole, consisting of administrative record and that additionally adduced before District Court, supported conclusion that action of superintendent should not be sustained. *Id.*

#### § 35-426. Suspension or revocation of license—Grounds for—Hearing—Penalty.

The Superintendent of Insurance may suspend or revoke the license of any life insurance general agent, agent, solicitor, or broker when and if, after investigation, it appears to the Superintendent that any license issued to such person was obtained by fraud or misrepresentation; or that the general agent, agent, solicitor, or broker has violated any insurance law of the District; or has made any misleading representations or incomplete or fraudulent comparison of any policies or companies or concerning any companies to any person for the purpose or with the intention of inducing such person to lapse, forfeit, surrender, or exchange his insurance then in force; or has made any misleading estimate of the dividends or share of surplus to be received on a policy; or has failed or refused to pay or to deliver to the company or to his principal any money or other property in the hands of said general agent, agent, solicitor, or broker belonging to such company or principal when requested so to do; or has violated any lawful ruling of the insurance department; or has been convicted of a felony; or has otherwise shown himself untrustworthy or incompetent to act as a life insurance general agent, agent, solicitor, or broker. Before the Superintendent of Insurance shall revoke or suspend the license of any such person he shall give to such person an opportunity to be fully heard, and to introduce evidence in his behalf. Within thirty days after the revocation or suspension of license or the refusal of the Superintendent to grant a license, the general agent, agent, solicitor, or broker, or applicant aggrieved may appeal from the ruling of the Superintendent of Insurance to the court of competent jurisdiction designated in section 35-427. Appeals may be taken from the judgment of said court as prescribed in section 35-427. At any hearing provided by this section, the Superintendent shall have authority to administer oaths to witnesses. Anyone testifying falsely after having been administered such an oath shall be subject to the penalties of perjury.

No individual whose license as a general agent, agent, solicitor, or broker is revoked shall be entitled to any license under chapters 3-8 of this Title for a period of one year after revocation.

Any person who violates any provision of this section upon conviction shall be fined not exceeding \$100 for each and every violation: *Provided*, That in lieu of revoking or suspending the license of any such general agent, agent, solicitor, or broker for causes enumerated in this section after hearing as herein provided, the Superintendent may subject such person to a penalty of not more than \$200 when in his judgment he finds that the public interest would be best served by the continuation of the license of such person. The amount of any such penalty shall be paid by such person through the office of the Superintendent to the Collector of Taxes of the District of Columbia. (June 19, 1934, 48 Stat. 1140, ch. 672, Ch. II, § 27; May 4, 1950, 64 Stat. 103, ch. 157, § 2; Feb. 22, 1958, 72 Stat. 21, Pub. L. 85-334, § 3.)

#### AMENDMENTS

1958—Act Feb. 22, 1958, authorized the Superintendent to administer oaths to witnesses, provided that false testimony after such oath be penalized as perjury, and eliminated provisions which related to hearings before salaried employees of the Department designated by the Superintendent, and which required written notice to be given by registered mail to the person and to the company, not less than 20 days prior to the time set for hearing.

1950—Act May 4, 1950, added the proviso relating to monetary penalties in lieu of suspension or revocation of license.

#### EFFECTIVE DATE OF 1950 AMENDMENT

See note under section 35-405.

#### TRANSFER OF FUNCTIONS

The Office of the Collector of Taxes was abolished and the functions thereof transferred, see note under § 47-301.

#### OFFICE OR AGENCY ABOLISHED BY REORGANIZATION PLAN NUMBER 5 OF 1952

References in act Feb. 22, 1958, to any office or agency abolished by Reorg. Plan No. 5 of 1952 are deemed to refer to the Commissioners of the District, or to any office, officer or agency designated by them, see note under § 35-404.

#### CROSS REFERENCES

Administrative procedure, see § 1-1501 et seq.

Misrepresentations forbidden, see § 35-714.

Perjury, generally, see § 22-2501.

Suspension or revocation of license for violation of Uniform Narcotic Drug Act, § 33-418.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1611.

#### NOTES TO DECISIONS

##### Findings of fact

In a proceeding before Superintendent of Insurance on a complaint charging insurance solicitor with misrepresenting advantages of exchange of life insurance policies, Superintendent was required to make findings of fact disclosing particular circumstances upon which determination of misrepresentation rested and although solicitor did not ask for specific findings prior to institution of suit in District Court following revocation of his license, he would be given an opportunity to request specific findings of the Superintendent. *Coffey v. Jordan ind. and as Supt. of Insurance* (1959, 275 F. 2d 1, 107 U.S. App. D.C. 113).

#### § 35-427. Appeal from rulings of superintendent—Procedure—Costs and supersedeas bond—Liability of superintendent.

Within thirty days after the revocation or suspension of license or the refusal of the superintendent to grant a license, the general agent, agent, solicitor,



or broker or applicant aggrieved may appeal as provided by the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1501 to 1-1510).

In all said proceedings and appeals said superintendent shall not be taxed with any costs, nor shall he be required to give any supersedeas bond or security for costs or damages on any appeal whatsoever. Said superintendent shall not be liable to suit or action or for any judgment or decree for any damages, loss, or injury claimed by any person on any appeal taken by said superintendent in any case, nor shall said superintendent be required in any case to make any deposit for costs or pay for any service to the clerks of any court or to any marshal of the United States. (June 19, 1934, 48 Stat. 1140, ch. 672, Ch. II, § 28; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127. July 29, 1970, Pub. L. 91-358, § 163(c), title I, 84 Stat. 583.)

#### AMENDMENT

1970—Section 163(c) of Act July 29, 1970, Public Law 91-358 amended section by striking out "from the ruling of the superintendent to the United States District Court for the District of Columbia, in equity" and all that follows in the first paragraph and inserting in lieu thereof "as provided by the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1501 to 1-1510)."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

#### CROSS REFERENCE

Jurisdiction of court of appeals, see § 11-722.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-426, 35-428, 35-712 to 35-714.

#### NOTES TO DECISIONS

##### Findings of fact

In a proceeding before Superintendent of Insurance on a complaint charging insurance solicitor with misrepresenting advantages of exchange of life insurance policies, Superintendent was required to make findings of fact disclosing particular circumstances upon which determination of misrepresentation rested, and although solicitor did not ask for specific findings prior to institution of suit in District Court following revocation of his license, he would be given an opportunity to request specific findings of the Superintendent. *Coffey v. Jordan ind. and as Supt. of Ins.* (1959, 275 F. 2d 1, 107 U.S. App. D.C. 113).

##### Jurisdiction

The United States District Court for District of Columbia, as local court of general jurisdiction, had jurisdiction without express statutory authorization to review administrative action by trial de novo. *A. F. Jordan, Supt of Insurance etc. v. United Insurance Co. of America* (1961, 289 F. 2d 778, 110 U.S. App. D.C. 112).

##### Weight of Superintendent's decisions

Decision of superintendent of insurance for District of Columbia as to whether general insurance agent's license should be renewed must be given weight because of superintendent's special position in congressional regulatory plan. *A. F. Jordan, Superintendent of Insurance etc. v. J. Silverman* (1961, 294 F. 2d 916, 111 U.S. App. D.C. 132).

District Court's conclusion on appeal that action of superintendent of insurance for District of Columbia in refusing to renew general insurance agent's license should not be sustained was not in derogation of statutory responsibility of superintendent. *Id.*

Notwithstanding weight to be given decision of superintendent of insurance for District of Columbia to deny renewal of general insurance agent's license, evidence as a whole, consisting of administrative record and that additionally adduced before District Court, supported conclusion that action of superintendent should not be sustained. *Id.*

#### § 35-428. Brokers—License—Application—Contents—Person vouched for—Examination—Issuance—Effect of revocation—Appeal from refusal to issue—Renewal annually—Penalty for violation.

Every person desiring to engage in business in the District as a life insurance broker shall apply to the superintendent for a license so to do and in the manner hereinafter prescribed.

The applicant for such license shall file with the superintendent his written application therefor and shall make a sworn statement on blanks to be prepared by the superintendent giving his name, age, residence, place of business, occupation for five years just prior to the date of making his application; and shall state that he intends to hold himself out in good faith as carrying on the business of broker of life insurance, and shall also set out his qualifications, namely, his familiarity with the life insurance laws of the District and with the provisions of the policy contracts to be negotiated; what insurance experience and instruction he has had; his intention with reference to engaging regularly if not exclusively in the business of life insurance broker; whether he has been refused or has had suspended or revoked a license as a broker, general agent, agent, or solicitor of life insurance by the insurance department or the supervising officials of any state; whether any company claims that he is indebted to it under any agency contract or otherwise; if so, what company, the nature of the claim and of his defense if any, whether he has had any agency contract canceled by any company, and if so, when, by what company, and the reason for such action, and such other information as the District of Columbia Council may require. Any such applicant who willfully files with or otherwise submits to the Superintendent, orally or in writing, any material statement, knowing such statement to be false, shall, in addition to any other penalty prescribed by law, be guilty of perjury and subject to the penalties thereof.

The applicant shall be vouched for by at least three reputable citizens of the District setting out whether the applicant is personally known to them, what they know of the reputation of the applicant as a man of business integrity, and what they know of the applicant's general fitness to act as a broker of life insurance.

The superintendent may require such applicant for license or renewal thereof to submit to examination as to his fitness or qualifications for the license or licenses applied for. Such examination may be made by the superintendent or by his deputy, which said examination may be waived by the superintendent, upon satisfactory proof of the qualifications of the applicant.



When the superintendent is satisfied from the application or the examination made by him that the applicant is qualified, he shall issue to said applicant a license to engage in the business specified in said applications which shall also be specified in said license.

No individual whose license as a broker is revoked shall be entitled to any license under chapters 3-8 of this title for a period of one year after such revocation, provided, however, that the failure or refusal of the superintendent to license any such applicant shall be subject to review in the same manner as provided in section 35-427.

Licenses shall be renewed annually and every such license shall continue in force until the 30th day of April next following unless in the meantime suspended or revoked; provided any qualified person may be licensed as a broker regardless of place of residence or domicile.

Any person who violates any provision of this section upon conviction shall be fined not exceeding \$100 for each and every violation. (June 19, 1934, 48 Stat. 1141, ch. 672, Ch. II, § 29; July 8, 1963, 77 Stat. 76, Pub. L. 88-57, § 1.)

#### AMENDMENT

1963—Act July 8, 1963, added the above sentence starting with the words "Any such applicant" to follow the second sentence in the section.

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(273) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of requiring information, in addition to that specified in the statute, to be included in applications for licensing as a life insurance broker under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

#### CROSS REFERENCES

Insurance agents other than life, see §§ 35-1201, 35-1202.

License fees, see § 35-402.

Life insurance agents, see § 35-425 et seq.

Revocation or suspension of licenses, see § 35-426.

#### § 35-429. Premiums paid to agent—Agent trustee—Embezzlement—Penalty.

An insurance agent, solicitor, or broker who acts in negotiating or renewing or continuing a contract of insurance for a company lawfully doing business in the District, and who receives any money or substitute for money as a premium for such a contract from the insured, whether he shall be entitled to an interest in same or otherwise, shall be deemed to hold such premium in trust for the company making the contract. If he fails to pay the same over to the company after written demand made upon him therefor, such failure shall be prima facie evidence that he has used or applied the said premium for a purpose other than paying the same over to the company, and upon conviction thereof he shall be deemed guilty of embezzlement and punished accordingly. (June 19, 1934, 48 Stat. 1142, ch. 672, Ch. II, § 30.)

#### CROSS REFERENCE

Embezzlement, see § 22-1201 et seq.

#### § 35-430. Contract of minors for life, health, and accident insurance—Beneficiaries—Surrender and discharge.

Any minor of the age of fifteen years or more may, notwithstanding such minority, contract for life, health, and accident insurance on his own life for his or her own benefit or for the benefit of his father, mother, husband, wife, child, brother, sister, or for the benefit of any person who has the care or custody of said minor or with whom said minor makes his or her home, and may exercise all such contractual rights with respect to any such contract of insurance as might be exercised by a person of full legal age and may at any time surrender his or her interest in any such insurance or give a valid discharge for any benefit accruing or money payable thereunder. (June 19, 1934, 48 Stat. 1142, ch. 672, Ch. II, § 31.)

#### § 35-431. Assessment companies shall not be formed, admitted, or licensed.

Any company which makes insurance or reinsurance the performance of which is not guaranteed by the reserves required by chapters 3-8 of this title, but is contingent upon the payment of assessments or calls made upon its members, shall not be formed, admitted, or licensed in the District. (June 19, 1934, 48 Stat. 1142, ch. 672, Ch. II, § 32; May 4, 1950, 64 Stat. 104, ch. 157, § 3.)

#### AMENDMENT

1950—Act May 4, 1950, struck out the word "mainly" which appeared before the word "contingent."

#### EFFECTIVE DATE OF 1950 AMENDMENT

See note under section 35-405.

#### § 35-432. Appeal from superintendent to Commissioner.

Any appeals to the Commissioner from rulings of the superintendent shall be perfected and filed with the Commissioner within twenty days exclusive of Sundays and legal holidays from the date such rulings are communicated to the party at interest. (June 19, 1934, 48 Stat. 1142, ch. 672, Ch. II, § 33.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

### Chapter 5.—DOMESTIC LIFE COMPANIES

#### Sec.

35-501. Articles of incorporation.

35-502. Filing articles of incorporation—Notice of intention to form company—Bond of incorporators.

35-503. Articles of incorporation—Submission to corporation counsel—Recording—Corporate powers—Permit as "company in course of organization"—Authority to organize—No policies to be issued—Certificate of authority.

35-504. Authority to solicit subscriptions to capital of company in course of organization.

35-505. Subscription to capital stock—Limitation of expense on sale of capital stock—Disposition of proceeds.

35-506. Examination of company in course of organization—Revocation of permit, authority of agent—Cause—Notice.

35-507. When corporate powers of company in course of organization shall cease.

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- Sec.  
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 35-534. Mutual company guaranty fund—Mutual company's power to borrow—Approval by superintendent.  
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 35-538. Vouchers for disbursements.  
 35-539. Books, records, accounts, and vouchers of domestic companies.  
 35-540. Unlawful acquisition by company of its own capital stock.  
 35-541. Variable contracts—Separate accounts—Assets of accounts to equal obligations for variable payments—Issuance by foreign companies—Standards of qualification—Reports—Regulations—Investment limitations.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 26-610, 35-301, 35-302, 35-405, 35-412, 35-415 to 35-417, 35-426, 35-428, 35-431, 35-503, 35-508, 35-511, 35-513, 35-518 to 35-523, 35-528, 35-529, 35-534, 35-540, 35-601, 35-602, 35-709, 35-719, 35-801, 35-803, 35-1612.

#### § 35-501. Articles of incorporation.

Any seven or more persons who desire to become incorporated as an insurance company shall make, sign, and acknowledge articles of incorporation before an officer authorized to take acknowledgment of deeds, in which shall be stated:

(a) The proposed corporate name, which shall not be identical with nor so nearly resemble the name

of an existing corporation organized under the laws of the District, or authorized to transact business therein, as to mislead the public or cause confusion and, in case of a mutual company, shall contain the word "mutual."

(b) The term of its existence, which may be perpetual.

(c) The place where its principal office shall be located, which shall be the District of Columbia.

(d) The purpose of the company, which shall be restricted to the business of insurance appertaining to persons.

(e) The mode and manner in which the corporate power shall be exercised; the number, terms of office, and manner of electing directors, who shall be stockholders, or, in the case of a mutual company, shall be members or policyholders of the corporation.

(f) The provisions for meeting and votes of stockholders and policyholders. A stock company in which the policyholders do not vote shall provide for cumulative voting in its articles of incorporation. A stock company in which policyholders vote shall provide that each stockholder shall have one vote, in person or by proxy, for each share of stock owned. A company without capital stock shall provide that every policyholder shall be a member and entitled to one or more votes, in person, or by proxy, based on the insurance in force, the number of policies held or the amount of premiums paid as may be provided in the by-laws, and a stock company may provide for votes by policyholders, but in such case each policyholder shall have the same voting power as every other policyholder.

(g) The amount of its capital stock, if any, the number of shares, and the par value of each share.

(h) The number of directors who shall manage the company for the first year and their names.

(i) Such other particulars as may be necessary to manifest and explain the objects and purposes of the company. (June 19, 1934, 48 Stat. 1143, ch. 672, Ch. III, § 1.)

#### EFFECTIVE DATE

Chapter effective June 19, 1934, see section 5 of Ch. VI of act June 19, 1934, set out as a note under section 35-301.

#### CROSS REFERENCES

Amendment of articles, see § 35-509.

Application to existing companies, see § 35-520.

Assessment companies forbidden, see § 35-431.

Conversion of stock into mutual companies, see § 35-519.

Health and accident companies, see § 35-202.

Increase or decrease of capital stock, see §§ 35-510, 35-511.

Liability of stockholders, see § 35-512.

Quo warranto proceedings to question right to corporate rights and franchises, see § 16-3501 et seq.

Reincorporation of existing companies, see § 35-518.

Sales of securities, see 15 U.S.C. § 77a et seq.

#### § 35-502. Filing articles of incorporation—Notice of intention to form company—Bond of incorporators.

The incorporators shall file such articles with the superintendent and shall publish in a newspaper of general circulation in the District notice of the filing of such articles and of the intention to form such company. Copy of such notice verified by the oath of the publisher of the newspaper, or his agent, copies of proposed bylaws and forms of subscription



for capital stock and of proposed applications for membership and for insurance and of all proposed forms of insurance policies, literature, and advertisements shall be filed with the superintendent. The incorporators shall also file with the superintendent a bond payable to the superintendent and his successors, as trustee, in the sum of \$10,000 with approved corporate sureties, and conditioned upon the faithful accounting to the proposed company, on completion of its organization and the receipt of its certificate of authority from the superintendent, or the stockholders, members, applicants for policies, and creditors, or the trustee, receiver, or assignee of the proposed company, duly appointed in any proceedings in any court or department of competent jurisdiction in the District, in accordance with their respective rights in case the organization of the proposed company shall not be completed and a certificate of authority shall not be procured from the superintendent. (June 19, 1934, 48 Stat. 1144, ch. 672, Ch. III, § 2.)

**§ 35-503. Articles of incorporation—Submission to corporation counsel—Recording—Corporate powers—Permit as "company in course of organization"—Authority to organize—No policies to be issued—Certificate of authority.**

The superintendent shall submit the proposed articles and other papers so filed with him to the corporation counsel of the District, who shall examine the same, and, if he finds the same in accordance with law, he shall so certify and return the same to the superintendent, who shall cause the articles and the certificate of the corporation counsel to be recorded in the records of the superintendent and issue to the incorporators two certified copies thereof, one of which shall be recorded in the office of the recorder of deeds for the District of Columbia, and thereupon such incorporators and their associates shall become and be a body corporate with power to sue and be sued, contract and be contracted with, adopt a seal, and do such other acts, subject to the provisions of chapters 3-8 of this title, as shall be needful to accomplish the purposes of its organization. If the superintendent shall approve the sureties on the bond so filed, or on any like bond substituted therefor, he shall issue to the corporation a permit, as a "company in course of organization," authorizing it to complete its organization. Said company in course of organization shall have authority under such permit to solicit subscriptions and payments for capital stock, if a stock company, and applications and advance premiums for insurance, and to exercise such powers, subject to the limitations in chapters 3-8 of this title prescribed, as may be necessary and proper in completing its organization and qualifying itself for a certificate of authority from the superintendent to transact the business of insurance appertaining to persons. But such company shall not issue policies or enter into contracts of insurance until it shall have received the certificate of the superintendent authorizing it so to do.

Upon completion of organization in accordance with chapters 3-8 of this title the superintendent shall issue to such company, in course of organization, a certificate of authority as an insurance com-

pany. (June 19, 1934, 48 Stat. 1144, ch. 672, Ch. III, § 3.)

**§ 35-504. Authority to solicit subscriptions to capital of company in course of organization.**

No person shall solicit subscriptions for the capital stock of or applications for insurance in any such company in course of organization unless he has been duly authorized by the company and a certificate of his authority, duly signed by a principal officer of the company, has been filed with and approved by the superintendent. (June 19, 1934, 48 Stat. 1145, ch. 672, Ch. III, § 4.)

**§ 35-505. Subscription to capital stock—Limitation of expense on sale of capital stock—Disposition of proceeds.**

Every subscription to the capital stock of a stock company shall contain the stipulation that no sum shall be used for commission, promotion, or organization expenses in excess of a percentage of the amount paid upon the stock subscriptions, to be named in such stipulation and approved by the superintendent, and the remainder of sums so paid to the company shall be invested in securities in which a life insurance company is authorized to invest, or deposited in a bank or trust company in the District until the company has duly procured a certificate of authority from the superintendent. (June 19, 1934, 48 Stat. 1145, ch. 672, Ch. III, § 5.)

**§ 35-506. Examination of company in course of organization—Revocation of permit, authority of agent—Cause—Notice.**

The superintendent shall personally, or through his deputy and assistants, examine into the affairs of any such company in course of organization and inspect its books and papers, and may summon and examine under oath any officer or agent or any person who is or has been connected with or who has knowledge of the affairs of such company, and if he find the company is violating the law, or if the company shall not be qualified for a certificate of authority within two years from date of its permit, he shall revoke its permit; and if he find an agent of such company has violated the law, he shall revoke his authority, and he may for such agent's violation revoke the company's permit. Any revocation shall be after twenty days' notice. The superintendent may, on proper showing, reinstate any company's permit or agent's authority which he has revoked. (June 19, 1934, 48 Stat. 1145, ch. 672, Ch. III, § 6.)

**§ 35-507. When corporate powers of company in course of organization shall cease.**

If any domestic life insurance company, in course of organization, shall not commence to issue policies within two years from the date of filing its articles of incorporation in the office of the superintendent, its powers shall thereby cease, and the court, upon petition of the superintendent or of any person interested, may fix by decree the time in which the superintendent may settle and close its affairs: *Provided, however*, That the superintendent may extend the time for any such company to commence the issuance of policies for a period not exceeding two years if the said company shall show good cause in



writing why the same should be done. (June 19, 1934, 48 Stat. 1145, ch. 672, Ch. III, § 7.)

#### § 35-508. Capital-stock requirements.

(a) A domestic capital-stock company organized under chapters 3-8 of this title shall have a paid-up capital stock of not less than \$200,000. Each domestic capital-stock company organized under chapters 3-8 of this title, in addition to the paid-up capital stock shall have a surplus paid up equal to at least 50 per centum of such capital stock. Each domestic mutual company organized or doing business under chapters 3-8 of this title shall at all times have a surplus as defined by chapters 3-8 of this title of not less than \$150,000.

(b) No company shall be exempt from the provisions of this section by reason of its having been incorporated in the District or elsewhere prior to the effective date of this subsection, except that in the case of companies authorized in the District of Columbia on (date of passage) and continuously authorized thereafter without any increase or broadening of authority, the minimum capital required of a stock company shall not be increased by this section. (June 19, 1934, 48 Stat. 1145, ch. 672, Ch. III, § 8; May 4, 1950, 64 Stat. 104, ch. 157, § 4; Aug. 31, 1964, 78 Stat. 764, Pub. L. 88-556, § 1.)

#### AMENDMENTS

1964—Section 1 of act Aug. 31, 1964, amended section by inserting (a) at the beginning of the section; striking "\$100,000" in the first sentence and inserting "\$200,000" and by adding subsection (b).

1950—Act May 4, 1950, added the provisions relating to domestic mutual companies.

#### EFFECTIVE DATE OF 1964 AMENDMENT

Section 5 of act Aug. 31, 1964, provided: "This Act [amending sections 35-508, 35-509, 35-510, and 35-535] shall take effect on the first day of the first month which is at least ninety days after its approval."

#### EFFECTIVE DATE OF 1950 AMENDMENT

See note under section 35-405.

#### § 35-509. Amendment of articles of incorporation—Procedure.

Any company may amend its articles of incorporation upon publishing notice of such intention, authorized by a majority of its directors, once a week for three consecutive weeks in a newspaper of general circulation in the District, and with the written consent of stockholders representing at least two-thirds of the capital stocks entitled to vote, or two-thirds of its members present in person or by proxy at a meeting called for that purpose if it does not have capital stock, and by observing such other and further requirements in that behalf as may be prescribed in its articles of incorporation. Such amendment shall be signed and acknowledged by the president and secretary or like officers of the company, and, with a copy of the proceedings of the stockholders or members, if any, and of the directors, shall be filed with the superintendent and by him submitted to the corporation counsel, and if he finds the amendment and proceedings in conformity with the law, he shall so certify to the superintendent. The amendment shall not take effect until the superintendent shall deliver to the company his certified copy of the amendment and of the certificate of the

corporation counsel. (June 19, 1934, 48 Stat. 1145, ch. 672, Ch. III, § 9; Aug. 31, 1964, 78 Stat. 765, Pub. L. 88-556, § 3.)

#### AMENDMENT

1964—Section 3 of act Aug. 31, 1964, amended the first sentence by striking out "two-thirds of its stockholders" and inserting in lieu thereof the words "stockholders representing at least two-thirds of the capital stock entitled to vote".

#### EFFECTIVE DATE OF 1964 AMENDMENT

See note to section 35-508.

#### § 35-510. Increase of capital stock—Failure to subscribe and pay in within one year.

(a) If a company amend its articles of incorporation by providing for an increase of its capital stock, such increase shall be subscribed and fully paid up within one year of the date of such amendment, unless the superintendent shall certify his consent to an extension of such time. Failure to have such increase of capital stock paid up within the time provided may be considered grounds for ousting the company from its powers under any such amendment to such articles of incorporation by a court of competent jurisdiction in a proceeding by the superintendent, the corporation counsel representing him, against the company for such judgment.

(b) Subsection (a) hereof shall not be applicable to an amendment of the articles of incorporation providing for an increase of capital stock wherein said amendment provides that said increase will be reserved for issuance for—

(1) the acquisition of the ownership or control of another insurance company as an affiliate or subsidiary subject to the limitations of subsection 10(b) of section 35-535: *Provided, however,* That no such acquisition shall be consummated until it has been approved or ratified by stockholders representing at least a majority of the capital stock entitled to vote;

(2) the granting of options to officers or employees of the company to purchase authorized but unissued shares of stock of the company, for such consideration and upon such terms and conditions as may be fixed by the board of directors: *Provided, however,* That (a) at no time shall the number of shares reserved for this purpose exceed, in the aggregate, 5 per centum of the total authorized shares of stock of the company; (b) no more than 10 per centum of the total number of shares authorized to be optioned may be made available to any individual under any and all options issued to him by the company; (c) no option shall be promised or granted (1) to any individual employed by an insurance company authorized to do business in the District of Columbia (other than the company promising or granting the option or a subsidiary of the company promising or granting the option) while that individual is so employed, or (2) to any individual within two years following the termination of his employment with such an insurance company; (d) the option price of shares subject to any such option shall not be less than 95 per centum of the fair market value of such shares at the time the option is granted and shall be not less than the par value of such shares; (e)



any such option shall not be transferable except by will or the laws of descent and distribution; (f) any such option shall not be exercisable after the expiration of 10 years from the time the option is granted; or

(3) the paying of stock dividends:

*Provided*, That at no time shall the number of shares of reserved unissued stock exceed the number of shares of issued and outstanding shares of stock of said company. (June 19, 1934, 48 Stat. 1146, ch. 672, Ch. III, § 10; Aug. 31, 1964, 78 Stat. 765, Pub. L. 88-556, § 4.)

#### AMENDMENT

1964—Section 4 of act Aug. 31, 1964, amended section by inserting (a) at the beginning of the section and by adding subsection (b) thereto.

#### EFFECTIVE DATE OF 1964 AMENDMENT

See note to section 35-508.

#### § 35-511. Decrease of capital stock—Conditions—Reissuance of stock certificates.

A company may, with the approval of the superintendent, amend its articles of incorporation by providing for a decrease of its capital stock and a corresponding increase in surplus to an amount not less than the minimum capital stock and surplus required by chapters 3-8 of this title. The superintendent shall not approve or issue his certified copy of such amendment if he be of the opinion that the interests of policyholders or creditors may be prejudiced thereby. No distribution of the assets of the company shall be made to stockholders upon any such decrease of capital stock which shall reduce the surplus and capital stock to less than the minimum capital stock and surplus required as aforesaid. Upon any such amendment so decreasing the capital stock such company may require each stockholder to return his certificate of stock and accept a new certificate for such proportion of the amount of its original capital stock as the reduced capital stock shall bear to the original capital stock. (June 19, 1934, 48 Stat. 1146, ch. 672, Ch. III, § 11.)

#### § 35-512. Liability of stockholders—Fiduciaries as stockholders—Pledged stock.

All the stockholders of every company incorporated under this chapter shall be severally and individually liable to the policyholders and creditors of the company in which they are stockholders for the unpaid amount due upon the shares of capital stock held by them, respectively, for all debts and contracts made by such company until the whole amount of capital stock fixed and limited by such company shall have been paid in.

No person holding capital stock in such company as executor, administrator, guardian, committee, or trustee shall be personally subject to any liability as stockholder of such company, but the estate and funds in the hands of such executor, administrator, guardian, committee, or trustee shall be liable in like manner and to the same extent as the testator or intestate or the ward or person interested in such trust would have been if he had been living and competent to act and hold the stock in his own name.

Every such executor, administrator, guardian, committee, or trustee shall represent the capital stock

in his hands at all meetings of the company, and may vote accordingly as a stockholder.

No person holding capital stock in such company as collateral security shall be personally subject to any liability as stockholder of such company, but the person pledging such capital stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and every person who shall pledge his capital stock as collateral security may, nevertheless, represent the same at all meetings and vote as a stockholder. (June 19, 1934, 48 Stat. 1146, ch. 672, Ch. III, § 12.)

#### § 35-513. Capital stock must be paid in before doing business—Capital stock payment calls—Forfeiture—Notice.

No company incorporated under this chapter shall be authorized to transact any business until the authorized capital stock shall have been actually paid in, either in cash or in investments authorized by chapters 3-8 of this title at market value; and it shall be lawful for the directors to call in and demand from the stockholders the residue of their subscriptions in money or property at such times and in such instalments as the directors shall deem proper, under the penalty of forfeiting the shares of capital stock subscribed for and all previous payments made thereon, if payment shall not be made by the stockholder within sixty days after a personal demand or a notice requiring such payment shall have been published once a week for three consecutive weeks in a daily newspaper in the District. (June 19, 1934, 48 Stat. 1147, ch. 672, Ch. III, § 13.)

#### § 35-514. Capital stock transfers—Effect of record ownership.

The capital stock of such company shall be deemed personal estate and shall be transferable in such manner as shall be prescribed by the bylaws of the company; but no shares shall be transferable until all previous calls thereon shall have been fully paid in or the shares shall have been declared forfeited for nonpayment.

A person in whose name shares of capital stock stand on the books of a company shall be deemed the owner thereof as regards the company, but if any such person shall in good faith sell or otherwise dispose of any of his shares of capital stock to another and deliver to him the certificates for such shares, with written authority for the transfer of the same on the books, the title of the former shall vest in the latter so far as may be necessary to effect the purpose of the sale or other disposition, not only as between the parties themselves but also as against the creditors of and subsequent purchasers from the former. (June 19, 1934, 48 Stat. 1147, ch. 672, Ch. III, § 14.)

#### § 35-515. Capital stock records—Contents—To be kept open—Contents as evidence—Penalty for neglect to make entry or to exhibit.

It shall be the duty of the directors of every domestic stock company to cause a record to be kept by the treasurer or secretary of the company or by the stock transfer agent of the company containing the names of all persons, alphabetically arranged, who are or shall within six years have been stockholders of such company, and showing their place of



residence, the number of shares of capital stock held by them, respectively, the time when they became owners of such shares, and the amount of capital stock actually paid in.

Such record shall, during the usual business hours of the day, on every business day, be open for inspection by policyholders, stockholders, creditors of the company, and the personal representatives of such policyholders, stockholders, and creditors at the office or principal place of business of such company in the place where its business operations shall be located in the District of Columbia, or at the office of the stock transfer agent located in the District of Columbia, and any policyholder, stockholder, creditor, or representative shall have a right to make extracts from such record.

Such record shall be presumptive evidence of the facts therein stated in favor of the plaintiff in any suit or proceeding against such company or against any one or more stockholders.

Every officer, stock transfer agent, or any other agent of any company who shall neglect to make any proper entry in such record, or shall refuse or neglect to exhibit the same, or allow the same to be inspected and extracts to be taken therefrom, as herein provided, shall be deemed guilty of a misdemeanor and the company shall pay to the party injured a penalty of \$50 for any such neglect or refusal, and all damages resulting therefrom.

Every company that shall neglect to have such record kept open for inspection, as herein provided, shall forfeit to the District the sum of \$50 for every day it shall so neglect, to be sued for and recovered by the Superintendent, the Corporation Counsel representing him, in the Superior Court of the District of Columbia. (June 19, 1934, 48 Stat. 1147, ch. 672, Ch. III, § 15; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 20, 1964, 78 Stat. 556, Pub. L. 88-458, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(c) (37) (C), 84 Stat. 572.)

#### AMENDMENTS

1970—Section 155(c) (37) (C) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

1964—Section 1, of act Aug. 20, 1964, amended section generally.

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

#### § 35-516. Corporations and associations as members of mutual companies—Liability.

Public or private corporations, boards, or associations of the District or elsewhere, may make applications, enter into agreements for, hold policies in, and become members of mutual companies. Any officer, stockholder, trustee, or legal representative

of any such corporation, board, association, or of an estate may be recognized as acting for or on its behalf, but shall not be personally liable by reason of acting in such representative capacity. (June 19, 1934, 48 Stat. 1148, ch. 672, Ch. III, § 16.)

#### § 35-517. Mutual companies—Requirements before doing business.

No domestic mutual company shall transact any business until at least two hundred persons shall have subscribed in the aggregate for at least \$200,000 of insurance and shall have paid in full one annual premium in money upon the insurance so subscribed. (June 19, 1934, 48 Stat. 1148, ch. 672, Ch. III, § 17.)

#### CROSS REFERENCE

Assessment companies forbidden, see § 35-431.

#### § 35-518. Reincorporation of existing corporations.

Any domestic insurance corporation existing or doing business on June 19, 1934, may, by a vote of a majority of its directors or trustees, accept the provisions of chapters 3-8 of this title and amend its charter to conform with the same upon obtaining the consent of the superintendent thereto in writing, and filing such consent in the office of the recorder of deeds for the District; and thereafter it shall be deemed to have been incorporated under this chapter, and every such corporation in reincorporating under this provision may for that purpose so adopt in whole or in part a new charter, in conformity herewith, and include therein any and all provisions of its existing charter, and any or all changes from its existing charter, to cover and enjoy any or all the privileges and provisions of existing laws which might be so included and enjoyed if it were originally incorporated hereunder, and it shall, upon such adoption of and after obtaining the consent, as in this section before provided, to such charter and filing the same with the superintendent and the record thereof with the recorder of deeds of the District, perpetually enjoy the same as and be such corporation, which is declared to be a continuation of such corporation which existed prior to such reincorporation; and the offices therein which shall be continued shall be filled by the respective incumbents for the period and the same general proceedings shall be taken upon the presentation of such amended charter or certificate adopted in relation to such amendment, to the superintendent, as are required by this chapter to be taken with respect to an original charter or certificate, except that no examination of the condition and affairs of such corporation shall be required unless so ordered by the superintendent, and if the amended charter or certificate be approved by the superintendent and his certificate of authority to do business thereunder is granted, the corporation shall thereafter be deemed to possess the same powers and be subject to the same liabilities as if such charter or certificate so amended had been its original charter or certificate of incorporation, but without prejudice to pending action or proceeding or any rights previously accrued.

Upon the reincorporation or upon the amendment of the charter of any corporation having a capital



stock in accordance with the provisions of this section it may by a vote of the majority of its directors confer upon its policyholders as may have a prescribed amount of insurance upon their lives the right to vote for all or any less number of the directors in such manner not inconsistent with any provision of chapters 3-8 of this title. (June 19, 1934, 48 Stat. 1148, ch. 672, Ch. III, § 18.)

**§ 35-519. Conversion of a stock life company into a mutual life company—Plan for acquisition of capital stock—Conditions.**

Any domestic stock company organized or licensed to do business, whether incorporated under chapters 3-8 of this title, or any previous existing law, or Act of Congress, may become a mutual company, and to that end may carry out a plan for the acquisition of shares of its capital stock: *Provided, however*, That such plan (1) shall have been adopted by a vote of a majority of the directors of such company; (2) shall have been approved by a vote of stockholders representing a majority of the capital stock at a meeting of stockholders called for the purpose; and (3) shall have been approved by a majority vote of the policyholders voting at a meeting, called for the purpose, of policyholders each insured for at least \$1,000 and whose insurance shall then be in force and shall have been in force for at least one year prior to such meeting; notice of such meeting shall be given by mailing such notice from the home office of such corporation at least thirty days prior to such meeting, in a sealed envelope, postage prepaid, addressed to such policyholders at their last known post-office addresses, and such meeting shall be otherwise provided for and conducted in such manner as shall be provided in such plan: *Provided, however*, That policyholders may vote in person, by proxy, or by mail: that all votes shall be cast by ballot and the superintendent shall supervise and direct the methods and procedure of said meeting and appoint an adequate number of inspectors to conduct the voting at said meeting who shall have power to determine all questions concerning the verification of the ballots, the ascertainment of the validity thereof, the qualifications of the voters, and the canvass of the vote, and who shall certify to the superintendent and to the company the result thereof, and with respect thereto shall act under such rules and regulations as shall be prescribed by the District of Columbia Council; that all necessary expenses incurred by the superintendent shall be paid by the company as certified to by him; and (4) shall have been submitted to the superintendent and shall have been approved by him in writing: *Provided*, That every payment for the acquisition of any shares of the capital stock of such company, the purchase price of which is not fixed by such plan, shall be subject to the approval of the superintendent: *Provided further*, That neither such plan, nor any such payment, shall be approved by the superintendent unless at the time of such approvals, respectively, the company, after deducting the aggregate sum appropriated by such plan for the acquisition of any part or all of its capital stock, and in the case of any payment not fixed by such plan and subject to separate approval as aforesaid after

the approval of such plan, after deducting also the amount of such payment, shall be possessed of assets not less than the entire liabilities of the company, including the net values of its outstanding contracts computed according to the standard adopted by the company under section 35-701, and also all funds, contingent reserves, and surplus save so much of the latter as shall have been appropriated or paid under such plan. (June 19, 1934, 48 Stat. 1149, ch. 672, Ch. III, § 19.)

**TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL**

Section 402(274) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of prescribing rules and regulations governing inspectors of elections held by policy holders of domestic stock life insurance companies for the purpose of converting to a mutual company under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

**§ 35-520. Application to corporations formed prior to June 19, 1934.**

Every company incorporated under the provisions of the laws of the District, or Act of Congress, prior to June 19, 1934, is hereby brought under all the provisions of chapters 3-8 of this title, except that its capital may continue in the amount named in its charter during the existing term thereof, unless it extends its business to other kinds of insurance, and it shall be entitled to all privileges granted by such charter not authorized by this law. (June 19, 1934, 48 Stat. 1149, ch. 672, Ch. III, § 20.)

**§ 35-521. Directors—Election—Qualifications—Limitation on proxies.**

The stock, property, and business of every company organized under chapters 3-8 of this title shall be managed by the directors who shall, except for the first year, be annually elected, at such time and place as shall be determined by the bylaws of the company. Every director of such a stock company shall be a stockholder thereof, and every director of such a mutual company shall be a policyholder thereof. All proxies used in the election of directors of such companies shall be valid for a period not exceeding one year from the election for which they were signed and in which they were authorized to be voted. (June 19, 1934, 48 Stat. 1149, ch. 672, Ch. III, § 21.)

**CROSS REFERENCE**

Quo warranto proceedings to question right to corporate office, see § 16-3501 et seq.

**§ 35-522. By-laws.**

The directors of companies organized under chapters 3-8 of this title shall have power to make such by-laws as they deem proper for the management of the business affairs of such company, not inconsistent with the laws of the District and the Constitution of the United States, and prescribing the duties of officers, employees, and servants, that may be employed, for the appointment or election of all officers, and for carrying on all kinds of business within the objects and purposes of such company. (June 19, 1934, 48 Stat. 1150, ch. 672, Ch. III, § 22.)



### § 35-523. Election of directors.

Notice of the time and place of holding election of directors of a company organized under chapters 3-8 of this title shall be sent to those entitled to vote, and the election shall be made by such of the stockholders and/or policyholders as shall attend for that purpose, either in person or by proxy. All elections shall be by ballot, and the persons receiving the greatest number of votes shall be directors. When any vacancy shall happen among the directors it shall be filled for the remainder of the year in such manner as shall be prescribed by the by-laws of the company.

In case it shall happen at any time that an election of directors shall not be made on the day designated by the by-laws of said company when it ought to have been made, the company shall not for that reason be dissolved, but it shall be lawful on any other day to hold an election for directors in such manner as may be provided in the by-laws, and all acts of directors shall be valid and binding as against said company until their successors shall be elected. (June 19, 1934, 48 Stat. 1150, ch. 672, Ch. III, § 23.)

### § 35-524. Cumulative voting.

In an election for directors of any stock company in which the policyholders do not vote, each stockholder having a right to vote may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer, that is to say: If the stockholder having a right to vote owns one share of stock, or has one vote, or is entitled to one vote for each of seven directors by virtue thereof, he may give one vote to each of said seven directors, or seven votes for any one thereof, or a less number of votes for any less number of directors, whatever may be the actual number to be elected, and in this manner may distribute or cumulate his votes as he may see fit. (June 19, 1934, 48 Stat. 1150, ch. 672, Ch. III, § 24.)

### § 35-525. Voting power under policies of group life insurance.

In every group policy issued by a domestic life company the employer shall be deemed to be the policyholder for all purposes, within the meaning of this chapter, and, if entitled to vote at meetings of the company, shall be entitled to one vote thereat. (June 19, 1934, 48 Stat. 1150, ch. 672, Ch. III, § 25.)

### § 35-526. Liability of directors—Objections to be filed.

The directors of any company organized under the laws of the District shall be personally liable when they have participated in or assented to any act which shall cause injury to policyholders, creditors, or stockholders resulting from (a) ultra vires acts; (b) illegal corporate acts done with their connivance, knowledge, or consent; (c) issuing unpaid or part-paid stock and marking or representing it as paid up in full; (d) dividend payments declared whether negligently or purposely impairing the capital stock and minimum surplus; (e) mismanagement; (f) loaning corporate funds to stockholders or discounting their notes out of corporate moneys; (g) making false notices or reports that deceive the public; or, (h) transferring property to officers or stockholders

to defraud policyholders or creditors. If any of the directors shall object to declaring a dividend or the payment of the same, and shall, at any time before the time fixed for the payment thereof, file a certificate of their objections in writing with the secretary of the company and with the superintendent, they shall be exempt from the liability prescribed in this section for dividends declared or paid impairing the capital stock and minimum surplus. (June 19, 1934, 48 Stat. 1150, ch. 672, Ch. III, § 26.)

### NOTES TO DECISIONS

#### Claim for "ultra vires" act as part of derivative action

An alleged cause of action charging that the president and director of a corporation is personally liable for participating in "ultra vires" act to the detriment of the corporation and for being pecuniarily interested in corporate transactions in violation of statute should be maintainable as part of a derivative action. *G. E. Johnson et al. v. American General Insurance Company et al.* (1969, 296 F. Supp. 802).

### § 35-527. Salaries to be authorized by directors.

No domestic company shall pay any salary, compensation, or emolument to any officer, trustee, or director thereof, amounting in any one year to more than \$5,000, unless such payment shall be authorized by the board of directors of the company. (June 19, 1934, 48 Stat. 1151, ch. 672, Ch. III, § 27.)

### § 35-528. Limitation of dividends to stockholders and policyholders.

No domestic company shall make any payments in form of dividends or otherwise to its stockholders for or on account of any interest in or relation to the company as stockholders unless it possesses assets in the amount of such payment in excess of its liabilities, including its capital stock, and the surplus required by chapters 3-8 of this title; and no domestic company shall make any payments to its policyholders for or on account of any interest in or relation to the company as members or policyholders except for matured claims or other policy obligations and in the purchase of surrender values unless it possesses assets in the amount of such payments in excess of its liabilities, and the capital stock and surplus required by chapters 3-8 of this title. (June 19, 1934, 48 Stat. 1151, ch. 672, Ch. III, § 28.)

### § 35-529. Officers.

There shall be a president, a secretary, and a treasurer of the company, who shall be elected by the directors; and also such subordinate officers as may be elected or appointed, and who may be required to give security for the faithful performance of the duties of their office, as chapters 3-8 of this title and the company by its by-laws may require. (June 19, 1934, 48 Stat. 1151, ch. 672, Ch. III, § 29.)

### CROSS REFERENCE

Quo warranto proceedings to question right to corporate office, see § 16-3501 et seq.

### § 35-530. Officers and directors not to be pecuniarily interested in transactions—Appraisement—Loans on policies.

No director or officer of any company doing business in the District shall receive any money or valuable thing for negotiating, procuring, recommending, or aiding in any purchase by or sale to such



company of any property, or any loan from such company, nor be pecuniarily interested, either as principal, coprincipal, agent, or beneficiary, in any such purchase, sale, or loan, nor shall the financial obligation of any such director or officer be guaranteed by such company in any capacity: *Provided*, That nothing herein contained shall prevent any such director or officer from receiving a fee for appraising property for said company or for serving on any committee that passes on the investments of said company: *Provided further*, That nothing herein contained shall prevent a life insurance company from making a loan upon a policy held therein by a director not in excess of the net value thereof. Any person violating any provision of this section shall be guilty of a misdemeanor. (June 19, 1934, 48 Stat. 1151, ch. 672, Ch. III, § 30.)

#### NOTES TO DECISIONS

##### Claim for "ultra vires" act as part of derivative action

An alleged cause of action charging that the president and director of a corporation is personally liable for participating in "ultra vires" act to the detriment of the corporation and for being pecuniarily interested in corporate transactions in violation of statute should be maintainable as part of a derivative action. *G. E. Johnson et al. v. American General Insurance Company et al.* (1969, 296 F. Supp. 802).

##### Construction

District of Columbia statute providing that a director or officer of an insurance company doing business in the district shall not receive any money or valuable thing for negotiating any loan from the company or be pecuniarily interested in any such loan is regulatory and is intended to secure fiduciary relationship from being utilized in a manner which might give rise to conflict of interest and is not intended to punish one who violates the statute, hence the rule of strict construction of criminal statute is to be relaxed. *A. F. Jordan v. Acacia Mutual Life Insurance Co., et ano.* (1969, 409 F. 2d 1141, 133 U.S. App. D.C. 224; rev'g 283 F. Supp. 766).

Inasmuch as statute prohibiting director or officer of life insurer from obtaining loan from insurer provided that any person violating statute should be guilty of misdemeanor, statute must be treated as a penal statute. *Acacia Mutual Life Insurance Co., et ano. v. A. F. Jordan Sup't etc.* (1968, 283 F. Supp. 766; rev'd and remanded 409 F. 2d 1141).

Portion of section of District of Columbia Code to effect that no director or officer of any life insurer doing business in district shall receive any money or valuable thing for negotiating, procuring, recommending or aiding in any loan from such insurer was intended to bar director or officer from receiving any compensation, such as broker's commission, for procuring a loan to be made and to prevent director or officer from borrowing any money from insurer while he was director or officer. *Id.*

##### Eligibility of borrower to become director or officer

Under District of Columbia statute providing that a director or officer of any insurance company doing business in the district shall not receive any money or valuable thing for negotiating any loan from the company or be pecuniarily interested in any such loan, a person who is interested as principal in a loan from the insurance company is barred from becoming a director even though his interest in the loan arose prior to his becoming a director. *A. F. Jordan v. Acacia Mutual Life Insurance Co., et ano.* (1969, 409 F. 2d 1141, 133 U.S. App. D.C. 224; rev'g 283 F. Supp. 766).

Person who had borrowed money from District of Columbia insurance company was eligible to become member of board of directors or officer of company while loan was outstanding. *Acacia Mutual Life Insurance Co., et ano. v. A. F. Jordan Sup't etc.* (1968, 283 F. Supp. 766; rev'd and remanded 409 F. 2d 1141).

Section of District of Columbia Code banning director or officer of any insurer from being pecuniarily interested, either as principal, coprincipal, agent or beneficiary in any purchase by, or sale to, insurer or any loan from insurer relates to transaction of lending money and does not apply to status of loan and is not effective during entire period when loan is in existence. *Id.*

##### § 35-531. "Voting-trust agreements" defined and declared unlawful.

It shall be unlawful for any stockholder, director, or officer of any company having capital stock to enter into any contract or agreement, commonly known as "voting-trust agreements," whereby the rights, benefits, or liabilities attaching to the capital stock are transferred or assigned, temporarily or otherwise, to any person or group of persons, incorporated or unincorporated, for the purpose of controlling, managing, or directing the company, or voting its stock: *Provided*, That this section shall not prevent the granting of proxies by stockholders authorizing a designated individual to represent them at stockholders' meetings. (June 19, 1934, 48 Stat. 1151, ch. 672, Ch. III, § 31.)

##### § 35-532. Repealed. May 4, 1950, 64 Stat. 104, ch. 157, § 5.

Section, act June 19, 1934, 48 Stat. 1152, ch. 672, Ch. III, § 32, related to maximum and contingent premiums of mutual companies.

##### EFFECTIVE DATE OF REPEAL

Repeal of section by act May 4, 1950, effective ninety days after May 4, 1950, see section 8 of act May 4, 1950, set out as a note under section 35-405.

##### § 35-533. Classification of risks, payment of dividends, and creation of surplus by mutual companies.

A mutual company may, in its articles of incorporation or in its by-laws, provide for the classification of its risks and of its members and for the payment of dividends and for the creation of a surplus. (June 19, 1934, 48 Stat. 1152, ch. 672, Ch. III, § 33.)

##### § 35-534. Mutual company guaranty fund—Mutual company's power to borrow—Approval by superintendent.

A mutual company organized under chapters 3-8 of this title may borrow or assume a liability for the repayment of a sum of money sufficient to defray the reasonable expenses of its organization or to enable it to comply with any requirement of the law or as a guaranty fund upon agreement, which shall first be submitted to and approved by the superintendent that such loan or advance, with interest at a rate not exceeding six per centum per annum, shall be repaid out of the earnings, or profits of such corporation with the approval of the superintendent whenever in his judgment the financial condition of the company shall warrant; but such approval shall not be withheld if, after such repayment shall be made, the company shall have and be in possession of a surplus equal to 10 per centum or more of its gross annual premiums. Any such loan or advance shall not form a part of the legal liabilities of the company, but until repaid all statements published by such company or filed with the superintendent shall show the amount thereof then remaining unpaid. (June 19, 1934, 48 Stat. 1152, ch. 672, Ch. III, § 34.)



**§ 35-535. Investment of funds of domestic companies.**

A domestic company shall invest its funds only in—

(1) Bonds, notes, or other evidences of indebtedness of the United States, any State, Territory, or possession of the United States, the District of Columbia, the Dominion of Canada, any Province of the Dominion of Canada, or of any administration, agency, authority, or instrumentality of any of the political units enumerated; or obligations issued or guaranteed as to principal and interest by the International Bank for Reconstruction and Development or by the Inter-American Development Bank.

(2) Bonds, notes, or other evidences of indebtedness guaranteed or insured as to principal and interest by the United States, any State, Territory or possession of the United States, the District of Columbia, the Dominion of Canada, any Province of the Dominion of Canada, or by an administration, agency, authority, or instrumentality of any of the political units enumerated.

(3) Bonds, notes, or other evidences of indebtedness issued, guaranteed, or insured as to principal and interest by a city, county, drainage district, road district, school district, tax district, town, township, village or other civil administration, agency, authority, instrumentality or subdivision of a State, Territory or possession of the United States, or the District of Columbia, or of the Dominion of Canada, or any province thereof, provided such obligations are authorized by law and are (a) direct and general obligations of the issuing, guaranteeing, or insuring governmental unit, administration, agency, authority, district, subdivision, or instrumentality; or (b) payable from designated revenues pledged to the payment of the principal and interest thereof.

(4) Legally authorized bonds, debentures, notes, collateral trust certificates, and other such evidences of indebtedness, and share certificates, which have been or may be issued by (a) the Federal home-loan bank; (b) the Home Owners' Loan Corporation; (c) any Federal savings and loan association; (d) the Reconstruction Finance Corporation; (e) the Federal Farm Loan Board; (f) any Federal land bank; (g) the Federal Intermediate Credit Bank; (h) any housing authority organized under the public housing laws of the District of Columbia or any State of the United States, or in notes, bonds, or loans secured by mortgage or deed of trust insured under the provisions of the National Housing Act, as amended (12 U.S.C. 1701 et seq.), or guaranteed or insured pursuant to the provisions of title III of an Act of Congress of the United States of June 22, 1944, cited as the "Servicemen's Readjustment Act of 1944", as heretofore or hereafter amended, or by any entity, corporation, or agency which has been or which may be created by or authorized by any Act which has been enacted, or which may hereafter be enacted by the Congress of the United States, or any amendment thereto, which has for its purpose the relief of, refinancing of, or assistance to owners of mortgaged or encumbered homes, farms, or other real estate.

(5) (a) Bonds, notes, or loans secured by first lien on real estate in the United States or Dominion of Canada worth at least 33½ per centum more than the amount loaned thereon: *Provided*, That this limitation shall not apply to any of the classes of securities mentioned in subsection (4) of this section, if guaranteed or insured in whole or in part as therein provided; but nothing in this section shall be deemed to prohibit a company from renewing or extending a loan for the original amount where there has been a shrinkage in the value of such real estate nor to prohibit a company from accepting, as part payment for real estate sold by it, a lien thereon for more than the percentage herein specified of the purchase price of such real estate. For the purpose of this section, real estate shall not be deemed to be encumbered by reason of the existence of—

(i) taxes or assessments that are not delinquent.

(ii) assessments or other charges made by non-governmental agencies under instruments creating or reserving the right to make charges for the creation or maintenance of roadways, utilities, recreational or other community facilities or for supplying services or benefits for the community in which such real estate is situated, notwithstanding such charges are or may become a lien against the real estate, provided no such charges are delinquent.

(iii) instruments creating or reserving mineral, oil, gas, water, or timber rights, easements, rights-of-way, joint driveways, sewer rights, rights in walls.

(iv) building restrictions or other restrictive covenants, or leases with or without an option to purchase.

(v) conditions or rights of reentry or forfeiture which are insured against by a title insurance company, or which cannot cut off, subordinate, or otherwise disturb the aforesaid first lien on real estate.

(b) Bonds, notes, or loans secured by first lien on leasehold estates in improved real property located in the United States or Dominion of Canada, where such real property is unencumbered except by rentals to accrue therefrom to the owner of the fee, and where there is no condition or right of reentry or forfeiture under which such lien can be cut off, subordinated or otherwise disturbed so long as the lessee is not in default, provided the value of such leasehold, with improvements thereon shall be at least 50 per centum more than the amount loaned thereon: *Provided*, That this limitation shall not apply to any of the classes of securities mentioned in subsection (4) of this section, if guaranteed or insured in whole or in part as therein provided. Such loan shall be completely amortized during the unexpired portion of the lease or leasehold estate securing its payment.

(c) Loans or advances by a company for the purpose of making repairs, alterations, additions, or improvements to homes or other buildings on improved real estate upon which real estate or upon a leasehold estate in said real estate such company



then holds a first lien to secure a loan previously made: *Provided*, That no such loan or advance shall be made in a sum in excess of \$2,000: *And provided further*, That the amount of such loan or advance when added to the balance due on the original indebtedness shall not exceed the amount originally secured by the first lien.

(d) Ground rents in the District of Columbia or any State of the United States: *Provided*, That in the case of unexpired redeemable ground rents the premiums paid, if any, shall be amortized over the period between the date of acquisition and earliest redemption date, or charged off at any time prior to redemption date; and in the case of expired redeemable ground rents the premiums paid, if any, shall be charged off at the time of acquisition. Redeemable ground rents purchased at a discount shall be carried at an amount not greater than the cost of acquisition.

(6)(a) Notes, bonds, or equipment trust certificates secured by any transportation equipment leased or sold to a common carrier, domiciled within the United States or the Dominion of Canada, with gross revenues exceeding \$1,000,000 in the fiscal year immediately preceding purchase, which notes, bonds, or equipment trust certificates provide a right to receive determined rental, purchase or other fixed obligatory payments adequate to retire the obligations within twenty years from date of issue and also provide (i) for the vesting of title to such equipment, free from encumbrance in a corporate trustee or (ii) for the creation of a first lien on such equipment, provided at the date of purchase such notes, bonds, or trust certificates are not in default as to principal or interest, and provided further that no company shall invest an amount in excess of 2 per centum of its admitted assets in any one issue of such notes, bonds, or equipment trust certificates of any one corporation.

(b) Notes, bonds, or other evidences of indebtedness evidencing rights to receive partial payments agreed to be made upon any contract of leasing or conditional sale, the issue of which has been approved by the proper public authority if such approval was required by law at the time of issue, if such lessee or conditional vendee is a solvent corporation domiciled within the United States or the Dominion of Canada, and if the bonds or other evidences of indebtedness, if any, of such corporation are eligible as investments under the provisions of subsection (7) of this section: *Provided, however*, That no company shall invest an amount in excess of 2 per centum of its admitted assets in any one issue of such notes, bonds, or other evidences of indebtedness of any one corporation.

(c) Equipment or machinery for use in transportation, manufacturing, production or distribution, leased or to be leased to any solvent corporation domiciled within the United States or the Dominion of Canada, if the bonds or other evidences of indebtedness, if any, of such corporation are eligible as investments under the provisions of subsection (7) of this section: *Provided, however*, That no company shall invest an amount in excess of 2 per centum of its admitted assets in such equipment or

machinery leased or to be leased to any one corporation.

(7)(a) Bonds and other evidences of indebtedness of any solvent corporation created under the laws of the United States or any State thereof, or the District of Columbia, or the Dominion of Canada, or any Province thereof: *Provided*, That (i) no company shall invest an amount in excess of 2 per centum of its admitted assets in any one issue of such obligations of any one corporation; (ii) the net earnings of the issuing corporation available for its fixed charges for a period of five fiscal years next preceding the date of acquisition by such insurance company shall have averaged yearly, and during the last year of said five-year period shall have been not less than one and one-half times its annual fixed charges at the time of the investment, or, if a new issue, as shown by the pro forma statement of the corporation; and (iii) there shall have been no defaults in interest thereon, or on any such obligations of such corporation which are of equal or higher priority with those purchased, during the period of five years next preceding the date of acquisition, or, if outstanding for less than five years, at any time since said obligations were issued. The term "net earnings available for fixed charges", as used herein, shall mean the net income after deducting all operating and maintenance expenses, depreciation and depletion, and taxes other than Federal, State, and District of Columbia income taxes, but nonrecurring items of income and expenses may be eliminated. The term "fixed charges" as used herein shall include interest on all of the fixed interest bearing debt of the corporation outstanding and maturing in more than one year, as of the date of acquisition, and in case of investment in contingent interest obligations, said term shall also include maximum annual contingent interest as of said date. The earnings of all predecessor, merged, consolidated, or purchased companies may be included through the use of consolidated or pro forma statements provided the fixed charges of all such companies are also included.

(b) Certificates, notes, or other obligations issued by trustees or receivers of any corporation created or existing under the laws of the United States or of any State, District, or Territory thereof, which, or the assets of which, are being administered under the direction of any court having jurisdiction: *Provided*, That no company shall invest an amount in excess of 2 per centum of its admitted assets in any one issue of such certificates, notes or other obligations of any one corporation.

(8) Bank certificates of deposit and bankers' acceptances, and other bills of exchange of the kind and maturities made eligible by law for purchase in the open market by Federal Reserve banks.

(9)(a) Preferred stock of any solvent corporation (other than its own) created under the laws of the United States, or of any State thereof, or the District of Columbia, or the Dominion of Canada, or any Province thereof, where such corporation has not failed in any one of the three fiscal years next preceding such investment, to have earned a sum applicable to dividends on such preferred stock equal



at least to three times the amount of dividends due in that year, or where in case of issuance of new preferred stock such earnings applicable to dividends are equal to at least three times the amount of proforma annual dividend requirements after giving effect to such new financing, and where the bonds and other evidences of indebtedness, if any, of such corporation are eligible as investments under the provisions of subsection (7) of this section, and where the total investment in any one issue of such preferred stock of any one corporation does not exceed 1 per centum of the investing company's admitted assets.

(b) Stocks or other securities guaranteed by any solvent corporation created under the laws of the United States, or any State thereof, or the District of Columbia, or the Dominion of Canada, or any Province thereof, if the guaranteeing corporation has not failed in any one of the three fiscal years next preceding such investment to have earned a sum applicable to interest on outstanding indebtedness and dividends on all guaranteed stocks equal to at least twice the amount of interest and guaranteed dividends payable for that year. No company shall invest in excess of 1 per centum of its assets in any one issue of guaranteed stocks made eligible for investment under this subsection.

(10) (a) Common stocks of any solvent corporation (other than its own) created under the laws of the United States, or of any State thereof, or the District of Columbia, or the Dominion of Canada, or any Province thereof, which shall have paid common dividends in cash for not less than five years next preceding the purchase of such stocks, and where the bonds and other evidences of indebtedness, if any, and the preferred stock, if any, of such corporation are eligible as investments under the provisions of subsections (7) and (9), respectively, of this section, and where the total investment in the common stock of any one corporation does not exceed 1 per centum of the investing company's admitted assets.

(b) In addition to the investments authorized in paragraph (10) (a), common stocks of any insurance company (other than as prohibited in section 35-540) created under the laws of the United States, or by any State thereof, or the District of Columbia: *Provided, however,* That stocks may be acquired under this paragraph (10) (b) only (i) with the intention of ultimately acquiring ownership or control of the issuing corporation as an affiliate or a subsidiary, (ii) if such acquisition will not cause the acquiring company's aggregate cost of investments under this paragraph to exceed, in the case of a capital stock company, the amount of capital, surplus, and contingency reserves in excess of \$300,000, or, in the case of a mutual company, the amount of surplus and contingency reserves in excess of \$150,000, and (iii) after the Superintendent of Insurance of the District of Columbia has been furnished with such information as he may require and has given to the acquiring company his written approval of the proposed acquisition stating his opinion that it will not substantially lessen competition, will not tend to create a monopoly in any line of in-

surance, and will not impair the financial stability of the acquiring company.

(11) Loans upon the pledge of any of the securities aforesaid, not exceeding 85 per centum of the market value of the collateral taken as security at the date of the loan.

(12) A life-insurance company may also purchase for its own benefit any policy of life insurance or other obligation of the company and claims of the holders thereof, and may lend to the holders of its life-insurance policies sums not exceeding in any case the reserve value of the policy at the time the loan is made, and for the payment of any such loan the policy and all amounts payable thereunder shall be pledged.

(13) A company doing business in a foreign country may invest the funds required to meet its obligations in such country and in conformity to the laws thereof in the same kind of securities in such foreign country that such company is allowed by law to invest in the United States.

(14) A life-insurance company may also acquire, hold, and convey real estate for the purposes and in the manner following:

(a) the building in which it has its principal office and the land on which it stands;

(b) such as shall be requisite for its convenient accommodation in the transaction of its business;

(c) such as shall have been acquired for the accommodation of its business;

(d) such as shall have been conveyed to it in satisfaction of debts, previously contracted, in the course of its dealings;

(e) such as it shall have purchased at trustee sale or sales on judgments, decrees, or mortgages obtained or made for such debts; and

(f) such as it may purchase or hold for the production of income. It may improve or otherwise develop in any manner such real estate and the improvements thereon, and may own, maintain, manage, collect, and receive income from, and sell or convey the same. No company shall, in any period of twelve consecutive months, invest in or agree to pay for real estate, including improvements thereon, under the authority of this item (f) an aggregate amount in excess of 2 per centum of its admitted assets as shown in its most recent annual statement; nor shall the total value of real estate and improvements thereon acquired or held by a company for the production of income under the provisions of this item (f) at any time exceed 5 per centum of its said admitted assets. No investment shall be made by any company pursuant to this item (f) if such company then owns real estate having a total value in excess of 10 per centum of its said admitted assets or if such investment will cause such company's aggregate investments in real estate owned by it to exceed 10 per centum of its said admitted assets: *Provided,* That for the purpose of applying said 10 per centum limitation real estate shall include all real estate then owned by the company and such real estate as it may have owned and sold on contract, to the extent of the balance unpaid on such contract of sale; or if the balance unpaid on account of real



estate owned and sold by a company is secured by mortgage or other instrument, there shall be included as real estate the amount, if any, by which the balance unpaid exceeds 75 per centum of the value of such real estate. A company may, subject to the limitations and conditions of this item (f), elect to consider property acquired as specified in items (c), (d), and (e) as real estate for the production of income as defined in this item (f). Such election shall be duly authorized and recorded by the board of directors or by a committee of directors, officers, or employees of the company designated by the Board charged with the duty of supervising loans or investments. The minutes of any such committee shall be duly recorded and regular reports of such committee shall be submitted to the board of directors.

All such real estate specified in items (c), (d), and (e) of this subsection (14), which shall not be necessary for its accommodation in the convenient transaction of its business, and which it has not elected to hold for the production of income, shall be sold by the company and disposed of within five years after it shall have acquired the title to the same, or within five years after the same shall have ceased to be necessary for the accommodation of its business, unless the company file with the Superintendent an application for extension of time, supported by such evidence as may be required by the Superintendent, establishing to his satisfaction that an extension would be to the advantage of the company and that the interests of the company would be affected adversely by a forced sale thereof, in which event the time for the sale may be extended to such time as the Superintendent shall direct.

(15) Any domestic life insurance company may also lend or invest its funds, to an extent that the cost of such investments shall not exceed in the aggregate the lesser of (i) 5 per centum of its total admitted assets, or (ii) in the case of a capital stock company, the amount of capital, surplus, and contingency reserves in excess of \$300,000 or, in the case of a mutual company, the amount of surplus and contingency reserves in excess of \$150,000, in loans or investments (other than common stocks of insurance companies) not otherwise permitted under this section: *Provided, however,* That no company shall invest in excess of 1 per centum of its admitted assets in any one such loan or investment. The company shall keep a separate record of all loans and investments made under this subsection. In the event that, subsequently to being made under the provisions of this subsection, a loan or investment is determined to have become qualified under some other part of this section, the company may consider such loan or investment as being held under the applicable provision and such loan or investment shall no longer be considered as having been made under this subsection.

(16) The compliance of a particular investment with the restrictions that not more than a specified percentage of the investing company's admitted assets may be invested therein, as set forth in subsections (6), (7), (9), (10), (14), or (15) of this section, whichever is applicable, shall be determined

as of the date of the making or acquisition of each such investment.

No loan or investment, except loans on the security of life insurance policies, shall be made by any such company, unless the same shall have been authorized or be approved by the board of directors or by a committee of directors, officers or employees of the company designated by the board charged with the duty of supervising loans or investments. The minutes of any such committee shall be duly recorded and regular reports of such committee shall be submitted to the board of directors.

No such company shall subscribe to or participate in any underwriting of the purchase or sale of securities or property, jointly with any other corporation, firm, or person, or enter into any agreement to withhold from sale any of its securities or property; but the disposition of its assets shall at all times be within the control of the company. Nothing contained in this paragraph shall be construed to invalidate or prohibit such a company from joining with one or more other investors to share in the purchase of any securities or the making of any loan for investment purposes.

Nothing in this chapter shall prohibit a company from accepting in good faith, to protect its interests, securities or property, other than herein referred to, in payment of or to secure debts due or to become due the company. (June 19, 1934, 48 Stat. 1152, ch. 672, Ch. III, § 35; Feb. 3, 1938, 52 Stat. 26, ch. 13, § 12; June 19, 1948, 62 Stat. 480, ch. 503; July 19, 1954, 68 Stat. 494, ch. 546, § 1; Sept. 21, 1959, 73 Stat. 598, Pub. L. 86-329, § 1; Sept. 8, 1960, 74 Stat. 863-866, Pub. L. 86-731, § 1; Sept. 14, 1961, 75 Stat. 514, Pub. L. 87-245, § 1; Oct. 3, 1962, 76 Stat. 715, Pub. L. 87-739, § 1; Aug. 31, 1964, 78 Stat. 765, Pub. L. 88-556, § 2(a)(b).)

#### REFERENCES IN TEXT

Servicemen's Readjustment Act of 1944, referred to in subsec. (4), was repealed, and is now covered by 38 U.S.C. § 1801 et seq.

#### CODIFICATION

Section 1(f) of act Sept. 8, 1960, amended subsec. (14) (f) of this section by "deleting the last sentence in its entirety and substituting the following two sentences in lieu thereof." However, the report accompanying act Sept. 8, 1960, indicates that the next to last sentence of such paragraph was amended. Accordingly, the amendment has been executed as shown in the report.

#### AMENDMENTS

1964—Section 2(a) of act Aug. 31, 1964, amended paragraph 10(b) clause (ii) to read as above set out. Section 2(b) of the same act amended paragraph (15) clause (ii) by striking out the words "the amount of capital, surplus, and contingency reserves in excess of \$150,000" and inserted in lieu thereof the matter beginning with the words "in the case of" and ending with "\$150,000".

1962—Act Oct. 3, 1962, amended clause (1) so as to permit investments in securities of the Inter-American Development Bank.

1961—Act Sept. 14, 1961, amended subsection (10) by designating it as subsection (10)(a) and by adding a new par. to said subsection designated as (10)(b).

1960—Subsec. (5)(a) amended by act Sept. 8, 1960, § 1(a), which substituted the last sentence as set out above for provisions which read "For the purpose of this section real estate shall not be deemed to be encumbered by reason of the existence of taxes or assessments that are not delinquent, instruments creating or reserving mineral, oil, water, or timber rights, rights-of-way, joint driveways, sewer rights, rights in walls, nor by reason of



building restrictions or other restrictive covenants, nor when such real estate is subject to lease in whole or in part whereby rents or profits are reserved to the owner."

Subsec. (6) (a) amended by act Sept. 8, 1960, § 1(b), which added proviso prohibiting any company from investing an amount in excess of 2 per centum of its admitted assets in any one issue of such notes, bonds, or equipment trust certificates of any one corporation.

Subsec. (6) (b), (c) added by act Sept. 8, 1960, § 1(b).

Subsec. (7) amended by act Sept. 8, 1960, § 1(c), which designated existing provisions as par. (a), and inserted therein depreciation and depletion in the definition of net earnings available for fixed charges, and added par. (b).

Subsec. (9) amended by act Sept. 8, 1960, § 1(d), which designated existing provisions as par. (a) and added par. (b).

Subsec. (11) amended by act Sept. 8, 1960, § 1(e), which limited the amount of loans to not more than 85 per centum of the market value of the collateral taken as security at the date of the loan.

Subsec. (14) (f) amended by act Sept. 8, 1960, § 1(f), which substituted "committee of directors, officers, or employees of the company designated by the Board" for "committee thereof", and inserted sentence requiring the minutes of any such committee to be duly recorded and requiring submission of reports to the board.

Subsecs. (15) and (16) added by act Sept. 8, 1960, § 1(g).

The paragraph following subsec. (16) was amended by act Sept. 8, 1960, § 1(h), which substituted "committee of directors, officers or employees of the company designated by the board" for "committee thereof", and inserted sentence requiring the minutes of the committee to be recorded and requiring the submission of regular reports.

The next to last paragraph was amended by act Sept. 8, 1960, § 1(i), which added sentence providing that nothing contained in this paragraph shall be construed to invalidate or prohibit such a company from joining with one or more other investors to share in the purchase of any securities or the making of any loan for investment purposes.

1959—Subsec. (5) (a), amended by act Sept. 21, 1959, which substituted "33⅓ per centum" for "40 per centum."

1954—Subsec. (1), amended by act July 19, 1954, which added "or obligations issued or guaranteed as to principal and interest by International Bank for Reconstruction and Development."

1950—Subsec. (h) amended generally by act May 4, 1950, which among other changes, substituted requirement that companies invest funds in accordance with the laws of their domicile, and in securities or property affording financial security substantially equal to that required for similar domestic companies, for provisions permitting companies to invest according to the laws of the District, or their domicile, and requiring non-stock companies to have additional assets to equal the cash premium of policies in force, and for all companies, a surplus held in trust for its policyholders equal to requirements for like domestic companies, and also requiring an additional \$100,000 deposit of securities with the Superintendent or authorized state official.

1948—Act June 19, 1948, amended section generally, and among other changes, effected the following:

Subsec. (1), inserted references to notes, territories or possessions, and to administrations, agencies, authorities and instrumentalities of the enumerated political units.

Subsec. (2), substituted provisions relating to indebtedness guaranteed or insured as to principal and interest by the United States or Canada or any of the enumerated political subdivisions of either, or of any instrumentality of said political subdivisions, for provisions relating to indebtedness of counties, cities, towns, villages, school districts, or other municipal districts within the United States or Canada, which have been substantially incorporated in subsec. (3).

Subsec. (3), substituted provisions relating to indebtedness guaranteed by cities, counties, drainage districts, road districts, school districts, tax districts, towns, local civil administrations and other subdivisions of States, Territories, possessions, or provinces of the United States or Canada, part of which were formerly in subsec. (2),

for provisions relating to bonds or notes secured by mortgages, deeds of trust, and perpetual leases on unencumbered real estate, insurance of improvements, and construction of unencumbered real estate, which have been substantially incorporated in subsec. (5).

Subsec. (3a), related to bonds or notes secured by mortgages insured by the Federal Housing Administrator, and was omitted. See subsec. (4) (h).

Subsec. (4), substituted provisions relating to indebtedness and share certificates issued by the enumerated federal administrative agencies, indebtedness secured by mortgage or deed of trust issued under the National Housing Act, or guaranteed or insured under the Servicemen's Readjustment Act of 1944, or by any entity created by Congress to assist owners of mortgaged or encumbered real estate, for provisions relating to indebtedness of Farm Loan Banks or national mortgage associations.

Subsec. (5) (a), (b), (c), substituted provisions relating to indebtedness secured by first lien on real estate and on leasehold estates in the United States or Canada, defining unencumbered real estate, loans for repairs and improvements, part of which were formerly in subsec. (3), for provisions relating to stocks and bonds of solvent corporations. See subsecs. (7), (9), and (10).

Subsec. (5) (d), added.

Subsec. (6), substituted provisions relating to notes, bonds or equipment trust certificates secured by transportation equipment, for "Loans upon the pledge of any of the securities aforesaid", which provisions have been redesignated as subsec. (11).

Subsec. (7), substituted provisions relating to bonds of solvent corporations, and defining "net earnings available for fixed charges", and "fixed charges", part of which were formerly in subsec. (5), for provisions relating to purchase of policies and loans to policyholders which have been redesignated as subsec. (12).

Subsec. (8), substituted provisions relating to bills of exchange for provisions relating to investments of companies doing business in a foreign country, which have been redesignated as subsec. (13).

Subsec. (9), substituted provisions relating to preferred stock, for provisions relating to bonds of the Home Owner's Loan Corporation, restrictions of general loans, underwriting, and acceptance of securities and property in payment of loans. See subsecs. (4) (b), and (14).

Subsecs. (10), (11), and (12), added, reenacting the provisions of former subsecs. (6), (7), and (8), respectively.

Subsec. (14), added, substantially reenacting provisions relating to approval of loans or investments, restrictions on underwriting, and acceptance of securities and property in payment of debts, which were part of former subsec. (9), and adding provisions relating to the purposes and the manner of acquiring, holding and conveying real estate.

1938—Subsec. (3a), added by act Feb. 3, 1938, § 12(a).

Subsec. (4) was amended by act Feb. 3, 1938, § 12(b), which inserted "and bonds or other evidences of indebtedness of national mortgage associations."

#### EFFECTIVE DATE OF 1964 AMENDMENT

See note to section 35-508.

#### EFFECTIVE DATE OF 1960 AMENDMENT

Section 2 of act Sept. 8, 1960, provided that: "The amendments made by this Act [to this section] shall become effective on September 1, 1960."

#### ABOLISHMENT OF FEDERAL FARM LOAN BOARD

The Federal Farm Loan Board, referred to in par. (4) (e), was abolished and the functions thereof transferred to the Farm Credit Administration. See Ex. Ord. 6084 and 12 U.S.C. 641 et seq.

#### ABOLISHMENT OF HOME OWNERS' LOAN CORPORATION

The Home Owners' Loan Corporation, referred to in par. (4) (b), was dissolved by order of Secretary of the Home Loan Bank Board, effective Feb. 3, 1954, pursuant to act June 30, 1953 (67 Stat. 121; 12 U.S.C. 1463 note).

#### ABOLISHMENT OF RECONSTRUCTION FINANCE CORPORATION

The Reconstruction Finance Corporation, referred to in par. (4) (d), was abolished by Reorganization Plan No. 1 of 1967 (71 Stat. 647; 15 U.S.C. 601 note).



## CROSS REFERENCES

Investment limitations on variable payment contract assets, see § 35-541.

Investments, generally, see § 35-202.

Securities permitted for deposits, see § 35-416.

Valuation of securities, see § 35-422.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-510, 35-541.

## NOTES TO DECISIONS

## Construction

District of Columbia Loan Shark Act is applicable to loans made by life insurance companies in regular course of their business and thus such companies, until 1963, were not exempt from requirement of obtaining license in order to make loans at rate of interest in excess of 6%, notwithstanding contentions that Act does not apply to insurance companies which "invest" their funds by making loans secured by real estate, that, in view of comprehensive regulation of insurance companies under certain titles of District of Columbia Code, they cannot be subject to licensing regulation of lending activities under Act, and that Act is not intended to apply to large loans made by "institutional lenders" and secured by real estate. *In re Parkwood, Inc.* (1972, 461 F. 2d 158, 149 U.S. App. D.C. 67).

§ 35-536. Repealed, June 19, 1948, 62 Stat. 480, ch. 503.

Section, act June 19, 1934, 48 Stat. 1152, ch. 672, Ch. III, § 36, relating to domestic company real estate holdings, is now covered by section 35-535.

§ 35-537. Reinsurance by domestic companies in authorized companies.

Any domestic company may reinsure any part of an individual risk in another company having power to make such reinsurance, and with the consent of the superintendent may reinsure any part or all of its risks in another such company. But no credit shall be taken for the reserve for unearned premiums on such reinsurance unless the company accepting the reinsurance is authorized to do business in the District by the superintendent, or in one or more States in the United States, and the superintendent shall have approved the reinsurance. (June 19, 1934, 48 Stat. 1154, ch. 672, Ch. III, § 37.)

## CROSS REFERENCE

Reinsurance reserves, see § 35-201.

§ 35-538. Vouchers for disbursements.

No domestic company shall make any disbursement of \$100 or more unless the same be evidenced by a voucher signed by or on behalf of the person, firm, or corporation receiving the money and describing the consideration for the payment; and if the expenditure be in connection with any matter pending before any legislative or public body or before any department or officer of any State or government, the voucher shall describe the nature of the matter and the interest of the company therein. or, if such voucher can not be obtained, the expenditure shall be evidenced by affidavit describing its character and object and stating the reasons for not obtaining such voucher. (June 19, 1934, 48 Stat. 1154, ch. 672, Ch. III, § 38.)

§ 35-539. Books, records, accounts, and vouchers of domestic companies.

Every domestic company shall keep its books, records, accounts, and vouchers in such manner that its financial condition can be ascertained and so that its financial statements filed with the superintendent

can be readily verified. (June 19, 1934, 48 Stat. 1154, ch. 672, Ch. III, § 39.)

§ 35-540. Unlawful acquisition by company of its own capital stock.

It shall be unlawful for any company to acquire shares of its own capital stock except upon approval of the superintendent where the total outstanding stock is being diminished in accordance with chapters 3-8 of this title. (June 19, 1934, 48 Stat. 1154, ch. 672, Ch. III, § 40.)

## CROSS REFERENCE

Decrease of capital, see § 35-511.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-535.

§ 35-541. Variable contracts—Separate accounts—Assets of accounts to equal obligations for variable payments—Issuance by foreign companies—Standards of qualification—Reports—Regulations—Investment limitations.

(a) Every domestic life insurance company which issues contracts providing for payments which vary directly according to investment experience shall establish one or more separate accounts in connection with such contracts, as directed by the superintendent. All amounts received by the company which are required by contract to be applied to provide such variable payments shall be added to the appropriate separate account, and the assets of any such separate account shall not be chargeable with liabilities arising out of any other business the company may conduct. Any surplus or deficit which may arise in any such separate account by virtue of mortality experience shall be adjusted by withdrawals from or additions to such account so that the assets of such account shall always equal the assets required to satisfy the company's obligations for such variable payments.

(b) A foreign or alien life insurance company authorized to do business in the District may be authorized to issue or deliver contracts in the District providing for payments which vary directly according to investment experience only if authorized to issue such contracts under the laws of its domicile.

(c) No domestic life insurance company shall be authorized to issue such variable contracts, and no foreign or alien life insurance company shall be authorized to issue or deliver such contracts in the District, until such company has satisfied the Superintendent that its condition and methods of operation in connection with the issuance of such variable contracts will not be such as to render its operation hazardous to the public or to its policyholders in the District. In determining the qualification of a company to issue or deliver such variable contracts in the District, the Superintendent shall consider, among other things, the history and financial condition of the company; the character, responsibility, and general fitness of the officers and directors of the company; and, in the case of a foreign or alien company, whether the regulation provided by the laws of its domicile provides a degree of protection to policyholders and the public substantially equal to that provided by this section and the rules and regulations issued by the Superintendent pursuant thereto.



(d) Every life insurance company which issues or delivers such variable contracts in the District shall file with the Superintendent, in addition to the annual statement required by section 35-407, such other periodic or special reports as the Superintendent may prescribe.

(e) The provisions of this section shall not apply to any contracts which do not provide for payments which vary directly according to investment experience.

(f) The District of Columbia Council shall have the authority to issue such reasonable rules and regulations as may be necessary to carry out the purposes of this section.

(g) In the case of a domestic life insurance company which issues contracts providing for payments which vary directly according to investment experience—

(1) the 2 per centum limitation of clause (1) of subsection (7) of section 35-535, shall be enlarged to include an additional 2 per centum of the assets held by such company in the separate account or accounts established pursuant to subsection (a) of this section.

(2) the 1 per centum limitation of subsection (9) of said section 35-535 shall be enlarged to include an additional 2 per centum of the assets held by such company in the separate account or accounts established pursuant to subsection (a) of this section.

(3) the 1 per centum limitation of subsection (10) of said section 35-535 shall be enlarged to include an additional 2 per centum of the assets held by such company in the separate account or accounts established pursuant to subsection (a) of this section.

(June 19, 1934, ch. 672, Ch. III, § 41, as added June 12, 1960, 74 Stat. 218, Pub. L. 86-520, § 1.)

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(275) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of issuing rules and regulations under subsection (f), to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2-2401.

### Chapter 6.—FOREIGN AND ALIEN LIFE COMPANIES

Sec.

- 35-601. Conditions precedent to authority of foreign or alien company to do business in the District.  
35-602. Trustees of alien companies.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 26-610, 35-301, 35-302, 35-405, 35-412, 35-415 to 35-417, 35-426, 35-428, 35-431, 35-503, 35-508, 35-511, 35-513, 35-518 to 35-523, 35-528, 35-529, 35-534, 35-540, 35-601, 35-602, 35-709, 35-719, 35-801, 35-803, 35-1612.

#### § 35-601. Conditions precedent to authority of foreign or alien company to do business in the District.

A foreign or alien insurance company desiring to transact business in the District shall file with the superintendent:

(a) Its application for certificate of authority, stating the kind or kinds of insurance it proposes to transact.

(b) A copy of its charter, articles of incorporation, or deed or settlement, certified by the official who is required to keep or record the same in the state under whose laws the company is incorporated, or if organized under the laws of a foreign government, province, or state, by the proper official of such government, province, or state.

(c) A copy of its by-laws, or regulations, if any, certified to by the secretary of the company.

(d) Copies of the policies it is issuing or proposes to issue and of the applications therefor.

(e) The instrument authorizing service of process on the superintendent required by chapters 3-8 of this title.

(f) A statement of its financial condition and business, in form as prescribed by law for annual statements, signed and sworn to by the president and secretary or other principal officers of the company. If an alien company, the statement shall comprise only its condition and business in the United States, and shall be signed and sworn to by its United States manager.

(g) It shall satisfy the superintendent that the company is duly organized under the laws of the state, province, or government under whose laws it professes to be organized, and authorized to do the business it is transacting or proposes to transact, and that its name is not identical with, nor so similar to, that of another company organized prior to the organization of the applying company as to lead to confusion.

(h) It shall satisfy the Superintendent that its funds are invested in accordance with the laws of its domicile and in securities or property which afford a degree of financial security substantially equal to that required for similar domestic companies, and, if a stock company, that it has paid-up capital and surplus at least equal to the capital and surplus required of domestic stock companies, or, if a mutual company, that it has a surplus at least equal to that required by chapters 3-8 of this title for domestic mutual companies. (June 19, 1934, 48 Stat. 1154, ch. 672, Ch. IV, § 1; May 4, 1950, 64 Stat. 104, ch. 157, § 6.)

#### EFFECTIVE DATE OF 1950 AMENDMENT

See note under § 35-405.

#### EFFECTIVE DATE

Chapter effective June 19, 1934, see section 5 of Ch. VI of act June 19, 1934, set out as a note under section 35-301.

#### CROSS REFERENCES

Application to existing companies, see § 35-520.  
Deposits of domestic companies, see § 35-415 et seq.  
Requirements for domestic companies, see chapter 5 of this title.

#### § 35-602. Trustees of alien companies.

The directors of an alien company may appoint citizens or corporations of the United States, approved by the superintendent, as its trustees to hold funds and assets in trust for the benefit of the policyholders and creditors of the company in the United States. A certified copy of the record of such appointment and of the deed of trust shall be filed with



the superintendent, who may examine such trustees and any officers and agents, books, and papers of the company in the same manner as he may examine officers, agents, books, papers, and affairs of insurance companies. The funds and assets so held by such trustees shall, with the deposits otherwise made by the company and the funds and assets held by the company in the United States for the benefit of its policyholders and creditors in the United States, constitute the assets of the company for the purpose of making its financial statements required by chapters 3-8 of this title. (June 19, 1934, 48 Stat. 1155, ch. 672, Ch. IV, § 2.)

### Chapter 7.—PROVISIONS RELATING TO ALL LIFE INSURANCE COMPANIES

Sec.

- 35-701. Superintendent to value policies—Legal standard of valuation.
- 35-702. Separate classes and accounts to be kept for participating and nonparticipating insurance.
- 35-703. Standard provisions required in life insurance policies.
- 35-704. Provisions prohibited in life insurance policies.
- 35-705. Standard provisions required in annuities and pure endowment contracts.
- 35-705a. Nonforfeiture benefits and cash surrender values.
- 35-705b. Standard nonforfeiture law.
- 35-705c. Loan provisions in policies.
- 35-706. Extension of time for payment of life premiums.
- 35-707. Interest on policy and premium loans shall be added to principal.
- 35-708. Life-policy forms to be filed with Superintendent—Notice of nonconformity—Review.
- 35-709. Provisions required by the laws of a company's own State may be included in policies.
- 35-710. Group life insurance.
- 35-711. Standard provisions for policies of group life insurance.
- 35-711a. Notice to individual insured under group life insurance policy.
- 35-712. Individual Accident and Sickness Policy Provisions.
- 35-713. Stock operations and advisory board contracts prohibited.
- 35-714. Misrepresentations prohibited.
- 35-715. Discriminations prohibited.
- 35-716. Rights of creditors and beneficiaries under policies of life insurance.
- 35-717. Exemption of disability insurance from execution.
- 35-718. Exemption of group life insurance policies from execution.
- 35-719. False statements—Misdemeanor.
- 35-720. Proceeds of certain policies to be held in trust by life company.
- 35-721. When actual premium for life policy is less than net premium.
- 35-722. Acceptance of premiums in arrears and recording of payments.
- 35-723. Standard provisions required in industrial life insurance policies.
- 35-724. Provisions prohibited in industrial life insurance policies.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 26-610, 35-301, 35-302, 35-405, 35-412, 35-415 to 35-417, 35-426, 35-428, 35-431, 35-503, 35-508, 35-511, 35-513, 35-518 to 35-523, 35-528, 35-529, 35-534, 35-540, 35-601, 35-602, 35-709, 35-719, 35-801, 35-803, 35-1612.

#### § 35-701. Superintendent to value policies—Legal standard of valuation.

(a) The Superintendent shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life-insurance

policies and annuity and pure endowment contracts of every life-insurance company doing business in the District except that in the case of an alien company such valuation shall be limited to its insurance transactions in the United States, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods (net level premium method or other) used in the calculation of such reserves. All such valuations made by him or by his authority, shall be made upon the net premium basis. In calculating such reserves, he may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien company, he may accept any valuation made, or caused to be made, by the insurance supervisory official of any State or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such State or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the Superintendent when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that State or jurisdiction.

Any such company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the Superintendent, adopt any lower standard of valuation, but not lower than the minimum herein provided.

(b) This subsection shall apply to only those policies and contracts issued prior to the operative date of section 35-705b (the standard nonforfeiture law).

The legal minimum standard for the valuation of life-insurance contracts issued before January 1, 1935, shall be the method and basis of valuation heretofore applied by the Superintendent in the valuation of such contracts, and for life-insurance contracts issued on and after said date shall be the one-year preliminary term method of valuation, except as hereinafter modified, on the basis of the American Experience Table of Mortality with interest at 3½ per centum per annum: *Provided*, That any life company may, at its option, value its insurance contracts issued on and after January 1, 1935, in accordance with their terms on the basis of the American Men Ultimate Table of Mortality with interest not higher than 3½ per centum per annum by the level net premium method or by the modified preliminary term method hereinafter described.

If the premium charged for term insurance under a limited payment life preliminary term policy providing for the payment of all premiums thereon in less than twenty years from date of the policy, or under an endowment preliminary term policy, exceeds that charged for like insurance under twenty payment life preliminary term policies of the same company, the reserve thereon at the end of the year, including the first, shall not be less than the reserve on a twenty payment life preliminary term policy issued in the same year and at the same age, together with an amount which shall be equivalent to the



accumulation of a net level premium sufficient to provide for a pure endowment at the end of the premium payment period, equal to the difference between the value at the end of such period of such a twenty payment life preliminary term policy and the full net level premium reserve at such time of such a limited payment life or endowment policy. The premium payment period is the period during which premiums are concurrently payable under such twenty payment life preliminary term policy and such limited payment life or endowment policy.

Policies issued on the preliminary term method shall contain a clause specifying that the reserve thereof shall be computed in accordance with the modified preliminary term method of valuation provided for herein.

The legal minimum standard for the valuation of annuities issued on and after January 1, 1935, shall be McClintock's Table of Mortality Among Annuity-tants, with interest at 4 per centum per annum, but annuities deferred ten or more years and written in connection with life insurance shall be valued on the same basis as that used in computing the consideration or premium therefor, or upon any higher standard at the option of the company.

The legal minimum standard for the valuation of industrial policies issued after January 1, 1935, shall be the American Experience Table of Mortality with interest at  $3\frac{1}{2}$  per centum per annum: *Provided*, That any life company may voluntarily value its industrial policies on the basis of the standard industrial mortality table or the substandard industrial mortality table by the level net premium method or in accordance with their terms by the modified preliminary term method hereinbefore described.

The Superintendent may vary the standards of interest and mortality in the case of alien companies as to contracts issued by such companies in other countries than the United States, and in particular cases of invalid lives and other extra hazards.

Reserves for all such policies and contracts may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this subsection.

(c) This subsection shall apply to only those policies and contracts issued on or after the operative date of section 35-705b (the standard non-forfeiture law).

(1) The minimum standard for the valuation of all such policies and contracts shall be the Commissioner's reserve valuation method defined in paragraph (2),  $3\frac{1}{2}$  per centum interest, and the following tables:

(i) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, the Commissioners 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of the next to the last paragraph of section 35-705b(d), and the Commissioners 1958 Standard Ordinary Mortality Table for such policies issued on or after such operative date; provided that for any category of such policies issued on female risks all modified net pre-

miums and present values referred to in this section may be calculated according to an age not more than three years younger than the actual age of the insured.

(ii) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, the 1941 Standard Industrial Mortality Table for such policies issued prior to the operative date of the last paragraph of section 35-705b(d), and the Commissioners 1961 Standard Industrial Mortality Table for such policies issued on or after such operative date.

(iii) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the 1937 Standard Annuity Mortality Table or, at the option of the company, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the Superintendent.

(iv) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the Group Annuity Mortality Table for 1951, any modification of such table approved by the Superintendent, or, at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(v) For total and permanent disability benefits in or supplementary to ordinary policies or contracts, for policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the company, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(vi) For accidental death benefits in or supplementary to policies, for policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table; for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the company, the Intercompany Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Intercompany Double Indemnity Mortality Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(vii) For group life insurance, life insurance issued on the substandard basis and other special benefits, such tables as may be approved by the Superintendent.

(2) Reserves according to the Commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess,



if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (A) over (B), as follows:

(A) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due: *Provided, however,* That such net level annual premium shall not exceed the net level annual premium on the nineteen year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(B) A net one-year term premium for such benefits provided for in the first policy year.

Reserves according to the Commissioner's reserve valuation method for (i) life-insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums, (ii) annuity and pure endowment contracts, (iii) disability and accidental death benefits in all policies and contracts, and (iv) all other benefits, except life insurance and endowment benefits in life-insurance policies, shall be calculated by a method consistent with the principles of this paragraph (2), except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums.

(3) In no event shall a company's aggregate reserves for all life-insurance policies, excluding disability and accidental death benefits, be less than the aggregate reserves calculated in accordance with the method set forth in paragraph (2) and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(4) Reserves for any category of policies, contracts, or benefits as established by the Superintendent, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein: *Provided, however,* That reserves for participating life-insurance policies may, with the consent of the Superintendent, be calculated according to a rate of interest lower than the rate of interest used in calculating the nonforfeiture benefits in such policies, with the further proviso that if such lower rate differs from the rate used in the calculation of the nonforfeiture benefits by

more than one-half per centum the company issuing such policies shall file with the Superintendent a plan providing for such equitable increases, if any, in the cash surrender values and nonforfeiture benefits in such policies as the Superintendent shall approve.

(June 19, 1934, 48 Stat. 1156, ch. 672, Ch. V, § 1; Feb. 19, 1948, 62 Stat. 27, ch. 66, § 1; June 27, 1960, 74 Stat. 227, Pub. L. 86-530, § 1; Oct. 3, 1962, 76 Stat. 711, Pub. L. 87-738, § 1.)

#### AMENDMENTS

1962—Section 1 of act Oct. 3, 1962, amended paragraph (1) of subsection (c) generally.

1960—Subsec. (c) (1) (i) amended by act June 27, 1960, § 1(a), which limited the use of the Commissioners 1941 Standard Ordinary Mortality Table to policies issued prior to the operative date of the last paragraph of section 35-705b(d) and authorized the use of the 1958 Standard Ordinary Mortality Table for policies issued after such date, and inserted the proviso relating to policies issued on female risks.

Subsec. (c) (2) (B) amended by act June 27, 1960, § 1(b), to require that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums.

1948—Act Feb. 19, 1948, amended section generally, and among other changes, authorized valuation of reserves for pure endowment contracts, limited valuation for alien companies to transactions in the United States, permitted the Superintendent to certify amount of reserves, to calculate them by group methods, and to accept valuations made by the insurance supervisory official of any other jurisdiction if it complies with the minimum standards herein provided and if the other jurisdiction accepts the Superintendent's certificate, permitted companies to reduce their reserves with the Superintendent's approval to the legal minimum, limited the application of the legal minimum standards for valuation to policies and contracts issued prior to the operative date of section 35-705b, and set new standards for valuation for policies and contracts issued on or after the operative date of section 35-705b.

#### EFFECTIVE DATE

Chapter effective June 19, 1934, see section 5 of Ch. VI of act June 19, 1934, set out as a note under section 35-301.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CROSS REFERENCES

Actual premium less than net premium, effect, see § 35-721.

Application to existing companies, see § 35-520.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-519, 35-721.

§ 35-702. Separate classes and accounts to be kept for participating and nonparticipating insurance.

Every life company doing business in the District which issues both participating and nonparticipating policies shall keep the two classes of business separate and shall make, and include in the annual statement to be filed with the superintendent each year a separate statement of the gains, losses, and expenses properly attributable to each of such classes and also showing the manner in which any general outlay of expenses of the company has been apportioned to each. No such life company shall be permitted to do business in the District unless it makes such a separation of its business. This section shall not apply to paid-up, temporary, or pure endowment



insurance issued or granted in exchange for lapsed or returned policies. (June 19, 1934, 48 Stat. 1157, ch. 672, Ch. V, § 2.)

**§ 35-703. Standard provisions required in life insurance policies.**

No policy of life insurance other than industrial insurance, annuities, and pure endowments with or without return of premiums or of premiums and interest shall be issued or delivered in the District or be issued by a life company organized under the laws of the District after the 1st day of January 1935, unless the same shall contain in substance the following:

(1) A provision that all premiums after the first shall be payable in advance, either at the home office of the company or to an agent of the company, upon delivery of a receipt signed by one or more of the officers who shall be designated in the policy.

(2) A provision that the insured is entitled to a grace period of at least thirty days or of one month within which the payment of any premiums after the first year may be made, subject at the option of the company to an interest charge not in excess of 6 per centum per annum for the number of days of grace elapsing before the payment of the premium, during which period of grace the policy shall continue in full force, but in case the policy becomes a claim during the said period of grace before the overdue premium or the deferred premiums of the current policy year, if any, are paid, the amount of such premiums, with interest on any overdue premiums, may be deducted from any amount payable under the policy in settlement. Grace shall date from the premium-paying date stated in the policy.

(3) A provision that, except as otherwise expressly provided by law, the policy shall constitute the entire contract between the parties and shall be incontestable after it has been in force during the lifetime of the insured for a period of not more than two years from its date, except for nonpayment of premiums and except for violations of the conditions of the policy relating to naval or military service in time of war, and at the option of the company, provisions relative to benefits in the event of total and permanent disability and provisions which grant additional insurance specifically against death by accident may also be excepted; that all statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties; and that no such statement or statements shall be used in defense of a claim under the policy unless contained in a written application and unless a copy of such statement or statements be endorsed upon or attached to the policy when issued: *Provided*, That nothing contained herein shall apply to applications for reinstatement. A reinstated policy shall be contestable on account of fraud or misrepresentation of material facts pertaining to the reinstatement, for the same period after reinstatement as provided in the policy with respect to the original issue.

(4) A provision that if it shall be found at any time before final settlement under the policy that the age of the insured (or the age of the beneficiary, if considered in determining the premium) has been misstated, the amount payable under the policy

shall be such as the premium would have purchased at the correct age, according to the company's rate at date of issue.

(5) A provision that the policy shall participate in the surplus of the company, and any policy containing provisions for participation at the end of the first policy year, and annually thereafter, may also provide that each dividend shall be paid subject to the payment of the premium for the next ensuing year; and the insured under any annual dividend policy shall have the right each year to have the dividend arising from such participation paid in cash; and if the policy shall provide other dividend options, it shall further provide which of said options shall be effective if the insured shall not elect any such other option on or before the expiration of the period of grace allowed for the payment of the premium. This provision shall not apply to any form of paid-up insurance or temporary insurance or pure endowment insurance, issued or granted in exchange for lapsed or surrendered policies, or to nonparticipating policies.

(6) A provision that after the policy has been in force three full years the company at any time, while the policy is in force, will advance, on proper assignment or pledge of the policy and on the sole security thereof, at a specified rate of interest, a sum equal to, or at the option of the insured less than the amount required by section 35-705c under the conditions specified thereby; and that the company will deduct from such loan value any indebtedness not already deducted in determining such value and any unpaid balance of the premium for the current policy year, and may collect interest in advance on the loan to the end of the current policy year. This provision shall not be required in term insurance, nor shall it apply to temporary insurance or pure endowment insurance, issued or granted in exchange for lapsed or surrendered policies. The policy may further provide that if the interest on the loan is not paid when due it shall be added to the existing loan and shall bear interest at the same rate.

(7) A provision for nonforfeiture benefits and cash surrender values in accordance with the requirements of section 35-705a or section 35-705b.

(8) A provision specifying the options, if any, to which the policyholder is entitled in the event of default in a premium payment.

(9) A table showing in figures the loan values and the options available under the policy each year upon default in premium payments, during at least the first twenty years of the policy or during the premium paying period if less than twenty years.

(10) A provision that if in event of default in premium payments the value of the policy shall have been applied to the purchase of other insurance as provided for in this section, and if such insurance shall be in force and the original policy shall not have been surrendered to the company and canceled, the policy may be reinstated within three years from such default, upon evidence of insurability satisfactory to the company and payment of arrears of premiums and the payment or reinstatement of any other indebtedness to the company upon said policy, with interest on said premium and indebtedness at the rate of not exceeding 6 per



centum per annum payable annually, and that such reinstated policy shall be contestable, on account of suicide, fraud, or misrepresentation of material facts pertaining to the reinstatement, for the same period after reinstatement as provided in the policy with respect to the original issue.

(11) A provision that when a policy shall become a claim by the death of the insured settlement shall be made upon receipt of due proof of death.

(12) A table showing the amount of instalments, if any, in which the policy may provide its proceeds may be payable.

(13) Title on the face and on the back of the policy briefly describing its form.

Any of the foregoing provisions or portions thereof not applicable to single premium or non-participating or term policies shall, to that extent, not be incorporated therein; and any such policy may be issued or delivered in the District which in the opinion of the superintendent contains provisions on any one or more of the several foregoing requirements more favorable to the policyholder than hereinbefore required. The provisions of this section shall not apply to policies of reinsurance, or to policies issued or granted in exchange for lapsed or surrendered policies, or to group insurance. (June 19, 1934, 48 Stat. 1158, ch. 672, Ch. V, § 3; Feb. 19, 1948, 62 Stat. 30, ch. 66, § 2.)

#### AMENDMENT

1948—Subsec. (6) was amended by act Feb. 19, 1948, § 3(6), which substituted "amount required by section 35-705c of this chapter under the conditions specified thereby;" for provisions relating the amount of loan to the reserve at the end of the current policy year on the policy and dividend additions thereto exclusive of reserve on return premium insurance and on disability and accidental death benefits less a percentage of the policy, and deleted provisions permitting deferral of loans for six months after application, and for alternate deductions of either not more than 2½ per centum of the policy or one-fifth of the reserve.

Subsec. (7) was amended by act Feb. 19, 1948, § 3(7), which substituted "a provision for nonforfeiture benefits and cash surrender values in accordance with the requirements of section 35-705a or section 35-705b of this chapter", for provisions that in event of default in premium payments after having been paid for three years, the insured was entitled to a stipulated form of insurance with net value at least equal to reserve at default date plus dividend additions, exclusive of reserve on account of return premium insurance and disability and accidental death benefits, less a percentage of the policy, for alternate deductions of either not more than 2½ per centum of the policy or one-fifth of the reserve, a right to surrender for a specific cash value, and that the company could defer payment up to six months after application, and for a net single premium rate.

Subsec. (8) was amended by act Feb. 19, 1948, § 3(8), which deleted "after three full annual premiums shall have been paid. This provision shall not be required in term insurance of twenty years or less. A provision may also be inserted in the policy that in event of default in a premium payment before such options become available the reserve on any dividend additions then in force may at the option of the company be paid in cash or applied as a net premium to the purchase of paid-up term insurance for any amount not in excess of the face of the original policy", following "default in a premium payment."

#### CROSS REFERENCES

Effect of false statements in application, see § 35-414.

Industrial policies, special provisions governing, see § 35-1001 et seq.

Standard provisions for,

Accident and health policies, see § 35-712.

Annuity and endowment contracts, see § 35-705.

Group life policies, see § 35-711.

Valuation of policies, see § 35-701.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-705a, 35-705c.

#### § 35-704. Provisions prohibited in life insurance policies.

No policy of life insurance other than industrial insurance, annuities, and pure endowments, with or without return of premiums or of premiums and interest, shall be issued or delivered in the District or be issued by a life company organized under the laws of the District after the 1st day of January 1935 if it contains any of the following provisions:

(1) A provision limiting the time within which any action at law or in equity may be commenced to less than three years after the cause of action shall accrue.

(2) A provision by which the policy shall purport to be issued or take effect more than six months before the original application for the insurance was made.

(3) Except for provisions relating to misstatement of age, suicide, aviation, and military or naval service in time of war, a provision for any mode of settlement at maturity, after the expiration of the contestable period of the policy, of less value than the amount insured on the face of the policy plus dividend additions, if any, less any indebtedness to the company on or secured by the policy, and less any premium that may, by the terms of the policy, be deducted. This paragraph shall not apply to any nonforfeiture provision.

(4) A provision for forfeiture of the policy for failure to repay any loan on the policy, or to pay interest on such loan, while the total indebtedness on the policy, including interest, is less than the loan value thereof.

(5) A provision to the effect that the agent soliciting the insurance is the agent of the person insured under said policy, or making the acts or representations of such agent binding upon the person so insured under said policy.

(6) A provision permitting the payment of funeral benefits in merchandise or services, or permitting the payment of any benefits other than in lawful money of the United States.

(7) A provision permitting either contracting to pay, or the payment of, funeral, burial, and other expenses to any designated undertaker or undertaking establishment, or to any particular tradesman or business man, so as to deprive the persons entitled by law to dispose of the body of a deceased, or in any way to control such persons in procuring and purchasing said supplies and services in the open market with the advantage of competition. (June 19, 1934, 48 Stat. 1161, ch. 672, Ch. V, § 4; Feb. 19, 1948, 62 Stat. 30, ch. 66, § 3.)

#### AMENDMENT

1948—Act Feb. 19, 1948, amended par. (3) by deleting "which employs the cash value less indebtedness, if any, to purchase automatic paid-up or extended insurance", following "This paragraph shall not apply to any nonforfeiture provision."



## CROSS REFERENCE

Discrimination prohibited, see § 35-715.

## NOTES TO DECISIONS

## Soliciting agent

The mailing of life policy from home office of insurer in Washington, D. C., to soliciting agent in Alabama for delivery in person to insured did not constitute a delivery of policy at Washington, D. C., since agent was agent of insurer rather than of insured, and delivery took place when agent handed policy to insured in Alabama. *United Services Life Ins. Co. v. Farr* (D. C. N. Y. 1945, 60 F. Supp. 829).

§ 35-705. Standard provisions required in annuities and pure endowment contracts.

On and after January 1, 1935, no annuity or pure endowment contract shall be issued or delivered in the District unless and until a copy of the form thereof has been filed with the superintendent and formally approved by him.

Except in the case of a reversionary annuity, otherwise called a "survivorship annuity," or an annuity contracted by an employer in behalf of his employees, no annuity or pure endowment contract shall be so issued or delivered in this District unless it contains, in substance, the following provisions:

First. A provision that there shall be a period of grace, either of thirty days or of one month, within which any stipulated payment to the company falling due after the first year may be made, subject, at the option of the company, to an interest charge thereon at a rate to be specified in the contract, but not exceeding 6 per centum per annum for the number of days of grace elapsing before such payment, during which period of grace, the contract shall continue in full force; but in case a claim arises under the contract on account of death during the said period of grace before the overdue payment to the company or the deferred payments of the current contract year, if any, are made, the amount of such payments, with interest on any overdue payments, may be deducted from any amount payable under the contract in settlement.

Second. If statements, other than those relating to age and identity, are required, as a condition of issuing the contract, a provision that the contract shall be incontestable after it has been in force during the lifetime of the person or each of the persons as to whom such statements are required, for a period of two years from its date of issue, except where stipulated payments to the company have not been made, and except for violation of the conditions of the contract relating to military or naval service in time of war, and at the option of the company, provisions relative to benefits in the event of total and permanent disability and provisions which grant insurance specifically against death by accident, may also be excepted.

Third. A provision that such contract shall constitute the entire contract between the parties, but if the company desires to make the application a part of the contract it may do so, provided a copy of such application shall be endorsed upon or attached to such contract, when issued, and in such case such contract shall contain a provision that it, together with the application therefor, shall constitute the entire contract between the parties.

Fourth. A provision that if the age of the person or persons upon whose life or lives the contract is based, or of any of them, has been misstated, the amount payable under the contract shall be such as the stipulated payments to the company would have purchased at the correct age or ages.

Any overpayment or overpayments by the company, on account of misstatement of age, shall with interest thereon at a rate to be specified in the contract, but not exceeding 6 per centum per annum, be charged against the current or next succeeding payment or payments to be made by the company under the contract.

Fifth. If the contract is participating, a provision that the divisible surplus shall be apportioned annually and dividends shall be payable in cash or shall be applicable to any stipulated payment or payments to the company under the contract.

Sixth. A provision that if the contract after having been in force for three full years, shall, by its terms, lapse or become forfeited because any stipulated payment to the company shall not have been made, the reserve on such contract, computed according to the standard adopted by said company in accordance with this chapter, shall, after deducting one-fifth of the said entire reserve, and any indebtedness to the company under the contract, be applied as a net single payment, according to said standard, for the purchase of a paid-up annuity or pure endowment contract, which may be nonparticipating and which shall be payable by the company under the same terms and conditions, except as to amount, as the original contract. A company may provide, in lieu of such paid-up values, for a paid-up annuity or pure endowment contract in an amount bearing the same proportion to the original annuity or pure endowment contract as the number of stipulated payments which shall have been made to the company shall bear to the total number of stipulated payments required to be made to the company under the contract, and if there be any indebtedness to the company under the contract, the amount of such paid-up annuity or pure endowment shall be reduced by an amount bearing the same proportion to such paid-up annuity or pure endowment as such indebtedness bears to the reserve on such paid-up annuity or pure endowment, computed according to the standard adopted by said company in accordance with this chapter.

Seventh. A provision that the contract may be reinstated at any time within one year from the date of default in making stipulated payments to the company, provided that all overdue stipulated payments and any indebtedness to the company on the contract shall be made or paid, with interest thereon at a rate to be specified in the contract but not exceeding 6 per centum per annum, payable annually. In cases where applicable a company may also include a requirement of evidence of insurability satisfactory to the company.

No contract for a reversionary annuity shall be so issued or delivered unless it contains in substance the following provisions:

A. Provisions "First," "Second," "Third," and "Fifth," of this section, except that under provision "First," the company may, at its option, provide for



an equitable reduction of the amount of the annuity payments in settlement of any overdue or deferred payments, in lieu of providing for a deduction of such payments from any amount payable upon a settlement under the contract.

B. A provision that, if the age of any of the persons upon whose lives the contract is based has been misstated, the amount payable under the contract shall be such as the stipulated payments to the company would have purchased at the correct ages.

C. A provision that the contract may be reinstated at any time within three years from the date of default in making stipulated payments to the company, upon production of evidence of insurability satisfactory to the company, provided that all overdue payments and any indebtedness to the company on the contract shall be made or paid, with interest thereon at a rate to be specified in the contract, but not exceeding 6 per centum per annum, payable annually.

Any of the foregoing provisions or portions thereof not applicable to nonparticipating contracts nor to contracts for which a single stipulated payment to the company is made, shall, to that extent, not be incorporated therein; and any such contract may be issued or delivered in this District, which, in the opinion of the superintendent, contains provisions on any one or more of the several foregoing requirements, more favorable to the holder of the contract than hereinbefore required.

Nothing herein contained shall be construed to prevent a life company, which issues life insurance on a participating basis, from issuing annuities, reversionary annuities, or pure endowments on a nonparticipating basis.

Any such contract or any application, endorsement, or rider form used in connection therewith, issued in violation of this section, shall, nevertheless, be held valid, but shall be construed as provided in this section and when any provision in such contract, application, endorsement, or rider is in conflict with any provision of this section or with any other statutory provision, the rights, duties, and obligations of the company, of the holder of the contract and of the beneficiary or annuitant thereunder, shall be governed by the provisions of this section.

The provisions of this section shall not apply to contracts of reinsurance nor to contracts for deferred annuities or reversionary annuities included in life insurance policies.

For the purposes of this section, application forms, rider forms, and endorsement forms for use in connection with any such contract, excepting riders or endorsements relating to the manner of distribution of benefits or to the reservation of rights and benefits under any such contract, and used at the request of the individual holders of such contracts, shall be deemed to be parts of such contract and shall require the approval of the superintendent. No rider and no endorsement, except as stated above, shall be attached to or printed or stamped upon any such contract issued or delivered in the District until the form of such rider or endorsement has been filed with the superintendent and formally approved by him. (June 19, 1934, 48 Stat. 1161, ch. 672, Ch. V, § 5.)

#### CROSS REFERENCES

Copy of application to be delivered with policy, see § 35-203.

Effect of false statements in application, see § 35-414.

Industrial policies, special provisions governing, see § 35-1001 et seq.

Provision prohibited in life policies, see §§ 35-704, 35-712.

Accident and health policies, see §§ 35-704.

Group life policies, see § 35-711.

Life policies, see § 35-701.

Valuation of policies, see § 35-701.

#### § 35-705a. Nonforfeiture benefits and cash surrender values.

This section shall apply only to policies of life insurance issued prior to the operative date of section 35-705b (the standard nonforfeiture law).

The nonforfeiture benefits referred to in provision (7) of section 35-703 shall be available to the insured in event of default in premium payments, after premiums shall have been paid for three years, and shall be a stipulated form of insurance, effective from the due date of the defaulted premium, the net value of which shall be at least equal to the reserve at the date of default on the policy and on dividend additions thereto, if any, exclusive of the reserve on account of return premium insurance and on total and permanent disability and additional accidental death benefits (the policy to specify the mortality table and rate of interest adopted for computing such reserve), less a specified percentage (not more than two and one-half) of the amount insured by the policy and of existing dividend additions thereto, if any, and less any existing indebtedness to the company on or secured by the policy: *Provided*, That a company may, in lieu of the provision herein permitted for the deduction from the reserve of a sum not more than 2½ per centum of the amount insured by the policy, and of any dividend additions thereto, insert in the policy a provision that one-fifth of said reserve may be deducted, or may provide therein that a deduction may be made of said 2½ per centum or one-fifth of said reserve, at the option of the company: *Provided further*, That the policy may be surrendered to the company at its home office within one month of the due date of defaulted premium for a specified cash value at least equal to the sum which would otherwise be available for the purchase of insurance as aforesaid: *And provided further*, That the company may defer payment for not more than six months after the application therefor is made. A provision may also be inserted in the policy that in event of default in a premium payment before such benefit becomes available, the reserve on any dividend additions then in force may at the option of the company be paid in cash or applied as a net premium to the purchase of paid-up term insurance for any amount not in excess of the face of the original policy. This section shall not apply to term insurance of twenty years or less. The net single premium rate employed in computing the term of temporary insurance or the amount of pure endowment insurance granted as a nonforfeiture value under any life-insurance policy may at the option of the company be based upon a table of mortality showing rates of mortality not greater than 130 per centum of those shown by the American Men



Ultimate Table of Mortality instead of the table used in computing the reserve on the policy, or in case of substandard policies not greater than 130 per centum of the rates of mortality shown by the table of mortality approved by the Superintendent for computing the reserve on the policy, anything herein to the contrary notwithstanding. (June 19, 1934, ch. 672, Ch. V, § 5a, as added Feb. 19, 1948, 62 Stat. 30, ch. 66, § 4.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-703, 35-723.

§ 35-705b. Standard nonforfeiture law.

(a) In the case of policies issued on or after the operative date of this section, as defined in subsection (g) no policy of life insurance, except as stated in subsection (f), shall be issued or delivered in the District of Columbia unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the Superintendent are at least as favorable to the defaulting or surrendering policyholder—

(1) that, in event of default in any premium payment after premiums have been paid one full year in the case of ordinary insurance or three full years in the case of industrial insurance, the company will grant, upon proper request not later than sixty days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such value as may be hereinafter specified;

(2) that, upon surrender of the policy within sixty days after the due date of any premium payment in default after premiums have been paid for at least three full years in the case of ordinary insurance or five full years in the case of industrial insurance, the company will pay, in lieu of any paid-up nonforfeiture benefit a cash surrender value of such amount as may be hereinafter specified;

(3) that a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than sixty days after the due date of the premium in default;

(4) that, if the policy shall become paid up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the company will pay, upon surrender of the policy within thirty days after any policy anniversary, a cash surrender value of such amount as may be hereinafter specified;

(5) a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary either during the first twenty policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that

there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the company on the policy;

(6) a brief and general statement of the method to be used in calculating the cash surrender value and the paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy, with an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy.

Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

The company shall reserve the right to defer the payment of any cash surrender value for a period of six months after demand therefor with surrender of the policy.

(b) Any cash surrender value available under any policy referred to in subsection (a) in the event of default in a premium payment due on any policy anniversary, whether or not required by subsection (a), shall be an amount not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of (i) the then present value of the adjusted premiums as defined in subsection (d), corresponding to premiums which would have fallen due on and after such anniversary, and (ii) the amount of any indebtedness to the company on the policy. Any cash surrender value available within thirty days after any policy anniversary under any policy paid up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, whether or not required by subsection (a), shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the company on the policy.

(c) Any paid-up nonforfeiture benefit available under any policy referred to in subsection (a), in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value which would have been required by this section in the absence of the condition that premiums shall have been paid for at least a specified period.

(d) Except as provided in the third paragraph of this subsection, the adjusted premiums for any policy referred to in subsection (a) shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding any extra premiums charged because of impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall



be equal to the sum of (i) the then present value of the future guaranteed benefits provided for by the policy; (ii) 2 per centum of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy; (iii) 40 per centum of the adjusted premium for the first policy year; (iv) 25 per centum of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less: *Provided, however,* That in applying the percentages specified in (iii) and (iv) above, no adjusted premium shall be deemed to exceed 4 per centum of the amount of insurance or uniform amount equivalent thereto.

In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this subsection shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy: *Provided, however,* That in the case of a policy providing a varying amount of insurance issued on the life of a child under age ten, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age ten were the amount provided by such policy at age ten.

The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (a) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (b) the adjusted premiums for such term insurance, the foregoing items (a) and (b) being calculated separately and as specified in the first two paragraphs of this subsection except that, for the purposes of (ii), (iii), and (iv) of the first such paragraph, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (b) shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (a).

Except as otherwise provided in the next succeeding paragraphs of this subsection, all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the Commissioners 1941 Standard Ordinary Mortality Table: *Provided,* That for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured, and such calculations for all policies of industrial insurance shall be made on the basis of

the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding  $3\frac{1}{2}$  per centum per annum, specified in the policy for calculating cash surrender values, if any, and paid-up nonforfeiture benefits: *Provided, however,* That in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than 130 per centum of the rates of mortality according to such applicable table: *Provided further,* That for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Superintendent.

In the case of ordinary policies issued on or after the operative date of this paragraph as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table and the rate of interest, not exceeding  $3\frac{1}{2}$  per centum per annum, specified in the policy for calculating cash surrender values, if any, and paid-up nonforfeiture benefits: *Provided,* That for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured: *Provided, however,* That in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1958 Extended Term Insurance Table: *Provided further,* That for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Superintendent. After the effective date of the amendatory Act of 1960, any company may file with the Superintendent a written notice of its election to comply with the provisions of this paragraph after a specified date before January first, nineteen hundred and sixty-six. After the filing of such notice, then upon such specified date (which shall be the operative date of this paragraph for such company), this paragraph shall become operative with respect to the ordinary policies thereafter issued by such company. If a company makes no such election, the operative date of this paragraph for such company shall be January first, nineteen hundred and sixty-six.

In the case of industrial policies issued on or after the operative date of this paragraph as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table and the rate of interest, not exceeding  $3\frac{1}{2}$  per centum per annum, specified in the policy for calculating cash surrender values, if any, and paid-up nonforfeiture benefits: *Provided, however,* That in calculating the present value of any paid-up



term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1961 Industrial Extended Term Insurance Table: *Provided further*, That for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Superintendent. After the effective date of the amendatory Act of 1962, any company may file with the Superintendent a written notice of its election to comply with the provisions of this paragraph after a specified date before January first, nineteen hundred and sixty-eight. After the filing of such notice, then upon such specified date (which shall be the operative date of this paragraph for such company), this paragraph shall become operative with respect to the industrial policies thereafter issued by such company. If a company makes no such election, the operative date of this paragraph for such company shall be January first, nineteen hundred and sixty-eight.

(e) Any cash surrender value and any paid-up nonforfeiture benefit, available under any such policy in the event of default in the payment of any premium due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections (b), (c), and (d) may be calculated upon the assumption that any death benefit is payable at the end of the policy or contract year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the dividends used to provide such additions. Notwithstanding the provisions of subsection (b), additional benefits payable (i) in the event of death or dismemberment by accident or accidental means, (ii) in the event of total and permanent disability, (iii) as reversionary annuity or deferred reversionary annuity benefits, (iv) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply, (v) as term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid up by reason of the death of a parent of the child, and (vi) as other policy benefits additional to life insurance and endowment benefits and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(f) This section shall not apply to any reinsurance, group insurance, pure endowment, annuity or reversionary annuity contract, nor to any term policy of uniform amount, or renewal thereof, of fifteen years or less expiring before age sixty-six, for which uniform premiums are payable during the entire

term of the policy, nor to any term policy of decreasing amount on which each adjusted premium, calculated as specified in subsection (d), is less than the adjusted premium so calculated, on such fifteen-year term policy issued at the same age and for the same initial amount of insurance, nor to any policy or contract which shall be delivered outside the District of Columbia through an agent or other representative of the company issuing the policy.

(g) After February 19, 1948, any company may file with the Superintendent a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1950. After the filing of such notice, then upon such specified date (which shall be the operative date for such company), this section shall become operative with respect to the policies and contracts thereafter issued by such company. If a company makes no such election, the operative date of this section for such company shall be January 1, 1950: *Provided, however*, That the operative date of the last two paragraphs of subsection (d) shall be as stated therein. (June 19, 1934, ch. 672, ch. V, § 5b, as added Feb. 19, 1948, 62 Stat. 30, ch. 66, § 4, and amended June 27, 1960, 74 Stat. 228, Pub. L. 86-530, § 2; Oct. 3, 1962, 76 Stat. 712, Pub. L. 87-738, § 2.)

#### AMENDMENTS

1962—Section 2 of act Oct. 3, 1962, amended subsection (d) generally; subsection (e) by adding the matter set out in clause (v) and subsection (g) by changing the word "paragraph" in the last sentence to read "two paragraphs."

1960—Subsec. (d) amended generally by act June 27, 1960, § 2(a).

Subsec. (e) amended by act June 27, 1960, § 2(b), which eliminated word "decreasing" preceding "term insurance" in cl. (iv).

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-701, 35-703, 35-705a, 35-705c, 35-723.

#### § 35-705c. Loan provisions in policies.

(a) In the case of ordinary policies issued prior to the operative date of section 35-705b (the standard nonforfeiture law) the loan value referred to in provision (6) of section 35-703 shall be the reserve at the end of the current policy year on the policy and on the dividend additions thereto, if any, exclusive of the reserve on account of return premium insurance and of total and permanent disability and additional accidental death benefits, less a sum not more than  $2\frac{1}{2}$  per centum of the amount insured by the policy and of any dividend additions thereto (the policy to specify the mortality table and rate of interest adopted for computing such reserve). The policy may provide that such loan may be deferred for not exceeding six months after the application therefor is made. A company may, in lieu of the provision hereinabove permitted for the deduction from a loan on the policy of a sum not more than  $2\frac{1}{2}$  per centum of the amount insured by the policy and of any dividend additions thereto, insert in the policy a provision that one-fifth of the said reserve may be



deducted in case of a loan under the policy, or may provide therein that the deduction may be the said 2½ per centum or the one-fifth of the said reserve at the option of the company.

(b) In the case of ordinary policies issued on or after the operative date of section 35-705b (the standard nonforfeiture law) the loan value referred to in provision (6) of section 35-703 shall be the cash surrender value at the end of the current policy year as required by section 35-705b. The company shall reserve the right to defer such loan, except when made to pay premiums, for six months after application therefor is made. (June 19, 1934, ch. 672, Ch. V, § 5c, as added Feb. 19, 1948, 62 Stat. 30, ch. 66, § 4.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-703.

#### § 35-706. Extension of time for payment of life premiums.

A life company may enter into subsequent agreements in writing with the insured, which need not be attached to the policy, to extend the time for the payment of any premium, or part thereof, upon condition that failure to comply with the terms of such agreement shall lapse the policy, as provided in said agreement or in the policy. Subject to such lien as may be created to secure any indebtedness contracted by the insured, in consideration of such extension, said agreement shall not impair any right existing under the policy. (June 19, 1934, 48 Stat. 1164, ch. 672, Ch. V, § 6.)

#### § 35-707. Interest on policy and premium loans shall be added to principal.

In ascertaining the indebtedness due upon policy or premium loans the interest, if not paid when due, shall be added to the principal of such loans and shall bear interest at the rate specified in the note or loan agreement. (June 19, 1934, 48 Stat. 1164, ch. 672, Ch. V, § 7.)

#### § 35-708. Life-policy forms to be filed with Superintendent—Notice of nonconformity—Review.

A policy of life insurance shall not be issued or delivered in the District until the form of the same has been filed with the superintendent, nor if the superintendent give written notice, within thirty days of such filing to the company proposing to issue it, showing wherein the form of such policy does not comply with the requirements of the laws of the District, provided that such action of the superintendent shall be subject to review by a court of competent jurisdiction. (June 19, 1934, 48 Stat. 1164, ch. 672, Ch. V, § 8.)

#### NOTES TO DECISIONS

##### War clause

Under life policy limiting liability if death of insured resulted from military or naval service outside the United States in time of war and if death of insured resulted within two years from date of issue of policy from war while insured was outside the United States, where death of insured occurred while he was serving as a naval officer outside of the United States in time of war and more than two years after date of policy, ambiguity between policy provisions would be resolved by applying the two year provision as an affirmation of liability. *Hayes v. Home Life Ins. Co.* (1948, 168 F. 2d 152, 83 U.S. App. D.C. 110).

Where insured was fatally injured when he fell from hotel window in France on October 2, 1945, while serving

with occupation forces, the United States was not a country "engaged in war" within life policy provision restricting liability, even though war had not terminated in a political sense. *Stinson v. New York Life Ins. Co.* (1948, 167 F. 2d 233, 83 U.S. App. D.C. 115).

#### § 35-709. Provisions required by the laws of a company's own State may be included in policies.

The policies of a life company, not organized under the laws of the District, may contain any provisions prescribed by the laws of the state, territory, District, or country, under which the company is organized. The policies of a life company, organized under the laws of the District, may, when issued or delivered in any state, territory, District, or country, contain any provisions required by the laws of the state, territory, District, or country in which the same are issued or delivered, anything in chapters 3-8 of this title to the contrary notwithstanding. (June 14, 1934, 48 Stat. 1164, ch. 672, Ch. V, § 9.)

#### § 35-710. Group life insurance.

No policy of group life insurance shall be delivered in the District unless it conforms to one of the following descriptions:

(1) A policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustee shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

(a) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors, or partnerships if the business of the employer and of such affiliated corporations, proprietors, or partnerships is under common control through stock ownership or contract. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership.

(b) The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured em-



ployees may be placed in force only if at least 75 per centum of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy must cover at least ten employees at date of issue.

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees. No policy may be issued which provides term insurance on any employee which together with any other term insurance under any group life-insurance policy or policies issued to the employers or any of them or to the trustees of a fund established in whole or in part by the employers or any of them exceeds \$20,000 unless 150 per centum of the annual compensation of a covered employee, exceeds \$20,000, in which event all such insurance shall not exceed \$40,000, or 150 per centum of such annual compensation, whichever is less.

(2) A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:

(a) The debtors eligible for insurance under the policy shall be all of the debtors of the creditor whose indebtedness is repayable in installments, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary corporations, and the debtors of one or more affiliated corporations, proprietors, or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise.

(b) The premium for the policy shall be paid by the policyholder, either from the creditor's funds, or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least 75 per centum of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least one hundred persons yearly, or may reasonably be expected to receive at least

one hundred new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than 75 per centum of the new entrants become insured.

(d) The amount of insurance on the life of any debtor shall at no time exceed the amount owed by him which is repayable in installments to the creditor or \$10,000, whichever is less. Notwithstanding the immediately preceding provision, the amount of insurance with respect to a loan commitment incurred to defray educational costs of a student may be in an amount not exceeding the fixed amount committed to be loaned under the loan commitment less the amount of any repayments made on the loan.

(e) The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment.

(3) A policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives or agents, subject to the following requirements:

(a) The members eligible for insurance under the policy shall be all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both.

(b) The premium for the policy shall be paid by the policyholder, either wholly from the union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least 75 per centum of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy must cover at least ten members at date of issue.

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union. No policy may be issued which provides term insurance on any union member which together with any other term insurance under any group life insurance policies exceeds \$20,000 unless 150 per centum of the annual compensation of a covered union member exceeds \$20,000, in which event all such insurance shall not exceed \$40,000, or 150 per centum of such annual compensation, whichever is less.



(4) A policy issued to the trustees of a fund established by two or more employers in the same industry or by one or more labor unions, or by one or more employers and one or more labor unions, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

(a) The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or to both. The policy may provide that the term "employees" shall include the individual proprietor or partners if an employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

(b) The premium for the policy shall be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions, or by both. No policy may be issued on which any part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance. The policy must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy must cover at date of issue at least one hundred persons and not less than an average of five persons per employer unit; and if the fund is established by the members of an association of employers the policy may be issued only if (i) either (a) the participating employers constitute at date of issue at least 60 per centum of those employer members whose employees are not already covered for group life insurance or (b) the total number of persons covered at date of issue exceeds six hundred; and (ii) the policy shall not require that, if a participating employer discontinues membership in the association, the insurance of his employees shall cease solely by reason of such discontinuance.

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions. No policy may be issued which provides term insurance on any person which together with any other term insurance under any group life-insurance policy or policies issued to the employers, or any of them,

or to the trustees of a fund established in whole or in part by the employers, or any of them, exceeds \$20,000 unless 150 per centum of the annual compensation of a covered person exceeds \$20,000, in which event all such insurance shall not exceed \$40,000, or 150 per centum of such annual compensation, whichever is less.

(5) A policy issued to the Commissioner of the District of Columbia or to the head of any Federal department or independent Federal bureau, board, commission, or other Federal independent establishment, or to an association of Federal employees, as the case may be, covering not less than ten employees of the government of the District or of the Federal Government, with or without medical examination, the premium on which is to be paid by the employees and insuring only employees, or any class or classes thereof determined by conditions pertaining to the employment, for amounts of insurance based upon some plan which will preclude individual selection, for the benefit of persons other than the employer: *Provided*, That when the benefits of the policy are offered to all eligible employees, not less than 75 per centum of such employees may be so insured.

(6) A policy issued to an association whose eligible members have the same profession, trade, or occupation which has been organized and is maintained for purposes other than that of obtaining insurance, which shall be deemed the policyholder, to insure members, or employees of members, of such association for the benefit of persons other than the association, or any of its officials, representatives, or agents, subject to the following requirements:

(a) The members or employees eligible for insurance under the policy shall be all the members, and all the employees of the members, of the association, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the association, or both.

(b) The premium for the policy shall be paid by the policyholder either wholly from the association's funds, or partly from such funds and partly from funds contributed by the insured members or employees specifically for their insurance, or from funds wholly contributed by the insured members or employees specifically for their insurance. A policy on which any part or all of the premium is to be derived from funds contributed by the insured members or employees specifically for their insurance may be placed in force only if at least 60 per centum of the then eligible members or employees or a minimum of four hundred members or employees, whichever is less, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members or employees specifically for their insurance must insure all eligible members or employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.



(c) The policy must cover at least twenty-five members or employees at date of issuance.

(d) The amounts of insurance under the policy must be based on some plan precluding individual selection either by the members or employees, or by the association. No policy may be issued which provides term insurance on any association member or employee which, together with any other term insurance under any group life insurance policy or policies, exceeds \$20,000, unless 150 per centum of the annual compensation of such person exceeds \$20,000, in which event all such term insurance shall not exceed \$40,000, or 150 per centum of such annual compensation, whichever is less.

(7) Any policy issued pursuant to this section, except a policy issued to a creditor pursuant to subsection (2) hereof, may be extended to insure the spouses and minor children of insured persons, or any class or classes thereof, subject to the following requirements:

(a) The premiums for the insurance shall be paid by the policy holder either from the policy holder's funds or from funds contributed by the insured person, or from both. If any part of the premium is to be derived from funds contributed by the insured persons, the insurance with respect to spouses and children may be placed in force only if at least 75 per centum of the then eligible employees or members of the organization or the association, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, elect to make the required contribution. If no part of the premium is to be derived from funds contributed by the insured persons, all such eligible employees or members of the organization or the association excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, must be insured with respect to their spouses and children.

(b) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, and shall not exceed with respect to any spouse or child, 50 per centum of the insurance on the life of such insured person.

(c) Upon termination of the insurance with respect to the spouse of any insured person by reason of such person's termination of employment or membership or death, the spouse insured pursuant to this section shall have the same conversion rights as to the insurance on his or her life as is provided for the insured person under section 35-711.

(d) Notwithstanding the provisions of section 35-711, only one certificate need be issued for delivery to an insured person if a statement concerning any dependent's coverage is included in such certificate.

(8) A policy of group life insurance issued to a credit union organized pursuant to the laws of the District of Columbia or pursuant to the Federal Credit Union Act (12 U.S.C. 1751 et seq.), which credit union shall be deemed the policyholder, to insure members of the credit union for the benefit

of persons other than the credit union, subject to the following requirements:

(a) The members eligible for insurance under the policy shall be all of the members of the credit union, or all of any class or classes thereof determined by age, or by membership in the credit union, or both.

(b) The premium for the policy shall be paid by the policyholder, either from the credit union's own funds, or from charges collected from the insured members specifically for the insurance, or both. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least 75 per centum of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy must cover at least twenty-five members at date of issue.

(d) The amount of insurance on the life of any member shall not exceed the total amount of his shares and deposits in the credit union or \$2,000, whichever is less. Such policy may be issued either in addition to, or in lieu of, a policy issued pursuant to section 35-710(2).

(9) A policy issued to a duly organized national veterans' organization which has been organized and is maintained for purposes other than that of obtaining insurance, which shall be deemed the policyholder, to insure members of such organization for the benefit of persons other than the organization, or any of its officials, representatives, or agents, subject to the following requirements:

(a) The members eligible for insurance under the policy shall be all the members of the organization, or all of any class or classes thereof determined by conditions pertaining to their membership in the organization, or both.

(b) The premium for the policy shall be paid by the policyholder either wholly from the organization's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance, or from funds wholly contributed by the insured members specifically for their insurance. A policy on which any part or all of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least 60 per centum of the then eligible members or a minimum of four hundred members, whichever is less, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except



any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy must cover at least twenty-five members at date of issuance.

(d) The amounts of insurance under the policy must be based on some plan precluding individual selection either by the members, or by the organization. No policy may be issued which provides term insurance on any organization member which, together with any other term insurance under any group life insurance policy or policies, exceeds \$20,000, unless 150 per centum of the annual compensation of such person exceeds \$20,000, in which event all such term insurance shall not exceed \$40,000, or 150 per centum of such annual compensation, whichever is less.

(June 19, 1934, 48 Stat. 1164, ch. 672, ch. V, § 10; July 2, 1940, 54 Stat. 726, ch. 518; July 12, 1950, 64 Stat. 330, ch. 457, § 1; July 5, 1960, 74 Stat. 315, 316, Pub. L. 86-579, §§ 1-5; Sept. 14, 1961, 75 Stat. 519, Pub. L. 87-249, § 1; Oct. 23, 1962, 76 Stat. 1131, Pub. L. 87-855, §§ 1, 2; Sept. 20, 1966, 80 Stat. 821, Pub. L. 89-594, § 1.)

#### AMENDMENTS

1966—Subsection (2)(d) amended by act Sept. 20, 1966, § 1, which substituted "\$10,000" for "\$5,000" in first sentence and added second sentence relating to maximum amount of insurance with respect to loan commitments incurred to defray educational costs.

1962—Subsection (7)(a) amended by act Oct. 23, 1962, § 1, which substituted "or members of the organization or the association" for "or association members" in the second and third sentences.

Subsection (9) added to the section by act Oct. 23, 1962, § 2.

1961—Act Sept. 14, 1961, amended section by adding subsection 8.

1960—Subsec. (1)(c) amended by act July 5, 1960, § 1, which substituted "ten employees" for "twenty-five employees."

Subsec. (1)(d) amended by act July 5, 1960, § 1, which inserted words "unless 150 per centum of the annual compensation of a covered employee, exceeds \$20,000, in which event all such insurance shall not exceed \$40,000, or 150 per centum of such annual compensation, whichever is less."

Subsec. (3)(c) amended by act July 5, 1960, § 2, which substituted "ten members" for "twenty-five members."

Subsec. (3)(d) amended by act July 5, 1960, § 2, which substituted "insurance policies exceeds \$20,000 unless 150 per centum of the annual compensation of a covered union member exceeds \$20,000, in which event all such insurance shall not exceed \$40,000, or 150 per centum of such annual compensation, whichever is less" for "insurance policies issued to the union exceeds \$20,000."

Subsec. (4)(d) amended by act July 5, 1960, § 3, which inserted words "unless 150 per centum of the annual compensation of a covered person exceeds \$20,000, in which event all such insurance shall not exceed \$40,000, or 150 per centum of such annual compensation, whichever is less."

Subsec. (5) amended by act July 5, 1960, § 4, which substituted "ten employees" for "fifty employees."

Subsecs. (6) and (7) added by act July 5, 1960, § 5.

1950—Act July 12, 1950, amended section generally, and among other changes, provided that: the trustees of a fund established by an employer may be policyholders, "employees" to include individual proprietors or partners if they are the employer and devote substantial time to the business, and retired employees, excluded directors unless otherwise qualified as employees, and limited total term coverage under any number of policies to \$20,000 per employee; regarding creditor's policies, where premiums are partly paid by debtors, excluded as insurable debtors those under obligations outstanding at the date of issue without evidence of individual insurability unless at least

75 per centum elect to pay the charges, but where debtors pay entire premium, then all individually insurable must be included, and increased the amount of insurance to \$5,000; in labor union groups, policy must cover at least twenty-five members at issue date, and limited total term coverage to \$20,000 per member; trustees of trust funds by two or more member employers, or one or more unions, or combinations of employers and unions may be policyholders, and in such cases, defined "employees" in like manner as aforesaid in the case of trust funds set up by a single employer, premiums to be paid by funds contributed by the employers, or unions, or both, with no policy to be issued if any premiums are to be paid by the insured, all individually insurable to be insured, established formulas to determine how many people must be covered at date of issue under diverse circumstances, precluded individual selection of employees, and limited individual coverage to \$20,000; provisions defining as insurable groups, National Guard units, and units of the State troopers or police were deleted.

1940—Act July 2, 1940, added subdivision (e) which established as an acceptable form of group life insurance, that covering the lives of members of a group, with not less than one hundred entrants to the group yearly, and limited in coverage to \$2,000 per life, who are borrowers from one lending institution, or are purchasers of securities, merchandise or other property from one vendor under agreement to repay the sum borrowed, or the balance of the price due, and payable to the lender or vendor or other creditor to whom the vendor may have transferred title to the indebtedness, with the premium "payable by the borrower lending institution vendor or other creditor."

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CROSS REFERENCE

For provisions relating to amount of credit life, accident, and health insurance, see § 35-1604.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-711, 35-1604.

#### NOTES TO DECISIONS

##### Construction

The terms of a statute should be so construed so as to effectuate the true intent and object of the Legislature in the enactment. *Shenandoah Life Insurance Co. v. Jordan* (D.C.D.C. 1955, 128 F. Supp. 274).

##### Number of employees required

This section, respecting group insurance in view of legislative history, does not manifest a congressional intent that 75 percent of all employees of a government department, board, commission, etc., must be included before the group may be validly insured and an association of not less than 50 employees can be formed and obtain insurance, although the group does not comprise 75 percent of all employees of the government department, board, commission, etc., and even if the sole purpose for the formation of the association is the obtaining of group insurance. *Shenandoah Life Insurance Co. v. Jordan* (D.C.D.C. 1955, 128 F. Supp. 274).

##### Opinions of superintendent

While the informal opinions of the superintendent of insurance are not conclusive in the construction of a statute the court would not disregard such administrative interpretations despite their informality especially where the interpretation had been followed in practice for a long period of time. *Shenandoah Life Insurance Co. v. Jordan* (D.C.D.C. 1955, 128 F. Supp. 274).

#### § 35-711. Standard provisions for policies of group life insurance.

No policy of group life insurance shall be delivered in the District unless it contains in substance the following provisions, or provisions which in the opinion of the superintendent are more favorable to the persons insured, or at least as favorable to the



persons insured and more favorable to the policyholder:

*Provided, however,* (a) That provisions (6) to (10), inclusive, shall not apply to policies issued to a creditor to insure debtors of such creditor, or to policies issued pursuant to section 35-710(8); (b) that the standard provisions required for individual life-insurance policies shall not apply to group life-insurance policies; and (c) that if the group life-insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions which in the opinion of the superintendent is or are equitable to the insured persons and to the policyholder, but nothing herein shall be construed to require that group life-insurance policies contain the same nonforfeiture provisions as are required for individual life-insurance policies:

(1) A provision that the policyholder is entitled to a grace period of thirty-one days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force, unless the policyholder shall have given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period.

(2) A provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that no statement made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two years during such person's lifetime nor unless it is contained in a written instrument signed by him.

(3) A provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or to his beneficiary.

(4) A provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his coverage.

(5) A provision specifying an equitable adjustment of premiums or of benefits or of both to be made in the event the age of a person insured has been misstated, such provision to contain a clear statement of the method of adjustment to be used.

(6) A provision that any sum becoming due by reason of the death of the person insured shall be payable to the beneficiary designated by the person insured, subject to the provisions of the policy in the event there is no designated beneficiary as to all

or any part of such sum living at the death of the person insured, and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding \$250 to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured.

(7) A provision that the insurer will issue to the policyholder for delivery to each person insured an individual certificate setting forth a statement as to the insurance protection to which he is entitled, to whom the insurance benefits are payable, and the rights and conditions set forth in (8), (9), and (10) following.

(8) A provision that if the insurance, or any portion of it, on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such person shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one days after such termination: *And provided further,* That—

(a) the individual policy shall, at the option of such person, be on any one of the forms, except term insurance, then customarily issued by the insurer at the age and for the amount applied for;

(b) the individual policy shall be in an amount not in excess of the amount of life insurance which ceases because of such termination, provided that any amount of insurance which shall have matured on or before the date of such termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this provision, be included in the amount which is considered to cease because of such termination; and

(c) the premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such person then belongs, and to his age attained on the effective date of the individual policy.

(9) A provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates and who has been so insured for at least five years prior to such termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by (8) above, except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of (a) the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within thirty-one days after such termination, and (b) \$2,000.



(10) A provision that if a person insured under the group policy dies during the period within which he would have been entitled to have an individual policy issued to him in accordance with (8) or (9) above and before such an individual policy shall have become effective, the amount of life insurance which he would have been entitled to have issued to him under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made. (June 19, 1934, 48 Stat. 1165, ch. 672, Ch. V, § 11; July 2, 1940, 54 Stat. 726, ch. 518; July 12, 1950, 64 Stat. 333, ch. 457, § 2; Oct. 3, 1962, 76 Stat. 715, Pub. L. 87-740, § 1.)

#### AMENDMENTS

1962—Act Oct. 3, 1962, amended clause (a) of the proviso in the first sentence by adding a comma after the word creditor and the words "or to policies issued pursuant to section 10(8) [35-710(8)] of this chapter."

1950—Act July 12, 1950, amended section generally, and among other changes provided that: policyholders are to have a grace period of thirty-one days for premium payments, except the first, with death benefit coverage continuing; to contest a policy, the statement relating to insurability must be in writing and prior to a two-year period from date of issue; a copy of the application should be attached to the policy, and that a copy of an instrument containing a statement used to contest a policy is to be furnished to the insured; the conditions whereby the insurer may require evidence of individual insurability must be set forth; the method of adjustment where a misstatement of age exists must be clearly stated; policy to be payable to the beneficiary designated by the insured, subject to policy provisions in the event there is no living beneficiary, and also subject to the insurer's right, if reserved, to pay up to \$250 to persons equitably entitled; insurance which matures before termination of employment shall not be considered in determining the amount of insurance obtainable at a conversion to an individual policy; if the group policy terminates or is amended to terminate the insurance of any class thereunder, every person whose insurance so terminates shall be entitled to individual insurance, subject to the same limitations as if his employment was terminated, and not more than the lesser of \$2,000, or the difference between his protection in the group less his protection in any other policy his employer places him in within thirty-one days; if a person dies after termination of employment or policy during period wherein he was entitled to an individual policy, the amount of that individual policy is payable through the group even if no application had been made, and deleted the provision that violation of the policy conditions relating to war service shall survive the incontestability period.

1940—Act July 2, 1940, amended paragraph 4 by adding "The provisions of the paragraph shall not apply to insurance described in item (e) of section 35-710."

#### CROSS REFERENCES

Copy of application to be delivered with policy, see § 35-203.

Effect of false statements in application, see § 35-414.

Provisions prohibited in life policies, see § 35-704.

Standard provisions for,

Accident and health policies, see § 35-712.

Annuity and endowment contracts, see § 35-705.

Life policies, see § 35-701.

Valuation of policies, see § 35-701.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-710.

#### NOTES TO DECISIONS

##### Incontestability

First sentence of incontestability clause of master life policy that policy would be incontestable after two years from date of issue except for nonpayment of premium

referred exclusively to the policy and, since the insurer was not contesting the policy but the individual certificate of insurance, second sentence of incontestability clause barring contest of insurance based on asserted misrepresentation only if individual had been insured under policy for period of at least two years before death was applicable, and certificate was not incontestable since the individual did not live for two years after its date of issuance. *R. A. Taylor v. American Heritage Life Insurance Company* (1971, 448 F. 2d 1375).

#### § 35-711a. Notice to individual insured under group life insurance policy.

If any individual insured under a group life insurance policy hereafter delivered in the District becomes entitled under the terms of such policy to have an individual policy of life insurance issued to him without evidence of insurability, subject to making of application and payment of the first premium within the period specified in such policy, and if such individual is not given notice of the existence of such right at least fifteen days prior to the expiration date of such period, then, in such event, the individual shall have an additional period within which to exercise such right, but nothing herein contained shall be construed to continue any insurance beyond the period provided in such policy. This additional period shall expire fifteen days next after the individual is given such notice but in no event shall such additional period extend beyond sixty days next after the expiration date of the period provided in such policy. Written notice presented to the individual or mailed by the policyholder to the last-known address of the individual or mailed by the insurer to the last-known address of the individual as furnished by the policyholder shall constitute notice for the purpose of this paragraph.

Except as provided in this chapter it shall be unlawful to make a contract of life insurance for a group in the District. (June 19, 1934, ch. 672, Ch. V, § 11(a), as added July 12, 1950, 64 Stat. 335, ch. 457, § 2.)

#### § 35-712. Individual Accident and Sickness Policy Provisions.

##### 1. Filing Requirements

No policy of insurance against loss resulting from sickness or from bodily injury or death by accident, or both, shall be issued or delivered to any person in the District by any company organized under this or any other law of the District, or, if a foreign or alien company, authorized to do business in the District, until a copy of the form thereof, and of the classification of risks and the premium rates appertaining thereto, have been filed with the Superintendent; nor shall it be so issued or delivered until the expiration of thirty days after it has been so filed, unless the Superintendent shall sooner give his written approval thereto. If the Superintendent shall give written notice to the company which has filed such form that it does not comply with the requirements of law, specifying the reasons for his opinion, it shall be unlawful thereafter for any such insurer to issue any policy in such form. The action of the Superintendent in this regard shall be subject to appeal and review in the form and manner prescribed in section 35-427.



## 2. Form of Policy

(a) No policy of accident and sickness insurance shall be delivered or issued for delivery to any person in the District unless—

(1) the entire money and other considerations therefor are expressed therein; and

(2) the time at which the insurance takes effect and terminates is expressed therein; and

(3) it purports to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any two or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed nineteen years and any other person dependent upon the policyholder; and

(4) the style, arrangement, and over-all appearance of the policy give no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any endorsements or attached papers is plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten-point with a lowercase unspaced alphabet length not less than one hundred and twenty-point (the text shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions); and

(5) the exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in subsection (3) of this section, are printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "EXCEPTIONS," or "EXCEPTIONS AND REDUCTIONS": *Provided*, That, if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies; and

(6) each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof; and

(7) it contains no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the Superintendent.

(b) If any policy is issued by an insurer domiciled in the District for delivery to a person residing in another jurisdiction, and if the official having responsibility for the administration of the insurance laws of such other jurisdiction shall have advised the Superintendent that any such policy is not subject to approval or disapproval by such official, the Superintendent may by ruling require that such policy meet the standards set forth in paragraph (a) of this subsection and in subsection (3).

## 3. Accident and Sickness Policy Provisions

(a) Required provisions: Except as provided in paragraph (c) of this subsection each such policy delivered or issued for delivery to any person in the District shall contain the provisions specified in this paragraph in the words in which the same appear in this paragraph: *Provided, however*, That the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the Superintendent which are in each instance not less favorable in any respect to the insured or the beneficiary. Such provisions shall be preceded individually by the caption appearing in this paragraph or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Superintendent may approve.

(1) A provision as follows:

"ENTIRE CONTRACT; CHANGES: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions."

(2) A provision as follows:

"TIME LIMIT ON CERTAIN DEFENSES: (aa) After three years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such three-year period."

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial three-year period, nor to limit the application of subsection 3 (b), (1), (2), (3), (4), and (5) in the event of misstatement with respect to age or occupation or other insurance.)

A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue, may contain in lieu of the foregoing the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "INCONTESTABLE."

"After this policy has been in force for a period of three years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application."

"(bb) No claim for loss incurred or disability (as defined in the policy) commencing after three years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy."



(3) A provision as follows:

"GRACE PERIOD: A grace period of -----  
(insert a number not less than '7' for weekly premium policies, '10' for monthly premium policies, and '31' for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force."

A policy which contains a cancellation provision may add, at the end of the above provision, "subject to the right of the insurer to cancel in accordance with the cancellation provision hereof".

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision,

"Unless not less than five days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted,".

(4) A provision as follows:

"REINSTATEMENT: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer, or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement."

(The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue.)

(5) A provision as follows:

"NOTICE OF CLAIM: Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at -----  
(insert the location of such office as the insurer may

designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer."

In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision:

"Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he shall, at least once in every six months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which such notice is actually given."

(6) A provision as follows:

"CLAIM FORMS: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made."

(7) A provision as follows:

"PROOFS OF LOSS: Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required."

(8) A provision as follows:

"TIME OF PAYMENT OF CLAIMS: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid -----  
----- (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof."



(9) A provision as follows:

**"PAYMENT OF CLAIMS:** Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured."

The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

"If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity up to an amount not exceeding \$----- (insert an amount which shall not exceed \$1,000), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment.

"Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person."

(10) A provision as follows:

**"PHYSICAL EXAMINATIONS AND AUTOPSY:** The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law."

(11) A provision as follows:

**"LEGAL ACTIONS:** No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished."

(12) A provision as follows:

**"CHANGE OF BENEFICIARY:** Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy."

(The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.)

(b) Other provisions: Except as provided in paragraph (c) of this subsection, no such policy delivered or issued for delivery to any person in the District shall contain provisions respecting the matters set forth below unless such provisions are in the words in which the same appear in this paragraph: *Provided, however,* That the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the Superintendent which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this paragraph or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Superintendent may approve.

(1) A provision as follows:

**"CHANGE OF OCCUPATION:** If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro-rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the official having supervision of insurance in the jurisdiction where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such jurisdiction prior to the occurrence of the loss or prior to the date of proof of change in occupation."

(2) A provision as follows:

**"MISSTATEMENT OF AGE:** If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age."

(3) A provision as follows:

**"OTHER INSURANCE IN THIS INSURER:** If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for ----- (insert type of coverage or coverages) in excess of \$----- (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums



paid for such excess shall be returned to the insured or to his estate.”  
or, in lieu thereof:

“Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies.”

(4) A provision as follows:

“INSURANCE WITH OTHER INSURERS: If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the ‘like amount’ of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage.”

(If the foregoing policy provision is included in a policy which also contains the next following policy provision there shall be added to the caption of the foregoing provision the phrase “—EXPENSE INCURRED BENEFITS.” The insurer may, at its option, include in this provision a definition of “other valid coverage”, approved as to form by the Superintendent, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other jurisdiction of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the Superintendent. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen’s compensation or employer’s liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be “other valid coverage” of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as “other valid coverage”.)

(5) A provision as follows:

“INSURANCE WITH OTHER INSURERS: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense-

incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro-rata portion for the indemnities thus determined.”

(If the foregoing policy provision is included in a policy which also contains the next preceding policy provision there shall be added to the caption of the foregoing provision the phrase “—OTHER BENEFITS.” The insurer may, at its option, include in this provision a definition of “other valid coverage”, approved as to form by the Superintendent, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other jurisdiction of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the Superintendent. In the absence of such definition such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen’s compensation or employer’s liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be “other valid coverage” of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as “other valid coverage”.)

(6) A provision as follows:

“RELATION OF EARNINGS TO INSURANCE: If the total monthly amount of loss-of-time benefits promised for the same loss under all valid loss-of-time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of two hundred dollars or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it



operate to reduce benefits other than those payable for loss of time."

(The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss-of-time coverage", approved as to form by the Superintendent, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other jurisdiction of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the Superintendent or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.)

(7) A provision as follows:

"UNPAID PREMIUM: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom."

(8) A provision as follows:

"CANCELLATION: The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to his last address as shown by the records of the insurer, stating when, not less than five days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the official having supervision of insurance in the jurisdiction where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation."

(9) A provision as follows:

"CONFORMITY WITH STATE STATUTES: Any provision of this policy which, on its effective date, is in conflict with the statutes of the jurisdiction in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes."

(10) A provision as follows:

"ILLEGAL OCCUPATION: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation."

(11) A provision as follows:

"INTOXICANTS AND NARCOTICS: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician."

(c) Inapplicable or inconsistent provisions: If any provision of this subsection is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy the insurer, with the approval of the Superintendent, shall omit from such policy any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of the provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

(d) Order of certain policy provisions: The provisions which are the subject of paragraphs (a) and (b) of this subsection, or any corresponding provisions which are used in lieu thereof in accordance with such paragraphs, shall be printed in the consecutive order of the provisions in such paragraphs or, at the option of the insurer, any such provision may appear as a unit in any part of the policy, with other provisions to which it may be logically related, provided the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered, or issued.

(e) Third party ownership: The word "insured", as used in this section, shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits, and rights provided therein.

(f) Filing procedure: The District of Columbia Council may make such reasonable rules and regulations concerning the procedure for the filing or submission of policies subject to this section as are necessary, proper or advisable to the administration of this section. This provision shall not abridge any other authority granted the Superintendent by law.

#### 4. Conforming to Statute

(a) Other policy provisions: No policy provision which is not subject to subsection (3) of this section shall make a policy, or any portion thereof, less favorable in any respect to the insured or the beneficiary than the provisions thereof which are subject to this section.

(b) Policy conflicting with this section: A policy delivered or issued for delivery to any person in the District in violation of this section shall be held valid but shall be construed as provided in this section. When any provision in a policy subject to this section is in conflict with any provision of this section, the rights, duties, and obligations of the insurer, the insured, and the beneficiary shall be governed by the provisions of this section.

#### 5. Application

(a) The insured shall not be bound by any statement made in an application for a policy unless a copy of such application is attached to or endorsed on the policy when issued as a part thereof. If any



such policy delivered or issued for delivery to any person in the District shall be reinstated or renewed, and the insured or the beneficiary or assignee of such policy shall make written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall within fifteen days after the receipt of such request at its home office or any branch office of the insurer, deliver or mail to the person making such request, a copy of such application. If such copy shall not be so delivered or mailed, the insurer shall be precluded from introducing such application as evidence in any action or proceeding based upon or involving such policy or its reinstatement or renewal.

(b) No alteration of any written application for any such policy shall be made by any person other than the applicant without his written consent, except that insertions may be made by the insurer, for administrative purposes only, in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.

(c) The falsity of any statement in the application for any policy covered by this section may not bar the right to recovery thereunder unless such false statement materially affected either the acceptance of the risk or the hazard assumed by the insurer.

#### 6. Notice; Waiver

The acknowledgment by any insurer of the receipt of notice given under any policy covered by this section, or the furnishing of forms for filing proofs of loss, or the acceptance of such proofs, or the investigation of any claim thereunder shall not operate as a waiver of any of the rights of the insurer in defense of any claim arising under such policy.

#### 7. Age Limit

If any such policy contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective, and if such date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such date, the coverage provided by the policy will continue in force subject to any right of cancellation until the end of the period for which premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective, or would have ceased prior to the acceptance of such premium or premiums, then the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the policy.

#### 8. Nonapplication to Certain Policies

Nothing in this section shall apply to or affect (1) any policy of group accident, group health, or group accident and health insurance; or (2) life insurance, endowment or annuity contracts, or contracts supplemental thereto which contain only such provisions relating to accident and sickness insurance as (a) provide additional benefits in case of death or dismemberment or loss of sight by accident, or as (b) operate to safeguard such contracts against lapse, or to give a special surrender value or special

benefit or an annuity in the event that the insured or annuitant shall become totally and permanently disabled, as defined by the contract or supplemental contract: *Provided*, That no such supplemental contract shall be issued or delivered to any person in the District unless and until a copy of the form thereof has been submitted to and approved by the Superintendent under such reasonable rules and regulations as the District of Columbia Council shall make concerning the provisions in such contracts and their submission to and approval by him. (June 19, 1934, 48 Stat. 1166, ch. 672, Ch. V, § 12; July 12, 1950, 64 Stat. 335, ch. 457, § 3; July 16, 1953, 67 Stat. 162, ch. 196, § 1.)

#### AMENDMENTS

1953—Act July 16, 1953, amended the section generally so as to modernize existing law with respect to life insurance particularly that part relating to accident and sickness provisions.

1950—Subsec. (k) (1) amended by act July 12, 1950, which substituted "group accident, group health, or group accident and health insurance", for liability or workmen's compensation insurance or any general or blanket policy of insurance issued to any municipal corporation or department thereof, or to any employer, whether a corporation, copartnership, association, or individual or to any police or fire department, underwriters corps, salvage bureau, or to any association of fifty or more members having a constitution or bylaws and formed in good faith for purposes other than that of obtaining insurance, where not less than 75 per centum of the members or employees are insured for their individual benefit against specified accidental bodily injuries or sickness while exposed to the hazards of the occupation or otherwise in consideration of a premium intended to cover the risks of all the persons insured under such policy.

#### EFFECTIVE DATE OF 1953 AMENDMENT

See note under section 35-302.

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(276) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of making rules and regulations concerning the procedure for the filing or submission of policies under par. 3(f); and making rules and regulations concerning the provisions in supplemental contracts and the submission and approval of such contracts under the proviso in par. 8; to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

#### CROSS REFERENCES

Health and accident companies, see § 35-202.

Health and accident policies issued by companies operating under the "Fire and Casualty Act" may be required to comply with this section, see § 35-1332.

Standard provisions for,

Annuity and endowment contracts, see § 35-705.

Group life policies, see § 35-711.

Life policies, see § 35-703.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1332.

#### NOTES TO DECISIONS

##### Burden of proof

Insurer had burden of proving that right to recovery on hospitalization policy was barred by insured's failure to state in application inquiring as to past medical or surgical treatment that insured's cervix had been cauterized, and such burden could be carried by evidence deduced from insured's own witnesses. *Turner v. National Hospitalization* (D. C. Mun. App. 1947, 52 A. 2d 274).



**Domestic and foreign corporations**

Subsection (f) of this section providing that falsity of any statement in application for accident and health policy shall not bar right of recovery thereunder unless made with intent to deceive, or unless materially affecting acceptance of risk or hazard assumed by insurer, was applicable to insurance company issuing hospitalization policy and chartered in District of Columbia and authorized to do business in District, and to Maryland company assuming policy with consent of insured, where insured continued to live in District and claim arose in District. *Turner v. National Hospitalization* (D. C. Mun. App. 1947, 52 A. 2d 274).

**Intention to deceive**

An insured's failure to state, in hospitalization policy application inquiring as to past medical or surgical treatment, that her cervix had been cauterized, precluded recovery of hospitalization benefits under policy, where failure to disclose such fact was intended to deceive and materially affected acceptance of risk. *Turner v. National Hospitalization* (D. C. Mun. App. 1947, 52 A. 2d 274).

**§ 35-713. Stock operations and advisory board contracts prohibited.**

No life company doing business in the District shall issue in the District, nor permit its general agents, agents, officers, solicitors, or employees to issue or deliver in the District, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board or other contracts of any kind promising returns and profits as an inducement to insure; and no life company shall be authorized to do business in the District which issues or permits its general agents, agents, officers, solicitors, or employees to issue in the District or in any state or territory agency company stock or other capital stock, or benefit certificates or shares in any common-law corporations, or securities or any special advisory board or other contracts of any kind promising returns and profits as an inducement to insurance; and no corporation or stock company acting as agent of a life company nor any of its general agents, agents, officers, solicitors, or employees shall be permitted to sell, agree, or offer to sell, or give or offer to give, directly or indirectly, in any manner whatsoever, any share of stock, securities, bonds, or agreement of any form or nature promising returns and profits as an inducement to insurance or in connection therewith. It shall be the duty of the superintendent, upon due proof after notice and hearing that any such company or agent thereof has violated any of the provisions of this section, to revoke the authority of the company or agent so offending: *Provided, however,* That the action of the superintendent in this regard shall be subject to appeal and review in the form and manner prescribed in section 35-427. (June 19, 1934, 48 Stat. 1173, ch. 672, Ch. V, § 13.)

**§ 35-714. Misrepresentations prohibited.**

No life company doing business in the District, and no officer, director, general agent, agent, or solicitor thereof, broker, or any other person shall make, issue, or circulate, or cause to be issued or circulated, any estimate, illustration, circular, or statement of any sort misrepresenting the terms of any policy issued or to be issued by it or the benefits or advantages promised thereby, or the dividends or shares of the

surplus to be received thereon, or shall use any name or title of any policy or class of policies misrepresenting the true nature thereof. Nor shall any such corporation or officer, director, general agent, agent, or solicitor thereof, broker or any other person, firm, association, or corporation make any misrepresentation to any person insured in any company for the purpose of inducing or tending to induce a policyholder in any company to lapse, forfeit, or surrender his insurance. It shall be the duty of the superintendent, upon due proof after notice and hearing that any such company or agent thereof has violated any of the provisions of this section, to revoke the authority of the company or agent so offending: *Provided, however,* That the action of the superintendent in this regard shall be subject to appeal and review in the form and manner prescribed in section 35-427. (June 19, 1934, 48 Stat. 1174, ch. 672, Ch. V, § 14.)

**CROSS REFERENCE**

Revocation or suspension of agent's or broker's license, see § 35-426.

**§ 35-715. Discriminations prohibited.**

No life insurance corporation doing business in the District shall make or permit any discriminations between individuals of the same class or of equal expectation of life, in the amount of payment or return of premiums or rates charged for policies of insurance, including endowment policies and annuity contracts, or in the dividends or other benefits payable thereon, or in any of the terms or conditions of the policy; nor shall any such company permit or agent thereof offer to make any contract of insurance, endowment policy, or annuity contract, or agreement as to such contracts other than as plainly expressed in the policy issued thereon, nor shall any such company or officer, agent, solicitor, or representative thereof pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as inducement to any person to insure, or give, sell, or purchase, or offer to give, sell, or purchase as such inducement or in connection with such insurance, endowment policy, or annuity contract, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profit accruing thereon, or any valuable consideration or inducement whatever not specified in the policy, nor shall any person knowingly receive any such inducement, any rebate of premium, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any paid employment or contract for services of any kind or any valuable consideration or inducement whatever, not specified in the policy. No person shall be excused from attending and testifying and producing any books, papers, or other documents before any court or magistrate, upon any investigation, proceeding, or trial for a violation of any of the provisions of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any



penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding. Nothing in this section shall be so construed as to forbid a company, transacting industrial life insurance, from returning to policyholders, who have made premium payments for a period of at least one year, directly to the company at its home or distant offices, a percentage of such a premium which the company would have paid for the collection thereof. (June 19, 1934, 48 Stat. 1174, ch. 672, Ch. V, § 15.)

## CROSS REFERENCE

Provisions prohibited in life policies, see § 35-704.

## NOTES TO DECISIONS

## Splitting commissions

An insurance broker was not prohibited from splitting commissions with insurance solicitor where arrangement was otherwise valid. *Werber v. Wallop* (D. C. Mun. App. 1946, 46 A. 2d 110).

This section prohibiting discrimination, rebates, kickbacks, or other improper manipulating of premiums, did not invalidate agreement between insured and broker that broker would pay half of commissions on issuance of life policies, to insurance solicitor who had handled practically all of insured's insurance business. *Id.*

## § 35-716. Rights of creditors and beneficiaries under policies of life insurance.

When a policy of insurance, whether heretofore or hereafter issued, is effected by any person on his own life or on another life in favor of some person other than himself having an insurable interest therein, or, except in cases of transfer with intent to defraud creditors, if a policy of life insurance is assigned or in any way made payable to any such person, the lawful beneficiary or assignee thereof, other than the insured or the person so effecting such insurance or executors or administrators of such insured or the person so effecting such insurance, shall be entitled to its proceeds and avails against the creditors and representatives of the insured and of the person effecting such insurance whether or not the right to change the beneficiary is reserved or permitted and whether or not the policy is made payable to the person whose life is insured, if the beneficiary or assignee shall predecease such person: *Provided*, That subject to the statute of limitations the amount of any premiums for said insurance paid with intent to defraud creditors, with interest thereon, shall inure to their benefit from the proceeds of the policy, but the company issuing the policy shall be discharged of all liability thereon by payment of its proceeds in accordance with its terms, unless before such payment the company shall have written notice by or in behalf of a creditor of a claim to recover for transfer made or premiums paid with intent to defraud creditors with specifications of the amount claimed. (June 19, 1934, 48 Stat. 1175, ch. 672, Ch. V, § 16; Aug. 1, 1947, 61 Stat. 711, ch. 427.)

## AMENDMENT

1947—Act Aug. 1, 1947, substituted "executors or administrators of such insured or the person so effecting such insurance" for "his executors or administrators".

## NOTES TO DECISIONS

## Beneficiary, rights of

Under this section providing that the lawful beneficiary other than insured or person effecting insurance or "his" executors or administrators shall be entitled to its proceeds against creditors and representatives of insured the word "beneficiary" is an antecedent of the word "his" and this section means that lawful beneficiary or his executors or administrators shall be entitled to the proceeds against creditors and representatives of insured. *Kindleberger v. Lincoln Nat. Bank of Wash.* (1946, 155 F. 2d 281, 81 U.S. App. D.C. 101, 167 A.L.R. 1011, certiorari denied 67 S. Ct. 495, 329 U.S. 803, 91 L. Ed. 686).

## Impairment of contract

Where this section was expressly made applicable to policies previously issued, this section was controlling over contrary provision of policy issued before enactment of this section and such application of this section did not impair obligation of contract embodied in the policy. *Kindleberger v. Lincoln Natl. Bank of Wash.* (1946, 155 F. 2d 281, 81 U.S. App. D.C. 101, 167 A.L.R. 1011, certiorari denied 67 S. Ct. 495, 329 U.S. 803, 91 L. Ed. 686).

## Representatives of deceased beneficiary

Under this section, proceeds of life policy were payable to estate of beneficiary who predeceased insured, notwithstanding insured reserved right to change beneficiary and policy, issued before enactment of this section, provided that interest of beneficiary should vest in insured in event of beneficiary's death before insured. *Kindleberger v. Lincoln Nat. Bank of Wash.* (1946, 153 F. 2d 281, 81 U.S. App. D.C. 101, 167 A.L.R. 1011, certiorari denied 67 S. Ct. 495, 329 U.S. 803, 91 L. Ed. 686).

Where insured reserves right to change beneficiary of life policy, interest of beneficiary may be defeated by insured by expedient of changing beneficiary; but in absence of change, when policy has matured because of insured's death, claim of beneficiary to proceeds cannot be defeated and, if beneficiary has not survived, beneficiary's executors or administrators are entitled under this section to the proceeds against creditors and representatives of insured. *Id.*

## Representatives of insured

Where life policy provided that proceeds thereof were to be paid to insured's wife, "if living; otherwise to his executors, administrators or assigns", and insured died 15 months after his wife's death without having changed beneficiary clause, insured's executors, rather than wife's administrators, were entitled to proceeds of policy notwithstanding this section providing that beneficiary's representatives shall be entitled to proceeds of a life policy as against insured's representatives, and though application for policy did not contain the quoted words appearing in policy. *Horning v. Lindsay* (1948, 169 F. 2d 963, 83 U.S. App. D.C. 363).

## § 35-717. Exemption of disability insurance from execution.

No money or other benefit paid, provided, allowed, or agreed to be paid by any company on account of the disability from injury or sickness of any insured person shall be liable to execution, attachment, garnishment, or other process, or to be seized, taken, appropriated or applied by any legal or equitable process or operation of law, to pay any debt or liability of such insured person whether such debt or liability was incurred before or after the commencement of such disability, but the provisions of this section shall not affect the assignability of any such disability benefit otherwise assignable, nor shall this section apply to any money income disability benefit in an action to recover for necessities contracted for after the commencement of disability covered by the disability clause or contract allowing such money income benefit. (June 19, 1934, 48 Stat. 1175, ch. 672, Ch. V, § 16a.)



## NOTES TO DECISIONS

## Alimony

Liability for alimony and support payments to divorced wife is not a "debt or liability" within the meaning of this exemption. *Schlaefer v. Schlaefer* (1940, 112 F. 2d 177, 71 App. D.C. 350).

Payments of disability insurance are not exempt from liability for alimony and for support of divorced wife. *Id.*

## Disposition of insurance

So far as general creditors are concerned, the purpose of this provision is clear, with the exceptions stated, to make disposition of these funds a matter solely for the insured's judgement. *Schlaefer v. Schlaefer* (1940, 112 F. 2d 177, 71 App. D.C. 350).

## Reason for law

Congress regarded it better for creditors to go unpaid than to deprive the debtor and his dependents of this means of support when earning capacity would be cut off *Schlaefer v. Schlaefer* (1940, 112 F. 2d 177, 71 App. D.C. 350).

## § 35-718. Exemption of group life insurance policies from execution.

No policy of group life insurance, nor the proceeds thereof when paid to any employee or employees thereunder, shall be liable to attachment, garnishment, or other process, or to be seized, taken, appropriated, or applied by any legal or equitable process or operation of law, to pay any debt or liability of such employee, or his beneficiary, or any other person who may have a right thereunder, either before or after payment; nor shall the proceeds thereof, when not made payable to a named beneficiary, constitute a part of the estate of the employee for the payment of his debts. (June 19, 1934, 48 Stat. 1176, ch. 672, Ch. V, § 17.)

## § 35-719. False statements—Misdemeanor.

Any agent, broker, examining physician, or other person who shall knowingly or wilfully make any false or fraudulent statement or representation in or with reference to any application for life insurance, or who shall make any such statement for the purpose of obtaining any fee, commission, money, or benefit from or in any company transacting business under chapters 3-8 of this title shall be guilty of a misdemeanor. (June 19, 1934, 48 Stat. 1176, ch. 672, Ch. V, § 18.)

## § 35-720. Proceeds of certain policies to be held in trust by life company.

Any life company licensed under the laws of the District shall have power to hold the proceeds of any policy issued by it under a trust or other agreement upon such terms and restrictions as to revocation by the policyholder and control by beneficiaries and with such exemptions from the claims of creditors or beneficiaries other than the policyholder as shall have been agreed to in writing by such company and the policyholder. Such insurance company shall not be required to segregate funds so held, but may hold them as a part of its general corporate assets. (June 19, 1934, 48 Stat. 1176, ch. 672, Ch. V, § 19.)

## § 35-721. When actual premium for life policy is less than net premium.

When the actual premium charged for an insurance policy by any company is less than the net premium on the basis adopted by the company for

the valuation of such policy under section 35-701, such company shall be charged as a separate liability with a deficiency reserve equal to the total present value of the future deficiencies in the actual premium calculated according to the table of mortality and rate of interest employed by the company for the valuation of such policy. (June 19, 1934, 48 Stat. 1176, ch. 672, Ch. V, § 20.)

## § 35-722. Acceptance of premiums in arrears and recording of payments.

No industrial insurance company or agent thereof shall accept any money in payment of premiums which are in arrears on any industrial life or industrial sick benefit insurance policy which has lapsed and which the insured seeks to reinstate, unless such payment shall amount at least to the total of all premiums in arrears or unless such payment shall, under the regulations of the company, make the policy immediately eligible for reinstatement, subject only to evidence of insurability.

Every current premium shall be correctly recorded by the agent or by the company in the premium receipt book of the insured at the time the premium is paid.

Every advance premium paid by an industrial life or industrial sick-benefit policyholder shall be recorded in the receipt book of the insured in exactly the same manner as current premiums are recorded, and accurate entry thereof shall be made in the record book of the agent: *Provided, however*, That failure so to do shall not invalidate the policy. (June 19, 1934, ch. 672, Ch. V, § 21, as added May 4, 1950, 64 Stat. 104, ch. 157, § 7.)

## EFFECTIVE DATE

Section effective ninety days after May 4, 1950, see section 8 of act May 4, 1950, set out as a note under section 35-405.

## § 35-723. Standard provisions required in industrial life insurance policies.

No policy of industrial life insurance shall be delivered or issued for delivery in the District unless it contains in substance the following provisions, or provisions which in the opinion of the Superintendent are more favorable to the policyholders:

(1) A provision that all premiums after the first shall be payable in advance, either at the home office of the company or to an agent of the company.

(2) A provision that the insured is entitled to a grace period of at least twenty-eight days within which the payment of any premiums after the first may be made, and during which period of grace the policy shall continue in full force, but in case the policy becomes a claim during the said period of grace before the overdue premium is paid, the amount of such premium may be deducted from any amount payable under the policy in settlement.

(3) A provision that, except as otherwise expressly provided by law, the policy shall constitute the entire contract between the parties and shall be incontestable after it has been in force during the lifetime of the insured for a period of not more than two years from its date, except for nonpayment of premiums and except for violations of the conditions of the policy relating to naval or military service in



time of war, and, at the option of the company, provisions relative to benefits in the event of total and permanent disability and provisions which grant additional insurance specifically against death by accident may also be excepted; if a copy of the application be attached to the policy, a provision that all statements made by the insured shall in the absence of fraud, be deemed representations and not warranties, and that no such statement or statements shall be used in defense of a claim under the policy unless contained in the attached written application.

(4) A provision that if it shall be found at any time before final settlement under the policy that the age of the insured (or the age of any other person considered in determining the premium) has been misstated, the amount payable under the policy shall be such as the premium would have purchased at the correct age, according to the company's rate at date of issue.

(5) If the policy is a participating policy, a provision indicating the conditions under which the company shall periodically ascertain and apportion any divisible surplus accruing to the policy.

(6) A provision for nonforfeiture benefits and cash surrender values in accordance with the requirements of section 35-705a or section 35-705b.

(7) A provision specifying the options, if any, to which the policyholder is entitled in the event of default in a premium payment.

(8) A provision that if in event of default in premium payments the value of the policy shall have been applied to the purchase of other insurance as provided for in this section, and if such insurance shall be in force and the original policy shall not have been surrendered to the company and canceled, the policy may be reinstated within two years from such default, upon evidence of insurability satisfactory to the company and payment of arrears of premiums and the payment or reinstatement of any other indebtedness to the company upon said policy, with interest on said premium and indebtedness at the rate of not exceeding 6 per centum per annum payable annually.

(9) A provision that when a policy shall become a claim by the death of the insured settlement shall be made upon receipt of due proof of death.

(10) Title on the face and on the back of the policy briefly describing its form.

Any of the foregoing provisions or portions thereof not applicable to single premium or nonparticipating or term policies shall, to that extent, not be incorporated therein; and any such policy may be issued or delivered in the District which in the opinion of the Superintendent contains provisions on any one or more of the several foregoing requirements more favorable to the policyholder than hereinbefore required. The provisions of this section shall not apply to policies issued or granted in exchange for lapsed or surrendered policies. Nothing contained in subsection (3) hereof shall apply to applications for reinstatement. A reinstated policy shall be contestable on account of fraud or misrepresentation of material facts pertaining to the reinstatement, for the same period

after reinstatement as provided in the policy with respect to the original issue. (June 19, 1934, ch. 672, Ch. V, § 22, as added May 4, 1950, 64 Stat. 104, ch. 157, § 7.)

#### EFFECTIVE DATE

Section effective ninety days after May 4, 1950, see section 8 of act May 4, 1950, set out as a note under section 35-405.

#### § 35-724. Provisions prohibited in industrial life insurance policies.

No policy of industrial life insurance shall be delivered or issued for delivery, in the District, if it contains any of the following provisions:

(1) A provision limiting the time within which any action at law or in equity may be commenced to less than three years after the cause of action shall accrue.

(2) Except for provisions relating to misstatement of age, suicide, aviation, and military or naval service in time of war, a provision for any mode of settlement at maturity, after the expiration of the contestable period of the policy of less value than the amount insured on the face of the policy plus dividend additions, if any, less any indebtedness to the company on or secured by the policy, and less any premium that may, by the terms of the policy, be deducted. This paragraph shall not apply to any nonforfeiture provision.

(3) A provision for forfeiture of the policy for failure to repay any loan on the policy, or to pay interest on such loan, while the total indebtedness on the policy, including interest, is less than the loan value thereof.

(4) A provision to the effect that the agent soliciting the insurance is the agent of the person insured under said policy, or making the acts or representations of such agent binding upon the person so insured under said policy.

(5) A provision permitting the payment of funeral benefits in merchandise or services, or permitting the payment of any benefits other than in lawful money of the United States.

(6) A provision whereby the benefits or any part thereof accruing under such policy upon the death of a person insured may be paid to any designated undertaker or undertaking firm or corporation or to any person or persons engaged in or connected with such business, without the written consent of the person or persons to whom such benefits would otherwise be paid, or so as in any way to deprive the personal representative or family of the deceased of the advantages of competition in procuring and purchasing supplies and services in connection with the burial of the person insured.

(7) A provision that the liability of the company by reason of the insured's death shall be limited to less than the face amount of the policy if the death of the insured results from a specified kind or character of disease. (June 19, 1934, ch. 672, Ch. V, § 23, as added May 8, 1950, 64 Stat. 104, ch. 157, § 7.)

#### EFFECTIVE DATE

Section effective ninety days after May 4, 1950, see section 8 of act May 4, 1950, set out as a note under section 35-405.



## Chapter 8.—LIFE INSURANCE—PENALTIES— TESTIMONY—SEPARABILITY

Sec.

- 35-801. Penalties.
- 35-802. Repealed.
- 35-803. Separability of provisions.

### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 26-610, 35-301, 35-302, 35-405, 35-412, 35-415 to 35-417, 35-426, 35-428, 35-431, 35-503, 35-508, 35-511, 35-513, 35-518 to 35-523, 35-528, 35-529, 35-534, 35-540, 35-601, 35-602, 35-709, 35-719, 35-801, 35-803, 35-1612.

### § 35-801. Penalties.

Any person, partnership, or company who violates any of the provisions of chapters 3-8 of this title, or fails to comply with any duty imposed upon him or it by any provision of chapters 3-8 of this title, for which violation or failure no penalty is elsewhere provided by the laws of the District, shall be fined not exceeding \$500 for each and every violation. (June 19, 1934, 48 Stat. 1176, ch. 672, Ch. VI, § 1.)

### EFFECTIVE DATE

Chapter effective June 19, 1934, see section 5 of Ch. VI of act June 19, 1934, set out as a note under section 35-301.

### CROSS REFERENCE

Application to existing companies, see § 35-520.

### § 35-802. Repealed. Oct. 15, 1970, Pub. L. 91-452, title II, § 254, 84 Stat. 931.

Section, act June 19, 1934, 48 Stat. 1176, ch. 672, Ch. VI, § 2, related to testimony, production of books, and immunity of witnesses. Immunity of witnesses, generally, see 18 U.S.C. § 6002.

### EFFECTIVE DATE OF REPEAL

See sec. 260 of act Oct. 15, 1970, Pub. L. 91-452, set out as a note to § 23-545.

### § 35-803. Separability of provisions.

Should any section or provision of chapters 3-8 of this title be decided by the courts to be unconstitutional or invalid, the validity of chapters 3-8 of this title as a whole or of any part thereof other than the part decided to be unconstitutional shall not be affected. (June 19, 1934, 48 Stat. 1177, ch. 672, Ch. VI, § 3.)

## Chapter 9.—FRATERNAL BENEFIT ASSOCIATIONS

Sec.

- 35-901. Definition—When disability payable—Reserves—To whom benefits payable—Exemption from general insurance laws.
- 35-902. Existing associations.
- 35-903. Nonresident associations—Conditions precedent to doing business in District—Right of superintendent to examine.
- 35-904. Annual reports.
- 35-905. Nonresident associations to name superintendent attorney upon whom process may be served—Sufficiency—Notice by mail—Fee—Record.
- 35-906. Permit to do business from Superintendent of Insurance—Fee.
- 35-907. Organization—Procedure—Certificate of declaration—Recording—Corporate powers—Trustees, directors, or managers—Election—Quorum.
- 35-908. Reinforcement of associations existing prior to January 1, 1902.
- 35-909. Incorporation of subordinate bodies—Procedure.
- 35-910. Contract invalid if beneficiary to pay assessments.
- 35-911. Benefits exempt from attachment.
- 35-912. Meetings.
- 35-913. Fraudulent representations—Penalty.

Sec.

- 35-914. Neglect to report—Effect—Injunction—Penalty for violating injunction.
- 35-915. Acting without authority—Misdemeanor—"Transact business"—"Doing business" defined.
- 35-916. Associations for profit.
- 35-917. Associations or individuals using name of previously existing corporation.

### JUVENILE FRATERNAL ACT

- 35-918. Fraternal benefit society may issue insurance and annuities upon lives of children—Branches for children.
- 35-919. Contributions—How computed.
- 35-920. Reserves.
- 35-921. Enforcement of payment of contributions—Rules and regulations.

### SEPARATION OF INSURANCE AND FRATERNAL ACTIVITIES

- 35-922. Separation of insurance and fraternal activities authorized.
- 35-923. Certificate to be filed with Superintendent of Insurance—Contents.
- 35-924. Approval and certificate of Superintendent—Recordation.
- 35-925. Division of activities and property—Directors of Insurance activities—Number and selection—Policies as evidence.
- 35-926. Original corporation not dissolved—Subject to supervision as mutual legal reserve life insurance corporation.
- 35-927. Contracts not impaired—Right of repeal and amendment reserved.
- 35-928. Insurance laws of States and District applicable.

### § 35-901. Definition—When disability payable—Reserves—To whom benefits payable—Exemption from general insurance laws.

A fraternal beneficial association is hereby declared to be a corporation, society, order, or voluntary association, formed or organized and carried on for the sole benefit of its members and their beneficiaries, and not for profit, having a lodge system with ritualistic form of work and representative form of government, making provision for the payment of benefits in case of death. Each such association may make provision for the payment of benefits in case of sickness, temporary or permanent physical disability, either as a result of disease, accident, or old age: *Provided*, That the period in life at which physical disability benefits on account of old age commences shall not be under seventy years, or the age of expectancy from the time of entering, subject to their compliance with its laws. Any such association may create and maintain a reserve, emergency, or benefit fund in accordance with its laws. Any such association having a reserve, emergency, or benefit fund may, in addition to the benefits hereinbefore named, pay withdrawal benefits, not exceeding the contributions of such member, to a member unable or unwilling to continue membership, provided such membership shall continue not less than three successive years. Such association may also, after ten years of membership, apply its funds and accumulations as its laws provide or the association and members agree. The fund from which the payments of such benefits shall be made and the fund from which the expenses of such association shall be defrayed shall be derived from assessments, dues, and other payments collected from its members or otherwise. The payment of death benefits shall be



to the families, heirs, blood relatives, affianced husband, affianced wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepchildren, stepbrother, stepsister, children or parents by legal adoption, member's estate, a charitable, benevolent, educational, or eleemosynary institution, or to persons dependent upon the member or upon whom the member is dependent. Such association shall be governed by sections 35-901 to 35-917, and shall be exempt from the provisions of insurance laws of the United States relating to the District of Columbia, and no law hereafter passed shall apply to them unless they be expressly designated therein: *Provided, however*, That the fact that any such association has outstanding agreements with its members for the payment of benefits other than those herein specified, if it is making no new contracts of that character and is retiring those already existing, shall not exclude such association from the operation of sections 35-901 to 35-917. (Mar. 3, 1901, 31 Stat. 1310, ch. 854, § 749; Dec. 20, 1928, 45 Stat. 1055, ch. 40, § 1.)

#### AMENDMENT

1928—Act Dec. 20, 1928, inserted: "father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepchildren, stepbrother, stepsister, children or parents by legal adoption, member's estate, a charitable, benevolent, educational, or eleemosynary institution," and "or upon whom the member is dependent."

#### REPEAL OF INCONSISTENT PROVISIONS

Provisions of this chapter conflicting with the Life Insurance Act, classified to chapters 3 to 8 of this title, are repealed by section 4, Ch. VI of said act which is set out as a note under section 35-301.

Provisions of this chapter conflicting with the Fire and Casualty Act, classified to chapter 13 of this title, are repealed by section 46, Ch. II, of said act which is set out as a note under section 35-1301.

Section 2 of act Dec. 20, 1928, provided that: "All Acts or parts of Acts inconsistent with the provisions of this Act [amending this section] are hereby repealed."

#### CROSS REFERENCES

Application of act, see §§ 35-916, 35-917.

Juvenile Fraternal Act, see §§ 35-918 to 35-921.

Separation of insurance and fraternal activities, see § 35-922 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-202, 35-902, 35-903, 35-906 to 35-909, 35-911, 35-913 to 35-917, 35-1202.

#### NOTES TO DECISIONS

##### Amendment of charter or constitution

The amendment of the charter of a fraternal benefit association, which originally had been a joint-stock company, from depriving certificate holders of the right formerly had of designating beneficiaries, will not affect existing insurance contracts in the absence of anything in the charter showing that it was intended to have a retrospective effect. *Brown v. Grand Fountain* (1906, 28 App. D.C. 200).

A committee appointed by a fraternal beneficial association to revise the laws and constitution does not have authority to originate and propose methods without the notice as required for amendments generally, as to abolition of both constitution and laws. *National Council Junior Order United American Mechanics v. State Council* (1906, 27 App. D.C. 1).

##### Beneficiaries

This section permitted as beneficiaries only families, heirs, blood relatives, affianced husband, affianced wife, or dependents. Certificate in favor of woman who had been

living with the insured, knowing that he had a legal wife living, was void. *Electrical Workers Ben. Assn. v. Brown* (1928, 26 F. 2d 981, 58 App. D.C. 203).

Police Relief Association could not authorize payment of benefit certificates to persons other than those designated by this section as eligible beneficiaries. *Simpkins v. McDermott* (1939, 81 F. 2d 257, 65 App. D.C. 123, certiorari denied 56 S. Ct. 592, 297 U.S. 715, 80 L. Ed. 1001).

##### By-Laws

When by-laws of fraternal beneficial association imposes upon the officers of local councils the duty of receiving and transmitting all assessments and dues to the central committee, a provision in such by-laws that the officers of each local council shall be agents solely of such council and its members, is not consistent with duty and agency imposed by central governing body, and it cannot defeat claim upon certificate of insurance issued by the association. *Prudent Patricians of Pompeii v. Marr* (1902, 20 App. D.C. 363).

##### Payment of dues

Courts will ordinarily not concern themselves with questions of the good standing of members of such organizations, but when good standing depends solely on payment of dues the civil courts will not hesitate to take cognizance. *Prudent Patricians of Pompeii v. Marr* (1902, 20 App. D.C. 363). See, also, *Berkley v. Harper* (1894, 3 App. D.C. 308); *Moss v. Littleton* (1895, 6 App. D.C. 201); *Drum v. Benton* (1898, 13 App. D.C. 245).

##### Reinstatement

Right of reinstatement is personal to the member of a fraternal beneficial association, and it does not survive to the personal representatives or beneficiaries, and if member dies within specified 30 days as stipulated in by-laws, there can be no recovery. *Supreme Commandery of United Order of Golden Cross v. Bernard* (1905, 26 App. D.C. 169, 6 Ann. Cas. 694).

#### § 35-902. Existing associations.

All such associations coming within the description as set forth in section 35-901, organized under the laws of the United States relating to said District, or of any state, county, province, or territory, and doing business in said District on January 1, 1902, may continue such business: *Provided*, That they comply with the provisions of sections 35-901 to 35-917 regulating annual reports and the designation of the Superintendent of Insurance of said District, provided for in section 35-101 et seq., as the person upon whom process may be served as hereinafter provided. (Mar. 3, 1901, 31 Stat. 1310, ch. 854, § 750.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-202, 35-901, 35-903, 35-906 to 35-909, 35-911, 35-913 to 35-917, 35-1202.

#### § 35-903. Nonresident associations—Conditions precedent to doing business in District—Right of superintendent to examine.

Any such association coming within the description as set forth in section 35-901, organized under the laws of any state, country, province, or territory, and not doing business in said District on January 1, 1902, shall be admitted to do business within said District when it shall have filed with the Superintendent of Insurance a duly certified copy of its charter and articles of association and a copy of its by-laws certified to by its secretary or corresponding officer, together with an appointment of the said superintendent as the person upon whom process may be served as hereinafter provided: *Provided*, That such association shall be shown to be author-



ized to do business in the state, country, province, or territory in which it is incorporated or organized, in case the laws of such state, country, province, or territory shall provide for such authorization; and in case the laws of such state, country, province, or territory do not provide for any formal authorization to do business on the part of any such association, then such association shall be shown to be conducting its business in accordance with the provisions of sections 35-901 to 35-917; for which purpose the said superintendent may personally, or by some person to be designated by him, examine into the condition, affairs, character, and business methods, accounts, books, and investments of such association at its home office, which examination shall be at the expense of such association and shall be made within thirty days after demand therefor, and the expense of such examination shall be limited to fifty dollars. Any association doing business under the provisions of sections 35-901 to 35-917 shall be permitted to do business upon filing annually with the Superintendent of Insurance the certificate of authority of the insurance department of the state, province, or territory in which it is incorporated or organized: *Provided, however,* That in case of failure to file said certificate by any such association, or in case the Superintendent of Insurance shall deem it necessary, he shall have power, either personally or by some person designated by him, to examine into the condition, affairs, character, business methods, accounts, books, and investments of such association, at its home office, which examination shall be at the expense of the association. The amount of such expense shall not exceed one hundred dollars for associations which have no reserve or emergency fund and two hundred dollars for associations with a reserve or emergency fund. (Mar. 3, 1901, 31 Stat. 1310, ch. 854, § 751.)

#### CROSS REFERENCES

D.C. Council may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

Inspection and examination of insurance companies, see §§ 35-108, 35-201, 35-202, 35-418, 35-1313.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-202, 35-901, 35-902, 35-906 to 35-909, 35-911, 35-913 to 35-917, 35-1202.

#### § 35-904. Annual reports.

Every such association doing business in said District shall, on or before the first day of March of each year, make and file with the said superintendent a report of its affairs and operations during the year ending on the thirty-first day of December immediately preceding, which annual report shall be in lieu of all other reports required by any other law. Such report shall be upon blank forms to be provided by the said superintendent, or may be printed in pamphlet form, and shall be verified under oath by the duly authorized officers of such association, and shall be published, or the substance thereof, in the annual report of the said superintendent under a separate part entitled "Fraternal Beneficial Associations," and shall contain answers to the following questions:

First. Number of certificates issued during the year or members admitted.

Second. Amount of indemnity effected thereby.

Third. Number of losses or benefit liabilities incurred.

Fourth. Number of losses or benefit liabilities paid.

Fifth. The amount received from each assessment for the year.

Sixth. Total amount paid members, beneficiaries, legal representatives, or heirs.

Seventh. Number and kind of claims for which assessments have been made.

Eighth. Number and kind of claims compromised or resisted, and brief statement of reasons.

Ninth. Does the association charge annual or other periodical dues or admission fees?

Tenth. If so, how much on each one thousand dollars, annually or per capita, as the case may be?

Eleventh. Total amount received, from what source, and the disposition thereof.

Twelfth. Total amount of salaries paid to officers.

Thirteenth. Does the association guarantee in its certificate fixed amounts to be paid regardless of amount realized from assessments, dues, admission fees, and donations?

Fourteenth. If so, state amount guaranteed and the security of such guaranty.

Fifteenth. Has the association a reserve or emergency fund?

Sixteenth. If so, how is it created, and for what purpose, the amount thereof, and how invested?

Seventeenth. Has the association more than one class?

Eighteenth. If so, how many; and the amount of indemnity in each case.

Nineteenth. Number of members in each class.

Twentieth. If voluntary, so state; and give date of organization.

Twenty-first. If organized under the laws of said District, under what law and at what time, giving chapter and year, and date of passage of the act

Twenty-second. If organized under the laws of any state, country, province, or territory, state such fact and the date of organization, giving chapter and year, and date of passage of the act.

Twenty-third. Number of certificates of beneficial membership lapsed during the year.

Twenty-fourth. Number in force at beginning and end of year; if more than one class, number in each class.

Twenty-fifth. Names and addresses of its president, secretary, and treasurer, or corresponding officers. (Mar. 3, 1901, 31 Stat. 1311, ch. 854, § 752.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-202, 35-901 to 35-903, 35-906 to 35-909, 35-911, 35-913 to 35-917, 35-1202.

§ 35-905. Nonresident associations to name superintendent attorney upon whom process may be served—Sufficiency—Notice by mail—Fee—Record.

Each such association doing business on January 1, 1902, or thereafter admitted to do business within said District, and not having its principal office within said District, and not being organized under the laws of the United States relating to said District,



shall appoint, in writing, the said superintendent and his successors in office to be its true and lawful attorney, upon whom all lawful process in any action or proceeding against it may be served, and in such writing shall agree that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served upon the association, and that the authority shall continue in force so long as any liability remains outstanding in said District. Copies of said certificate certified by said superintendent shall be deemed sufficient evidence thereof, and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service upon such attorney shall be deemed sufficient service upon such association. When legal process against such association is served upon said superintendent he shall immediately notify the association of such service by letter, prepaid and directed to its secretary or corresponding officer, and shall, within two days after such service, forward in the same manner a copy of the process served on him to such officer. The plaintiff in such process so served shall pay to the said superintendent at the time of such service a fee of three dollars which shall be recovered by him as a part of the taxable costs if he prevails in his suit. The said superintendent shall keep a record of all processes served upon him, which record shall show the day and hour when such service was made. (Mar. 3, 1901, 31 Stat. 1312, ch. 854, § 753.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-202, 35-901 to 35-903, 35-906 to 35-909, 35-911, 35-913 to 35-917, 35-1202.

#### § 35-906. Permit to do business from Superintendent of Insurance—Fee.

The said superintendent shall, upon the application of any association having the right to do business within said District, as provided by sections 35-901 to 35-917, issue to such association a permit in writing authorizing such association to do business within said District, for which certificate and all proceedings in connection therewith such association shall pay the said superintendent the fee of five dollars. (Mar. 3, 1901, 31 Stat. 1312, ch. 854, § 754.)

#### CROSS REFERENCES

D.C. Council may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

Fraternal benefit associations exempted from provision of general law governing taxes and license fees for insurance companies, see § 47-1808.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-202, 35-901 to 35-903, 35-907 to 35-909, 35-911, 35-913 to 35-917, 35-1202.

#### NOTES TO DECISIONS

##### Estoppel as affecting issue

A corporation which did not question finding that it was not qualified under this chapter to do insurance business as a fraternal beneficial association had no "legal right" to a license and could not invoke an estoppel to obtain a license forbidden by statute. *National Hospital Service Soc. v. Jordan* (1942, 128 F. 2d 460, 76 U. S. App. D. C. 23, certiorari denied 63 S. Ct. 65, 317 U. S. 664, 87 L. Ed. 534).

##### Mandatory injunction to compel issue

Plaintiff was not entitled to a mandatory injunction requiring superintendent of insurance to renew its permit to do insurance business as a fraternal beneficial association, even though it was not qualified under this chapter, on ground that persons in control of plaintiff had acted in reliance on expired permits which were issued by superintendent's predecessors in office and that superintendent was "estopped" from refusing to renew permit. *National Hospital Service Soc. v. Jordan* (1942, 128 F. 2d 460, 76 U. S. App. D. C. 23, certiorari denied 63 S. Ct. 65, 317 U. S. 664, 87 L. Ed. 534).

#### § 35-907. Organization—Procedure—Certificate of declaration—Recording—Corporate powers—Trustees, directors, or managers—Election—Quorum.

Any nine or more persons, at least one-third of whom shall be residents of the District of Columbia, being desirous of forming a fraternal beneficial association for the purposes set forth in section 35-901 may associate themselves together and effect such organization as hereinafter prescribed, and not otherwise. Such persons shall make, sign, and acknowledge before any officer authorized to take the acknowledgment of deeds in this District and file in the office of the recorder of deeds of said District a certificate or declaration in writing, to be recorded in a book kept for that purpose and open to public inspection, in which shall be stated the name or title by which said association shall be known to law; the mode and manner in which the corporate powers granted by sections 35-901 to 35-917 are to be exercised; the name or official title of the officers, trustees, representatives, or other persons by whatever name or title designated, who are to have and exercise the general control and management of its affairs; the place of doing business defined; the limit as to age of applicants for beneficial membership, together with the sworn statement by three of said corporators that at least one hundred persons eligible under the proposed laws of such association to membership therein have in good faith made application in writing for membership. The recorder of deeds, upon the filing of said declaration, shall deliver to such association a certified copy of the papers so filed and recorded in his office, together with a certificate to such association, stating that the provisions in sections 35-901 to 35-917 relative to incorporation have been complied with and that said association becomes thereby authorized to carry on the work of a fraternal beneficial association. Upon filing the certificate or declaration as aforesaid, the persons who shall have signed and acknowledged the same, and their successors and associates, shall, by the provisions of sections 35-901 to 35-917, be a body politic and corporate by the name and style stated in the certificate, and by that name and style shall have perpetual succession, and by said name may sue and be sued, and may have and use a common seal, and the same may alter and change at pleasure, and may make and alter, at times or from time to time, such laws, not inconsistent with the Constitution of the United States or the laws in force in said District, as they may deem necessary for the government of said association. And they and their successors, by their corporate name, shall in law be capable of creating, maintaining, and disbursing a reserve or emergency



fund in accordance with its laws and the provisions of sections 35-901 to 35-917, and of taking, receiving, purchasing, and holding real and personal estate necessary for the purpose of such association, and may let, place out at interest, or sell and convey the same as may seem most beneficial for said association. The association shall elect from its members trustees, directors, or managers, by whatever title known in its laws, at such time and place and in such manner as may be specified in its laws, who shall have the control and management of the affairs and funds of said association, a majority of whom shall be a quorum for the transaction of business; and whenever any vacancy shall happen among such trustees, directors, or managers, by death, resignation, or otherwise, such vacancy shall be filled in such manner as shall be provided by the laws of said association. (Mar. 3, 1901, 31 Stat. 1313, ch. 854, § 755; Oct. 5, 1962, 76 Stat. 752, Pub. L. 87-757, § 2.)

#### AMENDMENT

1962—Section 2 of act Oct. 5, 1962, 76 Stat. 752, Pub. L. 87-757, amended the second sentence of the section by striking out the phrase "which shall not exceed fifty-five years and that medical examinations are required of applicants for life benefits".

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-202, 35-901 to 35-903, 35-906, 35-908, 35-909, 35-911, 35-913 to 35-917, 35-1202.

#### § 35-908. Reincorporation of associations existing prior to January 1, 1902.

The officers, trustees, directors, or governing body of any existing fraternal beneficial association may, by conforming to the requirements of the several provisions of sections 35-901 to 35-917, reincorporate themselves or continue their existing corporate powers under sections 35-901 to 35-917, or change their name, stating in their certificate the original name of such corporation as well as their new name assumed, and all the property and effects of such existing corporation shall vest in and belong to the corporation so reincorporated or continued. (Mar. 3, 1901, 31 Stat. 1313, ch. 854, § 756.)

#### EFFECTIVE DATE

The Code of the Laws of the District of Columbia enacted March 3, 1901, 31 Stat. 1189, ch. 854, by its preamble provided that it shall be effective January 1, 1902.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-202, 35-901 to 35-903, 35-906, 35-907, 35-909, 35-911, 35-913 to 35-917, 35-1202.

#### § 35-909. Incorporation of subordinate bodies—Procedure.

Any subordinate body of any fraternal beneficial association incorporated under the provisions of sections 35-901 to 35-917 or of such association doing business in this District under sections 35-901 to 35-917, where the laws of the governing body of said association do not prohibit the incorporation of their subordinate bodies, may become a body corporate in the manner following: At some regular meeting of such subordinate body a resolution expressing the desire of such subordinate body to be incorporated, and directing its officers to perfect such incorporation, shall be submitted to a vote of the members

present, and if two-thirds of the members present vote therefor the president and secretary of such subordinate body, or the officers holding relative offices therein, shall prepare articles of association, under their hands and the seal of such subordinate body, setting forth, first, the number of members of such subordinate body then in good standing; second, the name by which said subordinate body is known; third, the date of its organization and the period for which it is to be incorporated, not exceeding thirty years. A copy of such articles of association shall be filed with the recorder of deeds, and shall by him be recorded, together with the affidavit hereafter named, in a book to be kept for that purpose. On the execution of said articles of association and before the filing thereof with the recorder the secretary of such subordinate body shall annex thereto his affidavit, stating that he is a member in good standing in such subordinate body and occupies the position of secretary, or the office corresponding therewith, and that the resolution, a copy of which shall be set forth at length, was regularly passed at a regular meeting of said subordinate body and received the vote of two-thirds of the members present and voting, and that, to the best of his knowledge and belief, the statements made in the articles of association are true, and that such subordinate body is organized and acting under the laws of its respective association, giving the name by which such association is known. When the foregoing requirements are complied with such subordinate body shall be a body corporate by the name expressed in such articles, and by that name shall be a person in law, capable of suing and being sued in the courts, and taking and holding property of every kind the same as natural persons, and a copy of said articles of association, duly certified to by the recorder of deeds, shall be prima facie evidence in all courts and places of the existence and the due incorporation of such subordinate body. (Mar. 3, 1901, 31 Stat. 1314, ch. 854, § 757.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-202, 35-901 to 35-903, 35-906 to 35-908, 35-911, 35-913 to 35-917, 35-1202.

#### § 35-910. Contract invalid if beneficiary to pay assessments.

No contract with any such association shall be valid when there is a contract, agreement, or understanding between the member and the beneficiary prior to or at the time of becoming a member of the association that the beneficiary, or any person for him, shall pay such member's assessments and dues, or either of them. (Mar. 3, 1901, 31 Stat. 1314, ch. 854, § 758.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-202, 35-901 to 35-903, 35-906 to 35-909, 35-911, 35-913 to 35-917, 35-1202.

#### NOTES TO DECISIONS

##### Waiver of requirements

The provisions of the section are not waived when order has no knowledge of agreement between insured and beneficiary whereby latter pays the assessment. *Columbian Fraternal Assn. v. Smith* (1924, 297 F. 887, 54 App. D. C. 308).



**§ 35-911. Benefits exempt from attachment.**

The money or other benefit, charity, relief, or aid to be paid, provided, or rendered by any association authorized to do business under sections 35-901 to 35-917 shall not be liable to attachment, garnishment, or other process, and shall not be seized, taken, appropriated, or applied by any legal or equitable process, or by operation of law to pay any debt or liability of a certificate holder or of any beneficiary named in the certificate, or any person who may have any right thereunder. (Mar. 3, 1901, 31 Stat. 1314, ch. 854, § 759.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 35-202, 35-901 to 35-903, 35-906 to 35-909, 35-913 to 35-917, 35-1202.

**§ 35-912. Meetings.**

Any such association organized under the laws of said District may provide for the meetings of its legislative or governing body in any state, country, province, or territory wherein such association shall have subordinate bodies, and all business transacted at such meetings shall be valid in all respects as if such meetings were held within said District; and where the laws of any such association provide for the election of its officers by votes to be cast in its subordinate bodies, the votes so cast in its subordinate bodies in any state, country, province, or territory shall be valid as if cast within said District. (Mar. 3, 1901, 31 Stat. 1314, ch. 854, § 760.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 35-202, 35-901 to 35-903, 35-906 to 35-909, 35-911, 35-913 to 35-917, 35-1202.

**§ 35-913. Fraudulent representations—Penalty.**

Any person, officer, member, or examining physician who shall knowingly or wilfully make any false or fraudulent statement or representation in or with reference to any application for membership or for restoration to membership or for the purpose of obtaining any money or benefit in any association transacting business under sections 35-901 to 35-917 shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the United States jail in said District for not less than thirty days nor more than one year, or both, in the discretion of the court; and any person who shall wilfully make a false statement of any material fact or thing in a sworn statement as to the death or disability of a certificate holder in any such association for the purpose of procuring payment of a benefit named in the certificate of such holder, and any person who shall wilfully make any false statement in any verified report or declaration under oath required or authorized by sections 35-901 to 35-917, shall be guilty of perjury. (Mar. 3, 1901, 31 Stat. 1315, ch. 854, § 761; June 30, 1902, 32 Stat. 534, ch. 1329, § 761.)

**AMENDMENT**

1902—Act June 30, 1902, inserted following the word "membership," the first time said word appears, the words "or for restoration to membership."

**CROSS REFERENCE**

Perjury, see § 22-2501.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 35-202, 35-901 to 35-903, 35-906 to 35-909, 35-911, 35-914 to 35-917, 35-1202.

**§ 35-914. Neglect to report—Effect—Injunction—Penalty for violating injunction.**

Any such association refusing or neglecting to make the report as provided in sections 35-901 to 35-917 shall be excluded from doing business within the District. The superintendent of insurance must, within sixty days after failure to make such report, or in case any such association shall exceed its powers, or shall conduct its business fraudulently, or shall fail to comply with any of the provisions of sections 35-901 to 35-917, give notice in writing to the attorney for said District, who shall immediately commence an action against such association to enjoin the same from carrying on any business. An injunction against any such association may be granted on application by the Commissioner of said District at the request of the said superintendent. No association so enjoined shall have authority to continue business until such report shall be made, or overt act or violation complained of shall have been corrected, nor until the costs of such action be paid by it (provided, the court shall find that such association was in default, as charged), whereupon the Superintendent of Insurance shall reinstate such association, and not until then shall such association be allowed again to do business in said District. Any officer, agent, or person acting for any association or subordinate body thereof, within said District, while such association shall be so enjoined or prohibited from doing business pursuant to sections 35-901 to 35-917, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment in said jail not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court. (Mar. 3, 1901, 31 Stat. 1315, ch. 854, § 762.)

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**CROSS REFERENCE**

Quo warranto proceedings to question right to corporate rights and franchises, see § 16-3501 et seq.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 35-202, 35-901 to 35-903, 35-906 to 35-909, 35-911, 35-913, 35-915 to 35-917, 35-1202.

**§ 35-915. Acting without authority—Misdemeanor—"Transact business"—"Doing business" defined.**

Any person who shall act within said District as an officer, agent, or otherwise, for any association which shall have failed, neglected, or refused to comply with, or shall have violated any of the provisions of sections 35-901 to 35-917, or shall have failed or neglected to procure from the said superintendent a proper certificate of authority to transact business as provided for in sections 35-901 to 35-917, shall be subject to the penalty provided in section 35-914 for the misdemeanor therein specified. To "trans-



act business" or "doing business" under sections 35-901 to 35-917 means the writing of applications and the soliciting of new members so far as the penalty of sections 35-901 to 35-917 applies thereto. It shall not be unlawful for any organization under section 35-901 to continue the operation of its lodges or branches except in securing new members. (Mar. 3, 1901, 31 Stat. 1315, ch. 854, § 763.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-202, 35-901 to 35-903, 35-906 to 35-909, 35-911, 35-913, 35-914, 35-916, 35-917, 35-1202.

#### § 35-916. Associations for profit.

Nothing in sections 35-901 to 35-917 shall be construed to apply to any corporation, society, order, or association carrying on the business of life, health, casualty, or accident insurance for profit or gain, and it shall only apply to fraternal beneficial associations as defined by section 35-901, and nothing in sections 35-901 to 35-917 contained shall be construed to affect any grand or subordinate lodge or branch of any such fraternal beneficial societies, orders, or associations which limits its certificate holders to a particular religious denomination or to the employees of a particular town or city, designated firm, business house, or corporation, or department or branch of the United States government, nor the grand or subordinate lodges of the Independent Order of Odd Fellows, nor any grand or subordinate lodge, or other body of Free and Accepted Masons, nor the grand or any subordinate lodge of the Knights of Pythias, nor the National Council or any subordinate council of the Junior Order United American Mechanics, nor the national council or any subordinate council of the Daughters of America, nor the supreme council of the Knights of Columbus or any subordinate council thereof, or similar orders, associations, or societies that do not have as their principal object the issuance of benefit certificates of membership in case of death or the payment of sick, funeral, or death benefits exceeding in amount one hundred dollars. (Mar. 3, 1901, 31 Stat. 1316, ch. 854, § 764; Dec. 12, 1928, 45 Stat. 1021, ch. 24.)

#### AMENDMENT

1928—Act Dec. 12, 1928, inserted "nor the National Council or any subordinate council of the Junior Order United American Mechanics, nor the national council or any subordinate council of the Daughters of America, nor the supreme council of the Knights of Columbus or any subordinate council thereof."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-202, 35-901 to 35-903, 35-906 to 35-909, 35-911, 35-913, 35-915, 35-917, 35-1202.

#### § 35-917. Associations or individuals using name of previously existing corporation.

The provisions of sections 35-901 to 35-917 shall not extend to nor apply to any association or individual who shall, in the certificate filed with the recorder of deeds, use or specify a name or style the same as that of any previously existing incorporated fraternal beneficial association in the District of Columbia. (Mar. 3, 1901, 31 Stat. 1316, ch. 854, § 765.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-202, 35-901 to 35-903, 35-906 to 35-909, 35-911, 35-913 to 35-916, 35-1202.

#### JUVENILE FRATERNAL ACT

#### § 35-918. Fraternal benefit society may issue insurance and annuities upon lives of children—Branches for children.

Any fraternal benefit society authorized to do business in the District of Columbia may provide in its laws, in addition to other benefits provided for therein, for insurance and/or annuities upon the lives of children, at any age, upon the application of some adult person, as the laws of such society may provide. Any such society may, at its option, organize and operate branches for such children, and membership in local lodges and initiation therein shall not be required of such children, nor shall they have any voice in the management of the society. (May 29, 1928, 45 Stat. 953, ch. 862, § 2.)

#### SHORT TITLE

Section 1 of act May 29, 1928, provided: "That this Act [which added §§ 35-918 to 35-921] shall be known as the Juvenile Fraternal Act."

#### REPEAL OF INCONSISTENT PROVISIONS

Section 6 of act May 29, 1928, provided that: "All Acts or parts of Acts inconsistent with the provisions of this Act [§§ 35-918 to 35-921] are hereby repealed."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-921.

#### § 35-919. Contributions—How computed.

Contributions to be made upon such certificates shall be based upon the Standard Industrial Mortality Table or the English Life Table Numbered 6, or the society may use a table based upon its own juvenile experience of at least ten years and covering not less than one hundred thousand lives with a rate of interest not greater than 4 per centum per annum, or upon a higher standard. (May 29, 1928, 45 Stat. 953, ch. 862, § 3.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-920, 35-921.

#### § 35-920. Reserves.

Any society issuing such benefit certificates shall maintain on all such certificates the reserve required by the standard of mortality and interest adopted by the society for computing contributions as provided in section 35-919. (May 29, 1928, 45 Stat. 953, ch. 862, § 4.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-921.

#### § 35-921. Enforcement of payment of contributions—Rules and regulations.

Any society shall have full power to provide for means of enforcing payment of contributions, designation of beneficiaries, and changing such designations, and in all other respects for the regulation, government, and control of such certificates and all rights, obligations, and liabilities incident thereto and connected therewith, not at variance with the provisions of sections 35-918 to 35-921. (May 29, 1928, 45 Stat. 953, ch. 862, § 5.)



## SEPARATION OF INSURANCE AND FRATERNAL ACTIVITIES

### § 35-922. Separation of insurance and fraternal activities authorized.

Any corporation heretofore organized by a special Act of Congress and vested with the powers, rights, and privileges of fraternal and benevolent corporations under the laws of the District of Columbia and engaged in carrying on fraternal activities and fraternal beneficial insurance activities in which are maintained reserves not lower than the reserves required by the American Experience Table of Mortality with 3½ per centum interest per annum, is authorized and empowered, by a majority vote of its supreme legislative body and with the approval of the Superintendent of Insurance of the District of Columbia as hereinafter provided, to divide and separate such activities and continue the same as separate and distinct corporations in the manner set forth in sections 35-923 to 35-928. (Apr. 12, 1930, 46 Stat. 158, ch. 135, § 1.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-923, 35-924, 35-926, 35-927.

### § 35-923. Certificate to be filed with Superintendent of Insurance—Contents.

A certificate under the seal of said corporation shall be filed in the office of the Superintendent of Insurance of the District of Columbia and which certificate shall set forth the facts as follows:

(a) That said corporation is organized under special Act of Congress giving appropriate reference thereto.

(b) That said corporation is engaged in carrying on fraternal activities and fraternal beneficial-insurance activities, with appropriate detailed information touching each of such activities, including the name of the corporation, its officers, numbers, and classes of membership, benefits carried, and other similar appropriate information.

(c) That the fraternal beneficial-insurance activities of said corporation maintain reserves not lower than the reserves required by the American Experience Table of Mortality with 3½ per centum interest per annum.

(d) That the supreme legislative body, at a regular or duly called special convention thereof, had, by a majority vote, authorized the division and separation of its activities and the amendment of its charter, under sections 35-922 to 35-928.

(e) That the name under which the fraternal activities of such corporation shall be carried on shall be "\_\_\_\_\_."

(f) That the name under which the insurance activities of such corporation shall be carried on shall be "\_\_\_\_\_."

(g) That until otherwise designated by its directors, its principal office shall be at \_\_\_\_\_.

(h) That until otherwise provided the number of its directors shall be nine, and that until their successors shall be elected the names of such directors shall be \_\_\_\_\_. (Apr. 12, 1930, 46 Stat. 158, ch. 135, § 2.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-922, 35-924, 35-926, 35-927.

### § 35-924. Approval and certificate of Superintendent—Recordation.

The Superintendent of Insurance of the District of Columbia shall examine such certificate, and if satisfied of the truth of the matters set forth in such certificate the Superintendent of Insurance may approve the same and may issue his certificates showing compliance herewith, which certificates shall be recorded in the office of the recorder of deeds for the District of Columbia, and such certificates when so issued shall be conclusive evidence that such corporation has complied with all of the requirements of sections 35-922 to 35-928 as conditions precedent to the separation and division of its activities as herein provided. (Apr. 12, 1930, 46 Stat. 159, ch. 135, § 3.)

#### CROSS REFERENCE

D.C. Council may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-922, 35-923, 35-926, 35-927.

### § 35-925. Division of activities and property—Directors of insurance activities—Number and selection—Policies as evidence.

From and after the issuance of such certificates by the Superintendent of Insurance the fraternal activities and the fraternal beneficial insurance activities of such corporation shall be divided and separated; and

(a) All of the fraternal activities of said corporation shall continue unchanged under the name chosen therefor in such certificate, which may be the name of the original corporation or any other name chosen therefor, and in it shall remain vested, without the necessity for any further act or deed, all of the fraternal powers, activities, and functions, as well as the title, ownership, possession, and control of all property, both real and personal, and all rights, claims, contracts, and privileges connected with and belonging to such fraternal activities; and it shall be subject to and assume, carry out, fulfill, and pay all liabilities, obligations, responsibilities, and contracts connected therewith.

(b) All of the insurance activities of said corporation shall continue, under the name chosen therefor in such certificate, as a mutual legal reserve life insurance corporation, and in it shall remain vested without the necessity for any further act or deed all of the fraternal beneficial insurance powers, activities, and functions thereof, as well as the title, ownership, possession, and control of all property, both real and personal, and all rights, claims, contracts, and privileges connected with and belonging to such insurance activities; it shall be absolved and relieved from any and all responsibility, obligations, and liabilities connected with the fraternal activities of the mother corporation, and shall be subject to and assume, carry out, fulfill, and pay all liabilities, obligations, responsibilities, and contracts connected with and arising from such insurance activities; it shall have authority to make all and every insurance



and reinsurance appertaining to or connected with life, accident, health, and disability risks of whatever kind or nature and to grant, purchase, or dispose of annuities and to furnish any aid or service to promote the health or safety of its members or their beneficiaries; such activities to be carried on and conducted for the mutual benefit of its members and their beneficiaries and not for profit, subject to the supervisions imposed by the law of the District of Columbia relating to mutual legal reserve life insurance corporations; that the number of directors shall be fixed by the by-laws and shall be at least nine, who shall be elected by the insured members; the terms of the directors shall be three years from the date of their election, and such directors may be classified so that their terms shall not all expire at the same time; the election shall be held annually, and such directors shall elect the president and other officers and shall have power to make and promulgate such by-laws, rules, and regulations as may be deemed necessary and proper for the elections herein provided and for the disposition and management of the business, funds, property, and effects of said corporation and shall be vested with the control and supervision of all of the business affairs of said corporation; and said corporation shall have all the powers, rights, and privileges on or after April 12, 1930 held and exercised by mutual legal reserve life insurance companies within the District of Columbia; in any action or suit by or against such corporation the policies, certificates, and other evidences of insurance obligation issued and executed by the mother corporation shall be admissible in evidence without further proof, and shall constitute prima facie evidence of the same obligations against said corporation as against such mother corporation. (Apr. 12, 1930, 46 Stat. 159, ch. 135, § 4.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-922 to 35-924, 35-926, 35-927.

§ 35-926. Original corporation not dissolved—Subject to supervision as mutual legal reserve life insurance corporation.

The proceedings in sections 35-922 to 35-928 provided, including the amendment of the charter, the issuance of the certificates by the Superintendent of Insurance, the division of assets and liabilities or any other act done under said sections, shall not be or constitute a dissolution of the original corporation, but the resulting corporation shall, so separated and divided, be continuations thereof and under the names as herein authorized, be separate legal entities, and the insurance corporation herein provided for shall be subject to supervision, regulation, and control as a mutual legal reserve life-insurance corporation. (Apr. 12, 1930, 46 Stat. 160, ch. 135, § 5.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-922 to 35-924, 35-927.

§ 35-927. Contracts not impaired—Right of repeal and amendment reserved.

Nothing contained in sections 35-922 to 35-928 and nothing done under said sections shall impair or operate to impair the obligations of any contract;

and said sections and any certificate issued thereunder shall be subject to the power of Congress to alter, amend, or repeal at will. (Apr. 12, 1930, 46 Stat. 160, ch. 135, § 6.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-922 to 35-924, 35-926.

§ 35-928. Insurance laws of States and District applicable.

Such corporation shall be subject to all the laws of the respective states, including the District of Columbia, with respect to similar mutual legal reserve life-insurance corporations. (Apr. 12, 1930, 46 Stat. 160, ch. 135, § 7.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-922 to 35-924, 35-926, 35-927.

### Chapter 10.—INDUSTRIAL LIFE INSURANCE

#### Sec.

- 35-1001. Conditions of policies.
- 35-1002. Validity of policy—Good faith of insured material element—Unsound health as defense.
- 35-1003. Incontestability of policy.
- 35-1004. Assignment of policy.
- 35-1005. Beneficiary.

§ 35-1001. Conditions of policies.

Policies of industrial weekly payment life insurance after June 4, 1934, issued or delivered in the District of Columbia shall be subject to the following conditions, in addition to any others prescribed by law and not inconsistent with the provisions of this chapter. (June 4, 1934, 48 Stat. 834, ch. 373, § 1.)

#### REPEAL OF INCONSISTENT PROVISIONS

Provisions of this chapter conflicting with the Life Insurance Act, classified to chapters 3 to 8 of this title, are repealed by section 4, Ch. VI, of said act which is set out as a note under section 35-301.

§ 35-1002. Validity of policy—Good faith of insured material element—Unsound health as defense.

If payment of such a policy shall be refused because of unsound health at or prior to the date of the policy, the good faith of both applicant and insured shall constitute a material element in determining the validity of the policy; and it shall not be held invalid because of unsound health unless the insurer shall prove that, at or before the date of issue of the policy, the insured or applicant had knowledge of, or reason to know, the facts on which the defense is based, or shall prove that the insurance was procured by the insured or applicant in bad faith or with intent to defraud the company, any provision, agreement, condition, warranty, or clause contained in said policy, or endorsed thereon, or added or attached thereto, to the contrary notwithstanding. Proof by the insurer of fraud, intent to deceive, unsound health, bad faith, breach or (of) warranty or condition precedent, or other matter of defense, shall be subject to the provisions of section 35-203. (June 4, 1934, 48 Stat. 834, ch. 373, § 2.)

#### CROSS REFERENCE

General provisions concerning formal requisites of insurance policies, see § 35-703 et seq.



## NOTES TO DECISIONS

## Burden of proof

In action on an industrial life policy with defense that insured had been attended by physician for a serious disease which resulted in death and that such was not endorsed on the policy as required by the terms thereof, record established that statutory burden of proof was actually placed upon the insurer to prove the defense by the trial court. *Ferguson v. Quaker City Life Ins. Co.* (D. C. Mun. App. 1957, 129 A. 2d 189).

Where insurer sets up defense of insured's unsound health prior to issuance of policy, whether defense is based on application or on policy provision, insurer has burden of proving that applicant or insured acted in bad faith. *Walton et ano. v. Sun Life Insurance Company of America* (D.C. Mun. App. 1955, 115 A. 2d 310).

This section regarding burden of proof where payment of policy is refused because of unsound health of insured, casts the burden of proof on insurer and requires that it establish that the ailment was serious and that the insured knew, or had reason to know, the facts on which the defense is based. *Washington Nat. Ins. Co. v. Stanton* (D.C. Mun. App. 1943, 31 A. 2d 680).

Where forfeiture clause invoked in action on industrial life policy was conditioned on proof that insured had been hospitalized, had undergone an operation, or had been attended by a physician for a serious disease or injury, and had failed to disclose the facts, effect of this section was to shift the burden of proof and to make insured's good faith concerning representations on which policy issued the test and by its terms to impose on insurer the burden of proving the contrary. *Eureka-Maryland Assur. Co. v. Gray* (1941, 121 F. 2d 104, 74 App. D. C. 191, certiorari denied 62 S. Ct. 114, 314 U. S. 613, 86 L. Ed. 494).

## Evidence

In action by beneficiary against insurer on industrial life policy, wherein insurer defended on provision of policy that policy is voidable if, within two years before date of issue of policy, insured received treatment for serious disease or physical condition, evidence was sufficient to sustain insurer's burden under this section of proving insured's unsound health, knowledge of insured's unsound health or reason to know thereof, and bad faith of insured or beneficiary or intent to defraud insurer. *Ferguson v. Quaker City Life Insurance Co.* (D.C. Mun. App. 1958, 146 A. 2d 580).

In action on industrial life policy where insurer defended on ground that insured was suffering from serious disease of arthritis at time of issuance of policy but testimony of insured's physician directly rebutted insurer's contention that insured had either real or imputed knowledge of alleged seriousness of her condition and insured's physician testified that the ailment was serious only in sense that it temporarily restricted motion of certain parts of the body, evidence was sufficient for jury. *Washington Nat. Ins. Co. v. Stanton* (D.C. Mun. App. 1943, 31 A. 2d 680).

## Good faith

In action to recover under life policy, wherein insurer relied on policy provision that policy was voidable if, within two years prior to date of issuance, insured had undergone hospitalization for condition of a serious nature, test was insured's good faith, and trial court erred in failing to make a finding on that issue. *Walton et ano. v. Sun Life Insurance Co. of America* (D.C. Mun. App. 1955, 115 A. 2d 310).

## Purpose

The design of this section is to make its terms applicable in all cases in which the defense is that the insured had suffered, before issuance of policy, a serious injury or disease, and had concealed the truth from the insurer. *Eureka-Maryland Assur. Co. v. Gray* (1941, 121 F. 2d 104, 74 App. D. C. 191, certiorari denied 62 S. Ct. 114, 314 U. S. 613, 86 L. Ed. 494).

## Questions for court

In an action for the reinstatement of an industrial life insurance policy, a liberal view prevails in favor of holders of such policies. But it is equally well established that the rules of liberal construction have no application where the contract is clear and definite. *Capital City Life In-*

*urance Company v. Saunders* (D. C. Mun. App. 1949, 65 A. 2d 588).

Where insurer defends action on insurance policy on ground of unsound health of insured at or prior to date of policy, and there is no conflict in evidence or no contradiction of showing of existence of serious disease, the trial judge must take the case from the jury and rule as a matter of law in favor of insurer. *Washington Nat. Ins. Co. v. Stanton* (D.C. Mun. App. 1943, 31 A. 2d 680).

## Questions for jury

Where insurer defends action on insurance policy on ground of unsound health of insured at time or prior to date of policy and plaintiff creates a substantial issue of fact on question of unsound health, it becomes a question for the jury and not for the court. *Washington Nat. Ins. Co. v. Stanton* (D.C. Mun. App. 1943, 31 A. 2d 680).

## § 35-1003. Incontestability of policy.

Every such policy shall be incontestable upon any ground relating to health after two years from its date of issue (notwithstanding a longer period may be named therein), provided the insured shall be alive at the end of said period. If the policy by its terms shall be incontestable after a shorter period than herein provided the terms of the policy with regard to such period of limitation shall govern. (June 4, 1934, 48 Stat. 834, ch. 373, § 3.)

## CROSS REFERENCE

General provisions governing formal requisites of insurance policies, see § 35-703 et seq.

## NOTES TO DECISIONS

## Immediate full benefit

The words "Immediate full benefit", as used in industrial life policy, did not make the policy incontestable or require that amount thereof be paid regardless of cause of death, but meant nothing more than that full amount of policy would be paid immediately upon death. *Walker v. Superior Life Ins. Co.* (D. C. Mun. App. 1948, 62 A. 2d 192).

The words "Immediate full benefit", appearing on cover page of industrial life policy, did not preclude insurer from rejecting claim upon the policy for insured's death five days after policy had been issued as result of heart attack under provision in limitation of liability clause, excluding heart disease and other enumerated diseases contracted in any time before or within first year from date of policy, where limitation of liability clause appeared inside the policy in the boldest type of any text matter therein. *Id.*

## § 35-1004. Assignment of policy.

Nothing contained in the terms of any such policy shall operate to prevent its valid assignment by the insured; but the company issuing the policy so assigned shall be discharged of all liability thereon by payment of its proceeds in accordance with its terms, unless before such payment the company shall have written notice of such assignment. (June 4, 1934, 48 Stat. 835, ch. 373, § 4.)

## § 35-1005. Beneficiary.

Any individual designated with the consent of the insurer, evidenced by the signature of its president or secretary, or designated upon a form furnished by and filed with the insurer, as beneficiary of such a policy shall be entitled to the proceeds of such policy after the death of the insured in priority to all other claimants, and may sue in his own name for such proceeds if payment is refused by the insurer: *Provided*, That upon the expiration of fifteen days after the death of the insured, unless proof of claim



in the manner and form required by the policy, accompanied by the policy for surrender, has theretofore been made by or on behalf of such designated beneficiary, the insurer may pay to any other claimant permitted by the policy. A person specified as one to whom the insured desires payment made, but not formally designated as beneficiary, shall be deemed a beneficiary for the purposes of this section, provided such designation be made in writing and filed with the company during the lifetime of the insured. (June 4, 1934, 48 Stat. 835, ch. 373, § 5.)

### Chapter 11.—MARINE INSURANCE

#### Sec.

- 35-1101. Definitions.
- 35-1102. Powers of Superintendent of Insurance and general insurance laws applicable to marine insurance companies.
- 35-1103. Kinds of insurance that may be written—Capital stock and surplus requirements—Reinsurance companies—Companies excluded.
- 35-1104. Domestic mutual companies—Licensing, amount of advance premium required—Surplus.
- 35-1105. Foreign corporation—Requirements before doing business in District.
- 35-1106. Reinsurance.
- 35-1107. Unearned premium reserve.
- 35-1108. Taxes—Underwriting profits—Computation of premiums earned on marine insurance contracts.
- 35-1109. Statement for taxation purposes—Computation of tax by Superintendent of Insurance—Statement of taxes to be mailed.
- 35-1110. Taxation on earnings on reserves for unpaid loss and unexpired insurance.
- 35-1111. Taxes on investment income from funds representing capital stock and surplus.
- 35-1112. Report to include all items necessary to enable Superintendent of Insurance to compute tax—Notification of amount of tax.
- 35-1113. Taxation in lieu of license fees.
- 35-1114. Report upon cessation of marine insurance business—Taxes and license fees to be paid after such cessation.
- 35-1115. Penalty for failure to report or pay taxes.
- 35-1116. Syndicate "B" exempt from taxes and fees.
- 35-1117. Insurance companies not exempt from payment of Federal income tax.
- 35-1118. Investment of assets of domestic companies.
- 35-1119. Domestic company may acquire, hold, and convey real estate for certain purposes—Disposition.
- 35-1120. Merger of companies.
- 35-1121. Establishment of foreign connections.
- 35-1122. Corporations engaged exclusively in writing insurance in foreign countries may organize in District of Columbia.
- 35-1123. Prohibition of unauthorized insurance—Licensing of brokers in certain cases.
- 35-1124. Superintendent of insurance may issue license to agent or broker to solicit marine insurance.
- 35-1125. Holder of license to maintain office in District of Columbia and to keep book of records—Contents—Superintendent of Insurance may inspect such record—Data secured by Superintendent to be confidential.
- 35-1126. Licensee to furnish bond.
- 35-1127. Keeping of classified records.
- 35-1128. Penalties.
- 35-1129. Repealed.
- 35-1130. Clerical assistance and departmental expenses.
- 35-1131. Separability of provisions.
- 35-1132. Right to amend or repeal reserved.
- 35-1133. Wagering policies, illegal.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 47-1806.

### § 35-1101. Definitions.

Whenever used in this chapter—

"Marine insurance" means insurance against any and all kinds of loss of or damage to vessels, craft, cars, aircraft, automobiles, and other vehicles, whether operated on or under water, land, or in the air, in any place or situation, and whether complete or in process of or awaiting construction; also all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, including money loaned on bottomry or respondentia, valuable papers, and all other kinds of property and interests therein, including liabilities and liens of every description, in respect to any and all risks and perils while in course of navigation, transit, travel, or transportation on or under any seas or other waters, on land or in the air or while in preparation for or while awaiting the same or during any delays, storage, transshipment, or reshipment incident thereto, including builders' risks, war risks, and for loss of or damage to property or injury or death of any person, whether legal liability results therefrom or not, during, awaiting, or arising out of navigation, transit, travel, or transportation, or the construction or repair of vessels;

"Marine insurance company" means any persons, companies, or associations authorized by this chapter to write marine insurance within the District;

"Insurance company" or "company" means any insurer, incorporated or otherwise;

"Domestic company" means an insurance company organized under the laws of the District of Columbia;

"District" means the District of Columbia;

"Superintendent" means the Superintendent of Insurance of the District of Columbia. (Mar. 4, 1922, 42 Stat. 401, ch. 93, title I, § 1.)

#### REPEAL OF INCONSISTENT PROVISIONS

Provisions of this chapter conflicting with the Fire and Casualty Act, classified to chapter 13 of this title, are repealed by section 46, Ch. II, of said act which is set out as a note under section 35-1301.

#### CROSS REFERENCES

Definitions concerning fire, casualty, and marine insurance, see § 35-1303.

Liability policy or bond for motor carriers, see § 44-301.

Motor-vehicle liability policies, see § 40-435.

Rates, schedules, and classification of workmen's compensation insurance, see § 35-205.

Taxation, see § 35-1108 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1103.

### § 35-1102. Powers of Superintendent of Insurance and general insurance laws applicable to marine insurance companies.

Unless the context of any section under this chapter expressly indicate otherwise, the laws of the District relating to the powers and duties of the superintendent, making of examinations, filing of financial and other statements, legal process, organization and licensing of companies, certification and supervision of agents, deposit of assets, impairment and liquidation proceedings, and other requirements pertaining to insurance in general, shall, in so far as they are made applicable by the terms of



such laws, or by the terms of this chapter, apply to all marine insurance companies transacting business within the District: *Provided*, That, with respect to the filing of statements, the superintendent shall accept a photographic copy of a single original, or a certified copy from the insurance department of the state where the company is organized or has its principal office. (Mar. 4, 1922, 42 Stat. 402, ch. 93, title I, § 2.)

#### CROSS REFERENCE

Powers and duties of the insurance department with respect to fire, casualty, and marine insurance, see § 35-1304.

§ 35-1103. Kinds of insurance that may be written—Capital stock and surplus requirements—Reinsurance companies—Companies excluded.

A marine, fire-marine, or fire insurance company may be formed, admitted, or licensed to write any or all insurance and reinsurance comprised in any one or more of the following numbered subdivisions:

First. On marine risks as described in section 35-1101 under the definition of "marine insurance."

Second. On property and rents and use and occupancy, against loss or damage by fire, lightning, tempest, earthquake, hail, frost, snow, explosion (other than explosion of steam boilers or flywheels), breakage or leakage of sprinklers or other apparatus erected for extinguishing fires, and on such apparatus against accidental injury; and against liability of the insured for such loss or damage; and on automobiles against loss or damage from collision or theft, and against liability of the owner or user for injury to person or property caused by his automobile.

Third. Against bodily injury or death by accident, and against disablement resulting from sickness, and every insurance appertaining thereto, including quarantine and identification.

Fourth. Against liability of the insured for the death or disability of another.

Fifth. Against loss of or damage to property resulting from causes other than fire, marine and inland navigation hazards, and against liability of the insured for such loss or damage, and on motor vehicles against fire, marine and inland navigation hazards, and against personal injury and death, and liability of the insured therefor, from explosions of steam boilers and engines, pipes and machinery connected therewith, and breakage of flywheels or machinery, and to make and certify inspections thereof; and against loss of use and occupancy from any cause; against loss by burglary, theft, and forgery.

Sixth. Against loss or damage from failure of debtors to pay their obligations to the insured.

Seventh. Against loss from encumbrances on or defects in titles.

Eighth. Against loss or damage by theft, injury, sickness, or death of animals, and to furnish veterinary services.

Ninth. Against any loss or liability arising from any other casualty or hazard not contrary to public policy, other than that appertaining to or connected with (1) life insurance (including the granting of endowments and annuities), and (2) fidelity and surety bonding.

An insurance company organized for the transaction of one or more of the kinds of insurance permitted under subdivisions three to nine, inclusive, of this section, shall also, if complying with this chapter, be admitted or licensed to write any or all insurance and reinsurance comprised in any one or more of the other subdivisions of this section: *Provided*, That nothing in this section shall be construed as preventing any insurance company, formed, admitted, or licensed to transact insurance in the District on March 4, 1922, from continuing the writing of those kinds of insurance which it may have been authorized to write on March 4, 1922.

Every company formed, admitted, or licensed to transact in the District any of the kinds of insurance permitted by the several numbered subdivisions of this section shall maintain separate and distinct reserves for each kind of insurance so written, and if a stock company shall not transact the business of insurance in the District unless—

(a) It has a capital stock actually paid in, in cash or invested as provided by law, of at least \$100,000 for the insurance specified in any one subdivision of this section, nor unless it has a surplus of money or other lawful assets over its authorized capital and all other liabilities of at least \$50,000;

(b) With an additional \$50,000 of capital stock and \$25,000 of surplus for the insurance authorized by any other subdivision of this section and which may be transacted by such company;

(c) That every company writing more than one class of insurance, as authorized in the several subdivisions of this section, shall keep a separate account of all receipts in respect to each class of insurance, as directed by the superintendent, and the receipts in respect to each class of insurance shall be carried to and form a separate insurance fund with an appropriate name, which fund, exclusive of the capital stock and general surplus of the company, shall be as absolutely the security of the policyholders of that class as though it belonged to a company writing no other business than the insurance business of that class, and shall not be liable for any contracts of the company for which it would not have been liable had the business of the company been only that of insurance of that class, and shall not be applied, directly or indirectly, for any purposes other than those of the class of insurance to which the fund is applicable: *Provided*, That nothing in this subsection shall require the investments of any such fund to be kept separate from the investments of any other fund: *Provided further*, That nothing in this subsection shall be construed as preventing a company, at the end of each calendar year, from declaring dividends out of profits earned in any particular class of insurance, or from allocating such profits, either in part or in whole, to its general surplus: *And provided further*, That nothing in this section shall be applicable to companies operating in the District known as life, health, and accident companies under section 35-202.

Corporations for the sole purpose of reinsuring risks insured by other companies may be organized, or admitted, within the District in the same manner as prescribed for other companies. Such reinsur-



ance companies may transact business with any other insurer or reinsurer, and such reinsurance may include all classes of insurance that may be lawfully written: *Provided*, That any reinsurance company, organized or admitted to reinsure one or more of the enumerated classes of insurance, shall be required to have an aggregate capital and surplus equal to the capital and surplus provided by this section for the direct writing of each class of insurance, and shall be required to hold reserves in the same amount and manner as required of other companies for each such class of insurance which, by the provisions of its charter, it is authorized to transact. Such reinsurance companies shall comply with this chapter, and with any other law of the District, regulating direct-writing companies, in so far as the same may be applicable. (Mar. 4, 1922, 42 Stat. 402, ch. 93, title 2, § 3.)

#### CROSS REFERENCES

Capital and surplus required of foreign and alien companies, see § 35-1326.

Fire, casualty, and marine insurance companies,

Capital and surplus, see § 35-1316.

Types of insurance which can be written, see § 35-1314.

Fire insurance companies may become perpetual, see § 29-237.

Health and accident companies, see §§ 35-202, 35-501.

Surplus required for operation under Lloyd's plan, see § 35-1324.

Title insurance companies, see § 26-301 et seq.

Title insurance excepted from operation of Fire, Casualty, and Marine Insurance Act, see § 35-1302.

Wagering policies forbidden, see § 35-1133.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-1104, 35-1105, 35-1106.

#### § 35-1104. Domestic mutual companies—Licensing, amount of advance premium required—Surplus.

No domestic mutual company shall be organized or licensed within the District unless it has applications from at least two hundred persons for each class of insurance (as enumerated under the several subdivisions of section 35-1103) it may be authorized to write aggregating not less than \$500,000, the maximum amount of insurance applied for in any application on any risk not exceeding one-half of 1 per centum of the aggregate amount, nor three times the average amount of insurance applied for in the several applications. No such mutual company shall be so licensed for any of the classes of insurance as allowed under the several subdivisions of section 35-1103 unless it has received in cash, with respect to each such class of insurance written, at least one advanced periodical premium on each such application, aggregating at least \$10,000; but if the applications are for employers' liability or workmen's compensation insurance, the premiums on such applications shall aggregate at least \$25,000, and each employer shall be considered a separate risk; nor unless it has a surplus of \$10,000 in money or other lawful investments above its liabilities, including the liability equal to the aggregate amount of premiums so advanced. (Mar. 4, 1922, 42 Stat. 404, ch. 93, title 2, § 4.)

#### CROSS REFERENCES

Fire, casualty, and marine insurance.

Capital and surplus requirements, see § 35-1316.

Licensing, see § 35-1305.

Rates, schedules, classifications of workmen's compensation insurance, see § 35-205.

#### NOTES TO DECISIONS

##### Authority of superintendent

There is neither express nor implied authority in the Superintendent of Insurance of the District to amend, add to, or alter insurance law by regulations or to apply the drastic provisions of those rules solely to mutual companies. Without such authority, the limit of his power is to make rules consistent with the provisions of the law. *Hutchins Mut. Ins. Co. v. Hazen* (1939, 105 F. 2d 53, 70 App. D.C. 174).

##### Regulation

Continued regulation of marine insurance should remain with the individual states. *Wilburn Boat Co. v. Fireman's Fund Ins. Co.* (1955, 75 S. Ct. 368, 348 U.S. 310, 99 L. Ed. 337, rehearing denied 75 S. Ct. 575, 349 U.S. 907, 99 L. Ed. 1243).

#### § 35-1105. Foreign corporation—Requirements before doing business in District.

An insurance company organized under laws other than the laws of the District and desiring to transact business in the District shall satisfy the superintendent that it has, if a capital stock company, a paid-up capital and a surplus of assets, invested in accordance with the laws of the State under which it is organized, over its entire authorized capital and all other liabilities, at least equal to the capital and surplus prescribed under section 35-1103 for the writing of various kinds of insurance; and, if a company without capital stock or an interinsurance exchange, that it has a surplus of assets, invested according to the laws of the State under which it is organized, over all its liabilities, of \$100,000; or if a mutual company other than a life insurance company that it has a surplus over liabilities amounting to \$100,000, or in lieu thereof a surplus amounting to \$10,000 and an additional contingent liability of its policyholders equal to not less than the cash premium expressed in the policies in force; or if a company organized under a foreign Government, Province, or State, that it has a surplus of assets invested according to the laws of the District or of the State in the United States where it has its deposit, held in the United States in trust for the benefit and security of all its policyholders in the United States, over all its liabilities in the United States, of at least \$150,000, and, if writing more than one class of insurance as enumerated and allowed under section 35-1103, an additional \$75,000 for each such additional kind of insurance written; and such company so organized under the laws of a foreign Government or State shall also either deposit with the superintendent securities of the amount and value of \$150,000 (or such larger amount as may be required by this section if the company writes more than one class of insurance) and of the classes in which insurance companies are permitted by this chapter to make investments, or with the official of a State of the United States, authorized by the law of such State to accept such deposit, securities of the amount and value of \$150,000 (or such larger amount as may be required by this section if the company writes more than one class of insurance),



of the classes in which life insurance companies of such States are permitted to make their investments, and such deposits shall be made for the benefit and security of all the policyholders of such company in the United States, and the company shall file with the superintendent the certificate of such official of any such deposit with such official of any such State. (Mar. 4, 1922, 42 Stat. 404, ch. 93, title 2, § 5.)

## CROSS REFERENCE

Admission of foreign and alien companies, see §§ 35-1323 to 35-1327.

## § 35-1106. Reinsurance.

Every insurance or reinsurance company, authorized to transact insurance or reinsurance within the District, may reinsure any part of an individual risk in another company having power to make such reinsurance, and with the consent of the superintendent may reinsure all of its risks, within any class of insurance as enumerated under the several subdivisions of section 35-1103, in another company. But no credit shall be taken for the reserve or unearned premium liability on such reinsurance unless the company accepting the reinsurance is licensed by the superintendent, or unless it is licensed in one or more States in the United States and shows the same standards of solvency as would be required if it were at the time of such reinsurance authorized in the District to insure risks of the same kind as those reinsured.

In case such reinsurance is effected with an insurer so authorized, or so recognized for reinsurance in this District, the ceding insurer shall thereafter be charged on the gross premium basis with an unearned premium liability representing the proportion of each obligation retained by it, and the insurer to which the business is ceded shall be charged with an unearned premium liability representing the proportion of such obligation ceded to it calculated in the same way. The two parties to the transaction shall together carry the same reserve which the ceding insurer would have carried had it retained the risk.

The superintendent shall require schedules of reinsurance to be filed by every insurer at the time of making the annual report and at such other times as he may direct. (Mar. 4, 1922, 42 Stat. 405, ch. 93, title 3, § 6.)

## CROSS REFERENCE

Deducting reinsured risks in determining limitation of risks, see § 35-1315.

## § 35-1107. Unearned premium reserve.

With respect to marine insurance risks, the unearned premium shall be found by computing 50 per centum of the amount of premiums received and receivable on unexpired risks on time policies running one year or less from date of policy, and 100 per centum of the amount of premiums on all untermi-nated voyage and transit risks. As a basis for unearned premium reserves, untermi-nated voyage or transit risks shall be deemed to expire within thirty days on the average. Every insurance company shall so compute such unearned premium in its annual and other financial statements. (Mar. 4, 1922, 42 Stat. 405, ch. 93, title 4, § 7.)

## CROSS REFERENCE

Computation of reserves, see § 35-1330.

## § 35-1108. Taxes—Underwriting profits—Computation of premiums earned on marine insurance contracts.

With the exception of license fees, real estate and personal property taxes, and a tax on investment income derived from funds representing reserves, capital stock and surplus as defined by this chapter, every insurance company organized, admitted, or licensed to transact business within the District shall, with respect to marine insurance written by it within the District, be taxed only on that proportion of the total underwriting profit of the company from marine insurance written within the United States which the net premiums of the company from marine insurance written within the District bear to the total net marine premiums of the company written within the United States. The term "underwriting profit," as used herein, shall be arrived at by deducting from the premiums earned on marine insurance contracts written within the United States during the calendar year (1) the losses incurred and (2) expenses incurred, including all taxes, in connection with such business.

Premiums earned on marine insurance contracts written during the calendar year shall be arrived at as follows:

(1) Gross premiums on marine insurance contracts written during the calendar year, less return premiums and premiums paid for reinsurance.

(2) Add unearned premiums on outstanding marine business at the end of the preceding calendar year.

(3) Deduct unearned premiums on outstanding marine business at the end of the current calendar year.

Losses incurred, as used herein, shall mean gross losses incurred during the calendar year under marine insurance contracts written within the United States, less reinsurance claims collected or collectible and salvages or recoveries collected or collectible from any source applicable to aforesaid losses.

Expenses incurred shall include—

(1) Specific expenses incurred, consisting of all agency commissions, agency expenses, taxes, licenses, fees, loss-adjustment expenses, and all other expenses incurred directly and specifically for the purpose of doing a marine insurance business.

(2) General expenses incurred, consisting of that proportion of general or overhead expenses, such as salaries of officers and employees, printing and stationery, all Federal Government taxes, and all other expenses not chargeable specifically to a particular class of insurance which the net premiums received from marine insurance bear to the total net premiums received by the company from all classes of insurance written during the current calendar year. (Mar. 4, 1922, 42 Stat. 405, ch. 93, title 5, § 8.)

## CROSS REFERENCES

Excepted from operation of general statutes for taxation of insurance companies, see § 47-1806.

Syndicate "B" exempted from taxation, see § 35-1116. Taxation upon business written for unauthorized companies, see § 35-1344.



## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-1109, 35-1110, 35-1111, 35-1114, 35-1116, 35-1122.

**§ 35-1109. Statement for taxation purposes—Computation of tax by Superintendent of Insurance—Statement of taxes to be mailed.**

Every company transacting marine insurance in the District shall set forth in its annual statement to the superintendent, and in the form prescribed by him, all the items pertaining to its insurance business as enumerated and prescribed in section 35-1108. To determine the basis of the tax on underwriting profit, every company which has been writing marine insurance for five years shall furnish the superintendent a statement of all of the aforementioned items, in the form prescribed by him, for each of the preceding five calendar years. A company which has not been writing marine insurance for five years shall furnish to the superintendent a statement of all of the aforementioned items for each of the calendar years during which it has written marine insurance.

If the superintendent finds the report of the company reporting correct, he shall, if the company has transacted marine insurance for five years, (1) ascertain the total average annual underwriting profit, as hereinbefore defined, derived by the company from its marine insurance business written within the United States during the last preceding five calendar years, (2) ascertain the proportion which the average net annual premiums of the company from marine insurance written by it in the District during the last preceding five calendar years bear to the average total net marine premiums of the company during the same five years, (3) compute an amount of 5 per centum on this proportion of the aforementioned average annual underwriting profit of the company from marine insurance, and (4) charge the amount of tax thus computed to such company as a tax upon the marine insurance written by it in the District during the current calendar year. Thereafter the superintendent shall each year compute the tax, according to the method described in this section, upon the average annual underwriting profit of such company from marine insurance during the preceding five years, including the current calendar year; namely, at the expiration of each current calendar year, the profit or loss on the marine insurance business of that year is to be added or deducted, and the profit or loss upon the marine insurance business of the first calendar year of the preceding five-year period is to be dropped, so that the computation of underwriting profit for purposes of taxation under this chapter will always be on a five-year average: *Provided, however,* That a company which has not been writing marine insurance in the District for five years shall, until it has transacted such business in the District for that number of years, be taxed on the basis of the annual average underwriting profit on marine insurance written within the United States during the preceding five years as averaged for all companies reporting to the superintendent for the current calendar year and which have been transacting marine insurance in the District for the past five years: *Provided further,*

That, if at any time none of the companies reporting to the superintendent shall have written marine insurance in the District for five years, a company which has not been writing marine insurance in the District for five years shall be taxed on the basis of an annual average underwriting profit as averaged for all companies reporting to the superintendent for the number of years during which they have written marine insurance in the District, subject, however, to an adjustment in the tax as soon as the superintendent, in accordance with the provisions of this section, is enabled to compute the tax on the aforementioned five-year basis: *And provided further,* That in the case of mutual companies the superintendent shall not include in underwriting profit, when computing the tax prescribed by this section, the amounts refunded by such companies on account of premiums previously paid by their policyholders.

When the superintendent has computed the tax on a company's underwriting profit, he shall forthwith mail to the last-known address of the principal office of such company a statement of the amount so charged against it, which amount the company shall pay to the collector of taxes within thirty days after receipt of such notice from the superintendent, and no further tax, except the taxes on investment income from funds representing reserves, capital stock, and surplus as prescribed by sections 35-1110 and 35-1111 and the license fee prescribed by section 35-1113 shall be imposed by the District upon such company, or the agents thereof, for the privilege of transacting the business of marine insurance in the District. (Mar. 4, 1922, 42 Stat. 406, ch. 93, title 5, § 9.)

## CROSS REFERENCES

Excepted from operation of general tax laws, see § 47-1806.

Fire, casualty, and marine insurance companies, annual statement, see § 35-1311.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-1110, 35-1111, 35-1113, 35-1114, 35-1116, 35-1122.

**§ 35-1110. Taxation on earnings on reserves for unpaid loss and unexpired insurance.**

In addition to the tax on underwriting profit as prescribed under sections 35-1108, 35-1109, every insurance company transacting business within the District shall, with respect to marine insurance written by it within the District, be taxed annually at the rate of 5 per centum on its average earnings on reserves for unpaid losses and unexpired premiums. The reserve for unpaid losses and unexpired premiums shall be arrived at by adding the unpaid loss and unexpired premium reserves on marine insurance risks, written within the District, at the beginning and end of the calendar year, and striking an average. Should any company not carry its unpaid loss and unexpired premium reserves separately for the District, then the tax provided under this section shall be applied to such proportion of the company's total unpaid loss and unexpired premium reserves as the net premiums of the company from marine insurance written within the District during the calendar year bear to the total net marine premiums of the company. Average earnings on reserves for



unpaid losses and unexpired premiums shall be deemed, for the purpose of taxation under this section, to mean not more than 2 per centum of these reserves. (Mar. 4, 1922, 42 Stat. 407, ch. 93, title 5, § 10.)

#### CROSS REFERENCE

Excepted from operation of general tax laws, see § 47-1806.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-1109, 35-1111, 35-1112, 35-1114, 35-1116, 35-1122.

### § 35-1111. Taxes on investment income from funds representing capital stock and surplus.

In addition to the taxes, as prescribed under sections 35-1108 to 35-1110, every company organized under the laws of the District and transacting marine insurance therein shall, with respect to marine insurance written in the District, pay a tax of 2 per centum on its investment income from funds representing capital stock and surplus as shown by the company's annual statement. Such investment income shall, for purposes of taxation under this chapter, be arrived at as follows: Add the gross assets at the beginning and end of the calendar year and strike an average. Add capital stock and surplus at the beginning and end of the year and strike an average. Ascertain the proportion which the average capital stock and surplus bears to average gross assets. Credit to investment income on capital stock and surplus such proportion of all income, except income taxed under section 35-1110, derived from interest, dividends, rents, and profits on sales or redemption of assets. Charge against investment income on capital stock and surplus such proportion of all losses on sales or redemption of assets.

Should a company subject to this tax be writing other classes of insurance, and the capital stock and surplus referred to herein relate to all the classes of insurance written without being specifically allocated to the several classes of insurance written, then such proportion of the investment income from funds representing capital stock and surplus, computed according to the method prescribed in the preceding paragraph of this section, shall be applicable to marine insurance for purposes of taxation under this section as the net premiums from marine insurance during the calendar year bear to the net premiums of the company from all the classes of insurance written. (Mar. 4, 1922, 42 Stat. 408, ch. 93, title 5, § 11.)

#### CROSS REFERENCE

Excepted from operation of general tax laws, see § 47-1806.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-1109, 35-1112, 35-1114, 35-1116, 35-1122.

### § 35-1112. Report to include all items necessary to enable Superintendent of Insurance to compute tax—Notification of amount of tax.

Every company writing marine insurance in the District shall set forth in its annual statement to the superintendent, and in the form prescribed by him, all the items necessary to compute the taxes as prescribed under sections 35-1110, 35-1111. If the superintendent finds the report of such company cor-

rect he shall compute the taxes as prescribed and charge the same to such company. Notification to companies by the superintendent of the amount of tax charged to them and the time and place of payment by the companies shall be the same as is required under section 35-1109, relating to taxation of underwriting profit. (Mar. 4, 1922, 42 Stat. 408, ch. 93, title 5, § 12.)

#### CROSS REFERENCES

Excepted from operation of general tax laws, see § 47-1806.

Fire, casualty, and marine insurance companies, annual statements, see § 35-1311.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-1114, 35-1116, 35-1122.

### § 35-1113. Taxation in lieu of license fees.

In lieu of all other license fees every company writing marine insurance in the District shall pay a single annual fee equal to \$100 if the assets of the company aggregate \$1,000,000 or under, to \$150 if the assets aggregate over \$1,000,000 and do not exceed \$5,000,000, and to \$200 if the assets exceed \$5,000,000. The manner and time of paying this single fee and its remittance to the collector of taxes shall be the same as prescribed under section 35-1109 for the payment of taxes on underwriting profit. (Mar. 4, 1922, 42 Stat. 408, ch. 93, title 5, § 13.)

#### CROSS REFERENCES

Excepted from operation of general tax laws, see § 47-1806.

Refund of fees when license refused, see § 47-1017.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-1109, 35-1114, 35-1116, 35-1122.

### § 35-1114. Report upon cessation of marine insurance business—Taxes and license fees to be paid after such cessation.

If a company cease to do a marine insurance business in the District, it shall thereupon make report to the superintendent of the items pertaining to its marine insurance business, as enumerated and described by sections 35-1108 to 35-1113, to the date of its ceasing to do business and not theretofore reported, and forthwith pay to the superintendent the taxes and annual license fee thereon, computed according to this chapter. (Mar. 4, 1922, 42 Stat. 408, ch. 93, title 5, § 14.)

#### CROSS REFERENCES

Excepted from operation of general tax laws, see § 47-1806.

Payment of taxes upon ceasing business, see § 35-1307.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1122.

### § 35-1115. Penalty for failure to report or pay taxes.

If a company refuses to make any report for taxation or license fee purposes, or to pay taxes or license fees imposed upon it as required by this chapter, it shall be liable to the United States for the amount thereof and a penalty of not more than \$200 per month for each month it has failed after demand therefor. Service of process in any action to recover such tax or penalty shall be made according to the requirements of the District law relating to actions



brought against insurance companies by policyholders thereof. (Mar. 4, 1922, 42 Stat. 408, ch. 93, title 5, § 15.)

#### CROSS REFERENCE

Excepted from operation of general tax laws, see § 47-1806.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1122.

#### § 35-1116. Syndicate "B" exempt from taxes and fees.

None of the taxes or fees prescribed under sections 35-1108 to 35-1113, shall be imposed upon business written within the District by "Syndicate B," a marine insurance syndicate created by agreement between the United States Shipping Board and the United States Shipping Board Emergency Fleet Corporation and a number of subscribing American marine insurance companies, under date of June 28, 1920, for the purpose of insuring all American steel steamships which the United States Shipping Board or United States Shipping Board Emergency Fleet Corporation may hereafter sell to others, to the full extent of the unpaid purchase price thereof, and also such other American steel steamships heretofore sold by said Shipping Board or by said corporation as are acceptable for insurance to the Syndicate B subscribers. (Mar. 4, 1922, 42 Stat. 409, ch. 93, title 5, § 16.)

#### TRANSFER OF FUNCTIONS

Acts Sept. 7, 1916, ch. 451, § 3, 39 Stat. 729; June 5, 1920, ch. 250, § 3, 41 Stat. 989, established the United States Shipping Board and enumerated its duties. By Ex. Ord. No. 6166, § 12, June 10, 1933 (5 U.S.C. 901 note), the Board was abolished and its functions, including those over and in respect to the United States Shipping Board Merchant Fleet Corporation, were transferred to the Department of Commerce. Subsequently, by act June 29, 1936, ch. 858, §§ 201, 204, 49 Stat. 1987, sections 1111 and 1114 of title 46, U.S. Code, the United States Maritime Commission was created and the functions of the former United States Shipping Board, including those vested in the Department of Commerce by Ex. Ord. No. 6166, referred to above, were transferred thereto. Section 904 of act June 29, 1936, section 1243 of title 46, U.S. Code, provided that wherever the words United States Shipping Board appeared in prior acts the acts were amended so that the words would be applicable to the United States Maritime Commission. For abolishment of the United States Maritime Commission and transfer of its function and the functions of its chairman, see section 1111 of title 46, U.S. Code, and notes thereunder. See also repeal note preceding section 801 of title 46, U.S. Code.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1122.

#### § 35-1117. Insurance companies not exempt from payment of Federal income tax.

Nothing in this chapter shall be construed so as to relieve any corporation organized or doing business under the provisions of this chapter from the payment of taxes on its income under the revenue laws of the United States. (Mar. 4, 1922, 42 Stat. 409, ch. 93, title 5, § 17.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1122.

#### § 35-1118. Investment of assets of domestic companies.

The cash capital of every domestic corporation transacting marine insurance in the District, required to have a capital, to the extent of the mini-

mum capital required by this chapter shall be invested and kept invested in—

(1) Stocks or bonds of the United States, or of any state or of the District, or of any county, township, school, or other district or municipality in the United States, or federal farm-loan bonds, not estimated above their par value or their current market value.

(2) Bonds or notes secured by mortgages or deeds of trust of improved unencumbered real estate, or perpetual leases thereof, in the United States, worth not less than 50 per centum more than the amount loaned thereon. Where improvements on land constitute part of the value on which the loan is made, the improvements shall be insured against fire for the benefit of the mortgagee in amount not less than the difference between two-thirds the value of the land and the amount of the loan.

(3) Mortgage bonds of railroad companies in the United States and on which default in payment of interest has not occurred within five years prior to the purchase by the company.

(4) Loans upon the pledge of such securities.

The cash capital of every insurance corporation not organized under the laws of the District and transacting marine insurance in the District to the extent of the minimum capital required of a like domestic corporation shall be invested and kept invested in the same classes of securities specified in the preceding paragraph of this section for domestic insurance corporations, except that like securities of the home state or foreign country shall be recognized as legal investments for the amount of the minimum capital required. The residue of the capital and the surplus money and funds of every domestic insurance corporation over and above its capital, and the deposit that it may be required to make with the superintendent, may be invested in or loaned on the pledge of any of the securities specified in the preceding paragraph of this section; or in the stocks, bonds, or other evidence of indebtedness of any solvent institution incorporated under the laws of the United States, or of any state thereof, or of the District; or in such real estate as it is authorized by this chapter to hold.

The assets of every domestic mutual insurance corporation transacting marine insurance in the District to the extent of an amount equal to the minimum capital required of a like domestic stock corporation shall be invested and kept invested in the same class of securities specified for the investment of the minimum capital of like domestic stock insurance corporations. The residue of the assets of every domestic mutual insurance corporation, over and above said amount, may be invested in or loaned on the pledge of the same classes of securities or property as specified in this section and section 35-1119 for the investment or loan of the residue of the capital and the surplus money and funds of like domestic stock insurance corporations.

A company doing business in a foreign country may invest the funds required to meet its obligations in such country in conformity to the laws thereof in the same kinds of securities in such foreign country



as such company is allowed by law to invest in the United States.

Nothing in this chapter shall prohibit a company from accepting in good faith, in order to prevent losses and to protect its interests, securities or property, other than herein referred to, in payment of or to secure debts due or to become due the company. (Mar. 4, 1922, 42 Stat. 409, ch. 93, title 6, § 18.)

#### CROSS REFERENCES

Investments of insurance companies, see § 35-202.

Investments for fire, casualty, and marine companies, see § 35-1321.

### § 35-1119. Domestic company may acquire, hold, and convey real estate for certain purposes—Disposition.

A domestic company may acquire, hold, and convey real estate only for the purpose and in the manner following:

(1) The building in which it has its principal office and the land on which it stands.

(2) Such as shall be requisite for branch office or other business facilities necessary for its convenient accommodation in the transaction of its business.

(3) Such as shall have been acquired for the accommodation of its business.

(4) Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for money due.

(5) Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

(6) Such as it shall have purchased at sales on judgments, decrees, or mortgages obtained or made for such debts.

All such real estate specified in subdivisions (3), (4), (5), and (6) of this section which shall not be necessary for its accommodation in the convenient transaction of its business shall be sold by the company and disposed of within five years after it shall have acquired the title to the same, or within five years after the same shall have ceased to be necessary for the accommodation of its business, unless the company procure the certificate of the superintendent that its interests will suffer materially by a forced sale thereof, in which event the time for the sale may be extended to such time as the superintendent shall direct in such certificate. (Mar. 4, 1922, 42 Stat. 410, ch. 93, title 6, § 19.)

#### CROSS REFERENCES

Conveyance of real estate, formal requisites, see § 45-302.

Holding real estate by fire, casualty, and marine companies, see § 35-1319.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1118.

### § 35-1120. Merger of companies.

Any two or more corporations organized under the laws of the District, and transacting the business of marine insurance, may merge or consolidate into one corporation under the name of any title approved by the superintendent, but no mutual corporation or company shall be merged with a stock corporation or company. The corporations may enter into and make an agreement for such merger or consolidation, prescribing its terms and conditions, the amount of

its capital, which shall not be larger in amount than the aggregate amount of capital of the merged or consolidated corporations, and the number of shares into which it is to be divided. Such agreement must be assented to by a vote of the majority of the number of directors of each corporation prescribed in its charter and must be approved by the votes of stockholders owning at least two-thirds of the stock of each corporation represented and voted upon in person or by proxy at a meeting, called separately for that purpose, upon a notice stating the time, place, and object of the meeting served at least thirty days previously upon each personally or mailed to him at his last known post-office address, and also published at least once a week for four weeks successively in some newspaper printed in the District. Every such agreement must have the approval of the superintendent before the details of said agreement may be carried into effect as provided therein.

The new corporation may require the return of the original certificates of stock held by each stockholder in each of the corporations to be merged or consolidated and issue in lieu thereof new certificates for such number of shares of its own stock as such stockholder may be entitled to receive. Upon such merger or consolidation all rights and property of the several companies shall become the property of the corporation composed of such companies, and the new corporation shall succeed to all the obligations and liabilities of the old corporations in the same manner as if they had been incurred or contracted by it. The stockholders of the old corporations shall continue subject to all the liabilities, claims, and demands existing against them at or before such merger or consolidation. No action or proceeding pending at the time of the consolidation, in which any or all of the old corporations may be a party, shall abate or discontinue by reason of the merger or consolidation, but the same may be prosecuted to final judgment in the same manner as if the merger or consolidation had not taken place, or the new corporation may be substituted in place of any corporation so merged or consolidated by order of the court in which the action or proceeding may be pending. (Mar. 4, 1922, 42 Stat. 410, ch. 93, title 7, § 20.)

### § 35-1121. Establishment of foreign connections.

Any domestic company authorized to write insurance or reinsurance within the District may establish and maintain one or more agencies beyond the United States for the transaction of its lawful business upon such terms and conditions as it may prescribe and may omit from its annual report the transactions by any such agency, if beyond the North American Continent, for six months previous to the time when the report is made, but such omitted transactions shall be included in the next annual report. If such company is required by the foreign nation within which it transacts business to make a deposit in the securities of its own Government, or otherwise, the excess of such deposit over the local reserve liability, computed according to the terms of this chapter, shall be allowed as an asset in the company's home statement. The company shall also be allowed to include in its admitted assets all agents'



balances in foreign countries which are collectible and which are not more than one hundred and eighty days past due. (Mar. 4, 1922, 42 Stat. 411, ch. 93, title 8, § 21.)

**§ 35-1122. Corporations engaged exclusively in writing insurance in foreign countries may organize in District of Columbia.**

Corporations engaged exclusively in the writing of insurance in foreign countries may be organized within the District in the same manner and under the same conditions as prescribed by this chapter for companies writing risks within the United States. The capital stock of such insurance corporations may be owned by American corporations engaged in the same kind of insurance, and the holding companies shall be given credit for the stock thus owned as admitted assets when rendering their financial statements to the superintendent. Any corporation organized under this section shall pay taxes and fees as provided under sections 35-1108 to 35-1117 and shall comply with and receive the benefit of this chapter so far as the same may be applicable. (Mar. 4, 1922, 42 Stat. 411, ch. 93, title 8, § 22.)

**§ 35-1123. Prohibition of unauthorized insurance—Licensing of brokers in certain cases.**

Any insurance agent or broker, incorporated or unincorporated, or any other person, partnership, or corporation, who or which, with or without compensation, shall, in or from the District, act for or with, or aid, in any manner, either directly or indirectly, any other person, association, partnership, or corporation in soliciting, procuring, or transacting marine insurance with or from any corporation, partnership, association, Lloyd's, individual underwriters, or reinsurers not authorized by license of the superintendent to transact the business of insurance therein, and whether the subject-matter of the insurance or reinsurance is or may be within or without the District, except as provided in sections 35-1124 to 35-1126, shall be guilty of a misdemeanor and shall forfeit to the District the sum of not less than \$100 nor more than \$1,000 for each offense: *Provided*, That for the purposes of sections 35-1123 to 35-1126 any office outside of the United States of an insurer organized under the laws of any foreign country, whether said insurer be licensed to do business in the United States or not, shall be deemed and held to be an insurer not authorized to transact the business of insurance in the District. (Mar. 4, 1922, 42 Stat. 412, ch. 93, title 9, § 23.)

**CROSS REFERENCES**

Agents for fire, casualty, and marine insurance, see §§ 35-1334 to 35-1345.

Representation of unauthorized companies prohibited except in certain cases, see §§ 35-1341, 35-1343, 35-1344.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 35-1125, 35-1126.

**§ 35-1124. Superintendent of insurance may issue license to agent or broker to solicit marine insurance.**

The superintendent, in consideration of the yearly payment of \$100, shall issue to any person or corporation who is trustworthy and is competent to trans-

act a marine insurance business in such manner as to safeguard the interests of the insured and who maintains in this District a regular office for the transaction of an insurance brokerage business a license, revocable for cause by the superintendent, permitting the party named in such license to act within the District as agent for the assured or broker to solicit or negotiate or place contracts of marine insurance with corporations, partnerships, associations, Lloyd's, individual underwriters, and insurers, which are not authorized to transact the business of insurance in this District, and shall renew the same annually, unless revoked for cause: *Provided*, That with respect to insurers organized under the laws of any foreign country and duly licensed to transact the business of insurance in any State or Territory of the United States and with respect to insurers organized under the laws of any State or Territory of the United States, said license shall not issue unless the superintendent shall be satisfied that said insurers show within the United States the same standards of solvency as would be required if said insurers were licensed at the time of issue of said license to transact the business of marine insurance in the District. Said license shall provide and the licensee thereunder shall agree that it may be revoked by the superintendent in his discretion in the event that said licensee does not comply with the terms and conditions of said license and of this chapter: *Provided*, That if a branch, associate, agent, correspondent, or head office of any broker so licensed by the superintendent, or such broker, shall, outside of this District, do or perform any of the acts or things forbidden to an unlicensed broker in this District the superintendent may, in his discretion, cancel and revoke the license of such licensee: *Provided, however*, That nothing herein contained shall authorize any person or corporation so licensed to act as insurer or guarantee the performance of any agreement, instrument, or policy of insurance or reinsurance as aforesaid or countersign or issue in the District any agreement, policy, or other instrument of such insurance unless such person or corporation so licensed shall have complied with the provisions of this chapter. (Mar. 4, 1922, 42 Stat. 412, ch. 93, title 9, § 24.)

**CROSS REFERENCES**

D.C. Council may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

Insurance agents other than life, see §§ 35-1201, 35-1334, 35-1345.

Refund of fees when license refused, see § 47-1017.

Revocation or suspension of licenses for violation of Uniform Narcotic Drug Act, see § 33-418.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 35-1123, 35-1125, 35-1126.

**§ 35-1125. Holder of license to maintain office in District of Columbia and to keep book of records—Contents—Superintendent of Insurance may inspect such record—Data secured by Superintendent to be confidential.**

Any person or corporation holding such license from the superintendent who shall do or perform any or all of the aforesaid acts in connection with marine insurance with any corporation, person, partnership, association, Lloyd's, individual underwriters,



or interinsurers, which are not authorized by license of the superintendent to transact such business in the District, shall (1) maintain in good faith an office in the District, (2) keep in said office a complete book of record of the marine insurance transacted by, through, or with his or its assistance with unauthorized insurers, showing (a) a brief description or identification of the subject-matter and kind of the insurance, (b) the voyage insured, or, if for time, the date of such insurance going into effect and the date of its termination, (c) the name of the beneficial insured, (d) the amount insured with unauthorized insurers, (e) the rate of premium, (f) the gross premium payable therefor. Such book of record shall also contain statements in the same details of all such insurances canceled or on which premiums have been increased or reduced (including laying-up returns) and the amounts of additional or of return premiums thereon; (3) keep in said office such additional record of the insurance, including the names of the corporations, partnerships, associations, persons, Lloyd's, underwriters, or interinsurers and the amount insured by each. The books of record and all supplementing records shall be open at all times to the inspection of and examination by the superintendent of insurance or anyone appointed by him for said purpose. The data as herein outlined shall be furnished to the superintendent within one month following his request therefor and upon the form furnished by him. Such classified records of any licensee reporting shall be regarded by the superintendent as intended solely for the information of the District and federal governments and shall not be revealed to any person not authorized by law to receive the same. Any person or persons in position to acquire the aforesaid information who shall, either while in office or after leaving office, reveal such information to any person or corporation not legally authorized to receive the same shall be guilty of a misdemeanor and subject, upon conviction, to a fine of \$2,000 or imprisonment for one year, or to both such fine and imprisonment. Any licensee under sections 35-1123 to 35-1126 failing to report such classified records within the time limit prescribed by this section shall forfeit to the District \$200 per month for each month he has failed. (Mar. 4, 1922, 42 Stat. 412, ch. 93, title 9, § 25.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-1123, 35-1126.

#### § 35-1126. Licensee to furnish bond.

Each person or corporation to whom such a license as broker shall be issued shall, before transacting business thereunder, execute and deliver to the superintendent a bond in the penal sum of not less than \$5,000, with such surety or sureties as the superintendent shall require and approve, conditioned that the said broker will faithfully comply with all the requirements of sections 35-1123 to 35-1126. (Mar. 4, 1922, 42 Stat. 413, ch. 93, title 9, § 26.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-1123, 35-1125.

#### § 35-1127. Keeping of classified records.

Every insurance company organized or admitted to write marine insurance within the District shall

keep a classified record of all its marine insurance transactions in the United States, setting forth for each calendar year the volume of risks and the premiums involved with respect to (1) hull and time freight insurance; (2) cargo and voyage freight insurance and other voyage interests; (3) builders' risk insurance; (4) reinsurance ceded to American companies; (5) reinsurance ceded to American branch offices of alien admitted companies; (6) reinsurance ceded to any foreign office of alien admitted companies and reinsurance ceded to nonadmitted alien insurers; (7) reinsurance received from American companies; (8) reinsurance received from any foreign office of admitted alien companies and reinsurance received from alien nonadmitted insurers. The data as herein outlined shall be furnished to the superintendent within two months following his request therefor and upon the form furnished by him. Such classified records of any individual company reporting shall be regarded by the superintendent as intended solely for the information of the District and federal governments, and shall not be revealed to any person not authorized by law to receive the same. Any person or persons in position to acquire the aforesaid information who shall, either while in office or after leaving office, reveal such information to a competitor shall be guilty of a misdemeanor and subject upon conviction to a fine of \$2,000, or imprisonment for one year, or to both such fine and imprisonment. Any company or admitted branch office failing to report such classified records within the time limit prescribed by this section shall forfeit to the District \$200 per month for each month it has failed. (Mar. 4, 1922, 42 Stat. 413, ch. 93, title 10, § 27.)

#### § 35-1128. Penalties.

Any person, corporation, association, or partnership who violates any of the provisions of this chapter, or fails to comply with any duty imposed upon him or it by any provision of said sections for which violation or failure no penalty is elsewhere provided by said sections or by the laws of the District, shall upon conviction thereof be fined not exceeding \$500. (Mar. 4, 1922, 42 Stat. 414, ch. 93, title 11, § 28.)

#### § 35-1129. Repealed. Oct. 15, 1970, Pub. L. 91-452, title II, § 255, 84 Stat. 931.

Section, act Mar. 4, 1922, 42 Stat. 414, ch. 93, title 11, § 29, related to the production of incriminating evidence and the immunity of witnesses. For current provisions relating to immunity of witnesses, see 18 U.S.C. 6002.

#### EFFECTIVE DATE OF REPEAL

See sec. 260 of act Oct. 15, 1970, Pub. L. 91-452, set out as a note to § 23-545.

#### § 35-1130. Clerical assistance and departmental expenses.

For the purpose of carrying out the provisions of this chapter the superintendent of insurance is authorized to appoint, in addition to the present force, an examiner, a clerk-stenographer and to increase the contingent expenses of the insurance department in the sum of \$800. (Mar. 4, 1922, 42 Stat. 414, ch. 93, title 12, § 30.)



## CODIFICATION

The provisions for a salary of \$3,000 per annum for the examiner and a salary of \$1,800 per annum for the clerk-stenographer were deleted as covered by the Classification Act of 1949, as amended. That act (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended) was later repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by chapter 51 and subchapter III of chapter 53 of title 5, U.S.C.

## CROSS REFERENCE

Receivership expenses, see § 35-1308.

## § 35-1131. Separability of provisions.

This chapter shall supersede the provisions of any other law of the District in conflict therewith. Should any section or provision of this chapter be held unconstitutional or invalid, the constitutionality or validity of the chapter as a whole or of any part thereof, other than the part so held unconstitutional or invalid, shall not be affected. (Mar. 4, 1922, 42 Stat. 414, ch. 93, title 13, § 31.)

## § 35-1132. Right to amend or repeal reserved.

The right to alter, amend, or repeal this chapter is hereby reserved. (Mar. 4, 1922, 42 Stat. 414, ch. 93, title 13, § 32.)

## § 35-1133. Wagering policies, illegal.

No insurance shall be made by any person or persons, bodies politic or corporate, on any ship or ships, or on any goods, merchandise, or effects laden or to be laden on board of any ship or ships, interest or no interest, or without further proof of interest than the policy, or by way of gaming or wagering or without benefit of salvage to the insurer; and every such insurance shall be null and void to all intents and purposes. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 656.)

## CODIFICATION

This section was not enacted as part of the Act of Mar. 4, 1922, which comprises this chapter.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1202.

## Chapter 12.—INSURANCE AGENTS OTHER THAN LIFE

Sec.

35-1201. Insurance agents to secure licenses—Commissions to unlicensed agents prohibited—Penalties.

35-1202. Fraternal associations exempt under this chapter—Employment of solicitors and license fees therefor—Industrial insurance may be carried on—Industrial insurance license—Penalty for soliciting without license.

## § 35-1201. Insurance agents to secure licenses—Commissions to unlicensed agents prohibited—Penalties.

No person, firm, or corporation shall act as agent for any insurance company or association, or act as insurance broker or agent for procuring or placing insurance for commissions, compensation, gain, or profit, without first having obtained a license as an insurance agent or broker from the Superintendent of Insurance of the District. Every such license certificate shall have printed conspicuously upon its face the words "General insurance license," and for such license the sum of fifty dollars shall be paid

annually in the month of March to the collector of taxes of said District. All licenses for insurance companies, their agents, or solicitors, who may apply for permission to do business in the District of Columbia shall date from the first of the month in which application is made and expire on the thirtieth day of April following, and payment shall be made in proportion. No person, firm, or corporation, or association shall allow or pay any commission, rebate, or compensation whatever, directly or indirectly, to, for, or in behalf of any person, firm, or corporation doing business in the District of Columbia not licensed as herein provided. Any violation of this section shall be a misdemeanor and, on conviction in the Superior Court of the District of Columbia, be subject to the penalties provided in section 35-201 for the misdemeanors therein described: *Provided*, That licenses to firms, corporations, or associations shall be held to extend only to the bona fide copartners, not exceeding two in one firm, and to the secretary and one assistant secretary of each corporation or association so licensed, any one of whom may be held and dealt with on behalf of such firm, corporation, or association for any violation of the provisions hereof. (Mar. 3, 1901, 31 Stat. 1292, ch. 854, § 654; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

## CODIFICATION

As enacted this section provided at the end that: "*And provided further*, That all moneys paid as fines under the provisions hereof shall be turned over to the proper custodian of the relief or pension fund of the fire department of the District, to be used and accounted for agreeably to the then existing rules for the use of such relief or pension fund." Act Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12 [former § 4-503], provided that the "Police relief fund" and the "Fireman's relief fund" should be known as the "Policemen and firemen's relief fund, District of Columbia," and prescribed the moneys of which such fund shall consist. Act June 14, 1935, ch. 241, § 1, 49 Stat. 358 [§ 4-502] provides: "Commencing with July 1, 1935, and thereafter, all moneys on June 14, 1935, required to be deposited to the credit of the policemen and firemen's relief fund, District of Columbia, under section 4-503, shall be paid to the collector of tax of the District of Columbia and deposited in the treasury to the credit of the revenues of the said District." For current provisions for disposition of fines payable and paid under judgment of the criminal division of the Superior Court, see § 16-707.

## AMENDMENT

1970—Section 155(a) of act July 29, 1970, Pub. L. 91-358, amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

## REPEAL OF INCONSISTENT PROVISIONS

Provisions of this chapter conflicting with the Life Insurance Act, classified to chapters 3 to 8 of this title, are repealed by section 4, Ch. VI of said act which is set out as a note under section 35-301.

## CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court of said District" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the



District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

#### TRANSFER OF FUNCTIONS

See note under § 35-101.

The Office of the Collector of Taxes was abolished and the functions thereof transferred, see note under § 47-301.

#### CROSS REFERENCES

D.C. Council may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

Fire, casualty, and marine insurance agents, see §§ 35-1334 to 35-1345.

Life insurance,

Agents, see § 35-425 et seq.

Brokers, see § 35-428.

Marine insurance agents, see § 35-1124.

Refund of fees when license refused, see § 47-1017.

Revocation or suspension of license for violation of Uniform Narcotic Drug Act, see § 33-418.

Transacting business for unauthorized company, see § 35-1123.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-105, 35-201, 35-1202.

#### NOTES TO DECISIONS

##### Licensed agents

An agent licensed to represent one company is entitled to apply for and receive another license to represent another company. *United States ex rel. Kreh v. Ingram* (1912, 38 App. D. C. 379).

Broker licensed under this section may act as agent for any company authorized to do business in the District. *Drake v. United States ex rel. Bates* (1908, 30 App. D. C. 312).

##### Licensed corporations

"All insurance companies are compelled to comply with the provisions of the several sections relating to them before they can carry on business. \* \* \* The companies are under no obligation to apply for licenses for their agents or brokers. They must apply for their own licenses." *Drake v. United States ex rel. Bates* (1908, 30 App. D. C. 312).

##### Injunction

Superintendent of Insurance of the District has no statutory authority to issue license to mutual insurance companies writing taxicab insurance, and injunction may be issued to restrain him from doing so. *Hutchins Mut. Ins. Co. v. Hazen* (1939, 105 F. 2d 53, 70 App. D. C. 174).

##### Mandamus

The issuance of a license to represent another company may be compelled by mandamus. *United States ex rel. Kreh v. Ingram* (1912, 38 App. D. C. 379).

##### Regulations

Superintendent of Insurance does not have power "to make regulations for the classification of persons required to take out a 'general insurance license' by the provisions of 1901 Code, § 654 (§ 35-1201)." *Drake v. United States ex rel. Bates* (1908, 30 App. D. C. 312).

§ 35-1202. Fraternal associations exempt under this chapter—Employment of solicitors and license fees therefor—Industrial insurance may be carried on—Industrial insurance license—Penalty for soliciting without license.

Nothing contained in sections 35-101 to 35-108, 35-201 to 35-205, 35-1133, 35-1201, 35-1202 shall be held to interfere with or abridge the rights of, or apply to, any fraternal beneficial societies, orders, or associations under sections 35-901 to 35-917: *Provided*, That any insurance company or agent licensed to do business in the District of Columbia may em-

ploy solicitors, and the license fee to be paid for each solicitor so employed shall be five dollars per year, payable in the month of March, and such license shall have printed on its face the words "Insurance solicitor's license," and shall contain the name of the company for which such solicitor is employed, and no other: *Provided*, That nothing contained in sections 35-101 to 35-108, 35-201 to 35-205, 35-1133, 35-1201, 35-1202 shall be held to prevent any life or fire insurance company from carrying on the business commonly known as industrial insurance, and the license fee to be paid for solicitors for such industrial insurance shall be two dollars for every such solicitor, to be paid in the month of March in each year. Such license certificate shall have conspicuously printed on its face "Industrial insurance license," and shall also express upon its face the name of the company for which such solicitor is employed; and any certificate of license granted under this section or section 35-1201 may be assigned, upon application to the Superintendent of Insurance, by canceling the old certificate and issuing a new one of like tenor to the assignee for the unexpired term, for which assignment a fee of twenty-five cents shall be paid to the collector of taxes; and any person who shall act as solicitor for any such insurance company, without having first procured such license therefor, or shall solicit for any company other than the one named in such license, shall be guilty of a misdemeanor and, on conviction thereof in the Superior Court of the District of Columbia be punished by a fine of not less than ten dollars nor more than fifty dollars, and in default of payment of such fine by imprisonment in the jail of said District for a term of not less than ten days nor more than thirty days, at the discretion of the court: *Provided*, That nothing in sections 35-101 to 35-108, 35-201 to 35-205, 35-1133, 35-1201, 35-1202 shall be held to prevent any life insurance company organized in the District of Columbia under special act of Congress, but which has discontinued writing new insurance, from collecting premiums or dues upon any undetermined policies under which such company has liabilities, provided such company has sufficient assets and reserves to safely meet such liabilities. (Mar. 3, 1901, 31 Stat. 1293, ch. 854, § 655; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### AMENDMENT

1970—Section 155(a) of act July 29, 1970, Pub. L. 91-358, amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court of said District" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.



## TRANSFER OF FUNCTIONS

The Office of the Collector of Taxes was abolished and the functions thereof transferred, see note under § 47-301.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-105, 35-201.

## Chapter 13.—FIRE, CASUALTY, AND MARINE INSURANCE

## SUBCHAPTER I.—FIRE, CASUALTY, AND MARINE INSURANCE, GENERALLY

Sec.

- 35-1301. Short title.
- 35-1302. Application of chapter—Life, title, fidelity, and surety companies and pension plans excepted.
- 35-1303. Definitions.
- 35-1304. Records of Insurance Department—Power to make rules.
- 35-1305. Certificate of authority—Necessity for—Expiration—Requirements.
- 35-1306. Revocation and suspension of certificate of authority—Grounds for—Notice and hearing.
- 35-1307. Taxes, report and payment upon ceasing business—Penalties.
- 35-1308. Receivership—Grounds for—Injunction—Hearing—Liquidation by Superintendent—Title to property—Notice to be recorded in office of recorder of deeds—Appointment and compensation of clerks and special deputies—Expenses—Bond of receiver.
- 35-1309. "Insolvency" defined.
- 35-1310. "Impairment of capital or surplus" defined.
- 35-1311. Annual statement—Time for filing—Extension of time—Verification—Blanks to be furnished—Form and modification of blanks—Publication of statement.
- 35-1312. False statements—Penalties.
- 35-1313. Examinations—Production of books and papers—Expenses—False statements, reports, or entries—Penalties—Foreign or alien companies, acceptance of examinations made by other authorities.
- 35-1314. Classification of insurance—Fire and marine—Casualty—Risks insurable—Fidelity and surety risks excepted.
- 35-1315. Limitation of risk—Reinsured risks excluded from computations—Workmen's compensation, employers' liability, marine or inland marine risks excluded.
- 35-1316. Capital and surplus, minimum requirements.
- 35-1317. Existing companies, application of act—Capital and surplus requirements.
- 35-1318. Formation of domestic companies—Filing articles of incorporation, by-laws, charter and policy forms—Issuance of certificate of authority to do business.
- 35-1319. Real estate which may be held by domestic companies—Sale of certain real estate within five years after acquisition—Extension of time for sale.
- 35-1320. Borrowing money, mutual company may borrow to create surplus fund, comply with law, or defray expenses of organization—Approval of superintendent—Interest rate—Repayment—Obligation of company.
- 35-1321. Investments permitted, domestic companies—Real estate, insurance on improvements required—Real estate required to be unencumbered, "encumbrances" defined—Stock and bonds, investments may not be made when dividends or interest have not been paid—Foreign investments—Approval of directors or supervising committee—Joint investments forbidden.
- 35-1322. Agency contracts, exclusive—Approval of Superintendent required—Prohibited provisions.
- 35-1323. Foreign or alien companies, admission—Certificate of authority required.
- 35-1324. Lloyd's organizations—Requirements—Limitation of risk—Surplus—Filing copy of power of attorney—Annual statement—Verification.

Sec.

- 35-1325. Certificate of authority, application by foreign or alien companies—Form and execution.
- 35-1326. Application for certificate of authority, foreign or alien companies—Delivery of instruments concerning company to Superintendent—Service of process—Deceptive names prohibited—Capital and surplus—Investments—Examination by Superintendent.
- 35-1327. Process, service upon foreign or alien companies by service on Superintendent—Force and effect—Registered letter to company—Proof of service—Penalty for failure to designate attorney for service of process.
- 35-1328. Names of mutual or reciprocal companies—Requirements—Exceptions.
- 35-1329. Premiums of mutual companies—Maximum required to be stated—Contingent premiums.
- 35-1330. Reserves, computation.
- 35-1331. Policy forms filed with the Superintendent—Power to disapprove.
- 35-1332. Accident and health policies, required provisions.
- 35-1333. Discriminations prohibited.
- 35-1334. Agents and brokers—Policies to be executed by licensed and authorized agents—All agreements contained in policy—Rebates prohibited—List of agents to be filed—Payment of premium to broker—Soliciting agent may not sign policy—Life, title, and ocean marine agents excepted.
- 35-1335. Commissions to unlicensed persons prohibited.
- 35-1336. Agents and brokers, license—Form of application—Request by company or agent, form and contents—Bond of brokers—Written examination—Requirements for license—Waiver of examination—Issuance to individuals or firms—License for own business prohibited.
- 35-1337. Effective dates of licenses and proration of fees.
- 35-1338. Temporary transfer of licenses—Renewal.
- 35-1339. Renewal of licenses—Written notice of refusal to renew—Hearing—Application to court for leave to continue business pending appeal.
- 35-1340. Revocation and suspension of licenses—Grounds for—Notice and hearing—Evidence.
- 35-1341. Unauthorized solicitation or representation.
- 35-1342. Exemption from license—Sale of accident insurance in railroad ticket offices, common carriers—Travel bureau—Business of ocean marine insurance, insurance covering railroad property and other common carriers.
- 35-1343. Agents prohibited from representing unauthorized companies—"Companies" defined—Penalties—Civil liability—Exceptions—Prosecution.
- 35-1344. License to write policy in unauthorized company when no authorized company available—Taxation—Reports, form and contents—Revocation or refusal.
- 35-1345. License fees.
- 35-1346. Repealed.
- 35-1347. Penalties not otherwise prescribed.
- 35-1348. Appeal from Superintendent to Commissioner—Time for—Hearing on appeal—Effect of Commissioner's decision.
- 35-1349. Court proceedings—Superintendent not liable for costs, damages, or to give supersedeas bond.
- 35-1350. Separability of provisions.

## SUBCHAPTER II.—INSURANCE PREMIUM—FINANCE COMPANIES

- 35-1361. Application.
- 35-1362. Definitions.
- 35-1363. Licenses.
- 35-1364. Action by Superintendent on application.
- 35-1365. Revocation and suspension of licenses.
- 35-1366. Books and records.
- 35-1367. Power to make rules.
- 35-1368. Form of premium finance agreement.
- 35-1369. Maximum service charge.
- 35-1370. Delinquency charges.
- 35-1371. Cancellation of insurance contract upon default.
- 35-1372. Exemption from any filing requirement.



## CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 35-1501, 35-1502.

SUBCHAPTER I.—FIRE, CASUALTY, AND  
MARINE INSURANCE, GENERALLY

## § 35-1301. Short title.

This chapter shall be known as the "Fire and Casualty Act." (Oct. 9, 1940, 54 Stat. 1063, ch. 792, Ch. I, § 1.)

## EFFECTIVE DATE

Section 48 of act Oct. 9, 1940, provided that: "Except where otherwise specifically provided herein, this Act [this chapter] shall become effective thirty days after approval [Oct. 9, 1940]."

## REPEAL OF INCONSISTENT PROVISIONS

Section 46 of act Oct. 9, 1940, ch. 792, Ch. II, provided that: "All laws or parts of laws, insofar as they relate to business affected hereby and are in conflict with any provisions of this act [Fire and Casualty Act, §§ 35-1301 to 35-1350], are hereby repealed."

## CROSS REFERENCES

Insurance companies, see chapters 1 and 2 of this title.  
Marine insurance companies, see chapter 11 of this title.

## NOTES TO DECISIONS

## Labor organization

The 1940 act requiring that all fire, marine, and casualty companies doing business in District of Columbia must obtain certificate of authority expressly repealed earlier statute exempting nonprofit relief associations composed of government employees from licensing and regulation, and consequently unincorporated nonprofit labor organization composed exclusively of postal clerks employed by United States Post Office Department must obtain from superintendent of insurance certificate of authority to operate program of health insurance. *National Federation of Post Office Clerks etc. v. District of Columbia* (D.C. Mun. App. 1961, 173 A. 2d 483).

## § 35-1302. Application of chapter—Life, title, fidelity, and surety companies and pension plans excepted.

All fire, marine, and casualty insurance companies now or hereafter incorporated or formed in the District, or authorized to do business in the District, all brokers and all agents and other representatives of such companies, shall, to the extent hereinafter provided, be subject to this chapter: Provided, That this chapter shall not affect the business of life and title insurance, and shall not affect the right or authority of any solvent company to make contracts of fidelity or surety, and shall not affect a plan under which any person provides pension benefits to his employees. (Oct. 9, 1940, 54 Stat. 1064, ch. 792, Ch. I, § 2.)

## CROSS REFERENCES

Effect on existing companies, see § 35-1317.

Regulation of fire insurance rates, see §§ 35-1401 to 35-1409.

## NOTES TO DECISIONS

## Labor organization

The 1940 act requiring that all fire, marine and casualty companies doing business in District of Columbia must obtain certificate of authority expressly repealed earlier statute exempting nonprofit relief associations composed of government employees from licensing and regulation, and consequently unincorporated nonprofit labor organization composed exclusively of postal clerks employed by United States Post Office Department must obtain from superintendent of insurance certificate of authority to operate program of health insurance. *National Federation of Post Office Clerks etc. v. District of Columbia* (D.C. Mun. App. 1961, 173 A. 2d 483).

## § 35-1303. Definitions.

In this chapter, unless the context otherwise requires—

"District" means District of Columbia.

"Commissioner" means the Commissioner of the District of Columbia.

"Superintendent" means the Superintendent of Insurance of the District of Columbia, or the officer or officers, agency or agencies succeeding to his functions under Reorganization Plan Number 5 of 1952.

"Department" means the Department of Insurance of the District of Columbia.

"Company" means an insurance, surety, or indemnity company, and shall be deemed to include a corporation, company, partnership, association, individual, or aggregation of individuals engaging in or proposing or attempting to engage in any kind of insurance, surety, or indemnity business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships, and corporations.

"Authorized company" means a company which has authority from the Superintendent to do business in the District as provided under section 35-1305.

"Unauthorized company" means a company which does not have authority from the Superintendent to do business in the District as provided under section 35-1305.

"Domestic company" means a company incorporated or organized under the laws of the District.

"Foreign company" means a company incorporated or organized under the laws of any State of the United States.

"Alien company" means a company incorporated or organized under the laws of any country other than the United States.

"Reciprocal" includes interinsurance exchange.

"Person" includes individuals, corporations, associations, exchanges, and partnerships.

Personal pronouns include all genders; the singular includes the plural and the plural includes the singular.

"Policy" means an insurance policy or contract, including contracts of fidelity and surety, and includes any contract wherein one party called the "company," for a consideration, undertakes to pay money or its equivalent, or to do an act valuable to any other party upon the happening of the hazard or peril insured against whereby the party insured suffers loss or injury or is subjected to legal liability.

"Officer," when used to refer to officer of the company, includes an attorney-in-fact.

"Policy writing agent" means any person who is not a salaried employee of a company, and whose residence or principal place of business is located in the District, and who is authorized in writing by any company authorized to transact business in the District to countersign policies and to solicit, negotiate, or effect contracts of insurance, surety, or indemnity for such company in the District.

"Soliciting agent" means any person who is not a salaried employee of a company and whose residence or principal place of business is located in the District, and who is authorized by a company having authority to transact business in the District, or by



a policy-writing agent, to solicit in the District contracts of insurance, surety, or indemnity in behalf of such company or agent.

"Broker" means any person who for a consideration acts or aids in any manner in the solicitation or negotiation on behalf of the assured of contracts of insurance, surety, or indemnity.

"Salaried company employee" means any person regularly employed by an authorized company, and who is paid a regular wage or salary to perform certain duties and functions authorized by such company. For the purposes of this chapter the term "salaried company employee" shall not include employees engaged solely in office duties or in the inspection, rating, or classifying of risks or in the supervision of agents, or any employee not engaged in the solicitation or writing of policies, or officers of companies or associations engaged in the performance of their usual and customary executive duties.

"Surplus" means the excess of admitted assets over liabilities and capital in the case of a company with capital stock, and the excess of admitted assets over liabilities in the case of a company without capital stock.

"Liabilities" means all debts due or to become due, contingent or otherwise, of which the company has knowledge, and includes the reserves required by this chapter.

"Admitted assets" includes the investments authorized or permitted by this chapter, and in addition thereto only the following:

(1) Cash in a company's principal or branch offices or in possession of a company or in transit, and cash deposited with the officers of any state or subdivision thereof, or the Dominion of Canada, when such deposit is necessitated by the laws of such state or subdivision thereof, or by the laws of the Dominion of Canada.

(2) Cash deposited in sound banks and trust companies.

(3) The amount fairly estimated as recoverable on cash deposited in closed banks and trust companies.

(4) Bills and accounts receivable collateralized by securities of the kind in which the company is authorized to invest.

(5) Bills receivable not past due for risks taken by companies authorized to transact fire and marine business described in section 35-1313 that are not in excess of the unearned premiums thereon.

(6) Gross premiums or premium deposits in course of collection not more than ninety days past due, less commissions due thereon to agents.

(7) Amounts fairly estimated as recoverable from advances made on contracts under surety bonds.

(8) Amounts due from solvent insurance companies, bureaus, or company associations, and amounts fairly estimated as recoverable from insolvent insurance companies.

(9) The interest accrued during the twelve months immediately preceding on mortgage loans other than those upon which the company is proceeding for the enforcement of security.

(10) The rents accrued on the company's property during the twelve months immediately preceding.

(11) Interest due and accrued on bonds conforming to this chapter and not in default.

(12) Amounts due and accrued on dividends declared on shares of stock conforming to this chapter.

(13) Interest due and accrued on collateral loans which is not in excess of the value of the collateral over the amount loaned thereon.

(14) Interest due and accrued on deposits in sound banks and trust companies.

(15) Interest accrued on tax-anticipation warrants.

(16) Amounts due for tax refunds allowed but unpaid from the United States or any state. (Oct. 9, 1940, 54 Stat. 1064, ch. 792, Ch. I, § 3; June 30, 1953, 67 Stat. 120, ch. 168.)

#### AMENDMENT

1953—Act June 30, 1953, changed the definition of "Superintendent" by inserting "or the officer or officers, agency or agencies succeeding to his functions under Reorganization Plan Number 5 of 1952."

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan and § 35-101.

#### CROSS REFERENCES

Additional definition of "company," see § 35-1343.  
 "Encumbrances on real estate" defined, see § 35-1321.  
 "Impairment of capital or surplus" defined, see § 35-1310.  
 "Insolvency" defined, see § 35-1309.  
 Marine insurance, definitions, see § 35-1101.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1401.

#### NOTES TO DECISIONS

##### Engaging in insurance

Statutes regulating business of insurance were not intended for application to all organizations having some element of risk assumption or distribution in their operations. *Metropolitan Police Retiring Assn. Inc. v. W. N. Tobriner et al.* (1962, 306 F. 2d 775, 113 U.S. App. D.C. 168).

The legislation relating to insurance in District of Columbia is so elaborate that court is not inclined to strain its coverage to include an activity left uncovered by the ordinary meaning of language used. *Id.*

The absence of a profit motive and facts that Metropolitan Police Retiring Association possesses a representative government and engages in no solicitation of the public, add some though not controlling support to review that its activities are not within scope of statute primarily designed to protect insured vis-a-vis the insurer. *Id.*

Where Metropolitan Police Retiring Association was incorporated as a charitable organization, membership was limited to members of Metropolitan Police Department, the White House Police, and Park Police, purpose of association was to furnish financial relief to members in case of their retirement from police force, payments upon retirement were principally the amounts of retirees' own contributions with some increment of interest from investments which were required to be approved by majority of board of directors and by majority vote of membership in regular session, association was not engaged in "insurance" and hence was not required to obtain certificate of authority from Superintendent of Insurance. *Id.*

##### Labor organization

The 1940 act requiring that all fire, marine and casualty companies doing business in District of Columbia must obtain certificate of authority expressly repealed earlier statute exempting nonprofit relief associations composed of government employees from licensing and regulation, and consequently unincorporated nonprofit labor organization composed exclusively of postal clerks



employed by United States Post Office Department must obtain from superintendent of insurance certificate of authority to operate program of health insurance. *National Federation of Post Office Clerks etc. v. District of Columbia* (D.C. Mun. App. 1961, 173 A. 2d 483).

#### § 35-1304. Records of Insurance Department—Power to make rules.

The office of the superintendent shall be a public office, and the records, books, and papers thereof on file therein shall be public records of the District, except as the superintendent for good reason may decide otherwise, or except as it may be provided otherwise herein.

The District of Columbia Council shall have authority to make, and the superintendent shall have the authority to enforce, such reasonable rules and regulations as may be necessary in making effective the provisions of this chapter, but such rules and regulations shall not be contrary to nor inconsistent with the provisions of this chapter. (Oct. 9, 1940, 54 Stat. 1066, ch. 792. II, § 1.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(277) of Reorg. Plan 3, of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of making rules and regulations necessary in making effective the provisions of this chapter under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### CROSS REFERENCES

Power and duties of insurance department with respect to marine insurance, see § 35-1102.

Power of Superintendent to,

Alter or prescribe forms for annual statements, see § 35-1311.

Disapprove inequitable policy forms, see § 35-1331.  
Prescribe form of application of foreign and alien companies to do business in the District, see § 35-1325.

Rules and regulations,

Generally, see § 35-102.

Governing liability policies or bonds for motor carriers, see § 44-301.

Under subchapter II of this chapter, see § 35-1367.

#### § 35-1305. Certificate of authority—Necessity for—Expiration—Requirements.

It shall be the duty of the superintendent to issue a certificate of authority to a company when it shall have complied with the requirements of the laws of the District so as to be entitled to do business therein. The superintendent may, however, satisfy himself by such investigation as he may deem proper or necessary that such company is duly qualified under the laws of the District to transact business therein, and may refuse to issue or renew any such certificate to a company if the issuance or renewal of such certificate would adversely affect the public interest. In each case the certificate shall be issued under the seal of the superintendent authorizing and empowering the company to transact the kind or kinds of business specified in the certificate, and each such certificate shall be made to expire on the 30th day of April next succeeding the date of its issuance. No company shall transact any business in or from the District until it shall have received a certificate

of authority as authorized by this section, and no company shall transact any business not specified in such certificate of authority. No domestic mutual company shall transact any business in the District until it has bona fide applications for insurance covering not less than two hundred separate risks in not less than twenty policies to be issued to not less than twenty members, and has received the cash premium therefor, and has a surplus of not less than the amount provided under sections 35-1315, 35-1316. (Oct. 9, 1940, 54 Stat. 1066, ch. 792, Ch. II, § 2.)

#### CROSS REFERENCES

D.C. Council may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

General penalties for violation of the insurance laws, see § 35-1347.

Issuance of certificate, see § 35-1318.

Licensing,

Health and accident business, generally, see § 35-202.

Marine insurance companies, see § 35-1104.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-1303, 35-1318, 35-1323.

#### NOTES TO DECISIONS

##### License requirements

Insurer who seeks licenses under the Life Insurance Act and the Fire and Casualty Act bears responsibility of satisfying the more stringent requirement regardless of which statute prescribes it, and if two certificates are issued, each must stand on its own feet. *Travelers Insurance Co. v. A. F. Jordan, Dept. of Insurance etc.* (1961, 287 F. 2d 347, 109 U.S. App. D.C. 308).

Life Insurance Act of District of Columbia and Fire and Casualty Act do not prohibit issuance of certificate or certificates authorizing a single insurer to do both life and casualty insurance business. *Id.*

#### § 35-1306. Revocation and suspension of certificate of authority—Grounds for—Notice and hearing.

The Superintendent shall have power to revoke or suspend the certificate of authority to transact business in the District of any company which has failed or refused to comply with any provision or requirement of this chapter, or which—

(a) is impaired in capital or surplus;

(b) is insolvent;

(c) is in such a condition that its further transaction of business in the District would be hazardous to its policyholders or creditors, or to the public;

(d) has refused or neglected to pay a valid final judgment against such company within thirty days after such judgment shall have become final either by expiration without appeal within the time when such appeal might have been perfected, or by final affirmance on appeal;

(e) has violated any law of the District or has in the District violated its charter or exceeded its corporate powers;

(f) has refused to submit its books, papers, accounts, records, or affairs to the reasonable inspection or examination of the Superintendent, his deputies, or duly appointed examiners;

(g) has an officer who has refused upon reasonable demand to be examined under oath touching its affairs;

(h) fails to file with the Superintendent a copy of an amendment to its charter or articles of associa-



tion within thirty days after the effective date of such amendment;

(i) has had its corporate existence dissolved or its certificate of authority revoked in the State in which it was organized;

(j) has had all its risks reinsured in their entirety in another company, without prior approval of the Superintendent; or

(k) has made, issued, circulated, or caused to be issued or circulated any estimate, illustration, circular, or statement of any sort misrepresenting either its status or the terms of any policy issued or to be issued by it, or the benefits or advantages promised thereby, or the dividends or shares of the surplus to be received thereon, or has used any name or title of any policy or class of policies misrepresenting the true nature thereof.

The Superintendent shall not revoke or suspend the certificate of authority of any company until he has given the company not less than thirty days' notice of the proposed revocation or suspension and of the grounds alleged therefor, and has afforded the company an opportunity for a full hearing: *Provided*, That if the Superintendent shall find upon examination that the further transaction of business by the company would be hazardous to the public or to the policyholders or creditors of the company in the District, he may suspend such authority without giving notice as herein required: *Provided further*, That in lieu of revoking or suspending the certificate of authority of any company for causes enumerated in this section after hearing as herein provided, the Superintendent may subject such company to a penalty of not more than \$200 when in his judgment he finds that public interest would be best served by the continued operation of the company. The amount of any such penalty shall be paid by the company through the office of the Superintendent to the Collector of Taxes, District of Columbia. At any hearing provided by this section, the Superintendent shall have authority to administer oaths to witnesses. Anyone testifying falsely after having been administered such an oath shall be subject to the penalties of perjury. (Oct. 9, 1940, 54 Stat. 1066, ch. 792, Ch. II, § 3; Apr. 22, 1944, 58 Stat. 192, ch. 173, § 1; Feb. 22, 1958, 72 Stat. 21, Pub. L. 85-334, § 4.)

#### AMENDMENTS

1958—Act Feb. 22, 1958, added subdiv. (k) relating to misrepresentations of status, policies, benefits, dividends or surplus, and inserted provisions relating to the administration of oaths to witnesses by the Superintendent, and to the perjury penalties for testifying falsely thereunder.

1944—Act April 22, 1944, added the proviso at the end thereof relating to the penalty of a fine in lieu of revocation or suspension.

#### OFFICE OR AGENCY ABOLISHED BY REORGANIZATION PLAN NUMBER 5 OF 1952

References in act Feb. 22, 1958, to any office or agency abolished by Reorg. Plan No. 5 of 1952 are deemed to refer to the Commissioners of the District, or to any office, officer or agency designated by them, see note under § 35-404.

#### TRANSFER OF FUNCTIONS

The Office of the Collector of Taxes was abolished and the functions thereof transferred, see note under § 47-301.

#### CROSS REFERENCES

Administrative procedure, see § 1-1501 et seq.

Examination of companies, see § 35-1313.

General penalties for violation of the insurance laws, see § 35-1347.

Judicial review, see §§ 1-1510, 11-722.

Receivership proceedings, see § 35-1308.

Revocation of licenses, certificates, and permits in general, see § 35-102.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-1409, 35-1509, 35-1611.

#### § 35-1307. Taxes, report and payment upon ceasing business—Penalties.

If a company shall cease to do business in the District, it shall thereupon make report to the superintendent of the taxable premiums collected which have not been reported prior to the date of the cessation of business, and shall forthwith pay to the collector of taxes of the District, through the superintendent, a tax thereon computed according to law. If a company fails or refuses to make such a report or to pay the tax imposed upon it as required by law, it shall be liable to the District for the amount of such taxes, plus a penalty of 8 per centum per month for each month or part thereof during which such taxes remain unpaid. (Oct. 9, 1940, 54 Stat. 1067, ch. 792, Ch. II, § 4.)

#### TRANSFER OF FUNCTIONS

The Office of the Collector of Taxes was abolished and the functions thereof transferred, see note under § 47-301.

#### CROSS REFERENCES

Marine insurance excepted from operation of General Tax Laws, see § 47-1806.

Payment of taxes upon ceasing business, see § 35-1114.

Taxation of insurance companies, generally, see §§ 35-1108 to 35-1117, 47-1806 et seq.

#### § 35-1308. Receivership—Grounds for—Injunction—Hearing—Liquidation by Superintendent—Title to property—Notice to be recorded in office of recorder of deeds—Appointment and compensation of clerks and special deputies—Expenses—Bond of receiver.

The superintendent may, through the corporation counsel of the District, apply to the court having jurisdiction of civil actions wherein the amount in controversy exceeds \$50,000 for a rule directing any company organized under the laws of the District or any company in the course of organization to show why the superintendent should not take possession of its property and conduct its business as the nature of the case and the interests of the policyholders, creditors, stockholders, or the public may require, whenever any such company is—

(a) Insolvent; or

(b) Has neglected or refused to observe a lawful order of the superintendent to make good any deficiency in its capital or surplus; or

(c) Has by contract of reinsurance or otherwise transferred or attempted to transfer substantially its entire property or business, or has entered into any transaction, the effect of which is to merge substantially its entire property or business in the property or business of any other company, without having first obtained the written approval of the superintendent; or

(d) Is found after an examination by the superintendent to be in such condition that its further



transaction of business would be hazardous to its policyholders; or

(e) Has violated its charter; or

(f) Is carrying on activities against public policy.

Upon such application, such court may, in its discretion, issue an injunction restraining such company from the transaction of its business or disposition of its property pending further order of the court. On the return of such rule to show cause, the court shall hear, try, and determine the issues forthwith, and shall either deny the application or direct the superintendent to take possession of the property and conduct the business of such company and retain such possession and conduct such business until on the application either of the superintendent, the corporation counsel representing him, or the company, it shall, after a like hearing, appear to the court that the ground for the order directing the superintendent to take possession has been removed, and that the company can properly resume the possession of its property, and the conduct of its business. If on the like application and rule to show cause, and after a hearing, the court shall order the liquidation of the business of such company, such liquidation shall be made by and under the direction of the superintendent, who may deal with the property and business of such company in his own name as superintendent, or in the name of the company, as the court may direct, and shall be vested by operation of law with title to all of the property, contracts, and rights of action of such company as of the date of the order so directing him to liquidate. The filing or recording of such order in the office of the recorder of deeds for the District shall impart the same notice that a deed, bill of sale, or other evidence of title duly filed or recorded by such company would have imparted. For the purpose of this section, the superintendent shall have power to appoint under his hand and official seal one or more special deputy superintendents, and to employ clerks and assistants as may by him be deemed necessary. The fair and reasonable compensation of such special deputies, clerks, and assistants, and all the expenses of taking possession of and conducting the business of any such company shall, subject to the approval of the court, be paid out of the funds or assets of such company. The court may require a corporate surety bond or bonds from the superintendent in such amount as it may deem necessary. (Oct. 9, 1940, 54 Stat. 1067, ch. 792, Ch. II, § 5; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970; Pub. L. 91-358, § 168(g), title I, 84 Stat. 589.)

#### AMENDMENT

1970—Section 168(g) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court having jurisdiction of civil actions wherein the amount in controversy exceeds \$50,000".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District."

#### CROSS REFERENCES

Court having jurisdiction of civil actions wherein the amount in controversy exceeds \$50,000, see §§ 11-501, 11-921.

General provisions concerning expenses of regulating marine insurance companies, see § 35-1130.

Revocation or suspension of certificate of authority, see § 35-1306.

#### § 35-1309. "Insolvency" defined.

Any insurance company whose assets are not sufficient to reinsure its outstanding risks in a solvent insurance company shall be deemed insolvent, and may be proceeded against as provided in this chapter. (Oct. 9, 1940, 54 Stat. 1068, ch. 792, Ch. II, § 6.)

#### CROSS REFERENCES

Definitions, see § 35-1303.

Power of Superintendent to examine and determine solvency of insurance companies, see §§ 35-201, 35-202.

#### § 35-1310. "Impairment of capital or surplus" defined.

Any company whose capital has been reduced to an amount less than that required by this chapter, or whose surplus of admitted assets in excess of all liabilities is less than the amount required by this chapter, shall be deemed to be impaired in capital or surplus, and may be proceeded against as provided in this chapter. (Oct. 9, 1940, 54 Stat. 1068, ch. 792, Ch. II, § 7.)

#### CROSS REFERENCES

Superintendent to examine and determine whether capital or surplus of insurance companies is impaired, see §§ 35-201, 35-202.

"Surplus" defined, other definitions, see § 35-1303.

#### § 35-1311. Annual statement—Time for filing—Extension of time—Verification—Blanks to be furnished—Form and modification of blanks—Publication of statement.

Every company doing business in the District shall file with the superintendent before March 1 in each year a financial statement for the year ending December 31 immediately preceding on forms furnished by the superintendent. The superintendent shall have authority to extend the time for filing such statement by any company for reasons which he shall deem good and sufficient. Such statement shall be verified by the oath of the president and secretary of the company, or, in their absence, by two other principal officers. The superintendent shall annually in the month of December furnish to each of the companies authorized to do business in the District blanks necessary for the filing of the statement herein required. Such blanks shall conform substantially to the form of statement adopted by the National Association of Insurance Commissioners. The superintendent shall have power to make such modifications and additions in said blank forms of statement as he may deem desirable and necessary to ascertain the condition and affairs of the company. The superintendent shall also have power to require that at least once in the month of March in each year a summary of such annual statement shall be published by the company in a daily newspaper published in the District. (Oct. 9, 1940, 54 Stat. 1068, ch. 792, Ch. II, § 8.)

#### CROSS REFERENCES

Annual statement for tax purposes, see §§ 35-1109, 35-1112.



Annual statement of companies operating upon Lloyd's plan, see § 35-1324.

General power to make rules and regulations, see § 35-1304.

Refund of taxes erroneously or unlawfully collected, see § 47-1016.

Taxation of business transacted by unauthorized company, see § 35-1344.

Taxation of health and accident companies, see § 35-202.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1330.

#### § 35-1312. False statements—Penalties.

Any director, officer, agent, or employee of any company who subscribes to, makes or concurs in making or publishing any annual or other statement required by law, knowing the same to contain any material statement which is false, shall be fined not more than \$5,000 or imprisoned for not more than five years, or both. (Oct. 9, 1940, 54 Stat. 1069, ch. 792, Ch. II, § 9.)

#### CROSS REFERENCE

General penalties, see § 35-1347.

#### NOTES TO DECISIONS

##### Instructions

In action by insured, an insurance company, on employees' fidelity policy to recover consequential losses resulting from payments made under surplus risk policies by reason of fraudulent or dishonest acts of general manager who had failed to disclose surplus risk policies in an annual statement of financial position required to be filed by District of Columbia statute, giving of instruction that referred to possible criminal prosecution of general manager was prejudicially erroneous. *Imperial Insurance, Inc. v. Employers' Liability Assurance Corporation* (1970, 442 F. 2d 1197, 143 U.S. App. D.C. 173).

#### § 35-1313. Examinations—Production of books and papers—Expenses—False statements, reports, or entries—Penalties—Foreign or alien companies, acceptance of examinations made by other authorities.

The superintendent may examine the books, papers, property, and affairs of any agent or company organized or doing business in the District, and of any company engaged in or professing to be engaged in organizing, promoting, or soliciting stock or capital contributions to or aiding in the formation of any company, or any company which holds the capital stock of another company for the purpose of controlling the management thereof as voting trustee or otherwise. The superintendent, his deputy, or any examiner designated by the superintendent, may examine under oath the officers and agents of such company, and all persons deemed to have material information regarding the company's property or business. Every such company, its officers, and agents shall produce at the home office of the company at the time designated by the superintendent its books of original entry, and all records and papers in its or their possession relating to its or their business or affairs. The officers and agents of such company shall facilitate such examination insofar as it is in their power to do so. The expense of such examination shall be paid by the company examined. Any officer, director, agent, or employee of any company who makes or causes to be made any false entry in any book, report, or statement of such company with intent to injure or defraud such

company or any other company or person, or to deceive any officer of such company, or the superintendent, and any person who with like intent aids or abets any officer, director, agent, or employee in any violation of this chapter shall be fined not more than \$1,000, or shall be imprisoned for not more than five years, or both. The superintendent may, in lieu of such examination of a foreign or alien company, accept the report on the examination of such company made by the insurance department or other insurance supervising official in any other state or any government outside the United States. (Oct. 9, 1940, 54 Stat. 1069, ch. 792, Ch. II, § 10.)

#### CROSS REFERENCES

General penalties, see § 35-1347.

General provisions for examination of insurance companies, see § 35-108 and notes.

Inspection and examination of insurance companies, see §§ 35-108, 35-201, 35-202, 35-903.

Revocation or suspension of certificate of authority for failure to comply with this section, see § 35-1306.

Superintendent's right to examine health and accident companies to determine solvency, see §§ 35-201, 35-202.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1303.

#### § 35-1314. Classification of insurance—Fire and marine—Casualty—Risks insurable—Fidelity and surety risks excepted.

Any company authorized to do business in the District may, when empowered by its charter, make all or any one or more of the kinds of insurance and reinsurance comprised in either or both of the following classes, subject to and in accordance with the provisions of this chapter:

(1) *Fire and marine*.—On houses, buildings, and all other kinds of property against loss, damage, or damages by fire, lightning, or storm; to insure against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers or water pipes; and to make all kinds of insurance against loss of or damage to goods, merchandise, or other property caused by fire, risks of transportation, or navigation, the action of the elements or adverse manifestations of nature, as well as all and every risk or peril to which the subject of insurance may be exposed, against which it is not contrary to public policy to insure, including every insurable interest therein or in the use thereof, or profit or income therefrom, or legal liability therefor, but not to include injury to the person nor loss caused by breach of trust.

(2) *Casualty*.—(a) Upon the health of persons, or against injury, disablement, or death of persons resulting from traveling or general accidents by land or water, and against liability of the assured for injuries to employees or other persons; (b) against liability of the assured for loss or destruction of or damage to property; (c) upon the lives of domestic animals; (d) against loss of or damage to glass and its appurtenances; (e) against loss of or damage to any property resulting from the explosion of or injury to any boiler, heater, unfired pressure vessel, pipes, or containers connected therewith, any engine, turbine, compressor, pump, or wheel or any apparatus generating, transmitting or using electricity, or any other machine or apparatus connected with or



operated by any of the previously named boilers, vessels, or machines; and including the incidental power to make inspections of and to issue certificates of inspection upon, any such boilers, apparatus, and machinery, whether insured or otherwise; (f) against loss by burglary or theft, or both, and against loss of or damage to moneys and securities; (g) to guarantee and indemnify merchants, traders, and those engaged in business and giving credit, from loss and damage by reason of giving and extending credit to their customers and those dealing with them; (h) against loss or damage by water or other fluid or substance to any property resulting from the breakage or leakage of sprinklers or water-pipes; (i) to insure against any other casualty risk which may lawfully be the subject of insurance, and which it is not contrary to public policy to insure: *Provided*, That this section shall not be construed as having any effect whatever upon the right or authority of any solvent company to make contracts of fidelity or surety. (Oct. 9, 1940, 54 Stat. 1069, ch. 792, Ch. II, § 11.)

## CROSS REFERENCES

Insurance under Employees' Compensation Act, see § 35-205.

Kinds of insurance which may be written by marine insurance companies, see § 35-1103.

Liability policy or bond for motor carriers, see § 44-301.  
Motor vehicle liability policies, powers of department, form and requisites of policies, see § 40-435.

Wagering policies prohibited, see § 35-1133.

**§ 35-1315. Limitation of risk—Reinsured risks excluded from computations—Workmen's compensation, employers' liability, marine or inland marine risks excluded.**

No company other than a mutual or reciprocal company doing business in the District shall expose itself to any loss on any one risk or hazard in the District to an amount exceeding ten per centum of the sum of its capital stock and surplus without the written prior consent of the superintendent. No mutual or reciprocal company shall expose itself to any loss on any one risk or hazard in the District to an amount exceeding ten per centum of its surplus without written prior consent of the superintendent. No portion of any such risk or hazard which shall have been reinsured in a company authorized to do business in the District shall be included in determining limitation of risk: *Provided*, That the provisions of this section shall not apply to the insurance of workmen's compensation, employers' liability, marine, or inland marine risks. (Oct. 9, 1940, 54 Stat. 1070, ch. 792, Ch. II, § 12.)

## CROSS REFERENCES

Limitation of risk for companies operating on Lloyd's plan, see § 35-1324.

Reinsurance of risks, see § 35-1106.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1305.

**§ 35-1316. Capital and surplus, minimum requirements.**

Every stock company authorized to do business in the District shall have and shall at all times maintain a paid-up capital stock of not less than \$150,000, and a surplus of not less than \$150,000, except that every domestic stock company authorized to do a fidelity or surety business in the District shall have

and shall at all times maintain a paid-up capital stock of not less than \$500,000, and a surplus of not less than \$250,000. Every domestic mutual company and every domestic reciprocal company shall have and shall at all times maintain a surplus of not less than \$150,000, and every foreign or alien mutual company and every foreign or alien reciprocal company shall have and shall at all times maintain a surplus of not less than \$200,000. (Oct. 9, 1940, 54 Stat. 1070, ch. 792, Ch. II, § 13; Apr. 16, 1966, 80 Stat. 121, Pub. L. 89-399, § 1(b).)

## AMENDMENT

1966—Act Apr. 16, 1966, added exception with respect to domestic stock companies authorized to do a fidelity or surety business, at end of first sentence.

## CROSS REFERENCES

Capital and surplus required of,

Foreign and alien companies, see § 35-1326.

Life, health and accident companies, see §§ 35-201, 35-202.

Marine insurance companies, see §§ 35-1103, 35-1104.

Surplus required for operation under Lloyd's plan, see § 35-1324.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26-301, 35-1305.

**§ 35-1317. Existing companies, application of act—Capital and surplus requirements.**

No company shall be exempt from the provisions of this chapter by reason of its having been incorporated in the District or elsewhere prior to the effective date of this chapter, except that, in the case of companies authorized in the District on October 9, 1940, and continuously authorized thereafter without any increase of authority, the minimum capital and surplus required of a stock company, and the minimum surplus required of a mutual or reciprocal company, or of a Lloyd's organization by the laws of the District heretofore applicable shall not be increased by this chapter, and provided also that in the case of such continuously authorized companies the provisions of section 35-1327 relating to the names of companies, and the provisions of section 35-1328 relating to the amount of surplus necessary to the issuance of policies having no provision for contingent liability, shall not be applicable. (Oct. 9, 1940, 54 Stat. 1070, ch. 792, Ch. II, § 14.)

## REFERENCE IN TEXT

"Effective date of this chapter", referred to in the text, means the effective date of act Oct. 9, 1940. See Effective Date note post.

## EFFECTIVE DATE

Chapter effective 30 days after Oct. 9, 1940, see section 48 of act Oct. 9, 1940, set out as a note under section 35-1301.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-1328, 35-1329.

**§ 35-1318. Formation of domestic companies—Filing articles of incorporation, by-laws, charter and policy forms—Issuance of certificate of authority to do business.**

Any domestic stock, mutual, or reciprocal company desiring to transact business in the District shall, after complying with the general laws of the District governing the formation of companies or corporations, file with the Superintendent copies of its articles or incorporation, by-laws, charter, pro-



posed forms of policies, and such other information as may be necessary to manifest and explain the organization, objects, and purposes of the company, and to satisfy the Superintendent that such company has complied with the laws of the District regarding the formation of companies. Thereafter, upon application made to the Superintendent upon such forms as the Superintendent shall prescribe, the Superintendent, subject to the provisions of section 35-1305, shall issue to the company a certificate of authority to transact business in the District. (Oct. 9, 1940, 54 Stat. 1071, ch. 792, Ch. II, § 15.)

**§ 35-1319. Real estate which may be held by domestic companies—Sale of certain real estate within five years after acquisition—Extension of time for sale.**

A domestic company may acquire, hold, and convey real estate for the purpose and in the manner only following:

- (1) The building in which it has its principal office and the land on which it stands.
- (2) Such as shall be requisite for its convenient accommodation in the transaction of its business.
- (3) Such as shall have been acquired for the accommodation of its business.
- (4) Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for money due.
- (5) Such as shall have been conveyed to it in satisfaction of debts, previously contracted, in the course of its dealings.
- (6) Such as it shall have purchased at sales on judgments, decrees, or mortgages obtained or made for such debts.

All such real estate specified in paragraphs (3), (4), (5), and (6) of this section, which shall not be necessary for its accommodation in the convenient transaction of its business, shall be sold by the company and disposed of within five years after it shall have acquired the title to the same, or within five years after the same shall have ceased to be necessary for the accommodation of its business, unless the company procure the certificate of the Superintendent that its interests will suffer materially by a forced sale thereof, in which event the time for the sale may be extended to such time as the Superintendent shall direct in such certificate. (Oct. 9, 1940, 54 Stat. 1071, ch. 792, Ch. II, § 16.)

**CROSS REFERENCE**

Holding real estate, marine insurance companies, see § 35-1119.

**§ 35-1320. Borrowing money, mutual company may borrow to create surplus fund, comply with law, or defray expenses of organization—Approval of superintendent—Interest rate—Repayment—Obligation of company.**

A domestic mutual company may borrow or assume liability for the repayment of a sum of money sufficient to defray the reasonable expenses of its organization or to enable it to comply with any requirement of law or as a surplus fund upon agreement which shall first be submitted to and approved by the superintendent that such loan or advance with interest at a rate not exceeding six per centum per annum shall be repaid only with the approval

of the superintendent whenever in his judgment the company shall be in possession of sufficient surplus in excess of a surplus equal to the amount required by this chapter. Any such loan or advance shall not form a part of the legal liabilities of the company, but until such loan or advance has been repaid all statements published by such company or filed with the superintendent shall show the amount thereof then remaining unpaid. (Oct. 9, 1940, 54 Stat. 1071, ch. 792, Ch. II, § 17.)

**§ 35-1321. Investments permitted, domestic companies—Real estate, insurance on improvements required—Real estate required to be unencumbered, "encumbrances" defined—Stock and bonds, investments may not be made when dividends or interest have not been paid—Foreign investments—Approval of directors or supervising committee—Joint investments forbidden.**

A domestic company shall invest its funds only in—

- (1) Bonds or other evidences of indebtedness of the United States, or of any State; or of the Dominion of Canada, or of any Province thereof; or obligations issued or guaranteed as to principal and interest by the International Bank for Reconstruction and Development or by the Inter-American Development Bank.

- (2) Bonds or other evidences of indebtedness of any county, city, town, village, school district, or other municipal district within the United States or the Dominion of Canada which shall be a direct obligation of the county, city, town, village, or district issuing the same.

- (3) Bonds or notes secured by mortgages or deeds of trust on unencumbered real estate or perpetual leases thereon in the United States or Dominion of Canada worth not less than fifty per centum more than the amount loaned thereon. Where improvements on the land constitute a part of the value on which the loan is made, the improvements shall be insured against fire for the benefit of the mortgage in an amount not less than the difference between two-thirds of the value of the land and the amount of the loan: *Provided*, That for the purposes of this section real estate shall not be deemed to be encumbered within the meaning of this section by reason of the existence of taxes or assessments that are not delinquent, instruments creating or reserving mineral, oil, or timber rights, rights-of-way, joint drive-ways, sewer rights, rights in walls, nor by reason of building restrictions or other restrictive covenants, nor when such real estate is subject to lease in whole or in part whereby rents or profits are reserved to the owner.

- (4) Bonds or notes secured by mortgages insured by the Federal Housing Administrator and in debentures issued by the Federal Housing Administrator: *Provided*, That the restrictions in subparagraph (3) of this section in regard to the ratio of the loan to the value of the property shall not apply to such insured mortgages.

- (5) Bonds or other evidences of indebtedness of the farm-loan banks authorized under the Federal Farm Loan Act or Acts amendatory thereof or supplementary thereto, and bonds or other evidences of indebtedness of national mortgage associations.



(6) Stock or bonds and other evidences of indebtedness of any solvent corporation of any State or Territory of the United States or of the District or of any Province of the Dominion of Canada, excepting stock in its own corporation: *Provided*, That no such investment shall be made in or loan made upon the security of any such stocks upon which dividends in cash during the period of five years next preceding such purchase in each fiscal year for said five years shall not have been paid, and upon which bonds any regular interest payment shall have been defaulted any time within five years prior to such purchase or loan.

(7) Loans upon the pledge of any of the securities aforesaid.

(8) A company doing business in a foreign country may invest the funds required to meet its obligations in such country and in conformity to the laws thereof in the same kind of securities in such foreign country that such company is allowed by law to invest in the United States.

(9) The bonds of the Home Owners' Loan Corporation, a corporation organized under and pursuant to the authority of sections 1461—1468 of title 12, U.S. Code.

No loan or investment shall be made by any such company, unless the same shall have been authorized by the board of directors or by a committee thereof charged with the duty of supervising loans or investments.

No such company shall subscribe to or participate in any underwriting of the purchase or sale of securities or property, or enter into any transaction for such purchase or sale on account of said company, jointly with any other corporation, firm, or person, or enter into any agreement to withhold from sale any of its securities or property; but the disposition of its assets shall at all times be within the control of the company.

Nothing in this chapter shall prohibit a company from accepting in good faith, to protect its interest, securities or property, other than herein referred to, in payment of or to secure debts due or to become due the company. (Oct. 9, 1940, 54 Stat. 1072, ch. 792, § 18, ch. II; July 19, 1954, 68 Stat. 494, ch. 546, § 1; Oct. 3, 1962, 76 Stat. 715, Pub. L. 87-739, § 2.)

#### AMENDMENTS

1962—Act Oct. 3, 1962, amended clause (1) of section so as to permit investments in securities of the Inter-American Development Bank.

1954—Act July 19, 1954, permitted investment in obligations issued or guaranteed as to principal and interest by International Bank for Reconstruction and Development.

#### TRANSFER OF FUNCTIONS

The office of Federal Housing Administrator, referred to in par. (4), was abolished and the functions thereof transferred to the Federal Housing Commissioner by sections 3 and 9 of Reorganization Plan No. 3 of 1947, 61 Stat. 954. The functions of the Federal Housing Commissioner were transferred to the Secretary of Housing and Urban Development by section 5(a) of act Sept. 9, 1965 (79 Stat. 669; 42 U.S.C. 3534(a)).

#### ABOLISHMENT OF HOME OWNERS' LOAN CORPORATION

The Home Owners' Loan Corporation, referred to in par. (9), was dissolved by order of the Secretary of the Home Loan Bank Board, effective Feb. 3, 1954, pursuant to act June 30, 1953 (67 Stat. 121; 12 U.S.C. 1463 note).

#### CROSS REFERENCES

Definitions, see § 35-1303.

Investments of,

Health and accident companies, see § 35-1118.

Marine companies, see § 35-1118.

#### § 35-1322. Agency contracts, exclusive—Approval of Superintendent required—Prohibited provisions.

No domestic company authorized to do an insurance business in the District shall have or make any contract with any person whereby such person is granted the exclusive right or privilege to solicit, procure, write, produce, or manage the entire insurance business of such company, or to collect premiums therefor, unless such contract is filed with and approved in writing by the Superintendent. The Superintendent shall not approve any such contract which—

(a) Subjects the company to excessive charges for expenses or commissions; or

(b) Gives to such person the right to manage any of the affairs of such company or the exclusive right to solicit, procure, write, or produce the entire insurance business for such company, or to collect the premiums therefor for such unreasonable period as may jeopardize the interests or security of the company's policyholders. (Oct. 9, 1940, 54 Stat. 1073, ch. 792, Ch. II, § 19.)

#### CROSS REFERENCE

Licensing of agents, see §§ 35-1334 to 35-1345.

#### § 35-1323. Foreign or alien companies, admission—Certificate of authority required.

Upon complying with the provisions of this chapter, a foreign or alien company organized as a stock, mutual, or reciprocal company, or as a Lloyd's organization, but not otherwise, may be authorized by certificate of authority to transact in the District the kind or kinds of business which a domestic company similarly organized may be authorized to transact under this chapter. Such certificate of authority shall be issued as provided under section 35-1305. The issuance of a certificate of authority to a Lloyd's organization shall be subject to the provisions of section 35-1324. Any company chartered by special act of the legislature of its State of domicile prior to the effective date of this chapter, as provided in section 48 of this Act, as a company without capital stock but doing business exclusively on the stock plan and maintaining at all times a surplus of not less than \$300,000 shall, in the administration of this chapter, be considered as a stock company. (Oct. 9, 1940, 54 Stat. 1073, ch. 792, Ch. II, § 20; June 27, 1960, 74 Stat. 222, Pub. L. 85-526, § 1)

#### REFERENCES IN TEXT

Section 48 of this Act, referred to in the text, means section 48 of act Oct. 9, 1940, which is set out as a note under section 35-1301.

#### AMENDMENT

1960—Act June 27, 1960, inserted the last sentence.

#### CROSS REFERENCES

Definitions, see § 35-1303.

Establishment of foreign branches, see §§ 35-1121, 35-1122.

Foreign and alien companies, admission, see § 35-1105.



## NOTES TO DECISIONS

## License requirements

Insurer who seeks licenses under the Life Insurance Act and the Fire and Casualty Act bears responsibility of satisfying the more stringent requirement regardless of which statute prescribes it, and if two certificates are issued, each must stand on its own feet. *Travelers Insurance Co. v. A. F. Jordan, Dept. of Insurance etc.* (1961, 287 F. 2d 347, 109 U.S. App. D.C. 308).

Life Insurance Act of District of Columbia and Fire and Casualty Act do not prohibit issuance of certificate or certificates authorizing a single insurer to do both life and casualty insurance business. *Id.*

**§ 35-1324. Lloyd's organizations—Requirements—Limitation of risk—Surplus—Filing copy of power of attorney—Annual statement—Verification.**

Individuals and aggregations of individuals transacting an insurance business upon the plan known as Lloyd's whereby the individual underwriters become liable severally for specified proportions of the whole amount insured by a policy, heretofore organized under the laws of a State of the United States, or of a foreign government, may be authorized to transact business in the District, upon the following conditions:

1. They shall comply with and be subject to the same terms, conditions, and provisions as are imposed by this chapter upon foreign stock insurance companies, except as provided in the next succeeding paragraph and except that the maximum amount of insurance to be assumed by an individual underwriter upon any single risk for each kind of insurance shall not exceed 10 per centum of the value of the cash and securities deposited in trust by such underwriter, plus the share of admitted assets other than underwriter's deposits of such Lloyd's belonging to such underwriter, less the share of liabilities and reserves of such Lloyd's allocable to such underwriter, but in no event shall it exceed 10 per centum of the value of cash or securities deposited in trust by such underwriter:

2. They shall have and shall at all times maintain surpluses of not less than \$300,000 in the aggregate and shall at all times have on deposit with an insurance department of a State of the United States, or with a bank or trust company designated by such insurance department, for the benefit of all policyholders within the United States the sum of at least \$350,000 in cash or in securities such as are required for the investment of the assets of insurance companies authorized to do business in the District: *Provided*, That they shall not be required to establish or maintain such a deposit if they have on deposit in the hands of a bank or trust company in the United States as trustee cash deposits or securities issued by the United States worth not less than \$2,000,000 in the aggregate and held in trust for the benefit of all policyholders in the United States;

3. They shall file with the superintendent an authenticated copy of their powers of attorney and an authenticated copy of the trust agreement, or other agreement under which deposits made by underwriters are held:

4. They shall notify the superintendent forthwith of any amendments to their powers of attorney, deposit agreement, or other documents underlying their organization, by filing with the superintendent

an authenticated copy of such document as amended.

5. They shall notify the superintendent forthwith of any change in their names or change of attorney-in-fact, or change of address of their attorney-in-fact;

6. In the case of an alien Lloyd's, their annual statement shall embrace only their condition and transactions in the United States, and may be verified by the oath of their resident manager or other person or persons having proper authority;

7. There shall be filed with the superintendent by the attorney-in-fact at the time of filing the annual statement, or more often if the superintendent requires, a statement verified by the appropriate official of such Lloyd's, setting forth—

(a) the names and addresses of all the underwriters of such Lloyd's;

(b) a description of the cash and securities deposited in trust by each underwriter;

(c) the maximum amount of insurance assumed by each underwriter upon any single risk or each kind of insurance;

(d) that the maximum amount of insurance assumed upon any single risk for each kind of insurance by any individual underwriter does not exceed the limitation provided for in paragraph one of this section.

(Oct. 9, 1940, 54 Stat. 1073, ch. 792, Ch. II, § 20a.)

## CROSS REFERENCES

Admission of foreign and alien companies, see § 35-1105.  
Capital and surplus requirements, general provisions, see § 35-1316.

Limitation of risk, see § 35-1315.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1323.

**§ 35-1325. Certificate of authority, application by foreign or alien companies—Form and execution.**

A foreign or alien company, in order to procure a certificate of authority to transact business in the District shall make application therefor to the superintendent on forms prescribed and furnished by the superintendent. Such forms shall be executed for the company, by its president or vice-president, or executive officer corresponding thereto, and verified by such officer, and if a corporation the corporate seal shall be thereto affixed, attested by its secretary or other proper officer. (Oct. 9, 1940, 54 Stat. 1074, ch. 792, Ch. II, § 21.)

## CROSS REFERENCES

Admission of foreign and alien marine companies, see § 35-1105.

Powers and duties of Superintendent, see § 35-1304.

**§ 35-1326. Application for certificate of authority, foreign or alien companies—Delivery of instruments concerning company to Superintendent—Service of process—Deceptive names prohibited—Capital and surplus—Investments—Examination by Superintendent.**

A foreign or alien company shall deliver to the superintendent (a) application of the company for a certificate of authority; (b) a copy of its articles of incorporation or articles of association and amendments thereto, duly certified by the proper officer of the state or country under whose laws the company is organized or incorporated, or if reciprocal, the



power of attorney of the attorney-in-fact; (c) if an alien company, a copy of the appointment and authority of its United States manager, certified by a proper officer of the company; (d) a copy of its by-laws and regulations; (e) forms of contracts and policies it proposes to issue in the District, and forms of the applications therefor, if any; (f) the instrument authorizing service of process on the superintendent required by section 35-1327; (g) a statement of its financial condition and business as of the end of the preceding calendar year, complying as to form and verification with the requirements of this chapter for annual statements, or financial statement as of such later date as the superintendent may require; (h) a copy of the last report of examination, certified to by an insurance commissioner or other proper supervisory official; (i) a certificate from the proper official of the state or country wherein it is incorporated or organized, that it is duly incorporated or organized and is authorized to write the kind or kinds of insurance which it proposes to write in the District. Before a certificate of authority to transact business in the District is issued to a foreign or alien company, such company shall satisfy the superintendent that (a) the company is duly organized under the laws of the state or country under whose laws it professes to be organized and is authorized to do the business it is transacting or proposes to transact; (b) its name is not the same as, or so deceptively similar to, the name of any domestic company, or the name of any department of the federal government or existing corporation authorized to transact business in the District as to mislead the public or cause confusion; (c) if a stock company, it has a paid-up capital and surplus at least equal to the capital and surplus required by this chapter, or, if a mutual company or reciprocal, it has a surplus and provision for contingent liability of policyholders at least equal to the surplus and provision for contingent liability of policyholders required by this chapter; (d) its funds are invested in accordance with the laws of its domicil, and in securities or property which afford a degree of financial security substantially equal to that required for similar domestic companies. Before issuing a certificate of authority to a foreign or alien company, the superintendent may cause an examination to be made of the condition and affairs of such company. (Oct. 9, 1940, 54 Stat. 1074, ch. 792, Ch. II, § 22.)

#### CROSS REFERENCES

Capital and surplus requirements, general provisions. see § 35-1316.

Foreign and alien marine companies, admission, see § 35-1105.

§ 35-1327. Process, service upon foreign or alien companies by service on Superintendent—Force and effect—Registered letter to company—Proof of service—Penalty for failure to designate attorney for service of process.

(a) *Service of process upon unauthorized company.*—(1) The issuance or delivery of a policy or contract of insurance in this District, to a citizen or resident thereof, by a foreign or alien company transacting business in this District without a cer-

tificate of authority, shall be deemed equivalent to an appointment by such company of the superintendent and his successor or successors in office to be its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against it, arising out of such policy or contract of insurance, and said issuance or delivery shall be a signification of its agreement that any such process against it which is so served shall be of the same legal force and validity as if served upon the company.

(2) Service of such process upon the superintendent, and the responsibility of the superintendent in regard thereto, shall be in accordance with the provisions for service of process upon authorized companies as provided in subsection (b).

(b) *Attorney for services of process.*—Every foreign or alien company now or hereafter authorized to transact business in the District shall file with the superintendent a duly executed instrument appointing and constituting him and his successors true and lawful attorney for such company, upon whom all lawful process in any action or legal proceeding against it in the District may be served, and therein shall agree that any lawful process against it, which may be served upon its said attorney as herein provided, shall be of the same force and validity as if served upon the company, and that the authority thereof shall continue in force irrevocably so long as any liability of the company in the District shall remain outstanding. Such process shall be served by delivering to and leaving the same with the superintendent or his deputy, and service thereof upon such attorney shall be deemed service upon the company. The superintendent shall forthwith forward such process by prepaid registered mail or by certified mail to the company, or, in the case of an alien company, to the United States manager or last-appointed United States general agent of the company. The registry receipt evidencing the deposit by the superintendent, or his deputy, of such process, in the United States mails in the manner herein prescribed, shall be prima facie evidence of the completion of such service. Failure of any such company to file such an instrument, or failure on the part of any such company to authorize such filing, shall not invalidate any service made by serving the superintendent. By accepting a certificate of authority to transact business in the District, every such company shall be held to have appointed the superintendent its true and lawful attorney. Any such company transacting business in the District without designating an attorney for service of process as herein provided shall, upon information filed by the corporation counsel of the District in the Superior Court of the District of Columbia, be fined upon conviction not less than \$10 nor more than \$500 for each day during which the company shall have operated in violation of this section. (Oct. 9, 1940, 54 Stat. 1075, ch. 792, Ch. II, § 23; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 11, 1960, 74 Stat. 203, Pub. L. 86-507, § 1 (49); July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)



## AMENDMENTS

1970—Section 155(a) of act July 29, 1970, Pub. L. 91-358, amended subsec. (b) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

1960—Act June 11, 1960, inserted words "or by certified mail" following "registered mail."

## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding § 11-101.

## CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court of the District" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

## CROSS REFERENCE

Certified mail receipts as prima facie evidence of delivery, see § 14-506.

Existing companies, non-application of section to, see § 35-1317.

General penalties, see § 35-1347.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-1317, 35-1326.

## NOTES TO DECISIONS

## Doing business

Activity of insurer, not licensed to do business in the District of Columbia, in issuing policy to resident of district, who entered into contract in district, was sufficient "doing business" to authorize substituted service on Superintendent of Insurance in insured's subsequent action against insurer, and such service was valid. *United States Liability Ins. Co. v. A. Handy* (D.C. Mun. App. 1961, 173 A. 2d 208).

## § 35-1328. Names of mutual or reciprocal companies—Requirements—Exceptions.

Except as otherwise provided in section 35-1317, no mutual company shall be authorized to transact business in the District unless the name of such company shall include the word "mutual," and no reciprocal or interinsurance exchange shall be authorized to transact business in the District unless the name or designation under which reciprocal or interinsurance contracts are to be exchanged shall include the words "reciprocal" or "interinsurance exchange," or be supplemented by the following words immediately below the name or designation under which such contracts are exchanged: "A reciprocal" or "an interinsurance exchange." (Oct. 9, 1940, 54 Stat. 1076, ch. 792, Ch. II, § 24.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1317.

## § 35-1329. Premiums of mutual companies—Maximum required to be stated—Contingent premiums.

The maximum premium shall be expressed in the policy of a mutual company, and it may be solely a cash premium, or may be a cash premium and an additional contingent premium, which contingent premium shall be not less than the cash premium, but no mutual company, except as otherwise provided in section 35-1317, shall issue any policy for a cash premium without an additional contingent premium until and unless it possesses a surplus of not less than \$300,000. (Oct. 9, 1940, 54 Stat. 1076, ch. 792, Ch. II, § 25.)

## § 35-1330. Reserves, computation.

In determining the financial condition of companies authorized under this chapter, allowance shall be made for proper and adequate reserves for liabilities, including reserves for—

(a) Unpaid losses and the expenses of the adjustment thereof;

(b) Unearned premiums;

(c) Commissions, taxes, and all other legal obligations, contingent or otherwise, of which the company has knowledge.

The computation of such reserves shall be in accordance with the provisions of the form of annual statement required under section 35-1311, and every authorized company shall maintain such reserves at all times. (Oct. 9, 1940, 54 Stat. 1076, ch. 792, Ch. II, § 26.)

## CROSS REFERENCE

Computation of unearned premium reserves, see § 35-1107.

## § 35-1331. Policy forms filed with the Superintendent—Power to disapprove.

The superintendent may require that all policy forms used by every authorized company covering risks in the District be filed with the superintendent. The superintendent shall have authority to disapprove the use in the District of any policy form which is inequitable, or does not comply with the requirements of the law of the District. (Oct. 9, 1940, 54 Stat. 1076, ch. 792, Ch. II, § 27.)

## CROSS REFERENCE

General powers of superintendent, see § 35-1304.

## NOTES TO DECISIONS

## Generally

The Superintendent of Insurance is required to regulate insurance carriers, to see that they maintain adequate reserves, to scrutinize their costs and fix their rates, all policy forms used by fire, liability and marine insurance companies must be filed with him, and he may disapprove use of any form which is inequitable or which does not comply with requirements of law. *Bennett v. Amalgamated Cas. Ins. Co.* (1953, 200 F. 2d 129, 91 U.S. App. D. C. 279).

The duty of Superintendent of Insurance is to see that form of taxicab liability policies accurately and equitably meet requirements of Public Utilities Commission. *Id.*

## Construction of policies

Words used in automobile insurance policy should be given their common, ordinary, or "popular" meaning, rather than meaning of lexicographers or those skilled in niceties of language. *Unkelsbee v. Homestead Fire Ins. Co. of Baltimore* (D. C. Mun. App. 1945, 41 A. 2d 168).

The maxim "expressio unius est exclusio alterius" as applied to an automobile insurance policy is an aid to construction of policy and not a rule of law, and is not to be arbitrarily applied. *Id.*

## § 35-1332. Accident and health policies, required provisions.

The Superintendent may require that the provisions and conditions contained in any policy of insurance against loss or damage from sickness or bodily injury or death of the insured by accident issued by any company authorized by this chapter to transact business in the District be made to conform to the requirements prescribed under section 35-712. (Oct. 9, 1940, 54 Stat. 1076, ch. 792, Ch. II, § 28.)

## CROSS REFERENCES

Benefits from health and accident insurance are not subject to claims of creditors, see § 35-717.



Minors may contract for health and accident insurance, see § 35-430.

### § 35-1333. Discriminations prohibited.

Discrimination between individual risks of the same class or hazard in the amount of premiums or rates charged for any policy, or in the benefits or amount of insurance payable thereon, or in any of the terms or conditions of such policy, or in any other manner whatsoever, is prohibited, and the superintendent is empowered after investigation to order removed at such time and in such manner as he shall specify any such discrimination which his investigation may reveal. (Oct. 9, 1940, 54 Stat. 1077, ch. 792, Ch. II, § 29.)

§ 35-1334. Agents and brokers—Policies to be executed by licensed and authorized agents—All agreements contained in policy—Rebates prohibited—List of agents to be filed—Payment of premium to broker—Soliciting agent may not sign policy—Life, title, and ocean marine agents excepted.

No company authorized to do business in the District shall, by its representatives or otherwise, make, write, issue, or deliver any contract of insurance, surety, or indemnity, except title and ocean marine insurance, on any person, property, business activity, or insurable interest within the District except through regularly constituted policy-writing agents or authorized salaried employees licensed in the District as provided in this chapter.

No such contract covering persons, property, business activities, or insurable interests in the District, except contracts of title and ocean marine insurance, shall be written, issued, or delivered by any authorized company or by any of its representatives unless such contract is duly countersigned in writing by a person who is licensed as provided in this chapter to countersign such contracts, and no salaried officer, manager, or other salaried employee of any authorized company, unless he be licensed as provided in this chapter, shall write, issue, or countersign any such contract.

No company, agent, or salaried company employee shall make any agreement as to a policy other than that which is plainly expressed in the policy issued.

No company, agent, salaried company employee, or broker shall pay or offer to pay or allow as an inducement to any person to insure any rebate of premium or any special favor or advantage whatever in the dividends to accrue thereon, or any inducement whatever not specified in the policy.

Every company authorized by this chapter to do business in the District shall file annually with the Superintendent on or before the fifteenth day of April, and at such other times as they may be appointed, a list of agents and salaried employees of said company who are authorized to solicit, write, effect, issue, or deliver policies for such company in the District, except that the names of soliciting agents may be filed either by the company or by the policy-writing agent.

Any policy-writing agent or salaried company employee authorized by any company to solicit, negotiate, bind, write, or issue policies or applications

therefor shall, in any controversy between the insured or his representative and the said company, be held to be the agent of the company which issued or effected the policy solicited or so applied for, anything in the application or policy to the contrary notwithstanding.

Any payment made by or on behalf of the insured to any broker for policies issued to such broker for delivery to the insured or issued directly to the insured on the order of such broker, shall, in controversies between the insured and the company, be deemed to have been paid to the company.

No soliciting agent shall have any authority to countersign any policy. (Oct. 9, 1940, 54 Stat. 1077, ch. 792, Ch. II, § 30; Feb. 22, 1958, 72 Stat. 22, Pub. L. 85-334, § 5.)

#### AMENDMENT

1958—Act Feb. 11, 1958, removed life insurance from the enumerated exceptions to the prohibition against doing business except through regularly constituted policy writing agents or authorized salaried employees, and with the contract countersigned by someone licensed to do so.

#### OFFICE OR AGENCY ABOLISHED BY REORGANIZATION PLAN NUMBER 5 OF 1952

References in act Feb. 22, 1958, to any office or agency abolished by Reorg. Plan No. 5 of 1952 are deemed to refer to the Commissioners of the District, or to any office, officer or agency designated by them, see note under § 35-404.

#### CROSS REFERENCES

D.C. Council may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

Definitions, see § 35-1303.

Exclusive agency contracts must be approved by Superintendent, see § 35-1322.

General provisions concerning agents, see §§ 35-1201, 35-1202.

Marine insurance, agents for, see §§ 35-1123 to 35-1126.

#### NOTES TO DECISIONS

##### Construction

This section providing that "Any policywriting agent or salaried company employee authorized by any company to solicit \* \* \* policies or applications therefor shall \* \* \* be held to be the agent of the company which issued or effected the policy solicited or so applied for, anything in the application or policy to the contrary notwithstanding" does not exclude the possibility of a dual agency relationship; accordingly, since in instant case insurance agency acted both as insurer's agent and as insureds' broker, payment of insurance premium refunds to the agency by the insurer constituted payment to the insureds. *Jonathan Woodner Co. et al. v. Aetna Insurance Company* (1971, 442 F. 2d 754, 143 U.S. App. D.C. 32).

### § 35-1335. Commissions to unlicensed persons prohibited.

No company, policy-writing agent, soliciting agent, broker, or salaried employee shall pay any money or commission or brokerage or give or allow any valuable consideration to any person for or because of service in the District in negotiating or effecting a policy on any person, property, business activity, or insurable interest in the District, unless said person is duly licensed in conformity with this chapter as a broker or as an agent or salaried employee of the company issuing the policy. This section shall not apply to contracts of reinsurance, and shall not apply to persons and kinds of insurance exempted under section 35-1342. (Oct. 9, 1940, 54 Stat. 1077, ch. 792, Ch. II, § 31.)



§ 35-1336. Agents and brokers, license—Form of application—Request by company or agent, form and contents—Bond of brokers—Written examination—Requirements for license—Waiver of examination—Issuance to individuals or firms—License for own business prohibited.

Any person hereafter desiring to engage in business in the District as a policy-writing agent, soliciting agent, broker, or salaried company employee, as defined by this chapter shall, before engaging in such business, secure from the Superintendent a license authorizing him to engage in such business.

The person to whom the license may be issued shall file sworn answers, subject to the penalties of perjury, to such interrogatories as the Superintendent may require. Before the Superintendent shall issue or renew a license to any policywriting agent, soliciting agent, or salaried company employee, he shall require the company or policywriting agent desiring the appointment of such person to certify—

(a) That the person to be appointed, if not a salaried company employee, is a resident of this District, or that his principal office for the conduct of such business is in or will be maintained in the District;

(b) That he is personally known to the person making the certification;

(c) That he has had experience or instructions necessary to the proper conduct of the kind or kinds of business to which the license is to extend;

(d) That he has a good business reputation, is trustworthy, and is worthy of a license.

Resident and nonresident brokers shall, as a prerequisite to the issuance of a license, file with the Superintendent a corporate surety bond in an amount not less than \$1,000 for the benefit of any person who may suffer loss resulting from fraud or dishonesty on the part of said resident or nonresident broker. Before the Superintendent shall issue a license to any policy-writing agent, soliciting agent, salaried company employee, or resident broker, who has not previously been licensed under this chapter, he shall personally, or through his deputy or any person regularly employed in the department, within a reasonable time, and in a designated place within the District, subject each such person to a personal written examination relating to such person's knowledge of the kind or kinds of business to which the license may extend and his competency to act as such policy-writing agent, soliciting agent, broker, or salaried company employee. The Superintendent may in his discretion limit the scope of such examination to such particular kind or kinds of business in which the person to be licensed is to be principally engaged. The Superintendent shall issue or renew such license as may be applied for when he is satisfied that the person to be licensed is (a) competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for, and that not more than 25 per centum of his commission income from business to which the license applies will result from policies the premiums on which are paid or are to be paid in the manner set forth in paragraph (f) of section 35-1340 and (b) that he has a good business reputation and has had experience,

training, or education, or is otherwise qualified in the line or lines of business in which the license would entitle him to engage, and, except in the case of a nonresident broker or salaried company employee, is a resident of the District, or maintains his principal office for the conduct of such business in the District; and (c) is reasonably familiar with the insurance laws of the District, and with the provisions, terms, and conditions of the policies he is proposing to solicit, negotiate, or effect, and is worthy of a license. In the case of a nonresident applying for a broker's license, the Superintendent may waive the examination requirement and accept in lieu thereof evidence that the applicant holds a license as broker or agent in the State where his principal business is conducted. The Superintendent may also waive the examination requirement in the case of any person who has been licensed in the District prior to the effective date of this chapter. The examination requirement shall be waived in the case of any applicant for a license under this section who holds a license under section 35-425, if the company desiring the appointment of such applicant certifies in writing to the Superintendent that such applicant will solicit only accident and health insurance on its behalf. Licenses may be issued in the names of individuals, or in the names of firms, partnerships, or corporations, including banks, trust companies, real-estate offices, and building and loan associations: *Provided*, That on such licenses in addition to the name of the applicant, there shall be listed the name of every member or officer of such firm, partnership, or corporation who solicits insurance or who countersigns policies: *Provided further*, That such named persons as well as the licensee shall be subject to all requirements of this chapter, and that the Superintendent shall have authority at any time to require the applicant fully to disclose the identity of all stockholders, partners, officers, and employees, and he may in his discretion refuse to issue or renew a license in the name of any firm, partnership, or corporation if he is not satisfied that any officer, employee, stockholder, or partner thereof who may materially influence the applicant's conduct, meets the standards of this section applicable to persons applying as individuals. No person shall be licensed as agent, broker, or salaried company employee when it appears to the Superintendent that said license is sought primarily for the purpose of obtaining commissions on policies on which he on his own account pays or is to pay the premiums, or on which the premiums are paid or are to be paid by any person who receives or is to receive any benefit, direct or indirect, from the commissions obtained, or on which the premiums are paid or are to be paid by any partnership, association, or corporation of which he is a member. (Oct. 9, 1940, 54 Stat. 1073, ch. 792, Ch. II, § 32; Apr. 22, 1944, 58 Stat. 192, ch. 173, § 3; June 30, 1953, 67 Stat. 120, ch. 168; Feb. 22, 1958, 72 Stat. 23, Pub. L. 85-334, § 6; July 8, 1963, 77 Stat. 76, Pub. L. 88-57, § 2.)

#### AMENDMENTS

1963—Act July 8, 1963, amended the second sentence by adding thereto the words "subject to the penalties of perjury".



1958—Act Feb. 22, 1958, substituted "Provided further, That such named persons as well as the licensee shall be subject to all requirements of this chapter, and that the Superintendent shall have authority at any time to require the applicant fully to disclose the identity of all stockholders, partners, officers, and employees, and he may in his discretion refuse to issue or renew a license in the name of any firm, partnership, or corporation if he is not satisfied that any officer, employee, stockholder, or partner thereof who may materially influence the applicant's conduct, meets the standards of this section applicable to persons applying as individuals" for "And provided further, That such named persons shall be subject to all requirements of this chapter, and that no officer or employee of such organizations other than those specifically named in such license shall be required to comply with this section, unless the duties of such officers or employees include soliciting or the countersigning of policies", inserted "who has not previously been licensed under this chapter" following "or resident broker," "in addition to the name of the applicant", following "Provided, That on such licenses", and deleted "on forms furnished by the Superintendent" following "interrogatories as the Superintendent may require", and "Following such examination", preceding "the Superintendent shall issue or renew."

1953—Act June 30, 1953, inserted immediately after "prior to the effective date of this chapter" the following: "The examination requirement shall be waived in the case of any applicant for a license under this section who holds a license under section 26 of the Life Insurance Act (§ 35-425), if the company desiring the appointment of such applicant certifies in writing to the Superintendent that such applicant will solicit only accident and health insurance on its behalf."

1944—Act Apr. 22, 1944, substituted "\$1,000" for "\$5,000."

#### EFFECTIVE DATE

Chapter effective 30 days after Oct. 9, 1940, see section 48 of act Oct 9, 1940, set out as a note under section 35-1301.

#### OFFICE OR AGENCY ABOLISHED BY REORGANIZATION PLAN NUMBER 5 OF 1952

References in act Feb. 22, 1958, to any office or agency abolished by Reorg. Plan No. 5 of 1952 are deemed to refer to the Commissioners of the District, or to any office, officer or agency designated by them, see note under § 35-404.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-1339, 35-1345.

#### NOTES TO DECISIONS

##### Building and loan associations

This chapter specifically authorizes building and loan associations to be licensed and to act as insurance agents and brokers. *L. S. Goodman et al. v. Perpetual Building Association et al.* (1970, 320 F. Supp. 20).

Building and loan association would not be "primarily" obtaining license for purpose of obtaining commissions on policies on which it is paying premiums or on which premiums are paid by person who receives any benefit direct or indirect from commission, since any benefits to individual members of association, who paid insurance premiums on hazard insurance used to protect association's security, was so remote as to be inconsequential and since the Superintendent of Insurance had, in its license application form, interpreted primary to be 25 percent. *Id.*

##### Construction

Interpretation of statute by agency charged with administering it is entitled to great weight. *L. S. Goodman et al. v. Perpetual Building Association et al.* (1970, 320 F. Supp. 20).

District of Columbia statutes governing organization and powers of building and loan association, object of Home Loan Bank Board, objects of building and loan association and licensing of agents and brokers for hazard insurance do not preclude building and loan association from obtaining license for and conducting

business of, insurance agent or broker with respect to insurance on property securing loans, as incident to its primary business. *Id.*

Change in language of this section from, "no person, firm, or corporation shall act \* \* \*", to "licenses may be issued in the name of individuals, or in the name of firms, partnerships, or corporations including \* \* \* building and loan associations \* \* \*" was merely in clarification of previous ambiguous language and did not constitute change in law to include building and loan associations. *Id.*

This section authorizes the Superintendent of Insurance to issue a license in name of building and loan association, notwithstanding proviso that no person shall be licensed when it appears that license is sought primarily for purpose of obtaining commissions on which he is to pay premium because of indirect benefit to members of association by virtue of increase of association's income. *Id.*

This section, providing that no person shall be licensed when it appears that license is sought primarily for purpose of obtaining commission on which he is to pay premiums, does not preclude issuing license in all instances when the license is sought to obtain commissions on policies on which premiums are paid or to be paid by person who receives direct or indirect benefit, but only when such license is primarily sought for restrictive purpose. *Id.*

##### Powers of superintendent of insurance

However desirable it might be for superintendent of insurance for the District of Columbia to be empowered to act at all times in public interest in insurance field, neither superintendent nor courts could supply powers which Congress had never conferred. *Atlantic Insurance Agency, Inc. v. Jordan, Superintendent of Insurance* (1956, 229 F. 2d 758, 97 U. S. App. D. C. 184).

Insurance superintendent is not authorized to deny renewal of license as insurance broker in District of Columbia to corporation which in every respect has originally been found by him to be qualified under, and to have complied with, statutes, even though it later develops that an ownership interest in corporation has been acquired by person deemed by superintendent to be untrustworthy. *Id.*

##### Purpose

Purpose of District of Columbia statutes governing licensing of fire and casualty agents and providing that no person shall be licensed when it appears that license is primarily sought for purpose of obtaining commissions on policies on which he is to pay premiums or premiums are to be paid by person who receives direct or indirect benefit from commissions is to outlaw rebates, not to exclude building and loan associations from obtaining licenses and collecting commissions on insurance covering property securing association's loans. *L. S. Goodman et al. v. Perpetual Building Association et al.* (1970, 320 F. Supp. 20).

##### Qualification of corporate broker

To extent that corporation is to act as insurance broker in District of Columbia, it is not the corporate entity but its personnel actually performing functions of broker that are to be examined, and if license is to be issued to corporation, names of individual, competent qualified personnel must appear thereon. *Atlantic Insurance Agency, Inc. v. Jordan, Superintendent of Insurance* (1956, 229 F. 2d 758, 97 U. S. App. D. C. 184).

##### Renewal of license

District of Columbia Insurance Commissioner's authority to refuse to renew insurance broker's license and considerations to govern his action with regard to renewal are not the same, and are not to be exercised for the same reasons, as his authority to deny original application. *Atlantic Insurance Agency, Inc. v. Jordan, Superintendent of Insurance* (1956, 229 F. 2d 758, 97 U. S. App. D. C. 184).

If license as insurance broker in District of Columbia is to be issued to corporation, superintendent, when passing upon original application, must satisfy himself that corporation is trustworthy, taking into account such



factors as its financial solvency, its standing with tax authorities, its relationship with insurance companies it will represent, their standing to do business in district, and similar criteria upon which his judgment may be based; but once superintendent has found corporation trustworthy and has issued license, presumption of trustworthiness continues, though license renewal application will be subject to conditions of § 35-1339 specifying when renewal may be denied. *Id.*

### § 35-1337. Effective dates of licenses and proration of fees.

All licenses issued under this chapter shall date from the first of the month in which the application for license is made, and shall expire on the 30th day of April next succeeding, and payment of the fees for such licenses shall be prorated accordingly. (Oct. 9, 1940, 54 Stat. 1079, ch. 792, Ch. II, § 33.)

#### CROSS REFERENCE

License fees, see § 35-1345.

### § 35-1338. Temporary transfer of licenses—Renewal.

In the event of the death or disability of any person licensed as a policy-writing agent, soliciting agent, or salaried company employee, the Superintendent may transfer such license to another person without the payment of an additional fee, and may renew such license: *Provided, however,* That no person shall act as policy-writing agent, soliciting agent, or salaried company employee under any transferred license or renewal thereof for a period in excess of six consecutive months. (Oct. 9, 1940, 54 Stat. 1079, ch. 792, Ch. II, § 34.)

### § 35-1339. Renewal of licenses—Written notice of refusal to renew—Hearing—Application to court for leave to continue business pending appeal.

Upon application for renewal of an expiring license and the payment of the applicable fee prescribed in section 35-1345, the Superintendent shall issue the license applied for when he is satisfied that the applicant therefor meets the conditions set forth in sections 35-1336 and 35-1340. Before the Superintendent shall refuse to renew any such license he shall give to the applicant an opportunity to be fully heard and to introduce evidence in his behalf. If the Superintendent shall refuse to renew any such license he shall give the applicant written notice thereof and he shall not, for a period of ten days from the date of that notice, take any action to stop the applicant from continuing in business, within which period the applicant may apply to any court as provided in section 35-1349, for leave, in the discretion of the court, to continue in business until an appeal from such refusal is decided.

Any applicant who, in connection with such application for renewal of an expiring license, willfully files with or otherwise submits to the Superintendent, orally or in writing, any material statement under oath, knowing such statement to be false, shall, in addition to any other penalty prescribed by law, be guilty of perjury and subject to the penalties thereof. (Oct. 9, 1940, 54 Stat. 1079, ch. 792, Ch. II, § 35; Feb. 22, 1958, 72 Stat. 25, Pub. L. 85-334, § 7; July 8, 1963, 77 Stat. 76, Pub. L. 88-57, § 3.)

#### AMENDMENTS

1963—Act July 8, 1963, amended the section by adding the last sentence.

1958—Act Feb. 22, 1958, provided for a hearing, and for a ten-day written notice before any action is taken to stop the applicant from continuing in business during which time he may seek leave of court to continue in business until an appeal from such refusal is decided.

#### OFFICE OR AGENCY ABOLISHED BY REORGANIZATION PLAN NUMBER 5 OF 1952

References in act Feb. 22, 1958, to any office or agency abolished by Reorg. Plan No. 5 of 1952 are deemed to refer to the Commissioners of the District, or to any office, officer or agency designated by them, see note under § 35-404.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1365.

#### NOTES TO DECISIONS

##### License requirements

Insurer who seeks licenses under the Life Insurance Act and the Fire and Casualty Act bears responsibility of satisfying the more stringent requirement regardless of which statute prescribes it, and if two certificates are issued, each must stand on its own feet. *Travelers Insurance Co. v. A. F. Jordan, Dept. of Insurance etc.* (1961, 287 F. 2d 347, 109 U.S. App. D.C. 308).

Life Insurance Act of District of Columbia and Fire and Casualty Act do not prohibit issuance of certificate or certificates authorizing a single insurer to do both life and casualty insurance business. *Id.*

##### Misrepresentation

Where evidence amply supported finding that policy-writing agent for insurance company violated insurance laws by failing to furnish policies or comparable evidence of insurance to which insured persons were entitled and that agent represented that it had authority to solicit and procure policies of insurance when it had no license to do so, refusal of Superintendent of Insurance to renew agent's license was proper. *Columbia Auto Loan v. Jordan* (1952, 196 F. 2d 568, 90 U. S. App. D. C. 222).

##### Powers of superintendent of insurance

However desirable it might be for superintendent of insurance for the District of Columbia to be empowered to act at all times in public interest in insurance field, neither superintendent nor courts could supply powers which Congress had never conferred. *Atlantic Insurance Agency, Inc., v. Jordan, Superintendent of Insurance* (1956, 229 F. 2d 758, 97 U. S. App. D. C. 184).

If license as insurance broker in District of Columbia is to be issued to corporation, superintendent, when passing upon original application, must satisfy himself that corporation is trustworthy, taking into account such factors as its financial solvency, its standing with tax authorities, its relationship with insurance companies it will represent, their standing to do business in district, and similar criteria upon which his judgment may be based; but once superintendent has found corporation trustworthy and has issued license, presumption of trustworthiness continues, though license renewal application will be subject to conditions of this section specifying when renewal may be denied. *Id.*

##### Qualification of corporate broker

To extent that corporation is to act as insurance broker in District of Columbia, it is not the corporate entity but its personnel actually performing functions of broker that are to be examined, and if license is to be issued to corporation, names of individual, competent qualified personnel must appear thereon. *Atlantic Insurance Agency, Inc., v. Jordan, Superintendent of Insurance* (1956, 229 F. 2d 758, 97 U. S. App. D. C. 184).

Insurance superintendent is not authorized to deny renewal of license as insurance broker in District of Columbia to corporation which in every respect has originally been found by him to be qualified under, and to have complied with, statutes, even though it later develops that an ownership interest in corporation has been acquired by person deemed by superintendent to be untrustworthy. *Id.*



District of Columbia Insurance Commissioner's authority to refuse to *renew* insurance broker's license and considerations to govern his action with regard to renewal are not the same, and are not to be exercised for the same reasons, as his authority to deny original application. *Id.*

#### Trial de novo

Where Superintendent of Insurance of the District of Columbia refused to renew license of policy-writing agent for an insurance company, and agent, in bringing suit in federal district court to review the action of the Superintendent chose to frame his complaint broadly and seek the fullest measure of relief, court did not err in conducting a *de novo* trial which explored grounds beyond those on which the Superintendent rested his refusal to renew. *Columbia Auto Loan v. Jordan* (1952, 196 F. 2d 568, 90 U. S. App. D. C. 222).

Due process of law did not entitle policy-writing agent to a formal hearing before Superintendent of Insurance of the District of Columbia when Superintendent refused to renew agent's license, in view of the fact that administrative action could be challenged in federal court in any or every respect in which the order might be invalid, and in view of the fact that agent had right to *de novo* hearing to explore evidence on which Superintendent acted, and reasons and calculations on which he reached his conclusions. *Id.*

#### § 35-1340. Revocation and suspension of licenses— Grounds for—Notice and hearing—Evidence.

The Superintendent may revoke or suspend the license of any policy-writing agent, soliciting agent, broker, or salaried company employee when and if, after investigation, it appears to the Superintendent that any license issued to such person was obtained by fraud or misrepresentation, or that such person has otherwise shown himself untrustworthy or incompetent to act in any of the foregoing capacities, or that such person has—

(a) violated any of the provisions of the insurance laws of the District; or

(b) has failed within a reasonable time to remit to any company all moneys which he has collected, and to which the company is entitled; or

(c) has been guilty of rebating or has misrepresented the provisions of the policies which he is selling, or the policies of other companies;

(d) has countersigned policies in blank; or that

(e) more than 25 per centum of his commission income from business to which the license applies results from policies the premiums on which are paid or are to be paid in the manner set forth in paragraph (f) of this section; or that

(f) said license is being used primarily for the purpose of obtaining commissions on policies on which he, on his own account, pays or is to pay the premiums, or on which the premiums are paid or are to be paid by any person who receives or is to receive any benefit, direct or indirect, from the commissions obtained, or on which the premiums are paid or are to be paid by any partnership, association, or corporation of which he is a member.

Before the Superintendent shall revoke or suspend the license of any such person he shall give to such person an opportunity to be fully heard, and to introduce evidence in his behalf: *Provided*, That in lieu of revoking or suspending the license of any policy-writing agent, soliciting agent, broker, or salaried company employee for causes enumerated in this section after hearing as herein provided, the

Superintendent may subject such person to a penalty of not more than \$200 when in his judgment he finds that public interest would be best served by the continued operation of such person. The amount of any such penalty shall be paid by such person through the office of the Superintendent to the Collector of Taxes, District of Columbia. At any hearing provided by this section, the Superintendent shall have authority to administer oaths to witnesses. Anyone testifying falsely after having been administered such an oath shall be subject to the penalties of perjury. (Oct. 9, 1940, 54 Stat. 1079, ch. 792, Ch. II, § 36; Apr. 22, 1944, 58 Stat. 192, ch. 173, § 2; Feb. 22, 1958, 72 Stat. 25, Pub. L. 85-334, § 8.)

#### AMENDMENTS

1958—Act Feb. 22, 1958, inserted "otherwise shown himself untrustworthy or incompetent to act in any of the foregoing capacities, or that such person has—" preceding subd. (a), authorized the Superintendent to administer oaths to witnesses, and provided that false testimony after such oath shall be subject to the penalties of perjury.

1944—Act Apr. 22, 1944, added the proviso to last paragraph relating to the imposition of an alternate penalty of a fine.

#### OFFICE OR AGENCY ABOLISHED BY REORGANIZATION PLAN NUMBER 5 OF 1952

References in act Feb. 22, 1958, to any office or agency abolished by Reorg. Plan No. 5 of 1952 are deemed to refer to the Commissioners of the District, or to any office, officer or agency designated by them, see note under § 35-404.

#### TRANSFER OF FUNCTIONS

The Office of the Collector of Taxes was abolished and the functions thereof transferred, see note under § 47-301.

#### CROSS REFERENCES

Administrative procedure, see § 1-1501 et seq.

General penal provisions, see § 35-1347.

Judicial review, see §§ 1-1510, 11-722.

Perjury, see § 22-2501.

Revocation or suspension of license for violation of Uniform Narcotic Drug Act, see § 33-418.

Revocation or suspension of licenses, certificates, and permits in general, see § 35-102.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-1336, 35-1339, 35-1409, 35-1509, 35-1611.

#### NOTES TO DECISIONS

##### Jurisdiction

The United States District Court for District of Columbia, as local court of general jurisdiction, had jurisdiction without express statutory authorization to review administrative action by trial *de novo*. *A. F. Jordan, Supt. of Insurance etc. v. United Insurance Co. of America* (1961, 289 F. 2d 778, 110 U.S. App. D.C. 112).

#### § 35-1341. Unauthorized solicitation or representation.

It shall be unlawful for any person, without conforming to the provisions of this chapter, directly or indirectly to represent himself as having authority to solicit, negotiate, effect, procure, receive, or forward directly or indirectly any policy or renewal thereof, or to attempt to effect insurance, surety, or indemnity contracts covering any person or insurable interest in the District, or to countersign any policy or renewal thereof. (Oct. 9, 1940, 54 Stat. 1080, ch. 792, Ch. II, § 37.)

#### CROSS REFERENCE

Representation of unauthorized companies, see § 35-1123.



§ 35-1342. Exemption from license—Sale of accident insurance in railroad ticket offices, common carriers—Travel bureau—Business of ocean marine insurance, insurance covering railroad property and other common carriers.

The provisions of this chapter relating to the licensing of policy-writing agents, soliciting agents, salaried company employees, and brokers shall not apply to the sale of personal accident insurance in the ticket offices of railroad companies or other common carriers, or in the offices of travel bureaus, nor to the business of ocean marine insurance, nor to insurance covering the property of railroad companies and other common carriers engaged in interstate commerce. (Oct. 9, 1940, 54 Stat. 1080, ch. 792, Ch. II, § 38; Feb. 22, 1958, 72 Stat. 26, Pub. L. 85-334, § 9.)

#### AMENDMENT

1958—Act Feb. 22, 1958, deleted references to life insurance, and fraternal benefit societies.

#### OFFICE OR AGENCY ABOLISHED BY REORGANIZATION PLAN NUMBER 5 OF 1952

References in act Feb. 22, 1958, to any office or agency abolished by Reorg. Plan No. 5 of 1952 are deemed to refer to the Commissioners of the District, or to any office, officer or agency designated by them, see note under § 35-404.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1335.

§ 35-1343. Agents prohibited from representing unauthorized companies—"Companies" defined—Penalties—Civil liability—Exceptions—Prosecution.

Except as provided in section 35-1344, no person shall act as agent in the District for any company which is not authorized to do business in the District, nor shall any person directly or indirectly negotiate for or solicit applications for policies of, or for membership in, any company which is not authorized to do business in the District. The term "company" as used in this section shall include any association, society, company, corporation, joint-stock company, individual, partnership, trustee, or receiver engaged in the business of assuming risks of insurance, surety, or indemnity, and any Lloyd's organization, assessment, or cooperative fire company, or any reciprocal or interinsurance exchange, and any company, association, or society, whether organized for profit or not, conducting a business, including any of the principles or features of insurance, surety, or indemnity. Any person who violates any provision of this section upon conviction shall be fined not less than \$100 nor more than \$1,000 for each offense, or be imprisoned for not more than twelve months, or both, and any such person shall be personally liable to any resident of the District having claim against any such unauthorized company under any policy which said person has solicited or negotiated, or has aided in soliciting or negotiating: *Provided*, That the provisions of this section shall not apply to any person who negotiates with an unauthorized company for policies covering his own property or interests, nor shall the provisions of this section apply to the officers, agents, or representatives of any company which is in process of organization under the laws of the District, and which is authorized temporarily to solicit or secure memberships or applications for policies for the

purpose of completing such organization. Prosecutions for violations of this section shall be upon information filed in the Superior Court of the District of Columbia by the corporation counsel or any of his assistants. (Oct. 9, 1940, 54 Stat. 1080, ch. 792, Ch. II, § 39; Feb. 22, 1958, 72 Stat. 26, Pub. L. 85-334, § 10; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Pub. L. 91-358, amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

1958—Act Feb. 22, 1958, deleted "fraternal beneficial association, order, or society" from the enumerated forms of the term "company."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded Act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions. See section 11-101.

#### OFFICE OR AGENCY ABOLISHED BY REORGANIZATION PLAN NUMBER 5 OF 1952

References in act Feb. 22, 1958, to any office or agency abolished by Reorg. Plan No. 5 of 1952 are deemed to refer to the Commissioners of the District, or to any office, officer or agency designated by them, see note under § 35-404.

#### CROSS REFERENCES

Definitions generally, see § 35-1303.

General penalties, see § 35-1347.

#### NOTES TO DECISIONS

##### Defenses

Accused charged with soliciting insurance for company unauthorized to do business in District of Columbia could not defend on ground that company had been granted permits to do business where such permits were not perpetual. *Stover v. District of Columbia* (D.C. Mun. App. 1943, 32 A. 2d 536).

##### Evidence

In prosecution for soliciting insurance for company unauthorized to do business in District of Columbia, evidence which had a direct bearing on solicitation was properly admitted. *Stover v. District of Columbia* (D.C. Mun. App. 1943, 32 A. 2d 536).

In prosecution for soliciting insurance for company unauthorized to do business in District of Columbia, evidence that company once had permit to do business as a fraternal organization was properly excluded as immaterial in view of inclusion of fraternal organizations in section 35-1342 on which prosecution was based. *Id.*

##### Instructions

In prosecution for soliciting insurance for company unauthorized to do business in District of Columbia, instruction to acquit if accused did not personally solicit was properly refused, since Congress never intended that liability should be limited to those who personally solicit. *Stover v. District of Columbia* (D.C. Mun. App. 1943, 32 A. 2d 536).

##### Prosecution, pending proceedings as bar

The trial judge properly refused to continue prosecution for soliciting insurance business for an unauthorized company, pending trial of suit by company to enjoin officials from interfering with its business. *Stover v. District of Columbia* (D.C. Mun. App. 1943, 32 A. 2d 536).

##### Questions for jury

In prosecution for soliciting insurance for company unauthorized to do business in District of Columbia, accused's guilt was for jury. *Stover v. District of Columbia* (D.C. Mun. App. 1943, 32 A. 2d 536).



**§ 35-1344. License to write policy in unauthorized company when no authorized company available—Taxation—Reports, form and contents—Revocation or refusal.**

Any agent or broker licensed in the District may, upon payment of a license fee, as provided under section 35-1345, be licensed to procure policies from companies which are not authorized to do business in the District where such person is, after diligent effort, unable to procure policies to cover the kind or kinds of business required from companies duly authorized to transact business in the District. Each agent or broker so licensed shall pay to the collector of taxes, through the superintendent, on February 1 and August 1 of each year, a sum equal to 2 per centum of the amount of the gross premiums upon all kinds of policies procured by him during the immediately preceding six months' period ending December 31 and June 30, respectively, and, in default of such payment, the superintendent, through the corporation counsel, may bring suit to recover the same. Each agent or broker so licensed to procure policies from unauthorized companies shall execute and file with the department on or before the 10th day of each month an affidavit covering the transactions of the previous calendar month, setting forth (1) the description and location of the insured property or risk, and the name of the assured; (2) the amount insured in the policy or contract; (3) the gross premiums charged thereon; (4) the name of the company whose policy or contract is issued, and the kind or kinds of business effected; and (5) that said agent or broker after diligent effort was unable to procure the policies or contracts required to protect the property or risk described in the affidavit from companies duly authorized to transact business in the District.

Each agent or broker so licensed to procure policies from unauthorized companies shall keep a separate account of the business transacted thereunder, which shall be open at all times to the inspection of the superintendent. The license provided for in this section may be revoked or renewal thereof refused for failure to pay the tax or to file the affidavit specified herein, or if the agent or broker procured policies from unauthorized companies without exercising diligent effort to secure the required business in duly authorized companies, or if the agent or broker procured policies from unauthorized companies whose standards of solvency and management do not meet the requirements necessary for the protection of the policyholders, or if the agent or broker has placed with any unauthorized company any risk which could be placed with an authorized company except for abnormal provisions of the policy, or if the agent or broker has procured from an unauthorized company any policy which covers a risk of a class generally covered in the District by authorized companies and which authorized companies would cover at a rate not higher than that charged by authorized companies on other District risks of the same class. (Oct. 9, 1940, 54 Stat. 1080, ch. 972, Ch. II, § 40; Apr. 22, 1944, 58 Stat. 192, ch. 173, § 4.)

**AMENDMENT**

1944—Act Apr. 22, 1944, inserted "or if the agent or broker has placed with any unauthorized company any risk which could be placed with an authorized company except for abnormal provisions of the policy, or if the agent or broker has procured from an unauthorized company any policy which covers a risk of a class generally covered in the District by authorized companies and which authorized companies would cover at a rate not higher than that charged by authorized companies on other District risks of the same class."

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 35-1343.

**§ 35-1345. License fees.**

Annual fees to be paid through the superintendent to the collector of taxes for licenses issued under this chapter shall be as follows:

(a) For policy-writing agent or for firms, partnerships, or corporations licensed as such, \$50, without regard to the number of companies represented: *Provided*, That, in the case of firms, partnerships, and corporations, an additional fee of \$5 shall be charged for each person in excess of two who is named in such license as required under section 35-1336.

(b) For soliciting agent, \$5 for each company represented by such soliciting agent, or for each company represented by any policy-writing agent through which such soliciting agent solicits: *Provided*, That no soliciting agent shall be required to pay for soliciting agents' licenses a sum in excess of \$15 for any one licensing year.

(c) For salaried company employee authorized to sign policies and to solicit insurance, \$50, without regard to the number of companies represented by such salaried company employee.

(d) For salaried company employee authorized to solicit but not authorized to sign policies, \$5 for each company represented by said employee: *Provided*, That the aggregation of such fees shall not exceed \$15 for any one license year.

(e) For nonresident or resident brokers, \$25, except that the fee shall be \$5 in case the applicant for a resident broker's license is subject also to the fee prescribed under paragraphs (a) or (c) hereof.

(f) For license to procure lines in unauthorized companies, \$15.

(g) Under the license issued to any policy-writing agent or salaried company employee, or in the name of any firm, partnership, or corporation as provided under section 35-1336, and for which license a fee has been paid in accordance with paragraphs (a) or (c) hereof, there may be added names of persons who are employed in or who actively function through the District office of the policy-writing agent, salaried company employee, or firm, partnership, or corporation, and who have company authority to sign but not to solicit policies. For such persons there shall be charged a fee of \$1 per year for each company whose policies such person is authorized to sign.

(h) Broker's licenses may be issued in the names of individuals, firms, partnerships, or corporations. In the case of firms, partnerships, or corporations, the authority to solicit shall extend only to the individuals who are designated in the license and in the



application therefor as having authority to solicit, and there shall be charged for each such individual in excess of two an additional fee of \$5.

(i) Licenses to procure lines in unauthorized companies shall be issued in the names of individuals only. (Oct. 9, 1940, 54 Stat. 1081, ch. 792, Ch. II, § 41.)

#### TRANSFER OF FUNCTIONS

The Office of the Collector of Taxes was abolished and the functions thereof transferred, see note under § 47-301.

#### CROSS REFERENCES

Effective date of license, proration of fees, see § 35-1337.  
Refund of fees when license refused, see § 47-1017.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-1339, 35-1344.

§ 35-1346. Repealed. Oct. 15, 1970, Pub. L. 91-452, title II, § 253, 84 Stat. 931.

Section, act Oct. 9, 1940, 54 Stat. 1082, ch. 792, Ch. II, § 42, related to testimony, production of books, and immunity of witnesses. Immunity of witness, generally, see 18 U.S.C. § 6002.

#### EFFECTIVE DATE OF REPEAL

See sec. 260 of act Oct. 15, 1970, Pub. L. 91-452, set out as a note to § 23-545.

§ 35-1347. Penalties not otherwise prescribed.

Any person who violates any of the provisions of this chapter, or fails to comply with any duty imposed upon such person by any of the provisions of this chapter, for which violation or failure no penalty is elsewhere provided by this chapter, or by the laws of the District, shall, upon conviction thereof, be fined for each offense not exceeding \$1,000 or be imprisoned for not more than twelve months, or both. Prosecutions authorized by this section shall be upon information filed in the Superior Court of the District of Columbia by the corporation counsel or any of his assistants. (Oct. 9, 1940, 54 Stat. 1082, ch. 792, Ch. II, § 43; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### AMENDMENT

1970—Section 155(a) of act July 29, 1970, Pub. L. 91-358, amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

#### CROSS REFERENCES

False statements or reports, see §§ 35-1312, 35-1313.  
Penalty against agent for representing unauthorized company, see § 35-1343.  
Penalty upon foreign or alien companies for transacting business before designating attorney to receive service of process, see § 35-1327.  
Revocation or suspension of,  
Agent's license, see § 35-1340.  
Certificate of authority, see § 35-1306.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-1363, 35-1611.

§ 35-1348. Appeal from Superintendent to Commissioner—Time for—Hearing on appeal—Effect of Commissioner's decision.

Any person aggrieved by any action of the superintendent may, within twenty days after such action was taken, appeal in writing from such action to the Commissioner. The hearings on said appeal may be either orally or in writing at the discretion of the Commissioner, and he shall not be required to take evidence on such appeal. The decision of the Commissioner on any question of fact on such appeal shall be final and conclusive, except the appeal provided for herein shall not affect the right to proceed under the provisions of section 35-1349. (Oct. 9, 1940, 54 Stat. 1082, ch. 792, Ch. II, § 44.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan and § 35-101.

#### CROSS REFERENCES

Administrative procedure, see § 1-1501 et seq.  
Judicial review, see §§ 1-1510, 11-722.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-1365, 35-1403, 35-1612.

#### NOTES TO DECISIONS

Standing to sue

Insurer could appeal from action of Superintendent of Insurance of District of Columbia in approving applications of other insurers for deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Supt. of Ins. et al.* (D.C.D.C. 1956, 148 F. Supp. 317).

Fire insurer had standing to sue, as a "person aggrieved", the Superintendent of Insurance of the District of Columbia and other fire insurers to contest validity of superintendent's approval of other insurers' application for downward deviation in fire and extended coverage rates. *Id.*

§ 35-1349. Court proceedings—Superintendent not liable for costs, damages, or to give supersedeas bond.

Any person affected by an order, ruling, proceeding, or action of the superintendent, or any person acting in his behalf and at his instance, may contest the validity of the same in any court of competent jurisdiction by appeal or through any other appropriate proceedings. In said proceedings and appeals said superintendent shall not be taxed with any costs, nor shall he be required to give any supersedeas bond or security for costs or damages on any appeal whatsoever. Said superintendent shall not be liable to suit or action or for any judgment or decree for any damages, loss, or injury claimed by any person on any appeal taken by said superintendent in any case, nor shall said superintendent be required in any case to make any deposit for costs or pay for any service to the clerks of any court or to any marshal of the United States. (Oct. 9, 1940, 54 Stat. 1082, ch. 792, Ch. II, § 45.)

#### CROSS REFERENCE

Judicial review, see §§ 1-1510, 11-722.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-1339, 35-1348, 35-1365, 35-1403, 35-1510, 35-1612.



## NOTES TO DECISIONS

**Hearing**

Due process of law did not entitle policy-writing agent to a formal hearing before Superintendent of Insurance of the District of Columbia when Superintendent refused to renew agent's license, in view of the fact that administrative action could be challenged in federal court in any or every respect in which the order might be invalid, and in view of the fact that agent had right to de novo hearing to explore evidence on which Superintendent acted, and reasons and calculations on which he reached his conclusions. *Columbia Auto Loan v. Jordan* (1952, 196 F. 2d 568, 90 U. S. App. D. C. 222).

**Insurer has right of appeal**

Insurer could appeal from action of Superintendent of Insurance of District of Columbia in approving applications of other insurers for deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Supt. of Ins. et al* (D.C.D.C. 1956, 148 F. Supp. 317).

## § 35-1350. Separability of provisions.

Should any section or provision of this chapter be held unconstitutional or invalid, the validity of the chapter as a whole, or of any part thereof, other than the part decided to be unconstitutional or invalid, shall not be affected. (Oct. 9, 1940, 54 Stat. 1083, ch. 792, Ch. II, § 47.)

SUBCHAPTER II.—INSURANCE PREMIUM  
FINANCE COMPANIES

## AMENDMENT

1966—This subchapter was added by Act Apr. 18, 1966, 80 Stat. 126, Pub. L. 89-403, § 1.

## § 35-1361. Application.

The provisions of this subchapter shall not apply with respect to (A) any insurance company licensed to do business in the District, (B) any banking institution, trust, loan, mortgage, safe deposit, or title company, building association, credit union, moneylenders, or common trust fund authorized to do business in the District, (C) the inclusion of a charge for insurance in connection with an installment sale of a motor vehicle made in accordance with chapter 9 of title 40, or (D) the financing of insurance premiums in the District in accordance with the provisions of sections 28-3301 and 28-3302 relating to rates of interest. (Oct. 9, 1940, ch. 792, Ch. III, § 51, as added Apr. 18, 1966, 80 Stat. 126, Pub. L. 89-403, § 1.)

## EFFECTIVE DATE

1966—Act Apr. 18, 1966, 80 Stat. 129, Pub. L. 89-403, § 2, provided: "The amendments made by this Act [adding this subchapter] shall take effect on the sixtieth day after the date of enactment [Apr. 18, 1966]."

## § 35-1362. Definitions.

For the purposes of this subchapter—

(1) The term "insurance premium finance company" means a person engaged in the business of entering into insurance premium finance agreements.

(2) The term "premium finance agreement" means an agreement by which an insured or prospective insured promises to pay to a premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent or broker in payment of premiums on an insurance contract together with

a service charge as authorized and limited by this subchapter.

(3) The term "licensee" means a premium finance company holding a license issued by the Superintendent under this subchapter. (Oct. 9, 1940, ch. 792, Ch. III, § 52, as added Apr. 18, 1966, 80 Stat. 126, Pub. L. 89-403, § 1.)

## § 35-1363. Licenses.

(a) No person shall engage in the business of financing insurance premiums in the District without first having obtained a license as a premium finance company from the Superintendent. Any person who shall engage in the business of financing insurance premiums in the District without obtaining a license as provided hereunder shall, upon conviction in the Superior Court of the District of Columbia, be guilty of a misdemeanor and shall be subject to the penalties provided in section 35-1347.

(b) The annual license fee shall be \$50. Licenses may be renewed from year to year as of the first day of May of each year upon payment of the fee of \$50. The fee for said license shall be paid through the Superintendent to the District of Columbia Treasurer.

(c) The person to whom the license or the renewal thereof may be issued shall file sworn answers, subject to the penalties of perjury, to such interrogatories as the Superintendent may require. The Superintendent shall have authority, at any time, to require the applicant fully to disclose the identity of all stockholders, partners, officers, and employees and he may, in his discretion, refuse to issue or renew a license in the name of any firm, partnership, or corporation if he is not satisfied that any officer, employee, stockholder, or partner thereof who may materially influence the applicant's conduct meets the standards of this subchapter. (Oct. 9, 1940, ch. 792, Ch. III, § 53, as added Apr. 18, 1966, 80 Stat. 126, Pub. L. 89-403, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

## AMENDMENT

1970—Section 155(a) of act July 29, 1970, Pub. L. 91-358, amended subsec. (a) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

## TRANSFER OF FUNCTIONS

The functions of the District of Columbia Treasurer (successor to the Collector of Taxes) were transferred, see note under § 47-301.

## § 35-1364. Action by Superintendent on application.

(a) Upon the filing of an application and the payment of the license fee the Superintendent shall make an investigation of each applicant and shall issue a license if the applicant is qualified in accordance with this subchapter. If the Superintendent does not so find, he shall, within thirty days after he has received such application, at the request of the applicant, give the applicant a full hearing.

(b) The Superintendent shall issue or renew a license as may be applied for when he is satisfied that the person to be licensed—



(1) is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for,

(2) has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied for, and

(3) if a corporation, is a corporation incorporated under the laws of the District or a foreign corporation authorized to transact business in the District.

(Oct. 9, 1940, ch. 792, Ch. III, § 54, as added Apr. 18, 1966, 80 Stat. 126, Pub. L. 89-403, § 1.)

#### § 35-1365. Revocation and suspension of licenses.

(a) The Superintendent may revoke or suspend the license of any premium finance company when and if after investigation it appears to the Superintendent that—

(1) any license issued to such company was obtained by fraud,

(2) there was any misrepresentation in the application for the license,

(3) the holder of such license has otherwise shown himself untrustworthy or incompetent to act as a premium finance company,

(4) such company has violated any of the provisions of this subchapter, or

(5) such company has been rebating part of the service charge as allowed and permitted herein to any insurance agent or any employee of an insurance agent or to any other person as an inducement to the financing of any insurance policy with the premium finance company.

(b) Before the Superintendent shall revoke, suspend, or refuse to renew the license of any premium finance company, he shall give to such person an opportunity to be fully heard and to introduce evidence in his behalf. In lieu of revoking or suspending the license for any of the causes enumerated in this section, after hearing as herein provided, the Superintendent may subject such company to a penalty of not more than \$200 for each offense when in his judgment he finds that the public interest would not be harmed by the continued operation of such company. The amount of any such penalty shall be paid by such company through the office of the Superintendent to the District of Columbia Treasurer. At any hearing provided by this section, the Superintendent shall have authority to administer oaths to witnesses. Anyone testifying falsely, after having been administered such oath, shall be subject to the penalty of perjury.

(c) If the Superintendent refuses to issue or renew any license or if any applicant or licensee is aggrieved by any action of the Superintendent, said applicant or licensee shall have the right to a hearing and court proceeding as provided for in sections 35-1339, 35-1348, and 35-1349. (Oct. 9, 1940, ch. 792, Ch. III, § 55, as added Apr. 18, 1966, 80 Stat. 126, Pub. L. 89-403, § 1.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan and § 35-101.

#### TRANSFER OF FUNCTIONS

The functions of the District of Columbia Treasurer (successor to the Collector of Taxes) were transferred, see note under § 47-301.

#### CROSS REFERENCE

Administrative procedure, see § 1-1501 et seq.

Judicial review, see §§ 1-1510, 11-722.

#### § 35-1366. Books and records.

(a) Every licensee shall maintain records of its premium finance transactions and the said records shall be open to examination and investigation by the Superintendent. The Superintendent may at any time require any licensee to bring such records as he may direct to the Superintendent's office for examination.

(b) Every licensee shall preserve its records of such premium finance transactions, including cards used in a card system, or at least three years after making the final entry in respect to any premium finance agreement. The preservation of records in photographic form shall constitute compliance with this requirement. (Oct. 9, 1940, ch. 792, Ch. III, § 56, as added Apr. 18, 1966, 80 Stat. 126, Pub. L. 89-403, § 1.)

#### § 35-1367. Power to make rules.

The Superintendent shall have authority to make and enforce such reasonable rules and regulations as may be necessary in making effective the provisions of this subchapter, but such rules and regulations shall not be contrary to nor inconsistent with the provisions of this subchapter. (Oct. 9, 1940, ch. 792, Ch. III, § 57, as added Apr. 18, 1966, 80 Stat. 126, Pub. L. 89-403, § 1.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan and § 35-101.

#### CROSS REFERENCE

D.C. Council authorized to prescribe rules and regulations necessary in making chapter effective, see § 35-1304.

#### § 35-1368. Form of premium finance agreement.

(a) A premium finance agreement shall—

(1) be dated, signed by or on behalf of the insured, and the printed portion thereof shall be in at least eight-point type,

(2) contain the name and place of business of the insurance agent negotiating the related insurance contract, the name and residence or the place of business of the premium finance company to which payments are to be made, a description of the insurance contracts involved and the amount of the premium therefor; and

(3) set forth the following items where applicable:

(A) the total amount of the premiums,

(B) the amount of the downpayment,

(C) the principal balance (the difference between items (A) and (B)),

(D) the amount of the service charge,

(E) the balance payable by the insured (sum of items (C) and (D)), and

(F) the number of installments required, the amount of each installment expressed in dollars, and

the due date or period thereof.



(b) The items set out in clause (3) of subsection (a) of this section need not be stated in the sequence or order in which they appear in such clause, and additional items may be included to explain the computations made in determining the amount to be paid by the insured. (Oct. 9, 1940, ch. 792, Ch. III, § 58, as added Apr. 18, 1966, 80 Stat. 126, Pub. L. 89-403, § 1.)

§ 35-1369. Maximum service charge.

(a) A premium finance company shall not charge, contract for, receive, or collect a service charge other than as permitted by this subchapter.

(b) The service charge is to be computed on the balance of the premiums due (after subtracting the downpayment made by the insured in accordance with the premium finance agreement) from the effective date of the insurance coverage, for which the premiums are being advanced, to and including the date when the final installment of the premium finance agreement is payable.

(c) The service charge shall be a maximum of \$6 per \$100 per year plus an additional charge of \$10 per premium finance contract which need not be refunded upon cancellation or prepayment. (Oct. 9, 1940, ch. 792, Ch. III, § 59, as added Apr. 18, 1966, 80 Stat. 126, Pub. L. 89-403, § 1.)

§ 35-1370. Delinquency charges.

A premium finance agreement may provide for the payment by the insured of a delinquency charge of \$1 to a maximum of 5 per centum of the delinquent installment but not to exceed \$5 on any installment which is in default for a period of five days or more. (Oct. 9, 1940, ch. 792, Ch. III, § 60, as added Apr. 18, 1966, 80 Stat. 126, Pub. L. 89-403 § 1.)

§ 35-1371. Cancellation of insurance contract upon default.

(a) When a premium finance agreement contains a power of attorney enabling the premium finance company to cancel any insurance contract or contracts listed in the agreement, the insurance contract or contracts shall not be canceled by the premium finance company unless such cancellation is effectuated in accordance with this section.

(b) Not less than ten days' written notice shall be mailed to the insured of the intent of the premium finance company to cancel the insurance contract unless the default is cured within such ten-day period.

(c) After expiration of such ten-day period, the premium finance company may thereafter request in the name of the insured, cancellation of such insurance contract or contracts by mailing to the insurer a notice of cancellation, and the insurance contract shall be canceled as if such notice of cancellation had been submitted by the insured himself, but without requiring the return of the insurance contract or contracts. The premium finance company shall also mail a notice of cancellation to the insured at his last known address.

(d) All statutory, regulatory, and contractual restrictions providing that the insurance contract may not be canceled unless notice is given to a governmental agency, mortgagee, or other third party shall

apply where cancellation is effected under the provisions of this section. The insurer shall give the prescribed notice in behalf of itself or the insured to any governmental agency, mortgagee, or other third party on or before the second business day after the day it receives the notice of cancellation from the premium finance company and shall determine the effective date of cancellation taking into consideration the number of days notice required to complete the cancellation.

(e) Whenever an insurance contract is cancelled in accordance with this section, the insurer shall return whatever gross unearned premiums are due under the insurance contract to the premium finance company effecting the cancellation for the account of the insured or insureds.

(f) In the event that the crediting of return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund such excess to the insured provided that no such refund shall be required if it amounts to less than \$1. (Oct. 9, 1940, ch. 792, Ch. III, § 61, as added Apr. 18, 1966, 80 Stat. 126, Pub. L. 89-403, § 1.)

§ 35-1372. Exemption from any filing requirement.

No filing of the premium finance agreement shall be necessary to perfect the validity of such agreement as a secured transaction as against creditors, subsequent purchasers, pledges, and encumbrances, successors, or assigns. (Oct. 9, 1940, ch. 792, Ch. III, § 62 as added Apr. 18, 1966, 80 Stat. 126, Pub. L. 89-403, § 1.)

Chapter 14.—REGULATION OF FIRE INSURANCE RATES

Sec.

- 35-1401. Definitions.
- 35-1402. Rates included in and excluded from regulation.
- 35-1403. Adjustment of rates—Powers and duties of Superintendent — Removal of discriminations—Appeal from Superintendent's rulings.
- 35-1404. Organization of rating bureau—Membership—Powers and duties—Apportionment of expenses.
- 35-1405. Standard provisions required in policies—Deviations—Duration of deviation—Rate in excess of standard.
- 35-1406. Rating bureau records—Agency records.
- 35-1407. Examination by Superintendent—Consolidated reports of classified experience by rating bureau.
- 35-1408. Effectiveness of rates, rating methods, rules, policy forms, etc., dependent upon filing with and approval of Superintendent.
- 35-1409. Penalties.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 35-1502.

§ 35-1401. Definitions.

In this chapter, unless the context otherwise requires—

“District” means the District of Columbia;

“Superintendent” means the superintendent of insurance of the District of Columbia;

“Company” means any insurer, whether stock, mutual, reciprocal, interinsurer, Lloyd's, or any other form or group of insurers;

“Agent” means and shall include any individual, co-partnership, or corporation acting in the capacity



of or licensed as a "policy-writing agent", "soliciting agent", or "salaried company employee", as defined under section 35-1303; and

"Broker" means any person who for a consideration acts or aids in any manner in the solicitation or negotiation on behalf of the assured of contracts of insurance. (June 1, 1944, 58 Stat. 267, ch. 224, § 1.)

#### REPEAL OF INCONSISTENT PROVISIONS

Section 10 of act June 1, 1944, provided that: "All laws or parts of laws, insofar as they relate to business affected hereby and in conflict with any of the provisions of this Act [§§ 35-1401 to 35-1409], are hereby repealed."

#### SEPARABILITY OF PROVISIONS

Section 11 of act June 1, 1944, provided that: "Should any section or provision of this Act [§§ 35-1401 to 35-1409] be decided by the courts to be unconstitutional or invalid, the validity of the Act as a whole, or of any part thereof, other than the part decided to be unconstitutional, shall not be affected."

#### TRANSFER OF FUNCTIONS

See note under § 35-101.

### § 35-1402. Rates included in and excluded from regulation.

The provisions of this chapter shall apply to insurance in the District of Columbia against loss of or damage to property or any valuable interest therein by or as a consequence of fire, lightning, tornado, windstorm, and explosion, or any one or more of such hazards, including all supplemental, additional, or extended forms of coverage written in connection with fire insurance, and including any policy which insures property, while it is at a permanent location, against the hazard of fire, lightning, tornado, windstorm, or explosion; but this chapter shall not apply to ocean marine, transportation, boiler and machinery, or motor-vehicle insurance, nor to insurance covering the property of interstate common carriers, nor to any form of insurance designated by the Superintendent as inland marine insurance. (June 1, 1944, 58 Stat. 267, ch. 224, § 2.)

### § 35-1403. Adjustment of rates—Powers and duties of Superintendent—Removal of discriminations—Appeal from Superintendent's rulings.

The Superintendent is empowered to investigate the necessity for an adjustment of the rates on any or all risks or classes of risks within the scope of this chapter, and to order an adjustment of such rates whenever he determines, after investigation of the experience showing premiums and losses for a period of not less than five years next preceding such investigation, that the rates for any one or more classes of risks are excessive, inadequate, or unreasonable. In determining the necessity for an adjustment of rates, the Superintendent shall give consideration to all factors reasonably attributable to the risks, to the conflagration or catastrophe hazard, both within and without the District, and to a reasonable profit. The Superintendent is also empowered, after investigation, to order removed, at such time and in such manner as he shall specify, any unfair discrimination existing between individual risks or classes of risks.

Any person, firm, or corporation aggrieved by any order, ruling, proceeding, or action of the Superintendent, or any person acting in his behalf and at

his instance, may appeal to the Commissioner of the District, or contest the validity of such order, ruling, proceeding, or action in any court of competent jurisdiction by appeal or through any other appropriate proceedings, as provided under sections 35-1348 and 35-1349. (June 1, 1944, 58 Stat. 267, ch. 224, § 3.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan and § 35-101.

#### CROSS REFERENCES

Administrative procedure, see § 1-1501 et seq.

Judicial review, see §§ 1-1510, 11-722.

#### NOTES TO DECISIONS

##### Appropriate proceedings

Under this section providing that any person aggrieved may contest validity of superintendent's order fixing insurance rates in any court of competent jurisdiction by appeal or through any other "appropriate proceeding", a civil action for injunction is an appropriate proceeding. *Jordan v. American Eagle Fire Ins. Co.* (1948, 169 F. 2d 281, 83 U.S. App. D.C. 192).

##### Contest validity

Under this section providing that any person aggrieved may "contest validity" of superintendent's order fixing insurance rates in any court of competent jurisdiction by appeal or through any other appropriate proceedings, the quoted clause means to test validity in every or any respect in which order might be invalid and includes right to present evidence and to explore evidence on which superintendent acted and the reasons and calculations upon which he reached his conclusions. *Jordan v. American Eagle Fire Ins. Co.* (1948, 169 F. 2d 281, 83 U.S. App. D.C. 192).

Under this section requiring that insurance superintendent must find that existing insurance rates are excessive, inadequate, or unreasonable before adjusting rates and that he must give consideration to all factors reasonably attributable to conflagration or catastrophe hazards, and to reasonable profit and permitting aggrieved person to contest order in any court of competent jurisdiction, the superintendent's findings as to such factors can be tested. *Id.*

##### Due process

Where insurance companies had right under this section to file bill in equity court, to seek therein an injunction of enforcement of order fixing insurance rates and as a necessary incident to such procedure to have, upon proper preliminary showing, a stay of enforcement of order pendente lite, to participate in trial de novo on issue of validity of order and to have court decide that issue, if such statutory rights were satisfied, the insurance companies could not claim procedural contravention of the due process clause. *Jordan v. American Eagle Fire Ins. Co.* (1948, 169 F. 2d 281, 83 U.S. App. D.C. 192).

##### Function of district court

Under this section authorizing any person aggrieved by insurance superintendent's rate order to contest validity of order in any court of competent jurisdiction, function of District Court is not that of a federal court acting on a state-made order, but is one of the functions which it possesses as local court of general jurisdiction. *Jordan v. American Eagle Fire Ins. Co.* (1948, 169 F. 2d 281, 83 U.S. App. D.C. 192).

The congressional plan for determination of local insurance rates in District of Columbia can include the District Court as part of the procedure. *Id.*

##### Hearings

This section authorizing insurance superintendent to adjust insurance rates whenever he determines after "investigation" that rates are excessive, inadequate, or unreasonable, does not require that a quasi-judicial hearing be conducted. *Jordan v. American Eagle Fire Ins. Co.* (1948, 169 F. 2d 281, 83 U.S. App. D.C. 192).



Even if requirement of this section that there be an investigation before establishment of insurance rates by superintendent could not be satisfied in absence of hearing, such requirement as an element of investigation, without more, was satisfied by hearing at which insurance companies were given an opportunity to state and support their objections to report and rate order, already issued. *Id.*

This section providing that any person aggrieved by insurance superintendent's order adjusting rates may contest validity of order in any court of competent jurisdiction gives complete right to full hearing de novo upon which court will determine validity of order in all respects in which it is contested, and, therefore, mere lack of quasi-judicial hearing before superintendent is not fatal. *Id.*

#### Insurer has right of appeal

Insurer could appeal from action of Superintendent of Insurance of District of Columbia in approving applications of other insurers for deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Sup't of Ins. et al.* (D.C.D.C. 1956, 148 F. Supp. 317).

#### Person aggrieved

Fire insurer had standing to sue, as a "person aggrieved", the Superintendent of Insurance of the District of Columbia and other fire insurers to contest validity of superintendent's approval of other insurers' application for downward deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Sup't of Ins. et al.* (D.C.D.C. 1956, 148 F. Supp. 317).

#### Remand

In action to enjoin enforcement of insurance superintendent's order fixing insurance rates, where trial court in opinion stated that court reached conclusion that insurance companies had not sustained their contention that rates fixed by superintendent were confiscatory but findings of fact and conclusions of law were silent on that issue, the trial court had not determined such issue, so that, where trial court was in error in view on which it rested judgment, that order was invalid, case would be remanded in order that complete determination of issues might be made. *Jordan v. American Eagle Fire Ins. Co.* (1948, 169 F. 2d 281, 83 U.S. App. D.C. 192).

#### Standing to sue doctrine

Statutory right to sue, which is based upon this section authorizing person aggrieved by action of Superintendent of Insurance of District of Columbia to appeal to District Commissioners or contest the validity of such action by appeal or other appropriate proceeding in a court of competent jurisdiction, enlarges the "standing-to-sue doctrine," which forbids suits by parties who are merely taxpayers, who are interested in obtaining government contracts, desirous of preventing competition caused by government activity, etc. *National Capital Ins. Co. et al. v. Jordan, Sup't of Ins. et al.* (D.C.D.C. 1956, 148 F. Supp. 317).

### § 35-1404. Organization of rating bureau—Membership—Powers and duties—Apportionment of expenses.

Within one hundred and twenty days after June 1, 1944, and under the supervision of the Superintendent, the insurance companies authorized to effect insurance in the District against the risk of loss or damage by hazards within the scope of this chapter shall organize a rating bureau for the purpose of administering rates for such insurance, and all such companies now or hereafter authorized to transact such business in the District shall be members of such bureau. The government of the rating bureau shall be vested in its members and it shall not be subject to the direction or control of any other bureau, association, corporation, company, individual, or group of individuals. The rating bureau shall have power to establish reasonable agreements

and bylaws for its governance, and shall be permitted to adopt reasonable rules and regulations necessary to carry out its functions, but such agreements, bylaws, rules, and regulations shall not be inconsistent with the provisions of this chapter, and the same and amendments thereto shall be approved by the District of Columbia Council before becoming effective. The rating bureau, subject to the approval of the Superintendent, shall apportion the expenses of its operation among its members in proportion to the premium income on risks in the District. (June 1, 1944, 58 Stat. 268, ch. 224, § 4.)

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(278) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of approving agreements and bylaws established by the rating bureau for its governance, approving rules and regulations adopted by the rating bureau to carry out its functions, and approving amendments to such agreements, bylaws, rules, and regulations under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

### § 35-1405. Standard provisions required in policies—Deviations—Duration of deviation—Rate in excess of standard.

No company, agent, or broker shall issue or deliver, or offer to issue or deliver, or knowingly permit the issuance or delivery of, any policy of insurance in the District which does not conform to the requirements approved by the Superintendent: *Provided, however,* That a company may deviate from such requirements if the company has filed with the rating bureau and with the Superintendent the deviation to be applied, and provided such deviation is approved by the Superintendent. If approved, the deviation shall remain in force for a period of one year from the date of approval by the Superintendent, unless such approval is withdrawn by the Superintendent for cause after notice to the insurer, or withdrawn by the insurer with the approval of the Superintendent.

It is further provided that a rate in excess of that promulgated by the rating bureau may be charged, provided such higher rate is charged with the knowledge and written consent of the insured and the Superintendent. (June 1, 1944, 58 Stat. 268, ch. 224, § 5.)

#### NOTES TO DECISIONS

##### Deviation

Insurer could appeal from action of Superintendent of Insurance of District of Columbia in approving applications of other insurers for deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Sup't of Ins. et al.* (D.C.D.C. 1956, 148 F. Supp. 317).

Fire insurer had standing to sue, as a "person aggrieved", the Superintendent of Insurance of the District of Columbia and other fire insurers to contest validity of superintendent's approval of other insurers' application for downward deviation in fire and extended coverage rates. *Id.*

### § 35-1406. Rating bureau records—Agency records.

The rating bureau shall keep a record of all rates, schedules, and proceedings. Every agent shall keep a record of every policy contract issued by or through his agency. (June 1, 1944, 58 Stat. 268, ch. 224, § 6.)



**§ 35-1407. Examination by Superintendent—Consolidated reports of classified experience by rating bureau.**

The Superintendent, his deputy, or duly authorized examiner, is authorized and empowered to examine all records of the rating bureau, companies, and agents, and to require every company to furnish statistical reports of premiums and losses in such form and according to such classifications as the Superintendent shall prescribe and any other information which the Superintendent may deem necessary for the administration of this chapter. The Superintendent may require the rating bureau to consolidate the reports of classified experience. (June 1, 1944, 58 Stat. 269, ch. 224, § 7.)

**§ 35-1408. Effectiveness of rates, rating methods, rules, policy forms, etc., dependent upon filing with and approval of Superintendent.**

No rate, premium, schedule, rating method, rule, bylaw, agreement, or regulation shall become effective or be charged, applied, or enforced in the District by the rating bureau, or by any company, agent, or broker governed by the provisions of this chapter, until it shall have been first filed with and approved by the Superintendent: *Provided*, That a rate or premium used or charged in accordance with a schedule, rating method, or rule previously approved by the Superintendent need not be specifically approved by the Superintendent. No company, agent, or broker shall issue any form of policy, clause, warranty, rider, or endorsement until such form shall have been filed with and approved by the Superintendent. (June 1, 1944, 58 Stat. 269, ch. 224, § 8.)

**§ 35-1409. Penalties.**

Any company or any agent or broker guilty of violating any of the provisions of this chapter shall be subject to the provisions of sections 35-1306 and 35-1340. (June 1, 1944, 58 Stat. 269, ch. 224, § 9.)

**Chapter 15.—REGULATION OF CASUALTY AND OTHER INSURANCE RATES**

**Sec.**

- 35-1501. Definitions.
- 35-1502. Scope of chapter.
- 35-1503. Making of rates.
- 35-1504. Supervision of rates.
- 35-1505. Cooperative and concerted action authorized.
- 35-1506. Cooperative and concerted action regulated.
- 35-1507. Information to be furnished by companies.
- 35-1508. Authority and duty of Superintendent.
- 35-1509. Penalties.
- 35-1510. Judicial review.

**§ 35-1501. Definitions.**

In this chapter, unless the context otherwise requires—

“District” means the District of Columbia.

“Superintendent” means the Superintendent of Insurance of the District of Columbia.

“Insurance” includes (but is not limited to) fidelity, surety, and guaranty bonds.

“Company” means any insurer, whether stock, mutual, reciprocal, interinsurer, Lloyd’s, or any other form or group of insurers.

“Policy” means an insurance policy or contract as defined by chapter 13 of this title.

“Agent” means and shall include any individual, copartnership, or corporation acting in the capacity of or licensed as a “policy-writing agent”, “soliciting agent”, or “salaried company employee” as defined by chapter 13 of this title. (May 20, 1948, 62 Stat. 242, ch. 324, § 1.)

**EFFECTIVE DATE**

Section 13 of act May 20, 1948, provided that: “This Act [§§ 35-1501 to 35-1510] shall become effective thirty days after approval [May 20, 1948].”

**REPEAL OF INCONSISTENT PROVISIONS**

Section 11 of Act May 20, 1948, provided that:

“All laws or parts of laws, insofar as they relate to business affected hereby and are in conflict with any of the provisions of this Act [§§ 35-1501 to 35-1510], are hereby repealed: *Provided*, That this Act shall not be construed as repealing or amending the Act [§ 44-301] entitled ‘An Act to amend an Act entitled “An Act to provide that all cabs for hire in the District of Columbia be compelled to carry insurance for the protection of passengers, and for other purposes”, approved June 29, 1938’, approved December 15, 1942.”

**SEPARABILITY OF PROVISIONS**

Section 12 of act May 20, 1948, provided that:

“If any section or provision of this Act [§§ 35-1501 to 35-1510] is held unconstitutional or invalid, the validity of the Act as a whole or of any part thereof, other than the part decided to be unconstitutional or invalid, shall not be affected.”

**TRANSFER OF FUNCTIONS**

See note under § 35-101.

**§ 35-1502. Scope of chapter.**

This chapter shall apply to all forms of casualty, motor vehicle, explosion, sprinkler leakage, and inland marine insurance in the District and to all forms of insurance within the scope of chapter 13 of this title, except those forms of insurance not enumerated herein which are within the scope of chapter 14 of this title: *Provided*, That this chapter shall not apply to reinsurance other than joint reinsurance to the extent provided in this chapter, and shall not apply to:

(a) Insurance of vessels or craft, their cargoes, marine builders’ risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies; (b) title insurance; (c) accident and health insurance; (d) insurance against loss of or damage to aircraft or to liability, other than workmen’s compensation and employers’ liability, arising out of the ownership, maintenance, or use of aircraft; (e) to insurance issued to self-insurers and insuring against loss in excess of at least \$10,000 resulting from any one accident or event, except when rates therefor are made by a rating organization. (May 20, 1948, 62 Stat. 242, ch. 324, § 2.)

**§ 35-1503. Making of rates.**

(a) Rates for insurance within the scope of this chapter shall not be excessive, inadequate, or unfairly discriminatory.

(b) Due consideration shall be given to past and prospective loss experience within and outside the District, to physical hazards, to safety and loss prevention factors, to underwriting practice and judgment, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies;



to dividends, savings, or unabsorbed premium deposits allowed or returned by companies to their policyholders, members, or subscribers; to past and prospective expenses both country-wide and those specially applicable to the District; to whether classification rates exist generally for the risks under consideration; to the rarity or peculiar characteristics of the risks; and to all other relevant factors within and outside the District.

(c) Nothing in this section shall be taken to prohibit as unfairly discriminatory the establishment of classifications or modifications of classifications of risks based upon the size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations attributable to such risks provided such classifications and modifications apply to all risks under the same or substantially similar circumstances or conditions.

(d) Nothing in this chapter shall be construed to require uniformity in insurance rates, classifications, rating plans, or practices.

(e) Nothing in this chapter shall abridge or restrict the freedom of contract of companies, agents, brokers, or employees with reference to the commissions or salaries to be paid to such agents, brokers, or employees by companies.

(f) Rates may become effective immediately upon filing or at such future time as the company or rating organization making them may specify. They shall thereafter remain in effect unless and until changed by the company or rating organization making them, or adjusted by order of the Superintendent in accordance with the provisions of this chapter. Rates for contracts or policies described in the last sentence of subsection (c) of section 35-1504 may become effective when made and filing thereof shall be made promptly thereafter.

(g) No company, agent, or broker shall make, issue, or deliver, or knowingly permit the making, issuance, or delivery of any policy of insurance within the scope of this chapter contrary to pertinent filings which are in effect for the company as provided in this chapter, except that upon the written application of the insured stating his reasons therefor, filed with and approved by the Superintendent, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk. (May 20, 1948, 62 Stat. 243, ch. 324, § 3.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1504.

### § 35-1504. Supervision of rates.

(a) On and after July 1, 1948, every company shall file with the Superintendent, either directly or through a licensed rating organization of which it is a member or subscriber, except as to rates on inland marine risks which are not made by a rating organization and which by general custom of the business are not written according to manual rates or rating plans, all rates and rating plans, rules, and classifications which it uses or proposes to use in the District.

(b) Whenever it shall be made to appear to the Superintendent, either from his own information or from complaint of any party alleging to be ag-

grieved thereby, that there are reasonable grounds to believe that the rates on any or on all risks or classes of risks or kinds of insurance within the scope of this chapter are not in accordance with the terms of this chapter, it shall be his duty, and he shall have the full power and authority, to investigate the necessity for an adjustment of any or all such rates.

(c) After such an investigation of any such rates, the Superintendent shall, before ordering any appropriate adjustment thereof, hold a hearing upon not less than ten days' written notice specifying the matters to be considered at such hearing, to every company and rating organization which filed such rates, provided the Superintendent need not hold such hearing in the event he is advised by every such company and rating organization that they do not desire such hearing. If after such hearing the Superintendent determines that any or all of such rates are excessive or inadequate, he shall order appropriate adjustment thereof. Pending such investigation and order of the Superintendent, rates shall be deemed to have been made in accordance with the terms of this chapter. No order of adjustment shall affect any contract or policy made or issued prior to the effective date of such order unless (i) the adjustment to be effected is substantial and exceeds the cost to the companies of making the adjustment and (ii) the order is made after the prescribed investigation and hearing and within thirty days after the filing of rates affected. In no event shall an order of adjustment affect an existing contract or policy other than one of workmen's compensation or automobile liability insurance required by law, order, rule, or regulation of a public authority, or a contract or policy of any type as to which the rates are not, by general custom of the business or because of rarity and peculiar characteristics, written according to normal classification or rating procedure.

(d) In determining the necessity for an adjustment of rates, the Superintendent shall be bound by all of the provisions of section 35-1503.

(e) The Superintendent is further empowered to investigate and to order removed at such time and in such manner as he shall specify any unfair discrimination existing between individual risks or classes of risks. (May 20, 1948, 62 Stat. 243, ch. 324, § 4.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1503.

### § 35-1505. Cooperative and concerted action authorized.

Subject to the provisions of this chapter, two or more companies may cooperate or act in concert with each other—

(a) as a rating organization, for the purpose of making rates, rating plans, or rating systems. No company shall be deemed to be a rating organization;

(b) as an advisory organization, for the purpose of preparing policy forms, making underwriting rules, surveys, or inspections incident to but not including the making of rates, rating plans, or rating systems, or collecting and furnishing to companies or rating organizations loss or



expense statistics or other statistical data, and acting in an advisory as distinguished from a rate making capacity;

(c) as a group or fleet of companies operating under the same general management and control, for the purpose of conducting a complete insurance service;

(d) as a group, association, or other organization for the purpose of joint underwriting or joint reinsurance, or of equitable apportionment and proper rating of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods.

No company shall be required by this chapter to be a member or subscriber of any rating organization. (May 20, 1948, 62 Stat. 244, ch. 324, § 5.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1506.

### § 35-1506. Cooperative and concerted action regulated.

(a) Every group, association, or other organization of companies authorized to act as such under the terms of this chapter, except groups or fleets described in subsection (c) of section 35-1505, shall file with the Superintendent (1) a copy of its constitution, its articles of agreement or association, or its certificate of incorporation, and of its bylaws, rules, and regulations governing the conduct of its business; (2) a list of its members and subscribers, if any; (3) the name and address of a resident of the District upon whom notices or orders of the Superintendent or process affecting it may be served; and shall notify the Superintendent promptly of any change in the foregoing.

(b) No group, association, or organization shall engage in any unfair or unreasonable practice in the conduct of its business.

(c) No rating organization shall conduct its business with respect to insurance on risks located within the District without a license from the Superintendent. To obtain such a license, a rating organization shall, in addition to the matters specified in subsection (a) of this section, supply to the Superintendent a statement relating to its qualifications as a rating organization and its ability adequately to administer the rates, rules, and regulations which it may make in behalf of its members and subscribers.

If the Superintendent finds that the applicant is competent, trustworthy, and otherwise qualified to act as a rating organization, he shall forthwith issue a license specifying the kinds of insurance and subdivisions thereof for which the applicant is authorized to act as a rating organization, but, if the Superintendent does not so find within thirty days after he has received such application, he shall, at the request of the applicant, give the applicant a full hearing.

Licenses issued pursuant to this section shall remain in effect until suspended or revoked by the Superintendent unless voluntarily surrendered by the rating organization. The fee for said license shall be \$250 and shall be paid by the applicant through the Superintendent to Collector of Taxes,

District of Columbia. Licenses issued pursuant to this section may, at the request of the rating organization, be amended by the Superintendent so as to include authority with respect to additional kinds of insurance and subdivisions thereof, provided the rating organization satisfies the Superintendent that such amendment would not in any way be contrary to or inconsistent with the provisions of this chapter: *Provided*, That an additional fee in the amount of \$50 shall be charged for such amendment.

The license of any rating organization may be suspended or revoked by the Superintendent for failure to comply with this chapter or for incompetence or untrustworthiness. The Superintendent shall not revoke or suspend the license of any rating organization until he has given it not less than thirty days' notice of the proposed revocation or suspension and of the grounds alleged therefor and has afforded the rating organization an opportunity to be heard. In lieu of revoking or suspending the license of any rating organization after hearing and for the causes named herein, the Superintendent may subject such rating organization to a penalty of not more than \$250 when in his judgment he finds that the public interest would be best served by the continued operation of the rating organization. The amount of any such penalty shall be paid by the rating organization through the Superintendent to Collector of Taxes, District of Columbia.

(d) Every licensed rating organization shall, subject to reasonable rules and regulations, permit any company not a member to be a subscriber to its rating services for any kind of insurance or subdivision thereof for which it is authorized to act; shall give notice of changes in such rules and regulations to its subscribers; and shall furnish its rating service without discrimination to its members and subscribers.

(e) No licensed rating organization shall adopt any rule, effect any agreement, or take any action contrary to or inconsistent with the provisions of this chapter or which would have the effect of prohibiting, restricting, or regulating the payment or allowance by any of its members or subscribers of dividends, savings, or unabsorbed premium deposits; nor practice or sanction any plan or act of boycott, coercion, or intimidation; nor enter into or sanction any contract or act by which any person is restrained from lawfully engaging in the business of insurance.

(f) Every member of or subscriber to a licensed rating organization shall adhere to the filings made on its behalf by such organization except that any such member or subscriber may deviate from such filings if it has filed with the rating organization and with the Superintendent the deviation to be applied and information necessary to justify the deviation and provided such deviation is approved by the Superintendent. If approved, the deviation shall remain in force until such approval is withdrawn by the Superintendent after notice to the company or withdrawn by the company with the approval of the Superintendent. The Superintendent shall approve any such deviation unless he finds that the deviation to be applied would not be uniform in its application or would be inconsistent with the provisions of this chapter, but unless he approves the



deviation within thirty days he shall, within a reasonable time, grant a hearing to the applicant at the applicant's request. (May 20, 1948, 62 Stat. 245, ch. 324, § 6.)

#### TRANSFER OF FUNCTIONS

The Office of the Collector of Taxes was abolished and the functions thereof transferred, see note under § 47-301.

#### CROSS REFERENCES

Administrative procedure, see § 1-1501 et seq.  
Judicial review, see §§ 1-1510, 11-722.

#### § 35-1507. Information to be furnished by companies.

(a) Every rating organization and every company which makes its own rates shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate.

(b) Every rating organization and every company which makes its own rates shall provide within the District reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his authorized representative, on his written request to revise the manner in which such rating system has been applied in connection with the insurance afforded him. If the rating organization or company fails to grant or reject such request within thirty days after it is made, the applicant may proceed in the same manner as if his application had been rejected. Any party affected by the action of such rating organization or such company on such request may, within thirty days after written notice of such action, appeal to the Superintendent, who, after a hearing held upon not less than ten days' written notice to the appellant and to such rating organization or company, may affirm or reverse such action.

(c) No company, agent, broker, or rating organization may willfully withhold required information from or give false or misleading information to the Superintendent.

(d) No company, agent, or broker shall fail to furnish to an insured any policy or comparable evidence of insurance to which the insured is entitled. (May 20, 1948, 62 Stat. 246, ch. 324, § 7.)

#### NOTES TO DECISIONS

##### Evidence of insurance

Where evidence amply supported finding that policy-writing agent for insurance company violated insurance laws by failing to furnish policies or comparable evidence of insurance to which insured persons were entitled and that agent represented that it had authority to solicit and procure policies of insurance when it had no license to do so, refusal of Superintendent of Insurance to renew agent's license was proper. *Columbia Auto Loan v. Jordan* (1952, 196 F. 2d 568, 90 U. S. App. D. C. 222).

#### § 35-1508. Authority and duty of Superintendent.

In addition to any powers hereinbefore expressly enumerated in this chapter, the Superintendent shall have full power and authority, and it shall be his duty, to enforce by regulations made and promulgated by the District of Columbia Council, by orders, or otherwise all and singular, the provisions of this chapter, and the full intent thereof. In particular he shall have the authority and power—

(a) to examine all records of companies and rating organizations and to require any or every company, agent, broker, and rating organization to furnish under oath such information as he may deem necessary for the administration of this chapter. The expense of such examination shall be paid by the company or rating organization examined. In lieu of such examination the Superintendent may, in his discretion, accept a report of examination made by any other insurance supervisory authority;

(b) the District of Columbia Council shall have the authority and power to make, and the Superintendent shall have the authority and power to enforce, such reasonable orders, rules, and regulations as may be necessary in making this chapter effective, but such orders, rules, and regulations shall not be contrary to or inconsistent with the provisions of this chapter;

(c) to issue an order, after a full hearing to all parties in interest requiring any group, association, or organization of companies and the members thereof to cease and desist from any unfair or unreasonable practice;

(d) The Superintendent may designate one or more rating organizations or other agencies to assist him in gathering statistical data and in making such compilations thereof as may be necessary for the proper administration of this chapter. Such compilations shall be made available, subject to reasonable rules promulgated by the District of Columbia Council, to companies and rating organizations.

The Superintendent shall have no authority at any hearing to compel the attendance of witnesses and he shall not be required to adhere to formal rules of pleading or evidence. At the request of a party or parties in interest made prior to any hearing, he shall administer oaths to witnesses and shall permit such party or parties, at the cost and expense of one who so requests, to have made a record of the hearing, which record upon request of such party or parties the Superintendent shall certify. (May 20, 1948, 62 Stat. 246, ch. 324, § 8.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(279) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the functions of the Board of Commissioners of making and promulgating (i) regulations governing the enforcement of the provisions of this chapter (providing for regulation of casualty and other insurance rates), (ii) regulations necessary in making this chapter effective, and (iii) rules for making compilations of statistical data available to companies and rating organizations under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### § 35-1509. Penalties.

Any company, broker, or agent guilty of violating any of the provisions of this chapter or any order, rule, or regulation issued pursuant to this chapter, shall be subject to the provisions of sections 35-1306 and 35-1340, respectively. (May 20, 1948, 62 Stat. 247, ch. 324, § 9.)



### § 35-1510. Judicial review.

Any person, firm or corporation aggrieved by any order, ruling, proceeding, or action of the Superintendent may contest the validity of such order, ruling, proceeding, or action in any court of competent jurisdiction by appeal or through any other appropriate proceedings, as provided under section 35-1349. (May 20, 1948, 62 Stat. 247, ch. 324, § 10.)

## Chapter 16.—CREDIT LIFE, ACCIDENT, AND HEALTH INSURANCE

### Sec.

- 35-1601. Title—Scope of chapter.
- 35-1602. Definitions.
- 35-1603. Forms of credit life insurance and credit accident and health insurance.
- 35-1604. Amount of credit life insurance and credit accident and health insurance.
- 35-1605. Term of credit life insurance and credit accident and health insurance.
- 35-1606. Provisions of policies and certificates of insurance—Disclosure to debtors.
- 35-1607. Filing, approval, and withdrawal of forms.
- 35-1608. Refunds.
- 35-1609. Claims.
- 35-1610. Existing insurance — Choice of insurer.
- 35-1611. Enforcement.
- 35-1612. Judicial review.

### § 35-1601. Title—Scope of chapter.

(a) This chapter regulating credit life insurance and credit accident and health insurance in the District of Columbia may be cited as "The Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance".

(b) All life insurance and all accident and health insurance in connection with loans or other credit transactions of less than five years duration in the District of Columbia shall be subject to the provisions of this chapter. Such insurance written in connection with a loan or other credit transaction of five years duration or more shall not be subject to the provisions of this chapter, nor shall such insurance be subject to the provisions of this chapter if the issuance of the insurance is an isolated transaction on the part of the insurer not related to a plan or regular course of conduct for insuring debtors of the creditor. (Sept. 25, 1962, 76 Stat. 580, Pub. L. 87-686, § 1.)

#### EFFECTIVE DATE

Section 14 of act Sept. 25, 1962, provides: "This Act [this chapter] shall take effect ninety days after its approval." [Sept. 25, 1962]

#### EFFECT OF REORGANIZATION PLAN NUMBERED 5 OF 1952

Section 13 of act Sept. 25, 1962, provided as follows: "Nothing in this Act [this chapter] shall be construed so as to affect the authority vested in the Commissioners by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act [this chapter] in the Commissioners or in any office or agency under the jurisdiction and control of said Commissioners may be delegated by said Commissioners in accordance with section 3 of such plan."

### § 35-1602. Definitions.

For the purpose of this chapter—

(a) "Commissioner" means the Commissioner of the District of Columbia;

(b) "Credit life insurance" means insurance issued on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction;

(c) "Credit accident and health insurance" means insurance against the disability of a debtor which provides indemnity for payments on a specific loan or other credit transaction;

(d) "Creditor" means the lender of money or vendor of goods, services, or property, including a lessor under a lease intended as a security, for which payment is arranged through a loan or other credit transaction, and includes any successor to the right, title, or interest of any such lender, vendor, or lessor;

(e) "Debtor" means a borrower of money or purchaser of goods, services, or property, including a lessee under a lease intended as a security, for which payment is arranged through a loan or other credit transaction;

(f) "District" means the District of Columbia;

(g) "Indebtedness" means the amount payable by a debtor to a creditor in connection with a loan or other credit transaction; and

(h) "Superintendent" means the Superintendent of Insurance of the District of Columbia. (Sept. 25, 1962, 76 Stat. 580, Pub. L. 87-686, § 2.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan and § 35-101.

### § 35-1603. Forms of credit life insurance and credit accident and health insurance.

Credit life insurance and credit accident and health insurance shall be issued only in the following forms:

(a) Individual policies of life insurance issued to debtors on the term plan;

(b) Individual policies of accident and health insurance issued to debtors on a term plan or disability provisions in individual life policies to provide such coverage;

(c) Group policies of life insurance issued to creditors providing insurance upon the lives of debtors on the term plan;

(d) Group policies of accident and health insurance issued to creditors on a term plan insuring debtors or disability provisions in group life policies to provide such coverage. (Sept. 25, 1962, 76 Stat. 581, Pub. L. 87-686, § 3.)

### § 35-1604. Amount of credit life insurance and credit accident and health insurance.

(a) The amount of credit life insurance shall not exceed the initial indebtedness however the indebtedness may be repayable: *Provided, however*, That nothing contained herein shall be deemed to supersede or repeal the limitation on the amount of group insurance specified in section 35-710(2) (d). In cases where an indebtedness is repayable in substantially equal installments, the amount of insurance shall at no time exceed the scheduled amount of unpaid indebtedness in the case of any individual policy or the actual amount of the unpaid indebtedness in the case of any group policy.

(b) The amount of indemnity payable by credit accident and health insurance in the event of disability, as defined in the policy, shall not exceed the



aggregate of the periodic scheduled unpaid installments of indebtedness; and the amount of each periodic indemnity payment shall not exceed the original indebtedness divided by the number of periodic installments.

(c) Notwithstanding subsections (a) and (b), the amount of any credit life insurance or credit accident and health insurance with respect to indebtedness incurred to defray educational costs of a student may include the part of a commitment that has not been advanced by the creditor. (Sept. 25, 1962, 76 Stat. 581, Pub. L. 87-686, § 4; Sept. 20, 1966, 80 Stat. 821, Pub. L. 89-594, § 2.)

#### AMENDMENT

1966—Subsection (c) added by act Sept. 20, 1966, § 2.

#### § 35-1605. Term of credit life insurance and credit accident and health insurance.

The term of any credit life insurance or credit accident and health insurance shall, subject to acceptance by the insurance company, commence on the date when the debtor becomes obligated to the creditor, except that where a group policy provides coverage with respect to existing obligations the insurance on a debtor with respect to such indebtedness shall commence on the effective date of the policy. Where evidence of insurability is required and such evidence is furnished more than thirty days from the date when the debtor becomes obligated to the creditor, the term of the insurance may commence on the date on which the insurance company determines the evidence to be satisfactory, and in such event there shall be an appropriate refund or adjustment of any charge to the debtor for insurance. The term of such insurance shall not extend more than fifteen days beyond the scheduled maturity date of the indebtedness except when extended without additional cost to the debtor. If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with the renewal or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund shall be paid or credited as provided in section 35-1608. (Sept. 25, 1962, 76 Stat. 581, Pub. L. 87-686, § 5.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1606.

#### § 35-1606. Provisions of policies and certificates of insurance—Disclosure to debtors.

(a) All credit life insurance and credit accident and health insurance shall be evidenced by an individual policy or in the case of group insurance by a group policy and individual certificates of insurance.

(b) Each individual policy or certificate of credit life insurance, each individual policy or certificate of credit accident and health insurance, and each individual policy or certificate of credit life insurance and credit accident and health insurance shall, in addition to other requirements of law, set forth the name and home office address of the insurance company, and the identity by name or otherwise of the

person insured, the rate or amount of payment, if any, by the debtor separately in connection with credit life insurance and credit accident and health insurance, a description of the coverage, including the amount and term thereof (which in the case of group insurance may be by description rather than stated amount and term), any exceptions, limitations, or restrictions, and shall state that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness and, whenever the amount of insurance may exceed the unpaid indebtedness, that any such excess shall be payable to a beneficiary, other than the creditor, named by the debtor or to his estate.

(c) Except as hereinafter provided, an individual policy or certificate of insurance shall be delivered to the insured debtor at the time the indebtedness is incurred.

(d) If a debtor makes a separate payment for credit life or credit accident and health insurance and an individual policy or certificate of insurance is not delivered to the debtor at the time the indebtedness is incurred, a copy of the application for such policy or a notice of proposed insurance shall be delivered at such time to the debtor by the creditor. The copy of the application for or notice of proposed insurance shall be signed by the debtor and shall set forth the identity by name or otherwise of the person insured; the rate or amount of payment by the debtor separately for credit life insurance and credit accident and health insurance; and a statement that within thirty days, if the insurance is accepted by the insurance company, there will be delivered to the debtor an individual policy or certificate of insurance containing the name and home office address of the insurance company, and a description of the amount, term, and coverage including any exceptions, limitations, and restrictions. The copy of the application for, or notice of, proposed insurance shall refer exclusively to insurance coverage, and shall be separate and apart from the loan, sale, or other credit statement of account, instrument, or agreement unless the information required by this subsection is prominently set forth in such statement of account, instrument, or agreement. If a debtor does not make a separate payment for credit life or credit accident and health insurance, an application need not be taken or a notice of proposed insurance given. In any case, upon acceptance of the insurance by the insurance company, and within thirty days of the date upon which the term of the insurance commences, the insurance company shall cause the individual policy or certificate of insurance to be delivered to the debtor. Said application or notice of proposed insurance shall state that, upon acceptance by the insurance company, the insurance shall become effective as provided in section 35-1605. (Sept. 25, 1962, 76 Stat. 581, Pub. L. 87-686, § 6.)

#### § 35-1607. Filing, approval, and withdrawal of forms.

(a) All forms of policies, certificates of insurance, notices of proposed insurance, applications for insurance, binders, endorsements and riders delivered or issued for delivery in the District and the premium rates pertaining thereto shall be filed with the



Superintendent by the insurance company, in such manner and together with such supporting information as the Superintendent may reasonably require. In any case where a group policy is made for a group in the District and the policy is neither delivered nor issued for delivery in the District, the form of policy and all other forms and premium rates referred to in the preceding sentence shall be filed with the Superintendent by the insurance company.

(b) The Superintendent may, within thirty days after the filing of any form of policy, certificate of insurance, notice of proposed insurance, application for insurance, binder, endorsement or rider, disapprove any such form if the premium rates charged or to be charged appear by reasonable assumptions to be excessive in relation to benefits paid or to be paid, or if the form contains provisions which are unjust, unfair, inequitable, misleading, or deceptive. In determining whether to disapprove any such form the Superintendent may give due consideration to past and prospective loss experience within and outside the District, to underwriting practice and judgment to the extent appropriate, and to all other relevant factors within and outside the District, and he may take into account the experience of the individual company.

(c) If the Superintendent notifies the insurance company that the form does not comply with the requirements of this chapter, it shall be unlawful thereafter for such insurance company to issue or use such form. In such notice, the Superintendent shall specify the reason for his disapproval and state that a hearing will be granted promptly upon request in writing by the insurance company. No such policy, certificate of insurance, notice of proposed insurance, application for insurance, binder, endorsement, or rider shall be issued or used until the expiration of thirty days after it has been so filed, unless the Superintendent shall give his prior written approval thereto.

(d) The Superintendent may, at any time after a hearing, held after not less than twenty days' written notice to the insurance company, withdraw his approval of any such form if it does not meet the requirements of this chapter.

(e) The insurance company shall not issue such forms or use them after the effective date of such withdrawal of approval.

(f) The insurance company may revise such forms and the premium rates pertaining thereto from time to time, and such revised forms and premium rates shall be filed with the Superintendent and shall be subject to all the preceding requirements of this section, in like manner as though they were original filings with the Superintendent. (Sept. 25, 1962, 76 Stat. 582, Pub. L. 87-686, § 7.)

#### § 35-1608. Refunds.

(a) Each individual policy or certificate of credit life insurance or credit accident and health insurance shall provide that in the event of termination of the insurance prior to the scheduled maturity date of the indebtedness, any refund of an amount paid by the debtor for insurance shall be paid or credited promptly to the person entitled thereto:

*Provided*, That the Superintendent shall prescribe a minimum refund and no refund which would be less than such minimum need be made. The formula to be used in computing refunds shall be filed with the Superintendent who may disapprove such formula if he finds that it is unjust or unreasonable.

(b) If a creditor requires a debtor to make a payment in connection with credit life insurance or credit accident and health insurance and an individual policy or certificate of insurance is not issued, the creditor shall promptly give written notice to such debtor and shall promptly make an appropriate credit to the account.

(c) The amount charged to a debtor for credit life or credit accident and health insurance shall not exceed the premium rate charged by the insurance company at the time the charge to the debtor is determined. (Sept. 25, 1962, 76 Stat. 583, Pub. L. 87-686, § 8.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1605.

#### § 35-1609. Claims.

(a) All claims shall be paid either by draft drawn upon the insurance company or by check of the insurance company to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions, or upon direction of such claimant to one specified, and every insurance company shall be held to strict settlement of all such claims.

(b) It shall be unlawful for any creditor, having received any such check or draft from such insurance company, to fail to correctly credit the account, pay to or upon the direction of, or otherwise correctly account to the claimant to whom payment is due for the full amount of such check or draft, less any lawful deductions therefrom.

(c) No plan or arrangement shall be used whereby any person, firm, or corporation other than the insurance company or its designated claim representative shall be authorized to settle or adjust claims. The creditor shall not be designated as claim representative for the insurance company in adjusting claims, nor, in the case of an individual creditor, shall the spouse of such creditor or any relative of the creditor or spouse within the third degree of consanguinity be so designated, nor shall any officer or employee of a corporate creditor or any spouse or relative of such officer, employee, or spouse within the third degree of consanguinity be so designated: *Provided*, That a group policyholder may, by arrangement with the group insurance company, draw drafts or checks in payment of claims due to the group policyholder subject to audit and review by the insurance company. (Sept. 25, 1962, 76 Stat. 584, Pub. L. 87-686, § 9.)

#### § 35-1610. Existing insurance—Choice of insurer.

When credit life insurance or credit accident and health insurance is required as additional security for any indebtedness, the creditor may not require that the insurance be written through any particular insurance company or any particular agent, and the debtor shall, upon request to the creditor, have the option of furnishing the required amount of insurance through existing policies of insurance owned



or controlled by him or of procuring and furnishing the required coverage through any insurance company authorized to transact an insurance business within the District. (Sept. 25, 1962, 76 Stat. 584, Pub. L. 87-686, § 10.)

#### § 35-1611. Enforcement.

(a) In the case of any violation of this chapter by an insurance company, agent, solicitor, or broker, the Superintendent shall have authority to proceed in accordance with the provisions of sections 35-405 and 35-426 and sections 35-1306 and 35-1340.

(b) In the case of any violation of this chapter by a creditor or by any other person not licensed in the District as an insurance agent, solicitor, or broker, regardless of the fact that such creditor or other person is not required by law to be so licensed, the penalties and the procedure for their imposition shall be as set forth in section 35-1347. (Sept. 25, 1962, 76 Stat. 584, Pub. L. 87-686, § 11.)

#### § 35-1612. Judicial review.

Any insurance company, agent, solicitor, or broker aggrieved by any order or action of the Superintendent under this chapter may contest the validity of such order or action by appeal or through any other appropriate proceeding, in accordance with the procedures prescribed by sections 35-1348 and 35-1349: *Provided*, That any such insurance company, agent, solicitor, or broker which is licensed in the District under chapters 3-8 of this title, may contest the validity of such order or action by appeal or through any other appropriate proceeding in accordance with the procedures prescribed by chapters 3-8 of this title. (Sept. 25, 1962, 76 Stat. 585, Pub. L. 87-686, § 12.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan and § 35-101.

### Chapter 17.—INSURANCE PLACEMENT

#### Sec.

- 35-1701. Declaration of purpose.
- 35-1702. Definitions.
- 35-1703. Industry placement facility.
- 35-1704. Fair access to insurance requirements.
- 35-1705. Joint Underwriting Association.
- 35-1706. Examination by Commissioner.
- 35-1707. Waiver of liability.
- 35-1708. Annual reports by Joint Underwriting Association.
- 35-1709. Appeals.
- 35-1710. Reimbursement for reinsurance provided under National Insurance Development Program.
- 35-1711. Delegation.

#### § 35-1701. Declaration of purpose.

The purposes of this chapter are—

- (1) to assure stability in the property insurance market for property located in the District of Columbia;
- (2) to assure the availability of basic property insurance as defined by this chapter;
- (3) to encourage maximum use, in obtaining basic property insurance, of the normal insurance market provided by authorized insurers; and
- (4) to provide for the equitable distribution among insurers of the responsibility for insuring

qualified property in the District of Columbia for which insurance cannot be obtained through the normal insurance market and to authorize the establishment of a joint underwriting association in the District of Columbia to provide for reinsuring of basic property insurance without regard to environmental hazards.

(Aug. 1, 1968, Pub. L. 90-448, § 1202, title XII, 82 Stat. 567.)

#### SHORT TITLE

Section 1201, act Aug. 1, 1968, Pub. L. 90-448, provided: "This title [This chapter and section 11-742(a)(12)] may be cited as the 'District of Columbia Insurance Placement Act.'" (The reference to section 11-742(a)(12) is no longer applicable as Title 11 was amended generally by Pub. L. 91-358.)

#### CROSS REFERENCE

National Insurance Development Program, see title XII of the National Housing Act, as added by sec. 1103, Pub. L. 90-448, sections 1749bbb et seq., title 12 U.S. Code.

#### § 35-1702. Definitions.

As used in this chapter, unless the context otherwise requires—

(1) The term "Commissioner" means the Commissioner of the District of Columbia or his designated agent.

(2) The term "basic property insurance" means (1) insurance against direct loss to property caused by perils as defined and limited in the standard fire policy and extended coverage endorsement thereon, as approved by the Commissioner, and (2) such other insurance (including insurance against the perils of vandalism, malicious mischief, burglary, theft, and robbery) as the Commissioner may designate (under regulations adopted or made under section 35-1704) from those lines of property insurance for which reinsurance is available for losses from riots or civil disorders under part B of title XII of the National Housing Act.

(3) The term "environmental hazard" means any hazardous condition that might give rise to loss under an insurance contract, but which is beyond the control of the property owner.

(4) The term "inspection bureau" means any rating bureau or other organization designated by the Commissioner to perform inspections to determine the condition of the properties for which basic property insurance is sought.

(5) The terms "Industry Placement Facility" and "Facility" mean the facility consisting of all insurers licensed to write and engaged in writing basic property insurance (including homeowners and commercial multiperil policies) within the District of Columbia to assist agents, brokers, and applicants in securing basic property insurance.

(6) The term "premiums written" means gross direct premiums charged with respect to property in the District of Columbia on all policies of basic property insurance and the basic property insurance premium components of all multiperil policies, less all premiums and dividends returned, paid, or credited to policyholders or the unused or unabsorbed portions of premiums deposits.

(7) The term "property owner" means any person having an insurable interest in real, personal, or mixed real and personal property. (Aug. 1, 1968, Pub. L. 90-448, § 1203, title XII, 82 Stat. 568.)



## REFERENCE IN TEXT

Part B of title XII of the National Housing Act, consists of sections 1221 to 1224, as added by section 1103 of the act of Aug. 1, 1968, Pub. L. 90-448, sections 1749bbb-7 et seq., title 12, U.S. Code.

## NOTES TO DECISIONS

## Authority of Superintendent of Insurance

District of Columbia Superintendent of Insurance has statutory authority to issue order including "crime lines" within definition of basic property insurance under this chapter even though the Secretary of Housing and Urban Development has not incorporated those lines into the definition of essential property insurance under the national insurance development programs, but the authority is qualified by substantive constitutional requirements of due process. *District of Columbia Insurance Placement Facility v. W. E. Washington, Commissioner, et ano.* (D.C. App. 1970, 269 A. 2d 45.)

## § 35-1703. Industry placement facility.

(a) Within thirty days after August 1, 1968 all insurers licensed to write and engaged in writing in the District of Columbia, on a direct basis, basic property insurance or any component thereof in multiperil policies, shall establish an Industry Placement Facility. The Facility shall formulate and administer a program, subject to disapproval by the Commissioner in whole or in part, to seek the equitable apportionment amount such insurers of basic property insurance which may be afforded applicants in the District of Columbia whose property is insurable in accordance with reasonable underwriting standards and who individually or through their insurance agent or broker request the aid of the Facility to procure such insurance. The Facility shall seek to place insurance with one or more participating companies up to the full insurable value of the risk, if requested, except to the extent that deductibles, percentage participation clauses, and other underwriting devices are employed to meet special problems of insurability.

(b) The Facility may, subject to the approval of the Commissioner, provide as part of its program for the equitable distribution of commercial risks and dwelling risks among insurers.

(c) Each insurer licensed to write and engaged in writing in the District of Columbia, on a direct basis, basic property insurance or any component thereof in multiperil policies shall participate in the Industry Placement Facility program in accordance with the established rules of the program as a condition of its authority to transact such kinds of insurance in the District of Columbia, except that, in lieu of revoking or suspending the certificate of authority of any company for any failure to comply with any of the established rules of the program, the Commissioner may subject such company to a penalty of not more than \$200 for each such failure to so comply when in his judgment he finds that the public interest would be best served by the continued operation of the company in the District of Columbia. (Aug. 1, 1968, Pub. L. 90-448, § 1204, title XII, 82 Stat. 568.)

## NOTES TO DECISIONS

## Due process

Order of District of Columbia Superintendent of Insurance including "crime lines" within definition of basic property insurance under this chapter denied due process since it was issued without giving Insurance Placement

Facility, which was established to implement federal program of establishing and effectuating plans to assure fair access to insurance requirements, notice or opportunity for hearing. *District of Columbia Insurance Placement Facility v. W. E. Washington, Commissioner, et ano.* (D.C. App. 1970, 269 A. 2d 45.)

## § 35-1704. Fair access to insurance requirements.

(a) The Industry Placement Facility shall on its own motion, or within thirty days after a request by the Commissioner, submit to the Commissioner such proposed rules and regulations applicable to insurers, agents, and brokers deemed necessary to assure all property owners fair access to basic property insurance through the normal insurance markets, including rules and regulations concerning—

(1) the manner and scope of inspections of risk by an inspection bureau;

(2) the preparation and filing of inspection reports and reports on actions taken in connection with inspected risks, and summaries thereof;

(3) the operation of the Facility, including rules and regulations concerning—

(A) the basic property insurance coverages to be provided through the Facility;

(B) the reasonable effort to obtain insurance in the normal commercial market required of an applicant before recourse to the Facility; and

(C) the appeals procedure within the Facility for any applicant for insurance regarding any ruling, action, or decision by or on behalf of the Facility.

(b) The Commissioner may adopt such of the rules and regulations submitted pursuant to subsection (a) of this section as he approves. If the Commissioner disapproves any proposed rule or regulation submitted, he shall state the reasons for so doing, and he shall require the Facility to submit a revision thereof within such time as he may designate, but no less than ten days. During such designated time, the Commissioner and the Facility shall consult regarding any such disapproved rule or regulation. If the Facility fails to submit a proposed rule or regulation, or revision thereof, within the designated time, or if a revised rule or regulation is unacceptable to the Commissioner, the Commissioner may make such rules and regulations covering the proposed general subject matter as he shall deem necessary to carry out the purposes of this chapter. Any rule or regulation adopted or made under this section shall be consistent with the requirements of part A of title XII of the National Housing Act. (Aug. 1, 1968, Pub. L. 90-448, § 1205, title XII, 82 Stat. 569.)

## REFERENCE IN TEXT

Part A of title XII of the National Housing Act, consists of sections 1211 to 1214, as added by section 1103 of the act of Aug. 1, 1968, Pub. L. 90-448, sections 1749bbb-3 et seq., title 12, U.S. Code.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1702.

## NOTES TO DECISIONS

## Authority of District Council

District of Columbia City Council does not have authority under either its police power or the Insurance Code to pass insurance regulations designed to prohibit geographic discrimination and arbitrary cancellation of policies within the District. *Firemen's Insurance Company of*



*Washington v. W. E. Washington et al.* (1971, 333 F. Supp. 951).

Where Congress provided for the equitable distribution of responsibility for insuring qualified property within the District of Columbia for which insurance could not be obtained through the normal market by passing this chapter, the City Council of the District could not thereafter regulate the same type of high risk coverage by passing regulation designed to prohibit geographic discrimination. *Id.*

#### Authority of Superintendent of Insurance

District of Columbia Superintendent of Insurance has statutory authority to issue order including "crime lines" within definition of basic property insurance under this chapter even though the Secretary of Housing and Urban Development has not incorporated those lines into the definition of essential property insurance under the national insurance development program, but the authority is qualified by substantive constitutional requirements of due process. *District of Columbia Insurance Placement Facility v. W. E. Washington, Commissioner, et ano.* (D.C. App. 1970, 269 A. 2d 45).

#### Construction

The provision in § 35-1704(b) that the Superintendent of Insurance may not adopt procedures conflicting with minimum administrative procedures for the operation of the fair plans is not to be construed as preventing Superintendent from proceeding toward an expansion of insurance coverage as provided in § 35-1702(3). *District of Columbia Insurance Placement Facility v. W. E. Washington, Commissioner, et ano.* (D.C. App. 1970, 260 A. 2d 45).

#### Due process

Order of District of Columbia Superintendent of Insurance including "crime lines" within definition of basic property insurance under this chapter denied due process since it was issued without giving Insurance Placement Facility, which was established to implement federal program of establishing and effectuating plans to assure fair access to insurance requirements, notice or opportunity for hearing. *District of Columbia Insurance Placement Facility v. W. E. Washington, Commissioner, et ano.* (D.C. App. 1970, 269 A. 2d 45).

### § 35-1705. Joint Underwriting Association.

(a) The Commissioner is authorized to establish by order a joint underwriting association if he finds, after notice and hearing, that such association is necessary to carry out the purposes of this chapter. Such joint underwriting association shall consist of all insurers licensed to write and engaged in writing in the District of Columbia, on a direct basis, such basic property insurance as may be designated by the Commissioner or any component thereof in multiperil policies.

(b) Every such insurer shall be and remain a member of the association and shall comply with all requirements of membership as a condition of its authority to transact such kinds of insurance in the District of Columbia, except that in lieu of revoking or suspending the certificate of authority of any company for any failure to comply with any of the requirements of membership, the Commissioner may subject such company to a penalty of not more than \$200 for each such failure to so comply when in his judgment he finds that the public interest would be best served by the continued operation of the company in the District of Columbia.

(c) (1) Within sixty days following the effective date of the order of the Commissioner under this section the association shall submit to him a proposed plan of operation, consistent with the provisions of this chapter, which shall provide for eco-

nomical, fair, and nondiscriminatory administration of the association and for the prompt and efficient provision of reinsurance, without regard to environmental hazards, for such basic property insurance as may be designated by the Commissioner. The plan of operation shall include provisions for—

(A) preliminary assessment of all members for initial expenses necessary to commence operations;

(B) establishment of necessary facilities;

(C) management and operation of the association;

(D) assessment of members to defray losses and expenses;

(E) commission arrangements;

(F) reasonable underwriting standards;

(G) assumption and cessation of reinsurance; and

(H) such other matters as the Commissioner may designate.

(2) The plan of operation shall not take effect until approved by the Commissioner. If the Commissioner disapproves the proposed plan of operation (or any part thereof), he shall state the reasons for so doing, and the association shall within thirty days thereafter submit for his review an appropriately revised plan of operation. During such time, the Commissioner and the association shall consult regarding the disapproved plan or part thereof. If the association fails to submit a revised plan of operation, or if the revised plan so submitted is unacceptable to the Commissioner, the Commissioner shall promulgate a plan of operation.

(3) The association may, on its own initiative, amend such plan, subject to approval by the Commissioner, and shall amend such plan at the direction of the Commissioner if he finds such action is necessary to carry out the purposes of this chapter.

(d) All members of the association shall participate in its writings, expenses, profits, and losses, or in such categories thereof as may be separately established by the association, subject to approval by the Commissioner, in the proportion that the premiums written by each such member during the preceding calendar year bear to the aggregate premiums written in the District of Columbia by all members of the association, or in accordance with such other formula as the association may devise with the approval of the Commissioner. Such participation by each insurer in the association shall be determined annually on the basis of such premiums written during the preceding calendar year as disclosed in the annual statements and other reports filed by the insurer with the Commissioner.

(e) The association shall be governed by a board of eleven directors, elected annually by cumulative voting by the members of the association, whose votes in such election shall be weighted in accordance with the proportionate amount of each member's net direct premiums written in the District of Columbia during the preceding calendar year. The first board shall be elected at a meeting of the members or their authorized representatives, which shall be held within thirty days after the effective date of the order under this section establishing the association, at a time and place designated by the



Commissioner. (Aug. 1, 1968, Pub. L. 90-448, § 1206, title XII, 82 Stat. 569.)

#### § 35-1706. Examination by Commissioner.

The operation of any inspection bureau, the Industry Placement Facility, and the joint underwriting association shall at all times be subject to the supervision and regulation of the Commissioner. The Commissioner shall have the power of visitation of and examination into such operations and free access to all the books, records, files, papers, and documents that relate to such operations, may summon and qualify witnesses under oath, and may examine directors, officers, agents, employees or, any other person having knowledge of such operations. (Aug. 1, 1968, Pub. L. 90-448, § 1207, title XII, 82 Stat. 571.)

#### § 35-1707. Waiver of liability.

There shall be no liability on the part of, and no cause of action of any nature shall arise against, insurers, any inspection bureau, the Industry Placement Facility, the joint underwriting association, the agents or employees of such bureau, Facility, or association, or any officer or employee of the District of Columbia, for any statements made in good faith by them concerning the insurability of property (A) in any reports or other communications, (B) at the time of the hearings conducted in connection therewith, or (C) in the findings with respect thereto required by the provisions of this chapter. The reports and communications of any inspection bureau, the Industry Placement Facility, and the joint underwriting association with respect to individual properties shall not be open to inspection by, or otherwise available to, the public. (Aug. 1, 1968, Pub. L. 90-448, § 1208, title XII, 82 Stat. 571.)

#### § 35-1708. Annual reports by Joint Underwriting Association.

The joint underwriting association shall file with the Commissioner, annually on or before the 1st day of March, a statement which shall contain information with respect to its transactions, condition, operations, and affairs during the preceding year. Such statement shall contain such matters and information as are prescribed by the Commissioner and shall be in such form as is approved by him. The Commissioner may at any time require the association to furnish him with additional information with respect to its transactions, condition, or any matter connected therewith which he considers to be material and which will assist him in evaluating the scope, operation, and experience of the association. (Aug. 1, 1968, Pub. L. 90-448, § 1209, title XII, 82 Stat. 571.)

#### § 35-1709. Appeals.

(a) Any applicant for insurance and any affected insurer may appeal to the Commissioner within ninety days after any final ruling, action, or decision by or on behalf of any inspection bureau, the Industry Placement Facility, or the joint underwriting association, following exhaustion of remedies available within such bureau, Facility, or association.

(b) All final orders or decisions of the Commissioner made under this chapter shall be subject to review by the District of Columbia Court of Appeals under the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1501 to 1-1510). (Aug. 1, 1968, Pub. L. 90-448, § 1210, title XII, 82 Stat. 571; July 29, 1970, Pub. L. 91-358, title I, § 163(d), 84 Stat. 583.)

#### AMENDMENT

1970—Section 163(d) of Act July 29, 1970, Public Law 91-358 amended section by striking out "section 11-742 of the District of Columbia Code" and inserting in lieu thereof "the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1501 to 1-1510)".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### § 35-1710. Reimbursement for reinsurance provided under National Insurance Development Program.

(a) In order to carry out the purposes of this chapter and to make available to insurers who participate hereunder the reinsurance afforded under part B of title XII of the National Housing Act against losses to property resulting from riots or civil disorders, the Commissioner is authorized to assess each insurance company authorized to do business in the District of Columbia an amount, in the proportion that the premiums earned by each such company in the District of Columbia, on lines reinsured in the District of Columbia by the Secretary of Housing and Urban Development, during the preceding calendar year bear to the aggregate premiums earned on those lines in the District of Columbia by all insurance companies, sufficient to provide a fund to reimburse the Secretary of Housing and Urban Development in the manner set forth in section 1223(a) (1) of such part B. Such fund may be added to or such fund may be created by moneys appropriated therefor by the Congress.

(b) Insurers shall add to the premium rate an amount, to be approved by the Commissioner, sufficient to recover, within not more than three years, any amounts assessed under subsection (a) of this section during the preceding calendar year. Such amount shall be a separate charge to the insured in addition to the premium to be paid and shall be reflected as such in the policy of insurance. No commission shall be paid thereon to any agent or broker producing or selling the policy of insurance wherein such amount is added. (Aug. 1, 1968, Pub. L. 90-448, § 1211, title XII, 82 Stat. 572.)

#### REFERENCE IN TEXT

Part B of title XII of the National Housing Act, consists of sections 1221 to 1224, as added by section 1103 of the act of Aug. 1, 1968, Pub. L. 90-448, sections 1749bbb-7 et seq., title 12, U.S. Code.

#### § 35-1711. Delegation.

The Commissioner is authorized to delegate any of the functions vested in him by this chapter. (Aug. 1, 1968, Pub. L. 90-448, § 1212, title XII, 82 Stat. 572.)

#### TRANSFER OF FUNCTIONS

Reorganization Order No. 43, as amended Aug. 12, 1968, delegated to the Superintendent of Insurance the functions vested in the Commissioner by this chapter. For full details see the order as set out in the appendix to title 1.







## TITLE 36.—LABOR

Chap.	Sec.
1. Apprentices .....	36-101
1A. Voluntary Apprentices.....	36-121
2. Child Labor and Work Permits.....	36-201
3. Employment of Women.....	36-301
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### Chapter 1.—APPRENTICES

§§ 36-101 to 36-111. Repealed. Apr. 22, 1944, 58 Stat. 195, ch. 174, § 10.

Sections, act Mar. 3, 1901, 31 Stat. 1253, ch. 854, §§ 173, and 402 to 411, related to apprentices, and are now covered by §§ 36-121 to 36-133.

Section 36-101 stated who might bind a minor child as an apprentice.

Section 36-102 related to jurisdiction of the probate court to bind out certain children.

Section 36-103 related to the protection of apprentices by the probate court.

Section 36-104 related to the term of apprenticeship.

Section 36-105 related to the terms and filing of the contract.

Section 36-106 related to the hearing and determination of complaints of apprentices or masters by the probate court.

Section 36-107 related to the removal of apprentices from the District.

Section 36-108 related to the assignment of apprenticeship contracts.

Section 36-109, amended act Feb. 17, 1909, 35 Stat. 623, ch. 134, related to actions for damages against persons concealing, harboring, or aiding an apprentice to run away.

Section 36-110 related to the form of the contract of apprenticeship.

Section 36-111 related to the payment of money by the master.

Sections 36-103, 36-104, 36-105, 36-107, 36-108, 36-110, and 36-111, were additionally repealed by act May 21, 1946, 60 Stat. 207, ch. 267, § 13.

#### EFFECTIVE DATE OF REPEAL

Repeal effective April 22, 1944, see section 11 of act April 22, 1944, set out as a note under section 32-781.

### Chapter 1A.—VOLUNTARY APPRENTICES

Sec.
36-121. Purposes of chapter.
36-122. Apprenticeship Council—Membership—Term—Compensation.
36-123. Director of Apprenticeship—Assistance furnished.
36-124. Meetings of Apprenticeship Council—Rules and regulations—Reports.
36-125. Administration of chapter—Responsibility of Board of Education.
36-126. Apprenticeship committees.
36-127. "Apprentice" defined.
36-128. Apprenticeship agreements—Contents.
36-129. Registration and approval of agreements—Agreements extending into majority of apprentice.
36-130. Violations of agreements—Hearings—Determinations—Appeals.
36-131. Application of chapter.
36-132. "Secretary of Labor" defined.
36-133. Separability of provisions.

#### CROSS REFERENCES

Powers and duties of Board of Public Welfare concerning apprentices and contracts of apprenticeship, see § 3-117 et seq.

Wages of minors, see § 36-408 et seq.

#### § 36-121. Purposes of chapter.

It is the purpose of this chapter to open to young people in the District of Columbia the opportunity to obtain training that will equip them for profitable employment and citizenship; to set up, as a means to this end, a program of voluntary apprenticeship under approved apprenticeship agreements providing facilities for their training and guidance in the arts and crafts of industry and trade, with parallel instruction in related and supplementary education; to promote employment opportunities for young people under conditions providing adequate training and reasonable earnings; to relate the supply of skilled workers to employment demands; to establish standards for apprentice training; to establish an apprenticeship council; to provide for the establishment of local joint trade apprenticeship committees to assist in effectuating the purposes of this chapter; to provide for a director of apprenticeship within the District of Columbia; to provide for reports to the Congress and to the public regarding the status of apprenticeship in the District of Columbia; to establish a procedure for the determination of apprenticeship agreement controversies; and to accomplish related ends. (May 21, 1946, 60 Stat. 204, ch. 267, § 1.)

#### § 36-122. Apprenticeship Council—Membership—Term—Compensation.

Without regard for any other provision of law with respect to the appointment of officers and employees of the United States or the District of Columbia, the Commissioner of the District of Columbia shall appoint an Apprenticeship Council, composed of three representatives each from employer and employee organizations, respectively. The Superintendent of Schools in the District of Columbia or, if he shall so designate, his representative in charge of trade and industrial education, and the Director of the District of Columbia Employment Center shall, ex officio, be members of said council, without vote. The terms of office of the members of the Apprenticeship Council first appointed by the Commissioner shall expire as designated by them at the time of making the appointment: One representative each of employers and employees being appointed for one year; one representative each of employers and employees being appointed for two years; and one representative each of employers and employees for three years. Thereafter, each member shall be appointed for a term of three years. Any member appointed to fill a vacancy occurring prior to the expiration of the term of his predecessor shall be appointed for the



remainder of said term. The compensation of each member may be fixed without regard to the provisions of the Classification Act of 1923, as amended, and each member of the council, not otherwise compensated by public money, shall be paid not more than \$10 per day for each day spent in attendance at meetings of the Apprenticeship Council. (May 21, 1946, 60 Stat. 204, ch. 267, § 2.)

#### REFERENCE IN TEXT

The exception from "the Classification Act of 1923, as amended" is obsolete. Sections 1202 and 1204 of the Classification Act of 1949 (63 Stat. 972, 973) repealed the 1923 Act and all laws or parts of laws inconsistent with the 1949 Act. While § 1106(a) of the 1949 Act provided that references in other laws to the 1923 Act should be held and considered to mean the 1949 Act, it did not have the effect of continuing the exception contained in this section because of § 1106(b) that provided that the application of the 1949 Act to any position, officer, or employee shall not be affected by § 1106(a). The Classification Act of 1949 was repealed by Act Sept. 6, 1966, Pub. L. 89-554, § 8(a), 80 Stat. 632 (of which § 1 revised and enacted title 5, U.S.C., into law). Section 5102 of title 5, U.S.C., now contains the applicability provisions of the 1949 Act.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 36-123. Director of Apprenticeship—Assistance furnished.

The Secretary of Labor shall appoint a Director of Apprenticeship who shall serve without compensation and who shall have no vote. Without regard for the provisions of any other law with respect to the appointment of officers and employees of the United States or the District of Columbia, the Director of Apprenticeship shall be chosen from among the employees of the Apprentice-Training Service actually engaged in formulating and promoting standards of apprenticeship under the provisions of Public Law Numbered 308 (29 U.S.C. 50-50b). The Apprentice-Training Service is further authorized to supply the Director or the council with such clerical, technical, and professional assistance as shall be deemed by said Service to be essential to effectuate the purposes of this chapter. (May 21, 1946, 60 Stat. 204, ch. 267, § 3.)

#### § 36-124. Meetings of Apprenticeship Council—Rules and regulations—Reports.

The Apprenticeship Council shall meet at the call of the Director, or the chairman thereof, and shall aid in formulating policies for the effective administration of this chapter. Subject to the approval of the Secretary of Labor, the Apprenticeship Council shall establish standards for apprenticeship agreements in accordance with those prescribed by this chapter, shall issue such rules and regulations as may be necessary to carry out the intent and purposes of said chapter, and shall perform such other functions as are necessary to carry out the intent of this chapter. Not less than once every two years the Apprenticeship Council shall make a report through the Commissioner of its activities and findings to the Congress and to the public. (May 21, 1946, 60 Stat. 205, ch. 267, § 4.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 36-125. Administration of chapter—Responsibility of Board of Education.

The Director, under the supervision of the Secretary of Labor and with the advice and guidance of the Apprenticeship Council, is authorized to administer the provisions of this chapter in cooperation with the Apprenticeship Council and local joint trade apprenticeship committees, to set up conditions and training standards for apprentices, which conditions or standards shall in no case be lower than those prescribed by this chapter; to act as secretary of the Apprenticeship Council and of joint trade apprenticeship committees; to approve, if, in his opinion, approval is for the best interest of the apprentice, any apprentice agreement which meets the standards established by or in accordance with this chapter; to terminate or cancel any apprenticeship agreement in accordance with the provisions of such agreement; and to perform such other duties as are necessary to carry out the intent of this chapter: *Provided*, That the administration and supervision of related and supplemental instruction for apprentices, coordination of the instruction with job experiences, and the selection and training of teachers and coordinators for such instruction shall be the responsibility of the District Board of Education. (May 21, 1946, 60 Stat. 205, ch. 267, § 5.)

#### § 36-126. Apprenticeship committees.

Local joint trade apprenticeship committees in any trade or group of trades may be approved by the Apprenticeship Council. Such apprenticeship committees shall be composed of an equal number of employer and employee representatives appointed by the groups or organizations they represent, or the committee may consist of the employer and not less than two representatives from the recognized bargaining agency. In a trade or group of trades in which there is no bona fide employee organization, the Apprenticeship Council may appoint a joint trade apprenticeship committee from persons known to represent the interests of employers and of employees, or the council may act itself as such joint committee. Subject to the review of the council, and in accordance with standards established by or under authority of this chapter, joint trade apprenticeship committees may set up standards to govern the training of apprentices and give such aid as may be necessary in effectuating such standards. (May 21, 1946, 60 Stat. 205, ch. 267, § 6.)

#### § 36-127. "Apprentice" defined.

The term "apprentice", as used herein, shall mean a person at least sixteen years of age who has entered into a written agreement, hereinafter called an apprenticeship agreement, with an employer, an association of employers, or an organization of employees, which apprenticeship agreement provides for not less than four thousand hours of reasonably continuous employment for such person and for his participation in an approved program of training through employment and through education in re-



lated and supplemental subjects. (May 21, 1946, 60 Stat. 205, ch. 267, § 7.)

#### § 36-128. Apprenticeship agreements—Contents.

Every apprenticeship agreement entered into under this chapter shall contain—

(1) the names and signatures of the contracting parties, including the apprentice's parent or guardian if he be a minor;

(2) the date of birth of the apprentice;

(3) a statement of the trade, craft, or business which the apprentice is to be taught and the time at which the apprenticeship will begin and end;

(4) a statement showing the number of hours to be spent by the apprentice in work and the number of hours to be spent in related and supplemental instruction, which instruction shall be not less than one hundred and forty-four hours per year;

(5) a statement setting forth a schedule of the processes in the trade or industry divisions in which the apprentice is to be taught and the approximate time to be spent at each process;

(6) a statement of the graduated scale of wages to be paid the apprentice and whether the required school time shall be compensated;

(7) a statement providing for a period of probation during which time the apprenticeship agreement shall be terminated by the Director at the request in writing of either party, and providing that after such probationary period the apprenticeship agreement may be terminated by the Director by mutual agreement of all parties thereto, or canceled by the Director for good and sufficient reasons;

(8) a provision that all controversies or differences concerning the apprenticeship agreement which cannot be adjusted by conference between the apprentice and the employer or under the terms of the apprenticeship standard shall be submitted to the Director for determination as provided for in section 36-129;

(9) a provision that an employer who is unable to fulfill his obligation under the apprenticeship agreement may, with the approval of the Director or under the direction of the joint trade apprenticeship committee, transfer such contract to any other employer: *Provided*, That the apprentice consents and that such other employer agrees to assume the obligations of said apprenticeship agreement;

(10) such additional terms and conditions as may be prescribed or approved by the council not inconsistent with the provisions of this chapter. (May 21, 1946, 60 Stat. 206, ch. 267, § 8.)

#### § 36-129. Registration and approval of agreements—Agreements extending into majority of apprentice.

No apprenticeship agreement shall be registered or approved by the Director under the provisions of this chapter unless it conforms with the standards established by or in accordance with this chapter and is in the best interests of the apprentice. Where a minor enters into an agreement for a period of training extending into his majority, and such agreement has been approved by the Director, then such

apprenticeship agreement shall, if the parties therein so provide, have the same force and effect during the period covered by the majority of such minor as if such agreement were entered into during the majority of such minor. (May 21, 1946, 60 Stat. 206, ch. 267, § 9.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 36-128.

#### § 36-130. Violations of agreements—Hearings—Determinations—Appeals.

(a) Upon the complaint of any interested person or upon his own initiative, the Director may investigate to determine if there has been a violation of the terms of an apprenticeship agreement made under this Act, and he may hold hearings, inquiries, and other proceedings necessary to such investigation and determination. The parties to such an agreement shall be given a fair and impartial hearing after reasonable notice thereof. All such hearings, investigations, and determinations shall be made under authority of reasonable rules and procedures prescribed by the Apprenticeship Council, subject to the approval of the Secretary of Labor.

(b) The determination of the Director shall be filed with the council. If no appeal therefrom is filed with the council within ten days after the date thereof, as herein provided, such determination shall become the order of the council. Any person aggrieved by any determination or action of the Director may appeal therefrom to the council, which shall hold a hearing thereon after due notice to the interested parties. Any person aggrieved by the action of the Council may appeal as provided in the District of Columbia Administrative Procurement Act (D.C. Code, secs. 1-1501 to 1-1510). (May 21, 1946, 60 Stat. 206, ch. 267, § 10; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91-358, § 163(e), title I, 84 Stat. 583.)

#### AMENDMENT

1970—Section 163(e) of Act July 29, 1970, Public Law 91-358 amended subsection (b) by striking out the fourth sentence and all that follows and inserting in lieu thereof "Any person aggrieved by the action of the Council may appeal as provided in the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1501 to 1-1510)." For provisions of subsec. (b) prior to this amendment, see 1967 edition of the code.

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

#### § 36-131. Application of chapter.

The provisions of this chapter shall apply to any person, firm, corporation, or craft in the District of Columbia which has voluntarily elected to conform with its provisions. (May 21, 1946, 60 Stat. 207, ch. 267, § 11.)

#### § 36-132. "Secretary of Labor" defined.

As used or referred to in this chapter the term "the Secretary of Labor" shall mean the administrator of that Department or agency of the United



States Government authorized to administer the provisions of Public Law Numbered 308 (29 U.S.C. 50-50b). (May 21, 1946, 60 Stat. 207, ch. 267, § 12.)

### § 36-133. Separability of provisions.

If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of such provision to other persons and circumstances, shall not be affected thereby. (May 21, 1946, 60 Stat. 207, ch. 267, § 14.)

## Chapter 2.—CHILD LABOR AND WORK PERMITS

Sec.

- 36-201. Regulation of child labor—Employment of children under fourteen years of age—Distribution of newspapers permitted.
- 36-202. Employment of children under eighteen years of age—Hours of employment—Notice to be posted in place of employment—List of minors employed.
- 36-203. Employment dangerous or prejudicial to life prohibited—Board of Education to prohibit such employment by general or special order.
- 36-204. Employment of minors under sixteen years of age prohibited in certain occupations.
- 36-205. Employment of minors under eighteen years of age prohibited in certain occupations—Employment of females under eighteen in certain occupations.
- 36-206. Employment as messenger between ages of eighteen and twenty-one years prohibited during certain hours.
- 36-207. Employment or exhibition of minor under sixteen years of age as performer.
- 36-207a. Work permits for minors between ages of fourteen and eighteen years authorized for stage appearances—Regulations.
- 36-208. Work or vacation permit—Procurement by employer.
- 36-209. Permit issued by director of school attendance and work permits—Contents—Record of applicants to be kept—List of permits granted or refused to be sent weekly to schools.
- 36-210. Application for permit—Evidence required to be furnished—Physician's certificate—School record.
- 36-211. Evidence of age.
- 36-212. Vacation permits.
- 36-213. Employer to notify department at commencement and termination of employment of minor—Issuance of new certificates.
- 36-214. Employer to furnish, on demand, proof of age of employee.
- 36-215. Penalties.
- 36-216. Director of department of school attendance and work permits to enforce law—Inspection of places in which minors are employed.
- 36-217. Limitations on employment in stuffing of newspapers—Sale of newspapers in streets—Distribution of papers on fixed routes.
- 36-218. Hours of employment—Work permit to be secured.
- 36-219. Badge to be obtained.
- 36-220. Street-trades badges—Evidence upon which issued.
- 36-221. Information to be contained on—Record to be kept—Badges not transferable—Principal of schools to keep list—Revocation if detrimental to minor—Badges to expire annually.
- 36-222. Penalties for violations of sections 36-217 to 36-224—Commitments to Board of Public Welfare—Probationary supervision—Revocation of badge.
- 36-223. Persons selling merchandise to minor under sixteen years of age for resale or distribution in public place to ascertain that minor wears badge—Penalties.

Sec.

- 36-224. Loitering around salesrooms of newspapers prohibited during school hours.
- 36-225. Board of Education to appoint inspectors—Appointments, how made.
- 36-226. Separability of provisions.
- 36-227. Board of Education to supervise and have appellate jurisdiction over agents and employees.
- 36-228. Family Division of Superior Court has jurisdiction.

### § 36-201. Regulation of child labor—Employment of children under fourteen years of age—Distribution of newspapers permitted.

No child under fourteen years of age shall be employed, permitted, or suffered to work in the District of Columbia, in, about, or in connection with any gainful occupation, with the exemption of housework performed outside of school hours in the home of the child's parent or legal guardian or agricultural work performed outside of school hours in connection with the child's own home and directly for the child's parent or legal guardian: *Provided*, That boys ten years of age and over may be employed outside of school hours in the distribution or sale of newspapers, subject to the provisions of sections 36-217 to 36-224. (May 29, 1928, 45 Stat. 998, ch. 908, § 1.)

#### CROSS REFERENCES

Compulsory school attendance and work permits; department created; school census, see § 31-201 et seq.

Federal Wage and Hour Law, child labor provisions, see 29 U.S.C. § 212.

Penalties for violation of sections 36-217 to 36-224, see § 36-222.

Wages of minors, see § 36-408 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-202, 36-208, 36-215.

### § 36-202. Employment of children under eighteen years of age—Hours of employment—Notice to be posted in place of employment—List of minors employed.

No minor under eighteen years of age shall be employed, permitted, or suffered to work in, about, or in connection with any gainful occupation, except in agricultural work, or housework, or in the distribution or sale of newspapers, as prescribed in section 36-201, and except in newspaper stuffing, subject to the provisions of section 36-217, more than six consecutive days in any one week, or more than forty-eight hours in any one week, or more than eight hours in any one day, nor shall any girl under eighteen years of age or boy under sixteen years of age be so employed, permitted, or suffered to work before the hour of seven o'clock in the morning or after the hour of seven o'clock in the evening of any day, nor shall any boy between sixteen and eighteen years of age be so employed before the hour of six o'clock in the morning or after the hour of ten o'clock in the evening of any day. Every employer shall post and keep conspicuously posted in the establishment, in or about which any minor is employed, permitted, or suffered to work, a printed notice, furnished by the official authorized to enforce this chapter, setting forth the legal regulations governing the employment and hours of work of minors and occupations prohibited to minors in such establishments. and, in addition, shall keep accessible in the place of employment a list of minors under eighteen em-



ployed, permitted, or suffered to work, and an accurate time record showing the hours of beginning and ending work each day and the hours when the time allowed for meals begins and ends for said minors. The presence of any such minor in the place of work for a longer time in the day or week than stated in the printed regulation hours shall be prima facie evidence of a violation of the provisions of this section. (May 29, 1928, 45 Stat. 999, ch. 908, § 2.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 36-215.

**§ 36-203. Employment dangerous or prejudicial to life prohibited—Board of Education to prohibit such employment by general or special order.**

No minor shall be employed, permitted, or suffered to work in any place of employment, or at any employment, dangerous or prejudicial to the life, health safety or welfare of such minor. It shall be the duty of the Board of Education of the District of Columbia and the said board shall have power, jurisdiction and authority, after hearing duly held, to issue general or special orders prohibiting the employment of such minors in any employment or at any place of employment dangerous or prejudicial to the life, health, safety, or welfare of such minors: *Provided*, That no such order shall permit the employment of any minor at any employment specified in sections 36-204 to 36-207 at a lower age than the age therein specified. (May 29, 1928, 45 Stat. 999, ch. 908, § 3.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-208, 36-215.

**§ 36-204. Employment of minors under sixteen years of age prohibited in certain occupations.**

No minor under sixteen years of age shall be employed, permitted, or suffered to work at any of the following occupations: (1) In the operation of any machinery operated by power other than hand or foot power; or (2) in oiling, wiping, or cleaning machinery or assisting therein. (May 29, 1928, 45 Stat. 999, ch. 908, § 4.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-203, 36-215.

**§ 36-205. Employment of minors under eighteen years of age prohibited in certain occupations—Employment of females under eighteen in certain occupations.**

No minor under eighteen years of age shall be employed, permitted, or suffered to work (1) at operating any freight or passenger elevator, or (2) in any quarry, tunnel, or excavation, or (3) in any tobacco warehouse or cigar or other factory or place where tobacco is manufactured or prepared. No girl under the age of eighteen years shall be employed, permitted, or suffered to work in any retail cigar or tobacco store, or in any hotel or for any apartment-house, or as an usher, attendant, or ticket seller in any theater or place of amusement, or as a messenger in the distribution or delivery of goods or messages for any person, firm, or corporation engaged in the business of transmitting or delivering messages. (May 29, 1928, 45 Stat. 999, ch. 908, § 5.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-203, 36-215.

**§ 36-206. Employment as messenger between ages of eighteen and twenty-one years prohibited during certain hours.**

No male between the ages of eighteen and twenty-one shall be employed, permitted, or suffered to work as a messenger for any person, firm, or corporation engaged in the business of transmitting or delivering messages before five o'clock in the morning or after twelve o'clock midnight of any day nor shall any female between the ages of eighteen and twenty-one be so employed before the hour of six o'clock in the morning, or after the hour of seven o'clock in the evening of any day. (May 29, 1928, 45 Stat. 1000, ch. 908, § 6.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-203, 36-215.

**§ 36-207. Employment or exhibition of minor under sixteen years of age as performer.**

No person having in his custody or control a minor under the age of sixteen years shall employ, exhibit, apprentice, sell, give away, or in any way dispose of such minor with a view to such minor being employed as an acrobat, or a gymnast, or a contortionist, or a ropewalker, or in any exhibition of like character, or as a beggar, or street singer, or street musician, or cause or procure such minor to be so engaged. (May 29, 1928, 45 Stat. 1000, ch. 908, § 7; Dec. 26, 1941, 55 Stat. 863, ch. 632, § 1.)

#### AMENDMENT

1941—Act Dec. 26, 1941, added the word "street" before the word "musician."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-203, 36-215.

**§ 36-207a. Work permits for minors between ages of fourteen and eighteen years authorized for stage appearances—Regulations.**

The Board of Education of the District of Columbia, or a duly authorized agent thereof, is authorized to issue a work permit to any minor under eighteen years of age, said permit authorizing and permitting the appearance of such minor on the stage of a duly licensed legitimate or vaudeville theater within the District of Columbia, in any professional travelling theatrical production, or act, or in a musical recital or concert: *Provided*, That such minor is at least seven years of age: *Provided further*, That such minor shall not appear on said stage in more than two performances in any one day, nor more than eight performances in any one week, and shall not appear on said stage after the hour of 11:30 postmeridian. Application for such permit should be made by the parent or guardian of such minor to the Board of Education of the District of Columbia or a duly authorized agent thereof, at such time as the Board may require. The Board or its agent may issue a permit if satisfied that the parent or guardian of such minor has made adequate provision for the educational instruction of such minor and for safeguarding his health and for the proper supervision of such minor.

The Board is authorized to promulgate such rules and regulations as may be necessary to protect properly the health, morals, and safety of minors coming within the purview of this chapter. (May



29, 1928, ch. 908, § 7a, as added Dec. 26, 1941, 55 Stat. 863, ch. 632, § 2, and amended July 3, 1952, 66 Stat. 329, ch. 569, § 1.)

#### AMENDMENT

1952—Act July 3, 1952, reduced age requirement from 14 to 7 years, deleted provisions requiring minor to have completed eight grades of elementary instruction or its equivalent and the restrictions on hours per performance by day and weeks, reduced the number of performances a week from twelve to eight, and substituted 11:30 postmeridian for 11:00 postmeridian.

#### § 36-208. Work or vacation permit—Procurement by employer.

No minor between fourteen and eighteen years of age shall be employed, permitted, or suffered to work in, about, or in connection with any gainful occupation, except in agricultural work or housework as specified in section 36-201, unless his employer procures and keeps on file and accessible to any attendance officer, inspector, or other person authorized to enforce this chapter a work or vacation permit issued as hereinafter prescribed, except that children between fourteen and eighteen years of age may be employed without a permit outside of school hours in irregular or casual work usual to the home of the employer: *Provided*, That such employment shall not be in connection with nor form a part of the business, trade, profession, or occupation of the employer: *And provided further*, That such employment shall not be specifically prohibited by any provision of this chapter or by any order issued under the authority of section 36-203. (May 29, 1928, 45 Stat. 1000, ch. 908, § 8.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 36-215.

#### § 36-209. Permit issued by director of school attendance and work permits—Contents—Record of applicants to be kept—List of permits granted or refused to be sent weekly to schools.

The work or vacation permit required by this chapter shall be issued only by the director of the department of school attendance and work permits created under the board of education according to the provisions of sections 31-211 to 31-213, or by any person duly authorized by said director, and shall state the name, sex, color, date, and place of birth, and place of residence of the minor, the grade last completed by said minor, and the kind of evidence of age accepted, and such other details as may be necessary for the identification of the minor. It shall certify that all the requirements for issuing a work or vacation permit under the provisions of this chapter have been fulfilled and shall be signed by the person issuing it. It shall state the name and address of the employer for whom and the nature of the specific occupation in which the work permit authorizes the minor to be employed, and no permit shall be valid except for the employer so named and for the occupation so designated. It shall bear a number, shall show the date of its issue, and shall be signed by the minor for whom it is issued in the presence of the person issuing it, and shall be mailed to the employer by the issuing officer, and in no case given to the minor. A record giving in full for each applicant the facts with reference to his sex, color, date, and place of birth, name and address of par-

ent, guardian, or custodian, name and address of employer, and nature of the specific occupation in which the minor is to be employed, grade and school last attended, evidence of age, and date of issuance or date of refusal of certificate, with reason, shall be kept in the department of school attendance and work permits, together with the physician's certificate of physical fitness, the school record, and the employer's statement of intention to employ the child. Lists shall be sent weekly to each school during the school term giving the names and addresses of all children from that school to whom permits have been issued or refused. (May 29, 1928, 45 Stat. 1000, ch. 908, § 9.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-210, 36-215.

#### § 36-210. Application for permit—Evidence required to be furnished—Physician's certificate—School record.

The officer authorized in section 36-209 to issue work or vacation permits shall issue such permits only upon the application in person of the minor desiring employment, accompanied, if said minor is under sixteen years of age, by his parent, guardian, or custodian, and after having received, examined, and approved and filed the following papers, namely:

(a) A statement signed by the prospective employer or by some one duly authorized on his behalf, stating that he expects to give such minor present employment, setting forth the specific nature of the occupation in which he intends to employ such minor, and the number of hours per day and of days per week which said minor shall be employed and agreeing to send the notice of the commencement of employment, and to return the permit according to the provisions of this chapter.

(b) Evidence of age as provided in section 36-211, showing that the minor is at least fourteen years of age.

(c) A certificate of physical fitness, if such minor is under sixteen years of age; otherwise no such certificate of physical fitness shall be required. Such certificate of physical fitness shall be signed by a medical inspector of the public schools of the District of Columbia, assigned by the Board of Health for such purpose. It shall show the height and weight of the minor and shall state that the said minor has been thoroughly examined by the said physician at the time of his application for a permit, has attained the normal development of a minor of his age and is in sound health, and is physically qualified for the employment specified in the statement submitted in accordance with the requirements of this chapter.

(d) A school record, if such minor is under sixteen years of age; otherwise no such record shall be required. Such school record shall be filled out and signed by the teacher of the class last attended by the minor and countersigned by the principal of the school, public, private, or parochial, which the minor has last attended or by some one duly authorized by him: *Provided*, That the signature of the teacher shall not be required in the case of a school record filled out during the summer vacation period of the public schools. It shall certify that the said minor



is able to read and write correctly sentences in the English language, has satisfactorily completed the eighth grade of the elementary school course prescribed for the public schools in the District of Columbia, or has regularly received in a private or parochial school instruction deemed equivalent by the Board of Education to that prescribed for the completion of the eighth grade in the public schools. Such school record shall give also the full name, date of birth, grade last completed, and residence of the minor as shown on the records of the school. (May 29, 1928, 45 Stat. 1001, ch. 908, § 10.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 36-215.

§ 36-211. Evidence of age.

The evidence of age required by this chapter shall consist of one of the following proofs of age, which shall be required in the order herein designated:

(a) A birth certificate or attested transcript issued by a registrar of vital statistics or other officer charged with the duty of recording births.

(b) A baptismal record or duly certified transcript thereof showing the date of birth and place of baptism of the minor.

(c) A bona fide contemporary record of the date and place of the child's birth kept in the Bible in which the records of the births in the family of the child are preserved, or other documentary evidence satisfactory to the director of the department of school attendance and work permits, such as a passport showing the age of the child, a certificate of arrival in the United States issued by the United States immigration officers and showing the age of the child, or a life-insurance policy: *Provided*, That such other satisfactory documentary evidence has been in existence at least one year prior to the time it is offered in evidence: *And provided further*, That a school record or a parent's, guardian's, or custodian's affidavit, certificate, or other written statement of age shall not be accepted except as specified in paragraph (d).

(d) A certificate of physical age, signed by a medical inspector of the public schools assigned by the Board of Health for such purposes and based upon a physical examination, which shall state the height and weight of such minor and other evidence upon which the opinion as to the age of such minor is founded. A parent's, guardian's, or custodian's affidavit of age, and a record of the age as given in the register of the school first attended by the minor, if obtainable, or in the earliest available school census, shall accompany the physician's certificate of age. And no work or vacation permit shall be issued if any of the above possible sources shows the minor to be under the age of fourteen.

The proof of age specified in subdivision (a) shall be accepted in preference to that specified in any subsequent subdivision, and no proof of age permitted by any subsequent subdivision shall be accepted unless there be received and filed substantial evidence that the proof required by the preceding subdivisions can not be obtained. Should such pre-

ferred proof of age be later procured, or if subsequent proof of age shall be procured and shall conclusively establish the falsity of the proof previously accepted, the director of the department of school attendance and work permits shall cancel the permit and issue or refuse a new one according to the age thus established. (May 29, 1928, 45 Stat. 1001, ch. 908, § 11.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-209, 36-210, 36-212, 36-215.

§ 36-212. Vacation permits.

The director of the department of school attendance and work permits, or any person duly authorized by him, shall have authority to issue a vacation permit to a minor between the age of fourteen and sixteen years, permitting employment during the regular summer vacation period of the public schools, or during the school term at such time as the public schools are not in session, if the age of such minor has been proved according to section 36-211, and such minor has in all other respects, except as to completion of the eighth grade, fulfilled the requirements for a work permit specified in this chapter. These permits shall be different in color from the work permit allowing employment while school is in session and shall state the periods during which its use is valid. (May 29, 1928, 45 Stat. 1002, ch. 908, § 12.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-209, 36-215.

§ 36-213. Employer to notify department at commencement and termination of employment of minor—Issuance of new certificates.

Every employer receiving a work or vacation permit shall notify the department in writing within three days of the time of the commencement of the employment of such minor, and within three days after termination of the employment shall return said permit to the department. Failure to so notify shall be cause for the cancellation of the permit; and failure to so return it shall be cause for the refusal of further permits upon the application of such employer. Returned permits shall be filed and the proper school authorities notified. A new certificate shall not be issued to any minor except upon presentation of a new promise of employment and a new certificate of physical fitness. (May 29, 1928, 45 Stat. 1002, ch. 908, § 13.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-209, 36-215.

§ 36-214. Employer to furnish, on demand, proof of age of employee.

Whenever any person authorized to enforce this chapter shall have reason to doubt that any minor employed in any occupation for which a permit is required by this chapter, and for whom a work permit or vacation permit is not on file, has reached the age of eighteen years, such person may make demand on such minor's employer that such employer shall either furnish him within ten days the evidence required for a work permit showing that the minor is in fact eighteen years of age, or shall refuse to employ or permit or suffer such child to



work. In case such evidence is not furnished to such person within ten days after such demand, the employer shall not thereafter continue to employ such minor or permit or suffer such minor to work in such establishment. Proof of the making of such demand and of failure to deliver such proof of age shall be prima facie evidence, in any prosecution brought for violation of this chapter, that such minor is under eighteen years of age and is unlawfully employed. (May 29, 1928, 45 Stat. 1002, ch. 908, § 14.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 36-215.

#### § 36-215. Penalties.

Whoever employs or permits or suffers any minor to be employed or to work in violation of any of the provisions of sections 36-201 to 36-214, or of any order issued under the provisions of section 36-203, or interferes with, obstructs, or hinders the department enforcing the child labor law, its officers or agents, or any other person authorized to inspect places of employment under this chapter and whoever, having under his control or custody any minor, permits or suffers him to be employed or to work in violation of any of the provisions of sections 36-201 to 36-214, shall for a first offense be punished by a fine of not less than \$25 nor more than \$100, or by imprisonment not less than ten days nor more than thirty days, or in the discretion of the court by both such fine and imprisonment, and for any subsequent offense shall be punished by a fine of not less than \$50 nor more than \$200, or by imprisonment not less than thirty days nor more than ninety days, or in the discretion of the court by both such fine and imprisonment. Every day during which any violation of this chapter continues shall constitute a separate and distinct offense. (May 29, 1928, 45 Stat. 1003, ch. 908, § 15.)

#### § 36-216. Director of department of school attendance and work permits to enforce law—Inspection of places in which minors are employed.

It shall be the duty of the director of the department of school attendance and work permits organized under the Board of Education of the District of Columbia and of the authorized inspectors and agents of said department to cause all the provisions of this chapter to be enforced, to make complaints against persons violating its provisions, and to prosecute violations of the same. The director of the said department, its inspectors, and agents are empowered and instructed to visit and inspect at any time, and as often as shall be necessary in order effectively to enforce the provisions of this chapter, all places where minors are employed, and shall have authority to enter any place or establishment covered by the terms of this chapter, and to have access to work or vacation permits kept on file by the employer and such other records as may aid in the enforcement of this chapter. All persons authorized to issue certificates of physical fitness and all attendance officers and probation officers are likewise empowered to visit and inspect at all reasonable hours all places where minors may be employed. (May 29, 1928, 45 Stat. 1003, ch. 908, § 16.)

#### CROSS REFERENCE

Director of department of school attendance and work permits, see §§ 31-211 to 31-213.

#### § 36-217. Limitations on employment in stuffing of newspapers—Sale of newspapers in streets—Distribution of papers on fixed routes.

No boy under sixteen years of age shall be employed in the stuffing of newspapers, nor shall the work of any boy between the ages of sixteen and eighteen so employed exceed forty hours in any one week, nor shall he be employed on more than one night in any one week. No boy under twelve years of age and no girl under eighteen years of age shall distribute, sell, expose, or offer for sale any newspapers, magazines, periodicals, or any other articles or merchandise of any description, or distribute handbills or circulars, in any street or public place, or exercise the trade of bootblack or any other trade, in any street or public place: *Provided*, That the provisions of this chapter shall not apply to boys ten years of age and over engaged in the distribution of newspapers, magazines, or periodicals on fixed routes. (May 29, 1928, 45 Stat. 1003, ch. 908, § 17.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-201, 36-202, 36-218 to 36-220, 36-222, 36-223.

#### § 36-218. Hours of employment—Work permit to be secured.

No boy under sixteen years of age shall work or shall be employed or permitted or suffered to work at any of the trades or occupations mentioned in section 36-217, in any street or public place after the hour of seven postmeridian or before the hour of six antemeridian, or, unless holding a work permit issued in accordance with the provisions of this chapter, during the hours when the public schools are in session. (May 29, 1928, 45 Stat. 1003, ch. 908, § 18.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-201, 36-222, 36-223.

#### § 36-219. Badge to be obtained.

No boy under sixteen years of age shall work at any time, or be employed or permitted or suffered to work at any time, in any of the trades or occupations mentioned in section 36-217, unless he shall have procured and shall carry on his person in plain sight while so working a badge as hereinafter provided, issued by the director of the department of school attendance and work permits, or some person duly authorized by him, and unless he complies with all the legal requirements concerning school attendance. (May 29, 1928, 45 Stat. 1004, ch. 908, § 19.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-201, 36-222, 36-223.

#### § 36-220. Street-trades badges—Evidence upon which issued.

The officer authorized by this chapter to issue street-trades badges shall issue such a badge only upon application of the minor desiring it, accompanied by the parent, guardian, or custodian of such minor, and after having received, examined, approved, and filed the following papers: (1) Evidence



that the minor is of the age required by section 36-217, which shall consist of the same evidence as is required for a work permit under this chapter; (2) evidence of physical fitness, which shall consist of a certificate of physical fitness issued as required for a work permit under this chapter; (3) a statement signed by the principal of the school and the teacher of the class which the minor is attending, stating that such minor is regularly enrolled in school and showing the grade such minor has attained, and certifying that in their opinion the minor is physically and mentally qualified to undertake the work contemplated without retarding his progress in school: *Provided*, That a work permit issued as required by this chapter may be accepted by the issuing officer in lieu of any other requirements for said badge. (May 29, 1928, 45 Stat. 1004, ch. 908, § 20.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-201, 36-222, 36-223.

#### § 36-221. Information to be contained on—Record to be kept—Badges not transferable—Principal of schools to keep list—Revocation if detrimental to minor—Badges to expire annually.

Such badge shall bear a number, and every such badge on its reverse side shall be signed in the presence of the officer issuing the same by the minor in whose name it is issued and shall contain the minor's address and date of birth and such other information as the officer issuing the same shall deem necessary. A complete record of badges issued and refused, and of the facts relating thereto, including the name and address of the parent, guardian, or custodian, the height and weight of the minor, the day, year, and month of birth of the minor, the date of issuance and kind of evidence of age accepted, and school grade and name of school attended, shall be kept in the office of the director of the department of school attendance and work permits. No minor to whom such badge is issued shall give, lend, sell, or otherwise transfer it to any other person, or be engaged in any of the trades or occupations mentioned in this section without having conspicuously on his person such badge, and he shall exhibit the same upon demand to any police or attendance officer, or to any person charged with the duty of enforcing this chapter. Lists shall be sent weekly to each school during the school term, giving the names and addresses of all minors to whom street trades badges have been issued and refused. The principal of each school shall keep a complete list of all minors in his school to whom badges, as herein required, have been issued, and whenever in the opinion of said principal the possession of any such permit and badge is detrimental to the school standing or well-being of any such minor, shall recommend to the officer issuing the same that the badge of such minor be revoked. All such badges shall expire annually on the 1st day of January. The color of the badge shall be changed each calendar year. (May 29, 1928, 45 Stat. 1004, ch. 908, § 21.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-201, 36-222, 36-223.

#### § 36-222. Penalties for violations of sections 36-217 to 36-224—Commitments to Board of Public Welfare—Probationary supervision—Revocation of badge.

Any minor who shall engage in any of the trades or occupations mentioned in section 36-217, in violation of any of the provisions of sections 36-217 to 36-224, shall for the first offense be warned by the director of the department of school attendance and work permits and the parent, guardian, or custodian of such minor shall be notified. For any subsequent violation, while under the care of said parent, guardian, or custodian, and with his or her knowledge, or consent, said minor may, in the discretion of the court, be deemed to be lacking in proper parental care and guardianship, and may on petition filed for that purpose, and in the discretion of the court, be committed to the Board of Public Welfare of the District of Columbia until twenty-one years of age or for a shorter period as the court may see fit, the said Board of Public Welfare being hereby expressly authorized and required to receive minors so committed. The court may, instead of immediate commitment, suspend the imposition or execution of judgment of commitment, or may, after partial hearing and instead of proceeding to judgment, suspend further proceedings without judgment, with the consent of the parent, guardian, or custodian of said minor, and in either event may assign a probation officer of the Family Division of the Superior Court to exercise probationary supervision over said minor, said probationary supervision to continue in force and the said minor to remain under the jurisdiction and control of the court as a ward of the court until said minor attains the age of seventeen years, or unless sooner discharged by order of the court or committed to said Board of Public Welfare, the court hereby being given power to withdraw said case from said probationary supervision at any time during said probation period, and after a hearing may commit said minor at once to the said board if, in the opinion of the court, the best interests and welfare of said minor shall so require. Upon the recommendation of the principal or chief executive officer of the school which said minor is attending or upon the complaint of any school attendance officer, or any officer authorized to enforce this chapter, the badge of any minor who violates any provision of this chapter, or who becomes delinquent, or who fails to comply with all the legal requirements concerning school attendance, may be revoked by the director of the department of school attendance and work permits for such period as the said officer may require; and upon revocation said officer shall so notify the parent, guardian, or custodian having such minor in charge, and it shall thereupon become the duty of said parent, guardian, or custodian to surrender or require said minor to surrender said badge to the said officer. After notice to such minor and his parent, guardian, or custodian of revocation of such badge, he shall be deemed to be in the same status as a minor without a badge. The refusal of any such minor to surrender his badge upon such revocation shall be deemed a violation of



this chapter. (May 29, 1928, 45 Stat. 1004, ch. 908, § 22; July 29, 1970, Pub. L. 91-358, title I, § 159(j) (1), 84 Stat. 578.)

#### AMENDMENT

1970—Section 159(j) (1) of Act July 29, 1970, Public Law 91-358 amended section by striking out "juvenile court" and inserting in lieu thereof "Family Division of the Superior Court."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### TRANSFER OF FUNCTION

Board of Public Welfare abolished and functions transferred, see note under section 3-102.

#### CROSS REFERENCE

General provisions concerning Board of Public Welfare, see § 3-101 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 36-201, 36-223.

§ 36-223. Persons selling merchandise to minor under sixteen years of age for resale or distribution in public place to ascertain that minor wears badge—Penalties.

Any person who either for himself or as agent of any other person, or of any firm, corporation, or company, furnishes or sells or offers for sale to any minor under sixteen any article of any description to be used for the purpose of sale or distribution in any public place, shall first ascertain that said minor wears his own badge in plain sight as herein provided, and if said minor has no badge, no article shall be furnished or sold to him. Any person who fails to comply with the foregoing provision, or who furnishes or sells or offers for sale to any minor any article of any description, with the knowledge that he intends to sell or distribute such article in violation of any provision of this chapter, or after having received written notice from any officer charged with the enforcement of this chapter, that such minor is selling such article in violation of any provision of said chapter, or any person who procures any minor to violate any provision of this chapter, shall for a first offense be punished by a fine of not less than \$25 nor more than \$100, or by imprisonment for not less than ten nor more than thirty days, or by both such fine and imprisonment, and for any subsequent offense shall be punished by a fine of not less than \$50 nor more than \$200, or by imprisonment for not less than thirty nor more than ninety days, or by both such fine and imprisonment. Whoever, having under his control or custody any minor, permits or consents to the violation by such minor of any of the provisions of sections 36-217 to 36-223, shall for a first offense be punished by a fine of not less than \$5 nor more than \$100, or by imprisonment of not less than five nor more than thirty days, or by both such fine and imprisonment, and for any subsequent offense shall be punished by a fine of not less than \$10 nor more than \$100, or by imprisonment for not less than ten nor more than sixty days, or by both such fine and imprisonment. (May 29, 1928, 45 Stat. 1005, ch. 908, § 23.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-201, 36-222.

§ 36-224. Loitering around salesrooms of newspapers prohibited during school hours.

No boy under the age of sixteen years required by law to attend school shall be permitted by any newspaper publisher or printer or person having for sale newspapers or periodicals of any character, to loiter or remain around any salesroom, assembly room, circulation room, or office for the sale of newspapers, between the hours of the opening of school in the forenoon and the close of school in the afternoon, on days when school is in session. Any newspaper publisher, printer, circulation agent, or seller of newspapers shall, upon conviction of permitting newsboys to loiter or remain around any assembly room, circulation room, salesroom, or office where papers are distributed or sold during such hours, be punished by a fine of not less than \$25 nor more than \$100, or by imprisonment for not less than ten days or more than thirty days. (May 29, 1928, 45 Stat. 1006, ch. 908, § 24.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-201, 36-222.

§ 36-225. Board of Education to appoint inspectors—Appointments, how made.

The Board of Education of the District of Columbia is hereby authorized, empowered, and directed to appoint such a number of inspectors, clerks, and other assistants as shall be necessary to carry out the provisions of this chapter: *Provided*, That at least two inspectors shall be so appointed. Such appointments shall be made from a list of applicants obtained from open competitive examinations conducted by the Boards of Examiners of the Board of Education designed to test the fitness of the applicant for the duties to be performed. (May 29, 1928, 45 Stat. 1006, ch. 908, § 25.)

§ 36-226. Separability of provisions.

If any provision of this chapter or the application of such provision to certain circumstances be held invalid, the remainder of this chapter and the application of such provision to circumstances other than those as to which it is held invalid shall not be affected thereby. (May 29, 1928, 45 Stat. 1006, ch. 908, § 28.)

§ 36-227. Board of Education to supervise and have appellate jurisdiction over agents and employees.

The Board of Education shall exercise general supervision and appellate jurisdiction over the agents and employees of said board engaged in the execution of this chapter. (May 29, 1928, 45 Stat. 1006, ch. 908, § 29.)

§ 36-228. Family Division of Superior Court has jurisdiction.

The Family Division of the Superior Court of the District of Columbia is hereby given jurisdiction in all cases arising under this chapter. (May 29, 1928, 45 Stat. 1006, ch. 908, § 26; July 29, 1970, Pub. L. 91-358, title I, § 159(j) (2), 84 Stat. 578.)

#### AMENDMENT

1970—Section 159(j) (2) of Act July 29, 1970, Public Law 91-358 amended section by striking out "juvenile court" and inserting in lieu thereof "Family Division of the Superior Court".



## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

## Chapter 3.—EMPLOYMENT OF WOMEN

Sec.

- 36-301. Employment of females—Period of employment.
- 36-302. Hours of employment.
- 36-303. Hours of continuous labor restricted.
- 36-304. Notice to be posted—Allowance for meals.
- 36-305. Time book to be kept.
- 36-306. Inspectors—Appointment.
- 36-307. Inspectors authorized to enter buildings.
- 36-308. Inspectors to enforce law—Reports.
- 36-309. Penalties.
- 36-309a. Exceptions as to requirements of certain sections, and as to keeping records of hours worked.
- 36-310. Employes to furnish seats for female employees.
- 36-311. Penalty.

## § 36-301. Employment of females—Period of employment.

No female shall be employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or telegraph or telephone establishment or office, or by any express or transportation company in the District of Columbia more than eight hours in any one day or more than six days or more than forty-eight hours in any one week: *Provided*, That the Minimum Wage and Industrial Safety Board of the District of Columbia, during the period ending June 30, 1946, or such earlier date as the Congress by concurrent resolution may determine, may issue to employers engaged in businesses or occupations specified in this section, upon satisfactory showing to the said Board that such action is essential to the war effort, a temporary permit, for such period of time and in such form as it may deem advisable, to employ females for more than eight hours in any one day, or more than forty-eight hours, but not to exceed fifty-four hours, in any one week: *Provided further*, That in cases where said Board has issued permits under this section the employer shall pay employees working under such permits an additional sum at the rate of time and one-half for the time they are employed in excess of the limitations under existing law. A true and correct copy of all permits issued pursuant to the authority granted herein shall be displayed by the employer in a prominent place, and in such case the employer shall not be required to post the notice required in section 36-304. (Feb. 24, 1914, 38 Stat. 291, ch. 28, § 1; June 1, 1943, 57 Stat. 93, ch. 109; Apr. 27, 1945, 59 Stat. 95, ch. 97).

## AMENDMENTS

1945—Act Apr. 27, 1945, substituted "June 30, 1946" for "June 30, 1945" in first proviso.

1943—Act June 1, 1943, added the two provisos relating to issuance of temporary permits extending hours of work, compensation for such extension and the last sentence providing for display of such permits.

## TRANSFER OF FUNCTIONS

The Minimum Wage and Industrial Safety Board was abolished and functions transferred, see Cross Reference note under § 36-402.

## CROSS REFERENCES

Fair Labor Standards Act, see 29 U.S.C §§ 201-219.  
Wages for women, see § 36-408 et seq.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-302 to 36-309a.

## § 36-302. Hours of employment.

No female under eighteen years of age shall be employed or permitted to work in or in connection with any of the establishments or occupations named in section 36-301 before the hour of seven o'clock in the morning or after the hour of six o'clock in the evening of any one day. (Feb. 24, 1914, 38 Stat. 291, ch. 28, § 2.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-304 to 36-309.

## NOTES TO DECISIONS

Government Printing Office employees

This act is not applicable to female employees in Government Printing Office (33 O. A. G. 355).

## § 36-303. Hours of continuous labor restricted.

No female shall be employed or permitted to work for more than six hours continuously at one time in any establishment or occupation named in section 36-301 in which three or more such females are employed without an interval of at least three-quarters of an hour; except that such female may be so employed for not more than six and one-half hours continuously at one time if such employment ends not later than half past one o'clock in the afternoon and if she is then dismissed for the remainder of the day. (Feb. 24, 1914, 38 Stat. 291, ch. 28, § 3.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-304 to 36-309a.

## § 36-304. Notice to be posted—Allowance for meals.

Every employer shall post and keep posted in a conspicuous place in every room in any establishment or occupation named in section 36-301 in which any females are employed a printed notice stating the number of hours such females are required or permitted to work on each day of the week, the hours of beginning and stopping such work, and the hours of beginning and ending the recess allowed for meals. The printed form of such notice shall be furnished by the inspectors authorized by sections 36-301 to 36-309. The employment of any such female for a longer time in any day than that stated in the printed notice shall be deemed a violation of the provisions of this section. Where the nature of the business makes it impracticable to fix the recess allowed for meals at the same time for all females employed, the inspectors authorized to enforce sections 36-301 to 36-309 may issue a permit dispensing with the posting of the hours when the recess allowed for meals begins and ends, and requiring only the posting of the total number of hours which the females are required or permitted to work on each day of the week and the hours of beginning and stopping such work. Such permit shall be kept by such employer upon such premises and exhibited to all inspectors authorized to enforce sections 36-301 to 36-309. (Feb. 24, 1914, 38 Stat. 291, ch. 28, § 4.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-301, 36-305 to 36-309a.

## § 36-305. Time book to be kept.

Every employer shall keep a time book or record for every female employed in any establishment or



occupation named in section 36-301, stating the wages paid, the number of hours worked by her on each day of the week, the hours of beginning and stopping such work, and the hours of beginning and ending the recess allowed for meals. Such time book or record shall be open at all reasonable hours to the inspection of the officials authorized to enforce sections 36-301 to 36-309. Any employer who fails to keep such record as required by this section, or makes any false statement therein, or refuses to exhibit such time book or record, or makes any false statement to an official authorized to enforce sections 36-301 to 36-309 in reply to any question put in carrying out the provisions of sections 36-301 to 36-309 shall be liable for a violation thereof. (Feb. 24, 1914, 38 Stat. 291, ch. 28, § 5.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-304, 36-306 to 36-309a.

#### § 36-306. Inspectors—Appointment.

The Commissioner of the District of Columbia is hereby authorized to appoint three inspectors, two of whom shall be women, to carry out the purposes of sections 36-301 to 36-309. (Feb. 24, 1914, 38 Stat. 291, ch. 28, § 6.)

#### CODIFICATION

Provision for "compensation not exceeding \$1,200 each per annum" was omitted as governed by the provisions of the Classification Act of 1949, now 5 U.S.C. 5101 et seq., and 5331 et seq.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-304, 36-305, 36-307 to 36-309.

#### § 36-307. Inspectors authorized to enter buildings.

The inspectors authorized by sections 36-301 to 36-309 may in the discharge of their duties enter any place, building, or room where any labor is being performed by females which is affected by the provisions of sections 36-301 to 36-309 whenever such inspectors may have reasonable cause to believe that any such labor is being performed therein. (Feb. 24, 1914, 38 Stat. 291, ch. 28, § 7.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-304 to 36-306, 36-308, 36-309.

#### § 36-308. Inspectors to enforce law—Reports.

The inspectors authorized by sections 36-301 to 36-309 shall visit and inspect the establishments and places of employment named in section 36-301 as often as practicable, during reasonable hours, and shall cause the provisions of sections 36-301 to 36-309 to be enforced therein and also the provisions of sections 36-310, 36-311. They shall make a daily report to the Commissioner of the District of Columbia, and also report any cases of illegal employment contrary to the provisions of sections 36-301 to 36-309 to the corporation counsel of the District of Columbia. (Feb. 24, 1914, 38 Stat. 292, ch. 28, § 8.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-304 to 36-307, 36-309.

#### § 36-309. Penalties.

Any person who violates or does not comply with any of the provisions of sections 36-301 to 36-309 shall upon conviction be punished for a first offense by a fine of not less than \$20 nor more than \$50; for a second offense, by a fine of not less than \$50 nor more than \$200; for a third offense, by a fine of not less than \$250. (Feb. 24, 1914, 38 Stat. 292, ch. 28, § 9.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-304 to 36-308.

#### NOTES TO DECISIONS

##### Evidence

In prosecution against employer for working employees in violation of this chapter, oral testimony of inspector for Minimum Wage and Industrial Safety Board as to contents of payroll record prepared by employer was inadmissible, where payroll record was the best and only source of knowledge of the violations charged, record was kept pursuant to § 36-305 and was quasi-public in character and open to government inspection and so could have been used by government without violating constitutional prohibition against self-incrimination, and the records were actually in court and immediately accessible to the prosecution. *Anderson v. District of Columbia* (D. C. Mun. App. 1946, 48 A. 2d 710).

In prosecution against employer for failure to keep proper time records of hours worked by employees in violation of § 36-305, testimony of inspector for Minimum Wage and Industrial Safety Board, based on owner's admission and not on inspection by witness, as to total absence of such records, was admissible without regard to the parol evidence rule. *Id.*

##### Imprisonment

A defendant convicted for violation of § 36-305 could be sentenced to prison in event of default in payment of fines, notwithstanding that this section provided for fines only, in view of § 11-606 authorizing commitment of defendant in default of payment of fine imposed. *Anderson v. District of Columbia* (D. C. Mun. App. 1946, 48 A. 2d 710).

##### Inspectors' failure to report

The failure of inspector who inspected records of employer to make daily reports to Commissioners of District of Columbia, as required by § 36-308, did not preclude prosecution of employer for working employees in violation of this chapter and for failure to keep the time records of hours worked by employees as required by § 36-305. *Anderson v. District of Columbia* (D. C. Mun. App. 1946, 48 A. 2d 710).

#### § 36-309a. Exceptions as to requirements of certain sections, and as to keeping records of hours worked.

The requirements of sections 36-301, 36-303, and 36-304, and so much of section 36-305 as relates to keeping records of hours worked, shall not be applicable in the case of a person employed in a bona fide executive, administrative, or professional capacity, or in the capacity of an outside salesperson, as such terms may from time to time be defined in regulations which the District of Columbia Council is hereby authorized to adopt and promulgate, except that this sentence shall not be construed as relieving an employer from keeping records relating to the



compensation paid any such person. (Feb. 24, 1914, ch. 28, § 10 as added Oct. 15, 1966, 80 Stat. 970, Pub. L. 89-684, § 3.)

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(280) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of adopting and promulgating regulations defining terms under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-304 to 36-309.

### § 36-310. Employers to furnish seats for female employees.

All persons who employ females in stores, shops, offices, or manufactories as clerks, assistants, operatives, or helpers in any business, trade, or occupation carried on or operated by them in the District of Columbia, shall be required to procure and provide proper and suitable seats for all such females and shall permit the use of such seats, rests, or stools, as may be necessary, and shall not make any rules, regulations, or orders preventing the use of such stools or seats when any such female employees are not actively employed in their work in such business or employment. (Mar. 2, 1895, 28 Stat. 964, ch. 192, § 1.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-308, 36-311.

### § 36-311. Penalty.

If any employer of female help in the District of Columbia, shall neglect or refuse to provide seats, as provided in sections 36-310 and 36-311, or shall make any rules, orders, or regulations in his shop, store, or other place of business, requiring females to remain standing when not necessarily employed in service or labor therein, he shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be liable to a fine therefor in a sum not to exceed twenty-five dollars, with costs, in the discretion of the court. (Mar. 2, 1895, 28 Stat. 964, ch. 192, § 2.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 36-308.

## Chapter 4.—MINIMUM WAGES AND INDUSTRIAL SAFETY

### SUBCHAPTER I.—MINIMUM WAGES

Sec.

- 36-401. Findings and declaration of policy.
- 36-402. Definitions.
- 36-403. Minimum wage and overtime compensation—Workweek—Wage orders.
- 36-404. Exemptions of certain employees from minimum wage and overtime provisions of section 36-403.
- 36-405. Powers and duties of Commissioner—Investigations—Statements from employers.
- 36-406. Reconsideration and revision of wage orders—Ad hoc committees—Committee reports of findings and recommendations—Failure to report.
- 36-407. Issuance of revised wage orders—Notice and hearing—Notice and effective date of orders—Contents of orders—Restrictions.
- 36-408. Regulations of Council—Contents—Notice and hearing—Effective date.

Sec.

- 36-409. Judicial review of orders—Procedure—Scope of review—Additional evidence—Modification of or setting aside findings or orders—Stay pending determination of proceedings.
- 36-410. Authority of Commissioner to take testimony and issue subpoenas—Punishment for contempt.
- 36-411. Records of employers—Availability for inspection—Sworn statements—Statements to employees.
- 36-412. Posting of law and wage orders—Commissioner to furnish copies.
- 36-413. Prohibited acts.
- 36-414. Penalties for violations—Jurisdiction—Prosecutions.
- 36-415. Employee remedies—Liability of employer—Liquidated damages—Actions—Parties—Attorney fees and costs—Defenses—Assignment of claim—Supervision of payment—Waiver.
- 36-416. Statute of limitations.
- 36-417. Right of collective bargaining.
- 36-418. Separability of provisions.
- 36-419. Short title.
- 36-420 to 36-422. Omitted.

### SUBCHAPTER II.—INDUSTRIAL SAFETY

- 36-431. Purpose of subchapter.
- 36-432. Definitions.
- 36-433. Additional duties of Board under this subchapter.
- 36-434. Rules and regulations—Public hearing—Publication—Effective date.
- 36-435. Authority to take testimony—Subpoena.
- 36-436. Variations by employers from regulations.
- 36-437. Employment of Director of Industrial Safety—Compensation—Duties.
- 36-438. Employers' duties—Furnish safe place of employment—Furnish required information—Report employees' injury, death, or disease—Record of employees.
- 36-439. Authority to examine place of employment.
- 36-440. Office space and supplies for Board.
- 36-441. Annual report to Commissioner.
- 36-442. Penalties for violations of subchapter—Jurisdiction.

#### CODIFICATION

The District of Columbia Minimum Wage Law for women and minors, act of Sept. 19, 1918, 40 Stat. 960, ch. 174, prior to the designation of its then existing provisions by act Oct. 14, 1941, 55 Stat. 738, ch. 438, § 2, as "Title I" of such 1918 act, and long before its general amendment by act Oct. 15, 1966, 80 Stat. 961, Pub. L. 89-684, § 1, which in effect established a new minimum wage law for the District of Columbia, was held unconstitutional in the case of *Atkins v. Children's Hosp.* (1923) 261 U.S. 525, 43 S. Ct. 394, 67 L. Ed. 785, 24 A.L.R. 1238. In 1937 the decision in that case was expressly overruled and a law of similar import, enacted by the State of Washington, was declared constitutional, the case of *Morehead v. New York ex rel. Tipaldo* (1936) 298 U.S. 587, 56 S. Ct. 918, 80 L. Ed. 1347, 103 A.L.R. 1445, being distinguished. *West Coast Hotel Co. v. Parrish* (1937) 300 U.S. 379, 57 S. Ct. 578, 81 L. Ed. 703, 108 A.L.R. 1330.

On the theory that the last-mentioned case revitalized the said act of Sept. 19, 1918, it was incorporated in this Code, and now, as amended, constitutes this subchapter. As stated, the effect of the general amendment by act Oct. 15, 1966, was to establish a new minimum wage law for the District. See 1966 amendment note below.

#### AMENDMENT

1966—Act Oct. 15, 1966, 80 Stat. 961—970, Pub. L. 89-684, § 1, amended generally title I of act Sept. 19, 1918, 40 Stat. 960—964, ch. 174, classified, except for § 7 of that act, to §§ 36-401 to 36-422 of this Code, primarily to extend the minimum wage coverage to men, to embrace occupations not theretofore covered, to establish minimum and overtime wage rates, and to fix an ultimate workweek of 40 hours. The amendment reduced the number of sections in this subchapter from 22 to 19, the latter classified as §§ 36-401 to 36-419 herein, and the effect of the



amendment was to substitute a new minimum wage law for the provisions that were contained in said title I of the act of Sept. 19, 1918. Sections 36-401 to 36-422, containing said title I of the act of Sept. 19, 1918, as amended, but prior to its amendment by said act Oct. 15, 1966, are set out in note below.

Following those sections set out in note form, §§ 36-401 to 36-419, as generally amended by said act Oct. 15, 1966, and stating the present law on the subject of minimum wages in the District, are set out.

Sections 36-420 to 36-422 were omitted in the general amendment by such act.

#### § 36-401. Definitions.

Where used in this subchapter—

The term "Board" means the Minimum Wage and Industrial Safety Board created by section 36-402;

The term "commissioners" means the commissioners of the District of Columbia;

The term "woman" includes only a woman of eighteen years of age or over;

The term "minor" means a person of either sex under the age of eighteen years;

The term "occupation" includes a business, industry, trade, or branch thereof, but shall not include domestic service. (Sept. 19, 1918, 40 Stat. 960, ch. 174, title I, § 1; Oct. 14, 1941, 55 Stat. 733, ch. 438, § 1.)

#### § 36-402. Minimum Wage and Industrial Safety Board—Members—Quorum.

There is hereby created a board to be known as the "Minimum Wage and Industrial Safety Board," to be composed of three members to be appointed by the commissioners of the District of Columbia. As far as practicable, the members shall be so chosen that one will be representative of employees, one representative of employers, and one representing the public.

The commissioners shall make their first appointments hereunder within thirty days after September 19, 1918, and shall designate one of the three members first appointed to hold office until January 1, 1919; one to hold office until January 1, 1920; and one to hold office until January 1, 1921. On or before the first day of January of each year, beginning with the year 1919, the commissioners shall appoint a member to succeed the member whose term expires on such first day of January, and such new appointee shall hold office for the term of three years from such first day of January. Each member shall hold office until his successor is appointed and has qualified; and any vacancy that may occur in the membership of the board shall be filled by appointment by the commissioners from the unexpired portion of the term.

A majority of the members shall constitute a quorum to transact business, and the act or decision of such a majority shall be deemed the act or decision of the board; and no vacancy shall impair the right of the remaining members to exercise all the powers of the board. (Sept. 19, 1918, 40 Stat. 961, ch. 174, title I, § 2; Oct. 14, 1941, 55 Stat. 738, ch. 438, § 1.)

[The Minimum Wage and Industrial Safety Board, created by these former provisions of this section, was abolished and its functions transferred to the Commissioners of the District of Columbia, who in turn re-established the Board by reorganization order (and delegated to it certain of their functions so transferred. See 1952 Reorg. Plan No. 5, set out in app. I to title I of this Code, and Reorg. Order No. 36 of the Commissioners, June 16, 1953, as amended, set out in app. II to such title.)]

#### § 36-403. Officers—Compensation.

The first members appointed shall, within twenty days after their appointment, meet and organize the board by electing one of their number as chairman and by choosing a secretary, who shall not be a member of the board; and on or before the 10th day of January of each year thereafter the board shall elect a chairman and choose a secretary for the ensuing year. The chairman and the secretary shall each hold office until his successor is elected or chosen; but the board may at any time remove the secretary. The secretary shall perform such duties as may be prescribed. The compensation of the secretary and all other employees of the board shall be fixed in accordance with the provisions of the Classification Act of 1949, as amended. None of the members shall

receive any salary as such. The board shall have power to employ agents and such other assistants as may be necessary for the proper performance of its duties: *Provided*, That until further authorization by Congress, the sum which it may expend, including the salary of the secretary, shall not exceed the sum of \$5,000. (Sept. 19, 1918, 40 Stat. 961, ch. 174, title I, § 3; June 16, 1938, 52 Stat. 758, ch. 474; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a).)

#### § 36-404. Authority to take testimony—Subpoenas.

At any public hearing held by the board any person interested in the matter being investigated may appear and testify. Any member of the board shall have power to administer oaths and the board may require by subpoena the attendance and testimony of witnesses, the production of all books, registers and other evidence relative to any matters under investigation, at any such public hearing or at any session of any conference held as herein after provided. In case of disobedience to a subpoena the board may invoke the aid of the United States District Court for the District of Columbia in requiring the attendance and testimony of witnesses and the production of documentary evidence. In case of contumacy or refusal to obey a subpoena the court may issue an order requiring appearance before the board, the production of documentary evidence, and the giving of evidence touching the matter in question, and any failure to obey such order of the court may be punished by such court as a contempt thereof. (Sept. 19, 1918, 40 Stat. 961, ch. 174, title I, § 4; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

#### § 36-405. Regulations.

The board is hereby authorized and empowered to make rules and regulations for the carrying into effect of this subchapter, including rules and regulations for the selection of members of the conferences hereinafter provided for and the mode of procedure thereof. (Sept. 19, 1918, 40 Stat. 962, ch. 174, title I, § 5.)

#### § 36-406. Annual report.

The board shall, on or before the 1st day of January of the year 1919, and of each year thereafter, make a report to the commissioners of its work and the proceedings under this subchapter. (Sept. 19, 1918, 40 Stat. 962, ch. 174, title I, § 6.)

[In the original, that is, in the act of Sept. 19, 1918, ch. 174, there followed, after § 6 (§ 36-406, above), § 7 of such act (40 Stat. 962), which was not classified to this Code, and which provided as follows: "Sec. 7. That there is hereby authorized to be appropriated, out of the revenues of the District of Columbia, for the fiscal year ending June thirtieth, nineteen hundred and nineteen, the sum of \$5,000, or so much thereof as may be necessary, to carry into effect the provisions of this Act."]

#### § 36-407. Authority concerning wages of women and minors.

The board shall have full power and authority: (1) To investigate and ascertain the wages of women and minors in the different occupations in which they are employed in the District of Columbia; (2) to examine, through any member or authorized representative, any book, pay roll or other record of any employer of women or minors that in any way appertains to or has a bearing upon the question of wages of any such women or minors; and (3) to require from such employer full and true statements of the wages paid to all women and minors in his employment.

Every employer shall keep a register of the names of the women and minors employed by him in any occupation in the District of Columbia, of the hours worked by each, and of all payments made to each, whether paid by the time or by the piece; and shall, on request, permit any member or authorized representative of the Board to examine such register.

To assist the Board in carrying out this chapter the Commissioners shall at all times give it any information or statistics in their possession under sections 36-301 to 36-309. (Sept. 19, 1918, 40 Stat. 962, ch. 174, title I, § 8.)

#### § 36-408. Standards of wages to be declared.

The Board is hereby authorized and empowered to ascertain and declare, in the manner hereinafter provided, the following things: (a) Standards of minimum wages



for women in any occupation within the District of Columbia, and what wages are inadequate to supply the necessary cost of living to any such women workers to maintain them in good health and to protect their morals; and (b) standards of minimum wages for minors in any occupation within the District of Columbia, and what wages are unreasonably low for any such minor workers. (Sept. 19, 1918, 40 Stat. 962, ch. 174, title § 9.)

**§ 36-409. Conference on inadequate wages.**

If, after investigation, the Board is of opinion that any substantial number of women workers in any occupation are receiving wages inadequate to supply them with the necessary cost of living and maintain them in health and protect their morals, it may call and convene a conference for the purpose and with the powers of considering and inquiring into and reporting on the subject investigated by the Board and submitted by it to such conference. The conference shall be composed of not more than three representatives of the employers in such occupation, of an equal number of representatives of the employees in such occupation, of not more than three disinterested persons representing the public, and of one or more members of the Board. The Board shall name and appoint all the members of the conference and designate the chairman thereof. Two-thirds of the members of the conference shall constitute a quorum, and the decision or recommendation or report of the conference on any subject submitted shall require a vote of not less than a majority of all its members.

The Board shall present to the conference all the information and evidence in its possession or control relating to the subject of the inquiry by the conference, and shall cause to be brought before the conference any witnesses whose testimony the Board deems material. (Sept. 19, 1918, 40 Stat. 962, ch. 174, title I, § 10.)

**§ 36-410. Report of findings and recommendations.**

After completing its consideration of and inquiry into the subject submitted to it by the Board, the conference shall make and transmit to the Board a report containing its findings and recommendations on such subject, including recommendations as to standards of minimum wages for women workers in the occupation under inquiry and as to what wages are inadequate to supply the necessary cost of living to women workers in such occupation and to maintain them in health and to protect their morals.

In its recommendations on a question of wages the conference (1) shall, where it appears that any substantial number of women workers in the occupation under inquiry are being paid by piece rates as distinguished from time rate, recommend minimum piece rates as well as minimum time rate and recommend such minimum piece rates as will, in its judgment, be adequate to supply the necessary cost of living to women workers in such occupation of average ordinary ability and to maintain them in health and protect their morals; and (2) shall, when it appears proper or necessary, recommend suitable minimum wages for learners and apprentices in such occupation and the maximum length of time any woman worker may be kept at such wages as a learner or apprentice, which wages shall be less than the regular minimum wages recommended for the regular women workers in such occupation. (Sept. 19, 1918, 40 Stat. 963, ch. 174, title I, § 11.)

**§ 36-411. Action of Board—Public hearings.**

Upon receipt of any report from any conference, the Board shall consider and review the recommendations, and may approve or disapprove any or all of such recommendations, and may resubmit to the same conference, or a new conference, any subject covered by any recommendations so disapproved.

If the Board approves any recommendations contained in any report from any conference, it shall publish a notice, once a week, for four successive weeks in a newspaper of general circulation printed in the District of Columbia, that it will, on a date and at a place named in the notice, hold a public hearing at which all persons in favor of or opposed to such recommendations will be heard.

After such hearing the Board may, in its discretion, make and render such an order as may be proper or necessary to adopt such recommendations and carry

them into effect, requiring all employers in the occupation affected thereby to observe and comply with such order. Such order shall become effective sixty days after it is made. After such order becomes effective, and while it is effective, it shall be unlawful for any employer to violate or disregard any of its terms or provisions, or to employ any woman worker in any occupation covered by such order at lower wages than are authorized or permitted therein.

The Board shall, as far as is practicable, mail a copy of such order to every employer affected thereby; and ever employer affected by any such order shall keep a copy thereof posted in a conspicuous place in each room in his establishment in which women workers are employed. (Sept. 19, 1918, 40 Stat. 963, ch. 174, title I, § 12.)

**§ 36-412. Licenses for less than time-rate standard.**

For any occupation in which only a minimum time-rate wage has been established, the board may issue to a woman whose earning capacity has been impaired by age or otherwise, a special license authorizing her employment as such wage less than such minimum time-rate wage as shall be fixed by the Board and stated in the license. (Sept. 19, 1918, 40 Stat. 963, ch. 174, title I, § 13.)

**§ 36-413. Determination of minimum wages for minors.**

The board may at any time inquire into wages of minors employed in any occupation in the District of Columbia, and determine suitable wages for them. When the board has made such determination it may make such an order as may be proper or necessary to carry such determination into effect. Such order shall become effective sixty days after it is made; and after such order becomes effective and while it is effective it shall be unlawful for any employer in such occupation to employ a minor at less wages than are specified or required in or by such order. (Sept. 19, 1918, 40 Stat. 963, ch. 174, title I, § 14.)

**§ 36-414. Separate inquiries.**

Any conference may make a separate inquiry into and report on any branch of any occupation, and the board may make a separate order affecting any branch of any occupation. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 15.)

**§ 36-415. Investigations.**

The board shall from time to time investigate and ascertain whether or not employers in the District of Columbia are observing and complying with its orders, and shall report to the corporation counsel of the District of Columbia all violations of this chapter. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 16.)

**§ 36-416. Decisions of fact by board final—Appeals on questions of law.**

All questions of fact arising under the foregoing provisions of this subchapter shall, except as otherwise herein provided, be determined by the board, and there shall be no appeal from the decision of the board on any such question of fact; but there shall be a right of appeal from the board to the United States District Court for the District of Columbia from any ruling or holding on a question of law included or embodied in any decision or order of the board; and, on the same question of law, from such court to the United States Court of Appeals for the District of Columbia. In all such appeals the corporation counsel shall appear for and represent the board. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 17; June 7, 1934, 48 Stat. 926, ch. 426; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

**§ 36-417. Penalties for violations.**

Whoever violates this subchapter, whether an employer or his agent, or the director, officer, or agent of any corporation, shall be deemed guilty of a misdemeanor; and, upon conviction thereof, shall be punished by a fine of not less than \$25 nor more than \$100 or by imprisonment not less than ten days nor more than three months, or by both such fine and imprisonment. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 18.)

**§ 36-418. Penalties for discrimination by employer against employee who testifies.**

Any employer and his agent, or the director, officer, or agent of any corporation who discharges or in any other manner discriminates against any employee because



such employee has served or is about to serve on any conference or has testified or is about to testify, or because such employer believes that said employee may serve on any conference or may testify in any investigation or proceedings under or relative to this subchapter shall be deemed guilty of a misdemeanor; and, upon conviction thereof, shall be punished by a fine of not less than \$25 nor more than \$100. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 19.)

§ 36-419. Employers responsible for acts of agents.

Any act which, if done or omitted to be done by any agent or officer or director acting for such employer, would constitute a violation of this subchapter, shall also be held to be a violation by the employer and subject such employer to the liability provided for by this subchapter. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 20.)

§ 36-420. Jurisdiction of District of Columbia Court of General Sessions.

Prosecutions for violations of this subchapter shall be on information filed in the District of Columbia Court of General Sessions by the corporation counsel. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 21; April 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1.)

§ 36-421. Civil action to recover if less than minimum wage paid.

If any woman worker is paid by her employer less than the minimum wage to which she is entitled under or by virtue of an order of the board, she may recover in a civil action the full amount of such minimum wage, less any amount actually paid to her by the employer, together with such reasonable attorney's fees as may be allowed by the court; and any agreement for her to work for less than such minimum wage shall be no defense to such action. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 22.)

§ 36-422. Short title—Purpose.

This chapter shall be known as the "District of Columbia Minimum-Wage Law." The purposes of the subchapter are to protect the women and minors of the District from conditions detrimental to their health and morals, resulting from wages which are inadequate to maintain decent standards of living; and the chapter in each of its provisions and in its entirety shall be interpreted to effectuate these purposes. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 23.)

## SUBCHAPTER I.—MINIMUM WAGES

Sections 36-401 et seq., as generally amended by act Oct. 15, 1966, Pub. L. 89-684, and stating the present law relating to minimum wages in the District, are set out below.

### SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 36-433.

### § 36-401. Findings and declaration of policy.

(a) The Congress hereby finds that there are persons employed in some occupations in the District of Columbia at wages insufficient to provide adequate maintenance and to protect health. Such employment impairs the health, efficiency, and well-being of the persons so employed, constitutes unfair competition against other employers and their employees, threatens the stability of industry, reduces the purchasing power of employees, and requires in many instances, that their wages be supplemented by the payment of public moneys for relief of other public and private assistance. Employment of persons at these insufficient rates of pay threatens the health and well-being of the people of the District of Columbia and injures the overall economy.

(b) It is hereby declared to be the policy of this subchapter to correct and as rapidly as practicable to eliminate the conditions referred to above. (Sept.

19, 1918, 40 Stat. 960, ch. 174, title I, § 1; Oct. 14, 1941, 55 Stat. 738, ch. 438, § 1; Oct. 5, 1966, 80 Stat. 961, Pub. L. 89-684, § 1.)

### AMENDMENTS

1966—Act Oct. 15, 1966, substituted entirely different provisions. See 1966 amendment note preceding this section. Former provisions (§ 1 of 1918 act) set out definitions.

1941—Act Oct. 14, 1941, changed name of Minimum Wage Board to Minimum Wage and Industrial Safety Board, in former provisions of this section. See 1966 amendment note above, also 1966 amendment note preceding this section.

### EFFECTIVE DATE OF 1966 AMENDMENT

Section 4 of act Oct. 15, 1966, 80 Stat. 971, Pub. L. 89-684, provided:

"(a) Except as provided in subsection (b), the amendments made by this Act [amending this subchapter generally (see 1966 amendment note preceding this section) and enacting § 36-309a] shall take effect February 1, 1967.

"(b) Notwithstanding the provisions of subsection (a), the authority to promulgate necessary rules, regulations, and orders with regard to amendments made by this Act may be exercised by the Commissioners on and after the date of enactment of this Act [Oct. 15, 1966]."

### SHORT TITLE OF 1966 AMENDMENT

Section 5 of act Oct. 15, 1966, 80 Stat. 971, Pub. L. 89-684, provided: "This Act [amending this subchapter generally (see 1966 amendment note preceding this section) and enacting § 36-309a] may be cited as the 'District of Columbia Minimum Wage Act of 1966.'"

For short title of this subchapter, see § 36-419.

### DELEGATION OF FUNCTIONS

Section 2 of act Oct. 15, 1966, 80 Stat. 970, Pub. L. 89-684, provided: "No amendments made by this Act [amending this subchapter generally (see 1966 amendment note preceding this section) and enacting § 36-309a] shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824) [set out in appendix I to title I of this Code]. The performance of any function vested by this Act or by amendments made by this Act in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan, except the function of making and adopting regulations to carry out the purposes of this Act or of any amendment made by this Act."

For abolishment of Minimum Wage and Industrial Safety Board, created under former provisions of § 36-402, and transfer of its functions to Commissioners of District of Columbia, and re-establishment of such Board and delegation to it of some of the functions so transferred, see 1952 Reorg. Plan No. 5, set out in the appendix to title 1 of this Code, Commissioners' Reorg. Order No. 36, June 16, 1953, as amended, and Commissioner's Order [Org. Action] No. 69-96, dated Mar. 7, 1969, as amended, set out in the appendix to title 1.

### CROSS REFERENCES

Fair Labor Standards Act, see 29 U.S.C. § 201 et seq.  
Minors, employment, see §§ 31-201 et seq., 36-121 et seq., and 36-201 et seq.  
Women, regulation of employment, see § 36-301 et seq.

### NOTES TO DECISIONS UNDER PRIOR LAW

#### In general

The Minimum Wage Law of the District of Columbia contemplates issuance of orders by the Minimum Wage Board on an occupational basis. *Chambers v. District of Columbia* (D.C. Mun. App. 1952, 89 A. 2d 636).

A statute which authorizes a commission, after hearing representatives of employers and employees together with disinterested persons representing the public, to establish such minimum standards of wages and conditions of labor for women and minors as it shall consider



reasonable and not detrimental to health and morals and which shall be sufficient for the decent maintenance of women; and to grant special licenses for the employment of apprentices and women who are physically defective or crippled by age or otherwise at less than the prescribed minimum wage is not unconstitutional. *West Coast Hotel Co. v. Parrish* (1937, 57 S. Ct. 578, 300 U.S. 379, 81 L. Ed. 703, 108 A.L.R. 1330).

#### Appeals

Where defendants were found guilty on 18 counts of information for violation of Minimum Wage Law, and fine of \$25 was imposed under each count, but fines under 14 counts were made concurrent with fines under other counts, so that result was that fines totaled \$100, action of Municipal Court would be deemed the entering of one judgment in excess of \$50, and therefore it was not necessary for defendants to comply with statute providing that reviews of judgments in criminal branch of Municipal Court, where penalty imposed is less than \$50, shall be by application for allowance of appeal within 3 days from date of judgment. *Chambers v. District of Columbia* (1952, 194 F.2d 336, 90 U.S. App. D.C. 153).

#### Basis of orders

The Minimum Wage Law of the District of Columbia contemplates issuance of orders by the Minimum Wage Board on an occupational basis. *Chambers v. District of Columbia* (D.C. Mun. App. 1952, 89 A.2d 636).

#### Classification of occupations

Order of the Minimum Wage Board of the District of Columbia covering certain named occupations as well as a "miscellaneous" category is invalid under Minimum Wage Law of the District of Columbia, prescribing an occupational basis for classification of workers. *District of Columbia v. Chambers et al.* (1953, 207 F.2d 14, 92 U.S. App. D.C. 296).

The Minimum Wage Board of the District of Columbia may use its discretion in the classification of occupations under the Minimum Wage Law so long as there is a reasonable basis for such classification, but a lumping together of all unclassified or miscellaneous occupations as one occupation is not a reasonable classification. *Chambers v. District of Columbia* (D.C. Mun. App. 1952, 89 A.2d 636).

Order of the Minimum Wage Board under the Minimum Wage Law of the District of Columbia placing in one class stenographers, bookkeepers, typists, clerks, cashiers, checkers, professional's assistants and attendants, laboratory mechanics and technicians, messengers, ushers, telegraph and telephone operators, and all similar workers is too broad in its coverage and is invalid. *Id.*

#### Constitutionality

A Supreme Court decision that District of Columbia Minimum Wage Law is unconstitutional did not repeal or abolish such law, which became effective, without reenactment by Congress, when effect of such decision was removed by Supreme Court's subsequent decision holding similar law of State of Washington constitutional and expressly overruling previous decision. *Jawish v. Morlet* (D.C. Mun. App. 1952, 86 A.2d 96).

#### Construction

The District of Columbia Minimum Wage Act [this subchapter] was intended to cover wages and hours of individuals working in transportation field solely within the District of Columbia, but does not apply to bus drivers who were engaged in interstate commerce, spending on the average 37.6 percent of working time in the District. *K. C. Williams et al. v. W.M.A. Transit Company* (D.C. App. 1970, 268 A.2d 261).

### § 36-402. Definitions.

As used in this subchapter—

(1) The term "Commissioner" means the Commissioner of the District of Columbia or his designated agent or representative.

(2) The term "wage" means compensation due to an employee by reason of his employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, including such allowances as may be per-

mitted by any order or regulation issued under sections 36-403, 36-406, 36-407, or 36-408.

(3) The term "employ" includes to suffer or permit to work.

(4) The term "employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons, acting directly or indirectly in the interest of an employer in relation to an employee, but shall not include the United States or the District of Columbia.

(5) The term "employee" includes any individual employed by an employer, except that such term shall not include—

(A) any individual who, without payment and without expectation of any gain, directly or indirectly, volunteers to engage in the activities of an educational, charitable, religious, or nonprofit organization;

(B) any lay member elected or appointed to office within the discipline of any religious organization and engaged in religious functions; or

(C) any individual employed in domestic service or otherwise employed, in or about the residence of the employer.

(6) The term "occupation" means any occupation, service, trade, business, industry, or branch or group of occupations or industries, or employment or class of employment, in which employees are gainfully employed.

(7) The term "gratuities" means voluntary monetary contributions received by an employee from a guest, patron, or customer for services rendered.

(8) The term "Washington metropolitan region" means the area consisting of the District of Columbia, Montgomery and Prince George's Counties in Maryland, Arlington and Fairfax Counties and the cities of Alexandria, Fairfax, and Falls Church in Virginia. (Sept. 19, 1918, 40 Stat. 961, ch. 174, title I, § 2; Oct. 14, 1941, 55 Stat. 738, ch. 438, § 1; Oct. 15, 1966, 80 Stat. 961, Pub. L. 89-684, § 1; Jan. 5, 1971, Pub. L. 91-650, title VII, § 703(a), 84 Stat. 1938.)

#### AMENDMENTS

1971—Section 703(a) of act Jan. 5, 1971, Pub. L. 91-650, added par. (8).

1966—Act Oct. 15, 1966, substituted entirely different provisions. See 1966 amendment note preceding § 36-401. Former provisions (§ 2 of 1918 act) related to establishment, members and quorum of Minimum Wage and Industrial Safety Board.

1941—Act Oct. 14, 1941, changed name of Minimum Wage Board to Minimum Wage and Industrial Safety Board, in former provisions of this section. See 1966 amendment note, above, and 1966 amendment note preceding § 36-401.

#### EFFECTIVE DATE OF 1966 AMENDMENT

See note under § 36-401.

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91-650

See secs. 801-803 of act Jan. 5, 1971, Pub. L. 91-650, set out as a note under § 47-2501a.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CROSS REFERENCE

Minimum Wage and Industrial Safety Board created under former provisions of this section, abolishment and transfer of functions to Commissioners, re-establishment and delegation thereto of certain functions so transferred,



see 1952 Reorg. Plan No. 5, Commissioners' Reorg. Ord. No. 36, June 16, 1953, as amended, and Commissioner's Order [Org. Action] No. 69-96, dated Mar. 7, 1969, as amended, set out in the Appendix to title 1. See, also, § 2 of act Oct. 15, 1966, Pub. L. 89-684, set out as a note under § 36-401.

#### NOTES TO DECISIONS

##### Construction

The District of Columbia Minimum Wage and Industrial Safety Board is entitled to use median wage level rather than entry-level income paid to those entering particular labor market as reference point in establishing minimum wage. *L. Allentuck, t/a etc. and Larimer's, Inc. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1970, 264 A.2d 307).

The District of Columbia Minimum Wage Act [this subchapter] was intended to cover wages and hours of individuals working in transportation field solely within the District of Columbia, but does not apply to bus drivers who were engaged in interstate commerce, spending on the average 37.6 percent of working time in the District. *K. C. Williams et al. v. W.M.A. Transit Company* (D.C. App. 1970, 268 A.2d 261).

#### § 36-403. Minimum wage and overtime compensation—Workweek—Wage orders.

(a) (1) Except as otherwise provided in paragraph (2) of this subsection, every employer shall pay to each of his employees (A) the wage established for each such employee in a wage order issued under this subsection, or (B) wages at the following rates:

(i) not less than \$1.25 an hour during the year beginning February 1, 1967,

(ii) not less than \$1.40 an hour during the year beginning February 1, 1968, and

(iii) not less than \$1.60 an hour thereafter, whichever is higher.

(2) Every employer shall pay to each of his employees whose wage rates are governed by Minimum Wage Order Numbered 10 (effective August 15, 1964), as revised under subsection (c)(2) of this section, wages at the following rates:

(A) not less than \$1.25 an hour during the year beginning August 1, 1967,

(B) not less than \$1.40 an hour during the year beginning August 1, 1968, and

(C) not less than \$1.60 an hour thereafter.

(b) (1) Except as otherwise provided in paragraph (2), no employer shall employ any of his employees—

(A) for a workweek longer than forty-two hours during the six month period beginning six months after the date of enactment of this subsection, or

(B) for a workweek longer than forty hours thereafter, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(2) In the case of an employer whose employees' wage rates are governed by Minimum Wage Order Numbered 10 (effective August 15, 1964), as revised under subsection (c)(2) of this section, during the period beginning on the date of enactment of this paragraph and ending August 14, 1968, such employer shall compensate each such employee for employment in excess of forty hours in any workweek at the rate specified in such Wage Order. Beginning August 15, 1968, such employer shall compensate such employees for employment in ex-

cess of forty hours in any workweek at the rate established by the Commissioner after public hearing, which rate may be established without regard to the rate specified in paragraph (1) of this subsection.

(3) No employer shall be deemed to have violated subsection (b)(1) of this section by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if (A) the regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable to him under subsection (a)(1) of this section, and (B) more than half his compensation for a representative period (not less than one month) represents commissions on goods or services. In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

(c) (1) Each minimum wage order issued prior to February 1, 1967, shall remain in full force and effect. Except as provided in paragraph (2) of this subsection, the Commissioner shall by order revise each such wage order as follows:

(A) Effective February 1, 1967, each such wage order shall be revised to make it applicable to men as well as women employees.

(B) Effective February 1, 1967, each such wage order which provides for the payment of minimum wages below those prescribed in subsection (a)(1) of this section shall be revised to provide for the payment of minimum wages in accordance with such subsection.

(C) Effective six months from the date of enactment of the District of Columbia Minimum Wage Amendments Act of 1966, each such wage order which does not provide for the payment of overtime compensation, or which does not require the payment to an employee of at least one and one-half his regular rate for his employment in excess of forty-two hours in a workweek, shall be revised to provide for the payment of overtime compensation in accordance with subsection (b)(1) of this section.

(2) The Commissioner shall modify Minimum Wage Order Numbered 10 (effective August 15, 1964), effective February 1, 1967, to apply to men as well as women employees. The Commissioner shall further modify such Wage Order to provide for the payment of minimum wages and overtime compensation in accordance with paragraph (2) of subsection (a) of this section and paragraph (2) of subsection (b) of this section.

(d) (1) For those occupations with respect to which, on the date of enactment of the District of Columbia Minimum Wage Amendments Act of 1966, there is no existing minimum wage order, the Commission shall order, effective February 1, 1967, providing for the payment of minimum wages as prescribed by subsection (a)(1) of this section and for the payment of overtime compensation as prescribed in subsection (b)(1) of this section.

(2) For those occupations with respect to which on the date of the enactment of the District of Colum-



bia Minimum Wage Amendments Act of 1966 there is no existing minimum wage order, the Commissioner shall, with or without reference to an ad hoc advisory committee, make one or more wage orders which may include unrelated occupations. Such a wage order shall include (A) the minimum wage and overtime provisions prescribed in subsections (a) (1) and (b) (1) of this section, and (B) such definitions and regulations as the Commissioner may prescribe, in accordance with section 36-408, to prevent the circumvention or evasion of such order and to safeguard the minimum wage rates and overtime provisions established in this subchapter. The Commissioner shall publish a notice once a week, for four successive weeks, in a newspaper of general circulation printed in the District of Columbia, stating that he will, on a date and at a place named in the notice, hold a public hearing on such order at which all interested persons will be given a reasonable opportunity to be heard. Such notice shall contain a summary of the major provisions of such order. Within thirty days after such hearing, the Commissioner may issue such wage order as may be proper or necessary to effectuate the purposes of this subchapter. Notice of such order shall be published in a newspaper of general circulation printed in the District of Columbia and such order shall take effect upon the expiration of sixty days after the date on which such order was issued by the Commissioner, but not before February 1, 1967.

(e) The minimum wage orders issued by the Commissioner prior to February 1, 1967, shall be modified by the Commissioner on or after such date in order to include such regulations as the District of Columbia Council may prescribe in accordance with section 36-408. Such regulations shall take effect upon the expiration of thirty days after the date on which they were made by the Council, but not before February 1, 1967.

(f) A wage order under this subchapter may establish at any one time only one wage rate for the occupation or the classification of employees within an occupation, as the case may be, to which the wage order applies. (Sept. 19, 1918, 40 Stat. 961, ch. 174, title I, § 3; June 16, 1938, 52 Stat. 758, ch. 474; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106 (a); Oct. 15, 1966, 80 Stat. 962, Pub. L. 89-684, § 1; Jan. 5, 1971, Pub. L. 91-650, title VII, § 703(b), 84 Stat. 1938.)

#### REFERENCES IN TEXT

Words "the date of enactment of this paragraph," contained in subsec. (b) (2), "the date of enactment of the District of Columbia Minimum Wage Amendments Act of 1966", contained in subsec. (c) (1) (C) and (d) (1), and "the date of the enactment of the District of Columbia Wage Amendments Act of 1966", contained in subsec. (d) (2), all refer to enactment of act Oct. 15, 1966, Pub. L. 89-684, which generally amended this subchapter. Such act was "enacted", that is, approved, on Oct. 15, 1966. See effective date note under § 36-401.

#### CODIFICATION

In subsec. (e), reference to the District of Columbia Council was substituted for "Commissioners" in two places to reflect § 36-408 of this chapter and § 402(281) of Reorg. Plan No. 3 of 1967, under which the regulations are prescribed by the Council.

#### AMENDMENTS

1971—Section 703(b) of act Jan. 5, 1971, Pub. L. 91-650, added subsec. (f).

1966—Act Oct. 15, 1966, substituted entirely different provisions. See 1966 amendment note preceding § 36-401. Former provisions (§ 3 of 1918 act) related to organization of Minimum Wage and Industrial Safety Board, election of its officers, and appointment and compensation of its employees.

1949 and 1938—Amended provisions no longer contained in section. See 1966 amendment note, above, and 1966 amendment note preceding § 36-401.

#### EFFECTIVE DATE OF 1966 AMENDMENT

See note under § 36-401.

#### APPLICABILITY OF 1971 AMENDMENT

Section 703(d) of act Jan. 5, 1971, Pub. L. 91-650, provided: "The amendment made by subsection (b) of this section [amending § 36-403] shall apply with respect to any wage order under the District of Columbia Minimum Wage Act [this subchapter] issued or revised after the date of enactment of this Act."

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CROSS REFERENCES

Governmental projects, wages employees employed on, see 40 U.S.C. § 276a et seq.

Provisions establishing standards for hours of work and overtime pay of laborers and mechanics employed on work done under contract for, or with the financial aid of, the United States, for any territory, or for the District of Columbia, see 40 U.S.C. §§ 327 to 332.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 36-402, 36-404, 36-406, 36-407, 36-408, 36-413.

#### NOTES TO DECISIONS

##### Construction

The District of Columbia Minimum Wage and Industrial Safety Board is entitled to use median wage level rather than entry-level income paid to those entering particular labor market as reference point in establishing minimum wage. *L. Allentuck, t/a etc. and Larimer's, Inc. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1970, 264 A. 2d 307).

§ 36-404. Exemptions of certain employees from minimum wage and overtime provisions of section 36-403.

(a) The minimum wage and overtime provisions of section 36-403 shall not apply with respect to—

(1) any employee employed in a bona fide executive, administrative, or professional capacity, or in the capacity of outside salesman (as such terms are defined by the Secretary of Labor under the Fair Labor Standards Act of 1938; 29 U.S.C. § 201 et seq.); or

(2) any employee engaged in the delivery of newspapers to the home of the consumer.

(b) The overtime provisions of section 36-403 (b) (1) shall not apply with respect to—

(1) any employee employed as a seaman;

(2) any employee employed by a railroad;

(3) any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trailers, or trucks if employed by a non-manufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers;

(4) any employee employed primarily to wash automobiles by an employer, more than 50 percent of whose annual dollar volume of sales is



derived from washing automobiles, if for such employee's employment in excess of one hundred and sixty hours in a period of four consecutive workweeks, such employees receives compensation at a rate not less than one and one-half times the regular rate at which he is employed; or

(5) any employee employed as an attendant at a parking lot or parking garage.

(Sept. 19, 1918, 40 Stat. 961, ch. 174, title I, § 4; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Oct. 15, 1966, 80 Stat. 964, Pub. L. 89-684, § 1; Jan. 5, 1971, Pub. L. 91-650, title VII, § 702(a), 84 Stat. 1938; Dec. 15, 1971, Pub. L. 92-196, title VIII, § 708(a), 85 Stat. 658.

#### AMENDMENTS

1971—Section 708(a) of Act Dec. 15, 1971, Pub. L. 92-196, amended subsec. (b)—

(1) by inserting "or" at the end of paragraph (4),

(2) by striking out "; or" at the end of paragraph (5) and inserting in lieu thereof a period, and

(3) by striking out paragraph (6).

Section 702(a) of act Jan. 5, 1971, Pub. L. 91-650, amended subsec. (b) of section: (1) by striking out "or" at the end of paragraph (4), (2) by striking out the period at the end of paragraph (5) and inserting in lieu thereof a semicolon and "or", and (3) by adding after paragraph (5) a new paragraph (6) to read as follows:

"(6) any employee (A) with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of part II of the Interstate Commerce Act, and (B) who is not employed for more than 50 per centum of any workweek within the Washington metropolitan region."

1966—Act Oct. 15, 1966, substituted entirely different provisions. See 1966 amendment note preceding § 36-401. Former provisions (§ 4 of 1918 act) related to authority of members of Minimum Wage and Industrial Safety Board to take testimony and issue subpoenas, and to punishment, for contempt, by the United States District Court for the District of Columbia.

1949, 1948 and 1936—Amended former provisions of this section to change name of Supreme Court of the District of Columbia first to District Court of the United States for the District of Columbia and finally to United States District Court for District of Columbia. See 1966 amendment note, above, and 1966 amendment note preceding § 36-401.

EFFECTIVE DATE OF 1971 AMENDMENT BY PUB. L. 92-196

Section 708(b) of Act Dec. 15, 1971, Pub. L. 92-196, provided: "The amendments made by subsection (a) of this section [amending § 36-404(b)] shall take effect January 1, 1972."

EFFECTIVE DATE OF 1971 AMENDMENT BY PUB. L. 91-650

Section 702(b) of act Jan. 5, 1971, Pub. L. 91-650, provided: "The amendments made by subsection (a) of this section [amending § 36-404(b)] shall take effect as of February 1, 1967."

#### EFFECTIVE DATE OF 1966 AMENDMENT

See note under § 36-401.

SEPARABILITY, AUTHORITY OF COMMISSIONER AND DISTRICT COUNCIL, AND SAVINGS PROVISIONS OF PUB. L. 92-196

See secs. 801-803 of Act Dec. 15, 1971, Pub. L. 92-196, set out as a note under § 47-2501a.

§ 36-405. Powers and duties of Commissioner—Investigations—Statements from employers.

The Commissioner or his authorized representative shall have authority—

(1) to investigate and ascertain the wages of persons employed in any occupation in the District of Columbia;

(2) to enter and inspect the place of business or employment of any employer in the District of Columbia for the purpose of (A) examining and inspecting any or all books, registers, payrolls, and other records of any such employer that in any way relate to or have a bearing upon the wages, hours, and other conditions of employment of any employees, (B) copying any or all of such books, registers, payrolls, and other records as the Commissioner or his authorized representative may deem necessary or appropriate, and (C) questioning such employee for the purpose of ascertaining whether the provisions of this subchapter and the orders and regulations issued thereunder have been and are being complied with; and

(3) to require from any such employer full and correct statements in writing, including sworn statements, with respect to wages, hours, names, addresses, and such other information pertaining to the employment of his employees as the Commissioner or his authorized representative may deem necessary or appropriate to carry out the purposes of this subchapter. (Sept. 19, 1918, 40 Stat. 962, ch. 174, title I, § 5; Oct. 15, 1966, 80 Stat. 964, Pub. L. 89-684, § 1.)

#### AMENDMENT

1966—Act Oct. 15, 1966, substituted entirely different provisions. See 1966 amendment note preceding § 36-401. Former provisions (§ 5 of 1918 act) related to authority of Minimum Wage and Industrial Safety Board to issue rules and regulations.

#### EFFECTIVE DATE OF 1966 AMENDMENT

See note under § 36-401.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CROSS REFERENCE

Minimum Wage and Industrial Safety Board created under former provisions of § 36-402, abolishment and transfer of functions to Commissioners, re-establishment and delegation thereto of certain functions so transferred, see Delegation of Functions note under § 36-401.

§ 36-406. Reconsideration and revision of wage orders—Ad hoc committees—Committee reports of findings and recommendations—Failure to report.

(a) At any time after a wage rate within a wage order has been in effect for one year the Commissioner may on his own motion reconsider such wage rate set in such wage order. If, after investigation, the Commissioner is of the opinion that any substantial number of workers in the occupation covered by such wage order are receiving wages insufficient to provide adequate maintenance and to protect health he may convene an ad hoc advisory committee for the purpose of considering and inquiring into and reporting to the Commissioner on the subject investigated by the Commissioner and submitted by him to such committee.

(b) The committee shall be composed of not more than three persons representing the employers in such occupation, of an equal number representing employees in such occupation, and of not more than three persons representing the public. The chairman of the agency designated by the Commissioner to administer this subchapter shall be an ex officio member of the Committee. Such agency shall name



and appoint all the members of the committee and designate its chairman. Two-thirds of the members of the committee shall constitute a quorum, and any decision, recommendation, or report of the committee on the subject submitted to it shall require an affirmative vote of not less than a majority of all its members.

(c) The Commissioner shall present to the committee such information as he might have relating to the subject he submitted to the committee, and may cause to be brought before the committee any witnesses whose testimony the Commissioner considers material.

(d) Within sixty days after the convening of the committee by the Commissioner, the committee shall make and transmit to the Commissioner a report containing its findings and recommendations on the subject submitted to it by the Commissioner.

(e) The committee report shall include a recommendation for minimum wages for the employees in the occupation under consideration, but the minimum wage rates recommended shall not be less than those prescribed in subsection (a) (1) of section 36-403. In making such recommendation the committee shall take into consideration (1) the amount of wages sufficient to provide adequate maintenance and to protect health, (2) the fair and reasonable value of the work performed, and (3) the wages paid in the Washington metropolitan region by fair employers for work of like or comparable character. The committee report shall also include recommendations for reasonable allowances for board, lodging, or other facilities or services, customarily furnished by the employer to the employees, or reasonable allowances for gratuities customarily received by employees in any occupation in which gratuities have customarily and usually constituted and have been recognized as a part of the remuneration for hiring purposes. The committee report may also recommend suitable minimum wages for learners and apprentices in the occupation under consideration, where it appears proper or necessary, and may recommend the maximum length of time any such employee may be kept at such wages as a learner or apprentice. The minimum wages recommended for learners and apprentices may be less than the minimum wages recommended for other employees in such occupation. The committee may make a separate inquiry into and report on any branch of any occupation and may recommend different minimum wages for such branch of employment in the same occupation.

(f) If such committee fails to submit a report to the Commissioner within the period specified in subsection (d) of this section, the Commissioner may (1) discharge such committee from further consideration of the subject submitted to it and convene a new committee for the purpose of considering such subject, or (2) consider the subject without the recommendations of an ad hoc advisory committee and prepare and publish a revised wage order for the occupation in accordance with the procedure specified in section 36-407 and after taking into consideration the matters referred to in the second sentence of subsection (e). (Sept. 19, 1918, 40 Stat.

962, ch. 174, title I, § 6; Oct. 15, 1966, 80 Stat. 965, Pub. L. 89-684, § 1; Jan. 5, 1971, Pub. L. 91-650, title VII, § 703(c), 84 Stat. 1938.)

#### AMENDMENTS

1971—Section 703(c) of Act Jan. 5, 1971, Pub. L. 91-650, amended section as follows:

(1) The first sentence of subsection (a) of such section is amended (A) by striking out "wage order" the first time it appears and inserting in lieu thereof "wage rate within a wage order", and (B) by striking out "the wage rates" and inserting in lieu thereof "such wage rate".

(2) The first sentence of subsection (b) of such section is amended (A) by inserting "and" immediately after "occupation," the second time it occurs, and (B) by striking out ", and one or more representatives of the agency designated by the Commissioners to administer this subchapter." and inserting in lieu thereof a period and the following: "The chairman of the agency designated by the Commissioner to administer this subchapter shall be an ex officio member of the committee."

(3) Clause (3) of the second sentence of subsection (e) of such section is amended by striking out "District of Columbia" and inserting in lieu thereof "Washington metropolitan region".

(4) Subsection (f) of such section is amended by inserting immediately before the period at the end thereof the following: "and after taking into consideration the matters referred to in the second sentence of subsection (e)".

1966—Act Oct. 15, 1966, substituted entirely different provisions. See 1966 amendment note preceding § 36-401. Former provisions (§ 6 of 1918 act) related to submission of annual reports by Minimum Wage and Industrial Safety Board to Board of Commissioners of District of Columbia.

#### EFFECTIVE DATE OF 1966 AMENDMENT

See note under § 36-401.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CROSS REFERENCE

Minimum Wage and Industrial Safety Board created under former provisions of § 36-402, abolishment and transfer of functions to Commissioners, re-establishment and delegation thereto of certain functions so transferred, see Delegation of Functions note under § 36-401.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-402, 36-407.

#### NOTES TO DECISIONS

##### Construction

The District of Columbia Minimum Wage and Industrial Safety Board is entitled to use median wage level rather than entry-level income paid to those entering particular labor market as reference point in establishing minimum wage. *L. Allentuck, t/a etc. and Larimer's, Inc. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1970, 264 A. 2d 307).

It is the wage order and not the wage rate that must be in effect for one year before Minimum Wage and Industrial Safety Board may reconsider existing wage rate. *L. Allentuck, t/a etc. and Larimer's, Inc. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1969, 261 A. 2d 826).

##### Discretion

The establishment of lower minimum wage rate for handicapped, apprentice and minor employees is within the discretion of District of Columbia Minimum Wage and Industrial Safety Board. *L. Allentuck, t/a etc. and Larimer's, Inc. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1970, 264 A. 2d 307).

##### Evidence—Sufficiency

The findings of the District of Columbia Minimum Wage and Industrial Safety Board that wage rate adopted was required to provide adequate maintenance to protect health, and that rate was commensurate with fair and



reasonable value of work performed and with that paid in District of Columbia by fair employers for work of like or comparable character were supported by substantial evidence. *L. Allentuck, t/a etc. and Larimer's, Inc. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1970, 264 A. 2d 307).

#### Jurisdiction

The Court held that the Minimum Wage and Industrial Safety Board was not without jurisdiction to reconsider wage rate of existing wage order by reason of fact that such rate had been in effect less than one year. *L. Allentuck, t/a etc. and Larimer's, Inc. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1969, 261 A. 2d 826).

#### Sufficiency of findings of fact

The court held that all interested parties are entitled to know and District of Columbia Court of Appeals, on review, must know basis and reasons for action of Minimum Wage and Industrial Safety Board in issuing wage order. *L. Allentuck, t/a etc. and Larimer's, Inc. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1969, 261 A. 2d 826).

In this case the findings of fact consisting of only finding relating to general minimum weekly wage of \$81.28 as sufficient to provide adequate maintenance and to protect health and finding that minimum wage in retail trade occupation should not be less than \$2.00 an hour based on prescribed 40-hour work week were insufficient to support wage order issued by Minimum Wage and Industrial Safety Board. *Id.*

#### § 36-407. Issuance of revised wage orders—Notice and hearing—Notice and effective date of orders—Contents of orders—Restrictions.

(a) Upon receipt of the report from the ad hoc advisory committee, or upon the discharge of such committee, in accordance with section 36-406(f), the Commissioner may prepare a proposed revised wage order for the occupation, giving due consideration to any recommendations contained in the report of such committee. In such order the Commissioner shall provide, among other things, such allowances as are recommended in the report. The Commissioner shall publish a notice once a week, for four successive weeks, in a newspaper of general circulation printed in the District of Columbia, stating that he will, on a date and at a place named in the notice, hold a public hearing at which all interested persons will be given a reasonable opportunity to be heard. Such notice shall contain a summary of the major provisions of the proposed revised wage order.

(b) Within thirty days after such hearing, the Commissioner may make such an order as may be proper or necessary to effectuate the purposes of this subchapter. Notice of such order shall be published in a newspaper of general circulation printed in the District of Columbia and such order shall take effect upon the expiration of sixty days after the date on which such order was made by the Commissioner.

(c) A wage order issued under this section shall define the occupation and classifications to which it is to apply, and shall contain such terms and conditions as the Commissioner finds necessary to (1) carry out the purposes of such order, (2) to prevent the circumvention or evasion of it, and (3) to safeguard the minimum wage rates and overtime compensation established in it.

(d) Nothing in this subchapter shall be construed so as to authorize the Commissioner to establish a minimum weekly wage which would require an em-

ployer to pay an employee in any week an amount greater than the amount such employer would have to pay such employee under section 36-403 for the hours worked in such week. (Sept. 19, 1918, 40 Stat. 962, ch. 74, title I, § 7; Oct. 15, 1966, 80 Stat. 966, Pub. L. 89-684, § 1.)

#### AMENDMENT

1966—Act Oct. 15, 1966, substituted entirely different provisions. See 1966 amendment note preceding § 36-401. Former provisions (§ 7 of 1918 act, which was not classified to Code) authorized maximum appropriation of \$5,000 for fiscal year 1919, to carry into effect provisions of that act. Former provisions of this section (§ 8 of 1918 act) related to power of Minimum Wage and Industrial Safety Board to investigate and ascertain wages of women and minors, to the keeping of registers by employers, and to the furnishing of information and statistics by Board of Commissioners of District of Columbia. In former provisions of § 36-401, women had been defined as including only women of 18 years of age or over, and minors had been defined as persons of either sex under the age of 18 years.

#### EFFECTIVE DATE OF 1966 AMENDMENT

See note under § 36-401.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CROSS REFERENCE

Minimum Wage and Industrial Safety Board created under former provisions of § 36-402, abolishment and transfer of functions to Commissioners, re-establishment and delegation thereto of certain functions so transferred, see Delegation of Functions note under § 36-401.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-402, 36-406.

#### NOTES TO DECISIONS

##### Authority of Board

The current wage order containing sections covering definitions, minimum wage and overtime compensation, employees compensated by commissions, workers under age of 18, handicapped workers, apprentices, adult learners, minimum daily wages, split shifts, uniforms, travel expenses, deductions, allowances for meals and lodging, basis of payment, time of payment, required records and issuance of wage statements were not regulations and Minimum Wage and Industrial Safety Board did not exceed authority in issuing such order. *L. Allentuck, t/a etc. and Larimer's, Inc. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1969, 261 A. 2d 826).

##### Construction

This District of Columbia Minimum Wage and Industrial Safety Board need not supply the same evidence or review its experience with previous wage orders to re-establish the various abuses and means of circumvention previously proscribed each time it issues a new minimum wage order. *L. Allentuck, t/a etc. and Larimer's, Inc. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1970, 264 A. 2d 307).

The specific expression, in sections 36-408 (b) and (c) of matter for regulations to be made by Commissioners cannot be taken as an indication by Congress that such matters cannot also be subject of a wage order. *L. Allentuck, t/a etc. and Larimer's, Inc. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1969, 261 A. 2d 826).

##### "Order" and "regulations" defined

An "Order" under section 36-407 is used to establish basic minimum level of income for an occupation and classification with additional provisions to insure its compliance, whereas "regulations" are used to make certain that there is coordination between all other government agencies or to secure inter-occupational uniformity. *L. Allentuck, t/a etc. and Larimer's, Inc. v. District of*



*Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1969, 261 A. 2d 826).

#### Review

Since the employers did not challenge terms and conditions of minimum wage order before the Minimum Wage and Industrial Safety Board, employers will not be heard to complain on judicial review of the order. *L. Allentuck, t/a etc. and Larimer's, Inc. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1970, 264 A. 2d 307).

#### Validity of wage order

To be valid, the terms and conditions of minimum wage order need only be supported by determination of necessity. *L. Allentuck t/a etc. and Larimer's, Inc. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1970, 264 A. 2d 307).

### § 36-408. Regulations of Council—Contents—Notice and hearing—Effective date.

(a) The District of Columbia Council shall make and revise such regulations, including definitions of terms, as it may deem appropriate to carry out the purposes of this subchapter or necessary to prevent its circumvention or evasion and to safeguard the minimum wage rates and the overtime provisions established in this subchapter.

(b) The Council shall make regulations—

(1) providing reasonable allowances for board, lodging, or services customarily furnished by employers to employees,

(2) providing reasonable allowances for gratuities in any occupation in which gratuities have customarily and usually constituted and have been recognized as part of the remuneration for hiring purposes, and

(3) providing allowances for such other special conditions or circumstances which may be usual in a particular employer-employee relationship.

(c) The Council may make regulations—

(1) defining and governing the employment of handicapped workers and workers under the age of 18 and providing minimum wages for such workers at a rate lower than that specified in section 36-403(a) (1),

(2) governing piece rates, bonuses, and commissions in relation to time rates,

(3) governing part-time rates,

(4) governing minimum daily wages,

(5) relating to wage provisions governing split shift and excessive spread of hours, and

(6) governing uniforms, tools, travel, and other items of expense incurred by employees as a condition of employment.

(d) Regulations or revisions thereof issued by the Council pursuant to this section shall be made only after a public hearing by the Council, subsequent to publication of a notice of the hearing at which interested persons may be heard. Such regulations or revisions shall, except as may otherwise be provided by the Council, take effect upon the expiration of thirty days after the date on which such regulations and revisions were made by the Council. (Sept. 19, 1918, 40 Stat. 962, ch. 174, title I, § 8; Oct. 15, 1966, 80 Stat. 966, Pub. L. 89-684, § 1.)

#### AMENDMENT

1966—Act Oct. 15, 1966, substituted entirely different provisions. See 1966 amendment note preceding § 36-401. Former provisions of this section (§ 9 of 1918 act) related

to ascertainment and declaration of standards of wages for women and minors. For former provisions of § 8 of the 1918 act, see 1966 amendment note under § 36-407.

#### EFFECTIVE DATE OF 1966 AMENDMENT

See note under § 36-401.

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(281) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the functions of the Board of Commissioners of making and revising regulations, including definitions of terms, under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

#### CROSS REFERENCES

Rules and regulations for protection of life, health, and property, generally, see § 1-226.

Minimum Wage and Industrial Safety Board created under former provisions of § 36-402, abolishment and transfer of functions to Commissioners, re-establishment and delegation thereto of certain functions to transferred, see Delegation of Functions note under § 36-401.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-402, 36-403, 36-413.

#### NOTES TO DECISIONS

##### Authority of Board

The current wage order containing sections covering definitions, minimum wage and overtime compensation, employees compensated by commissions, workers under age of 18, handicapped workers, apprentices, adult learners, minimum daily wages, split shifts, uniforms, travel expenses, deductions allowances for meals and lodging, basis of payment, time of payment, required records and issuance of wage statements were not regulations and Minimum Wage and Industrial Safety Board did not exceed authority in issuing such order. *L. Allentuck, t/a etc. and Larimer's Inc. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1969, 261 A. 2d 826).

##### Construction

The specific expression in sections 36-408 (b) and (c) of matter for regulations to be made by Commissioners cannot be taken as an indication by Congress that such matters cannot also be subject of a wage order. *L. Allentuck, t/a etc. and Larimer's Inc. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1969, 261 A. 2d 826).

### § 36-409. Judicial review of orders—Procedure—Scope of review—Additional evidence—Modification of or setting aside findings or orders—Stay pending determination of proceedings.

(a) Any person aggrieved by an order of the Commissioner issued under this subchapter may obtain a review of such order in the District of Columbia Court of Appeals by filing in such court, within sixty days after the issuance of such order, a written petition praying that the order of the Commissioner be modified or set aside in whole or in part. The review shall be governed by the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1501 to 1-1510).

(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Commissioner's order. The court shall not grant any stay of the order unless the person complaining or such order shall file in court an undertaking with a surety or sureties, satisfactory to the court, for the payment to the employees affected by the order, in the event such order



is affirmed, of the amount by which the compensation such employees are entitled to receive under the order exceeds the compensation they actually receive while such stay is in effect. (Sept. 19, 1918, 40 Stat. 962, ch. 174, title I, § 9; Oct. 15, 1966, 80 Stat. 967, Pub. L. 89-684, § 1; July 29, 1970, Pub. L. 91-358, § 163(f), title I, 84 Stat. 583.

#### AMENDMENTS

1970—Section 163(f) of Act July 29, 1970, Public Law 91-358 amended subsection (a) by striking out the second sentence and all that follows thereafter and inserting in lieu thereof "The review shall be governed by the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1501 to 1-1510)."

For provisions of stricken matter see 1967 edition of the Code.

1966—Act Oct. 15, 1966, substituted entirely different provisions. See 1966 amendment note preceding § 36-401. Former provisions of this section (§ 10 of 1918 act) related to conferences on inadequate wages. For former provisions of § 9 of the 1918 act, see 1966 amendment note under § 36-408.

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### EFFECTIVE DATE OF 1966 AMENDMENT

See note under § 36-401.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CROSS REFERENCES

Jurisdiction of court of appeals, see § 11-722.

Minimum Wage and Industrial Safety Board created under former provisions of § 36-402, abolishment and transfer of functions to Commissioners, re-establishment and delegation thereto of certain functions so transferred, see Delegation of Functions note under § 36-401.

#### NOTES TO DECISIONS

##### Evidence—Sufficiency

The findings of the District of Columbia Minimum Wage and Industrial Safety Board that wage rate adopted was required to provide adequate maintenance to protect health, and that rate was commensurate with fair and reasonable value of work performed and with that paid in District of Columbia by fair employers for work of like or comparable character were supported by substantial evidence. *L. Allentuck, t/a etc. and Larimer's, Inc. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1970, 264 A. 2d 307).

##### Review

On review of order of District of Columbia Minimum Wage and Industrial Safety Board, the District of Columbia Court of Appeals will not substitute its judgment for that of the Board. *L. Allentuck, t/a etc., and Larimer's Inc. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1970, 264 A. 2d 307).

##### Sufficiency of findings of fact

The court held that all interested parties are entitled to know and District of Columbia Court of Appeals, on review, must know basis and reasons for action of Minimum Wage and Industrial Safety Board in issuing wage order. *L. Allentuck, t/a etc. and Larimer's Inc. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1969, 261 A. 2d 826).

In this case the findings of fact consisting of only a finding relating to general minimum weekly wage of \$81.28 as sufficient to provide adequate maintenance and to protect health and finding that minimum wage in retail trade occupation should not be less than \$2.00 an hour based on prescribed 40-hour work week were insufficient to support wage order issued by Minimum Wage and Industrial Safety Board. *Id.*

§ 36-410. Authority of Commissioner to take testimony and issue subpoenas—Punishment for contempt.

The Commissioner shall have power to administer oaths and require by subpoena the attendance and testimony of witnesses, the production of all books, registers, and other evidence relative to any matters under investigation, at any public hearing or at any meeting of any committee or for the use of the Commissioner in securing compliance with this subchapter. In case of disobedience to a subpoena the Commissioner may invoke the aid of the Superior Court of the District of Columbia in requiring the attendance and testimony of witnesses and the production of documentary evidence. In case of contumacy or refusal to obey a subpoena the court may issue an order requiring appearance before the Commissioner, the production of documentary evidence, and the giving of evidence, and any failure to obey such order of the court may be punished by such court as a contempt thereof. (Sept. 19, 1918, 40 Stat. 962, ch. 174, title I, § 10; Oct. 15, 1966, 80 Stat. 968, Pub. L. 89-684, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### AMENDMENTS

1970—Section 155(a) of act July 29, 1970, Pub. L. 91-358, struck out "District of Columbia Court of General Sessions" and inserted in lieu thereof "Superior Court of the District of Columbia".

1966—Act Oct. 15, 1966, substituted entirely different provisions. See 1966 amendment note preceding § 36-401. Former provisions of this section (§ 11 of 1918 act) related to conferences' reports of findings and recommendations on subject of wages for women. For former provisions of § 10 of the 1918 act, see 1966 amendment note under § 36-409.

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding § 11-101.

#### EFFECTIVE DATE OF 1966 AMENDMENT

See note under § 36-401.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CROSS REFERENCE

Minimum Wage and Industrial Safety Board created under former provisions of § 36-402, abolishment and transfer of functions to Commissioners, re-establishment and delegation thereto of certain functions so transferred, see Delegation of Functions note under § 36-401.

§ 36-411. Records of employers—Availability for inspection—Sworn statements—Statements to employees.

(a) Every employer subject to any provision of this subchapter or of any regulation or order issued under this subchapter shall make, keep, and preserve for a period of not less than three years a record of (1) the name, address, and occupation of each of his employees, (2) a record of the date of birth of any employee under nineteen years of age, (3) the rate of pay and the amount paid each pay period to each of his employees, (4) the hours worked each day and each workweek by each of his employees, and (5) such other records or information as the District of Columbia Council shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this subchapter or of the regulations or orders issued thereunder.



Such records shall be open and made available for inspection or transcription by the Commissioner or his authorized representative at any reasonable time. Every such employer shall furnish to the Commissioner or to his authorized representative on demand a sworn statement of such records and information upon forms prescribed or approved by the Commissioner.

(b) Every employer shall furnish to each employee at the time of payment of wages an itemized statement showing the date of the wage payment, gross wages paid, deductions from and additions to wages, net wages paid, hours worked during the pay period, and any other information as the Council may prescribe by regulation. (Sept. 19, 1918, 40 Stat. 963, ch. 174, title I, § 11; Oct. 15, 1966, 80 Stat. 968, Pub. L. 89-684, § 1.)

#### AMENDMENT

1966—Act Oct. 15, 1966, substituted entirely different provisions. See 1966 amendment note preceding § 36-401. Former provisions of this section (§ 12 of 1918 act) related to actions of Minimum Wage and Industrial Safety Board on receipt of reports and recommendations of conferences called by it to consider minimum wages for women workers. For former provisions of § 11 of the 1918 act, see 1966 amendment note under § 36-410.

#### EFFECTIVE DATE OF 1966 AMENDMENT

See note under § 36-401.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(282) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the functions of the Board of Commissioners of prescribing by regulation records or information necessary or appropriate for the enforcement of the provisions of this subchapter, or of the regulations or orders issued thereunder, under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### CROSS REFERENCE

Minimum Wage and Industrial Safety Board created under former provisions of § 36-402, abolishment and transfer of functions to Commissioners, re-establishment and delegation thereto of certain functions so transferred, see Delegation of Functions note under § 36-401.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 36-413.

#### § 36-412. Posting of law and wage orders—Commissioner to furnish copies.

Every employer subject to any provision of this subchapter or of any regulation or order issued under this subchapter shall keep a copy or summary of this subchapter and of any applicable wage order and regulation issued thereunder, in a form prescribed or approved by the Commissioner, posted in a conspicuous and accessible place in or about the premises wherein any employee covered by such regulation or order is employed. Employers shall be furnished such copies or summaries by the Commissioner on request without charge. (Sept. 19, 1918, 40 Stat. 963, ch. 174, title I, § 12; Oct. 15, 1966, 80 Stat. 968, Pub. L. 89-684, § 1.)

#### AMENDMENT

1966—Act Oct. 15, 1966, substituted entirely different provisions. See 1966 amendment note preceding § 36-401.

Former provisions of this section (§ 13 of 1918 act) related to issuance of licenses, authorizing employment at wages less than minimum time-rate wages established, to women whose earning capacity had been impaired by age or otherwise. For former provisions of § 12 of the 1918 act, see 1966 amendment note under § 36-411.

#### EFFECTIVE DATE OF 1966 AMENDMENT

See note under § 36-401.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 36-413.

#### § 36-413. Prohibited acts.

It shall be unlawful for any employer—

(1) to violate any of the provisions of section 36-403 or any of the provisions of any regulation or order issued under this subchapter;

(2) to violate any of the provisions of section 36-411 or 36-412 or any regulation made under the provisions of section 36-408, or to make any statement, report, or record filed or kept pursuant to the provisions of section 36-411 or any regulation or order issued under section 36-408, knowing such statement, report, or record to be false in a material respect;

(3) to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this subchapter, has testified or is about to testify in any such proceeding, or has served or is about to serve on any ad hoc advisory committee; or

(4) to hinder or delay the Commissioner or his authorized representative in the performance of their duties in the enforcement of this subchapter, to refuse to admit the Commissioner or his authorized representative to any place of employment, to refuse to make available to the Commissioner or his authorized representative, upon demand, any record required to be made, kept, or preserved under this subchapter, or to fail to post a summary or copy of this subchapter or of any applicable regulation or order, as required under section 36-412.

(Sept. 19, 1918, 40 Stat. 963, ch. 174, title I, § 13; Oct. 15, 1966, 80 Stat. 968, Pub. L. 89-684, § 1.)

#### AMENDMENT

1966—Act Oct. 15, 1966, substituted entirely different provisions. See 1966 amendment note preceding § 36-401. Former provisions of this section (§ 14 of 1918 act) related to determination of minimum wages for minors. For former provisions of § 13 of the 1918 act, see 1966 amendment note under § 36-412.

#### EFFECTIVE DATE OF 1966 AMENDMENT

See note under § 36-401.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 36-414.



**§ 36-414. Penalties for violation—Jurisdiction—Prosecutions.**

Any person who willfully violates any of the provisions of section 36-413 shall upon conviction thereof be subject to a fine of not more than \$10,000, or to imprisonment of not more than six months, or both. No person shall be imprisoned under this section except for an offense committed after the conviction of such person for a prior offense under this section. Prosecutions for violations of this subchapter shall be in the Superior Court of the District of Columbia and shall be conducted by the Corporation Counsel of the District of Columbia. (Sept. 19, 1918, 40 Stat. 963, ch. 174, title I, § 14; Oct. 15, 1966, 80 Stat. 969, Pub. L. 89-684, § 1; July 29, 1970, Pub. L. 91-358, Title I, § 155(a), 84 Stat. 570.)

**AMENDMENTS**

1970—Section 155(a) of act July 29, 1970, Pub. L. 91-358, struck out "District of Columbia Court of General Sessions" and inserted in lieu thereof "Superior Court of the District of Columbia".

1966—Act Oct. 15, 1966, substituted entirely different provisions. See 1966 amendment note preceding § 36-401. Former provisions of this section (§ 15 of 1918 act) authorized any conference convened by Minimum Wage and Industrial Safety Board pursuant to former provisions of § 36-409 to make separate inquiry into and report on any branch of any occupation, and authorized the Board to make a separate order affecting any branch of any occupation. For former provisions of § 14 of the 1918 act, see 1966 amendment note under § 36-413.

**EFFECTIVE DATE OF 1970 AMENDMENT**

See note preceding § 11-101.

**EFFECTIVE DATE OF 1966 AMENDMENT**

See note under § 36-401.

**§ 36-415. Employee remedies—Liability of employer—Liquidated damages—Actions—Parties—Attorney fees and costs—Defenses—Assignment of claim—Supervision of payment—Waiver.**

(a) Any employer who pays any employee less than the wage to which such employee is entitled under this subchapter or any order or regulation issued thereunder, shall be liable to such employee in the amount of such unpaid wages, and in an additional equal amount as liquidated damages, except that if, in any action commenced to recover such unpaid wages or liquidated damages, the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of this subchapter, the court may, in its sound discretion, award no liquidated damages, or award any amount thereof not to exceed the amount specified in this section. Action to recover such liability may be maintained in any court of competent jurisdiction in the District of Columbia by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought. The court in such action shall allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. Any agreement between an employer and an employee to

work for less than the wages to which such employee is entitled under this subchapter or any order or regulation issued thereunder shall be no defense to any action to recover such unpaid wages or liquidated damages.

(b) At the written request of any employee paid less than the wage to which such employee is entitled under this subchapter or any order or regulation issued thereunder, the Commissioner may take an assignment of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim. In such an action, the defendant shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court.

(c) The Commissioner is authorized to supervise the payment of the unpaid wages owing to any employee under this subchapter or any order or regulation issued thereunder, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (a) of this section to such unpaid wages and an additional equal amount as liquidated damages. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 16; Oct. 15, 1966, 80 Stat. 969, Pub. L. 89-684, § 1.)

**AMENDMENT**

1966—Act Oct. 15, 1966, substituted entirely new provisions. See 1966 amendment note preceding § 36-401. Former provisions of this section (§ 16 of 1918 act) directed Minimum Wage and Industrial Safety Board to investigate from time to time and ascertain if employers in the District were observing and complying with Board's orders, and to report all violations to Corporation Counsel. For former provisions of § 15 of the 1918 act, see 1966 amendment note under § 36-414.

**EFFECTIVE DATE OF 1966 AMENDMENT**

See note under § 36-401.

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**NOTES TO DECISIONS****Jurisdiction of court**

District of Columbia Court of General Sessions, with a jurisdictional ceiling of \$10,000 on actions for damages, did not have jurisdiction of action by District of Columbia against employer to recover \$42,129.40 in wage claims assigned to it by employees assertedly aggrieved by failure of their employers to pay them compensation to which they were entitled under the District of Columbia Minimum Wage Act, notwithstanding claim that multiple claims should not be aggregated in determining jurisdictional amount where plaintiff is acting as assignee of claimants merely for purpose of collection, since the claims itemized were based on investigation of appropriate municipal agency and upon records retained by such agency, so that District government was much more than a nominal plaintiff. *District of Columbia v. Diener's Linoleum and Tile Co., Inc. et ano.* (D.C. App. 1971, 278 A. 2d 684).

District of Columbia Court of General Sessions, with a jurisdictional ceiling of \$10,000 on actions for damages, did not have jurisdiction of action by District of Columbia government against employer to recover \$12,299.68 in wage claims assigned to it by employees assertedly aggrieved by failure of employers to pay them compensation to which they were entitled under the District of Columbia Minimum Wage Act, but since the total and unpaid minimum and overtime wages was only \$6,149.84, a figure well below jurisdictional maximum,



case would be remanded to allow determination of question whether inclusion of liquidated damages in complaint was justified and, if unjustified, to allow District government to cure jurisdictional defect on motion to amend complaint by striking liquidated damages item. *Id.*

#### § 36-416. Statute of limitations.

Any action commenced on or after the effective date of the District of Columbia Minimum Wage Amendments Act of 1966 to enforce any cause of action for unpaid wages or liquidated damages under this subchapter or any order or regulation issued thereunder may be commenced within three years after the cause of action accrued, and every such action shall be forever barred unless commenced within three years after the cause of action accrued. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 17; June 7, 1934, 48 Stat. 926, ch. 426; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Oct. 15, 1966, 80 Stat. 970, Pub. L. 89-684, § 1.)

#### REFERENCES IN TEXT

In this section the words "on or after the effective date of the District of Columbia Minimum Wage Amendments Act of 1966" refer to effective date of act Oct. 15, 1966, cited to the text, which amended this section and all other sections of this subchapter. For effective date of such act, see § 4 thereof, set out as a note under § 36-401.

#### AMENDMENTS

1966—Act Oct. 15, 1966, substituted entirely new provisions. See 1966 amendment note preceding § 36-401. Former provisions of this section (§ 17 of 1918 act) provided for finality of Minimum Wage and Industrial Safety Board's decisions on questions of fact, and for appeals on questions of law to the District Court and from that court to United States Court of Appeals. For former provisions of § 16 of the 1918 act, see 1966 amendment note under § 36-415.

1949, 1948, 1936, and 1934—Affected names of the courts specified in former provisions of this section. See 1966 amendment note above.

#### EFFECTIVE DATE OF 1966 AMENDMENT

See note under § 36-401.

#### § 36-417. Right of collective bargaining.

Nothing in this subchapter shall be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or other conditions of work in excess of the standards applicable under the provisions of this subchapter. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 18; Oct. 15, 1966, 80 Stat. 970, Pub. L. 89-684, § 1.)

#### AMENDMENT

1966—Act Oct. 15, 1966, substituted entirely different provisions. See 1966 amendment note preceding § 36-401. Former provisions of this section (§ 18 of 1918 act) provided penalties for violations of former provisions of this subchapter. For former provisions of § 17 of the 1918 act, see 1966 amendment note under § 36-416.

#### EFFECTIVE DATE OF 1966 AMENDMENT

See note under § 36-401.

#### § 36-418. Separability of provisions.

If any provision of this subchapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the subchapter and

the application thereof to other persons or circumstances shall not be affected thereby. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 18; Oct. 15, 1966, 80 Stat. 970, Pub. L. 89-684, § 1.)

#### AMENDMENT

1966—Act Oct. 15, 1966, substituted entirely different provisions. See 1966 amendment note preceding § 36-401. Former provisions of this section (§ 19 of 1918 act) provided penalties for discrimination by employers against employees who testified, or who were considered as about to testify, or who served or were believed might serve on conferences, in investigations of proceedings under or relative to former provisions of this subchapter. For former provisions of § 18 of the 1918 act, see 1966 amendment note under § 36-417.

#### EFFECTIVE DATE OF 1966 AMENDMENT

See note under § 36-401.

#### § 36-419. Short title.

This subchapter may be cited as the "District of Columbia Minimum Wage Act". (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 19; Oct. 15, 1966, 80 Stat. 970, Pub. L. 89-684, § 1.)

#### AMENDMENT

1966—Act Oct. 15, 1966, substituted entirely different provisions. See 1966 amendment note preceding § 36-401. Former provisions of this section (§ 20 of 1918 act) made employers responsible for the acts of their agents with respect to violations of former provisions of this subchapter. Under former § 36-422 (§ 23 of 1918 act) the short title for this subchapter was the "District of Columbia Minimum-Wage Law". For former provisions of § 19 of the 1918 act, see 1966 amendment note under § 36-418.

#### EFFECTIVE DATE OF 1966 AMENDMENT

See note under § 36-401.

#### SHORT TITLE OF 1966 AMENDMENTS

See note under § 36-401.

#### §§ 36-420 to 36-422. Omitted.

#### CODIFICATION

Sections, act Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, §§ 21, 22, 23 respectively, were omitted in the general amendment of that act by act Oct. 15, 1966, 80 Stat. 961, Pub. L. 89-684, § 1. See 1966 amendment note preceding § 36-401.

Section 36-420 (§ 21 of 1918 act, as affected or amended by acts April 1, 1942, 56 Stat. 190, ch. 207, § 1, and July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1), provided for prosecutions by the Corporation Counsel for violations of former provisions of this subchapter, in the District of Columbia Court of General Sessions, and is now covered by § 36-414.

Section 36-421 (§ 22 of 1918 act) provided for civil actions by employees (women workers) to recover for unpaid minimum wages, and is now covered by § 36-415.

Section 36-422 (§ 23 of 1918 act) provided the short title for, and stated the purposes of, the former provisions of this subchapter, and is now covered by §§ 36-401 and 36-419.

### SUBCHAPTER II.—INDUSTRIAL SAFETY

#### § 36-431. Purpose of subchapter.

The purpose of this subchapter is to foster, promote, and develop the safety of wage earners of the District of Columbia in relation to their working conditions. (Sept. 19, 1918, ch. 174, title II, § 1, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3.)

#### EFFECTIVE DATE

Section 4 of act Oct. 14, 1941, provided that: "This Act [this subchapter] shall become effective upon its approval by the President [Oct. 14, 1941]."



## APPROPRIATIONS

Section 13 of title II of act Sept. 19, 1918, as added by section 3 of act Oct. 14, 1941, provided that: "There is hereby authorized to be appropriated, out of the revenues for the District of Columbia, a sum not to exceed \$15,000 per annum, or so much thereof as may be necessary, for the proper administration of this title [this subchapter]."

## SEPARABILITY OF PROVISIONS

Section 14 of title II of act Sept. 19, 1918, as added by section 3 of act Oct. 14, 1941, provided that: "If any provision of this title [this subchapter], or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this title [this subchapter], or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby."

## NOTES TO DECISIONS

## Persons protected

This chapter creating the Minimum Wage and Industrial Safety Board affects the relationship between employer and employee only, and safety regulations promulgated by Board pursuant to § 36-434 did not apply to plaintiff, a wall paper hanger who was not an employee of defendant operator of wall paper company, who was injured when a rod flew out of a wall paper trimming machine owned by defendant and being used by plaintiff in hanging wall paper purchased by plaintiff from defendant. *Kurtz v. Capital Wall Paper Co.* (D. C. Mun. App. 1948, 61 A. 2d 470).

## § 36-432. Definitions.

When used in this subchapter, the following words shall have the following meanings, unless the context clearly requires otherwise:

(a) "Employer" includes every person, firm, corporation, partnership, stock association, agent, manager, representative, or foreman, or other persons having control or custody of any place of employment or of any employee. It shall not include the District of Columbia or any instrumentality thereof, or the United States or any instrumentality thereof.

(b) "Board" means the Minimum Wage and Industrial Safety Board.

(c) "Safe" and "safety" as applied to an employment, a device, or a place of employment, including facilities of sanitation and hygiene, mean such freedom from danger to life or health of employees as circumstances reasonably permit, and shall not be given restrictive interpretation so as to exclude any mitigation or prevention of a specific danger.

(d) "Place of employment" means any place where employment is carried on: *Provided, however*, That such term shall not include the premises of any Federal or District of Columbia establishment, except to include any and all work of whatever nature being performed by an independent contractor for the United States Government or any instrumentality thereof or the District of Columbia or any instrumentality thereof.

(Sept. 19, 1918, ch. 174, title II, § 2, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3; Jan. 5, 1971, Pub. L. 91-650, title V, § 501(1), 84 Stat. 1936.)

## AMENDMENT

1971—Section 501(1) of act Jan. 5, 1971, Pub. L. 91-650, amended section—

(A) by striking out in paragraph (a) "industrial employment, place of employment," and inserting in lieu thereof "place of employment", and

(B) by striking out in paragraph (d) "industrial".

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91-650

See secs. 301-803 of act Jan. 5, 1971, Pub. L. 91-650, set out as a note under § 47-2501a.

## ABOLITION OF BOARD OF TRANSFER OF FUNCTIONS

The Minimum Wage and Industrial Safety Board was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorg. Plan No. 5 of 1952. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorg. Plan No. 3 of 1967.

Reorg. Ord. No. 36, dated June 16, 1953, as amended, established under the direction and control of a Commissioner, a Minimum Wage and Industrial Safety Board and prescribed its organization and functions. Commissioner's Order [Org. Action] No. 69-96, dated Mar. 7, 1969, as amended, provided in part that the Director of the Department of Economic Development shall maintain cooperative relationships and liaison with the Board.

The Plans and Orders are set out in the appendix to title 1.

## § 36-433. Additional duties of Board under this subchapter.

The Board, in addition to its duties defined in subchapter I of this chapter shall administer the provisions of this subchapter and shall have power to make such inspections and investigations as it may deem necessary; collect and compile statistical information; require employers to keep their places of employment reasonably safe; require employers to keep such records as it may deem advisable and to furnish the Board with complete, detailed reports relative to all accidents. The District of Columbia Council shall have power to determine and fix reasonable standards of safety in employment, places of employment, in the use of devices and safeguards, and in the use of practices, means, methods, operations, and processes of employment; promulgate general rules and regulations based upon such standards and fix the minimum safety requirements which shall be complied with by employers within the purview of this subchapter. To promote the safety of persons employed in existing buildings or other existing structures, such rules, regulations, and standards may require without limitation, changes in the permanent or temporary features of such buildings or other structures. (Sept. 19, 1918, ch. 174, title II, § 3, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3; Jan. 5, 1971, Pub. L. 91-650, title V, § 501(2), 84 Stat. 1936.)

## AMENDMENT

1971—Section 501(2) of act Jan. 5, 1971, Pub. L. 91-650, added at the end of the section a new sentence.

## ABOLITION OF BOARD AND TRANSFER OF FUNCTIONS

See note under § 36-432.

## TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(283) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the functions of the Board of Commissioners of (i) determining and fixing standards of safety in employment, places of employment, in the use of devices and safeguards, and in the use of practices, means, methods, operations, and processes of



employment, and (ii) promulgating general rules and regulations and fixing minimum safety requirements, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

#### NOTES TO DECISIONS

##### In general

Congress has power to impose on employer in District of Columbia duty to ascertain at his peril whether his equipment, used by employees, complies with set minimum safety standards. *Davis v. District of Columbia* (D. C. Mun. App. 1948, 59 A. 2d 208).

##### Coverage of regulation

A regulation of District of Columbia Industrial Safety Board that general slope of cross grain in side rails of portable ladders should not exceed one inch in fifteen inches was directed to employers using ladders in district rather than ladder manufacturers or retailers who might be located in any part of nation. *Davis v. District of Columbia* (D. C. Mun. App. 1948, 59 A. 2d 208).

##### Validity of regulations

A regulation of District of Columbia Industrial Safety Board that general slope of cross grain in wood side rails of portable ladders built to minimum dimensions should not exceed one inch in fifteen inches was not unreasonable, either in general or as applied to employer using or causing his employees to use a ladder having greater slope of grain. *Davis v. District of Columbia* (D.C. Mun. App. 1948, 59 A 2d 208).

Unreasonableness of requirement in regulation of District of Columbia Industrial Safety Board as to ladders that wood used in side rails thereof be dried to not more than specified moisture content did not render entire regulation, including provision as to maximum general slope of cross grain in such rails, unreasonable. *Id.*

#### § 36-434. Rules and regulations—Public hearing—Publication—Effective date.

Before any rules or regulations of the District of Columbia Council shall become effective a public hearing shall be held by the Council for the purpose of investigating reasonable standards of safety in employment, places of employment, in the use of devices and safeguards, and in the use of practices, means, methods, operations, and processes of employment, and any person interested in the matter being investigated may appear and testify. If, after investigation, the Council is of the opinion that minimum standards of safety requirements are necessary to protect or safeguard the lives or health of employees covered by this subchapter, it may adopt and promulgate such rules and regulations as it may deem advisable, which shall become effective thirty days after publication of notice at least once in a newspaper of general circulation in the District of Columbia that they have been adopted and copies are available to the public at the office of the Commissioner of the District of Columbia. (Sept. 19, 1918, ch. 174, title II, § 4, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 4, and amended June 14, 1944, 58 Stat. 279, ch. 258.)

##### AMENDMENT

1944—Act June 14, 1944, amended section by deleting "they have been published at least once in two of the daily newspapers of general circulation in the District of Columbia.", and inserting in lieu thereof "publication of notice \* \* \* office of the Board."

##### ABOLITION OF BOARD AND TRANSFER OF FUNCTIONS

See note under § 36-432.

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(284) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners of adopting and promulgating rules and regulations under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

##### CROSS REFERENCE

Filing and publishing of rules, see § 1-1506.

#### NOTES TO DECISIONS

##### Violation of safety regulations

Evidence sustained conviction for violations of certain safety regulations in connection with construction of a storm water sewer, based on defendant's failure to adequately shore a trench more than 15 feet in depth and 10 feet in length, in violation of safety standards. *East River Construction Corp. v. Dist. of Columbia* (D.C. Mun. App. 1960, 160 A. 2d 389).

#### § 36-435. Authority to take testimony—Subpoena.

Any member of the Board shall have power to administer oaths and the Board may require by subpoena the attendance and testimony of witnesses, the production of all books, registers, and other evidence relative to any matters under investigation, at any public hearing, or at any session or any conference held by the Board. In case of disobedience to a subpoena the Board may invoke the Superior Court of the District of Columbia in requiring the attendance and testimony of witnesses and the production of documentary evidence. In the case of contumacy or refusal to obey a subpoena, the court may issue an order requiring appearance before the Board, the production of documentary evidence and the giving of evidence touching the matter in question, and any failure to obey such order of the court may be punished by such court as a contempt thereof. (Sept. 19, 1918, ch. 174, title II, § 5, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3, and amended June 25, 1948, 62 Stat. 991, ch. 646, § 232(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91-358, title I, § 155(c) (38), 84 Stat. 572.)

##### AMENDMENT

1970—Section 155(c) (38) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

##### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

##### CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

#### § 36-436. Variations by employers from regulations.

The Board may, upon written application of any employer affected by such rule or regulation, permit variations from any provisions thereof if it shall find that the application of such provision would result in unnecessary hardship or practical difficulty, and notwithstanding such variance, that the protection afforded by such rule or regulation will be provided. The Board may grant a hearing



open to the public on such application upon request of the applicant or other interested party or parties, or on its own initiative. The Board's decision thereon shall be subject to review by the District of Columbia Court of Appeals upon petition of the applicant or other affected party or parties. The Board shall keep a properly indexed record of all variations permitted from any rule or regulation, which shall be open to public inspection. (Sept. 19, 1918, ch. 174, title II, § 6, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3; Jan. 5, 1971, Pub. L. 91-650, title V, § 501(3), 84 Stat. 1936.)

#### AMENDMENT

1971—Section 501(3) of act Jan. 5, 1971, Pub. L. 91-650, amended section generally. For provisions of section before this amendment, see 1967 edition of the code.

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91-650

See secs. 801-803 of act Jan. 5, 1971, Pub. L. 91-650, set out as a note under § 47-2501a.

### § 36-437. Employment of Director of Industrial Safety—Compensation—Duties.

The Board is hereby authorized to employ a Director of Industrial Safety, who shall not be a member of the Board and whose compensation shall be fixed in accordance with chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]. The Director shall perform such duties as may be prescribed by the Board in administering the provisions of this subchapter. (Sept. 19, 1918, ch. 174, title II, § 7, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3, and amended Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a).)

#### CODIFICATION

The reference in this section to "chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89-554, set out in note under § 1-251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

#### AMENDMENT

1949—Act Oct. 28, 1949, § 1106(a), which was a part of the Classification Act of 1949, and which has since been repealed, substituted "Classification Act of 1949" for "Classification Act of 1923". See codification note above.

### § 36-438. Employers' duties—Furnish safe place of employment—Furnish required information—Report employees' injury, death, or disease—Record of employees.

(a) Every employer shall furnish a place of employment which shall be reasonably safe for employees, shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably safe and adequate to render such employment and place of employment reasonably safe.

(b) Every employer shall furnish to the Board any information which the Board is authorized to require and shall make true and specific answers to all questions.

(c) Every employer shall submit to the Board within ten days from the date of any injury or death, or from the date that the employer has knowledge of any disease or infection resulting from any injury, a duplicate copy of the report provided for in section 930 of title 33, U.S. Code, as made applicable to the District of Columbia by sections 36-501 and 36-502.

(d) Every employer shall keep an accurate record of every person employed by him so as to be able in case of accident immediately to give an accurate record relative to same. (Sept. 19, 1918, ch. 174, title II, § 8, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3.)

### § 36-439. Authority to examine place of employment.

(a)<sup>1</sup> The Board, or any officer or employee acting under its authority, shall have the authority, at any reasonable time, to enter any place where an employment covered by this subchapter is being carried on, and to examine any structure, tool, appliance, machinery, or process used in or connected with such employment. No employer or other persons shall refuse to admit any member of the Board or its authorized representative to any such place or to permit any such examination. (Sept. 19, 1918, ch. 174, title II, § 9, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3.)

### § 36-440. Office space and supplies for Board.

The Commissioner of the District of Columbia shall furnish the Board with such office space, furniture and equipment, stationery, books, books of reference, and other supplies as are necessary for the discharge of its duties under this subchapter. (Sept. 19, 1918, ch. 174, title II, § 10, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

### § 36-441. Annual report to Commissioner.

The Board shall annually, on or before the 1st day of July, file with the Commissioner of the District of Columbia a report covering its activities under this subchapter. (Sept. 19, 1918, ch. 174, title II, § 11, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

### § 36-442. Penalties for violations of subchapter—Jurisdiction.

Whoever violates any of the provisions of this subchapter, or any rules or regulations promulgated hereunder, shall be deemed guilty of a misdemeanor; and, upon conviction thereof, shall be punished by a fine of not less than \$100 or more than \$600, or by imprisonment of not exceeding ninety days. Prosecutions for violations of this subchapter shall be in the name of the District of Columbia on information filed in the Superior Court of the District of Columbia by the corporation counsel or one of his

<sup>1</sup> So in original. There is no subsec. (b).



assistants. (Sept. 19, 1918, ch. 174, title II, § 12, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3, and amended Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570; Jan. 5, 1971, Pub. L. 91-650, title V, § 501(4), 84 Stat. 1936.)

#### AMENDMENTS

1971—Section 501(4) of act Jan. 5, 1971, Pub. L. 91-650, struck out "more than \$300" and inserted in lieu thereof "less than \$100 or more than \$600".

1970—Section 155(a) of act July 29, 1970, Pub. L. 91-358, struck out "District of Columbia Court of General Sessions" and inserted in lieu thereof "Superior Court of the District of Columbia".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding § 11-101.

#### CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

#### NOTES TO DECISIONS

##### Burden of proof

The burden is on employer, charged with violation of District of Columbia Industrial Safety Board's regulation, with its general authority, as to slope of cross grain in wood side rails of ladders, to demonstrate clearly that regulation is beyond board's delegated authority or so unreasonable as to be void. *Davis v. District of Columbia* (D. C. Mun. App. 1948, 59 A. 2d 208).

##### Scienter

Since Congress used no words bearing on specific intent in penalty provision of this section governing industrial safety of wage earners, the government was not required to prove that excavation corporation, charged with violating District of Columbia construction safety regulations requiring self-propelled equipment to be equipped with reverse signal alarm and requiring overhead protection to be provided for operator when equipment is used when falling or flying objects are a hazard, knew of such violations. *Hutchison Brothers Excavation Co., Inc. v. District of Columbia* (D.C. App. 1971, 278 A. 2d 318).

##### Witnesses

One who had been an inspector for industrial safety board of District of Columbia for over five years, had previously been employed as carpenter, iron worker and rigger for large construction company for over thirty years, and was member of carpenters' and iron workers' unions, was qualified to testify as expert that side rail of ladder showed cross grain of one inch in five inches in violation of board's regulation that slope of cross grain should not exceed one inch in fifteen inches. *Davis v. District of Columbia* (D. C. Mun. App. 1948, 59 A. 2d 208).

### Chapter 5.—WORKMEN'S COMPENSATION

#### Sec.

36-501. Longshoremen's and Harbor Workers' Compensation Act made applicable to District of Columbia.

36-502. Exceptions.

§ 36-501. Longshoremen's and Harbor Workers' Compensation Act made applicable to District of Columbia.

The provisions of chapter 18 of title 33, U.S. Code, including all amendments that may hereafter be made thereto, shall apply in respect to the injury or death of an employee of an employer carrying on

any employment in the District of Columbia, irrespective of the place where the injury or death occurs; except that in applying such provisions the term "employer" shall be held to mean every person carrying on any employment in the District of Columbia, and the term "employee" shall be held to mean every employee of any such person. (May 17, 1928, 45 Stat. 600, ch. 612, § 1.)

#### EFFECTIVE DATE

Section 3 of act May 17, 1928, provided that: "This Act [adding this section and section 36-502] shall take effect July 1, 1928."

#### CROSS REFERENCE

Action for wrongful death, generally see § 16-2701 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-438, 46-303.

#### NOTES TO DECISIONS

##### Abatement

Where all matured installments had been paid at the date of compensation claimant's death without dependents the unmatured portion of the award abated. *Turner v. Christian Heurich Brewing Co.* (1948, 169 F. 2d 681, 83 U.S. App. D.C. 333).

##### Accidental injury

Death of employee, who worked in mailing department of magazine publisher and who suffered from angina pectoris and whose work involved dragging heavy mail bags about 25 feet, "arose out of and in the course of his employment" and was due to "an accidental injury" within the meaning of Longshoremen's and Harbor Workers' Compensation Act. *M. T. Hancock, etc. v. C. Einbinder, Deputy Commissioner, etc.* (1962, 310 F. 2d 872, 114 U.S. App. D.C. 67).

"Accidental injury" includes any injury which is unexpected or not designed, and just as much includes injury sustained by an employee subject to physical infirmities as injury to one who is strong and robust. *Commercial Casualty Ins. Co. v. Hoage* (1935, 75 F. 2d 677, 64 App. D. C. 158).

The evidence, particularly the testimony of the physician, justified the deputy commissioner in ruling that the paralysis was the natural result of the accidental injury. *Massachusetts Bonding & Ins. Co. v. Hoage* (1934, 69 F. 2d 575, 63 App. D. C. 89).

##### Action at law

Where employer fails to secure workmen's compensation coverage and the employee files an action at law to recover for injuries sustained in course of his employment, the statute abolishes the ordinarily available defenses of contributory negligence, assumption of risk of employment, or that the cause was a fellow-employee's negligence, but beyond that there is no change in common-law rights and liabilities. *Howard v. Lightner* (D.C. App. 1965, 214 A. 2d 474).

An employee who elects to bring action at law against employer who failed to secure payment of compensation as required by section 932 of title 33, U. S. Code as authorized by section 905 of such title has affirmative duty of showing negligence equally as great as in any other tort action. *Garcia v. De Leon* (D. C. Mun. App. 1948, 59 A. 2d 637).

##### Aggravation of illness

Aggravation of a pre-existing condition may constitute compensable accidental injury under Longshoremen's and Harbor Workers' Compensation Act. *M. R. Wheatley v. H. Adler, Deputy Commissioner, etc., et al.* (1968, 407 F. 2d 307, 132 U.S. App. D.C. 177).

Deputy commissioner's findings that injury of September 29, 1958 caused aggravation of pre-existing osteoarthritis of right hip of claimant who had received a subsequent injury on February 4, 1961 and that need for subsequent injections into hip joint was due to injury of September 29, 1958 were not supported by substantial evidence. *Lumbermen's Mutual Casualty Co., et al. v. C. Einbinder, Deputy Commissioner etc.* (1965, 343 F. 2d 338, 120 U.S. App. D.C. 56).



In suit by widow to set aside denial of benefits for death of husband who had been awarded compensation as having been totally and permanently disabled while on job by unexpected overexertion which materially aggravated preexisting aneurysm of abdominal aorta, evidence established that exertion materially aggravated diseased aortic condition, and that disabling effect of injury continued until death, and aggravation of preexisting aneurysm of abdominal aorta, caused by unexpected overexertion, constituted "accidental injury" within meaning of Longshoremen's and Harbor Workers' Compensation Act. *Friend v. Britton* (1955, 220 F. 2d 820, 95 U. S. App. D. C. 139, certiorari denied 76 S. Ct. 72, 350 U. S. 836, 100 L. Ed. 745).

Where deceased's conduct demonstrates a sudden change in a pre-existing illness, the question arises whether that illness had been aggravated by the employment; and where upon a truck driver's return from a long and arduous trip he suddenly became obsessed with idea that he was being pursued by mob, with result that he was confined in jail, and was thereafter shot by police officer whom truck driver had violently attacked, wherein there was evidence of pre-existing nervous disorder, evidence was sufficient to warrant conclusion that death arose out of and in the course of employment. *Robinson v. Bradshaw* (1953, 206 F. 2d 435, 92 U. S. App. D. C. 216, certiorari denied 74 S. Ct. 226, 346 U. S. 899, 98 L. Ed. 399).

If an illness which itself is unrelated to the employment is nevertheless aggravated thereby and death is result, then the death is the result of an injury within the meaning of the Longshoremen's and Harbor Workers' Compensation Act, which is the compensation statute applicable in District of Columbia. *Id.*

#### Application of statute

A workmen's compensation statute must be liberally construed and applied in favor of the workman. *Great American Indemnity Co. et al. v. Britton, Deputy Commissioner etc.* (D.C.D.C. 1960, 186 F. Supp. 938).

Longshoremen's and Harbor Workers' Compensation Act is to be construed with view to its beneficent purposes, and doubts, including the factual, are to be resolved in favor of the employee or his dependent family. *Friend v. Britton* (1955, 220 F. 2d 820, 95 U. S. App. D. C. 139, certiorari denied 76 S. Ct. 72, 350 U. S. 836, 100 L. Ed. 745).

Workmen's compensation acts are remedial statutes and must be liberally construed in favor of injured employees or deceased employees' dependent families. *Liberty Mutual Insurance Co. et al. v. Donovan et al.* (D.C.D.C. 1954, 124 F. Supp. 320).

Congress did not, by enactment of wrongful death statute and compensation act applicable to District of Columbia, intend to create two separate and independent causes of action for wrongful death, and there was no intention to allow a widow of an injured employee to recover from the employer under both acts. *Ciarrocchi v. James Kane Co. et al.* (D.C.D.C. 1954, 116 F. Supp. 848).

Longshoremen's and Harbor Workers' Compensation Act is remedial in character and is to be liberally construed, with doubts being resolved in favor of the employee or his dependent family. *Robinson v. Bradshaw* (1953, 206 F. 2d 435, 92 U. S. App. D. C. 216, certiorari denied 74 S. Ct. 226, 346 U. S. 899, 98 L. Ed. 399).

Death benefits under amendatory provision of Longshoremen's and Harbor Workers' Compensation Act which increased benefits payable and which stipulated that increase should be applicable only to injuries or death occurring on or after effective date of amendment, were payable for death of employee which occurred after effective date but which resulted from injury which happened prior to effective date. *Travelers Ins. Co. v. Toner et al.* (1951, 190 F. 2d 30, 89 U. S. App. D. C. 77, certiorari denied 72 S. Ct. 48, 342 U. S. 826, 96 L. Ed. 624).

Where subcontractor and its employee, who were both residents of the District of Columbia, entered into a contract of employment in the District of Columbia, and employee was injured in Virginia because of alleged negligence of general contractor, and employee and subcontractor's insurer, which had paid workmen's compensation to employee, sought recovery in Virginia from general con-

tractor, on ground that general contractor negligently caused employee's injuries, courts in Virginia, including federal tribunals, could treat the District of Columbia Compensation Law with its privilege of suing the general contractor as a constituent of employee's contract of employment. *Liberty Mutual Ins. Co. v. Goode Const. Co.* (D.C.D.C. 1951, 97 F. Supp. 316).

Where subcontractor and its employee, who were both residents of the District of Columbia, entered into a contract of employment in the District of Columbia, and employee was injured in Virginia because of alleged negligence of general contractor, employee and subcontractor's insurer which had paid workmen's compensation to employee, were entitled to maintain action in federal district court in Virginia against general contractor, on ground that general contractor negligently caused employee's injuries, though such action was not maintainable under Virginia compensation law. *Id.*

Where appellant was injured while working in appellee's car barn, he could not recover under § 44-401 of the Code since this section has become the applicable workman's compensation act for the District and appellee was not a common carrier by railroad and is excepted from the operation of this section. *Keffer v. Capital Transit Co.* (1950, 183 F. 2d 808, 87 U. S. App. D. C. 13).

New York authorities interpreting New York Compensation Act, McKinney's Workmen's Compensation Law § 1 et seq., are particularly important in construing section 901 et seq. of title 33, U. S. Code, since former Act served as model for latter, which was made applicable to District of Columbia by this section. *Garcia v. De Leon* (D. C. Mun. App. 1948, 59 A. 2d 637).

Generally, employer must compensate workman for consequences of an accident although his previous defects cooperated in producing them, and a statute creating exceptions to that general principle should be narrowly construed. *National Homeopathic Hospital Ass'n of Dist. of Col. v. Britton* (1945, 147 F. 2d 561, 79 U. S. App. D. C. 309, certiorari denied 65 S. Ct. 1185, 325 U. S. 857, 89 L. Ed. 1977).

Where salesman's office was in District of Columbia, though his selling contacts were largely outside and his time was nearly equally divided between the two, this section affording him protection for injuries while traveling outside the district in connection with his employment was valid and within power of Congress. *B. F. Goodrich Co. v. Britton* (1944, 139 F. 2d 362, 78 U. S. App. D. C. 221).

Whether employer was at time of injury engaged in business in District of Columbia and whether deceased was an employee within District in carrying on of the business, and when injured was performing services in connection with the employment, were important considerations in determining whether this section was applicable. *Id.*

An intent to bar compensation claims before they arise cannot fairly be imputed to Congress. *Potomac Elec. Power Co. v. Cardillo* (1940, 107 F. 2d 962, 71 App. D. C. 163).

Under the United States Employees' Compensation Act an injured employee of the United States has his sole remedy. *Posey v. Tennessee Valley Authority* (C.C.A. 5, 1938, 93 F. 2d 726).

There is no substantial reason for denying the District the right to enforce its own law in its own courts, and that in the circumstances the full faith and credit clause does not require that the statutes of Alabama be given effect. *United States Casualty Co. v. Hoage* (1935, 77 F. 2d 542, 64 App. D. C. 284).

To bring the case within the terms of the Employers' Liability Act, the defendant must have been at the time of the injury engaged as a common carrier in interstate commerce or commerce solely within the District, and the plaintiff-employee must have been employed by a carrier in such commerce or in work so closely related to it as to be practically a part of it. *Poff v. Washington Terminal Co.* (1934, 69 F. 2d 572, 63 App. D. C. 86).

#### Apportionment

Where death was validly found to have been attributable equally to two successive injuries occurring within scope of employment by different employers, liability was properly to be apportioned equally between employers



and their respective insurers insofar as death benefits and medical and funeral expenses were concerned. *United Painters & Decorators et al. v. T. Britton, Deputy Commissioner etc.* (1962, 301 F. 2d 560, 112 U.S. App. D.C. 236).

#### Assumption of risk

A ride by employee on running board of dump truck was not so obviously dangerous or risky a method of traveling a few hundred feet that employee assumed risk of injury. *Smoot Sand & Gravel Corp. v. Britton* (1946, 152 F. 2d 17, 80 U. S. App. D. C. 260).

#### Award

Claimant who had lost use of right hand for all but lightest work, and who was permanently totally disabled, is not limited, under Longshoremen's and Harbor Workers' Act, to the scheduled award for loss of hand. *American Mutual Insurance Company of Boston et ano. v. W. B. Jones* (1970, 426 F. 2d 1263, 138 U.S. App. D.C. 269).

Where employee fell in course of his work and fractured right kneecap, but previous accidents, none of them connected with any employment, had fractured same kneecap and had led to amputation of left leg and left arm, and the fracture caused by the fall, combined with the previous fracture and amputations, caused permanent total disability, the employee was properly awarded compensation based on permanent total disability and on his earning capacity at time of the fall. *National Homeopathic Hospital Ass'n of Dist. of Col. v. Britton* (1945, 147 F. 2d 561, 79 U. S. App. D. C. 309, certiorari denied 65 S. Ct. 1185, 325 U. S. 857, 89 L. Ed. 1977).

When employee had hernia which caused disability, at first apparently temporary but later becoming permanent, this change is sufficient to support the modification of an award. *New Amsterdam Casualty Co. v. Cardillo* (1940, 108 F. 2d 492, 71 App. D.C. 172).

Medical and similar benefits which the employer is required to furnish are not to be counted in applying the \$7,500 limit of "total compensation" payable for death or injury, and it follows that compensation acts are to be "construed liberally in furtherance of the purpose for which they were enacted." *Cardillo v. Liberty Mut. Ins. Co.* (1939, 101 F. 2d 254, 69 App. D. C. 330).

Wage-earning capacity of the employee was diminished by reason of the injuries sustained by him in the course of and arising out of his employment. *Hartford Acc. & Indem. Co. v. Hoage* (1936, 85 F. 2d 420, 66 App. D. C. 163).

#### Basis for rejection of claim

The rejection of a workmen's compensation claim for the death of an employee occurring during the course of employment cannot be supported as matter of law unless record contains substantial evidence showing that the death did not arise out of employment. *M. R. Wheatley v. H. Adler, Deputy Commissioner, etc., et al.* (1968, 407 F. 2d 307, 132 U.S. App. D.C. 177).

#### Burden of proof

Longshoremen's and Harbor Workers' Compensation Act places burden on employer to go forward with evidence to meet presumption that injury or illness occurring during employment was caused by that employment. *J. F. Butler v. District Parking Management Co., et al.* (1966, 363 F. 2d 682, 124 U.S. App. D.C. 195).

Burden of proof imposed on employer of going forward with evidence to meet presumption that injury or illness occurring during employment was caused by that employment was not met by employer which offered no substantial evidence that employee's mental breakdown was not related to work as parking lot attendant. *Id.*

#### Causal relationship

Fact that workman's death from coronary thrombosis occurred shortly after attack of chest pains was evidence of causal relationship between attack and death, as was strenuous nature of work prior to fatal attack. *Vendemia v. Cristaldi et al.* (1955, 221 F. 2d 103, 95 U. S. App. D. C. 230).

For purposes of compensation under Longshoremen's and Harbor Workers' Compensation Act, to hasten death is to cause it. *Id.*

#### Change in physical condition

There was, within the meaning of this section, a change in the injured person's physical condition in relation to the injury, since the condition, which was temporary at one time, had become permanent. *New Amsterdam Casualty Co. v. Cardillo* (1940, 108 F. 2d 492, 71 App. D. C. 172).

#### Commissioner's finding of fact

Findings by Department of Labor that complaints received by clerical employee, rejection of a suggestion made by her, and an increase in amount of work employee was to perform aggravated employee's underlying obsessive and compulsive state, precipitated a marked worsening in a long-existing emotional condition, and required employee to cease work and receive institutionalized psychiatric care, which constituted an injury arising out of and in course of her employment at Institute, and entitled her to compensation benefits under Longshoremen's and Harbor Workers' Compensation Act were supported by substantial evidence. *Urban Land Institute et al. v. J. Garrell* (1972, 346 F. Supp. 699).

Deputy Commissioner of United States Department of Labor, Bureau of Employees' Compensation, who rejected claim that worker sustained a ruptured disc while employed as a freight handler, on grounds that worker failed to establish that injury was sustained on dates alleged, that worker failed to give written notice of injury to employer or Deputy Commissioner within 30 days, and that there was a failure to establish a causal relationship between the injury and worker's employment, should have stated whether he gave proper consideration to the possibility that worker's failure to give timely notice as required by statute was excusable for some satisfactory reason. *C. C. Bartges v. E. D. Woodworth, Deputy Commissioner etc., et al.* (1971, 452 F. 2d 1383, 147 U.S. App. D.C. 51).

The findings of a deputy commissioner in proceedings under the Longshoremen's and Harbor Workers' Act must be accepted as true unless they are not supported by substantial evidence on the record considered as a whole and may be set aside only if not in accordance with law. *A. E. Van Devander and W. L. Massey v. Heller Electric Co., Inc., et al.* (1968, 405 F. 2d 1108, 132 U.S. App. D.C. 40).

Deputy commissioner's conclusion that claim was not compensable under Longshoremen's and Harbor Workers' Compensation Act was controlling, where there was factual and legal support for the conclusion. *Wolff etc. v. Britton, Deputy Commissioner, etc.* (1964, 328 F. 2d 181, 117 U.S. App. D.C. 209).

In proceeding to obtain workmen's compensation for death of manager-cook, of lunch counter at drugstore, who was shot by customer whom manager-cook had ejected from drugstore, evidence sustained deputy commissioner's conclusion that deceased's death came within coverage of this section. *National Union Fire Ins. Co. v. Britton, Deputy Commissioner etc.* (D.C.D.C. 1960, 187 F. Supp. 359).

Evidence sustained deputy commissioner's findings that musicians who were individually paid by proprietor of restaurant were employees of proprietor, notwithstanding facts that proprietor made no deductions from their compensation for social security and income taxes and no premiums for workmen's compensation were paid with regard to them. *Great American Indemnity Co. et al. v. Britton, Deputy Commissioner etc.* (D.C.D.C. 1960, 186 F. Supp. 938).

Evidence sustained deputy commissioner's findings that musicians who were paid \$10 wages a night, five days a week and who received tips had average wage of \$65 per week. *Id.*

Evidence sustained deputy commissioner's finding that decedent's mother was dependent upon him. *Id.*

Deputy commissioner, in a proceeding under Longshoremen's and Harbor Workers' Compensation Act, need not disclose his reasoning processes in reaching a conclusion, but court should have, to extent possible, deputy commissioner's views so as to be able to follow and appraise his application of law to the evidence. *Vendemia v. Cristaldi et al.* (1955, 221 F. 2d 103, 95 U. S. App. D. C. 230).



In proceeding under the Longshoremen's and Harbor Workers' Compensation Act, neither the District Court nor the Court of Appeals is a trier of facts. *United States Fidelity & Guaranty Co. v. Britton* (1951, 188 F. 2d 674, 88 U. S. App. D. C. 293).

Finding of Deputy Commissioner that injuries sustained by stenographer, who was struck by taxicab while on way to lunch, did not arise out of and in course of employment, was supported by evidence and was not inconsistent with law. *Wetzel v. Britton* (1948, 170 F. 2d 285, 83 U. S. App. D. C. 327).

In proceeding under this chapter, Deputy Commissioner's findings as to jurisdiction are entitled to great weight and will be rejected only where there is apparent error. *Cardillo v. Liberty Mut. Ins. Co.* (1947, 67 S. Ct. 801, 330 U. S. 469, 91 L. Ed. 1028).

The deputy commissioner's findings of fact, if supported by evidence, are conclusive. *Employers Liability Assur. Corp. v. Hoage* (1934, 69 F. 2d 227, 63 App. D. C. 53). See, also, *Malone v. Hoage* (1935, 73 F. 2d 855, 64 App. D. C. 38); *Maryland Casualty Co. v. Cardillo* (1940, 107 F. 2d 959, 71 App. D. C. 160); *London Guarantee & Accident Co. v. Britton* (1944, 138 F. 2d 932, 78 U. S. App. D. C. 195).

Where district court determined that evidence did not support deputy commissioner's finding that at time of employee's death widow was living apart for justifiable cause, failure of district court to remand case to deputy commissioner for possible finding either that widow was dependent for support on employee or that she was living with him was not error where evidence would not have supported either finding. *Weeks v. Behrend* (1943, 135 F. 2d 258, 77 U. S. App. D. C. 341).

In workmen's compensation case, findings of a deputy commissioner, if supported by substantial evidence, are conclusive on court regardless of whether findings result in the grant or denial of a claim to compensation. *Carson v. Cardillo* (1943, 132 F. 2d 604, 77 U. S. App. D. C. 82).

In proceeding under this chapter, deputy commissioner's finding of fact is subject to review and reversal by a court only in a case in which the findings are not supported by substantial evidence. *Gudmundson v. Cardillo* (1942, 126 F. 2d 521, 75 U. S. App. D. C. 230).

Cases in which an order of the Commissioner may be set aside as "not in accordance with law" are only those in which it appears that there is an error of law, or in which the order of the Commissioner is not supported by substantial evidence, as well, of course, in those in which it is arbitrary and unreasonable. *Whitfield v. Hoage* (1934, 71 F. 2d 690, 63 App. D. C. 237). See, also, *Groom v. Cardillo* (1941, 119 F. 2d 697, 73 App. D. C. 358).

Deputy commissioner and the District Court were within their discretion in finding, in effect, that declarations concerning the injury were corroborated. *Associated General Contractors v. Cardillo* (1939, 106 F. 2d 327, 70 App. D. C. 303).

Deputy commissioner is authorized to award compensation using as the basis for his average annual earnings such sum as shall reasonably represent the annual earning capacity of the injured employee in the employment in which he was working at the time of the injury, having regard to "the previous earnings of the injured employee and of other employees of the same or most similar class." *Hartford Acc. & Indem. Co. v. Hoage* (1936, 85 F. 2d 411, 66 App. D. C. 154).

Chain of causation, beginning with the inhalation of the gas and ending in his death, as found by the deputy commissioner, is satisfactorily shown by the evidence. *National Casualty v. Hoage* (1936, 73 F. 2d 850, 64 App. D. C. 33).

Deputy commissioner, when passing upon the extent of injured person's vision, should not have excluded from consideration the assistance which he could receive from the use of glasses. *Washington Terminal Co. v. Hoage* (1935, 79 F. 2d 158, 65 App. D. C. 33).

Testimony supports the deputy commissioner's finding that the employee was "mentally incompetent" from the time of his injury to the time when his committee was appointed. *Hoage v. Terminal Refrigerating & Warehousing Co.* (1935, 78 F. 2d 1009, 65 App. D. C. 5).

Findings of the deputy commissioner upon the facts in compensation case are final and conclusive when supported by competent evidence. The act does not au-

thorize the court to reweigh the evidence when more than one inference can be drawn for the purpose of arriving at a different conclusion from the deputy commissioner. *Fulton v. Hoage* (1935, 77 F. 2d 110, 64 App. D. C. 232).

When evidence sustained the deputy commissioner's finding of suicide as opposed to accident, the court should not have disturbed an order denying compensation. *Del Vecchio v. Bowers* (1935, 56 S. Ct. 190, 296 U. S. 280, 80 L. Ed. 229).

Conclusion reached by deputy commissioner upon the facts found by him was contrary to law, and the claim of appellant should have been sustained when he was an employee at the time of the accident, at his place of duty, and engaged in his employment. *Scott v. Hoage* (1934, 73 F. 2d 114, 63 App. D. C. 391).

Deputy commissioner was justified in concluding that the death of the deceased arose at least in substantial part from his employment. *London Guarantee & Acc. Co. v. Hoage* (1934, 72 F. 2d 191, 63 App. D. C. 323).

As the question is solely the fact of employment, and, as this fact is an essential condition precedent to the right to make the claim, the proceeding in the court below was entirely proper, and Supreme Court will not overrule lower court unless findings are clearly wrong. *Metropolitan Casualty Ins. Co. v. Hoage* (1934, 72 F. 2d 175, 63 App. D. C. 307).

#### Compensation and compensation damages

Under Workmen's Compensation Act, "compensation" means money relief afforded according to scale established under the statute as differentiated from "compensatory damages" recoverable in an action at law for breach of contract or for a tort. *Howard v. Lightner* (D.C. App. 1965, 214 A. 2d 474).

#### Conflict of laws

Maryland Workmen's Compensation Act, relieving principal contractor of common law liability to employees of his subcontractors if he has workmen's compensation insurance for their benefit, would be a bar to District of Columbia tort action brought against principal contractor by electrician employed in District of Columbia by subcontractor but injured while working on principal employer's project in Maryland. *Jonathan Woodner Co. v. Mather* (1954, 210 F. 2d 868, 93 U. S. App. D. C. 234, certiorari denied 75 S. Ct. 39, 348 U. S. 824, 99 L. Ed. 650).

State of employment can give workmen's compensation even though injury occurred in another jurisdiction which would provide workmen's compensation, on basis said to be exclusive; and state in which injury occurred can provide workmen's compensation even though state where contract of employment was made would also provide workmen's compensation, on a purportedly exclusive basis. *Id.*

#### Consolidation of claims

Where claimant had been injured on September 29, 1958 and subsequently on February 4, 1961, two different insurance carriers were involved and diseased condition of claimant's hip was common to both claims and, if aggravation theory was adopted, either injury or both could have aggravated the disease, the two claims should have been considered on a fully consolidated basis and findings of fact should have been made and orders entered as to both injuries. *Lumbermen's Mutual Casualty Co., et al. v. C. Einbinder, Deputy Commissioner etc.* (1965, 343 F. 2d 338, 120 U.S. App. D.C. 56).

#### Constitutionality

The provision in Longshoremen's Compensation Act that employer's liability for benefits under the act is exclusive and in place of all other liability of employer to employee and anyone else entitled to recover damages from employer does not cover damages from employer on account of such injuries does not deny due process to electric company barred by such provision from recovering contribution in third party action from gas company for injuries received by employee, to whom compensation had been paid, when gas company's crane came in contact with electric company's overhead high voltage power line. *Coates v. Potomac Electric Power Co.* (D.C.D.C. 1951, 95 F. Supp. 779).



This chapter, construed as applying to case where there is some substantial connection between the District and the particular employee-employer relationship regardless of place of work or injury, fully satisfies any constitutional question of due process or full faith and credit. *Cardillo v. Liberty Mut. Ins. Co.* (1947, 67 S. Ct. 801, 330 U. S. 469, 91 L. Ed. 1028).

This chapter, which makes factual decision of deputy commissioner final, does not violate the "due process of law" provision of U. S. Const. Amend. 5. *Gudmundson v. Cardillo* (1942, 126 F. 2d 521, 75 U. S. App. D. C. 230).

This section does not violate constitutional provision for jury trial. *Rowlette v. Rothstein Dental Laboratories*, (1933, 63 F. 2d 150, 61 App. D. C. 373, certiorari denied 53 S. Ct. 657, 289 U. S. 736, 77 L. Ed. 1484).

#### Construction

The term "injury", in section of Longshoremen's and Harbor Workers' Compensation Act requiring a claim for compensation to be filed within one year after injury, encompasses physical harm of a kind that is unknown to the employee at time of accident but which is later revealed such as an occupational disease or a latent wound. *G. E. Stancil v. W. L. Massey, Deputy Commissioner etc., et al.* (1970, 436 F. 2d 274, 141 U.S. App. D.C. 120).

Longshoremen's and Harbor Workers' Compensation Act are required to be construed liberally in favor of employees and their dependents and it is in their favor that doubts, including the factual, are to be resolved. *M. R. Wheatley v. H. Adler, Deputy Commissioner, etc., et al.* (1968, 407 F. 2d 307, 132 U.S. App. D.C. 177).

Administrative findings in workmen's compensation case will not be sustained merely because they are substantiated by some isolated evidence and court's review must take account of settled rule that Longshoremen's and Harbor Workers' Compensation Act is to be construed with view to its beneficent purposes. *Id.*

In order to bring a claimant within ambit of Longshoremen's and Harbor Workers' Act affording compensation for accidental injury or death arising out of and in course of employment there is a requirement that there be a continuity of cause, combined with continuity in time and space. *A. E. Van Devander and W. L. Massey v. Heller Electric Co., Inc., et al.* (1968, 405 F. 2d 1108, 132 U.S. App. D.C. 40).

Workmen's Compensation Acts are to be liberally construed. *J. F. Wynn, Jr. v. A. P. Kelley, et al.* (1963, 223 F. Supp. 875).

#### Contribution

Where two alleged employers of claimant, insurer of first alleged employer, and claimant were parties in compensation proceeding, and Bureau of Employees' Compensation determined that employers were jointly and severally liable, and insurer of first paid total amount of compensation and brought action against second for contribution, determination of Bureau that employers were joint employers is res judicata in subsequent action for contribution. *Merchants Mutual Insurance Company v. M. E. Richardson* (D.C. App. 1971, 273 F. 2d 652).

Since neither first alleged employer of claimant nor insured of first alleged employer intervened in action by second alleged employer to vacate portion of compensation order of Bureau adverse to second, the order is pertinent to motion presented in court to compel contribution by alleged second employer, not as res judicata, but to show that joint obligation established by administrative award is no longer vulnerable to judicial overturn. *Id.*

Where Bureau rendered an order directing two alleged employers jointly and severally to pay compensation award to claimant, but insurer of first alleged employer paid entire award, insurer is entitled to contribution of one-half from second alleged employer. *Id.*

#### Contribution to a tort-feasor

Since employers covered by workmen's compensation statutes are not liable in tort to their injured employees, other tort-feasors are not entitled to contribution from negligent employers, but under Murray decision a person against whom employee was awarded damages in a tort action can reduce judgment by 50% if he can show that

employer's negligence contributed to the injury. *R. L. Dawson et al. v. Contractors Transport Corp.* (1972, 467 F. 2d 727, 151 U.S. App. D.C. 401).

Defendant, who is sued, for negligence, by subcontractor's employee who had received workmen's compensation, has no claim against subcontractor for credit against possible verdict adverse to such moving defendant, on ground that employee's injuries were caused in whole or in part by subcontractor-employer's negligence. *G. Turner et al. v. Excavation Construction, Inc., et al.* (1971, 324 F. Supp. 704).

Private employers in District of Columbia whose employees are within protection of the Longshoremen's and Harbor Workers' Compensation Act may not be compelled to contribute to a tort-feasor held liable to the employee. *J. S. Murray v. United States* (1968, 405 F. 2d 1361, 132 U.S. App. D.C. 91).

#### Contributory negligence

Contributory negligence of employee is no defense under section 904 (b) of title 33, U. S. Code, and this section. *Smoot Sand & Gravel Corp. v. Britton* (1946, 152 F. 2d 17, 80 U. S. App. D. C. 260).

#### Course of employment

Accidents and death occurring while an employee is on his way to or from toilet facilities or while he is engaged in relieving himself, generally arise within course of employment for workmen's compensation purposes, subject to possible question of reasonableness of means or place chosen. *M. R. Wheatley v. H. Adler, Deputy Commissioner etc., et al.* (1968, 407 F. 2d 307, 132 U.S. App. D.C. 177).

Record supported determinations that employee's death, occurring when employer's truck, driven by employee, crashed some five hours after last customer call, arose out of and in course of employment, and that death was not occasioned solely by intoxication. *Phoenix Assurance Co. of N.Y. v. T. Britton, Deputy Commissioner etc.* (1961, 289 F. 2d 784, 110 U.S. App. D.C. 118).

#### Death in the course of employment

In proceeding to recover compensation for deaths of musicians who were performing in a restaurant and who were shot and killed by persons who had been ejected as intoxicated and disorderly patrons but who had returned with firearms, in view of showing that musicians had completed their performance and had been paid off before the occurrence but that they had sat around the restaurant for their own personal purposes instead of immediately leaving, there was no substantial evidence justifying finding that they were murdered in course of their employment. *Great American Indemnity Co. et al. v. Britton, Deputy Commissioner, etc.* (D.C.D.C. 1960, 186 F. Supp. 938).

Where musicians engaged to perform in restaurant had completed their performance for the evening and had been immediately paid but they remained at the restaurant for their own personal purposes for about a period of a half hour before persons who had been ejected during the evening as disorderly patrons returned and shot them to death, at the time they were shot, they were not on premises in course of their employment and were not in employment status under this section, and their deaths were not compensable thereunder. *Id.*

Findings of deputy commissioner, in proceeding under Longshoremen's and Harbor Workers' Compensation Act, as to whether death of an employee arose out of and in the course of his employment, are to be accepted unless they are unsupported by substantial evidence on the record considered as a whole. *Robinson v. Bradshaw* (1953, 206 F. 2d 435, 92 U. S. App. D. C. 216, certiorari denied 74 S. Ct. 226, 346 U. S. 899, 98 L. Ed. 399).

"Course of employment" within section 902 (2) of title 33, U.S. Code, may include incidents of social character, the correct criterion being involvement of the incident in the employment. *Hurley v. Lowe* (1948, 168 F. 2d 553, 83 U. S. App. D. C. 123, certiorari denied 68 S. Ct. 1338, 334 U. S. 828, 92 L. Ed. 1756).

"Course of employment" on a specified errand or business trip, ordered by an employer, to a place different from the regular place of employment, includes all the ordinary incidents of the errand, such as the eating of meals in ordinary places at ordinary times which the employer



would normally contemplate as occurring in the course of errand. *Id.*

Where attorney employed by law firm in District of Columbia was sent by firm on business trip to another city and during course of dinner with his father and mother at restaurant in that city sustained an injury from which he died, conclusion of deputy commissioner that dinner was of a social character and that therefore injury was not sustained in "course of employment" was not "forbidden by law" or without any reasonable legal basis, and hence could not be disturbed by reviewing court, though contrary to court's opinion. *Id.*

Where contract between employer and union required employer to furnish transportation for work outside District of Columbia and employer performed its contractual obligation by paying travel costs and allowing employees to select transportation method, Deputy Commissioner's finding that fatal injury, received by employee while driving his automobile homeward after terminating day's work, "arose out of and in course of employment", was justified even though employee was not being paid wages at time of accident. *Cardillo v. Liberty Mut. Ins. Co.* (1947, 67 S. Ct. 801, 330 U.S. 469, 91 L. Ed. 1028).

Heat stroke causing death of parking lot attendant was compensable as "arising out of and in course of employment." *Davison v. Cardillo* (1944, 143 F. 2d 154, 79 U.S. App. D. C. 121).

Where lease, occupancy permit, and insurance against fire and theft were all in name of operator of parking lot alone, both before and after making of "partnership agreement" with deceased parking lot attendant which contained no provision for distribution of profits, deceased was not a "partner," but an "employee," and his death was compensable. *Id.*

Where salesman was fatally injured in automobile accident while on way back to his office in District of Columbia from a business trip in Pennsylvania, the salesman's death was compensable since it "arose out of employment." *B. F. Goodrich Co. v. Britton* (1944, 139 F. 2d 362, 78 U.S. App. D. C. 221).

This section creates a right of action against employer on account of death of employee arising out of and in course of employment, but it does not create a cause of action for wrongful death against any other person. *Webster v. Clodfelter* (1942, 130 F. 2d 434, 76 U.S. App. D. C. 171, 143 A. L. R. 280).

Butcher's death which was caused by the violent wrench suffered by him when handling the calf permitting the escape of colon bacilli causing pus, and finally involving the lower lobe of the left lung resulting in pneumonia, was accidental. *Employer's Liability Assur. Corp. v. Hoage* (1937, 91 F. 2d 318, 67 App. D. C. 245).

In determining whether death arose out of employment, when store manager was accidentally killed by gunshot wound, evidence that his possession of pistol was reasonably necessary for performance of his duties was admissible. *Del Vecchio v. Bowers* (1934, 67 F. 2d 751, 62 App. D. C. 327).

#### Dependency

For dependency within Longshoremen's and Harbor Workers' Compensation Act, there must be a legal or a voluntarily created status where the contributions are made for the purpose and have the result of maintaining or helping to maintain the dependent in his customary standard of living. *United States Fidelity & Guaranty Trust Co. v. Britton* (1951, 188 F. 2d 674, 88 U.S. App. D. C. 293).

Compensation benefits rest solely upon statutory authority and the rights of beneficiaries are dependent upon and limited by the terms of section 901 et seq. of title 33, U. S. Code, the purpose of which is to protect a disabled employee and his dependents. *Turner v. Christian Heurich Brewing Co.* (1948, 169 F. 2d 681, 83 U.S. App. D. C. 333).

The term "justifiable cause," in Longshoremen's Compensation Act, section 902 (16) of title 33, U. S. Code, defining widow, is used in its legal sense and ordinarily a wife who lives apart from her husband does so for what is called "justifiable cause" only when she does so because of her husband's matrimonial misconduct. *Weeks v. Behrend* (1943, 135 F. 2d 258, 77 U.S. App. D. C. 341).

Where employee and wife lived apart by mutual consent, so that employee would be eligible for relief, wife made no objection to employee's leaving and no attempt to rejoin him, and employee made no regular contributions to wife's support, the wife was not entitled to compensation under this chapter for death of employee on theory that she was living apart for "justifiable cause." *Id.*

Where employee and wife lived apart by mutual consent, employee made no regular contributions to wife's support, and wife testified in effect that she earned a modest living by running a rooming house which she and her brother owned, while her husband was on relief, evidence would not sustain award of compensation under this chapter on theory that the wife was "dependent for support" on the employee or that she was "living with" the employee. *Id.*

Partial dependency will sustain an award of compensation under the Longshoremen's Compensation Act, 33 section 901 et seq. of title 33, U. S. Code, but occasional contributions will not sustain a finding of partial dependency unless they are necessary and relied on. *Id.*

#### Disability, definition of

In construing statutory provision that if an employee receive an injury which of itself would only cause permanent partial disability but which, combined with a previous disability, does in fact cause permanent total disability, the employer should provide compensation only for disability caused by the subsequent injury, the relevant parts of the statutory definitions of "disability" and "injury" must be read in the place of the defined word "disability", so that the statutory phrase "combined with a previous disability" becomes "combined with a previous incapacity because of accidental injury arising out of and in course of employment". *National Homeopathic Hospital Ass'n of Dist. of Col. v. Britton* (1945, 147 F. 2d 561, 79 U.S. App. D. C. 309, certiorari denied 65 S. Ct. 1185, 325 U.S. 857, 89 L. Ed. 1977).

#### Election of remedies

Where an employer fails to provide workmen's compensation coverage, injured employee is authorized to either pursue his claim for benefits under compensation law or to file an action at law against his employer for damages. *Howard v. Lightner* (D.C. App. 1965, 214 A. 2d 474).

Where widow had accepted award of benefits under Workmen's Compensation Act, all rights to damages had been superseded by provisions of act, and she could not maintain action against employer for loss of consortium for death of husband. *Brown v. Curtin & Johnson, Inc.* (1955, 221 F. 2d 106, 95 U.S. App. D. C. 234).

Workmen's Compensation Act applicable to District of Columbia, providing in part that liability of an employer under act shall be exclusive and in place of all other liability, would have precluded employee from maintaining action for heart injury suffered while moving a piano in the course of his employment by defendant, if the injury had not resulted in death and thus his widow and children, who had accepted benefits of Compensation Act, could not maintain action under wrongful death statute making right of action dependent on whether decedent would have been able to maintain action for injury if death had not ensued. *O'Neil v. Shelton Bros. Trucking Co.* (D.C.D.C. 1954, 116 F. Supp. 654).

An injured employee's mere acceptance of compensation payments from his employer without an award under Longshoremen's Compensation Act does not preclude him from thereafter electing to sue a third-party tort-feasor for damages. *Jordan v. District of Columbia* (D.C.D.C. 1954, 116 F. Supp. 559).

In action against District of Columbia for personal injuries, defense that plaintiff waived right to recover damages from District by receiving compensation payments from his employer without an award under Longshoremen's Compensation Act was legally insufficient, where plaintiff filed notice of election to recover damages from District, instead of receiving compensation under act. *Id.*

The alternative remedy against an employer who fails to secure payment of compensation as required by section 901 et seq. of title 33, U. S. Code, provided by section 905



of title 33, U. S. Code, authorizing an election to claim compensation or to maintain action in law or in admiralty for damages on account of injury or death of employee is elective. *Garcia v. De Leon* (D. C. Mun. App. 1948, 59 A. 2d 637).

Standard workmen's compensation and employers' liability policy obligating insurer to pay promptly any person entitled to payment under the compensation law, and providing that all provisions of the law covered should remain part of policy, secured compensation to minor injured in course of employment while allegedly employed contrary to Child Labor Law, § 36-201 et seq., for any claim properly cognizable under the law, so that minor's remedy for workmen's compensation was exclusive, and minor could not maintain a common-law suit against employer for injuries, notwithstanding provision of policy obligating insurer to indemnify employer against loss by reason of liability imposed on him by law on account of injuries of employees "legally employed". *Mellen v. Hirsch* (D. C. Md. 1948, 8 F. R. D. 250, affirmed 171 F. 2d 127).

Under this chapter, which entitles injured employee to receive from his employer any excess over reimbursement which employer recovers from third party wrongdoer, injured employee's acceptance of compensation operates as an absolute transfer to the employer of substantive rights of injured employee against the wrongdoer and strips the employee of any further right until the employer recovers an amount in excess of his expenditures and only then a new right arises against the employer for the excess. *Moore v. Heckinger* (1942, 127 F. 2d 746, 75 U. S. App. D. C. 391).

#### Employers' duties controlling

Where main duty of deckhand employed on a stripper dredge was to coal up dredge from scow, and coal was used to fire engine which operated scoop shovel, deckhand was not a "member of a crew," and hence his claim for injuries was covered by the Longshoremen's Compensation Act, section 901 et seq. of title 33, U. S. Code, as made applicable to a District of Columbia employer and not by the Merchant Marine Act, section 688 of title 46, U. S. Code. *Beddoo v. Smoot Sand & Gravel Corporation* (1942, 128 F. 2d 608, 76 U. S. App. D. C. 39).

#### Employers' duty

It was responsibility of employer to deny liability for compensation and medical benefits if it knew that claimant was not employee and to notify carrier accordingly so that compensation payments would not be started, and where employer did not do so, carrier had no duty to require formal hearing before starting compensation payments, and its failure to do so could not affect its right to recover premiums based on such payments. *Gilbert Slaughterers, Inc. v. United States Fidelity and Guaranty Co.* (D. C. Mun. App. 1962, 183 A. 2d 560).

Insurer's record containing computation of premiums due under policy was, under Federal Shop Book Rule, admissible in evidence in its action to recover premiums from insured. *Id.*

#### Employers' liability

Where an employer maintains compensation insurance or otherwise provides for payment of benefits, his liability for injuries sustained by an employee in course of employment is as prescribed by the statute and is exclusive and in place of all other liability to the employee. *Howard v. Lightner* (D.C. App. 1965, 214 A. 2d 474).

An employer is responsible in the particulars and to the extent specified by the Workmen's Compensation Act for all legitimate consequences flowing from a compensable injury, but the liability so imposed measures an employee's entitlement. *Lindsay et al. v. George Washington University* (1960, 279 F. 2d 819, 108 U.S. App. D.C. 44).

The liability of an employer who is insured under the Workmen's Compensation Act is limited to the amount of damages prescribed. *Brown v. Curtin & Johnson Inc.* (D.C.D.C. 1954, 117 F. Supp. 830, affirmed 221 F. 2d 106, 95 U.S. App. D.C. 234).

The liability of the employer under the Workmen's Compensation Act is exclusive. *Id.*

#### Employment outside state

In compensation proceeding under this chapter, evidence that offer of employment was made by employer's foreman in District of Columbia, that workman was not hired until he was put to work in Maryland, and that injury occurred in Maryland sustained deputy commissioner's finding that the employment relationship was created in Maryland and not in the District of Columbia and that the deputy commissioner did not have jurisdiction to make an award. *Gudmundson v. Cardillo* (1942, 126 F. 2d 521, 75 U. S. App. D. C. 230).

#### Employment relationship

While employee must have a reasonable time within which to leave employer's premises after his duties are finished for the day, if, for his own purposes, he tarries for some time after working hours, he is no longer in employment status under this section and any injuries sustained during that period are not compensable. *Great American Indemnity Co. et al. v. Britton, Deputy Commissioner etc.* (D.C.D.C. 1960, 186 F. Supp. 938).

In workmen's compensation proceeding, evidence supported commissioner's findings that defendants were claimant's "employers" within meaning of Longshoremen's and Harbor Workers' Compensation Act. *Harris v. Deputy Commissioner etc., et al.* (1955, 218 F. 2d 45, 95 U. S. App. D. C. 32).

Under this chapter, right to compensation depends on existence of relation of master and servant at time of injury. *Liberty Mut. Ins. Co. v. Cardillo* (1946, 154 F. 2d 529, 81 U.S. App. D.C. 72, reversed on other grounds 67 S. Ct. 801, 330 U. S. 469, 91 L. Ed. 1028).

Liability under this chapter is based, not on any act or omission of employer, but upon existence of relationship which employee bears to employment because of and in course of which he has been injured. *Id.*

#### Error in award

Absent fault by employer, award to employee of damages for injuries suffered in service station robbery was error, but such judgment must be affirmed where employer did not attack it by cross appeal. *Howard v. Lightner* (D.C. App. 1965, 214 A. 2d 474).

#### Evidence

Evidence, consisting of doctor's statement that claimant could "probably" perform "suitable employment," does not support finding of Deputy Commissioner of Department of Labor that claimant, who was of limited intelligence, and who, due to fractures of right arm, lost use of right hand for all but lightest work, is not permanently totally disabled under Longshoremen's and Harbor Workers' Act. *American Mutual Insurance Company of Boston et al. v. W. B. Jones* (1970, 426 F. 2d 1263, 138 U.S. App. D.C. 269).

There was sufficient evidence to support the findings of deputy commissioner, in proceedings under Longshoremen's and Harbor Workers' Act, that injuries suffered by claimant when he fell asleep from fatigue while driving home after work were attributable to claimant's lack of sleep due to unusually long hours of work installing heavy electrical equipment and that such injuries arose out of and in the course of his employment. *A. E. Van Devander and W. L. Massey v. Heller Electric Co., Inc., et al.* (1968, 405 F. 2d 1108, 132 U.S. App. D.C. 40).

Evidence sustained finding that employer was not negligent in operation of his service station in which employee was injured during course of robbery. *Howard v. Lightner* (D.C. App. 1965, 214 A. 2d 474).

Although deference is usually accorded to findings of deputy commissioners in proceeding for compensation under Longshoremen's Compensation Act, they are not controlling unless supported by substantial evidence in record considered as a whole. *Pistorio v. Einbinder* (1965, 351 F. 2d 204, 122 U.S. App. D.C. 39).

Order of deputy commissioner modifying prior order awarding compensation under Longshoremen's and Harbor Workers' Compensation Act, based on permanent partial disability rating of 50% could not be sustained on record evidence respecting change in condition as ground. *Id.*

Evidence sustained finding that employee's fall, in which he sustained fatal injuries, was not caused by his



slipping or tripping on substances or objects associated with employment. *Wolff, etc. v. Britton, Deputy Commissioner, etc.* (1964, 328 F. 2d 181, 117 U.S. App. D.C. 209).

In proceeding on claim for compensation under provisions of Longshoremen's and Harbor Workers' Compensation Act, deputy commissioner of bureau of employees' compensation improperly admitted into evidence police record of claimant disclosing not only prior criminal convictions but also prior convictions of crimes not within the meaning of statute regarding the admission of evidence to affect credibility of a witness who has been convicted of a crime and arrests which did not result in convictions. *Colter v. C. Einbinder, Deputy Commissioner, etc.* (D.C.D.C. 1960, 184 F. Supp. 523).

Evidence sustained award of Deputy Commissioner to claimant under the District of Columbia Workmen's Compensation Act, incorporating by reference the Longshoremen's and Harbor Workers' Compensation Act, on ground that claimant sustained permanent partial disability as result of injury sustained in course of employment. *Gilbane Building Company v. Britton* (1959, 264 F. 2d 574, 105 U. S. App. D. C. 101).

In prosecution of employer for failing to secure payment of compensation as required under the Workmen's Compensation Act, employer's payroll books, which had been legally obtained from former employees of employer, were properly admitted in evidence as one link in chain of evidence to prove that employer was an employer during period alleged in information, however incriminating books might be. *Tyree v. United States* (D.C. Mun. App. 1959, 155 A. 2d 914).

Conclusions of deputy commissioner that employee's tuberculosis was contracted during employment and out of the employment because of aggravated risk resulting from employee's being sent by employer to work in Japan, which has a comparatively high incidence rate of tuberculosis, were reasonably supported by evidence. *Travelers Insurance Co. v. Donovan* (D.C.D.C. 1955, 125 F. Supp. 261, affirmed 221 F. 2d 886, 95 U.S. App. D.C. 331).

A finding of Deputy Commissioner of District of Columbia Bureau of Employees' Compensation that death of night watchman as result of coronary occlusion arose out of his employment within Longshoremen's Compensation Act, applicable as District's workmen's compensation law, was supported by substantial evidence, whether such occlusion occurred immediately before or after deceased slipped and fell down stairway in course of his employment. *Liberty Mutual Insurance Co. et. al. v. Donovan et al.* (D.C.D.C. 1954, 124 F. Supp. 320).

In action to review award of compensation under Longshoremen's Compensation Act, applicable as District of Columbia workmen's compensation law, for employee's death, District Court may not substitute its own judgment for finding of Deputy Commissioner of District Bureau of Employees' Compensation, supported by substantial evidence, that death arose out of decedent's employment. *Id.*

In proceeding under the Longshoremen's and Harbor Workers' Compensation Act, the evidence sustained finding of Deputy Commissioner that employee's mother, sister and brother were dependents within meaning of Act. *United States Fidelity & Guaranty Trust Co. v. Britton* (1951, 188 F. 2d 674, 88 U. S. App. D. C. 293).

Appellant's contention that the act was not applicable since the employer had not obtained insurance covering his injury as required by the act, is clearly contrary to the evidence presented. *Mellen v. Hirsch* (D.C. Md. 1948, 8 F.R.D. 250, affirmed 171 F. 2d 127).

Evidence supported finding that claimant, who was injured when brushed from running board of truck, had observed his fellow workers riding on the running board of truck. *Smoot Sand & Gravel Corp. v. Britton* (1946, 152 F. 2d 17, 80 U. S. App. D. C. 260).

In workmen's compensation proceeding presenting question whether this section was applicable to injuries sustained in Virginia, evidence sustained finding that employer, which had main office in New York, was engaged in construction work under three separate contracts, two located in the District and one in Virginia, that employer had an office in the District, that injured workmen's contract of employment was made in the District, and that

no separate contract of employment was made when he was transferred from one job to another. *Travelers Ins. Co. v. Cardillo* (1944, 141 F. 2d 364, 78 U.S. App. D.C. 394).

Where employee sustained toe injury in October which was followed by protracted infection, debility, and lowered resistance, and carbuncle appeared in June following, in workmen's compensation proceeding, fact that expert opinion regarding the links before the carbuncle was not unanimous might have detracted from its weight as evidence, but it did not destroy its substantiality. *Great American Indemnity Co. v. Cardillo* (1943, 135 F. 2d 241, 77 U. S. App. D. C. 306).

Where employee sustained toe injury in October which was followed by protracted infection, debility, and lowered resistance, and carbuncle appeared in June following, and causal relation between carbuncle, subsequent hip injury, osteomyelitis, and osteoporosis, which caused temporary total disability, was admitted, evidence that causal relation existed between the toe injury and the temporary total disability supported an award of compensation. *Id.*

The weight of the evidence is for the deputy commissioner and not for the courts under the Compensation Act. *Potomac Elec. Power Co. v. Cardillo* (1940, 107 F. 2d 962, 71 App. D. C. 163).

To justify an award there must have been some substantial connection between the alleged accident and the employment. *Hoage v. Liberty Mut. Ins. Co.* (1935, 78 F. 2d 874, 64 App. D. C. 395).

Where an employee within the provisions of this act is found dead and the evidence on the issue of accident or suicide is evenly balanced, the presumption created by section 20 (d) of the Longshoremen's and Harbor Workers' Compensation Act that the death was not suicidal, has not the quality of affirmative evidence, and the presumption may be invoked only where there is an entire lack of competent evidence. *Del Vecchio v. Bowers* (1935, 56 S. Ct. 190, 296 U.S. 280, 80 L. Ed. 229).

Evidence showed quite clearly that the possession of the pistol was reasonably necessary in the duty which deceased owed to protect his employer's property and his own life. *Del Vecchio v. Bowers* (1933, 67 F. 2d 751, 62 App. D. C. 327).

#### Exclusiveness of remedy

Workmen's compensation law was exclusive remedy of employees against employer for injuries sustained while employee was being driven home by another employee's husband, in accordance with arrangement made by employer. *M. H. Shreve v. Hot Shoppes, Inc., et ano.* (1961, 292 F. 2d 761, 110 U.S. App. D.C. 268).

Exclusive remedy provision of the Workmen's Compensation Act barred a suit by an employee, against his employer, for damages for alleged malpractice at employer's hospital in treatment of a compensable injury, and fortuity that employer operated the hospital where the professional services complained of were rendered was immaterial. *Lindsay et al. v. George Washington University* (1960, 279 F. 2d 819, 108 U.S. App. D.C. 44).

In District of Columbia, Longshoremen's and Harbor Workers' Compensation Act is the exclusive remedy for injuries occurring in course of employment. *Reeves v. Hot Shoppes, Inc., and C. Kittredge* (D.C.D.C. 1960, 184 F. Supp. 436).

Defense that injury in District of Columbia occurred in course of employment is not an affirmative defense which may be treated or waived, but goes to jurisdiction of court. *Id.*

The compensation provided by officers' mess for injuries to civilian employees of the mess was employee's exclusive remedy against the United States and he could not recover under Tort Claims Act though private insurance carrier was compensation insurer of the mess. *Aubrey v. United States* (1959, 254 F. 2d 768 103 U. S. App. D. C. 65).

Where gas company employee recovered longshoremen's compensation for injuries, electric company sued by employee for injuries received when gas company's crane came in contact with electric company's overhead high voltage power line was barred from recovering contribution from gas company in third party action by provision in Longshoremen's Compensation Act that employer's liability for benefits under the Act is exclusive



and in place of all other liability of employer to employee and to anyone else entitled to recover damages from employer on account of such injuries. *Coates v. Potomac Electric Power Co.* (D.C.D.C. 1951, 95 F. Supp. 779).

#### Exposure to hazards

It does not matter, for purposes of workmen's compensation award, that decedent employee was exposed to no more than ordinary hazards of working and living at the time he sustained fatal heart attack or that same kind of injury might have occurred wherever he might have been. *M. R. Wheatley v. H. Adler, Deputy Commissioner etc., et al.* (1968, 407 F. 2d 307, 132 U.S. App. D.C. 177).

#### Extent of stress required

Unusual stress is not required for an award for injury sustained by an employee during the course of his employment and award should be granted so long as death or injury results from activity in course of his employment. *M. R. Wheatley v. H. Adler, Deputy Commissioner etc., et al.* (1968, 407 F. 2d 307, 132 U.S. App. D.C. 177).

#### Federal jurisdiction

Where Longshoremen's and Harbor Workers' Compensation Act had been made applicable in District of Columbia as a workmen's compensation law, suit by employer's insurer as statutory assignee under Act against third party tort-feasors would involve a federal question under Longshoremen's and Harbor Workers' Compensation Act and Act was a law of United States within meaning of statute authorizing federal jurisdiction if cause of action arises under federal statute. *City Stores Company v. Shull* (D.C.D.C. 1958, 161 F. Supp. 459).

#### Finality of award

Trial court's action in dismissing defendant's suit to set aside supplementary order, declaring amount in default in workmen's compensation proceeding, and in entering judgment for amount in default was not error where defendants were notified of application for such supplementary order and failed to respond thereto. *Harris v. Deputy Commissioner etc. et al.* (1955, 218 F. 2d 45, 95 U. S. App. D. C. 32).

#### General contractor as "third person"

Since the District of Columbia Compensation Law is an adaptation of the Longshoremen's and Harbor Workers' Compensation Act, it will by analogy be interpreted to render a general contractor suable as a "third person" by an employee of a subcontractor. *Liberty Mutual Ins. Co. v. Goode Const. Co.* (D.C.D.C. 1951, 97 F. Supp. 316).

#### Impaired annual earning capacity

In determining impaired annual earning capacity of an injured employee under the Longshoremen's and Harbor Workers' Compensation Act as made applicable to the District of Columbia, "general earnings" are not restricted to employments or types of employment but rather extend to individual earnings. *Liberty Mutual Insurance Co. v. Britton, Deputy Commissioner et al.* (1956, 233 F. 2d 699, 98 U.S. App. D.C. 208, certiorari denied 77 S. Ct. 214, 352 U.S. 918, 1 L. Ed. 2d 122).

In workmen's compensation proceedings for injuries sustained by employee when he fell some 45 feet during installation of an elevator, evidence sustained finding of employee's impaired earning capacity. *Id.*

In awarding workmen's compensation based on impaired capacity to earn, previous earnings from a job other than the one in which the injury was sustained were properly considered along with previous earnings of the injured employee in the employment in which he was working at the time of the injury, even though the job at which employee was injured was full year-round employment. *Id.*

#### Increased coverage

Maryland statute providing for the exclusiveness of workmen's compensation remedies did not prevent Maryland employer from undertaking, in a union contract, to provide the increased coverage which would be applicable under District of Columbia law. *J. Nelson and R. M. Smith v. Victory Electric Works, Inc.* (1964, 227 F. Supp. 404).

Maryland's employer's project manager at construction site had at least apparent authority to execute an agreement for the employment of union carpenters under

which corporate employer undertook to provide increases in Maryland workmen's compensation benefits to bring them up to levels provided under District of Columbia law. *Id.*

#### Injury—Definition

Any attack of an occupational disease, whether an initial one or one following a symptom-free period, if it arises naturally out of the employment, is an "injury" within definition of term in Longshoremen's Compensation Act. *Cadwalader v. Sholl* (1952, 196 F. 2d 14, 89 U.S. App. D.C. 285, certiorari denied 72 S. Ct. 1061, 343 U. S. 966, 96 L. Ed. 1363).

Under provision of section 902 (2) of title 33, U. S. Code, that injury means accidental injury or death arising out of and in course of employment, "injury" comprises alternative events, and it is not necessary that both "accidental injury" and "death" occur in order that "injury" occur. *National Homeopathic Hospital Ass'n of Dist. of Col. v. Britton* (1945, 147 F. 2d 561, 79 U. S. App. D. C. 309, certiorari denied 65 S. Ct. 1185, 325 U. S. 857, 89 L. Ed. 1977).

#### Injury—In the course of employment

Where, in course of performance of his duties, or in protection of employer's property, employee uses excessive force as result of bad judgment or recklessness, such circumstance does not deprive employee of benefits of this section. *National Union Fire Ins. Co. v. Britton, Deputy Commissioner etc.* (D.C.D.C. 1960, 187 F. Supp. 359).

Where employee is injured solely as result of act which employee commits with a willful intention to injure or kill another, no workmen's compensation is payable. *Id.*

Generally, an injury sustained by an employee while traveling to and from work is not within scope of workmen's compensation law, but, in District of Columbia, where employer has agreed to, and does furnish, employee with transportation, transportation becomes incident of contract of employment, and any injuries to employee while traveling are within course of employment and within scope of compensation law. *Shreve v. Hot Shoppes, Inc.* (D.C.D.C. 1960, 184 F. Supp. 436).

Where employer had agreed to transport employee home, injury sustained by employee while being driven by person to whom employer had delegated this duty was not, as a matter of law, outside the District of Columbia Workmen's Compensation Law. *Id.*

Where coworker on third floor level was handing down to employee on ground planks weighing some 90 pounds each and employee collapsed while on the job, and it was found that he had suffered a paralysis of his right side due to occlusion of a cerebral vessel and that his "strenuous work" as found by deputy commissioner had accelerated a severe pre-existing, but symptom-free, diastolic hypertension, and also diagnosed was a sclerosis of the cerebral arteries, findings of district court that employee's injury arose out of and in course of his employment did not lack substantial support in the evidence. *General Accident Fire & Life Assurance Corp. et al. v. Donovan, Deputy Commissioner, etc.* (1958, 251 F. 2d 915, 102 U.S. App. D.C. 204, reconsideration denied 251 F. 2d 961, 102 U.S. App. D.C. 207).

An employee's injury, occurring on employer's premises during employee's working hours, is presumed to have arisen out of his employment within Longshoremen's Compensation Act applicable as District of Columbia workmen's compensation law, unless contrary is shown. *Liberty Mutual Insurance Co. v. Donovan* (D.C.D.C. 1954, 124 F. Supp. 320).

While presumption that employee's injury, occurring on employer's premises, arose out of employment within Longshoremen's Compensation Act, applicable as District of Columbia workmen's compensation law, is not evidence, it shifts burden of going forward with evidence to overcome presumption. *Id.*

Injury sustained while an employee is going to or from lunch does not as a positive rule of law, without reference to particular facts, arise out of and in course of employment within section 902 (2) of title 33, U. S. Code. *Wetzel v. Britton* (1948, 170 F. 2d 285, 83 U.S. App. D. C. 327).

Under this chapter, the presence or absence of control by employer over acts and movements of employee during



transportation to or from work is a factor to be considered in determining whether injury during transportation arose out of and in course of employment, but is not decisive. *Cardillo v. Liberty Mut. Ins. Co.* (1947, 67 S. Ct. 801, 330 U. S. 469, 91 L. Ed. 610).

Generally, injuries sustained by employees when going to or returning from their regular place of work do not "arise out of and in course of employment", but exception exists where employer requires employees to travel on highways, where employer contracts to and does furnish transportation to and from work, where employee is subject to emergency calls, or where employee uses highway to do something incidental to his employment, with knowledge and approval of employer. *Liberty Mut. Ins. Co. v. Cardillo* (1946, 154 F. 2d 529, 81 U.S. App. D.C. 72, reversed on other grounds 67 S. Ct. 801, 330 U. S. 469, 91 L. Ed. 1028).

Where employee stepped on running board of dump truck, intending to hitch a ride on way to exit from employer's premises after work but employee was brushed from running board by a support post and was injured, evidence supported finding that injury arose out of and in course of employment. *Smoot Sand & Gravel Corp. v. Britton* (1946, 152 F. 2d 17, 80 U. S. App. D. C. 260).

An injury arises "out of employment" when it occurs in the course of employment and as a result of risk involved in or incidental to the employment or to conditions under which it is required to be performed. *Ackerman v. Cardillo* (1944, 140 F. 2d 348, 78 U. S. App. D. C. 310).

Where employee was an ice technician working at public skating rink and stadium, his duties required that he be on job during the night, and for his and his employer's convenience he slept in small room underneath stadium seats and while in room was assaulted and injured, and where explanations of the injury which were consistent with liability were just as plausible as those which would avoid liability, court would not reverse finding that injury arose out of employment. *Travelers Ins. Co. v. Cardillo* (1944, 140 F. 2d 10, 78 U. S. App. D. C. 255).

Where injuries occurred while employee was on premises in connection with his employment, presumption existed that injuries arose out of his employment, unless contrary was shown. *Id.*

Where store manager sent employee to get lunch for all three employees to save time on exceptionally busy day, and employee was struck by automobile while carrying out manager's direction, the employee's fatal injury arose "out of and in course of employment." *London Guarantee & Accident Co. v. Britton* (1944, 138 F. 2d 932, 78 U. S. App. D. C. 195).

Where employer arranged to furnish employee transportation to and from work in employer's truck which regularly passed employee's home in lieu of a requested increase in salary and employee was struck by another vehicle while crossing road to where employer's approaching truck would stop, employee's injuries "arose out of and in course of employment" since the risks attendant on employee's crossing the road were incident to transportation in the truck and were assumed for the mutual convenience of the parties. *Ward v. Cardillo* (1943, 135 F. 2d 260, 77 U.S. App. D.C. 343).

The general rule that injuries sustained by employee when going to or returning from regular place of work are not deemed to "arise out of and in course of employment" is subject to exceptions, one of which is where the employer contracts to and does furnish transportation to and from work. *Id.*

To justify an award under the Longshoremen's Compensation Act, section 901 et seq. of title 33, U. S. Code, there must be a direct causal connection between the employment and the injury, whether it is the result of accident or disease. *Groom v. Cardillo* (1941, 119 F. 2d 697, 73 App. D. C. 358).

An injury "arises out of employment" within Longshoremen's Compensation Act, section 901 et seq. of title 33, U. S. Code, if it is caused by the environment, whether inanimate, animal, or human, to which the employment exposes the employee, and it does not matter whether he is struck by a machine, a mule or a man so long at least as he does not provoke the attack, and an assault by a stranger or a fellow employee clearly "arises out of the employment" where the employment provides the motive

for the assault. *Penker Const. Co. v. Cardillo* (1941, 118 F. 2d 14, 73 App. D. C. 168).

Where one employed in a produce warehouse was engaged in loading a truck, and a checker, his superior, addressed him repeatedly as "Shorty" which the loader resented and called his superior a vile name, for which the superior assaulted him, inflicting injuries, the employee is entitled to compensation, the injury having arisen out of, and in course of, his employment. *Hartford Acc. & Indem. Co. v. Cardillo* (1940, 112 F. 2d 11, 71 App. D.C. 330).

Injury sustained by driver-employee while returning from lunch arose out of and in the course of employment. *Cardillo v. Hartford Acc. & Indem. Co.* (1940, 109 F. 2d 674, 71 App. D. C. 330).

Injury which the employee received was a direct result of the position in which he was placed by the order of his superior and it therefore arose out of his employment. *Williams v. American Employers Ins. Co.* (1940, 107 F. 2d 953, 71 App. D. C. 153).

Injuries sustained by employee while driving automobile owned and kept by employer for employer's personal use, such driving being under the exclusive supervision and control of employer, were injuries arising out of and in the course of employment. *Id.*

An unexpected attack upon a cook in a restaurant who was killed by a bus boy during altercation regarding boy's work "arose out of the employment." *Maryland Casualty Co. v. Cardillo* (1938, 99 F. 2d 432, 69 App. D. C. 199).

Evidence that claim adjuster handled more than 250 cases a month, being a great many in excess of adjuster's monthly capacity, and as a result suffered a severe spasm of angina pectoris which in turn resulted in coronary thrombosis, it was an accidental injury which is any injury unexpected or not designed. *Hoage v. Royal Indem. Co.* (1937, 90 F. 2d 387, 67 App. D. C. 142).

When a chef was stabbed by a crazed stranger, the injuries "arose out of and in the course of his employment." *Hartford Acc. & Indem. Co. v. Hoage* (1936, 85 F. 2d 417, 66 App. D.C. 160).

Although there were instructions by superior that employee should not touch anything alive, it was not sufficient to prevent action as one "arising out of and in the course of employment," when employee was electrocuted while repairing cylinder on street car. *Capital Transit Co. v. Hoage* (1936, 84 F. 2d 235, 65 App. D.C. 382).

Injury suffered by an insurance agent, on the way home, when superior ordered him home, was compensable as occurring in and arising out of the course of employment. *Proctor v. Hoage* (1936, 81 F. 2d 555, 65 App. D. C. 153).

An injury "arises out of" the employment within the meaning of the Compensation Act when it occurs in the course of the employment and as the result of a risk involved in or incidental to the employment or to the conditions under which it is required to be performed, and the mere fact that the injury is contemporaneous or coincident with the employment is not a sufficient basis for an award. *Speaks v. Hoage* (1935, 78 F. 2d 208, 64 App. D.C. 324).

Newspaper solicitor, when in the course of his employment has to pass along the public streets and thereby sustains an accident by reason of the risks incident to the streets, the accident "arises out of" as well as "in the course of" his employment. *New Amsterdam Casualty Co. v. Hoage* (1933, 62 F. 2d 468, 61 App. D. C. 306).

Evidence held sufficient to show that warehouse manager was injured in the course of his employment, when injury occurred while he was on his way to the warehouse on Sunday. *Voehl v. Indemnity Ins. Co.* (1933, 53 S. Ct. 380, 288 U. S. 162, 77 L. Ed. 676).

In a claim for compensation on ground of relationship of employer and employee, evidence warranted finding that relation was that of partnership. *Georgia Casualty Co. v. Hoage* (1932, 59 F. 2d 870, 61 App. D. C. 195).

Garage employee proved by sufficient evidence to be employee and entitled to compensation for injury. *Lumbermens Mut. Casualty Co. v. Hoage* (1932, 58 F. 2d 1072, 61 App. D. C. 171).

#### Injury—Outside scope of employment

A finding of Deputy Commissioner that employee's disability because of Parkinson's disease was not caused by automobile collision while he was driving to work was



supported by substantial evidence, so that Deputy Commissioner properly denied employee's claim for compensation under Longshoremen's Compensation Act. *Richardson v. Britton* (1951, 192 F. 2d 423, 89 U. S. App. D. C. 391, certiorari denied 72 S. Ct. 676, 343 U.S. 920, 96 L. Ed. 1334).

In workmen's compensation proceeding, evidence sustained finding that following removal of last load of freight from railroad box car claimant lifted fellow worker off floor, that in ensuing struggle both fell and that claimant's resulting injury was not sustained in course of employment. *Ackerman v. Cardillo* (1944, 140 F. 2d 348, 78 U. S. App. D. C. 310).

Where following removal of freight from railroad box car claimant lifted coworker from floor and in ensuing struggle both fell to floor with resulting injury to claimant and claimant during same morning and against remonstrances of intended victim had indulged in similar prank, the injury did not "arise out of and in course of employment." *Id.*

The mere fact that an injury is contemporaneous or coincident with the employment is not a sufficient basis for an award under the Longshoremen's Compensation Act, section 901 et seq. of title 33, U. S. Code. *Groom v. Cardillo* (1941, 119 F. 2d 697, 73 App. D. C. 358).

Injuries sustained by an employee in a personal difficulty with another employee of the same employer, having no relation to the employment itself and in which there is no causal connection between the injury and the employment, are not compensable. *Fazio v. Cardillo* (1940, 109 F. 2d 835, 71 App. D. C. 264).

When employee went on roof of building during lunch hour for a rest and fresh air, but fell into a ventilator shaft the injury did not arise "out of the employment." *Monahan v. Hoage* (1937, 90 F. 2d 419, 87 App. D.C. 174).

Deputy commissioner was right in holding that the injury sustained did not occur in the course of the deceased's employment, when he was not at the time of the occurrence performing any service which he was required to do by virtue of his employment as financial secretary of the lodge. *Morgan v. Hoage* (1934, 72 F. 2d 727, 63 App. D. C. 355).

#### Injury—Psychological

Psychological injury should be included within purview of Longshoremen's and Harbor Workers' Compensation Act, notwithstanding fact that doctors cannot yet point to a physiological situs of injury, since such fact may only reflect current state of knowledge about human mind and personality. *Urban Land Institute et al. v. J. Garrell* (1972, 346 F. Supp. 699).

#### Insurance coverage

Bridge constructor's employee's electrocution, as result of crane's coming into contact with power line after lifting beam from assured's truck but prior to placing beam in position which it was eventually to occupy in new structure, occurred during the "unloading" of assured's truck, for purposes of "loading and unloading" clause or automobile liability policy. *Indemnity Insurance Company of N. A. v. Old Dominion Hoisting Service* (1958, 251 F. 2d 382, 102 U.S. App. D.C. 141).

#### Judgment, affirmance of

Absent fault by employer, award to employee of damages for injuries suffered in service station robbery was error, but such judgment must be affirmed where employer did not attack it by cross appeal. *R. L. Howard v. C. F. Lightner, etc.* (D.C. App. 1965, 214 A. 2d 474).

#### Jurisdiction

In proceeding under District of Columbia Workmen's Compensation Act, Deputy Commissioner's findings as to jurisdiction are entitled to great weight and will be rejected only where there is apparent error. *United States Fidelity and Guaranty Co. v. Donovan* (1954, 221 F. 2d 515, 94 U. S. App. D. C. 377).

To give Deputy Commissioner jurisdiction to award compensation, employee killed or injured need not have been working at time within the District of Columbia, and he would be within the intent and design of the statute when employer's office, the place of hiring, the employee's residence and other factors provide sub-

stantial connection between the district and the particular employee-employer relationship. *Id.*

The District Court had jurisdiction of action by administrator for balance due on compensation award to plaintiff's decedent although amount owing at time of decedent's death was less than \$3,000. *Turner v. Christain Heurich Brewing Co.* (1948, 169 F. 2d 681, 83 U.S. App. D.C. 633).

Under this chapter, Deputy Commissioner had jurisdiction to entertain a claim by widow of an employee who had been a resident of District, who had been employed by a District employer, and who had been subject to work assignments in the District, although employee was assigned to work outside District at time fatal injury was received. *Cardillo v. Liberty Mut. Ins. Co.* (1947, 67 S. Ct. 801, 330 U. S. 469, 91 L. Ed. 1028).

#### Jury trial

Where credit claim under Murray decision that a person against whom employee is awarded damages in tort action could reduce judgment by 50% if he could show that employer's negligence contributed to the injury was equitable in character and no legal claims underlay defendant's cross claim against injured employee's employer and there were no factual issues common to both legal and equitable claims in the suit and judge's determination of equitable issues in no way precluded any party's right to determination of the legal issues, trial judge was empowered to hear and resolve cross complaint without intervention of the jury. *R. L. Dawson et al. v. Contractors Transport Corp.* (1972, 467 F. 2d 727, 151 U.S. App. D.C. 401).

Fact that issue of employer's negligence was relevant to cross claim by defendant against injured employee's employer did not convert the action under Murray decision, that a person against whom employee is awarded damages in a tort action can reduce judgment by 50% if he can show that employer's negligence contributed to the injury, into an essentially legal action that would support demand for jury trial. *Id.*

#### Legality of employment

The Longshoremen's and Harbor Workers' Act, section 901 et seq. of title 33, U. S. Code, made applicable in the District of Columbia as a workmen's compensation act, is applicable to illegally employed employees, as well as to legally employed employees. *Mellen v. Hirsch* (D. C. Md. 1948, 8 F. R. D. 250, affirmed 171 F. 2d 127).

#### Liability for medical service

The employer is liable for all legitimate consequences following an accident, including unskillfulness or error of judgment of the physician furnished as required, and the employee is entitled to recover under the schedule of compensation for the extent of his disability, based on the ultimate result of the accident, regardless of the fact that the disability has been aggravated and increased by the employer's selected physician, and this remedy is exclusive. *Fernandez v. Gantz* (D.C.D.C. 1953, 113 F. Supp. 763).

Where award of compensation was based upon the ultimate result of the accident, including results of malpractice of physician furnished by employer, employer and its insurance carrier were not answerable in damages beyond the award of compensation, when it was not alleged that there had been negligence in selection of the physician. *Id.*

Where physician called defendant's manager and asked if it was all right for him to treat an employee and manager said it was all right if patient would retain him, it constituted sufficient authorization rendering defendant liable for medical services rendered. *Skolnick v. Swagart* (D. C. Mun. App. 1949, 66 A. 2d 523).

#### Liability for recurring injury

Where claimant contracted tuberculosis while serving as a visiting nurse during period of policy issued by prior compensation carrier, and disability occurred again 12 years later during term of policy issued by subsequent carrier, liability would be imposed upon the carrier which was on the risk at time of occurrence of injury bearing the requisite causal relationship to the disability giving rise to the claim. *American Casualty Co. v. Britton, Deputy Commissioner, etc.* (1956, 227 F. 2d 16, 97 U.S. App. D.C. 1).



**Limitation of action**

That federal district court had appointed a committee of person and estate of employee who allegedly had improperly been paid compensation payments for hospital and/or institutional care did not give federal district court jurisdiction over compensation carrier's action to recover payments where compensation carrier's claim was time barred by Longshoremen's and Harbor Workers' Compensation Act. *Lumbermen's Mutual Casualty Company v. M. O. Brooke et al.* (D.C.D.C. 1963, 219 F. Supp. 80).

Where decedent's employer and employer's insurer to their own use and use of widow and use of executor of estate of decedent brought action for wrongful death of employee against third party tort-feasors and second amended complaint indicated that sole plaintiff was employer, allowance of reinstatement of employer's insurer as plaintiff in third amended complaint would not assert a new cause of action, but merely reassert a cause of action, the jurisdictional basis of which was the same, in part, alleged to have existed in original, amended, and second amended complaints and cause of action would not be barred by Statute of Limitations. *City Stores Company v. Shull* (D.C.D.C. 1958, 161 F. Supp. 459).

Where defendant caused death of employee of another under such circumstances that, if death had not ensued, the employee would have been entitled to maintain action against defendant or to recover compensation under this section, death action instituted under section 1201 of title 16, U. S. Code, within one year after appointment of guardian for employee's infant son but more than one year after death was barred by limitation of section 1202 of title 16, U. S. Code, notwithstanding employees' compensation act provision that one year limitation on right to compensation for death should not be applicable to infants until appointment of guardian. *Webster v. Clodfelter* (1942, 130 F. 2d 434, 76 U. S. App. D. C. 171, 143 A. L. R. 280, certiorari denied 63 S. Ct. 261, 317 U. S. 689, 87 L. Ed. 552).

This section does not alter the period of limitations in section 1202 of title 16, U. S. Code. *Id.*

Where action for wrongful death was not filed within one year after the death as provided by section 913 of title 33, U. S. Code, action was barred notwithstanding that decedent if he had lived would have been entitled to compensation from his employer or his employer's insurance carrier and action was brought within one year after appointment of guardian for decedent's infant son, which was timely under Longshoremen's Compensation Act, since cause of action against third persons was not affected by the compensation act. *Id.*

The limitation does not begin to run until the claim to compensation arises, the term "injury" being equivalent to "compensatable injury." *Potomac Elec. Power Co. v. Cardillo* (1940, 107 F. 2d 962, 71 App. D. C. 163).

Statute of limitations applicable to this case and action must be brought by the personal representative within one year from the date of the death, or the employer must have vested in him within one year from the date of the death of the employee the right of the personal representative to bring such action. *Chapman v. Griffith-Consumers Co.* (1940, 107 F. 2d 263, 71 App. D.C. 64).

Where a statute gives a right unknown to the common law, and limits the time within which an action shall be brought to assert it, the limitation defines and controls the right. *Young v. Hoage* (1937, 90 F. 2d 395, 67 App. D. C. 150).

Provisions relating to the time within which the claimant shall present and prosecute his claim are essential parts of the procedure, and the court accordingly cannot revive a claim when barred by the limitations contained in the act. *Shugard v. Hoage* (1937, 89 F. 2d 796, 67 App. D. C. 52).

When injured employee elected to sue a third person and obtained judgment against tort-feasor, which was reversed, the employee then tried to proceed without paying costs and not being successful tried in forma pauperis, and then discontinued action, it was held that the employee was not entitled to compensation for the statute of limitations had run and employee failed to pursue the third-party remedy to final judgment. *Chapman v. Hoage* (1935, 78 F. 2d 233, 64 App. D. C. 349).

**Loss of consortium**

Payment of compensation under Longshoremen's and Harbor Workers' Compensation Act barred claim of employee's wife against employer for loss of consortium. *Thomas v. Central Linen Co.* (1959, 263 F. 2d 495, 105 U. S. App. D. C. 49).

Wife of injured employee was barred by the Workmen's Compensation Act from maintaining an action against his employer for loss of consortium as result of injuries sustained by employee while working for employer, on ground that employer was negligent. *Smither and Company v. Coles* (1957, 242 F. 2d 220, 100 U. S. App. D. C. 68, certiorari denied 77 S. Ct. 1299, 354 U. S. 914, 1 L. Ed. 2d 1129).

**Loss of services**

Where plaintiff's husband elected to file suit against third-part tort-feasor thereby electing not to receive workmen's compensation and a settlement was reached in which the wife joined, wife was not entitled to recover against the husband's employer for loss of services resulting from the injury to the husband occurring in the course of his employment. *Hilton v. Fifteen Hundred Mass. Ave. Inc.* (1958, 261 F. 2d 377, 104 U. S. App. D. C. 259).

**Negligence**

Failure of service station lessee to keep workmen's compensation insurance in force did not constitute negligence which proximately contributed in any degree to employee's injuries suffered in robbery. *Howard v. Lightner* (D.C. App. 1965, 1965, 214 A. 2d 474).

**Partial dependency**

A partial dependency falls within the statute as well as a complete or total dependency. *Harris v. Hoage* (1933, 66 F. 2d 801, 62 App. D. C. 275).

**Partial disability**

The degree of disability, under Longshoremen's and Harbor Workers' Act, cannot be measured by physical condition alone, but the claimant's age, his industrial history, and the availability of that type of work which he can do must be considered. *American Mutual Insurance Company of Boston et ano. v. W. B. Jones* (1970, 426 F. 2d 1263, 137 U.S. App. D.C. 269).

**Parties**

Under rule providing that every action shall be prosecuted in name of the real party in interest, employer's compensation insurance carrier, that paid workmen's compensation benefits to injured employee without an award, is not a "real party in interest" in employee's suit against third-party tort-feasor and need not be joined. *F. C. Joyner v. F & B Enterprises, Inc.* (1971, 448 F. 2d 1185, 145 U.S. App. D.C. 262).

**Payment of retirement and compensation benefits**

Retirement benefits under pension system were payable over and above compensation awarded under Longshoremen's and Harbor Workers' Compensation Act, where Act made invalid any agreement requiring employee to contribute to a fund for providing compensation or to waive his right to compensation, and pension plan provided that allowances were in addition to workmen's compensation benefits. *W. Massey and W. G. White v. D.C. Transit System, Inc.* (1967, 388 F. 2d 584, 128 U.S. App. D.C. 328).

**Place of injury**

Where employer, with main office in New York, maintained office and store yard in District of Columbia, workman's contract of employment was made in the District, employer was engaged in construction work under three contracts, two located in District and one in Virginia, and injured workman's contract of employment was made in the District but he was transferred from one job to another, injury sustained in Virginia was to an employee of an employer carrying on employment in the District so that this section was applicable even though the work was being performed on a federal job on land owned by the United States. *Travelers Ins. Co. v. Cardillo* (1944, 141 F. 2d 364, 78 U. S. App. D. C. 394).

Where resident of District of Columbia was employed by construction company which had its principal office in the District and at time of injury and prior thereto was engaged in construction work in the District and in immediate vicinity, the employer was carrying on employ-



ment in the District and this section was applicable even though work being done at time of injury was on a federal job on property owned by the United States in Maryland. *Travelers Ins. Co. v. Cardillo* (1944, 141 F. 2d 362, 78 U. S. App. D. C. 392).

Even though the Longshoremen's and Harbor Workers' Compensation Act, section 901 et seq. of title 33, U. S. Code, was adopted as the Compensation Law of the District of Columbia, section 903 (a) of said Act excluding jurisdiction of injuries compensable under state law, has no place in this section, which expressly extends its provisions to cases of injury or death, irrespective of the place where either occurred. *Id.*

Where salesman's office was in District of Columbia, though his selling contacts were largely outside and his time was nearly equally divided between the two, and he was fatally injured while traveling in Pennsylvania in connection with his employment, this section was applicable. *B. F. Goodrich Co. v. Britton* (1944, 139 F. 2d 362, 78 U. S. App. D. C. 221).

As respects liability of employer carrying on any employment in the District of Columbia to injured employee under this section, it was immaterial that injury occurred in Maryland. *Moyer v. Cardillo* (1941, 119 F. 2d 785, 73 App. D. C. 261).

#### Power of commission

The Federal Government may confer upon administrative agencies, such as Deputy Commissioner United States Employees' Compensation Commission, created to aid in performance of governmental functions the determination of questions of fact, including existence of master and servant relation, the test being whether the delegation concerns the exercise of judicial power in enforcing constitutional limitations. *Gudmundson v. Cardillo* (1942, 126 F. 2d 521, 75 U. S. App. D. C. 230).

#### Presumptions

If statutory presumption that a claim comes within provisions of the Longshoremen's and Harbor Workers' Compensation Act applies to a death that results in course of employment when a preexisting internal disorder takes a sudden turn for the worse, it must also apply equally to cases involving nonfatal injuries as well, since death and injury are placed on a par in the Act. *Urban Land Institute et al. v. J. Garrell* (1972, 346 F. Supp. 699).

The fact that injury or death occurs in course of employment strengthens presumption that it arises out of employment, with doubts resolved in claimant's favor. *M. R. Wheatley v. H. Adler, Deputy Commissioner, etc., et al.* (1968, 407 F. 2d 307, 132 U.S. App. D.C. 177).

Under the circumstances, evidence that tuberculosis rate in Japan was five times that in District of Columbia supported award of compensation to employee who was assigned to work in Japan and who there contracted the disease, in absence of substantial evidence to rebut statutory presumption that disability arose from employment. *Travelers Insurance Co. v. Donovan, Deputy Commissioner etc.* (1955, 221 F. 2d 886, 95 U.S. App. D.C. 331).

Provision of section 901 et seq. of title 33, U. S. Code, that in proceeding thereunder jurisdiction is to be presumed in absence of substantial evidence to contrary applies with equal force to proceedings under this chapter. *Cardillo v. Liberty Mut. Ins. Co.* (1947, 67 S. Ct. 801, 330 U. S. 469, 91 L. Ed. 1028).

Where employee was on his employer's premises and was on his way to an exit within a reasonable time after quitting work, presumption existed that he was in course of his employment and that injury sustained at that time and place arose out of his employment. *Smoot Sand & Gravel Corp. v. Britton* (1946, 152 F. 2d 17, 80 U. S. App. D. C. 260).

#### — Rebuttal of

Testimony of employer's doctors, neither of whom had ever seen the decedent, neither of whom had any personal knowledge of his work, and who, in response to a hypothetical set of facts that told them only that the decedent was performing a usual laboring job when he collapsed, opined that there was a reasonable medical probability that death was not work-related, did not constitute substantial evidence to dispel presumption that claim by widow of the decedent, who, shortly before he

died of a cerebral vascular accident, had picked up masonry blocks weighing approximately 25 pounds in each hand and carried them a distance of about 25 feet, came within provisions of the Longshoremen's and Harbor Workers' Compensation Act. *W. M. Mitchell et al. v. E. D. Woodworth, Deputy Commissioner, etc., et al.* (1971, 449 F. 2d 1097, 146 U.S. App. D.C. 21).

The evidence did not dispel the statutory presumption that an employee, who was shown by autopsy report to have been suffering from marked arteriosclerotic heart disease, whose death resulted from myocardial insufficiency and who collapsed after urinating outside employer's building in cold weather, came within provisions of Longshoremen's and Harbor Workers' Compensation Act. *M. R. Wheatley v. H. Adler, Deputy Commissioner, etc., et al.* (1968, 407 F. 2d 307, 132 U.S. App. D.C. 177).

#### Previous disability

Mental deficiency of the claimant, whose intelligence quotient on Wechsler-Bellvue scale was measured at 69, whose disability due to that deficiency was not shown to have been "manifest," and who as result of the mental deficiency and loss of use of right hand was permanently totally disabled, was not "previous disability" within Longshoremen's and Harbor Workers' Act provision to effect that if employee receives injury, which of itself is only cause of permanent partial disability but which, combined with previous disability, does in fact cause permanent total disability, employer is required to provide compensation only for disability caused by subsequent injury. *American Mutual Insurance Company of Boston et al. v. W. B. Jones* (1970, 426 F. 2d 1263, 138 U.S. App. D.C. 269).

It is immaterial, under Act provision to effect that if employee receives injury, which of itself would only cause permanent partial disability but which, combined with previous disability, does in fact cause permanent disability, employer is required to provide compensation only for disability caused by subsequent injury, whether disability is result of previous work-connected injury, injury not connected with employment, congenital defect, or perhaps even disability resulting from social and economic causes. *Id.*

Purpose of Act provision to effect that if employee receives injury, which of itself would only cause permanent partial disability but which, combined with previous disability, does in fact cause permanent total disability, employer is required to provide compensation only for disability caused by subsequent injury is to remove that aspect of discrimination against disabled that would otherwise be encouraged by the Act. *Id.*

#### Prior recovery

Under full faith and credit clause of federal constitution, Maryland award of workmen's compensation benefits for death of employee engaged in extrahazardous employment of plumbing, being a determination of all rights against employer and insurer growing out of employee's fatal injury, barred recovery of additional benefits allowable under District of Columbia Workmen's Compensation Act. *Gasch et al. v. Britton* (1953, 202 F. 2d 356, 92 U.S. App. D.C. 64).

#### Progression of disease

Where subsequent recurrence of tuberculosis in claimant was result of natural progression of the disease unaffected by any intervening work-connected cause, compensation carrier which had granted coverage at time of claimant's original, compensable disability from tuberculosis, not subsequent carrier granting coverage at time of subsequent disability, would be liable for the subsequent disability. *American Casualty Co. v. Britton, Deputy Commissioner, etc.* (1956, 227 F. 2d 16, 97 U. S. App. D. C. 1).

#### Purpose

The purpose of the Workmen's Compensation Act is to provide not only for employees a remedy which is both expeditious and independent of proof of fault, but also for employers a liability which is limited and determinative. *Smither and Company, Inc. v. Coles* (1957, 242 F. 2d 220, 100 U. S. App. D. C. 68, certiorari denied 77 S. Ct. 1299, 354 U. S. 914, 1 L. Ed. 2d 1129).



The purpose of the Workmen's Compensation Act is to substitute fixed payments for personal injuries sustained or death caused in the course of employment for the common-law cause of action for damages. *Brown v. Curtin & Johnson Inc.* (D.C.D.C. 1953, 117 F. Supp. 830, affirmed 221 F. 2d 106, 95 U.S. App. D.C. 234).

A prime purpose of this chapter is to provide residents of the District with a practical and expeditious remedy for their industrial accidents and to place on District of Columbia employers a limited and determinate liability. *Cardillo v. Liberty Mut. Ins. Co.* (1947, 67 S. Ct. 801, 330 U. S. 469, 91 L. Ed. 1028).

#### Questions of law

Applicability of workmen's compensation law is question of law, for court, which erred in submitting question to jury. *M. H. Shreve v. Hot Shoppes, Inc., et ano.* (1961, 292 F. 2d 761, 110 U.S. App. D.C. 268).

Where baker's contact with flour caused dermatitis and between first attack and its recurrence there was an interval during which she did not appear to have dermatitis, whether the recurrence was an injury within provision of Longshoremen's Compensation Act requiring claim to be filed within one year after injury or one year after last payment made without an award was question of law for court to decide, in absence of any specific elements that might differentiate baker's recurrence of dermatitis from other recurrences of occupational diseases. *Cadwallader v. Sholl et al.* (1952, 196 F. 2d 14, 89 U. S. App. D. C. 285, certiorari denied 72 S. Ct. 1061, 343 U. S. 966, 96 L. Ed. 1363).

Meaning of "course of employment" within section 902 (2) of title 33, U. S. Code, apart from any particular set of facts, is a question of law. *Hurley v. Lowe* (1948, 168 F. 2d 553, 83 U. S. App. D. C. 123, certiorari denied 68 S. Ct. 1338, 334 U. S. 828, 92 L. Ed. 1756).

#### Record on appeal

Record in this case did not adequately present question whether consent judgment awarding petitioner damages against third person evidenced a "compromise" subject to provision of Longshoremen's and Harbor Workers' Compensation Act governing compensation for injuries where third persons are liable, or an award of damages "determined \* \* \* by the independent evaluation of a trial judge," not subject to Act, and writ of certiorari, granted petitioner following affirmance of summary judgment in favor of employer and insurance carrier in review proceeding, would be dismissed as improvidently granted. *A. McClanahan v. Morauer & Hartzell, Inc.* (1971, 92 S. Ct. 170, 404, U.S. 16).

#### Recurrence of disability

Longshoremen's Act provision, barring right to compensation for disability unless claim therefor was filed within one year after injury, barred claim for compensation for recurrence of disability where claim was filed more than one year after injury responsibility for disability, even though such claim was filed within one year from date when disability recurred. *Henriot v. General Accident Fire and Life Assurance Corp.* (D. C. Mun. App. 1957, 134 A. 2d 374).

Where baker's contact with flour caused dermatitis which disabled her from July, 1944 to October, 1946, during which period employer paid her compensation without claim or award, and in December, 1946 she suffered a recurrence which wholly disabled her from January, 1947, and between first attack and its recurrence there was an interval during which she did not appear to have dermatitis, compensation claim filed in November, 1947 within one year after disease recurred was timely under Longshoremen's Compensation Act providing that right to compensation is barred unless a claim therefor is filed within one year after injury or one year after last payment made without award, whether baker resumed work during interval and thereby brought about recurrence or whether baker did not resume work in which case the second attack was a consequence of the previous work that had caused the previous attack. *Cadwallader v. Sholl et al.* (1952, 196 F. 2d 14, 89 U. S. App. D. C. 285, certiorari denied 72 S. Ct. 1061, 343 U. S. 966, 96 L. Ed. 1363).

#### Reimbursement of carrier

Where employee, after receiving compensation benefits, sued third party tort-feasor and effected settlement netting him amount in excess of what he would have been entitled under Longshoremen's and Harbor Workers' Compensation Act, carrier was entitled to be reimbursed for payments to employee without being required to pay legal fees to law firm which negotiated settlement with third party tort-feasor. *Ashcraft and Gerel v. Liberty Mutual Ins. Co.* (1965, 343 F. 2d 333, 120 U.S. App. D.C. 51).

#### Remand

Where question whether Deputy Commissioner had jurisdiction over claim under this chapter was considered and determined by Deputy Commissioner, who was in turn sustained by District Court, and facts pertinent to that issue were not seriously disputed and matter had been fully briefed and argued before Supreme Court, even though Court of Appeals had not determined that issue, a remand for determination thereof was not required, but Supreme Court could consider the jurisdictional issue. *Cardillo v. Liberty Mut. Ins. Co.* (1947, 67 S. Ct. 801, 330 U. S. 469, 91 L. Ed. 1028).

#### Res judicata

Where minor's contention, made in common-law action in the District of Columbia, that minor had right to sue at law rather than make a claim for workmen's compensation because employed contrary to Child Labor Law, section 36-201 et seq., of District of Columbia, was definitely adjudicated against minor, contention was not open to further controversy in subsequent action in federal court in Maryland. *Mellen v. Hirsch* (D. C. Md. 1948, 8 F. R. D. 250, affirmed 171 F. 2d 127).

Decision of court in District of Columbia that minor had no cause of action in a suit at common-law against employer for injuries because compensation law, section 905 of title 33, U. S. Code, provided exclusive remedy, and that such law was not rendered inapplicable because of employer's alleged violation of the Child Labor Law, section 36-201 et seq. was not ineffective as to minor in subsequent common-law suit against employer in Maryland, on ground that the suit in the District of Columbia was dismissed for lack of jurisdiction. *Id.*

#### Review

Scope of review of findings of deputy commissioner is narrow. *United Painters & Decorators et al. v. T. Britton, Deputy Commissioner etc.* (1962, 301 F. 2d 560, 112 U.S. App. D.C. 236).

Scope of judicial review in workmen's compensation cases is strictly limited and statutory action to set aside award of compensation does not contemplate a trial de novo but merely a judicial review of administrative action on the administrative record, and the only questions which court may consider are, first, whether award is contrary to law and second, where administrative findings of fact are supported by substantial evidence. *Great American Indemnity Co. et al. v. Britton, Deputy Commissioner etc.* (D.C.D.C. 1960, 186 F. Supp. 938).

The substantial evidence necessary to sustain administrative findings when workmen's compensation award is challenged in statutory action is more than a scintilla of evidence but the court may not consider the weight of the evidence and is limited to determining merely whether there is substantial evidence in record sustaining findings of fact and the fact that countervailing evidence may have more probative value will not warrant overruling findings. *Id.*

In statutory action to set aside award of workmen's compensation, the court may not set aside inferences drawn by administrator from evidence that he chooses to believe if such inferences are reasonably possible and have a rational basis. *Id.*

Where employer, who was convicted of failing to secure payment of compensation as required by Workmen's Compensation Act, contended on appeal that trial court erred in admitting in evidence two payroll books, on ground that they had been obtained and seized illegally from persons other than the employer, and record was not clear whether employer made a motion to suppress



books, and record was only a partial stenographic transcript without supporting statement of proceedings and evidence, Municipal Court of Appeals for the District of Columbia was required to hold, because of sketchy record, that the government did not obtain books as result of illegal search or seizure. *Tyree v. United States* (D.C. Mun. App. 1959, 155 A. 2d 914).

A deputy employees' compensation commissioner's determination sustained by District Court, fixing injured employee's wage-earning capacity, on which award of compensation for permanent partial disability was based, at smaller sum per week than wages actually received by him before and after injury, pursuant to finding that his post-injury wages did not reasonably represent his wage-earning capacity, will not be disturbed by Court of Appeals. *Liberty Mutual Insurance Co. et al. v. Britton et al.* (1957, 243 F. 2d 659, 100 U. S. App. D. C. 236).

On appeal from summary judgment for defendants in suit by widow to set aside denial of benefits for death of husband under Longshoremen's and Harbor Workers' Compensation Act, reviewing court's task was to ascertain whether Deputy Commissioner's findings were supported by substantial evidence on record considered as a whole, and reviewing court would not sustain administrative findings merely because they were substantiated by some isolated evidence. *Friend, surviving widow v. Britton, Commissioner et al.* (1955, 220 F. 2d 820, 95 U. S. App. D. C. 139, certiorari denied 76 S. Ct. 72, 350 U. S. 836, 100 L. Ed. 745).

In action to review Deputy Commissioner's order denying claim for compensation under Longshoremen's Compensation Act pursuant to finding that plaintiff's disability was not caused by accident, question is whether such finding is supported by substantial evidence on record considered as whole. *Richardson v. Britton et al.* (1951, 192 F. 2d 423, 89 U. S. App. D. C. 391, certiorari denied 72 S. Ct. 676, 343 U. S. 920, 96 L. Ed. 1334).

Reviewing court is limited to determining whether Deputy Commissioner's conclusion in compensation case is forbidden by law or without any reasonable basis. *Wetzel v. Britton* (1948, 170 F. 2d 285, 83 U.S. App. D.C. 327).

Court reviewing compensation order must review to determine, not whether principles of law applied by deputy commissioner are correct, but merely whether they are forbidden by law, or without any reasonable legal basis, or are invalidated by some formal principle of law. *Hurley v. Lowe* (1948, 168 F. 2d 553, 83 U. S. App. D. C. 123, certiorari denied 68 S. Ct. 1338, 334 U. S. 828, 92 L. Ed. 1756).

In proceeding under this chapter, even if inference made by Deputy Commissioner involves application of broad statutory term or phrase to specific set of facts and is considered more legal than factual in nature, reviewing court's function is exhausted when it becomes evident that Deputy Commissioner's choice has substantial roots in evidence and is not forbidden by law. *Cardillo v. Liberty Mut. Ins. Co.* (1947, 67 S. Ct. 801, 330 U. S. 469, 91 L. Ed. 1028).

Where employer arranged to furnish employee transportation to and from place of work in employer's truck which regularly passed employee's home, and employee was struck by another vehicle while crossing road to where employer's approaching truck would stop, and deputy commissioner concluded that injury did not arise out of and in course of employment, principle that deputy commissioner's findings when supported by substantial evidence are not subject to review was inapplicable since the question presented was a "question of law" not a "question of fact." *Ward v. Cardillo* (1943, 135 F. 2d 260, 77 U. S. App. D. C. 343).

In workmen's compensation case, function of United States Court of Appeals for the District of Columbia is limited to determining whether the finding of the deputy commissioner is supported by substantial evidence. *Great American Indemnity Co. v. Cardillo* (1943, 135 F. 2d 241, 77 U.S. App. D.C. 306).

In workmen's compensation case, the United States Court of Appeals for District of Columbia cannot sit as reappraisers of the evidence. *Id.*

Fact that evidence was taken and certified in disregard of technical rules of procedure does not invalidate it or

render it any the less entitled to consideration on an appeal when no request was made for a trial de novo. *Georgia Casualty Co. v. Hoage* (1932, 59 F. 2d 870, 61 App. D.C. 195).

#### Right of action

Widow, who was receiving compensation under Workmen's Compensation Act for husband's death as a result of defendant employer's claimed negligence, was not entitled to recover as against employer for loss of consortium. *Brown v. Curtin & Johnson Inc.* (D.C.D.C. 1953, 117 F. Supp. 830, affirmed 221 F. 2d 106, 95 U.S. App. D.C. 234).

Regardless of whether employer secures payment of compensation either by taking out insurance or providing for paying such compensation directly, employer remains liable, and employee is entitled to institute proceedings for an award before deputy commissioner and then before United States District Court for collection of the award. *Garcia v. De Leon* (D. C. Mun. App. 1948, 59 A. 2d 637).

Under section 933 of title 33, U.S. Code, providing that acceptance of compensation under an award shall operate as an assignment to employer of all rights of injured employee to recover damages against third person causing injury, the right to maintain an action against a third person causing injury is in the employee if he does not elect to receive compensation and is in the employer if employee elects to receive compensation, and an employee cannot follow both courses. *Moore v. Hechinger* (D.C.D.C. 1941, 39 F. Supp. 427, affirmed 127 F. 2d 746, 75 U.S. App. D.C. 391).

Since claimant was an independent contractor, he is not entitled to claim under the Compensation Act as an employee. *Cardillo v. Mockabee* (1939, 102 F. 2d 620, 70 App. D.C. 16).

Record clearly shows that the agent of the insurance carrier was a privy to all the proceedings leading to the bringing of the damage suit and its settlement, and it would also be inequitable to permit the employer and carrier to change their position to the prejudice of the claimant who had acquiesced in their position. *Metro-politan Casualty Ins. Co. v. Hoage* (1937, 89 F. 2d 798, 67 App. D.C. 54).

#### Rights of carrier

Where compensation benefits are paid without an award, and the employee commences a third-party action, the employer's workman's compensation carrier's only remaining substantive right is to be compensated out of employer's recovery. *F. C. Joyner v. F & B Enterprises, Inc.* (1971, 448 F. 2d 1185, 145 U.S. App. D.C. 262).

#### Rights of employer

When a person asserts a claim under the workmen's compensation law, the employer or his insurance carrier should be afforded a prompt opportunity to examine the claimant at the earliest possible time, especially when conditions of the heart are involved. *Good Impressions, Inc., et al. v. Britton* (D.C.D.C. 1958, 169 F. Supp. 866).

Under Longshoremen's and Harbor Workers' Compensation Act which provided that insurance carrier shall be subrogated to all rights of employer, fact that premium paid by decedent's employer for policy year in which injury and death occurred was materially increased by reason of a compensation claim paid by employer's insurer and fact that future premiums would be based upon experience rating of employer for prior years and would also be increased did not entitle employer to bring wrongful death action as sole plaintiff. *City Stores Company v. Shull* (D.C.D.C. 1958, 161 F. Supp. 459).

Under Longshoremen's and Harbor Workers' Compensation Act which provided that the insurance carrier shall be subrogated to all rights of the employer, as between carrier and employer, carrier was, as statutory assignee, the sole recipient of all right of the person entitled to compensation to recover damages against one liable in damages other than the employer. *Id.*

#### Sickness and disease

Employee's death was not compensable where employee died of massive cerebral edema caused when employee leaped upward and backward and then fell, striking back



of his head, during a convulsive seizure while employee was on employer's premises during working hours. *Wolff etc. v. Britton, Deputy Commissioners, etc.* (1964, 328 F. 2d 181, 117 U.S. App. D.C. 209).

Where employee, on day of death, was engaged in carrying hod up one flight of stairs, and in course of his work he complained of being ill, collapsed, and was taken to hospital where he died because of coronary occlusion, evidence sustained deputy commissioner's denial of compensation on ground that employee did not sustain an injury "arising out of and in course of employment." *Carson v. Cardillo* (1943, 132 F. 2d 604, 77 U.S. App. D.C. 82).

Evidence that pre-existing spinal arthritis was aggravated by back injury sustained by employee in 1930 and that after similar injury in 1935 employee became totally disabled from carrying out any type of gainful occupation justified an award of compensation on ground of "total disability" resulting from 1935 injury. *Great Atlantic & Pacific Tea Co. v. Cardillo* (1942, 127 F. 2d 334, 75 U.S. App. D.C. 342).

That an employee is diseased does not bar his right to recover compensation for an accidental injury. *Id.*

From an examination of the testimony, and the presumption of verity which the law accords the findings of fact by the deputy commissioner, the appellant has failed to establish a claim within the Compensation Act, as pneumonia causing death of taxicab driver was not occupational disease. *Anderson v. Hoage* (1934, 70 F. 2d 773, 63 App. D.C. 169).

When there is evidence of a positive nature, and wholly uncontradicted, which definitely and conclusively traces the cause of death and places it wholly at the door of a fatal disease from which the employee was suffering and wholly away from any relation to the work, then, in such a case, the inference must yield to the actual and deputy commissioner's determination must be set aside. *Liberty Mut. Ins. Co. v. Hoage* (1933, 65 F. 2d 822, 62 App. D.C. 189).

Employee not entitled to compensation because contracting tuberculosis while working in a restaurant. *Ayers v. Hoage* (1933, 63 F. 2d 364, 61 App. D.C. 388).

Death from "injuries in the course of employment" is proved by evidence of an epileptic seizure of employee while using hot water hose, which inflicted burns. *Georgetown College v. Stone* (1932, 59 F. 2d 875, 61 App. D.C. 200).

Findings of fact by deputy commissioner that injury to hip of employee was not proximate cause of pulmonary tuberculosis must be accepted as conclusive if supported by evidence. *Powell v. Hoage* (1932, 57 F. 2d 766, 61 App. D.C. 99).

#### Status to award

Provision of Longshoremen's and Harbor Workers' Compensation Act authorizing new compensation order on ground of change in conditions or because of mistake in determination of fact by deputy commissioner accords no different status to award evolved by agreement than to one determined after hearing. *Pistorio v. Einbinder* (1965, 351 F. 2d 204, 122 U.S. App. D.C. 39).

#### Subrogation

In case there is more than one dependent and one only elects to accept workmen's compensation and the other dependent or dependents elect to bring an action under the wrongful death statute, then the employer is not entitled to sue as a subrogee but the action must be brought by the personal representative of the decedent, the employee having the right to demand that such action be brought and that he share in the recovery. *Doleman v. Levine* (1935, 55 S. Ct. 741, 295 U.S. 221, 79 L. Ed. 1402).

An employer or an insurance carrier who has paid compensation to the only beneficiary or beneficiaries entitled to receive the same and who has a right of subrogation may bring the subrogation action against the third person who caused the death of the employee, and the action need not be brought by the personal representative of the decedent. *Aetna Life Ins. Co. v. Moses* (1931, 53 S. Ct. 231, 287 U.S. 530, 77 L. Ed. 477).

#### Subsequent injury

Provision of section 908(f) of title 33, U.S. Code, that if an employee receive an injury which of itself would only cause permanent partial disability but which, combined with a previous disability, does in fact cause permanent total disability, the employer shall provide compensation only for disability caused by the subsequent injury, deals with accidental injury and does not deal with death. *National Homeopathic Hospital Ass'n of Dist. of Col. v. Britton* (1945, 147 F. 2d 561, 79 U.S. App. D.C. 309, certiorari denied 65 S. Ct. 1185, 325 U.S. 857, 89 L. Ed. 1977).

#### Sufficiency of notice

Claim of injured employee was not barred for failure to give notice where there was no evidence that employer lacked knowledge of employee's illness or that employer had been prejudiced by lack of a formal written notice. *Butler v. District Parking Management Co.* (1966, 363 F. 2d 682, 124 U.S. App. D.C. 195).

Where only alleged notice given employer of heart attack allegedly sustained by claimant in the course of his employment was a telephone call by claimant's wife to employer on the following day, in which she informed employer that claimant had been ill the night before and that the doctor said he had a heart attack, and that he was in the hospital, and no further notice was given until approximately one year later, employer was deprived of timely notice of the claim asserted, and such failure to give timely notice barred claimant's right to compensation. *Good Impressions, Inc., et al. v. Britton* (D.C.D.C. 1958, 169 F. Supp. 866).

#### Summary judgment

Where injured employee had received hospital treatment and compensation under Longshoremen's and Harbor Workers' Compensation Act, and brought action against employer to recover damages apart from compensation statute, but set forth no cause of action against employer in which there was any genuine issue of material fact bearing upon claim for damages other than amounts due under compensation statute, summary judgment was properly entered for employer. *Thomas v. Central Linen Co.* (1959, 263 F. 2d 495, 105 U.S. App. D.C. 49).

#### Sunstroke

Heat prostration is compensable as accidental injury if suffered while delivering groceries. *Aetna Life Ins. Co. v. Hoage* (1933, 63 F. 2d 818, 62 App. D.C. 6).

Death of laborer from sunstroke while working in sunny street was compensable. *Fidelity & Casualty Co. v. Burris* (1932, 59 F. 2d 1042, 61 App. D.C. 228).

#### Third party compromise

Under provision of Longshoremen's and Harbor Workers' Compensation Act governing compensation for injuries where third persons are liable, an employer is not obligated to pay compensation to an employee who, without employer's written approval, settles a claim against a third person for an amount less than the compensation to which employee is entitled under the Act. *A. McClanahan v. Morauer & Hartzell, Inc.* (1971, 92 S. Ct. 170, 404 U.S. 16).

Consent judgment, which the claimant obtained against third-party tort-feasor, which was not result of judge's independent finding of value of claim after full presentation of evidence, but was at most informal exploratory attempt to determine possibilities for private settlement, the suggested figure of which claimant was free to reject, could not be considered a judicial determination, but rather was a "compromise" within section of Longshoremen's and Harbor Workers' Compensation Act providing that if a compromise is made with a third person by claimant in an amount less than compensation to which claimant would be entitled, the employer would be liable for compensation only if compromise was made with his written approval, and thus in view of fact that no written consent to compromise was secured from employer, claimant's subsequent claim for additional compensation is barred. *Morauer & Hartzell, Inc., et al. v. E. D. Woodworth, Deputy Commissioner etc.* (1970, 439 F. 2d 550, 142 U.S. App. D.C. 40; cert.



granted 91 S. Ct. 2196, 402 U.S. 1008; cert. dism'd 92 S. Ct. 170, 404 U.S. 16).

#### Third party, injury by

Question whether general contractor was a "third person" suable at common law by employee of subcontractor whose employees were covered by Workmen's Compensation Act was debatable law question where Court of Appeals had never decided question, and question had been resolved differently in other jurisdictions with similar statutes, and general contractor's settlement of personal injury claim of subcontractor's employee would not preclude indemnification from subcontractor on ground that employee's exclusive remedy was under Act. *Moses-Ecco Company, Inc. v. Roscoe-Ajax Corporation; Roscoe-Ajax Corporation v. Detwiler* (1963, 320 F. 2d 685, 115 U.S. App. D.C. 366).

Where injured employee has accepted compensation under this chapter so that right to recover damages from third party wrongdoer has been transferred to employer, employer's insurer or the employer may bring action in his own name to his own use and to the use of the injured employee. *Moore v. Hechinger* (1942, 127 F. 2d 746, 75 U.S. App. D.C. 391).

Under this chapter, where an injury is sustained through the wrongful act of a third party, the employee must elect between compensation from his employer and suit against the wrongdoer and he cannot have both. *Id.*

#### Time for filing claim

In enacting the section of the Longshoremen's and Harbor Workers' Compensation Act requiring a claim for compensation to be filed within one year after the injury, Congress did not wish to penalize an employee who reasonably does not know that he has suffered harm that will, or may well, reduce his earning capacity. *G. E. Stancil v. W. L. Massey, Deputy Commissioner etc. et al.* (1970, 436 F. 2d 274, 141 U.S. App. D.C. 120).

Where in January 1959 employee sustained back injury, shortly after accident employee was examined by a physician designated and paid by employer's workmen's compensation carrier and his condition was diagnosed as a mild back strain, employee was treated for his condition until May 1959 at which time he was discharged and informed that he had no further disability, employee thereafter suffered recurring back pains and was admitted to a hospital in 1962 for new treatment, and surgery performed in December of that year revealed that he was suffering from herniated or ruptured discs caused by 1959 accident, his claim for compensation under Longshoremen's and Harbor Workers' Compensation Act, filed on June 20, 1963, was timely filed. *Id.*

#### Total disability

Even relatively minor injury must lead to finding of total disability under Longshoremen's and Harbor Workers' Act if that injury prevents the employee from engaging in only type of gainful employment for which he is qualified. *American Mutual Insurance Company of Boston et ano. v. W. B. Jones* (1970, 426 F. 2d 1263, 138 U.S. App. D.C. 269).

#### Usual course of business

Mere fact that something unexpectedly goes wrong within human frame will not bar recovery under Longshoremen's and Harbor Workers' Compensation Act if injury, otherwise compensable, occurs when employee is engaged in his unusual and ordinary work. *Wolff etc. v. Britton, Deputy Commissioners, etc.* (1964, 328 F. 2d 181, 117 U.S. App. D.C. 209).

Tort principles or common law concepts of scope of employment are not controlling in determining recoverability under the Longshoremen's and Harbor Workers' Compensation Act. *Id.*

Words "usual course" refer to normal operations constituting the regular business of the employer. *Hoage v. Hartford Acc. & Indem. Co.* (1935, 77 F. 2d 381, 64 App. D.C. 258).

#### Visible injury

An accidental injury may occur, within workmen's compensation law notwithstanding the injured employee has been engaged in his usual and ordinary activity and

injury need not be external but it is enough if something unexpectedly goes wrong within the human frame. *M. R. Wheatley v. H. Adler, Deputy Commissioner etc., et al.* (1968, 407 F. 2d 307, 132 U.S. App. D.C. 177).

#### Widow

Common-law marriage is recognized in District of Columbia. *E. Matthews v. T. Britton, Deputy Commissioner etc.* (1962, 303 F. 2d 408, 112 U.S. App. D.C. 397).

If parties agreed to be husband and wife in ignorance of impediment to lawful matrimony, removal of impediment results in common-law marriage between parties if they have continued to cohabit and live together as husband and wife; the same result obtains even if parties have knowledge of impediment at time that they agree to be married. *Id.*

If man and woman agree to be married before impediment was removed and continued thereafter to cohabit and live together as husband and wife, a common-law union between man and woman was effected when woman's prior spouse was awarded divorce. *Id.*

To be entitled to workmen's compensation award as widow, woman must have continued to live as deserted wife of employee who has deserted her, and there must be bond in reality between husband and wife in their relation to one another, essential ingredient in her claim being her real status factually, not existing legal formalities of relationship. *Liberty Mutual Ins. Co. et al. v. Donovan* (1955, 218 F. 2d 860, 95 U.S. App. D.C. 49).

A woman must be a "widow" as defined by the Longshoremen's Compensation Act, section 902(16) of title 33, U.S. Code, in order to be entitled to compensation as a "surviving wife" during "widowhood." *Weeks v. Behrend* (1943, 135 F. 2d 258, 77 U.S. App. D.C. 341).

#### Zone of special danger

Obligations or conditions of employment must create a "zone of special danger" out of which injury arose if there is to be recovery under Longshoremen's and Harbor Workers' Compensation Act. *Wolff etc. v. Britton, Deputy Commissioner, etc.* (1964, 328 F. 2d 181, 117 U.S. App. D.C. 209).

#### § 36-502. Exceptions.

This chapter shall not apply in respect to the injury or death of (1) a master or member of a crew of any vessel; (2) an employee of a common carrier by railroad when engaged in interstate or foreign commerce or commerce solely within the District of Columbia; (3) an employee subject to the provisions of subchapter I of chapter 81 of title 5, U.S. Code; and (4) an employee engaged in agriculture, domestic service, or any employment that is casual and not in the usual course of the trade, business, occupation, or profession of the employer; and (5) any secretary, stenographer, or other person performing any services in the office of any Member of Congress or under the direction, employment, or at the request of any Member of Congress, within the scope of the duties performed by secretaries, stenographers, or such employees of Members of Congress. (May 17, 1928, 45 Stat. 600, ch. 612, § 2; June 15, 1938, 52 Stat. 689, ch. 392.)

#### CODIFICATION

The reference to "subchapter I of chapter 81 of title 5, U.S. Code" was substituted for "chapter 15 of title 5, U.S. Code", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89-554, set out in note under § 1-251. The act of Sept. 7, 1916 (39 Stat. 742, ch. 458), as amended, which was the Federal Employees' Compensation Act, was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of titles 5 and 18, U.S.C., cited.

#### AMENDMENT

1938—Act June 15, 1938, added clause (5) to include persons performing services for members of Congress.



## EFFECTIVE DATE

See note under section 36-501.

## CROSS REFERENCE

See 33 U.S.C. ch. 18.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 36-438.

## NOTES TO DECISIONS

## Application of statute

Where appellant was injured while working in appellee's car barn, he could not recover under § 44-401 of the Code since § 36-501 has become the applicable workman's compensation act for the District and appellee was not a common carrier by railroad and is excepted from the operation of § 36-501. *Keffe v. Capital Transit Co.* (1950, 183 F. 2d 808, 87 U.S. App. D.C. 13).

## Casual employment

Statutory provision excepting from workmen's compensation coverage those engaged in casual employment not in usual course of trade, business, occupation or profession of employer could not be invoked to exclude coverage for musicians temporarily employed by restaurant proprietor since music was furnished in restaurant in usual course of business. *Great American Indemnity Co. et al. v. Britton, Deputy Commissioner etc.* (D.C.D.C. 1960, 186 F. Supp. 938).

Death of ornamental ironworker resulting from accident while repairing door in grillwork was while engaged in "casual employment," and not in usual course of employer's business. *Hoage v. Hartford Acc. & Indem. Co.* (1935, 77 F. 2d 381, 64 App. D.C. 258, certiorari denied 56 S. Ct. 128, 296 U.S. 609, 80 L. Ed. 432).

## Employees' duties controlling

Where main duty of deckhand employed on a stripper dredge was to coal up dredge from scow, and coal was used to fire engine which operated scoop shovel, deckhand was not a "member of a crew," and hence his claim for injuries was covered by the Longshoremen's Compensation Act, section 901 et seq. of title 33, U.S. Code, as made applicable to a District of Columbia employer and not by the Merchant Marine Act, section 688 of title 46, U.S. Code. *Beddoe v. Smoot Sand & Gravel Corporation* (1942, 128 F. 2d 608, 76 U.S. App. D.C. 38).

## Second injury

Where deputy commissioner originally awarded compensation for temporary total disability, stipulated intermediate order finding temporary partial disability was made subject to deputy's right of review when claimant's condition might change, and compensation was paid after a second injury within less than one year of claim based on total disability, even if original award was suspended during reemployment of claimant, and claimant became only partially disabled, that classification did not prejudice claimant's rights to recover for total disability resulting from second injury. *Great Atlantic & Pacific Tea Co. v. Cardillo* (1942, 127 F. 2d 334, 75 U.S. App. D.C. 342).

## Chapter 6.—PAYMENT AND COLLECTION OF WAGES

## Sec.

36-601. Definitions.

36-602. When wages must be paid—Exceptions.

36-603. Payment of wages upon discharge or resignation of employee and upon suspension of work—Liability of employer for failure to pay wages in accordance with this section.

36-604. Unconditional payment of wages conceded to be due.

36-605. Provisions of law may not be waived.

36-606. Enforcement, records and subpoenas.

36-607. Penalties.

36-608. Employees' remedies.

36-609. Commissioner may delegate functions.

36-610. Separability of provisions.

## § 36-601. Definitions.

Whenever used in this chapter, (a) "employer" includes every individual, partnership, firm, associa-

tion, corporation, the legal representative of a deceased individual, or the receiver, trustee, or successor of an individual, firm, partnership, association, or corporation, employing any person in the District of Columbia: *Provided*, That the word "employer" shall not include the Government of the United States, the government of the District of Columbia, or any agency of either of said governments, or any employer subject to the Railway Labor Act (45 U.S.C. 151 et seq.).

(b) "Employee" shall include any person suffered or permitted to work by an employer except any person employed in a bona fide executive, administrative, or professional capacity (as such terms are defined and delimited by regulations promulgated by the District of Columbia Council).

(c) "Wages" mean monetary compensation after lawful deductions, owed by an employer for labor or services rendered, whether the amount is determined on a time, task, piece, commission, or other basis of calculation.

(d) "Commissioner" means the Commissioner of the District of Columbia or his designated agent or agents.

(e) "Working day" means any day exclusive of Saturdays, Sundays, or legal holidays. (Aug. 3, 1956, 70 Stat. 976, ch. 924, § 1.)

## EFFECTIVE DATE

Section 11 of act Aug. 3, 1956, provided that: "This Act [this chapter] shall take effect sixty days after its approval [Aug. 3, 1956]."

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(285) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners, under subsection (b), with respect to promulgating regulations defining and delimiting the term "any person employed in a bona fide executive, administrative, or professional capacity," to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

## § 36-602. When wages must be paid—Exceptions.

Every employer shall pay all wages earned to his employees at least twice during each calendar month, on regular paydays designated in advance by the employer: *Provided, however*, That an interval of not more than ten working days may elapse between the end of the pay period covered and the regular payday designated by the employer, except where a different period is specified in a collective agreement between an employer and a bona fide labor organization: *Provided further*, That where, by contract or custom, an employer has paid wages at least once each calendar month, he may lawfully continue to do so. Wages shall be paid on designated paydays in lawful money of the United States, or checks on banks payable upon demand by the bank upon which drawn. (Aug. 3, 1956, 70 Stat. 976, ch. 924, § 2.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-603, 36-604, 36-607.



**§ 36-603. Payment of wages upon discharge or resignation of employee and upon suspension of work—Liability of employer for failure to pay wages in accordance with this section.**

Unless otherwise specified in a collective agreement between an employer and a bona fide union representing his employees—

(a) Whenever an employer discharges an employee, the employer shall pay the employee's wages earned not later than the working day following such discharge: *Provided, however,* That in the instance of an employee who is responsible for monies belonging to the employer, the employer shall be allowed a period of four days from the date of discharge or resignation for the determination of the accuracy of the employee's accounts, at the end of which time all wages earned by the employee shall be paid.

(b) Whenever an employee (not having a written contract of employment for a period in excess of thirty days) quits or resigns, the employer shall pay the employee's wages due upon the next regular pay-day or within seven days from the date of quitting or resigning, whichever is earlier.

(c) When work of an employee is suspended as a result of a labor dispute, the employer shall pay to such employee not later than the next regular pay-day, designated under section 36-602, wages earned at the time of suspension.

(d) If an employer fails to pay an employee wages earned as required under subsections (a), (b), and (c) of this section, such employer shall pay, or be additionally liable to, the employee, as liquidated damages, 10 per centum of the unpaid wages for each working day during which such failure shall continue after the day upon which payment is hereunder required; or an amount equal to the unpaid wages, whichever is smaller: *Provided, however,* That for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of the filing of a petition in bankruptcy with respect to the employer if he thereafter shall have been adjudicated bankrupt upon such petition. (Aug. 3, 1956, 70 Stat. 976, ch. 924, § 3.)

**§ 36-604. Unconditional payment of wages conceded to be due.**

In case of a bona fide dispute concerning the amount of wages due, the employer shall give written notice to the employee of the amount of wages which he concedes to be due, and shall pay such amount, without condition, within the time required by sections 36-602 and 36-604: *Provided, however,* That acceptance by the employee of any payment made hereunder shall not constitute a release as to the balance of his claim. Payment in accordance with this section shall constitute payment for the purposes of complying with sections 36-602 and 36-604, only if there exists a bona fide dispute concerning the amount of wages due. (Aug. 3, 1956, 70 Stat. 977, ch. 924, § 4.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 36-607.

**§ 36-605. Provisions of law may not be waived.**

Except as herein provided, no provision of this chapter shall in any way be contravened or set aside by private agreement. (Aug. 3, 1956, 70 Stat. 977, ch. 924, § 5.)

**§ 36-606. Enforcement, records and subpoenas.**

The Commissioner shall enforce and administer the provisions of this chapter and may hold hearings and otherwise investigate any violations of this chapter and institute actions for penalties provided hereunder. Any and all prosecutions of violations of this chapter shall be conducted in the name of the District of Columbia and by the Corporation Counsel or his assistants.

(b) The Commissioner shall have power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony and to take depositions and affidavits in any proceedings before him.

(c) In case of failure of any person to comply with any subpoena lawfully issued, or on the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of the Superior Court of the District of Columbia or any judge thereof, on application by the Commissioner, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. (Aug. 3, 1956, 70 Stat. 977, ch. 924, § 6; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

**AMENDMENT**

1970—Section 155(a) of act July 29, 1970, Pub. L. 91-358, amended subsec. (c) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

**EFFECTIVE DATE OF 1970 AMENDMENT**

See note preceding § 11-101.

**CHANGE OF NAME**

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded Act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions. See section 11-101.

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**§ 36-607. Penalties.**

Any employer who, having the ability to pay, willfully violates any provisions of section 36-602 or section 36-604 or who fails to comply with any other provisions of this chapter, shall be guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be punished by a fine of not more than \$300, or by imprisonment of not more than thirty days, or in the discretion of the court, by both such fine and imprisonment; and for any subsequent offense shall be punished by a fine of not more than \$1,000 or more than ninety days, or in the discretion of the court, by both such fine and imprisonment. (Aug. 3, 1956, 70 Stat. 978, ch. 924, § 7.)



**§ 36-608. Employees' remedies.**

(a) Action by an employee to recover unpaid wages and liquidated damages may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and on behalf of all employees similarly situated. Any employee, or his representative, shall have the power to settle and adjust his claim for unpaid wages. Whenever the Commissioner determines that wages have not been paid, as herein provided and that such unpaid wages constitute an enforceable claim, the Commissioner may, upon the request of the employee, take an assignment in trust for the assigning employee of such wages, and of any claim for liquidated damages, without being bound by any of the technical rules respecting the validity of any such assignments, may bring any appropriate legal action necessary to collect such claim and may join in one proceeding or action such claims against the same employer as the Commissioner deems appropriate. Upon any such assignment the Commissioner shall have power to settle and adjust any such claim or claims on such terms as he may deem just.

(b) The court in any action brought under this section shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow costs of the action, including costs or fees of any nature, and reasonable attorney's fees, to be paid by the defendant. Such attorney's fees in the case of actions brought under

this subsection by the Commissioner shall be deposited in the Treasury of the United States to the credit of the District of Columbia. The Commissioner shall not be required to pay the filing fee or other costs or fees of any nature or to file bond or other security of any nature in connection with any action or proceeding under this chapter. (Aug 3, 1956, 70 Stat. 978, ch. 924, § 8.)

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**§ 36-609. Commissioner may delegate functions.**

The Commissioner is authorized to delegate to any agency of the government of the District of Columbia any function, power, or duty vested in or imposed upon him by this chapter. (Aug. 3, 1956, 70 Stat. 978, ch. 924, § 9.)

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**CROSS REFERENCE**

Authority of District Commissioner to delegate functions vested in him by Reorg. Plan No. 3 of 1967, see § 305 of the Plan set forth in the Appendix to Title 1.

**§ 36-610. Separability of provisions.**

If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances shall not be affected thereby. (Aug. 3, 1956, 70 Stat. 979, ch. 924, § 10.)



## TITLE 37.—LIBRARIES

Chap.		Sec.
1. Public Libraries.....		37-101

### Chapter 1.—PUBLIC LIBRARIES

Sec.		
37-101.	Public library established—Authority of Commissioner—Acceptance of gifts.	
37-102.	Branch libraries.	
37-103.	Persons entitled to use of library—Deposit of fees.	
37-104.	Board of trustees—Appointment and tenure.	
37-105.	Duties—Librarian and employees—Annual report	
37-106.	Submission of estimates.	
37-107.	Takoma Park branch—Hours of opening.	
37-108.	Appropriation for expenditures.	
37-109.	Transfer of miscellaneous books to District public library.	
37-110.	Advancement of funds for purchase of books, pamphlets, and periodicals.	
37-111.	Depository of Government publications.	

#### § 37-101. Public library established—Authority of Commissioner—Acceptance of gifts.

A free public library is hereby established and shall be maintained in the District of Columbia, which shall be the property of the said District and a supplement of the public educational system of said District. Said library shall consist of a central library and such number of branch libraries so located and so supported as to furnish books and other printed matter and information service convenient to the homes and offices of all residents of the said District. All actions relating to such library, or for the recovery of any penalties lawfully established in relation thereto, shall be brought in the name of the District of Columbia, and the Commissioner of the said District is authorized on behalf of said District to accept and take title to all gifts, bequests, and devises for the purpose of aiding in the maintenance or endowment of said library; and the Commissioner of said District is further authorized to receive, as component parts of said library, collections of books and other publications that may be transferred to him. (June 3, 1896, 29 Stat. 244, ch. 315, § 1; Apr. 1, 1926, 44 Stat. 229, ch. 98, § 1.)

#### AMENDMENT

1926—Act Apr. 1, 1926, specified that the library consist of a central library and branches, located and supported to furnish printed matter and information service convenient to homes and offices.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CROSS REFERENCE

Library Services and Construction Act, see 20 U.S.C. § 351 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37-102, 37-103.

#### § 37-102. Branch libraries.

In order to make the said library an effective supplement of the public educational system of the said District and to furnish the system of branch libraries

provided for in section 37-101, the board of library trustees, hereinafter provided, is authorized to enter into agreements with the Board of Education of the said District for the establishment and maintenance of branch libraries in suitable rooms in such public-school buildings of the said District as will supplement the central library and branch libraries in separate buildings. The board of library trustees, hereinafter provided, is authorized within the limits of appropriations first made therefor, to rent suitable buildings or parts of buildings for use as branch libraries and distributing stations. (June 3, 1896, 29 Stat. 244, ch. 315, § 2; Apr. 1, 1926, 44 Stat. 229, ch. 98, § 2.)

#### AMENDMENT

1926—Act Apr. 1, 1926, amended section generally to authorize establishment of branch libraries in public schools and elsewhere. Prior to amendment, section related to the library privileges of District residents, and is now covered by § 37-103.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 37-103.

#### § 37-103. Persons entitled to use of library—Deposit of fees.

All persons who are permanent or temporary residents of the District of Columbia shall be entitled to the privileges of said library, including the use of the books contained therein, as a lending or circulating library, subject to such rules and regulations as may be lawfully established in relation thereto.

Persons living outside of the said District, but having regular business or employment or attending school in the said District, shall for the purpose of sections 37-101 to 37-106 be deemed temporary residents. Other persons residing in counties of Maryland and Virginia adjacent to the said District may gain the privilege of withdrawing books from the said library by the payment of fees fixed by the board of library trustees hereinafter provided. All fees shall be paid weekly to the collector of taxes of the District of Columbia for deposit in the Treasury of the United States to the credit of said District of Columbia. (June 3, 1896, 29 Stat. 244, ch. 315, § 3, formerly § 2; renumbered and amended Apr. 1, 1926, 44 Stat. 229, ch. 98, § 3.)

#### AMENDMENT

1926—Act Apr. 1, 1926, amended section generally to entitle residents of the District to the privileges of the library, extend these privileges to non-residents attending school in the District, and permit non-residents of adjacent counties to withdraw books upon the payment of fees. Prior to amendment, section related to board of library trustees, and is now covered by section 37-104.

#### TRANSFER OF FUNCTIONS

The Office of the Collector of Taxes was abolished and the functions thereof transferred, see note under § 47-301.

#### § 37-104. Board of trustees—Appointment and tenure.

The said library shall be in charge of a board of library trustees, who shall purchase the books, magazines, and newspapers and procure the necessary



appendages for such library. The said board of trustees shall be composed of nine members, each of whom shall be a taxpayer in the District of Columbia, and shall serve without compensation. They shall be appointed by the Commissioner of the District of Columbia and shall hold office for six years. Any vacancy occurring in said board shall be filled by the District Commissioner. Said board shall have power to provide such regulations for its organization and government as it may deem necessary. (June 3, 1896, 29 Stat. 244, ch. 315, § 4, formerly § 3; renumbered and amended Apr. 1, 1926, 44 Stat. 229, ch. 98, § 4.)

#### AMENDMENT

1926—Act Apr. 1, 1926, amended section generally to establish a board of trustees, and specify its general powers, composition, appointment, and tenure. Prior to amendment, section related to the powers and duties of the said trustees, including the appointment of librarians and the making of the annual report, and is now covered by § 37-105.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### TRANSFER OF FUNCTIONS OF THE BOARD OF COMMISSIONERS

Section 501 of Reorganization Plan No. 3 of 1967, effective November 3, 1967, provides:

"Status of certain agencies. (a) Functions now vested in any agency listed in subsection (b) of this section, or in any officer or body of or under such agency, shall remain so vested; but all functions of the Board of Commissioners of the District of Columbia and all functions of the President of that Board or of any other member of the Board, relating to the listed agency or its functions or to an officer or body thereof or to the functions of such officer or body shall be deemed to be transferred by part IV of this reorganization plan.

"(b) The following agencies of the Corporation are the agencies referred to in subsection (a) of this section:

- "(1) Board of Education (including the public school system)
- "(2) Board of Library Trustees (including the public libraries)
- "(3) Recreation Board
- "(4) Public Service Commission
- "(5) Zoning Commission
- "(6) Zoning Advisory Council
- "(7) Board of Zoning Adjustment
- "(8) Office of the Recorder of Deeds
- "(9) Armory Board"

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 37-103.

#### § 37-105. Duties—Librarian and employees—Annual report.

The said board shall have power to provide for the proper care and preservation of said library, to prescribe rules for taking and returning books, to fix, assess, and collect fines and penalties for the loss or injury to books, and for the retention of books beyond the period fixed by library regulations, and to establish all other needful rules and regulations for the management of the library as the said board shall deem proper. All fines and penalties so collected shall after June 30, 1927, be paid weekly to the collector of taxes of the District of Columbia for deposit in the treasury of the United States to the credit of said District of Columbia. The said board of trustees shall appoint a librarian to have the care and superintendence of said library, who

shall be responsible to the board of trustees for the impartial enforcement of all rules and regulations lawfully established in relation to said library. The said librarian shall appoint such assistants as the board shall deem necessary to the proper conduct of the library. The said board of library trustees shall make an annual report to the Commissioner of the District of Columbia relative to the management of the said library. (June 3, 1896, 29 Stat. 244, ch. 315, § 5, formerly § 4; renumbered and amended Apr. 1, 1926, 44 Stat. 230, ch. 98, § 5.)

#### AMENDMENT

1926—Act Apr. 1, 1926, amended section generally to detail powers and duties of the board of trustees, provide for disposition of fines and penalties, the appointment of librarians, and the making of an annual report. Prior to amendment, the section provided for the location of the library, specifying that any municipal building thereafter erected, should provide room for a library.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### TRANSFER OF FUNCTIONS

The Office of the Collector of Taxes was abolished and the functions thereof transferred, see note under § 47-301.

#### CROSS REFERENCES

Monthly advancement to purchase books and periodicals, see § 1-263.

Penalty for stealing or injuring books, see § 22-3106.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 37-103.

#### § 37-106. Submission of estimates.

Said Commissioner of the said District is authorized to include in his annual estimates for appropriations such sums as he may deem necessary for the proper maintenance of said library, including branches, for the purchase of land for sites for library buildings, and for the erection and enlargement of necessary library buildings. (June 3, 1896, ch. 315, § 6, as added Apr. 1, 1926, 44 Stat. 230, ch. 98, § 6.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### TRANSFER OF FUNCTIONS

For transfer of functions with respect to budgetary matters, see § 403 of 1967 Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the Appendix to title 1.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 37-103.

#### § 37-107. Takoma Park branch—Hours of opening.

The Takoma Park branch shall be kept open at least seven hours per day on the same week days as the free Public Library shall be open to the public. (Mar. 4, 1913, 37 Stat. 943, ch. 150, § 1.)

#### § 37-108. Appropriation for expenditures.

The appropriation for the expenses of the Takoma Park branch of the Public Library shall not exceed in any one year the sum of ten per centum of the total costs of such branch library building. (Apr. 4, 1910, 36 Stat. 290, ch. 141.)



**§ 37-109. Transfer of miscellaneous books to District public library.**

Any books of a miscellaneous character no longer required for the use of any executive department, or bureau, or commission of the government, and not deemed an advisable addition to the Library of Congress, shall, if appropriate to the uses of the Free Public Library of the District of Columbia, subject to applicable regulations under the Federal Property and Administrative Services Act of 1949, as amended, be turned over to that library for general use as a part thereof. (Feb. 25, 1903, ch. 755, § 1, 32 Stat. 865; Oct. 31, 1951, ch. 654, § 2(1), 65 Stat. 706.)

**REFERENCES IN TEXT**

The Federal Property and Administrative Services Act, referred to in text, is act June 30, 1949, ch. 288, 63 Stat. 377. Titles I-IV and VI-VIII thereof are classified to chapters 10 and 16 of Title 40, U.S.C., Public Buildings, Property, and Works, and chapter 4 of Title 41, U.S.C., Public Contracts. Title V thereof was classified to former chapter 11 of Title 44, U.S.C., Public Printing and Documents, but was repealed in the revision of Title 44 by Pub. L. 90-620, § 3, Oct. 22, 1968, 82 Stat. 1309. The subject matter of such former title V is now covered by chapters 21, 25, 27, 29, and 31 of Title 44, U.S.C.

**CODIFICATION**

Section is also classified to 40 U.S.C. § 484-1.

**AMENDMENT**

1951—Act Oct. 31, 1951, inserted "subject to applicable regulations under the Federal Property and Administrative Services Act of 1949, as amended".

**CROSS REFERENCE**

Librarian of Congress authorized to transfer books to District public library, see 2 U.S.C. § 149.

**§ 37-110. Advancement of funds for purchase of books, pamphlets, and periodicals.**

**CODIFICATION**

Section, act June 12, 1940, 54 Stat. 313, ch. 331, § 1, which authorized advances to the librarian for purchase of books, pamphlets, and periodicals, is omitted as superseded by section 1-263.

**§ 37-111. Depository of Government publications.**

The Public Library of the District of Columbia is hereby constituted a designated depository of governmental publications, and the Superintendent of Documents shall supply to such library one copy of each such publication, in the same form as supplied to other designated depositories. (Sept. 28, 1943, 57 Stat. 568, ch. 243.)







## TITLE 38.—LIENS

Chap.	Sec.	
1. Mechanics, Materialmen, and Contractors..	38-101	
2. Garage Keepers and Liverymen.....	38-201	
3. Hospitals.....	38-301	

### Chapter 1.—MECHANICS, MATERIALMEN, AND CONTRACTORS

Sec.	
38-101.	Mechanic's lien.
38-102.	Notice.
38-103.	Subcontractor.
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38-105.	Notice to owner.
38-106.	Owner's duty.
38-107.	Subcontractor entitled to know terms of contract.
38-108.	Advance payments.
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38-123.	Wharves and lots.
38-124.	Artisan's lien.
38-125.	Enforcement by sale.
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#### § 38-101. Mechanic's lien.

Every building erected, improved, added to, or repaired by the owner or his agent, and the lot of ground on which the same is erected, being all the ground used or intended to be used in connection therewith, or necessary to the use and enjoyment thereof, to the extent of the right, title, and interest, at that time existing, of such owner, whether owner in fee or of a less estate, or lessee for a term of years, or vendee in possession under a contract of sale, shall be subject to a lien in favor of the contractor with such owner or his duly authorized agent for the contract price agreed upon between them, or, in the absence of an express contract, for the reasonable value of the work and materials furnished for and about the erection, construction, improvement, or repair of or addition to such building, or the placing of any engine, machinery, or other thing therein or in connection therewith so as to become a fixture, though capable of being detached: *Provided*, That the person claiming the lien shall file the notice herein prescribed. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1237.)

#### CROSS REFERENCES

Artisan's lien, see § 38-124 et seq.  
 Hotel, motel, and innkeeper's lien, see § 34-107.  
 Landlord lien, see §§ 45-915, 45-916.  
 Lien on goods under Uniform Sales Act, see § 28:2-701 et seq.

Lien on lands for funds donated by the United States to purchase such lands for charitable or reformatory purposes upon abandonment of purpose, see § 32-1003.  
 Motor Vehicle Lien Law, see §§ 40-701 to 40-715.  
 Warehouseman's lien, see § 28:7-209 et seq.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-2303, 5-925.

#### NOTES TO DECISIONS

##### In general

The provision of the code with respect to mechanic's liens is "fundamentally the same as in the former statute." *Lipscomb v. Hough* (1923, 286 F. 775, 52 App. D. C. 313).

##### Agreement not to claim lien

Where plasterer subcontractor finished the job and wrote letters to the building owner and to supplier of materials stating the balance due on subcontract and a willingness to refrain from filing a mechanic's lien against the property if owner and material supplier would acknowledge that they would protect subcontractor, and owner and supplier signed requested acknowledgements, there was a meeting of the minds, consideration for such agreement, and breach of agreement imposes on owner and supplier liability for loss flowing from subcontractor's forbearance. *Kidwell & Kidwell, Inc. v. W. T. Galliher & Bro., Inc. et ano.* (D.C. App. 1971, 282 A. 2d 575).

##### Contract of lessee

"A builder contracting with the lessee of premises to furnish labor and material thereon, with notice that he is dealing with the lessee and not the owner, is estopped to complain of ignorance of the terms of the lease, where as here, it was a matter of public record." *Lipscomb v. Hough* (1923, 286 F. 775, 52 App. D. C. 313).

Lessee was agent of lessor, in ordering improvements, so as to charge interest of lessor in land. *McLean v. Nolan* (1915, 44 App. D.C. 1).

"Nor does a covenant in the lease, vesting in the lessor title in the buildings, and improvements erected on the premises at the termination of the lease, create the relation of principal and agent between the lessor and lessee." *Lipscomb v. Hough* (1923, 286 F. 775, 52 App. D. C. 313). See, also, *Albaugh v. Litho-Marble Decorating Co.* (1899, 14 App. D.C. 113); *Langley v. D'Audigne* (1908, 31 App. D.C. 409).

##### Contract of owner

"In the latter case, the statutes relative to mechanics' liens \* \* \* are reviewed at length with the conclusion that a lien upon the premises can only be imposed where the building is erected or repaired at the instance of the owner or his agent. If the work is done and materials furnished at the instance of a lessee, or tenant for life, or years, or a person having an equitable interest therein, the lien can only extend to the interest of the lessee, tenant, or equitable owner." *Lipscomb v. Hough* (1923, 286 F. 775, 52 App. D. C. 313).

##### Owner's rights

Subcontractor who filed mechanic's lien for value of certain equipment he installed recognized that property owner's right to immediate possession of such equipment was superior to his own. *National Brick and Supply Co. Inc. v. W. E. Baylor et al., Trustees etc.; A. Grunstein etc. v. W. E. Baylor et al., Trustees etc.* (1962, 299 F. 2d 454, 112 U.S. App. D.C. 73).

Contract for making alterations and additions to church building did not authorize contractor or subcontractor to remove and not replace materials where progress payment had been made in reliance on presence of such equipment. *Id.*



**Pleading**

Under this section providing that a mechanic's lien may be placed on property not only for work done but also for materials furnished, complaint for removal of lien alleging that contractor did no work on one of 2 lots was insufficient where it failed to allege that no materials were furnished for improvement of such lot. *Clarke v. Huff* (1948, 165 F. 2d 247, 83 U. S. App. D. C. 38).

**Preferential treatment**

Enforcement of claim of heating contractor for amount due on contract with owners to complete work begun by contractor under subcontract with defaulting building corporation did not contravene public policy reflected in mechanics' lien law on theory that heating contractor would receive preferential treatment over building corporation's other subcontractors. *W. E. Baylor et al. v. H. Bortolussi et c.* (D.C. App. 1963, 194 A. 2d 653).

**Status of parties**

The status of the parties at the time of the contract determines the question of the right to a lien. *Deming v. Wardman Constr. Co.* (1930, 39 F. 2d 504, 59 App. D.C. 254).

**Statutory construction**

In determining whether a right to a lien exists, the statute should be strictly construed; but where the right to a lien is clear and the question is whether the claimant has proceeded properly, the statute should be liberally construed in his favor. *Deming v. Wardman Constr. Co.* (1930, 39 F. 2d 504, 59 App. D.C. 254).

A mechanic's lien is purely a creature of statute. "The performance of the work, or the furnishing of the materials, gives merely a right to acquire a lien. The statute prescribes the steps necessary to perfect it. These requirements relate to the remedy rather than the right." "In determining whether a right to a lien exists, the statute should be strictly construed against one claiming such right, \* \* \* but \* \* \* where the right to a lien clearly appears, and the sole question to be determined is whether the claimant has proceeded properly to acquire and establish his lien, the statute should be liberally construed in his favor." *Fidelity Storage Corp. v. Trussed Concrete Steel Co.* (1910, 35 App. D.C. 1). See, also, *James B. Lambie Co. v. Bigelow* (1909, 34 App. D.C. 49); *Columbia Brick Co. v. District of Columbia* (1893, 1 App. D.C. 351); *Alfred Richards Brick Co. v. Atkinson* (1900, 16 App. D.C. 462); *Alfred Richards Brick Co. v. Trott* (1904, 23 App. D.C. 284).

**Substantial performance**

In a proceeding to foreclose a mechanic's lien, a contractor who intentionally fails to perform the contract according to its terms, and refuses to remedy the defect, is not entitled to the benefit of the doctrine of substantial performance. *Turner v. Henning* (1920, 262 F. 637, 49 App. D.C. 183).

**Waiver**

Taking of security generally operates as waiver of right to mechanic's lien, but a mere agreement to take such security, not carried into effect, does not operate as a waiver. *McMurray v. Brown* (1875, 91 U. S. 257, 1 Otto 257, 23 L. Ed. 321).

**§ 38-102. Notice.**

Any such contractor wishing to avail himself of the provision aforesaid, whether his claim be due or not, shall file in the office of the Recorder of Deeds of the District of Columbia during the construction or within three months after the completion of such building, improvement, repairs, or addition, or the placing therein or in connection therewith of any engine, machinery, or other thing so as to become a fixture, a notice of his intention to hold a lien on the property hereby declared liable to such lien for the amount due or to become due to him, specifically setting forth the amount claimed, the name of the

party against whose interest a lien is claimed, and a description of the property to be charged, and the said recorder of deeds shall file said notice and record the same in a book to be kept for the purpose. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1238; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 265, Pub. L. 89-493, § 15(a)(b).)

**AMENDMENT**

1966—Act July 5, 1966, § 15(a), substituted "Recorder of Deeds of" for "clerk of the United States District Court for"; and § 15(b) of such act substituted "Recorder of Deeds" for "clerk".

**EFFECTIVE DATE OF 1966 AMENDMENT**

Amendment of this section by act July 5, 1966, as effective on first day of first month which is at least ninety days after July 5, 1966, see § 21 of such act, set out in note under § 1-504.

**CHANGE OF NAME**

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

**APPROPRIATIONS**

Appropriations authorized to carry out purposes of act July 5, 1966, which amended this section, see § 20 of such act, set out in note under § 1-504.

**NOTES TO DECISIONS****Completion**

The abandonment of the work by the original contractor is deemed in law to be a completion of it for the purpose of filing mechanics' liens by subcontractors and materialmen. *Harper v. Galliher & Huguely* (1929, 29 F. 2d 452, 58 App. D. C. 252, certiorari denied 49 S. Ct. 185, 278 U. S. 657, 73 L. Ed. 565).

Question of completion or noncompletion should be determined by what the common intelligence and the common usage regard as completion, always, of course, with reference to the provisions of the building contract. At the same time no amount of work is too small, the completion of which is required to prevent the consummation of a fraud. *Riggs Fire Ins. Co. v. Shedd* (1900, 16 App. D.C. 150).

**Distinct and separate notices**

Two or more distinct and separate notices of lien may be comprised in one single instrument of writing; and two or more notices of lien may be enforced in one and the same proceeding in equity where the parties may be the same. Dicta in *Alfred Richards Brick Co. v. Trott* (1904, 23 App. D.C. 284).

**"Elevator" defined**

Electric passenger elevator is both an engine and machine; and whether its motive power be electricity, water or steam, can make no difference in the contemplation of the statute, subjecting building to a lien under Mechanics' Lien Law. *Lefler v. Forsberg* (1893, 1 App. D.C. 36).

**Interest in property**

All persons concerned or interested in the estate are to be at least constructively notified of the interest in the property and the name against which the lien is claimed. *Chamberlain Metal Weather Strip Co. v. Karrick* (1932, 53 F. 2d 928, 60 App. D.C. 316).

**Naming wrong person**

Where a lienor has named as alleged owner one who has no interest in the property or the wrong person, notice of mechanic's lien is fatally insufficient. *Hartford Acc. & Ind. Co. v. A.B.C. Cleaning Contractors, Inc.* (1965, 350 F. 2d 430, 121 U.S. App. D.C. 300).



Mere fact that mechanic's lien undertaking had been offered and filed did not estop surety sued on personal judgment obtained against its insured from denying its insured's ownership of premises in question. *Id.*

Personal judgment obtained by contractor against purported owner, which expressly reserved a ruling with respect to validity of mechanic's lien, could not serve as basis of judgment against surety under its mechanic's lien undertaking in view of failure to show purported owner's interest in property in question. *Id.*

Notice of mechanic's lien naming wrong person as owner is invalid. *Chamberlain Metal Weather Strip Co. v. Karrick* (1932, 53 F. 2d 928, 60 App. D.C. 316).

#### Purpose

The purpose of mechanic's lien laws is to protect by the property those who contribute to its value by labor or materials, and it is only by compliance with statutory requirements that this can be accomplished. *Chamberlain Metal Weather Strip Co. v. Karrick* (1932, 53 F. 2d 928, 60 App. D.C. 316).

#### Requisites

"It is apparent that, under the statute, three essential averments are necessary to constitute a valid notice. These are, first, the amount claimed; second, the name of the party against whose interest the lien is claimed; and, third, a description of the property to be charged." *Fidelity Storage Corp. v. Trussed Concrete Steel Co.* (1910, 35 App. D.C. 1).

#### Time for filing

A mechanic's lien, if filed by an original contractor, must be filed either during the construction of the improvement or within three months after its completion. *Harper v. Galliher & Huguely* (1929, 29 F. 2d 452, 58 App. D.C. 252, certiorari denied 49 S. Ct. 185, 278 U.S. 657. 73 L. Ed. 565).

### § 38-103. Subcontractor.

Any person directly employed by the original contractor, whether as subcontractor, material man, or laborer, to furnish work or materials for the completion of the work contracted for as aforesaid, shall be entitled to a similar lien to that of the original contractor upon his filing a similar notice with the Recorder of Deeds of the District of Columbia to that above mentioned, subject, however, to the conditions set forth in sections 38-104 to 38-122. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1239; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 265, Pub. L. 89-493, § 15(a).)

#### AMENDMENT

1966—Section 15(a) of act July 5, 1966, substituted "Recorder of Deeds of" for "clerk of the United States District Court for".

#### EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act July 5, 1966, as effective on first day of first month which is at least ninety days after July 5, 1966, see § 21 of such act, set out in note under § 1-504.

#### CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

#### APPROPRIATIONS

Appropriations authorized to carry out purposes of act July 5, 1966, which amended this section, see § 20 of such act, set out in note under § 1-504.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2-2303.

### NOTES TO DECISIONS

#### In general

Prior to code, see *Leitch v. Emergency Hosp.* (1895, 6 App. D.C. 247). See, also, *Herrell v. Donovan* (1895, 7 App. D.C. 322); *Sommerville v. Williams* (1898, 12 App. D.C. 520); *Riggs Fire Ins. Co. v. Shedd* (1900, 16 App. D.C. 150).

#### Agreement not to claim lien

Where plasterer subcontractor finished the job and wrote letters to the building owner and to supplier of materials stating the balance due on subcontract and a willingness to refrain from filing a mechanic's lien against the property if the owner and material supplier would acknowledge that they would protect subcontractor, and owner and supplier signed requested acknowledgments, there was a meeting of the minds, consideration for such agreement, and breach of agreement imposes on owner and supplier liability for loss flowing from subcontractor's forbearance *Kidwell & Kidwell, Inc. v. W. T. Galliher & Bro., Inc. et ano.* (D.C. App. 1971, 282 A. 2d 575).

#### Contractor paid in full

Mechanic's lienors were not entitled to satisfy their liens out of sums which owner had paid prime contractor before liens were filed and before owner learned that prime contractor had abandoned contract. *National Brick and Supply Co. Inc. v. W. E. Baylor et al., Trustees etc.; A. Grunstein etc. v. W. E. Baylor et al., Trustees etc.* (1962, 299 F. 2d 454, 112 U.S. App. D.C. 73).

#### Knowledge of terms

"The subcontractor should acquaint himself with the terms and conditions of the building contract. This information is made available by statute \* \* \*. In the absence of anything to the contrary, we must assume that the plaintiff possessed this information." *Winter v. Hazen-Latimer Co.* (1914, 42 App. D.C. 469).

#### Materialmen as contractors

Materialmen held to be contractors under § 1237 (§ 38-101), and not subcontractors under this section. *McLean v. Nolan* (1915, 44 App. D.C. 1).

#### Payment into court of sum equal to lien

"The evident purpose of sections 1254 and 1255 (§§ 38-118, 38-119) is to enable the owner, against whose building or fixtures a lien has been asserted, to be relieved of the embarrassment of the lien through the payment into court of a sum equal to the amount of the lien with interest and costs, or the filing of an undertaking to cover that amount. Where, admittedly an amount is due the principal contractor, and the lien is asserted by a subcontractor, there is no contest between the owner and the subcontractor; the issue being restricted to the contractor and subcontractor. If the owner does not take advantage of these provisions of the code for the release of the lien, the statute imposes upon him no duty to notify the contractor of the pendency of the subcontractor's suit." *Woodward v. Union Trust Co.* (1920, 262 F. 627, 49 App. D.C. 173).

#### Sub-subcontractor

Under this section, a subcontractor but not a sub-subcontractor has right to file a mechanic's lien. *Battista v. Horton, Myers & Raymond* (1942, 128 F. 2d 29, 76 U.S. App. D.C. 1).

Where general contractors and subcontractor had entered into written agreements with owners not to permit or suffer any mechanic's liens to be filed against property but contract between subcontractor and sub-subcontractor did not specifically impose that condition on the sub-subcontractor, it was entitled under its contract to retain all its legal rights until payment or a valid tender of payment. *Id.*

#### Subcontractor's rights

Where subcontractor had filed mechanic's lien for value of equipment he had replaced, his subsequent removal of such equipment was tortious, and in absence of showing why owner could not enforce right to require subcontractor to replace such equipment or pay damages, amount paid by owner for having him replace equipment was not deductible from unpaid balance which was due prime contractor and in which other subcontractors who



had filed mechanic's liens were entitled to share. *National Brick and Supply Co. Inc. v. W. E. Baylor et al., Trustees etc.; A. Grunstein etc. v. W. E. Baylor et al., Trustees etc.* (1962, 299 F. 2d 454, 112 U.S. App. D.C. 73).

#### Waiver

Subcontractors who waive their remedy under the mechanic's lien statute at the instance of the owner, who refuses to pay the contractor until such releases are executed, cannot, in the absence of fraud, have the release set aside and the lien reinstated, when it appears that the amount paid the contractor was insufficient to pay the subcontractors in full. *Stevens v. Gordon* (1919, 48 App. D.C. 604).

#### § 38-104. Conditions.

All such liens in favor of parties so employed by the contractor shall be subject to the terms and conditions of the original contract except such as shall relate to the waiver of liens and shall be limited to the amount to become due to the original contractor and be satisfied, in whole or in part, out of said amount only; and if said original contractor, by reason of any breach of the contract on his part, shall be entitled to recover less than the amount agreed upon in his contract, the liens of said parties so employed by him shall be enforceable only for said reduced amount, and if said original contractor shall be entitled to recover nothing said liens shall not be enforceable at all. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1240.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 38-103.

#### NOTES TO DECISIONS

##### Lienholder's rights

Trial judge's findings as to balance of contract price which remained unexpended after owner had completed work following prime contractor's abandonment of work before completion, and against which subcontractors could enforce their mechanic's liens, were not clearly erroneous, in view of conflicting evidence supporting findings. *National Brick & Supply Co., Inc., etc. and A. Grunstein et al. v. W. E. Baylor etc.* (1963, 324 F. 2d. 892, 117 U.S. App. D.C. 14).

Payments made by owner to other subcontractors through general contractor, after plaintiff-subcontractor's filing of lien, were considered payments to general contractor, within statute requiring owner to withhold such payment in favor of lienholder. *J. C. Spencer v. Old Stein Grill et al.* (D.C.D.C. 1961, 194 F. Supp. 274).

##### Owners liability to subcontractor

Where 23% of each progress report certified by architect was chargeable against down payment and note to be delivered and to begin to be due when warehouse construction work was completed and lender paid remaining 77% of amounts shown on the first ten of eleven certified progress requisitions and where owners terminated the contract, the down payment and note at least negated further obligations of owners in those amounts, and owners thus owed general contractor nothing when subcontractors filed mechanics' liens, after termination of contract, pursuant to District of Columbia statute providing in effect that if owner owes general contractor nothing subcontractors can collect nothing by mechanics' liens. *Washington Concrete Sales Corporation, Inc., and R. L. Walutes etc. v. A. E. Morrisette et al.* (1966, 377 F. 2d 137, 126 U.S. App. D.C. 252).

Evidence supported finding that owners, sued by subcontractors for enforcement of mechanics' liens filed under District of Columbia statute providing in effect that if owner owes general contractor nothing subcontractors can collect nothing, had completed building at cost higher than original contract price after terminating the contract. *Id.*

##### Rights of supplier lienor

Supplier lienor had right to enforce its lien up to amount owner paid contractor after notice of supplier's lien, notwithstanding degree to which owner may have discharged obligation running to contractor under the contract. *S. Ritzenberg, et al. v. Noland Co., Inc.* (1966, 364 F. 2d 667, 124 U.S. App. D.C. 274).

#### § 38-105. Notice to owner.

The said subcontractor or other person employed by the contractor as aforesaid, besides filing a notice with the Recorder of Deeds of the District of Columbia as aforesaid, shall serve the same upon the owner of the property upon which the lien is claimed, by leaving a copy thereof with said owner or his agent, if said owner or agent be a resident of the District, or if neither can be found, by posting the same on the premises; and on his failure to do so, or until he shall do so, the said owner may make payments to his contractor according to the terms of his contract, and to the extent of such payments the lien of the principal contractor shall be discharged and the amount for which the property shall be chargeable in favor of the parties so employed by him reduced. (Mar. 3, 1901, 31 Stat. 1385, ch. 854, § 1241; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 265, Pub. L. 89-493, § 15(a).)

#### AMENDMENT

1966—Section 6 of act July 5, 1966, substituted "Recorder of Deeds of" for "clerk of the United States District Court for".

#### EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act July 5, 1966, as effective on first day of first month which is at least ninety days after July 5, 1966, see § 21 of such act, set out in note under § 1-504.

#### CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

#### APPROPRIATIONS

Appropriations authorized to carry out purposes of act July 5, 1966, which amended this section, see § 20 of such act, set out in note under § 1-504.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 38-103.

#### NOTES TO DECISIONS

##### In general

*Harper v. Galliher & Huguely* (1929, 29 F. 2d 452, 58 App. D.C. 252, certiorari denied 49 S. Ct. 185, 278 U.S. 657, 73 L. Ed. 565).

#### § 38-106. Owner's duty.

After notice shall be filed by said party employed under the original contractor and a copy thereof served upon the owner or his agents as aforesaid, the owner shall be bound to retain out of any subsequent payments becoming due to the contractor a sufficient amount to satisfy any indebtedness due from said contractor to the said subcontractor, or other person so employed by him, secured by lien as aforesaid, otherwise the said party shall be entitled to enforce his lien to the extent of the amount so accruing to



the principal contractor. (Mar. 3, 1901, 31 Stat. 1385, ch. 854, § 1242.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 38-103.

#### NOTES TO DECISIONS

##### Contractor paid in full

Mechanic's lienors were not entitled to satisfy their liens out of sums which owner had paid prime contractor before liens were filed and before owner learned that prime contractor had abandoned contract. *National Brick and Supply Co., Inc. v. W. E. Baylor et al., Trustees etc.; A. Grunstein etc. v. W. E. Baylor et al., Trustees etc.* (1962, 299 F. 2d 454, 112 U.S. App. D.C. 73).

Where the owner pays the contractor in full, without notice of subcontractor's right, the subcontractor has no lien upon moneys subsequently accruing to contractor's surety who completes the work under the power reserved to it in the bond. *Winter v. Hazen-Latimer Co.* (1914, 42 App. D.C. 469).

##### Limitation of rights

"The statute limits the right of a subcontractor to a lien upon money due the contractor from the owner at the time notice is given the owner." *Winter v. Hazen-Latimer Co.* (1914, 42 App. D.C. 469).

##### Purpose of statute

Purpose and effect of statute are not to expose owner to liability to lienors greater than that owed to contractor. *S. Ritzenberg, et al. v. Noland Co., Inc.* (1966, 364 F. 2d 667, 274 U.S. App. D.C. 124).

##### Subcontractor's knowledge of terms

"The subcontractor should acquaint himself with the terms and conditions of the building contract. This information is made available by statute \* \* \*. In the absence of anything to the contrary, we must assume that the plaintiff possessed this information." *Winter v. Hazen-Latimer Co.* (1914, 42 App. D.C. 469).

##### Subcontractor's rights

Where subcontractor had filed mechanic's lien for value of equipment he had replaced, his subsequent removal of such equipment was tortious, and in absence of showing why owner could not enforce right to require subcontractor to replace such equipment or pay damages, amount paid by owner for having him replace equipment was not deductible from unpaid balance which was due prime contractor and in which other subcontractors who had filed mechanic's liens were entitled to share. *National Brick and Supply Co. Inc. v. W. E. Baylor et al., Trustees etc.; A. Grunstein etc. v. W. E. Baylor et al., Trustees etc.* (1962, 299 F. 2d 454, 112 U.S. App. D.C. 73).

Payments made by owner to other subcontractors through general contractor, after plaintiff-subcontractor's filing of lien, were considered payments to general contractor, within statute requiring owner to withhold such payment in favor of lienholder. *J. C. Spencer v. Old Stein Grill et al.* (D.C.D.C. 1961, 194 F. Supp. 274).

Subcontractor's rights are "dependent on the contract between the owner and the builder and on the state of the accounts between them; and \* \* \* the subcontractors were bound by all the terms and conditions of that contract." But the subcontractor is equally entitled to the benefits of the contract as far as it inures to his advantage. *Riggs Fire Ins. Co. v. Shedd* (1900, 16 App. D.C. 150).

#### § 38-107. Subcontractor entitled to know terms of contract.

Any subcontractor or other person employed by the contractor as aforesaid shall be entitled to demand of the owner or his authorized agent a statement of the terms under which the work contracted for is being done and the amount due or to become due to the contractor executing the same, and if the owner or his agent shall fail or refuse to give the said information, or wilfully state falsely the terms of the contract or the amounts due or unpaid thereunder, the said

property shall be liable to the lien of the said party demanding said information, in the same manner as if no payments had been made to the contractor before notice served on the owner as aforesaid. (Mar. 3, 1901, 31 Stat. 1385, ch. 854, § 1243.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 34-103.

#### NOTES TO DECISIONS

##### Evidence of notice to subcontractors

Evidence supported finding that owners had advised subcontractors seeking to enforce mechanics' liens as to terms of warehouse construction contract, status of payments, etc., in accordance with District of Columbia statute. *Washington Concrete Sales Corporation, Inc., and R. L. Walutes etc. v. A. E. Morrisette et al.* (1966, 377 F. 2d 137, 126 U.S. App. D.C. 252).

##### Subcontractor's knowledge of terms

Subcontractor was chargeable with notice of terms of general contract. *National Brick and Supply Co. Inc. v. W. E. Baylor et al., Trustees etc.; A. Grunstein etc. v. W. E. Baylor et al., Trustees etc.* (1962, 299 F. 2d 454, 112 U.S. App. D.C. 73).

"The subcontractor should acquaint himself with the terms and conditions of the building contract. This information is made available by statute \* \* \*. In the absence of anything to the contrary, we must assume that the plaintiff possessed this information." *Winter v. Hazen-Latimer Co.* (1914, 42 App. D.C. 469).

#### § 38-108. Advance payments.

If the owner, for the purpose of avoiding the provisions hereof, and defeating the lien of the subcontractor or other person employed by the contractor, as aforesaid, shall make payments to the contractor in advance of the time agreed upon therefor in the contract, and the amount still due or to become due to the contractor shall be insufficient to satisfy the liens of the subcontractors or others so employed by the contractor, the property shall remain subject to said liens in the same manner as if such payments had not been made. (Mar. 3, 1901, 31 Stat. 1385, ch. 854, § 1244.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 38-103.

#### NOTES TO DECISIONS

##### Bad faith

In suit by subcontractors to establish liens against owners who had made advance payments to general contractor prior to filing of notice of liens by subcontractors, District Court's ruling that actual bad faith on owners' part need not be shown was erroneous. *Merrill v. B. R. Acker Co.* (1944, 142 F. 2d 102, 79 U.S. App. D.C. 51).

Where owner has made advances to general contractor in order to speed up the work, prior to filing of notice of liens by subcontractors, bad faith cannot be presumed from mere fact of advance payments, and something more is necessary to support such an inference, in order to establish owner's liability to subcontractors under this section. *Id.*

##### Evidence

In suit by subcontractors to establish liens against owners who had made advance payments to general contractor prior to filing of notice of liens by subcontractors, evidence did not disclose purpose by owner to defeat subcontractors' liens. *Merrill v. B. R. Acker Co.* (1944, 142 F. 2d 102, 79 U.S. App. D.C. 51).

##### Extent of lien

Where owners had, in good faith, made advance payments to general contractor and at time notice of lien was first filed by one of the subcontractors only a few dollars remained due from owners to general contractor, the subcontractors were not entitled to mechanic's liens in excess of amount remaining due when notice of lien



was filed and served. *Merrill v. B. R. Acker Co.* (1944, 142 F. 2d 102, 79 U.S. App. D.C. 51).

#### Rights and remedies of subcontractors

Subcontractors have ample opportunity to protect themselves against advance payments by owner to general contractor under §§ 38-103, 38-105, 38-107 entitling subcontractors to require owner to disclose terms of general contract and state of account between himself and general contractor and to secure liens by filing them and giving notice to owner. *Merrill v. B. R. Acker Co.* (1944, 142 F. 2d 102, 79 U.S. App. D.C. 51).

Subcontractor's rights are "dependent on the contract between the owner and the builder and on the state of the accounts between them; and \* \* \* the subcontractors were bound by all the terms and conditions of that contract." But the subcontractor is equally entitled to the benefits of the contract as far as it inures to his advantage. *Riggs Fire Ins. Co. v. Shedd* (1900, 16 App. D.C. 150).

#### § 38-109. Priority of lien.

The lien hereby given shall be preferred to all judgments, mortgages, deeds of trusts, liens, and incumbrances which attach upon the building or ground affected by said lien subsequently to the commencement of the work upon the building, as well as to conveyances executed, but not recorded, before that time, to which recording is necessary, as to third persons; except that nothing herein shall affect the priority of a mortgage or deed of trust given to secure the purchase money for the land, if the same be recorded within ten days from the date of the acknowledgment thereof. When a mortgage or deed of trust of real estate securing advances thereafter to be made for the purpose of erecting buildings and improvements thereon is given, or when an owner of lands contracts with a builder for the sale of lots and the erection of buildings thereon, and agrees to advance moneys toward the erection of such buildings, the lien hereinbefore authorized shall have priority to all advances made after the filing of said notices of lien, and the lien shall attach to the right, title, and interest of the owner in said building and land to the extent of all advances which shall have become due after the filing of such notice of such lien, and shall also attach to and be a lien on the right, title, and interest of the person so agreeing to purchase said land at the time of the filing of said notices of lien. When a building shall be erected or repaired by a lessee or tenant for life or years, or a person having an equitable estate or interest in such building or land on which it stands, the lien created by this act shall only extend to and cover the interest or estate of such lessee, tenant, or equitable owners. (Mar. 3, 1901, 31 Stat. 1385, ch. 854, § 1245.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 38-103.

#### NOTES TO DECISIONS

##### Mechanic's lien

The relation back preference of mechanic's lien does not affect the priority of a recorded purchase-money deed of trust, a priority that exceeds even that of a previous judgment. *Guardian Federal Savings & Loan Association v. H. P. Suskind* (D.C. App. 1970, 265 A. 2d 295).

##### Priority to surplus on foreclosure

In this case, the court held that the holder of purchase-money deed of trust (containing provision that it should be subordinate to any construction loan and all advances made under construction loan) is entitled, on foreclosure of first deed of trust held by construction lender, to priority with respect to surplus remaining after satisfac-

tion of construction lender's debt and payment of foreclosure expenses, notwithstanding construction lender's claim to surplus to satisfy mechanic's lien it had paid against property. *Guardian Federal Savings & Loan Association v. H. P. Suskind* (D.C. App. 1970, 265 A. 2d 295).

#### When lien attaches

Mechanic's lien attaches at commencement of work and sale thereafter does not affect validity. *Deland v. Wagner* (1933, 64 F. 2d 552, 62 App. D.C. 54).

The mechanic's lien attached upon the property at the time of the commencement of the work upon the building, but was subordinate to two deeds of trust previously executed. *Id.*

#### § 38-110. How lien enforced.

The proceeding to enforce the lien hereby given shall be a bill in equity, which shall contain a brief statement of the contract on which the claim is founded, the amount due thereon, the time when the notice was filed with the recorder of deeds, and a copy thereof served on the owner or his agent, if so served, and the time when the building or the work thereon was completed, with a description of the premises and other material facts; and shall pray that the premises be sold and the proceeds of sale applied to the satisfaction of the lien. If such suit be brought by any person entitled, other than the principal contractor, the latter shall be made a party defendant, as well as all other persons who may have filed notices of liens, as aforesaid. All or any number of persons having liens on the same property may join in one suit, their respective claims being distinctly stated in separate paragraphs; and if several suits are brought by different claimants and are pending at the same time, the court may order them to be consolidated. (Mar. 3, 1901, 31 Stat. 1386, ch. 854, § 1246; July 5, 1966, 80 Stat. 265, Pub. L. 89-493, § 15(b).)

#### AMENDMENT

1966—Act July 5, 1966, in first sentence, substituted "Recorder of Deeds" for "clerk".

#### EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act July 5, 1966, as effective on first day of first month which is at least ninety days after July 5, 1966, see § 21 of such act, set out in note under § 1-504.

#### APPROPRIATIONS

Appropriations authorized to carry out purposes of act July 5, 1966, which amended this section, see § 20 of such act, set out in note under § 1-504.

#### CROSS REFERENCE

One form of action in U.S. district courts, and in Superior Court of the District of Columbia, to be known as a civil action, see rule 2 of Fed. Rules of Civ. Proc., 28 U.S.C. App.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 38-103, 38-123.

#### NOTES TO DECISIONS

##### In general

It has never been the practice for persons holding or claiming mechanics' liens, who have been made defendants, to take affirmative action as a prerequisite for their participation in the fund to be realized by the suit. *Emack v. Campbell* (1899, 14 App. D.C. 186).

Notices of lien should specifically set forth the amount claimed and not the items that go to make up that amount. *Id.*

To enforce mechanics' liens although a personal judgment can only be enforced against party who incurred debt, still a personal decree by subcontractors against the owner of the property as well as original contractor is



proper, especially where record shows an unexpended balance in owner's hands more than enough to pay claims of subcontractors. *Emack v. Rushenberger* (1896, 8 App. D.C. 249).

If claim filed under law as it existed prior to act of Congress of 2d of July, 1884, it should have been made out against the former owner of the property with whom contract was made and not against subsequent purchaser. *Lefler v. Forsberg* (1893, 1 App. D.C. 36).

#### Arbitration

Where proceeding was commenced by bill in equity, and, when case was reached for trial, continuance was granted for cause shown that arbitration proceedings were in progress, and parties knew that court's judgment was suspended pending award of arbitrators, the arbitration agreement achieved status of a "stipulation" and would be enforced as a rule of court. *John W. Johnson, Inc. v. 2500 Wisconsin Ave., Inc.* (1956, 231 F. 2d 761, 98 U. S. App. D. C. 8).

#### Bill in equity

A bill in equity is proper proceeding to enforce mechanic's lien against trustees under deed of trust. *Roth v. Eisinger Mill & Lbr. Co.* (1934, 70 F. 2d 294, 63 App. D.C. 128).

#### Burden of proof

Burden is on plaintiffs to show by clear proof, when the buildings were commenced, the nature and character of the work and materials furnished and the time when the buildings were completed; and the failure to establish these facts, to a reasonable intent, will cause the plaintiffs to fail in their claim to a lien. *Brown v. Waring* (1893, 1 App. D.C. 378).

#### Clearly erroneous

In action to enforce a mechanic's lien for labor and materials in remodeling of defendant's property, finding of the district court that there was due the plaintiff \$7,750 was not "clearly erroneous". *J. W. Curtis v. R. A. Chambers* (1962, 310 F. 2d 857, 114 U.S. App. D.C. 52).

#### Continuance

The Court of Appeals would take judicial notice of practice of the District Court that no case can be continued by the assignment commissioner but that continuance can be only upon order of assignment judge for cause shown. *John W. Johnson, Inc. v. 2500 Wisconsin Ave., Inc.* (1956, 231 F. 2d 761, 98 U. S. App. D. C. 8).

#### Evidence

There is no doubt of the right of the mortgagees and others acquiring an interest in the property against which the lien is sought to be enforced, to require and insist upon strict proof of everything that is essential to maintain the lien. *Brown v. Waring* (1893, 1 App. D.C. 378).

#### Filing

This section provides means for the enforcement of such liens only when filed within the limitations of the statutes. *Harper v. Galliher Huguley* (1929, 29 F. 2d 452, 58 App. D.C. 252, certiorari denied 49 S. Ct. 185, 278 U.S. 657, 73 L. Ed. 565).

Sworn answer of defendant made it necessary for complainant to prove all allegations of bill which includes filing of notice of lien in the manner and within time presented by statute. *Landvoight v. Melovich* (1893, 1 App. D.C. 498).

#### Judgment

Fact that judgment foreclosing subcontractor's lien against owners of leasehold interest was in less amount than claim against general contractor did not automatically reopen or validate judgment against general contractor, nor did fact that no lien at all was recognized in final judgment as against owner of fee. *Redding & Company, Inc. v. Ruswine Construction Corporation* (1972, 463 F. 2d 929, 150 U.S. App. D.C. 93).

Summary money judgment against general contractor in favor of subcontractor, premised upon clear violation of court order requiring deposit and entry of unquestioned default, and not dependent upon security or extent of any lien, was not arbitrary or capricious and was valid. *Id.*

#### Reinsurance agreements

Reinsurers are liable to materialmen upon the first reinsurance agreements. *Bruckner-Mitchell v. Sun Indem. Co.* (1936, 82 F. 2d 434, 65 App. D.C. 178).

Fact that payment, under the reinsurance agreements, is to be made to the District of Columbia is not conclusive that only such a default under the bond as would affect the District in its own right, as distinguished from such a default as affects materialmen, is intended to be covered by the reinsurance agreements. *Id.*

#### Subcontractor entitled to lien

Under § 1239 (§ 38-103) a subcontractor is entitled to a mechanic's lien, which must be enforced by a bill in equity. *Woodward v. Union Trust Co.* (1920, 262 F. 627, 49 App. D.C. 173).

#### § 38-111. Decree of sale.

If the right of the complainant, or of any of the parties to the suit, to the lien herein provided for shall be established, the court shall decree a sale of the land and premises or the estate and interest therein of the person who, as owner, contracted for the erection, repair, improvement of, or addition to the building, as aforesaid. (Mar. 3, 1901, 31 Stat. 1386, ch. 854, § 1247.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 38-103.

#### NOTES TO DECISIONS

##### Establishment of agreement

Record failed to support claim of error in dismissal of complaint seeking to enforce mechanic's lien on ground that there was no testimony establishing that plaintiff's services had been engaged by agent of owner or that owner himself had agreed to pay for repairing and remodeling work done by plaintiff. *H. Berenter v. R. E. Stagers, et al.* (1966, 362 F. 2d 971, 124 U.S. App. D.C. 141).

#### § 38-112. Subcontractor preferred to contractor.

If the original contractor and the persons contracting or employed under him shall both have filed notices of liens, as aforesaid, the latter shall first be satisfied out of the proceeds of sale before the original contractor, but not in excess of the amount due him, and the balance, if any, of said amount shall be paid to him. (Mar. 3, 1901, 31 Stat. 1386, ch. 854, § 1248.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 38-103.

#### § 38-113. Distribution.

If one, or some only, of the persons employed under the original contractor shall have served notice on the owner, as aforesaid, before payments made by him to the original contractor, said party or parties shall be entitled to priority of satisfaction out of said proceeds to the amount of such payments; but, subject to this provision, if the proceeds of sale, after paying thereout the costs of the suit, shall be insufficient to satisfy the liens of said parties employed under the original contractor the said proceeds shall be distributed ratably among them to the extent of the payments accruing to the original contractor subsequently to the service of notice on the owner by said parties, as aforesaid. (Mar. 3, 1901, 31 Stat. 1386, ch. 854, § 1249.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 38-103.



**§ 38-114. Several buildings.**

In case of labor done or materials furnished for the erection or repair of two or more buildings joined together and owned by the same person or persons, it shall not be necessary to determine the amount of work done or materials furnished for each separate building, but only the aggregate amount upon all the buildings so joined, and the decree may be for the sale of all the buildings and the land on which they are erected as one building, or they may be sold separately if it shall seem best to the court. (Mar. 3, 1901, 31 Stat. 1386, ch. 854, § 1250.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 38-103.

**NOTES TO DECISIONS****In general**

A single mechanic's lien should cover no more than a single building, except in a case where there are two or more buildings joined together and owned by a single person. *Alfred Richards Brick Co. v. Trott* (1904, 23 App. D.C. 284).

**Row of buildings**

Where the contract to erect a row of buildings related to the row as an entirety and not to the particular buildings separately, the whole row was a building in the meaning of the mechanic's lien statute, from having been thus united by the parties in one contract, as one general piece of work, and the lien could be claimed on the whole row of buildings. *Phillips v. Gilbert* (1879, 101 U.S. 721, 11 Otto 721, 25 L. Ed. 833).

**Separate notices**

Where each lienor filed separate notices of lien, each in the full amount due, against each of the two lots, trustees under deed of trust were not prejudiced by release of the lien on one lot. *Roth v. Eisinger Mill & Lbr. Co.* (1934, 70 F. 2d 294, 63 App. D.C. 128).

**§ 38-115. When suit to be commenced.**

Any person, entitled to a lien, as aforesaid, may commence his suit to enforce the same at any time within a year from and after the filing of the notice aforesaid or within six months from the completion of the building or repairs aforesaid, on his failure to do which the said lien shall cease to exist, unless his said claim be not due at the expiration of said periods, in which case the action must be commenced within three months after the said claim shall have become due. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1251.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 38-103.

**§ 38-116. Extent of ground bound by lien.**

If there be any contest as to the dimensions of the ground claimed to be subjected to the lien aforesaid, the court shall determine the same upon the evidence and describe the same in the decree of sale. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1252.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 38-103.

**§ 38-117. Entry of satisfaction.**

Whenever any person having a lien by virtue hereof shall have received satisfaction of his claim and cost, he shall, on the demand, and at the cost of the person interested, enter said claim satisfied, in the clerk's office aforesaid, and on his failure or refusal so to do he shall forfeit fifty dollars to the party

aggrieved, and all damages that the latter may have sustained by reason of such failure or refusal. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1253.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 38-103.

**§ 38-118. Payment into court and release.**

In any suit to enforce a lien hereunder, the owner of the building and premises to which such lien may have attached, as aforesaid, may be allowed to pay into court the amount claimed by the lienor, and such additional amount, to cover interest and costs, as the court may direct, or he may file a written undertaking, with two or more sureties, to be approved by the court, to the effect that he and they will pay the judgment that may be recovered and costs, which judgment shall be rendered against all the persons so undertaking. On the payment of said money into court, or the approval of such undertaking, the property shall be released from such lien, and any money so paid in shall be subject to the final decree of the court. No such undertaking shall be approved by the court until the complainant shall have had at least two days' notice of the defendant's intention to apply to the court therefor, which notice shall give the names and residences of the persons intended to be offered as sureties and the time when the motion for such approval will be made, and such sureties shall make oath, if required, that they are worth, over and above all debts and liabilities, double the amount of said lien. The complainant may appear and object to such approval. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1254.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 5-925, 38-103.

**NOTES TO DECISIONS****Bond filed**

Upon the filing and approval of the undertaking of the owner and his surety, the property was released from the operation of the mechanics' lien. *Deland v. Wagner* (1933, 64 F. 2d 552, 62 App. D.C. 54).

Where bond is filed by purchaser of realty, for release of mechanic's lien, the suit to foreclose the lien is properly dismissed. *Maiatico v. Fletcher* (1930, 39 F. 2d 295, 59 App. D.C. 250).

**Notice not required**

"It will be observed that no notice is required under section 1254 (this section), where a money payment is made by the owner; the theory evidently being that cash speaks for itself, and that no one possibly could be prejudiced by the substitution of cash for the obligation of the owner to pay the amount due under the contract. It was for this reason that section 1255 (§ 38-119) makes no mention of a cash payment." *Woodward v. Union Trust Co.* (1920, 262 F. 627, 49 App. D.C. 173).

**Payment into court of sum equal to lien**

"The evident purpose of sections 1254 and 1255 (this section and § 38-119) is to enable the owner, against whose building or fixtures a lien has been asserted, to be relieved of the embarrassment of the lien through the payment into court of a sum equal to the amount of the lien with interest and costs, or the filing of an undertaking to cover that amount. Where admittedly an amount is due the principal contractor, and the lien is asserted by a subcontractor, there is no contest between the owner and the subcontractor; the issue being restricted to the contractor and subcontractor. If the owner does not take advantage of these provisions of the code for the release of the lien, the statute imposes upon him no duty to notify the contractor of the pendency of the subcontractor's suit." *Woodward v. Union Trust Co.* (1920, 262 F. 627, 49 App. D.C. 173).



**§ 38-119. Undertaking to discharge liens before suit.**

Such an undertaking as above mentioned may be offered before any suit brought in order to discharge the property from existing liens, in which case notice shall be given as aforesaid to the parties whose liens it is sought to have discharged, and the same proceedings shall be had as above directed in relation to the undertaking to be given after the commencement of the suit, and said undertaking shall be to the effect that the owner and his said sureties will pay any judgment that may be rendered in any suit that may thereafter be brought for the enforcement of said lien. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1255.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 38-103.

**NOTES TO DECISIONS****Exclusive remedy**

Where this section prescribed a specific method for removal of mechanic's liens from records by paying into court amount claimed plus interest and costs or by filing a bond, a direct action to remove the lien could not be maintained, notwithstanding plaintiff's contention that he was without funds either to pay amounts into court or to secure a bond and that delay incident to ordinary procedure would cause him irreparable damage, particularly where owner admitted that he had deposited sufficient money to cover lien with a title insurance company. *Clarke v. Huff* (1948, 165 F. 2d 247, 83 U.S. App. D.C. 38).

**Judgment**

Judgment which establishes a right to lien upon interest subject to lien is judgment which is secured by mechanic's lien undertaking. *Hartford Acc. & Ind. Co. v. A.B.C. Cleaning Contractors, Inc.* (1965, 350 F. 2d 430, 121 U.S. App. D.C. 300).

**Notice naming wrong person**

Mere fact that mechanic's lien undertaking had been offered and filed did not estop surety sued on personal judgment obtained against its insured from denying its insured's ownership of premises in question. *Hartford Acc. & Ind. Co. v. A.B.C. Cleaning Contractors, Inc.* (1965, 350 F. 2d 430, 121 U.S. App. D.C. 300).

Personal judgment obtained by contractor against purported owner, which expressly reserved a ruling with respect to validity of mechanic's lien, could not serve as basis of judgment against surety under its mechanic's lien undertaking in view of failure to show purported owner's interest in property in question. *Id.*

**Obligation of surety**

Surety's obligation under mechanic's lien undertaking is confined to purpose of mechanic's lien statute. *Hartford Acc. & Ind. Co. v. A.B.C. Cleaning Contractors, Inc.* (1965, 350 F. 2d 430, 121 U.S. App. D.C. 300).

**Substitute for interest in premises**

Mechanic's lien undertaking, when approved by court, becomes a substitute for interest in the premises which was subject to a lien. *Hartford Acc. & Ind. Co. v. A.B.C. Cleaning Contractors, Inc.* (1965, 350 F. 2d 430, 121 U.S. App. D.C. 300).

**§ 38-120. Decree against sureties.**

If such undertaking be approved before any suit brought, such suit shall be a suit in equity against the owner, to which the sureties may be made parties; if the undertaking be approved after suit brought, the said sureties shall ipso facto become parties to the suit, and in either case the decree of the court shall be against the sureties as well as the owner. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1256.)

**CROSS REFERENCE**

One form of action in U.S. district courts, and in Superior Court of the District of Columbia, to be known as a civil action, see rule 2 of Fed. Rules of Civ. Proc., 28 U.S.C. App.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 38-103.

**NOTES TO DECISIONS****Owner and surety, decree against**

Where owner and his surety had filed an undertaking and had thereby released the mechanics' lien, the decree was properly rendered against said owner and surety. *Deland v. Wagner* (1933, 64 F. 2d 552, 62 App. D.C. 54).

**§ 38-121. No action by subcontractor against owner.**

No subcontractor, materialman, or workman employed under the original contractor shall be entitled to a personal judgment or decree against the owner of the premises for the amount due to him from said original contractor, except upon a special promise of such owner, in writing, for a sufficient consideration, to be answerable for the same. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1257.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 38-103.

**NOTES TO DECISIONS****In general**

This section is applicable although the owner's contract with the contractor and the latter's contract with the subcontractor were to be performed in Maryland. *Mathews v. Libbey* (1914, 42 App. D.C. 272).

**Liability to subcontractor**

Where electrical contractor who initially undertook job at instance of general contractor could have quit the job because of general contractor's default, and he only agreed to continue in consideration of homeowner's personal new and direct agreement to pay for the work, homeowner was not relieved of obligation to pay, though his promise was merely verbal. *Thomas v. Ehrmantraut* (D. C. Mun. App. 1955, 111 A. 2d 623).

A promise need not be in writing when it is an original or separate agreement to pay and not the mere assumption of another's debt. *Id.*

**Personal obligation**

Subcontractor is not entitled to personal judgment against owner of premises for money due him from general contractor, but a personal, new and direct promise by owner to pay for work, though not in writing, is enforceable and not violative of statute of frauds, provided such promise is supported by sufficient consideration, and such agreement is construed to be promise by owner to pay his own debt and not antecedent debt of contractor. *Arthur Snowden Co., Inc. v. Meehan* (D. C. Mun. App. 1956, 118 A. 2d 687).

In subcontractor's action against owner of premises for reasonable value of work performed on houses, evidence would not sustain subcontractor's contention that owner had, after contractor's default on original contract, requested subcontractor to continue work and orally promised to pay him reasonable value thereof. *Id.*

Where principal contract did not cover additional work which owner, through general contractor requested plumbing subcontractor to perform for owner, subcontractor's claim against owner was based on owner's personal promise to pay owner's own debt and not debt of another, and authorizing subcontractor to recover amount owed by original contractor from owner who specially promises in writing for consideration to be answerable for such amount was inapplicable to subcontractor's claim against owner, and such claim was not within statute of frauds, § 12-302, requiring special promise to answer for debt of another person to be in writing. *Jones v. Guice* (D. C. Mun. App. 1948, 57 A. 2d 190).

**§ 38-122. Judgment for deficiency upon a sale.**

In any suit brought to enforce a lien by virtue of the provisions aforesaid, if the proceeds of the property affected thereby shall be insufficient to satisfy such lien, a personal judgment for the deficiency may be given in favor of the lien or against the



owner of the premises or the original contractor, as the case may be, whichever contracted with him for the labor or materials furnished by him, provided such person be a party to the suit and shall have been personally served with process therein. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1258.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 38-103.

#### NOTES TO DECISIONS

##### Former owners liable

Where property was sold under a deed of trust, it was properly held that a personal judgment for the deficiency should be rendered against the former owners who contracted for the repairs. *Davidson v. E. F. Brooks Co.* (1917, 46 App. D.C. 457, certiorari denied 38 S. Ct. 63, 245 U.S. 665, 62 L. Ed. 538). See, also, *Emack v. Rushenberger* (1896, 8 App. D.C. 249); *McCarthy v. Holtman* (1901, 19 App. D.C. 150).

##### § 38-123. Wharves and lots.

Any person who shall furnish materials or labor in filling up any lot or in constructing any wharf thereon, or dredging the channel of the river in front of any wharf, under any contract with the owner, shall be entitled to a lien for the value of such work or materials on said lot and wharf upon the same conditions and to be enforced in the same manner as in the case of work done in the erection of buildings, as provided in section 38-110. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1259.)

##### § 38-124. Artisan's lien.

Any mechanic or artisan who shall make, alter, or repair any article of personal property at the request of the owner shall have a lien thereon for his just and reasonable charges for his work done and materials furnished, and may retain the same in his possession until said charges are paid; but if possession is parted with by his consent such lien shall cease. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1260.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 38-125.

#### NOTES TO DECISIONS

##### Enforcement in Municipal Court

Municipal Court for the District of Columbia had jurisdiction of action to enforce artisan's lien, notwithstanding that lien was enforced according to due course of proceedings in equity and that Municipal Court had no general equity jurisdiction, since action was essentially one to recover debt that did not exceed \$3,000. *N. Villacres v. E. G. Haddad et ano.* (D.C. Mun. App. 1962, 184 A. 2d 634).

Statute on liens of mechanics or artisans restates common-law lien and provides a means of enforcing it. *Id.*

##### § 38-125. Enforcement by sale.

If the amount due and for which a lien is given by section 38-124 is not paid after the end of a month after the same is due, and the property bound by said lien does not exceed the sum of fifty dollars, then the party entitled to such lien, after demand of payment upon the debtor, if he be within the District, may proceed to sell the property so subject to lien at public auction, after giving notice once a week for three successive weeks in some daily newspaper published in the District, and the proceeds of such sale shall be applied, first, to the expenses of such sales and the discharge of such lien, and the remainder, if any, shall be paid over to the owner of the property.

(Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1263; redesignated § 1261 and amended Dec. 8, 1970, Pub. L. 91-537, § 4(a), 84 Stat. 1397.)

#### AMENDMENT

1970—Section 4(a) of act Dec. 8, 1970, Pub. L. 91-537, redesignated section 1263 of the act of Mar. 3, 1901, as section "1261"; and struck out of the section redesignated as section 1261 the words "by any of the last three sections" and inserted in lieu thereof "by section 1260 [§ 38-124]".

##### § 38-126. Enforcement by bill in equity.

If the value of the property so subject to lien shall exceed the sum of fifty dollars, the proceeding to enforce such lien shall be by bill or petition in equity, and the decree, which shall be rendered according to the due course of proceedings in equity, besides subjecting the thing upon which the lien was attached to sale for the satisfaction of the plaintiff's demand, shall adjudge that the plaintiff recover his demand against the defendant from whom such claim is due, and may have execution therefor as at law. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1264; redesignated § 1262 Dec. 8, 1970, Pub. L. 91-537, § 4(a)(1), 84 Stat. 1397.)

#### AMENDMENT

1970—Section 4(a)(1) of act Dec. 8, 1970, Pub. L. 91-537, redesignated section 1264 of the act of Mar. 3, 1901, as section "1262". A previous section 1262 was repealed by Act June 3, 1952, see note under § 38-201.

#### CROSS REFERENCE

One form of action in U.S. district courts, and in Superior Court of the District of Columbia, to be known as a civil action, see rule 2 of Fed. Rules of Civ. Proc., 28 U.S.C. App.

#### NOTES TO DECISIONS

##### Enforcement in Municipal Court

Municipal Court for the District of Columbia had jurisdiction of action to enforce artisan's lien, notwithstanding that lien was enforced according to due course of proceedings in equity and that Municipal Court had no general equity jurisdiction, since action was essentially one to recover debt that did not exceed \$3,000. *N. Villacres v. E. G. Haddad et ano.* (D.C. Mun. App. 1962, 184 A. 2d 634).

Statute on liens of mechanics or artisans restates common-law lien and provides a means of enforcing it. *Id.*

#### Chapter 2.—GARAGE KEEPERS AND LIVERYMEN

##### Sec.

38-201. Repealed.

38-202, 38-203. Repealed.

38-204. Lien of liverymen.

38-205. Lien for storage, repairs and supplies for motor vehicles.

38-206. Enforcement of lien by sale.

38-207. Application of proceeds of sale.

38-208. Limitation on lien for storage.

38-209. Liens acquired under prior law.

##### § 38-201. Repealed. June 3, 1952, 66 Stat. 98, ch. 361, § 6.

Section, acts Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1262, Apr. 19, 1920, 41 Stat. 568, ch. 153, related to liens of garage keepers and liverymen and is now covered by sections 38-204 to 38-209.

##### §§ 38-202, 38-203. Repealed. Dec. 8, 1970, Pub. L. 91-537, § 4(a), 84 Stat. 1397.

Sections, act Mar. 3, 1901, 31 Stat. 1388, ch. 854, §§ 1263 and 1264 (as applicable to § 1262), provided for enforcement of the lien of garage keepers and liverymen by sale and by bill in equity. The amendment made by section 4(a)(2) of Pub. L. 91-537 had the effect of repealing



sections 1263 and 1264 of the 1901 act as they applied to section 1262.

#### SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 38-209.

#### NOTES TO DECISIONS UNDER PRIOR § 38-203

##### Conversion

Where garage owner after repairing conditional vendee's automobile turned the same over to the holder of conditional sales contract with permission of conditional vendee's son and collected his repair charges from holder, garage owner was not guilty of conversion in failing to follow the statutory requirements as to notice by repairers of automobile before enforcing lien for charges. *Bullock v. Young* (D. C. Mun. App. 1956, 118 A. 2d 917).

#### § 38-204. Lien of liverymen.

It shall be lawful for all persons keeping or boarding any animals at livery within the District, under any agreement with the owner thereof, to detain such animals until all charges under such agreement for the care, keep, or board of such animals shall have been paid: *Provided, however*, That before enforcing the lien hereby given notice in writing shall be given to such owner in person or by registered mail at his last-known place of residence of the amount of such charges and the intention to detain such animal or animals until such charges shall be paid. (June 3, 1952, 66 Stat. 96, ch. 361, § 1.)

##### CROSS REFERENCE

Certain provisions with respect to enforcement of liens not subject to this section, see § 38-209.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 38-206, 38-209.

#### § 38-205. Lien for storage, repairs and supplies for motor vehicles.

(a) All persons storing, repairing, or furnishing supplies of or concerning motor vehicles including trailers shall have a lien for their agreed or reasonable charges for such storage, repairs, and supplies when such charges are incurred by an owner or conditional vendee or chattel mortgagor (including a grantor of deed of trust in lieu of mortgage) of such motor vehicle, and may detain such motor vehicle at any time they may have lawful possession thereof. Such lien shall have priority over every security interest and other lien or right in or to the vehicle except as hereinafter limited with respect to claims for storage. Before enforcing such lien, notice in writing shall be given to the title holder, every secured party and other lien holder shown by the certificate of title or registry of the vehicle, and any other persons known to claimant who have any interest in or lien upon the vehicle. Such notice shall be delivered personally or sent by registered mail to the last-known address of the person to whom given, shall state that a lien is claimed for the charges therein set forth or thereto attached, and shall demand payment thereof. There shall be incorporated in or attached to said notice a statement of particulars of the charge or charges for which a lien is claimed, to which may be added a claim for storage of the vehicle from the date of said notice to the date of payment or sale, which amount shall be set forth at a daily or weekly rate which shall not be in excess of charges prevailing at the time for similar storage, and shall not be in excess of \$3 per day or

\$21 per week, which additional charge shall in no event cover a period in excess of ninety days.

(b) As used in this section, "security interest" and "secured party" have the same meanings as those given to the terms by sections 28:1-201 and 28:9-105(i), respectively, of the District of Columbia Code. (June 3, 1952, 66 Stat. 97, ch. 361, § 2; Dec. 30, 1963, 77 Stat. 770, Pub. L. 88-243, § 5.)

##### AMENDMENT

1963—Section 5 of act Dec. 30, 1963, amended section by striking the words "all other liens or rights" in the second sentence and substituting the words "every security interest and other lien or right", striking the words "all lien holders" in the third sentence and substituting the words "every secured party and other lien holder", and by adding a subsection (b) thereto.

##### EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 30, 1963, effective on Jan. 1, 1965. See note preceding article I of subtitle I of title 28.

##### CROSS REFERENCES

Certain provisions with respect to enforcement of liens not subject to this section, see § 38-109.

Motor vehicle title liens, see §§ 40-701 to 40-715.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 38-206, 38-208, 38-209.

#### NOTES TO DECISIONS

##### In general

Congress seems to have taken notice that motor vehicles are sold frequently upon conditional sale contracts, and accordingly provided for a lien in favor of garage keepers, where the charges are incurred either by the owner or the conditional vendee. *Barrett v. Commercial Credit Co.* (1924, 296 F. 996, 54 App. D.C. 249).

The very fact that the statute awards a lien for work done or material furnished at the instance of the conditional vendee, and in view of the further fact that the automobile business is largely conducted upon a credit basis, by which dealers protect themselves through conditional sales agreements, are indicative of the legislative intent to give such a lien priority over the conditional bill of sale. *Id.*

##### Authority of Director of Vehicles and Traffic

Sole function of Director of Vehicles and Traffic under automobile lien statute is to satisfy himself that lienor has complied with notice provisions thereof. *Sanders v. Keneipp et al.* (D. C. Mun. App. 1954, 109 A. 2d 141).

##### Bankruptcy

Where garage keeper, having a subsisting lien upon bankrupt's automobile, lawfully regained and held possession of automobile before owner was adjudicated a bankrupt, garage keeper had a statutory lien valid against the trustee in bankruptcy, even though it arose and was perfected while the bankrupt was insolvent and within four months of filing of petition in bankruptcy. *Gordon v. Sullivan* (1951, 188 F. 2d 980, 88 U. S. App. D. C. 144).

##### Conversion

Where garage owner after repairing conditional vendee's automobile turned the same over to the holder of conditional sales contract with permission of conditional vendee's son and collected his repair charges from holder, garage owner was not guilty of conversion in failing to follow the statutory requirements as to notice by repairers of automobile before enforcing lien for charges. *Bullock v. Young* (D.C. Mun. App. 1956, 118 A. 2d 917).

##### Damages from loss of lien

Automobile transmission repairer who did not establish extent to which value of garage keeper's lien was diminished by defendant's delivering possession of automobile to owner and who did not prove that he could not collect his bill from owner without resort to his lien did not sufficiently establish damage resulting from claimed loss of lien for charges in repairing transmission when owner left district without paying transmission work. *L. Flanzbaum v. S. Gordon* (D.C. App. 1963, 194 A. 2d 135).



Automobile transmission repairer who refused to pay electrician's charges for repairs on automobile which transmission repairer had delivered to electrician and who said that owner would have to pay them and that owner could take automobile if he wanted it could not recover from electrician for amount of his charges when electrician pursuant to his instructions delivered automobile to owner who left District without paying transmission repairer. *Id.*

#### Extent of lien

Where automobile owner contracted with garage keeper for small repair job and, despite repeated promises to call for automobile, left it with garage keeper who was required to provide valuable space for its storage, a quasi contract or promise implied in law to pay for such storage was created and that obligation was recognizable under automobile lien statute. *Sanders v. Keneipp et al.* (D. C. Mun. App. 1954, 109 A. 2d 141).

#### Notice of lien

Garage owner, who did not give notice of lien until he had stored automobile for six months after repairing it, did not lose his lien or his right to claim storage thereby even though automobile lien statute allowed such notice after 30 days. *Sanders v. Keneipp et al.* (D. C. Mun. App. 1954, 109 A. 2d 141).

#### Possession

Independent garageman with whom conditional seller stored repossessed automobile had, in absence of proof of principal-agent relationship with seller, a lien for all reasonable charges for storage of automobile whether incurred by conditional buyer or by conditional seller, and had right to detain such automobile until storage charges had been paid. *C. Jackson v. B. Greenfield* (D.C. App., 1964, 198 A. 2d 916).

Where garage keeper performed repairs upon an automobile, and turned over automobile to its owner, but garage keeper subsequently resumed possession of automobile, garage keeper had a lien on automobile by operation of law and did not lose it by failing to give statutory notice. *Gordon v. Sullivan* (1951, 188 F. 2d 980, 88 U. S. App. D. C. 144).

Where garage keeper made repairs upon an automobile and turned it over to the owner, and garage keeper subsequently repossessed the automobile from a third party by paying storage charges on automobile, garage keeper's taking and retention of automobile were lawful and he was entitled to retain possession as against the owner's trustee in bankruptcy. *Id.*

#### Reinstatement of lien

Garage Keeper's lien is not lost by releasing automobile, but may be enforced thereafter if garage keeper should again obtain lawful possession. *L. Flanzbaum v. S. Gordon* (D.C. App. 1963, 194 A. 2d 125).

After electrician, who had received possession of automobile from plaintiff who had repaired transmission, had delivered possession to owner, plaintiff's garage keeper's lien was in state of suspended animation and was not extinguished. *Id.*

#### § 38-206. Enforcement of lien by sale.

If the amount due and for which a lien is given by section 38-204 or 38-205 hereof is not paid by the end of thirty days after the giving of notice, then the party entitled to such lien may proceed to sell the property so subject to lien at public auction, after giving notice once a week for three successive weeks in some daily newspaper published in the District. Said advertisement shall set forth the date, time, and place of sale, which shall not be less than fifteen days from date of the first publication of such notice, that the purpose of the sale is to satisfy a lien, the amount for which said lien is claimed, including storage to date of sale if allowable, the names of all interested parties, and a description of the chattel, including, in the case of vehicles, the make, type, year and model number,

serial number and engine number, if any, and State or District license number and year.

Any person selling such property in order to satisfy a fraudulent, excessive, or unreasonable lien shall be guilty of a conversion of such property and liable to the owner in damages therefor. (June 3, 1952, 66 Stat. 97, ch. 361, § 3.)

#### NOTES TO DECISIONS

##### Conversion

Where garage owner after repairing conditional vendee's automobile turned the same over to the holder of conditional sales contract with permission of conditional vendee's son and collected his repair charges from holder, garage owner was not guilty of conversion in failing to follow the statutory requirements as to notice by repairers of automobile before enforcing lien for charges. *Bullock v. Young* (D.C. Mun. App. 1956, 118 A. 2d 917).

#### § 38-207. Application of proceeds of sale.

The proceeds of such sale shall be applied, first, to the expenses of such sales and the discharge of such lien; second, to payment of other liens, if any, in the order of their priority; and, third, to the owner of the property. (June 3, 1952, 66 Stat. 97, ch. 361, § 4.)

#### § 38-208. Limitation on lien for storage.

To the extent that any lien provided for in this chapter is based on a claim for storage of a motor vehicle in excess of \$150, such lien shall be, as to such excess, inferior to the lien of a conditional vendor or chattel mortgagee (as defined in section 38-205) claiming under an instrument recorded on a date earlier than the period to which such charges are attributable. (June 3, 1952, 66 Stat. 97, ch. 361, § 5.)

#### § 38-209. Liens acquired under prior law.

Section 38-201 is hereby repealed and sections 38-202 and 38-203 are hereby made inapplicable to liens provided for in sections 38-204 and 38-205 hereof: *Provided, however,* That any liens heretofore acquired under the provisions of said section 38-201, shall be unaffected by the repeal of said section and may be enforced either in the manner provided in said sections 38-202 and 38-203 or in the manner provided herein. (June 3, 1952, 66 Stat. 98, ch. 361, § 6.)

#### REFERENCE IN TEXT

Sections 38-202 and 38-203, referred to in the text, were in effect repealed by the provisions of section 4(a) (2) of act Dec. 8, 1970, Pub. L. 91-537.

#### Chapter 3.—HOSPITALS

##### Sec.

- 38-301. Hospitals to have lien for services on recovery in accident cases.
- 38-302. Notice to be filed.
- 38-303. Liability for not paying hospital amount of its lien.
- 38-304. Permission to examine hospital records.
- 38-305. Recorder to provide lien docket.

#### § 38-301. Hospitals to have lien for services on recovery in accident cases.

Every association, corporation, or other institution, and any agency of the United States or the District of Columbia, maintaining a hospital in the District of Columbia, which shall furnish medical or other service to any patient injured by reason



of an accident causing injuries not covered by the Employees' Compensation Act or the Workmen's Compensation Act, shall, if such injured party shall assert or maintain a claim against another for damages on account of such injuries, have a lien upon that part going or belonging to such patient, of any recovery or sum had or collected or to be collected by such patient, or by his heirs or personal representatives in the case of his death, whether by judgment or by settlement or compromise to the amount of the reasonable and necessary charges of such hospital for the treatment, care, and maintenance of such patient in such hospital up to the date of payment of such damages: *Provided*, That the lien herein set forth shall not be applied or considered valid against any one suffering injuries coming under the Employees' Compensation Act or the Workmen's Compensation Act in this District. (June 30, 1939, 53 Stat. 990, ch. 255, § 1; June 19, 1948, 62 Stat. 496, ch. 525, § 1.)

## REFERENCES IN TEXT

The Employees Compensation Act, referred to in text, probably refers to the Act of Sept. 7, 1916 (later designated the Federal Employees' Compensation Act) which is now covered by 5 U.S.C. 8101 et seq.

The Workmen's Compensation Act probably refers to §§ 36-501, 36-502, which made the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) applicable in the District of Columbia.

## AMENDMENT

1948—Act June 19, 1948, inserted after "institution" the words "and any agency of the United States or the District of Columbia".

## § 38-302. Notice to be filed.

No such lien shall be effective, however, unless a written notice containing the name and address of the injured person, the date of the accident, the name and location of the hospital, and the name of the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries received, shall be filed in the office of the Recorder of Deeds of the District of Columbia in a docket provided for such liens, prior to the payment of any moneys to such injured person, his attorneys, or legal representatives as compensation for such injuries; nor unless the hospital shall also mail, postage prepaid, a copy of such notice with a statement of the date of filing thereof to the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries sustained prior to the payment of any moneys to such injured person, his attorneys, or legal representatives as compensation for such injuries. Such hospital shall mail a copy of such notice to any insurance carrier which has insured such person, firm, or corporation against such liability, where the name of such insurance carrier is ascertained. (June 30, 1939, 53 Stat. 990, ch. 255, § 2; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 265, Pub. L. 89-493, § 16.)

## AMENDMENT

1966—Section 6 of act July 5, 1966, substituted "Recorder of Deeds of" for "clerk of the United States District Court for".

## EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act July 5, 1966, as effective on first day of first month which is at least ninety days after July 5, 1966, see § 21 of such act, set out in note under § 1-504.

## CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

## APPROPRIATIONS

Appropriations authorized to carry out purposes of act July 5, 1966, which amended this section, see § 20 of such act, set out in note under § 1-504.

## § 38-303. Liability for not paying hospital amount of its lien.

Any person or persons, firm or firms, corporation or corporations, including an insurance carrier, making any payment to such patient or to his attorneys or heirs or legal representatives as compensation for the injury sustained, after the filing and mailing of such notice without paying to such hospital the amount of its lien or so much thereof as can be satisfied out of the moneys due under any final judgment or compromise or settlement agreement after paying the amount of any prior liens, shall for a period of one year from the date of payment to such patient or his heirs, attorneys, or legal representatives, as aforesaid, be and remain liable to such hospital for the amount which such hospital was entitled to receive as aforesaid; and any such association, corporation, or other institution, and any agency of the United States or the District of Columbia, maintaining such hospital, may, within such period, enforce its lien by a suit at law against such person or persons, firm or firms, corporation or corporations making any such payment. (June 30, 1939, 53 Stat. 990, ch. 255, § 3; June 19, 1948, 62 Stat. 496, ch. 525, § 2.)

## AMENDMENT

1948—Act June 19, 1948, inserted after "institution" the words "and any agency of the United States or the District of Columbia".

## § 38-304. Permission to examine hospital records.

Any person or persons, firm or firms, corporation or corporations legally liable for such lien or against whom a claim shall be asserted for compensation for such injuries, shall be permitted to examine the ledger entries and similar records of any such association, corporation, or other institution or body, and of any agency of the United States or the District of Columbia, maintaining such hospital for the purpose of ascertaining the basis for such lien. (June 30, 1939, 53 Stat. 991, ch. 255, § 4; June 19, 1948, 62 Stat. 496, ch. 525, § 3.)

## AMENDMENT

1948—Act June 19, 1948, inserted after word "body" the words "and of any agency of the United States or the District of Columbia".

## § 38-305. Recorder to provide lien docket.

The Recorder of Deeds of the District of Columbia shall provide a suitable bound book to be called the hospital lien docket, in which, upon the filing of any lien claim under the provisions of this chapter, he shall enter the name of the injured person, the name of the person, firm, or corporation alleged to



be liable for the injuries, the date of the accident, and the name of the hospital or other institution or agency making the claim. The Recorder of Deeds shall index the same in the name of the injured person and shall charge and collect a fee of \$1 for recording, indexing, and releasing the lien so filed. (June 30, 1939, 53 Stat. 991, ch. 255, § 5; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); June 19, 1948, 62 Stat. 496, ch. 525, § 4; May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 265, Pub. L. 89-493, § 16.)

#### AMENDMENTS

1966—Act of July 5, 1966, in first sentence, substituted "Recorder of Deeds of" for "clerk of the United States District Court for"; and substituted second sentence providing for indexing by the Recorder of Deeds and for his charging fee of \$1 for recording, indexing, and releasing lien so filed, for following sentence: "Said clerk shall make a proper index of the same in the name of

the injured person and the clerk shall charge such reasonable fees, not to exceed the sum of \$1, as the court may by rule fix for the recording, indexing, and the releasing of the lien so filed."

1948—Act June 19, 1948, inserted after word "institution" the words "or agency".

#### EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act July 5, 1966, as effective on first day of first month which is at least ninety days after July 5, 1966, see § 21 of such act, set out in note under § 1-504.

#### CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1949, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

#### APPROPRIATIONS

Appropriations authorized to carry out purposes of act July 5, 1966, which amended this section, see § 20 of such act, set out in note under § 1-504.



## TITLE 39.—MILITARY

Chap.	Sec.
1. Composition, Organization, and Control...	39-101
2. Commissioned Officers.....	39-201
3. Noncommissioned Officers.....	39-301
4. Enlisted Personnel.....	39-401
5. Armament, Equipment, and Supplies.....	39-501
6. Active Military Duty.....	39-601
7. Courts-martial .....	39-701
8. Pay and Allowances.....	39-801
9. Miscellaneous Provisions.....	39-901

### TITLE REFERRED TO IN U.S. CODE

This title is referred to in title 5, section 6323, U.S. Code.

### Chapter 1.—COMPOSITION, ORGANIZATION, AND CONTROL

Sec.
39-101. Militia—Persons to be enrolled.
39-102. Exemptions from service.
39-103. Assessors to make list of persons liable to enrollment.
39-104. Duty of enrolled militia.
39-105. Ordering enrolled militia into service.
39-106. Organized militia—Volunteer service—Designation.
39-107. Repealed.
39-108. Reserve corps—Organization—Composition.
39-109, 39-110. Repealed.
39-111. Disbanding companies below minimum strength.
39-112. President to be Commander-in-Chief.

### PRESIDENTIAL EXECUTIVE ORDER 11485

#### SUPERVISION AND CONTROL OF THE NATIONAL GUARD OF THE DISTRICT OF COLUMBIA

Ex. Ord. No. 11485, Oct. 1, 1969, 34 F.R. 15411, 15443

By virtue of the authority vested in me as President of the United States and Commander-in-Chief of the Armed Forces of the United States and the National Guard of the District of Columbia under the Constitution and laws of the United States, including section 6 of the Act of March 1, 1889, 25 Stat. 773 (District of Columbia Code, sec. 39-112), and section 110 of title 32 and section 301 of title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. The Secretary of Defense, except as provided in section 3, is authorized and directed to supervise, administer and control the Army National Guard and the Air National Guard of the District of Columbia (hereinafter "National Guard") while in militia status. The Commanding General of the National Guard shall report to the Secretary of Defense or to an official of the Department of Defense designated by the Secretary on all matters pertaining to the National Guard. Through the Commanding General, the Secretary of Defense shall command the military operations, including training, parades and other duty, of the National Guard while in militia status. Subject to the direction of the President as Commander-in-Chief, the Secretary may order out the National Guard under title 39 of the District of Columbia Code to aid the civil authorities of the District of Columbia.

SEC. 2. The Attorney General is responsible for: (1) advising the President with respect to the alternatives available pursuant to law for the use of the National Guard to aid the civil authorities of the District of Columbia; and (2) for establishing after consultation with the Secretary of Defense law enforcement policies to be observed by the military forces in the event the National Guard is used in its militia status to aid civil authorities of the District of Columbia.

SEC. 3. The Commanding General and the Adjutant General of the National Guard will be appointed by the President. The Secretary of Defense, after consultation with the Attorney General, shall at such times as may be appropriate submit to the President recommendations with respect to such appointments.

SEC. 4. The Secretary of Defense and the Attorney General are authorized to delegate to subordinate officials of their respective Departments any of the authority conferred upon them by this order.

SEC. 5. Executive Order No. 10030 of January 26, 1949, is hereby superseded.

### § 39-101. Militia—Persons to be enrolled.

Every able-bodied male citizen resident within the District of Columbia, of the age of eighteen years and under the age of forty-five years, excepting persons exempted by section 39-102, and idiots, lunatics, common drunkards, vagabonds, paupers, and persons convicted of any infamous crime, shall be enrolled in the militia. Persons so convicted after enrollment shall forthwith be disenrolled; and in all cases of doubt respecting the age of a person enrolled, the burden of proof shall be upon him. (Mar. 1, 1889, 25 Stat. 772, ch. 328, § 1.)

### CODIFICATION

Act Feb. 18, 1909, 35 Stat. 629, ch. 146 amended act Mar. 1, 1889, 25 Stat. 772, ch. 328. Some of the sections of the 1889 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1889 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1889 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

### CROSS REFERENCE

See U.S. Code, title 32.

### § 39-102. Exemptions from service.

In addition to the persons exempted from enrollment in the militia by the general laws of the United States, the following persons shall also be exempted from enrollment in the militia of the District of Columbia, namely: Officers of the government of the District of Columbia; judges and officers of the courts of the District of Columbia; officers who have held commissions in the Regular or Volunteer Army, Navy, or Air Force of the United States; officers who have served for a period of five years in the militia of the District of Columbia or of any state of the United States; ministers of the gospel; practicing physicians; conductors and engine-drivers of railroad trains; members of the paid police and fire departments. (Mar. 1, 1889, 25 Stat. 772, ch. 328, § 2.)

### CODIFICATION

"Air Force" was inserted on authority of section 207 (a) (f) of act July 26, 1947, ch. 343, 61 Stat. 502.

### CROSS REFERENCE

See U.S. Code, title 32.

### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 39-101.



**§ 39-103. Assessors to make list of persons liable to enrollment.**

The Commissioner of the District of Columbia shall provide for the enrollment of the militia, and for this purpose may require the assessors of taxes, at the same time they are engaged in taking the assessment of valuation of real and personal property, to make a list of persons liable to enrollment; and such record shall be deemed a sufficient notification to all persons whose names are thus recorded that they have been enrolled in the militia. Immediately after the completion of each enrollment they shall furnish the commanding general of the militia with a copy of the same. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 3.)

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**CROSS REFERENCE**

See U.S. Code, title 32.

**§ 39-104. Duty of enrolled militia.**

The enrolled militia shall not be subjected to any duty except when called into the service of the United States, or to aid the civil authorities in the execution of the laws or suppression of riots. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 4.)

**CROSS REFERENCE**

See U.S. Code, title 32.

**§ 39-105. Ordering enrolled militia into service.**

Whenever it shall be necessary to call out any portion of the enrolled militia the commander-in-chief shall order out, by draft or otherwise, or accept as volunteers as many as required. Every member of the enrolled militia who volunteers, or who is ordered out or drafted under the provisions of this chapter, who does not appear at the time and place designated, may be arrested by order of the commanding general and be tried and punished by a court-martial. The portion of the enrolled militia ordered out or accepted shall be mustered into service for such period as may be required, and the commanding general may assign them to existing organizations of the active militia, or may organize them as the exigencies of the occasion may require. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 5.)

**CROSS REFERENCE**

See U.S. Code, title 32.

**§ 39-106. Organized militia—Volunteer service—Designation.**

The organized militia shall be composed of volunteers, and shall be designated the National Guard of the District of Columbia. (Mar. 1, 1889, 25 Stat. 774, ch. 328, § 10; Feb. 18, 1909, 35 Stat. 629, ch. 146, § 10.)

**AMENDMENT**

1909—Act Feb. 18, 1909, amended section to read as set out in the text. Prior to the 1909 amendment the section provided: "The active militia shall be composed of volunteers, and shall be designated the National Guard of the District of Columbia; and in case the militia of the District of Columbia are called into the service of the United States, or required for the suppression of riots,

or to aid civil officers in the execution of the laws, shall be the first to be ordered into service."

**CROSS REFERENCE**

See U.S. Code, title 32.

**§ 39-107. Repealed. Aug. 10, 1956, 70A Stat. 641, ch. 1041, § 53.**

Section, acts June 3, 1916, 39 Stat. 197, ch. 134, § 60; June 4, 1920, 41 Stat. 780, ch. 227, subch. I, § 36; June 15, 1933, 48 Stat. 156, ch. 87, § 6, which related to organization of National Guard units, which had superseded act Mar. 1, 1889, 25 Stat. 774, ch. 328, § 11, as amended by act Feb. 18, 1909, 35 Stat. 629, ch. 146, is now covered by 32 U.S.C. § 104.

**§ 39-108. Reserve corps—Organization—Composition.**

A reserve corps of the National Guard of the District of Columbia is hereby organized, to consist of honorably discharged officers and men of the Army, the Navy, the Air Force, and the Marine Corps of the United States, honorably discharged officers and men of the organized militia of any state or territory who are residents of the District of Columbia, and honorably discharged members of the National Guard of the District of Columbia, whose military training and physical condition shall conform to the standard determined by regulations to be promulgated by the President of the United States: *Provided*, That the term of enlistment in the reserve and the military duties and obligations required of reservists shall be determined by regulations to be promulgated by the President of the United States: *Provided further*, That when called out for military duty, reservists shall receive the same pay and allowances as officers and men of like grade on the active list of the National Guard of the District of Columbia. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 636, ch. 146, § 72.)

**CODIFICATION**

"Air Force" was inserted on authority of section 207 (a) (f) of act July 26, 1947, ch. 343, 61 Stat. 502.

Section 74 of 1909 act made act Jan. 21, 1903, 32 Stat. 775 applicable to the District of Columbia; but this act had been superseded by the National Defense Act of June 3, 1916, 39 Stat. 166, ch. 134. The National Defense Act of June 3, 1916, was in turn repealed by act Aug. 10, 1956, 70A Stat. 641, ch. 1041, § 53 (this act enacted into law many of its provisions) and it is now covered by titles 10 and 32 of the U.S. Code. See tables in the U.S. Code.

**CROSS REFERENCE**

See U.S. Code, title 32.

**§§ 39-109, 39-110. Repealed. Aug. 10, 1956, 70A Stat. 641, ch. 1041, § 53.**

Section 39-109, act May 12, 1917, 40 Stat. 72, ch. 12, as amended by acts July 1, 1947, 61 Stat. 238, ch. 192, § 1(a); July 9, 1952, 66 Stat. 506, ch. 608, pt. VIII, § 804(a), which related to leaves of absence for employees of the United States and the District of Columbia who were members of the reserve components of the Armed Forces, is now covered by 5 U.S.C. §§ 502, 2105, 3551, 5534, 6323. See, particularly, 5 U.S.C. § 6323.

Section 39-110, act May 12, 1917, 40 Stat. 72, ch. 12, as amended by acts July 1, 1947, 61 Stat. 238, ch. 192, § 1(a); July 9, 1952, 66 Stat. 506, ch. 608, pt. VIII, § 804(a), which related to restoration of employees of the United States and the District of Columbia, who were members of the reserve components of the Armed Forces, to their government positions, when relieved from duty in such components, is now covered by 5 U.S.C. §§ 502, 2105, 3551, 5534, 6323. See, particularly, 5 U.S.C. § 3551.



### § 39-111. Disbanding companies below minimum strength.

When any company of the National Guard shall, for a period of not less than ninety days, contain less than the required number of enlisted men, or upon a duly ordered inspection, shall be found to have fallen below a proper standard of efficiency, the commanding general may, with consent of the President, either disband such company or consolidate it with any other company of the National Guard, and grant an honorable discharge to the supernumerary officers and noncommissioned officers produced by such consolidation. Officers and enlisted men discharged by reason of such disbanding or consolidation and at any time thereafter re-entering the service shall have allowed to them, as part of their term of service, the time already served. (Mar. 1, 1889, 25 Stat. 774, ch. 328, § 18; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 12; June 3, 1916, 39 Stat. 200, ch. 134, § 68.)

#### CODIFICATION

In first sentence, words “, with the consent of the President,” were inserted after “the commanding general may” on authority of a proviso in § 68 of act June 3, 1916, cited as one of the sources of this section, which read: “*Provided*, That no organization of the National Guard, members of which shall be entitled to and shall have received compensation under the provisions of this act, shall be disbanded without the consent of the President, nor, without such consent, shall the commissioned or enlisted strength of any such organization be reduced below the minimum that shall be prescribed therefor by the President.” Section 68 was repealed in its entirety by act Aug. 10, 1956, 70A Stat. 641, ch. 1041, § 53, and, including the quoted proviso, is now covered by 32 U.S.C. § 104. See, particularly, subsec. (f) thereof.

Section 14 of act Mar. 1, 1889, 25 Stat. 774, ch. 328, fixed the minimum number of enlisted men in any company at forty. That section was repealed by act Feb. 18, 1909, 35 Stat. 630, ch. 146. It was considered that § 11 of act Mar. 1, 1889, 25 Stat. 774, as amended by act Feb. 18, 1909, 35 Stat. 629, which related to composition of the National Guard, was intended to supersede repealed § 14, but § 11 was later superseded by § 60 of act June 3, 1916, 39 Stat. 197, ch. 134 (National Defense Act). The latter, however, which was formerly classified to § 39-107 and to 32 U.S.C. former § 5, has been repealed and is now covered by 32 U.S.C. § 104. See note under former § 39-107.

#### AMENDMENTS

1916—Act June 3, 1916, provided that “no organization of the National Guard \* \* \* shall be disbanded without the consent of the President, nor, without such consent, shall the commissioned or enlisted strength of any such organization be reduced below the minimum that shall be prescribed therefor by the President.”

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 18 to 12.

#### CROSS REFERENCE

Disbanding of National Guard organizations, consent of President, see 32 U.S.C. § 104.

### § 39-112. President to be Commander-in-Chief.

The President of the United States shall be the commander-in-chief of the militia of the District of Columbia. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 6.)

#### CROSS REFERENCES

See U.S. Code, title 32.

Soldiers' and Sailors' Civil Relief Act of 1940, see 50 U.S.C. App., § 501 et seq.

## Chapter 2.—COMMISSIONED OFFICERS

### Sec.

- 39-201. Commanding general—Appointment and removal—Rank.
- 39-202. Staff officers—Appointment and removal—Non-commissioned staff.
- 39-203. Qualifications of staff officers—Tenure—Vacancies.
- 39-204. Detail for adjutant-general.
- 39-205. Omitted.
- 39-206. Officers—Appointment—Oath.
- 39-207. Officers of staff departments—Appointment—Examination.
- 39-208. Vacancies above grade of second lieutenant—How filled.
- 39-209. Appointments to grade of second lieutenant.
- 39-210. Examinations for promotion—Retirement for disability—Suspension for failure to appear.
- 39-211. Examinations for second lieutenants.
- 39-212. Special examination of officer's capability—Certificate to President.
- 39-213. Retirement after ten years' service—Increased rank—Retirement at sixty-four years of age—Wearing uniform after retirement—Service on military boards—Pay and allowances—Retirement on recommendation of commanding general.
- 39-214. Discharge of commissioned officer.

### § 39-201. Commanding general—Appointment and removal—Rank.

(a) There shall be appointed and commissioned by the President of the United States a commanding general of the militia of the District of Columbia with the rank of brigadier-general, or major general, who shall hold office until his successor is appointed and qualified, but may be removed at any time by the President.

(b) Except as provided in subsection (c), any person serving as the commanding general of the militia of the District of Columbia shall be considered to be an employee of the Department of Defense, and of the United States, within the meaning of section 2105 of title 5, United States Code.

(c) Any officer of the Armed Forces of the United States who, while serving on active duty, is detailed to serve as commanding general of the militia of the District of Columbia shall, while so detailed, be entitled to receive only the pay and allowances to which he is entitled as an officer of the Armed Forces. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 7; Sept. 2, 1957, 71 Stat. 596, Pub. L. 85-270, § 1; June 30, 1970, Pub. L. 91-297, title V, § 501(a), 84 Stat. 366.)

#### CODIFICATION

Act Feb. 18, 1909, 35 Stat. 629, ch. 146, amended act Mar. 1, 1889, 25 Stat. 772, ch. 328. Some of the sections of the 1889 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1889 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1889 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

#### AMENDMENTS

1970—Section 501(a) of Pub. L. 91-297 inserted the designation “(a)” at the beginning of the section and added subsections (b) and (c).

1957—Section 1 of Pub. L. 85-270 inserted “or major general.”

#### EFFECTIVE DATE OF 1970 AMENDMENT

Section 501(c) of Pub. L. 91-297 provided: “The amendment made by this section [to sec. 39-201] shall take



effect on the first day of the first pay period beginning on or after the date of enactment of this title [June 30, 1970]."

## CROSS REFERENCES

See U.S. Code, title 32.

Power to make rules and regulations, see § 39-905.  
President as Commander-in-Chief, see § 39-112.

### § 39-202. Staff officers—Appointment and removal—Noncommissioned staff.

The staff of the militia of the District of Columbia shall be appointed and commissioned by the President. It shall consist of one adjutant-general, one inspector-general, one quartermaster-general, one commissary-general, one chief of ordnance, one chief engineer, one surgeon-general, one judge-advocate-general, and one inspector-general of rifle practice each with the rank of major; and four aids-de-camp, each with the rank of captain. The commanding general may appoint a noncommissioned staff of the militia, to consist of one sergeant-major, one quartermaster-sergeant, one commissary sergeant, one ordnance sergeant, two staff sergeants, one hospital steward, one color sergeant, and one sergeant bugler. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 8; June 3, 1916, 39 Stat. 199, ch. 134, § 66.)

## CODIFICATION

As enacted by the act of Mar. 1, 1889, this section, after "President" at end of first sentence, contained the additional words: ", and hold office until their successors are appointed and qualified, but may be removed at any time by the President"; and, after "adjutant-general," near beginning of second sentence, contained the words: "with the rank of lieutenant colonel." These words were omitted from this section because apparently affected by a proviso in § 66 of act June 3, 1916, cited as one of the sources hereof, which read: "Provided, That the adjutants general of the Territories and of the District of Columbia shall be appointed by the President with such rank and qualifications as he may prescribe, and each adjutant general for a Territory shall be a citizen of the Territory for which he is appointed," and which was classified to 32 U.S.C. former § 12. § 66 of act June 3, 1916 was repealed in its entirety by act Aug. 10, 1956, 70A Stat. 641, ch. 1041, § 53, and is now covered by 32 U.S.C. § 314. See, particularly, subsec. (b) thereof.

## CROSS REFERENCES

See U.S. Code, title 32.

Date of commissions, see § 39-902.

General provision as to duties of officers, see § 39-901.  
Noncommissioned officers, see § 39-301.

### § 39-203. Qualifications of staff officers—Tenure—Vacancies.

It is hereby provided that staff officers, including officers of the pay, inspection, subsistence, and medical departments, appointed in the National Guard of the District of Columbia, shall have had previous military experience and shall hold their positions until they shall have reached the age of sixty-four years, unless retired prior to that time by reason of resignation, disability, or for cause to be determined by a court-martial legally convened for that purpose, and that vacancies among said officers shall be filled by appointment from the officers of the National Guard of the District of Columbia. (July 11, 1919, 41 Stat. 127, ch. 8.)

## CODIFICATION

The paragraph of act July 11, 1919, 41 Stat. 127, ch. 8, classified to this section, contained an introductory clause as follows: "That to comply with the provisions of section 110, of the act entitled 'An Act for making further and more effectual provision for the national defense, and

for other purposes,' approved June 3, 1916 [39 Stat. 209, ch. 134], it is hereby provided that staff officers" [etc.]. § 110 of act June 3, 1916, was repealed by act Aug. 10, 1956, 70A Stat. 641, ch. 1041, § 53, and is now covered by 32 U.S.C. §§ 303, 322, 323, 710; see, also, 31 U.S.C. § 698a, and 37 U.S.C. §§ 201, 203, 204, 206, 402, 414-417, 301, 309, 1002.

## CROSS REFERENCE

See U.S. Code, title 32.

### § 39-204. Detail for adjutant-general.

The President may assign an officer of the army to act as adjutant-general of the militia of the District of Columbia, who, while so assigned, shall be commissioned as such and be subject to the orders of the commanding general and the provisions of this title: *Provided, however*, That the officer so assigned shall receive no other pay or emolument than that to which his rank in the army entitles him when on detached service. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 9.)

## CROSS REFERENCE

See U.S. Code, title 32.

### § 39-205. Omitted.

## CODIFICATION

Section, as enacted by act June 6, 1900, 31 Stat. 671, ch. 811, which was also classified to 10 U.S.C. former § 998, provided that the "President of the United States may detail as adjutant-general of the District of Columbia Militia any retired officer of the Army who may be nominated to the President by the brigadier-general commanding the District of Columbia Militia, said retired officer while so detailed to have the active service pay and allowances of his rank in the Regular Army." Although it was amended by act Sept. 2, 1957, 71 Stat. 596, Pub. L. 85-270, § 2, to substitute "commanding general of" for "brigadier-general commanding", it previously had been repealed by act Aug. 10, 1956, 70A Stat. 641, ch. 1041, § 53, having since been covered by 32 U.S.C. § 314(c), which also uses the term "commanding general", rather than the prior term "brigadier-general". As it is considered that the amendment of this repealed section by act Sept. 2, 1957, was an oversight, and that in any event this section is now covered by 32 U.S.C. § 314(c), this section is omitted from this Code.

### § 39-206. Officers—Appointment—Oath.

All officers shall be commissioned by the President of the United States, on the recommendation of the commanding general. They shall be nominated as herein provided. No person commissioned as an officer shall assume such rank or enter upon the duties of the office to which he may be commissioned until he has accepted such commission and taken such oath or affirmation as may be prescribed. (Mar. 1, 1889, 25 Stat. 775, ch. 328, § 19; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 13.)

## AMENDMENT

1909—Act Feb. 18, 1909, added the words "on the recommendation of the commanding general" at the end of the first sentence, omitted from the second sentence the words "In time of peace, or when not in the service of the United States they shall be previously elected or."

## CROSS REFERENCE

See U.S. Code, title 32.

### § 39-207. Officers of staff departments—Appointment—Examination.

The officers of the staff departments, staff corps, and the organizations created by this chapter when organized, shall be nominated by the commanding general, subject to the examination required by law. (Mar. 1, 1889, 25 Stat. 775, ch. 328, §§ 20, 21; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 14.)



## AMENDMENT

1909—Act Feb. 18, 1909, amended section to read as set out in the text. As originally enacted it read as follows: "The staff officers of a regiment or battalion shall be nominated by the permanent commander thereof. Field officers of regiments or battalions shall be nominated by the commanding general. Captains and lieutenants of companies shall be elected by the written votes of the enlisted men of the respective companies."

## CROSS REFERENCE

See U.S. Code, title 32.

### § 39-208. Vacancies above grade of second lieutenant—How filled.

Vacancies occurring in the cavalry, coast artillery corps, field artillery, and infantry above the grade of second lieutenant shall, subject to the examination required by law, be filled by promotion according to seniority from the next lower grade in the troop, the separate company, the field battery, the separate battalion, and the regiment in which the vacancy occurs. (Mar. 1, 1889, 25 Stat. 775, ch. 328, § 22; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 15.)

## AMENDMENT

1909—Act Feb. 18, 1909, amended section to read as set out in the text. As originally enacted it read as follows: "Elections of officers shall be ordered and held under such regulations as may be prescribed by the commanding general."

## CROSS REFERENCE

See U.S. Code, title 32.

### § 39-209. Appointments to grade of second lieutenant.

All appointments to the grade of second lieutenant shall be from the enlisted men, under regulations prescribed by the commanding general, and subject to the examination required by law. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 630, ch. 146, § 16.)

## CROSS REFERENCE

See U.S. Code, title 32.

### § 39-210. Examinations for promotion—Retirement for disability—Suspension for failure to appear.

The commanding general is authorized to prescribe a system of examination to be conducted at such times anterior to the accruing of the right to promotion as may be best for the interest of the service. If any officer fails to appear for examination within thirty days after notification to so appear or fails to pass a satisfactory examination and is reported unfit for promotion, the officer next below him in rank, having passed said examination, shall receive the promotion: *And provided*, That should the officer fail in his physical examination and be found incapacitated for service by reason of physical disability contracted in the line of duty he shall be retired with the rank to which his seniority entitled him to be promoted; but if he should fail for any other reason he shall be suspended from promotion for ninety days, when he shall be reexamined, and in case of failure on such reexamination he shall be honorably discharged. (Mar. 1, 1889, 25 Stat. 775, ch. 328, § 23; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 17.)

## AMENDMENT

1909—Act Feb. 18, 1909, amended section to read as set out in the text. As originally enacted it read as follows: "Every person accepting an election or nomination as an officer shall appear before an examining board, to be appointed by the commanding general, which board shall examine said officer as to his military and other qualifica-

tions. If any officer shall fail to appear before the board of examination within thirty days after being notified, or shall fail to pass a satisfactory examination, the fact shall be certified by the board to the commanding general, who shall thereupon declare the election or nomination of such officer null and void. If, in the opinion of the board such officer is competent, and otherwise qualified, they shall certify the fact to the commanding general, who shall thereupon recommend him to the President for commission."

## CROSS REFERENCE

See U.S. Code, title 32.

### § 39-211. Examinations for second lieutenants.

The commanding general is authorized to prescribe a system of examination of enlisted men to determine their fitness for promotion to the grade of second lieutenant. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 630, ch. 146, § 18.)

## CROSS REFERENCE

See U.S. Code, title 32.

### § 39-212. Special examination of officer's capability—Certificate to President.

Whenever, in the opinion of the commanding general of the militia of the District of Columbia, an officer of the said militia has become incapacitated for the performance of duty for any reason, the commanding general shall submit the name of such officer to the Secretary of the Army, with a view to his being ordered before a board of examination, to be appointed by the Secretary of the Army, which board shall examine said officer as to his physical, mental, and military qualifications.

If any officer shall fail to appear before a board of examination so appointed within thirty days after being notified, or shall fail to pass a satisfactory examination, the fact shall be certified by the board to the commanding general, who shall forward the record of examination to the Secretary of the Army, with his recommendation thereon, for submission to the President. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 631, ch. 146, § 19.)

## CHANGE OF NAME

The title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, title 11. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted U.S. Code, Title 10, Armed Forces, which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

## CROSS REFERENCE

See U.S. Code, title 32.

## NOTES TO DECISIONS

## Federal recognition of officers

The withdrawal of federal recognition to an officer of the National Guard of the state does not terminate his status as a state officer. *Hurley v. United States ex rel. Gladman* (1931, 47 F. 2d 431, 60 App. D.C. 69).

### § 39-213. Retirement after ten years' service—Increased rank—Retirement at sixty-four years of age—Wearing uniform after retirement—Service on military boards—Pay and allowances—Retirement on recommendation of commanding general.

Any commissioned officer in the National Guard of the District of Columbia who shall have served as such in the National Guard of the District of Columbia for the continuous period of ten years may, upon



his own application, be placed by the President of the United States upon a retired list, which is hereby authorized, with the rank held by him at the time such application is made: *Provided, however*, That an officer so retired, who at the time of making such application has remained in the same grade for the continuous period of ten years, or whose services have been especially meritorious, may be retired with increased rank of one grade and shall, before being so retired, receive from the President of the United States the commission of the new grade: *Provided further*, That whenever any officer on the active list reaches the age of sixty-four years he shall be retired; with or without increase of rank in the discretion of the President of the United States. Retired officers on occasions of ceremony may, and when acting under orders, as hereinafter provided, shall wear the uniform of the highest rank attained by them in the military service of the United States, the militia of the States or Territories, or the National Guard of the District of Columbia. Retired officers shall be eligible to perform any military duty to the same extent as if not retired, and the commanding general may, in his discretion, by order, require them to serve upon military boards, courts of inquiry, and courts-martial, or to perform any other special or temporary duty, and for such service they shall receive the same pay and allowances as are provided by law for like service by officers on the active list of the National Guard of the District of Columbia. All retired officers shall be amenable to court-martial for military offenses to the same extent as if upon the active list of the National Guard of the District of Columbia. The names of all officers of retired rank shall be borne upon a separate roster, kept under the supervision of the adjutant-general. The commanding general may at any time recommend to the President of the United States and the President may retire any commissioned officer who shall have been ordered before a medical board consisting of at least three commissioned medical officers and upon whom such a board shall have made report showing such officer to be physically unable to properly perform the duties of his office. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 631, ch. 146, § 20.)

## CROSS REFERENCE

See U.S. Code, title 32.

## § 39-214. Discharge of commissioned officer.

A commissioned officer may be honorably discharged—

Upon tender of resignation;

Upon disbandment of the organization to which he belongs;

Upon report of a board of examination, or for failure to appear before such board when ordered.

He may be dismissed upon the sentence of a court-martial; conviction in a court of justice of an infamous offense. (Mar. 1, 1889, 25 Stat. 775, ch. 328, § 24; Feb. 18, 1909, 35 Stat. 631, ch. 146, § 21.)

## AMENDMENT

1909—Act Feb. 19, 1909, did not amend the text of this section, but changed the section number from 24 to 21.

## Chapter 3.—NONCOMMISSIONED OFFICERS

Sec.

39-301. Noncommissioned officers—Appointment—Reduction to ranks.

## § 39-301. Noncommissioned officers — Appointment—Reduction to ranks.

The commanding officers of regiments and battalions not part of regiments shall appoint and warrant the noncommissioned staff officers of their respective regiments or battalions, and they shall, in their discretion, warrant the noncommissioned officers of the companies of their respective regiments and battalions from the members thereof, upon the written nomination of the commanding officers of the companies, respectively. In troop, battery, and companies not part of a regiment or battalion and in the hospital corps the noncommissioned officers shall be warranted by the commanding officer of the brigade, in his discretion, from the members thereof, upon the written nomination of the commanding officer of the troop, battery, company, or hospital corps. The officer warranting a noncommissioned officer shall have power to reduce to the ranks, for good and sufficient reasons, the noncommissioned officers named in this section, but such as were enlisted as noncommissioned officers shall be discharged. Noncommissioned officers who shall be dropped vacate their positions. (Mar. 1, 1889, 25 Stat. 775, ch. 328, § 25; Feb. 18, 1909, 35 Stat. 631, ch. 146, § 22.)

## CODIFICATION

Act Feb. 18, 1909, 35 Stat. 629, ch. 146, amended act Mar. 1, 1889, 25 Stat. 772, ch. 328. Some of the sections of the 1889 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1889 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1889 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

## AMENDMENT

1909—Act Feb. 18, 1909, amended the section to read as set out in the text. As originally enacted it provided as follows: "Noncommissioned staff officers shall be appointed by the permanent commander of the organization to which they belong; and permanent commanders of battalions shall appoint the noncommissioned officers of companies, upon the written nomination of the respective captains; but they may withhold such appointment if, in their judgment, there be proper cause; noncommissioned officers of unattached companies shall be appointed by there [their] respective captains. The permanent commander of any battalion or unattached company may reduce to the ranks any company noncommissioned officers of his command."

## CROSS REFERENCES

See U.S. Code, title 32.

General provisions as to duties of officers, see § 39-901.

Noncommissioned staff of the militia, see § 39-202.

Officers generally, see § 39-201 et seq.

## Chapter 4.—ENLISTED PERSONNEL

Sec.

39-401 to 39-403. Repealed.

39-404. Discharge without honor.

39-405. Dishonorable discharge.

§§ 39-401 to 39-403. Repealed. Aug. 10, 1956, 70A Stat. 641, ch. 1041, § 53.

Section 39-401, acts June 3, 1916, 39 Stat. 200, ch. 134, § 69; July 11, 1919, 41 Stat. 127, ch. 8; June 4, 1920, 41 Stat. 781, ch. 227, subch. I, § 37; June 6, 1924, 43 Stat.



470, ch. 275, § 4; June 15, 1933, 48 Stat. 156, ch. 87, § 7; July 9, 1952, 66 Stat. 506, ch. 608, pt. VIII, § 806(a), which related to terms of enlistments in the National Guard and reenlistments, which superseded act Mar. 1, 1889, 25 Stat. 775, ch. 328, § 26, as amended by act Feb. 18, 1909, 35 Stat. 632, ch. 146, § 23, relating to the same subject, is now covered by 32 U.S.C. § 302.

Section 39-402, acts June 3, 1916, 39 Stat. 201, ch. 134, § 70; June 4, 1920, 41 Stat. 781, ch. 227, subch. I, § 38; June 15, 1933, 48 Stat. 156, ch. 87, § 8; June 19, 1935, 49 Stat. 391, ch. 277, § 3; July 9, 1952, 66 Stat. 506, ch. 608, pt. VIII, § 806(b), which related to enlistment contract and oath of enlistment, which superseded act Mar. 1, 1889, 25 Stat. 776, ch. 328, § 27, as amended by act Feb. 18, 1909, 35 Stat. 632, ch. 146, relating to the same subject, is now covered by 32 U.S.C. § 304.

Section 39-403, acts June 3, 1916, 39 Stat. 201, ch. 134, § 72; June 4, 1920, 41 Stat. 781, ch. 227, subch. I, § 40; June 15, 1933, 48 Stat. 157, ch. 87, § 10; July 9, 1952, 66 Stat. 507, ch. 608, pt. VIII, § 806(d), which related to form and classification of discharge of an enlisted man from National Guard, and discharges in time of peace, which superseded act Mar. 1, 1889, ch. 328, §§ 28, 30, as amended by Act Feb. 18, 1909, 35 Stat. 632, ch. 146, relating to the same subject, is now covered by 32 U.S.C. § 322.

#### NOTES TO DECISIONS UNDER PRIOR SECTION 39-401

##### In general

It is immaterial whether the arrest was made before or after the issue or the service of the writ to release minor son from military service. *Ex Parte Foley* (D.C. Ky. 1917, 243 F. 470).

Petitioner was not entitled to a discharge, and he could not be furloughed to the Reserve when he was in actual military service. *Ex Parte Roach* (D.C. Ala. 1917, 244 F. 625).

Effect of this section was at most to make the enlistment voidable by the parent. *Reed v. Cushman* (C.C.A. 1, 1918, 251 F. 872).

##### Contract of enlistment

Fact that minor is under 21 when he enlisted, or that the written consent of his parent or guardian was not given to such enlistment, or that he was an alien, who had not made a declaration of his intention to become a citizen, or that he had a mother dependent upon him for support does not make his contract of enlistment void. *Ex Parte Dostal* (D.C. Ohio 1917, 243 F. 664).

##### Enlisted into military service

It was not intended that the provision containing the expression "enlisted or mustered into the military service of the United States" should apply to only one branch of that service. *Hoskins v. Dickerson* (C.C.A. 5, 1917, 239 F. 275).

##### Trial by military authorities

Where petitioners were acting, under orders of the President in the discharge of a high duty, and might be ordered at any time to perform active military service, the State had no right to try the men for offense, but it was a case for the military authorities. *In re Wulzen* (D.C. Ohio 1916, 235 F. 362).

#### § 39-404. Discharge without honor.

An enlisted man may be discharged without honor at any time by order of the commanding general on account of fraudulent enlistment, or on account of his being continuously absent without leave from his command for a period of not less than three months. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 632, ch. 146, § 26.)

##### CROSS REFERENCE

See U.S. Code, title 32.

#### § 39-405. Dishonorable discharge.

An enlisted man shall be dishonorably discharged by order of the commanding general upon conviction of felony in a civil court; upon discovery of re-enlistment after previous dishonorable discharge;

or to carry out a sentence of a court-martial. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 632, ch. 146, § 27.)

##### CROSS REFERENCE

See U.S. Code, title 32.

### Chapter 5.—ARMAMENT, EQUIPMENT, AND SUPPLIES

#### Sec.

- 39-501. Uniform, arms, and equipment—Issuance by Department of the Army.
- 39-502. Regulations for reissue of equipment by commanding general.
- 39-503. Personal liability for equipment—Determination of value of lost equipment.
- 39-504. Returns of equipment.
- 39-505. Penalty for selling, pawning, injuring, or retaining public property.
- 39-506. Transfer of property on promotion, retirement, or dismissal.
- 39-507. Failure to transfer property—Surveying officer—Appointment—Duties.
- 39-508. Defective accounts—Surveying officer to fix responsibility.
- 39-509. Surveying officer to be appointed upon death or desertion of accounting officer.
- 39-510. Liability of officer or his estate until accounts are found correct.
- 39-511. Liability of officer's estate for property lost, injured, or destroyed.
- 39-512. Distinctive uniforms.
- 39-513. Right to own personal property—Actions for injuries.
- 39-514. Armories to be provided.
- 39-515. Annual inspections.
- 39-516. Use of Washington Barracks.
- 39-517. Purchase of supplies.

#### § 39-501. Uniform, arms, and equipment—Issuance by Department of the Army.

The uniforms, arms, and equipments of the National Guard shall as far as practicable be the same as prescribed and furnished to the Regular Army. Every organization of the National Guard shall be provided with such ordnance and ordnance stores, clothing, camp and garrison equipage, quartermaster's stores, medical supplies, and other military stores, as may be necessary for the proper training and instruction of the force and for the proper performance of the duties required under this chapter. Such property shall be issued from the stores and supplies appropriated for the use of the Army, upon the approval and by the direction of the Secretary of the Army, to the commanding general, upon his requisitions for the same. The property so issued shall remain and continue to be the property of the United States, and shall be accounted for by the commanding general at such times, in manner, and on such forms as the Secretary of the Army may require. (Mar. 1, 1889, 25 Stat. 776, ch. 328, § 31; Feb. 18, 1909, 35 Stat. 632, ch. 146, § 29.)

##### CODIFICATION

Act Feb. 18, 1909, 35 Stat. 629, ch. 146, amended act Mar. 1, 1889, 25 Stat. 772, ch. 328. Some of the sections of the 1889 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1889 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1889 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

Section 36 of act Mar. 1, 1889, 25 Stat. 777, ch. 328, which was renumbered "39", without further amendment,



by act Feb. 18, 1909, 35 Stat. 634, ch. 146, provided: "That property issued or provided under the provisions of this act which becomes unfit for use, and is condemned as unserviceable shall be reported by the commanding general to the Secretary of War, and shall be disposed of as may be directed by him." That section is deemed to have been superseded by act June 3, 1916, 39 Stat. 204 (National Defense Act of 1916), ch. 134, § 87, as amended by acts June 3, 1924, 43 Stat. 363, ch. 244, § 1; Feb. 28, 1925, 43 Stat. 1077, ch. 371, § 4; Aug. 27, 1954, 68 Stat. 880, ch. 1014, which was repealed by act Aug. 10, 1956, 70A Stat. 641, ch. 1041, § 53, and is now covered by 32 U.S.C. § 710.

## AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 31 to 29.

## CHANGE OF NAME

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, title 11. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted U.S. Code, Title 10 Armed Forces, which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

## CROSS REFERENCE

See U.S. Code, title 32.

## NOTES TO DECISIONS

## Rental of armory

Decision of the District of Columbia National Guard Armory Board refusing to rent armory to organization on ground that organization would be at the vortex of any civil disturbance that might arise necessitating mobilization of the National Guard and its direction from the armory is reasonable, and Board is not required to repeat past mistakes of renting armory to groups at time when Guard was mobilized, and the refusal to rent armory did not deny free speech and assembly or equal protection of the law. *A. Jones et al. v. District of Columbia Armory Board et al.* (1970, 438 F. 2d 138, 141 U.S. App. D.C. 297).

## § 39-502. Regulations for reissue of equipment by commanding general.

The commanding general may transfer all public property, received by him for the use of the National Guard under the provisions of this chapter, to the several departmental officers of the general staff, and may make and prescribe regulations for its issue by them, and for its care and preservation by the officers or soldiers to whom issued. (Mar. 1, 1889, 25 Stat. 776, ch. 328, § 32; Feb. 18, 1909, 35 Stat. 632, ch. 146, § 30.)

## AMENDMENT

1909—Act Feb. 18, 1909, made no change in the text of this section, but changed the section number from 32 to 30.

## CROSS REFERENCE

See U.S. Code, title 32.

## § 39-503. Personal liability for equipment—Determination of value of lost equipment.

Every officer and enlisted man to whom property of the United States has been issued shall be personally responsible to the United States for such property, and no one shall be relieved from such responsibility except it be shown to the satisfaction of the commanding general that the loss or destruction of such property was unavoidable and in no way the fault of the person responsible for the same; and in all other cases the value of the property lost or

destroyed shall be charged against the person at fault or to the organization to which it has been issued, and such person or organization, if not relieved from such charge by the commanding general, shall pay the value of such property to the Quartermaster-General within one year after such loss or destruction. The value of lost or destroyed property and the person or organization to be charged therewith shall be determined by a board to consist of an inspector of the staff of the commanding general of the militia and the commanding officer of the organization in which such property is lost. In case of disagreement such value shall be fixed by the commanding general of the militia. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 632, ch. 146, § 31.)

## CROSS REFERENCES

See U.S. Code, title 32.

Disposition of funds, see § 39-806.

## § 39-504. Returns of equipment.

Every officer receiving public property for military use shall be accountable for the articles so received by him, and shall make returns of such property at such times, in such manner, and on such forms as may be prescribed. He shall be liable to trial by court-martial for neglect of duty, and also make good to the United States the value of all such property defaced, injured, destroyed or lost, by any neglect or default on his part, to be recovered in an action of tort, or by any other action at law, to be instituted by the judge-advocate-general of the militia at the order of the commanding general. All money received on account of loss or damages shall be paid in the treasury of the United States, and shall be accounted for by the commanding general in his returns to the Secretary of the Army. (Mar. 1, 1889, 25 Stat. 776, ch. 328, § 33; Feb. 18, 1909, 35 Stat. 633, ch. 146, § 32.)

## AMENDMENT

1909—Act Feb. 18, 1909, did not change the text of this section, but changed the section number from 33 to 32.

## CHANGE OF NAME

The title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, title 11. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted U.S. Code, Title 10, Armed Forces, which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

## CROSS REFERENCES

See U.S. Code, title 32.

Disposition of funds, see § 39-806.

## § 39-505. Penalty for selling, pawning, injuring, or retaining public property.

Any officer or soldier who shall sell, dispose of, pawn or pledge, wilfully destroy or injure, or retain after proper demand made, any public property issued under the provisions of this title, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment for not exceeding two months, or by a fine not exceeding one hundred dollars, or by both; and it is hereby made the duty of the judge of the Superior Court of the District of Columbia,



upon information filed or complaint, made under oath, to issue process for the arrest of the offender, and to cause him to be brought before the Superior Court of the District of Columbia to be dealt with according to the provisions of this section. (Mar. 1, 1889, 25 Stat. 777, ch. 328, § 34; Feb. 18, 1909, 35 Stat. 633, ch. 146, § 33; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Pub. L. 91-358, amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

1909—Act Feb. 18, 1909, did not change the text of this section, but changed the section number from 34 to 33.

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

"Municipal court" was substituted for "police court" to conform to act Apr 1, 1942, which consolidated the police court and the municipal court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

#### CROSS REFERENCE

See U.S. Code, title 32.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 39-511.

### § 39-506. Transfer of property on promotion, retirement, or dismissal.

Upon the promotion, tender of resignation, retirement, or dismissal of any officer who is responsible or accountable for public property, the commanding general of the militia shall designate an officer to accept and receipt for such property, and direct the officer responsible or accountable therefor to make prompt transfer of all property remaining on hand; and it shall be the duty of the officer responsible or accountable to proceed at once to complete such transfer and close his accounts without delay. (Feb. 18, 1909, 35 Stat. 633, ch. 146, § 34.)

#### AMENDMENT

The 1909 amendment repealed § 35 of the 1889 act, and inserted in lieu thereof §§ 34-38 (§§ 39-506 to 39-510). The original § 35 provided as follows: "Until an officer, or his legal representative shall have received notice that the property accounts of such officer have been examined and found correct, the liability of such officer, or of his estate, for public property for which he is or may have been responsible shall be in no way affected by resignation, discharge, change in official position, or death. Upon the death or desertion of an officer responsible for public property his immediate commander shall at once cause the property for which such officer was responsible to be collected, and a correct inventory made by actual count and examination; which inventory shall be forwarded to the commanding general, in order that any deficiency may be made good from the estate of the deceased or deserting officer; compensation for such deficiency may be recovered in the manner provided in § 34 [§ 39-505]."

#### CROSS REFERENCE

See U.S. Code, title 32.

### § 39-507. Failure to transfer property—Surveying officer—Appointment—Duties.

Should any officer responsible or accountable for public property, after receiving instructions to trans-

fer the same as aforesaid, fail to make proper transfer as directed within thirty days or any authorized extension of that period, the heads of the respective staff departments exercising supervision over or control of said property shall report the facts to the adjutant-general for the action of the commanding general of the militia. Upon receiving such a report the commanding general may in his discretion direct that a surveying officer be appointed, and it shall be the duty of such surveying officer to ascertain and verify all public property which the delinquent officer had on hand and certify the same to the officer designated to receive it, who will immediately take up all property so certified and receipt for the same to the head of the proper staff department. The surveying officer will then proceed to determine and fix the responsibility for the loss or destruction of any of the foregoing property which is not found or transferred as directed. (Feb. 18, 1909, 35 Stat. 633, ch. 146, § 35.)

#### AMENDMENT

See amendment note to § 39-506.

#### CROSS REFERENCE

See U.S. Code, title 32.

### § 39-508. Defective accounts—Surveying officer to fix responsibility.

Should any officer responsible or accountable for public property, after receiving instructions to transfer the same and close his accounts as aforesaid, fail to close his accounts to the satisfaction of the commanding general, the heads of the respective staff departments exercising supervision over or control of said property will report the facts to the adjutant-general for the action of the commanding general of the militia. Upon receiving such a report, the commanding general may, in his discretion, direct that a surveying officer be appointed to determine and fix the responsibility for the loss or destruction of any public property for which said officer is responsible or accountable and which he has failed to transfer to the officer designated to receive the same. (Feb. 18, 1909, 35 Stat. 633, ch. 146, § 36.)

#### AMENDMENT

See amendment note to § 39-506.

#### CROSS REFERENCE

See U.S. Code, title 32.

### § 39-509. Surveying officer to be appointed upon death or desertion of accounting officer.

In the event of the death or desertion of any officer accountable for public property the commanding general shall direct that a surveying officer be appointed, and also designate an officer to receive such property. Said surveying officer shall ascertain and verify all public property which the deceased or deserting officer had on hand at the time of his death or desertion and certify the same to the officer designated to receive it, who will immediately take up all property so certified and receipt for the same to the heads of the proper staff departments. The surveying officer will then proceed to determine and fix the responsibility for the loss or destruction of any of the foregoing property which is not found or transferred as directed. (Feb. 18, 1909, 35 Stat. 633, ch. 146, § 37.)



## AMENDMENT

See amendment note to § 39-506.

## CROSS REFERENCE

See U.S. Code, title 32.

**§ 39-510. Liability of officer or his estate until accounts are found correct.**

Until an officer or his legal representative shall have received notice that the property accounts of such officer have been examined and found correct the liability of such officer or of his estate for public property for which he is or may have been responsible or accountable shall be in no way affected by resignation, discharge, change in official position, desertion, or death. (Feb. 18, 1909, 35 Stat. 633, ch. 146, § 38.)

## AMENDMENT

See amendment note to § 39-506.

## CROSS REFERENCE

See U.S. Code, title 32.

**§ 39-511. Liability of officer's estate for property lost, injured, or destroyed.**

Compensation for any public property defaced, injured, lost, or destroyed through the neglect or default of a deceased officer may be recovered from his estate in the manner provided in section 39-505. (Feb. 18, 1909, 35 Stat. 633, ch. 146, § 38.)

## AMENDMENT

See amendment note to § 39-506.

## CROSS REFERENCES

See U.S. Code, title 32.

Disposition of funds, see § 39-806.

**§ 39-512. Distinctive uniforms.**

Any organization of the active militia may, with the approval of the commanding general, and at its own expense, adopt any other uniform than that issued to it; but such uniform shall not be worn when such organization is on duty under the orders of the commanding general except by his permission. (Mar. 1, 1889, 25 Stat. 777, ch. 328, § 37; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 40.)

## AMENDMENT

1909—Act Feb. 18, 1909, did not change the text of this section but changed the section number from 37 to 40.

## CROSS REFERENCE

See U.S. Code, title 32.

**§ 39-513. Right to own personal property—Actions for injuries.**

Organizations of the National Guard shall have the right to own and keep personal property, which shall belong to and be under the control of the active members thereof; and the commanding officer of any organization may recover for its use any debts or effects belonging to it, or damages for injury to such property; action for such recovery to be brought in the name of such commanding officer, before the court in the District of Columbia having jurisdiction of the amount in controversy, and no suit or complaint pending in his name shall be abated by his ceasing to be commanding officer of the organization; but, upon the motion of the commander succeeding him, such commander shall be admitted to prosecute

the suit or complaint in like manner and with like effect as if it had been originally commenced by him. (Mar. 1, 1889, 25 Stat. 777, ch. 328, § 38; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 41; Feb. 17, 1909, 35 Stat. 623, ch. 134; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 157(i), 84 Stat. 575.)

## AMENDMENTS

1970—Section 157(i) of Act of July 29, 1970, Public Law 91-358 amended section by striking out "any justice of the peace, with the right of appeals to the United States District Court for the District of Columbia, or before the United States District Court for the District of Columbia" and inserting in lieu thereof "the court in the District of Columbia having jurisdiction of the amount in controversy."

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 38 to 41.

## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

## CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

"Municipal court" was substituted for "justice of the peace" to conform to act Feb. 17, 1909.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

## CROSS REFERENCES

Jurisdiction of courts, see §§ 11-501, 11-921.

See U.S. Code, title 32.

**§ 39-514. Armories to be provided.**

The quartermaster-general of the militia shall provide, by rental or otherwise, such armories for the National Guard as may be allowed and directed by the commanding general. He shall also provide each organization with such lockers, closets, gun racks, and cases or desks as may be necessary for the care, preservation, and safe-keeping of the arms, equipments, uniforms, records, and other militia property in their possession. He shall also provide suitable rooms for the offices of the commanding general and staff, for the keeping of books, the transaction of business, and the instruction of officers, and also suitable places for the storage and safe-keeping of public property. (Mar. 1, 1889, 25 Stat. 777, ch. 328, § 39; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 42.)

## AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 39 to 42.

## CROSS REFERENCE

See U.S. Code, title 32.

## NOTES TO DECISIONS

## Rental of armory

Decision of the District of Columbia National Guard Armory Board refusing to rent armory to organization on ground that organization would be at the vortex of any civil disturbance that might arise necessitating mobilization of the National Guard and its direction from the



armory is reasonable, and Board is not required to repeat past mistakes of renting armory to groups at time when Guard was mobilized, and the refusal to rent armory did not deny free speech and assembly or equal protection of the law. *A. Jones et al. v. District of Columbia Armory Board et al.* (1970, 438 F. 2d 138, 141 U.S. App. D.C. 297).

#### § 39-515. Annual inspections.

An annual inspection and muster of each organization of the National Guard, and an inspection of their armories and of public property in their possession, shall be made at such times and places as the commanding general may order and direct. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 42; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 45.)

##### AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 42 to 45.

##### CROSS REFERENCE

See U.S. Code, title 32.

#### § 39-516. Use of Washington Barracks.

National Guard shall have the use of the drill grounds and rifle range at the Washington Barracks, subject to the approval of the Secretary of the Army, and the commanding general of the militia shall provide such additional targets and accessories as may be necessary for the use of the militia. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 44; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 47.)

##### AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 44 to 47.

##### CHANGE OF NAME

The title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, title 11. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted U.S. Code, Title 10, Armed Forces, which in sections 3011-3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

##### CROSS REFERENCE

See U.S. Code, title 32.

#### § 39-517. Purchase of supplies.

The purchase of supplies and the procurement of services for all branches of the District of Columbia militia service may be made in open market, in the manner common among business men, when the aggregate of the amount required does not exceed one hundred dollars. (May 26, 1908, 35 Stat. 308, ch. 198, § 1.)

##### CROSS REFERENCE

Expenses and allowances, see § 39-802 et seq.

### Chapter 6.—ACTIVE MILITARY DUTY

#### Sec.

- 39-601. Drills to be military duty.
- 39-602. Prescribing drills.
- 39-603. Suppression of riots.
- 39-604. Cause for being excused from duty when militia is ordered into service of United States or to suppress riots.
- 39-605. Parades to have right of way.
- 39-606. Rules for parades and encampments.
- 39-607. Camp duty.
- 39-608. Repealed.

### PRESIDENTIAL EXECUTIVE ORDER 11485

#### SUPERVISION AND CONTROL OF THE NATIONAL GUARD OF THE DISTRICT OF COLUMBIA

Ex. Ord. No. 11485, Oct. 1, 1969, 34 F.R. 15411, 15443

By virtue of the authority vested in me as President of the United States and Commander-in-Chief of the Armed Forces of the United States and the National Guard of the District of Columbia under the Constitution and laws of the United States, including section 6 of the Act of March 1, 1889, 25 Stat. 773 (District of Columbia Code, sec. 39-112), and section 110 of title 32 and section 301 of title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. The Secretary of Defense, except as provided in section 3, is authorized and directed to supervise, administer and control the Army National Guard and the Air National Guard of the District of Columbia (hereinafter "National Guard") while in militia status. The Commanding General of the National Guard shall report to the Secretary of Defense or to an official of the Department of Defense designated by the Secretary on all matters pertaining to the National Guard. Through the Commanding General, the Secretary of Defense shall command the military operations, including training, parades and other duty, of the National Guard while in militia status. Subject to the direction of the President as Commander-in-Chief, the Secretary may order out the National Guard under title 39 of the District of Columbia Code to aid the civil authorities of the District of Columbia.

SEC. 2. The Attorney General is responsible for: (1) advising the President with respect to the alternatives available pursuant to law for the use of the National Guard to aid the civil authorities of the District of Columbia; and (2) for establishing after consultation with the Secretary of Defense law enforcement policies to be observed by the military forces in the event the National Guard is used in its militia status to aid civil authorities of the District of Columbia.

SEC. 3. The Commanding General and the Adjutant General of the National Guard will be appointed by the President. The Secretary of Defense, after consultation with the Attorney General, shall at such times as may be appropriate submit to the President recommendations with respect to such appointments.

SEC. 4. The Secretary of Defense and the Attorney General are authorized to delegate to subordinate officials of their respective Departments any of the authority conferred upon them by this order.

SEC. 5. Executive Order No. 10030 of January 26, 1949, is hereby superseded.

#### § 39-601. Drills to be military duty.

Any drill, parade, encampment or duty that is required, ordered, or authorized to be performed under the provisions of this title, shall be deemed to be a military duty, and while on such duty every officer and enlisted man of the National Guard shall be subject to the lawful orders of his superior officers, and for any military offense may be put and kept under arrest or under guard for a time not extending beyond the term of service for which he is then ordered. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 40; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 43.)

##### CODIFICATION

Act Feb. 18, 1909, 35 Stat. 629, ch. 146, amended act Mar. 1, 1889, 25 Stat. 772, ch. 328. Some of the sections of the 1889 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1889 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1889 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.



## AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section but changed the section number from 40 to 43.

## CROSS REFERENCES

See U.S. Code, title 32.  
 Right-of-way, see § 39-605.  
 Rules of parade or encampment, see § 39-606.  
 Soldiers' and Sailors' Civil Relief Act of 1940, see 50 U.S.C. App., § 501 et seq.  
 System of discipline and field exercises, see § 39-904.

## § 39-602. Prescribing drills.

The commanding general shall prescribe such stated drills and parades as he may deem necessary for the instruction of the National Guard, and may order out any portion of the National Guard for such drills, inspections, parades, escort, or other duties, as he may deem proper. The commanding officer of any regiment, battalion or company may also assemble his command, or any part thereof, in the evening for drill, instruction, or other business, as he may deem expedient; but no parade shall be performed by any regiment, battalion, company, or part thereof, without the permission of the commanding general. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 41; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 44.)

## AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 41 to 44.

## CROSS REFERENCE

See U.S. Code, title 32.

## § 39-603. Suppression of riots.

When there is in the District of Columbia a tumult, riot, mob, or a body of men acting together by force with attempt to commit a felony or to offer violence to persons or property, or by force or violence to break and resist the laws, or when such tumult, riot, or mob is threatened, it shall be lawful for the Commissioner of the District of Columbia, or for the United States marshal for the District of Columbia, to call on the commander-in-chief to aid them in suppressing such violence and enforcing the laws; the commander-in-chief shall thereupon order out so much and such portion of the militia as he may deem necessary to suppress the same, and no member thereof who shall be thus ordered out by proper authority for any such duty shall be liable to civil or criminal prosecution for any act done in the discharge of his military duty. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 45; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 48.)

## AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of the 1899 act, but changed the section number from 45 to 48.

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## CROSS REFERENCES

See U.S. Code, title 32.  
 Enrolled militia subject to call, see § 39-104.

## § 39-604. Cause for being excused from duty when militia is ordered into service of United States or to suppress riots.

No officer or soldier of the National Guard, when ordered on duty to aid the civil authorities, or when ordered into the service of the United States in

obedience to the call or order of the President, shall be excused from such duty except upon the certificate of the surgeon of his command of physical disability, such certificate to be presented to the commanding general in case of an officer, or to his company commander in case of a soldier. If such officer or soldier fail to furnish such excuse he shall be tried and punished by a court-martial. For absence from any other military duty required or ordered under the provisions of this chapter the penalty shall be such as may be prescribed by the commanding general, or the by-laws of the organization to which the officer or soldier belongs. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 46; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 49.)

## AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 46 to 49.

## CROSS REFERENCE

See U.S. Code, title 32.

## § 39-605. Parades to have right of way.

The United States forces or troops, or any portion of the militia, parading, or performing any duty according to law, shall have the right of way in any street or highway through which they may pass: *Provided*, That the carriage of the United States mails, the legitimate functions of the police, and the progress and operations of fire engines and fire departments shall not be interfered with thereby. (Mar. 1, 1889, 25 Stat. 779, ch. 328, § 47; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 50.)

## AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 47 to 50.

## CROSS REFERENCE

See U.S. Code, title 32.

## § 39-606. Rules for parades and encampments.

Every commanding officer, when on duty, may ascertain and fix necessary bounds and limits to his parade or encampment. Whoever intrudes within the limits of the parade or encampment after being forbidden, or whoever shall interrupt, molest, or obstruct any officer or soldier while on duty, may be put and kept under guard until the parade, encampment, or duty be concluded; and the commanding officer may turn over such person to any police officer, and said police officer is required to detain him in custody for examination or trial before the Superior Court of the District of Columbia, and the judge thereof may punish such offense by a fine not exceeding twenty-five dollars. (Mar. 1, 1889, 25 Stat. 779, ch. 328, § 48; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 51; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

## AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Pub. L. 91-358, amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 48 to 51.

## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.



## CHANGE OF NAME

"Municipal Court" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the police court and the municipal court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

## CROSS REFERENCE

See U.S. Code, title 32.

## § 39-607. Camp duty.

The National Guard shall perform not less than six consecutive days of camp duty in each year, at such time as may be ordered by the commanding general; and the quartermaster-general of the militia, subject to the approval of the commanding general, shall provide, by rental or otherwise, a suitable camp ground for the annual encampment of the militia, make the necessary provisions thereon for the encampment, and provide necessary transportation to and from the same for baggage and supplies. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 43; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 46.)

## AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 43 to 46.

## CROSS REFERENCE

Required drills and field exercises and participation therein, see 32 U.S.C. §§ 502, 503.

## § 39-608. Repealed. Sept. 6, 1966, Pub. L. 89-554, § 8(a), 80 Stat. 632; Oct. 22, 1968, Pub. L. 90-623, § 7(a)(1) 82 Stat. 1315.

The first sentence of this former section, act Mar. 1, 1889, 25 Stat. 779, ch. 328, § 49, renumbered as § 52 of such act, without further amendment, by act Feb. 18, 1909, 35 Stat. 629 (634), ch. 146, provided for leaves of absence for officers and employees of the United States and District of Columbia, who were members of the National Guard, to attend parades and encampments. It was repealed as § "49" of the 1889 act, without citation of said amendatory act of Feb. 18, 1909, by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a). Prior to the repeal, such sentence had been superseded by act Aug. 10, 1956, 70 Stat. 632, ch. 1041, § 29, [See however, p. 5 of Report No. 1721, issued in connection with H.R. 17864, now Pub. L. 90-623 in relation to enactment of title 5 U.S.C. § 6323(c).] which, in turn, was also repealed by said § 8(a) of act Sept. 6, 1966, and is now covered by 5 U.S.C. §§ 502, 2105, 3551, 5534, 6323.

The second (and final) sentence of this former section, which was from act July 1, 1902, 32 Stat. 615, ch. 1352, and which provided that this former section should be construed as covering all days of service which the National Guard, or any portion thereof, might be ordered to perform by the commanding general, was repealed by act of Oct. 22, 1968, Pub. L. 90-623. The entire subject matter was reenacted by section 1(17)(B) of the same act as section 5 U.S.C. § 6323(c).

## Chapter 7.—COURTS-MARTIAL

Sec.

- 39-701. Military courts—Designated.
- 39-702. Courts of inquiry.
- 39-703. General courts-martial.
- 39-704. Constitution—Jurisdiction.
- 39-705. Prosecution of members prohibited.
- 39-706. Jurisdiction to be presumed.
- 39-707. Witnesses—Compulsory attendance.
- 39-708. Sentences—How executed.
- 39-709. Warrants for arrest of accused.

## § 39-701. Military courts—Designated.

The military courts of the District of Columbia shall be: General courts-martial, special courts-martial, the summary courts-martial, and courts of inquiry, as now or hereafter provided by law. (Mar. 1, 1889, 25 Stat. 779, ch. 328, § 50; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 54.)

## CODIFICATION

Act Feb. 18, 1909, 35 Stat. 629, ch. 146, amended act Mar. 1, 1889, 25 Stat. 772, ch. 328. Some of the sections of the 1888 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1888 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1889 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

## AMENDMENT

1909—Act Feb. 18, 1909, repealed § 50 of act 1889 and inserted in lieu thereof §§ 54 and 55 [this section and § 39-702].

## CROSS REFERENCES

Courts-martial of National Guard not in Federal service; composition, jurisdiction, and procedures, see 32 U.S.C. § 326.

General courts-martial, special courts-martial and summary courts-martial of National Guard not in Federal service, see 32 U.S.C. §§ 327, 329.

## § 39-702. Courts of inquiry.

Courts of inquiry, to consist of not more than three officers, may be ordered by the commanding general for the purpose of investigating the conduct of any officer, either at his own request or on complaint or charge of conduct unbecoming an officer. Such court of inquiry shall report the evidence adduced, a statement of facts, and an opinion thereon, when required, to the commanding general, who may, in his discretion, thereupon order a court-martial for the trial of the officer whose conduct has been inquired into. (Mar. 1, 1889, 25 Stat. 779, ch. 328, § 50; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 55.)

## AMENDMENT

See amendment note to § 39-701.

## CROSS REFERENCE

See U.S. Code, title 32.

## § 39-703. General courts-martial.

General courts-martial for the trial of commissioned officers or enlisted men shall be ordered by the President of the United States or commanding general at such times as the interests of the service may require. (Mar. 1, 1889, 25 Stat. 779, ch. 328, § 51; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 56.)

## CODIFICATION

Sections 52-54 of act of 1889, 25 Stat. 779, ch. 328 were repealed by act of Feb. 18, 1909, 35 Stat. 635, ch. 146.

## AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 51 to 56.

## CROSS REFERENCE

General courts-martial of National Guard not in Federal service, see 32 U.S.C. § 327.

## § 39-704. Constitution—Jurisdiction.

The constitution and jurisdiction of military courts, the form and manner in which their proceedings



shall be conducted and reported, and the forms of oaths and affirmations taken in the administration of military law by such courts, the limits of punishment and the proceedings in revision shall be governed by the Articles of War and the law and procedure of the military courts of the United States. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 634, ch. 146, § 57.)

## REFERENCES IN TEXT

Articles of War, referred to in the text, refer to Articles of War as codified in R.S. section 1342, Arts. 1—128, repealed June 4, 1920, 41 Stat. 812, ch. 227, subch. II, section 4, and now covered by the Uniform Code of Military Justice, section 1 of act Aug. 10, 1956, 70A Stat. 36, set out as U.S. Code, title 10, chapter 47.

## CROSS REFERENCES

See U.S. Code, title 32.

Failure of member of National Guard to report for duty when ordered into service, see § 39-604.

Failure of members of enrolled militia to appear when ordered out, see § 39-105.

Failure to return, or destruction of Government property, see § 39-504.

## § 39-705. Prosecution of members prohibited.

No action or proceeding shall be prosecuted or maintained against a member of a military court, or officer or person acting under its authority or reviewing its proceedings on account of the approval or imposition or execution of any sentence, or the imposition or collection of fine or penalty, or the execution of any warrant, writ, execution, process, or mandate of a military court, nor shall any officer or enlisted man be liable to civil or criminal prosecution for any act done while in the discharge of his military duty. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 634, ch. 146, § 58.)

## CROSS REFERENCE

See U.S. Code, title 32.

## § 39-706. Jurisdiction to be presumed.

The jurisdiction of the courts and boards established by this title shall be presumed, and the burden of proof shall rest on any person to oust such courts or boards of jurisdiction in any action or proceedings. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 635, ch. 146, § 59.)

## CROSS REFERENCE

See U.S. Code, title 32.

## § 39-707. Witnesses—Compulsory attendance.

Every person not belonging to the National Guard of the District of Columbia who, being duly subpoenaed to appear as a witness before the military courts herein provided for, wilfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or produce documentary evidence which such person may have been legally subpoenaed to produce, shall be guilty of a misdemeanor, for which such person shall be punished on information in the criminal courts of the District of Columbia, and it shall be the duty of the United States attorney for the District of Columbia, on certification of the facts to him by any military court herein provided for, to file an information against and prosecute the person so offending and the punishment of such person on conviction shall be by a fine of not more than one

hundred dollars, or imprisonment not exceeding thirty days, or both, at the discretion of the court: *Provided*, That this section shall not apply to persons residing beyond the limits of the District of Columbia, and that the fees of such witness and his mileage at the rate provided for witnesses in the United States District Court in said District shall be duly paid or tendered said witness; *And provided*, That no witness shall be compelled to incriminate himself or to answer any questions which may tend to criminate or degrade him. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 635, ch. 146, § 60.)

## CROSS REFERENCE

See U.S. Code, title 32.

## § 39-708. Sentences—How executed.

The sentences of said courts, whether of fine or imprisonment, shall be executed by the United States marshal for the District of Columbia in the same manner as are sentences of the criminal courts of said District. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 635, ch. 146, § 61.)

## CROSS REFERENCE

See U.S. Code, title 32.

## § 39-709. Warrants for arrest of accused.

Whenever it shall appear to a regularly constituted court-martial convened under the provisions of this chapter that the accused, having been duly ordered or summoned to appear before such court-martial for trial, has refused or neglected so to appear, such court-martial shall issue a warrant or attachment for the arrest of the accused, directed to the United States marshal for the District of Columbia, who shall forthwith execute said warrant or attachment, make proper return thereof to such court-martial, and produce to such court-martial the body of the accused, if within the District of Columbia, and to retain the custody thereof and continue so to produce said body during the sessions of such court-martial until the conclusion of the trial, unless sooner discharged by said court-martial. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 635, ch. 146, § 62.)

## CROSS REFERENCE

See U.S. Code, title 32.

## Chapter 8.—PAY AND ALLOWANCES

## Sec.

39-801. Payment for active service.

39-802. Allowances for general expenses.

39-803. Musicians' pay.

39-804. Subsistence while on duty.

39-805. Annual estimates.

39-806. Deductions for lost property—Officers' clothing—Use of fines—Use of appropriations.

## § 39-801. Payment for active service.

Whenever the National Guard of the District of Columbia shall be ordered to duty in case of riot, tumult, breach of the peace, or whenever called in aid of the civil authorities, all enlisted men who do duty shall be paid at the rate equivalent to two times the pay of enlisted men of the Regular Army of like grade. Commissioned officers who do duty shall be entitled to and shall receive the same pay and allowances as commissioned officers of like grade of the Regular Army. Each mounted officer and enlisted



man shall be paid a reasonable per diem compensation for each horse actually furnished and used by him: *Provided*, That when the National Guard of the District of Columbia is called into actual service of the United States the officers and enlisted men shall, during their time of service, be entitled to the same pay and allowances as are or may be provided by law for the Regular Army. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 634, ch. 146, § 53.)

#### CODIFICATION

Act Feb. 18, 1909, 35 Stat. 629, ch. 146, amended act Mar. 1, 1899, 25 Stat. 772, ch. 328. Some of the sections of the 1899 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1899 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1899 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

#### CROSS REFERENCE

See U.S. Code, title 32.

### § 39-802. Allowances for general expenses.

There shall be allowed for the general expenses of the militia such sums as may be necessary for the rental and furnishing of offices for headquarters, stationery, postage, printing and issuing orders, advertising orders, providing necessary blanks for the use of the militia, the cost of storing, caring for, and issuing all public property, and such other contingent expenses, not herein specially provided for, as may be estimated and appropriated for; the accounts for which shall be certified to by the officer receiving the service or property charged for, approved by the commanding general, and paid in the manner provided in section 39-901. (Mar. 1, 1889, 25 Stat. 780, ch. 328, § 55; Feb. 18, 1909, 35 Stat. 635, ch. 146, § 63.)

#### CODIFICATION

The last phrase of this section in the original act read as follows: "and paid in the manner provided for in section 60." Section 60 of the 1889 act now appears as § 39-901, and as it does not refer to payment, it seems probable that the reference should have been to § 58 of that act which appears in this code as § 39-805.

#### AMENDMENT

1909—Act Feb. 18, 1909, did not change the text of this section, but changed the section number from 55 to 63.

#### CROSS REFERENCES

See U.S. Code, title 32.

Method of purchase of services or supplies, see § 39-517.

### § 39-803. Musicians' pay.

During the annual encampment, and on every duty on parade ordered by the commanding general, there shall be allowed and paid for each day of service: To each member of the regularly enlisted bands, four dollars; to the chief musicians, eight dollars; and to the principal musicians, six dollars. In event there is no enlisted band or field music, or not a sufficient number of either, the commanding general may authorize the employment of such as he may deem necessary for the occasion: *Provided*, That the total pay of the enlisted musicians shall not in any event exceed the rates authorized by this section. (Mar. 1, 1889, 25 Stat. 780, ch. 328, § 56; Feb. 18, 1909, 35 Stat. 635, ch. 146, § 64.)

#### CODIFICATION

Act July 15, 1939, 53 Stat. 1030, ch. 281; *Provided*, That so much of the act of March 1, 1889 (25 Stat. 773), as amended by the act of February 18, 1909 (35 Stat. 629), as provides and fixes the rates of extra compensation to members of the regularly enlisted bands of the Militia of the District of Columbia, is hereby repealed.

#### AMENDMENT

1909—Act Feb. 18, 1909, changed the number of this section from 56 to 64; omitted the words "to each member of the regularly enlisted corps of field music, two dollars," and changed "chief musician" and "principal musician" to "chief musicians" and "principal musicians" in the first sentence, and inserted the final proviso in lieu of a sentence which read as follows: "The payments for bands of music and drum corps shall be made in the manner provided in section sixty."

#### CROSS REFERENCE

See U.S. Code, title 32.

### § 39-804. Subsistence while on duty.

During the annual encampment, or when ordered on duty to aid the civil authorities, the National Guard shall be furnished with subsistence stores, of the kind, quality, and amount allowed and prescribed by the army. Such stores shall be issued from the stores and supplies appropriated for the use of the army, upon the approval and by the direction of the Secretary of the Army, to the commanding general upon his requisitions for the same. (Mar. 1, 1889, 25 Stat. 790, ch. 328, § 57; Feb. 18, 1909, 35 Stat. 635, ch. 146, § 65.)

#### AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 57 to 65.

#### CHANGE OF NAME

The title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, title 11. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted U.S. Code, title 10, Armed Forces, which in sections 3011-3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

#### CROSS REFERENCE

See U.S. Code, title 32.

### § 39-805. Annual estimates.

The commanding general shall annually transmit to the Commissioner of the District of Columbia an estimate of the amount of money required for the next ensuing fiscal year to pay the expenses authorized by this title, and the said Commissioner shall include the same in his annual estimates of appropriations for the District; and all moneys appropriated to pay the expenses authorized by this title shall be disbursed in accordance with law. (Feb. 18, 1909, 35 Stat. 636, ch. 146, § 66.)

#### CODIFICATION

Act June 11, 1896, 29 Stat. 412, ch. 419, provided as follows: "Hereafter all leases and contracts involving expenditures on account of the militia shall be made by the Commissioners of the District of Columbia; and appropriations for the militia shall be disbursed only upon vouchers duly authorized by the Commissioners, for which they shall be held strictly accountable."

The 1909 act repealed section 58 and inserted in lieu thereof section 66 which substituted the closing words "disbursed in accordance with law" for "disbursed by the commissioners of the District of Columbia, upon vouchers



duly certified and approved by the commanding general, and accounted for by them in the same manner as all other moneys appropriated for the expenses of the District."

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### TRANSFER OF FUNCTIONS

For transfer of functions with respect to budgetary matters, see § 403 of 1967 Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the Appendix to title 1.

#### CROSS REFERENCES

See U.S. Code, title 32.

Method of purchase of services or supplies, see § 39-517.

#### § 39-806. Deductions for lost property—Officers' clothing—Use of fines—Use of appropriations.

All moneys collected on account of deductions made from the pay of any officer or enlisted man of the National Guard of the District of Columbia, on account of government property lost or destroyed by such individual shall be repaid into the United States Treasury to the credit of the officer of the militia of the District of Columbia who is accountable to the United States Government for such property lost or destroyed: *Provided further*, That there may be paid to all commissioned officers (without discrimination, and in lieu of the limited pay authorized by this section) an allowance to be used by them in the purchase and maintenance of clothing and equipment: *Provided further*, that after March 2, 1911, all moneys collected on account of deductions made from the pay of any officer or enlisted man of the National Guard of the District of Columbia for or on account of any violation of the regulations governing said National Guard, and all moneys which, by reason of the absence of officers or enlisted men from duly ordered assemblies or other duty, are not expended for pay of troops, shall be held by the commanding general of the militia of the District of Columbia, who is authorized to expend such moneys for necessary clerical and general expenses of the service, heretofore or hereafter incurred, including law books and books of reference, or for the pay of troops, other than government employees; and for all moneys so expended the commanding general shall make an accounting in like manner as for the appropriation disbursed for pay of troops: *Provided further*, That after March 2, 1911, any of the moneys appropriated for the District of Columbia Militia may be used to supplement specific appropriations or allotments which may be found insufficient for the purposes for which made, and authority is hereby given to supplement the regular ration by purchase of such additional articles of subsistence as may be deemed necessary: *Provided further*, That after March 2, 1911, the commanding general of the District of Columbia Militia is hereby authorized to make such deductions from any pay of any officer or enlisted man derived from appropriations or allotments made under the provisions of section sixteen hundred and sixty-one, United States Revised Statutes or other federal enactments as may be necessary to reimburse the United States or the District of Columbia for public property lost, destroyed, or

damaged by such individual. (Mar. 2, 1911, 36 Stat. 1004, ch. 192.)

#### REFERENCES IN TEXT

R. S., § 1661, referred to in the text, was repealed by act Mar. 3, 1933, 47 Stat. 1428, ch. 202, § 1.

#### CROSS REFERENCES

See U.S. Code, title 32.

Other provisions concerning disposition of funds, see § 39-504.

Soldiers' and Sailors' Civil Relief Act of 1940, see 50 U.S.C. App., § 501 et seq.

### Chapter 9.—MISCELLANEOUS PROVISIONS

#### Sec.

39-901. Duties of officers.

39-902. Date of commissions.

39-903. Regulations—Company and battalion rules.

39-904. System of discipline and field exercise.

39-905. Commanding general to make regulations.

39-906. Naval battalion not affected.

#### § 39-901. Duties of officers.

The departmental and military duties of the officers provided for in this title shall be correlative with those discharged by similarly designated officers in the Army of the United States. (Mar. 1, 1889, 25 Stat. 781, ch. 328, § 60; Feb. 18, 1909, 35 Stat. 636, ch. 146, § 68.)

#### CODIFICATION

Act Feb. 18, 1909, 35 Stat. 629, ch. 146, amended act Mar. 1, 1889, 25 Stat. 772, ch. 328. Some of the sections of the 1889 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1889 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1889 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

#### AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 60 to 68.

#### CROSS REFERENCE

See U.S. Code, title 32.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 39-802.

#### NOTES TO DECISIONS

##### Officers exceeding authority

Actions of company captain in giving furlough without authority from superior officers, were not binding upon the military authorities. *Ex Parte Roach* (D.C. Ala. 1917, 244 F. 625).

#### § 39-902. Date of commissions.

Any commission issuing under the provisions of this title shall, where the rank remains unchanged, bear the date of the commission held on Feb. 18, 1909; and any officer who has served continuously in the same grade may be recommissioned with rank from date of his original commission to that grade. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 636, ch. 146, § 76.)

#### CROSS REFERENCE

See U.S. Code, title 32.

#### § 39-903. Regulations—Company and battalion rules.

Companies, battalions, or regiments may adopt constitutional articles of agreement or by-laws subject to the approval of the commander-in-chief, for



the government of matters relating to the civic affairs of their respective organizations, the regulation of fines for nonperformance of duty, and the determination of causes upon which excuses from fines may be based: *Provided, however*, That such articles or rules shall not be repugnant to law or the regulations for the government of the militia: *And provided further*, That the articles or rules adopted by any company or battalion shall not be repugnant to the articles or rules adopted for the general government of the regiment or battalion to which it belongs. Certified copies of such articles or rules, with like copies of all alterations, as finally approved by the commanding general, shall be deposited in the office of the adjutant-general. (Mar. 1, 1889, 25 Stat. 780, ch. 328, § 59; Feb. 18, 1909, 35 Stat. 636, ch. 146, § 67.)

## AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section but changed the section number from 59 to 67.

## CROSS REFERENCE

See U.S. Code, title 32.

## § 39-904. System of discipline and field exercise.

The system of discipline and field exercise ordered to be observed by the Army of the United States, or such other system as may be directed for the militia by laws of the United States, shall be observed by the National Guard. (Mar. 1, 1889, 25 Stat. 781, ch. 328, § 61; Feb. 18, 1909, 35 Stat. 636, ch. 146, § 69.)

## AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 61 to 69.

## CROSS REFERENCE

See U.S. Code, title 32.

## § 39-905. Commanding general to make regulations.

The commanding general, subject to the approval of the commander-in-chief, is authorized to make and publish regulations for the government of the militia in all matters not specifically provided for by law, conforming the same to the practice and regulations of the army so far as they may be applicable. (Mar. 1, 1889, 25 Stat. 781, ch. 328, § 62; Feb. 18, 1909, 35 Stat. 636, ch. 146, § 70.)

## CODIFICATION

Section 63 of act 1889, 25 Stat. 781, ch. 328, provided: "That the act 'more effectually to provide for the organization of the militia of the District of Columbia,' approved March third, eighteen hundred and three, is hereby repealed."

Act Feb. 18, 1909, 35 Stat. 636, ch. 146, amended § 63 of act 1889 by changing the section from sixty-three to seventy-one.

## AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 62 to 70.

## CROSS REFERENCE

See U.S. Code, title 32.

## § 39-906. Naval battalion not affected.

Nothing contained in this title shall be held to alter the status or organization of the naval battalion as now provided for by law. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 636, ch. 146, § 75.)

## CROSS REFERENCE

See U.S. Code, title 32.







## TITLE 40.—MOTOR VEHICLES

Chap.	Sec.
1. Registration of Motor Vehicles-----	40-101
2. Inspection -----	40-201
3. Operators' Permits-----	40-301
4. Motor Vehicle Safety Responsibility-----	40-401
5. Public-Owned Vehicles-----	40-501
6. Regulation of Traffic-----	40-601
7. Liens on Motor Vehicles or Trailers-----	40-701
8. Regulation of Parking-----	40-801
9. Installment Sales of Motor Vehicles-----	40-901
10. Motor Vehicle Operators—Implied Consent to Blood-Alcohol Content Tests-----	40-1001

### Chapter 1.—REGISTRATION OF MOTOR VEHICLES

Sec.
40-101. Definitions.
40-102. Registration of motor vehicles and trailers—Certificates—Tags—Duplicates—Dealers—Fees—Official and foreign vehicles and trailers—Transfers—Regulations.
40-103. Fees classified and use of proceeds designated.
40-104. Unlawful acts—Penalty.
40-105. Provisions not affected.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 47-1208.

#### § 40-101. Definitions.

As used in this chapter—

(a) The term "motor vehicle" means any vehicle propelled by an internal-combustion engine or by electricity or steam, except road rollers, farm tractors, and vehicles propelled only upon stationary rails or tracks.

(b) The term "person" means an individual, partnership, corporation, or association.

(c) The term "owner" means a person who holds the legal title to a motor vehicle or trailer the registration of which is required in the District of Columbia. If a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the condition stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or if a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of these regulations.

(d) The term "director" means the director of vehicles and traffic of the District of Columbia, including assistants or agents duly designated by the Commissioner.

(e) The term "dealer" means any person engaged in the business of manufacturing, distributing, or dealing in motor vehicles or trailers.

(f) The term "public highway" means any road, street, alley, or way, open to use of the public, as a matter of right, for purposes of vehicular traffic.

(g) The term "trailer" means a vehicle without motor power intended or used for carrying property or persons and drawn or intended to be drawn by a

motor vehicle, whether such vehicle without motor power carries the weight of the property or persons wholly on its own structure or whether a part of such weight rests upon or is carried by a motor vehicle.

(h) The term "farm tractor" means a motor vehicle designed and used primarily for drawing implements of agricultural husbandry.

(i) The term "pneumatic tire" means a tire inflated with compressed air.

(j) The terms "operate" and "operated" shall include operating, moving, standing, or parking any motor vehicle or trailer on a public highway of the District of Columbia. (Aug. 17, 1937, 50 Stat. 679, ch. 690, § 1, title IV; Sept. 8, 1950, 64 Stat. 791, ch. 921, §§ 1, 2.)

#### AMENDMENT

1950—Act Sept. 8, 1950, inserted the words "or trailers" at the end of paragraph (e), and added paragraph (j), defining terms "operate" and "operated".

#### EFFECTIVE DATE

Section 7 of act Aug. 17, 1937, provided that: "This title shall take effect on January 1 of the first calendar year following the enactment thereof [Aug. 17, 1937], except that the Commissioners of the District of Columbia are authorized to provide for the registration of motor vehicles under this title for such calendar year, beginning with the 1st day of November preceding such effective date."

#### ABOLITION OF DEPARTMENT AND TRANSFER OF FUNCTIONS

The Department of Vehicles and Traffic, including the Director, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorg. Plan No. 5 of 1952. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorg. Plan No. 3 of 1967.

Reorganization Order No. 54 of the Board of Commissioners dated June 30, 1953, as amended Sept. 1, 1953, and effective Aug. 15, 1953, established a Department of Vehicles and Traffic, headed by a Director; a Board of Revocation and Review of Hackers' Identification Cards; a Motor Vehicle Parking Agency; and a Commissioners' Traffic Advisory Board; prescribed the functions thereof; and abolished the previously existing Department of Vehicles and Traffic, the Registrar of Titles and Tags, the Board of Revocation and Review of Hackers' Identification Cards, the Driver Improvement Section, and the Motor Vehicle Parking Agency. Reorg. Order No. 54 was repealed and replaced by Org. Ord. Nos. 105, 106, 107, and 108, dated May 17, 1955. Org. Ord. No. 105 continued the Department of Vehicles and Traffic (redesignated as the Department of Motor Vehicles by Commissioners' Order No. 58-919, dated June 10, 1958) and prescribed the functions thereof. Org. Ord. No. 106 continued the Motor Vehicle Parking Agency and prescribed the composition and functions thereof. Org. Ord. No. 107, relating to the Hackers' Board was redesignated as Org. Ord. No. 13, dated Aug. 15, 1968, and amended. Org. Ord. No. 108, as amended, replaced the Commissioners' Traffic Advisory Board with a Citizens' Traffic Board, and prescribed the composition and functions thereof.

The Plans and Orders are set out in the Appendix to title 1.

#### CROSS REFERENCE

Powers and duties of department of vehicles and traffic, see § 40-603.



## NOTES TO DECISIONS

## "Operate" defined

In view of statutory provisions dealing with registration of motor vehicles and defining terms "operate" and "operated" to include operating, moving, standing, or parking any motor vehicle or trailer on public highway, defendant, who had no operator's permit and who was manually pushing automobile, temporarily incapable of movement under its own power, along highway and controlling its direction by reaching through open window and manipulating steering wheel was guilty of violating regulation that no individual shall operate a motor vehicle without first having obtained an operator's permit. *Richardson v. District of Columbia* (D. C. Mun. App. 1957, 134 A. 2d 492).

## Owners

There is sale where minds of buyer and seller have met on all essential terms of contract of sale and automobile is delivered by seller and unconditionally accepted by buyer despite any omission to comply strictly with law regulating transfer and recordation of title. *F. M. Frei, Adm. of Estate, etc. v. S. Gordon, t/a Red's Sales, etc.* (D.C. App. 1965, 215 A. 2d 488).

There was executed contract of sale between plaintiff and defendant's decedent, where there was meeting of minds between parties, decedent's execution of promissory note duly secured by chattel deed of trust, plaintiff's acceptance of trade-in automobile, and delivery of new automobile which decedent retained, despite plaintiff's neglect to deliver manufacturer's certificate of origin and certificate of title. *Id.*

Contract for sale of automobile was not illegal and contrary to public policy despite seller's failure to deliver certificate of origin and certificate of title, in absence of evidence of deliberate, intentional violation by parties of law governing transfer of title. *Id.*

Where there had been a meeting of minds of sellers and buyer, payment of purchase price by buyer and delivery of automobiles by sellers, sellers were not the "owners", and were not liable for damage caused by buyer's negligent operation of automobile, notwithstanding fact that notarization of assignment of title was defective and automobile was still registered in sellers' names. *Burt and Mumford v. Cordover* (D. C. Mun. App. 1955, 117 A. 2d 116).

**§ 40-102. Registration of motor vehicles and trailers—Certificates—Tags—Duplicates—Dealers—Fees—Official and foreign vehicles and trailers—Transfers—Regulations.**

(a) No motor vehicle or trailer shall be operated (except motor vehicles or trailers operated by non-residents, exempted under the provisions of section 40-303, motor vehicles or trailers covered by a dealer's registration as provided in subsection (b) (1) of this section, and motor vehicles or trailers covered by a special use certificate as provided in subsection (b) (4) of this section) unless registered in the department of vehicles and traffic of the District of Columbia by the owner thereof. Upon receipt of an application from the owner of a motor vehicle or trailer and (except in the case of a motor vehicle or trailer covered by subsection (b) (2) of this section) payment of a registration fee computed as provided in section 40-103, and if there is in force with respect to such motor vehicle or trailer a valid certificate of title issued under section 40-603, the director shall issue to such owner a registration certificate and identification tags for such motor vehicle or trailer.

(b) The District of Columbia Council by regulation shall provide for the issuance by the director—

(1) annually to any dealer, upon payment of the fee prescribed in section 40-103, of a registra-

tion certificate and identification tags bearing a distinguishing dealer's mark, for interchangeable use on motor vehicles and trailers in accordance with regulations promulgated by the Council;

(2) annually, without charge, of certificates of registration and identification tags for all motor vehicles and trailers owned by the United States or by the District of Columbia, or officially used by any duly accredited representative of a foreign government;

(3) of duplicate registration certificates or duplicate identification tags, upon proof satisfactory to the director of loss, mutilation, or destruction thereon, upon payment of a fee of \$2 for each set of duplicate tags or \$1 for each duplicate registration certificate; and

(4) to any person, upon payment of a fee of \$3, of a special use certificate and special use identification tags bearing a distinguishing mark, valid for a period not exceeding twenty days, for use on a motor vehicle or trailer in accordance with regulations promulgated by the Council except that in the event such certificate and tags are necessary for use in complying with vehicle inspection regulations made pursuant to the authority contained in section 40-207, prior to completion of the registration of such vehicle or trailer, the fee shall be \$2: *Provided*, That if any person be convicted of a violation of such regulations, the director may refuse thereafter to issue a special use certificate and special use identification tags to such person for a period of one year: *Provided further*, That the issuance of a special use certificate and special use identification tags for a motor vehicle or trailer shall not constitute a registration of such motor vehicle or trailer for any purpose.

(c) Every registration made under this title shall expire at midnight on the last day of the registration year for which the registration was made, unless the time be extended by the Council. Any such registration may be renewed for the ensuing registration year upon application made by the owner during the months of February and March, and upon payment of the fees required by law. During the month of March it shall be lawful to operate a motor vehicle or trailer registered for the ensuing registration year. For the purposes of this chapter, a registration year shall be deemed to begin on April 1 and end on March 31.

(d) Upon the sale or other transfer to another owner of any motor vehicle or trailer registered under this title, the registration thereof shall expire. The owner selling or otherwise transferring such vehicle or trailer may register another motor vehicle or trailer for the unexpired portion of the registration year upon payment of a fee of \$2 and a sum equal to the difference between the registration fee originally paid and the fee computed for such other motor vehicle or trailer under section 40-103, in case the latter is the greater. If a motor vehicle or trailer be registered in the name of an individual, the name of the spouse of such individual may be added to the registration as a joint owner, subject to applicable provisions of law relating to the titl-



ing of the motor vehicle or trailer. Upon the death of a joint owner of a motor vehicle or trailer registered under this chapter the registration thereof shall be transferred to the survivor or survivors and the fee for such transfer shall be \$2. When the only assets of a decedent's estate requiring administration consist of not more than two motor vehicles, the Commissioner of the District of Columbia may upon proof satisfactory to him that all debts and taxes owed by the decedent have been paid or provided for, transfer the title to such motor vehicles to the person or persons entitled thereto or their nominee; and in such case, no administration of the decedent's estate, or other proceedings, need be had. In the event that any of the persons entitled to the transfer of title hereunder shall be a minor, the custodian or the legal guardian of said minor may nominate transferees on behalf of such minor.

(e) The District of Columbia Council is authorized to prescribe such regulations as may be necessary to carry out the provisions of this title and the Commissioner of the District of Columbia shall prescribe such forms of application for registration and for a special use certificate, such forms of registration and special use certificate, such design of identification tags, and provide for the keeping of such records of registration and issuance of special use certificates and transfers of registration as will facilitate the identification and the regulation of motor vehicles and trailers operated in the District of Columbia.

(f) The District of Columbia Council is further authorized to prescribe regulations under which the director may revoke or suspend the registration of any dealer who shall cease to be a dealer as defined in this chapter, or who shall have violated the provisions of this chapter or the regulations promulgated thereunder by the Council, and the Commissioner is authorized to revoke or suspend and provide for the return to the director of all dealers' identification tags issued to such dealer, subject to review by the Commissioner under rules and regulations prescribed by the Council. Pending such review, any such order of revocation or suspension shall be stayed unless the Commissioner shall otherwise direct. No order of the director or the Commissioner hereunder shall be set aside or suspended by any court unless such order is arbitrary or capricious. (Aug. 17, 1937, 50 Stat. 680, ch. 690, § 2, title IV; May 16, 1938, 52 Stat. 359, ch. 223, § 4; July 17, 1939, 53 Stat. 1045, ch. 313, § 1; Sept. 8, 1950, 64 Stat. 792, ch. 921, § 3; May 18, 1954, 68 Stat. 111, ch. 218, title VII, § 601; Apr. 6, 1965, 70 Stat. 102, ch. 182, § 1; July 3, 1967, Pub. L. 90-43, § 1, 81 Stat. 108; Oct. 31, 1969, Pub. L. 91-106, title IV, § 401, 83 Stat. 173; Aug. 11, 1971, Pub. L. 92-88, § 6, 85 Stat. 314.)

#### AMENDMENTS

1971—Section 6 of Act Aug. 11, 1971, Pub. L. 92-88, amended subsec. (d) by adding the fifth and sixth sentences relating to transfer of title when decedent's estate consists of not more than two motor vehicles.

1969—Act Oct. 31, 1969, Pub. L. 91-106, title IV, § 401 amended subsection (b) as follows:

In par. (3) changed the fee from "\$1" and "50 cents" to "\$2" and "\$1" respectively; In par. (4) changed the fee from "\$1 to \$3;" struck out "ten days" and inserted "twenty days" and also inserted the exception clause immediately after "Commissioners" relating to certificate

and tags for use in complying with inspection regulations.

In subsection (d) struck out \$1 and changed it to \$2. 1967—Act of July 3, 1967, added the third sentence to subsection (d) as above set out relating to the addition of a spouse's name to a registered vehicle or trailer as a joint owner.

1956—Act Apr. 6, 1956, amended paragraph (d) by adding second sentence pertaining to registration of another vehicle or trailer for the unexpired portion of the registration year on sale or transfer of a motor vehicle or trailer.

1954—Act May 18, 1954, amended paragraph (d) by deleting the second sentence.

1950—Act Sept. 8, 1950, amended section generally, and among other changes, added "and trailers" after "motor vehicles" throughout.

1939—Act July 17, 1939, amended paragraph (c) by changing registration year to begin on the first day of April and to end on the last day of March.

1938—Act May 16, 1938, amended paragraphs (c) and (d) by changing period of registration from the calendar year to a registration year beginning on the first day of March and ending on the last day of February.

#### EFFECTIVE DATE OF 1969 AMENDMENTS

Section 407 of Pub. L. 91-106, title IV, provided: "The amendments made by this title [amending section 40-102, 40-103, 40-201, 40-603, 40-301, and 40-419] shall take effect on the first day of the first month which begins on or after the thirtieth day after the date of enactment of this Act. [Oct. 31, 1969]."

#### EFFECTIVE DATE OF 1954 AMENDMENT

Section 610 of act May 18, 1954, provided that: "This title [amending this section and §§ 40-103, 47-1206, 47-1208, 47-1209, and repealing §§ 47-1210, 47-1211] shall become effective on and after the 1st day of April following the enactment of this Act [May 18, 1954] by ninety days or more".

#### EFFECTIVE DATE

Section effective on Jan. 1 of first calendar year following Aug. 17, 1937, see section 7 of act Aug. 17, 1937, set out as a note under section 40-101.

#### AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91-106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91-106, set out as a note under § 47-2501a.

#### SHORT TITLE, DEFINITIONS, CONSTRUCTION, SEPARABILITY AND REGULATIONS PROVISIONS OF ACT MAY 18, 1954

See notes under § 43-1601, and § 43-1618 and note thereunder.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(286, 287, 288 and 289) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsections (b), (c), (e) and (f) in the particulars described in pars. 286 to 289, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### CROSS REFERENCES

Operators' permits, see § 40-301 et seq.

Rules and regulations generally, see § 40-603.

Titling fees, see § 40-603.

#### NOTES TO DECISIONS

##### Purpose

Purpose of Vehicle Title and Registration Regulations was to make it extremely difficult, if not impossible, to perpetrate fraudulent automobile transfers. *Chiplock v. Steuart Motor Co.* (D. C. Mun. App. 1952, 91 A. 2d 851).

##### Recording of lien

Where automobile dealer had a "floor plan" arrangement by which plaintiff would advance funds to dealer



for purchase of automobiles and would take back chattel mortgages, and dealer had arrangement whereby finance company would purchase the conditional sales contracts executed by buyers of automobiles, and the buyer of an automobile gave conditional sales contract which was assigned to finance company but company never received title certificate because dealer had financial difficulties and never repaid plaintiff, plaintiff was estopped from asserting lien against buyer who had no actual knowledge of plaintiff's recorded chattel mortgage lien, and the buyer, not being in default, was entitled to use and enjoyment of automobile, and finance company was entitled to have its lien recorded on certificate of title. *Smith, Kirkpatrick Co., Inc. v. Continental Autos. Ltd., et al.* (D.C.D.C. 1960, 184 F. Supp. 764).

#### Violation

Where defendant was convicted for operating an automobile without identification tags, basic error was committed in convicting him of an offense for which he was not arrested or charged, and while great strictness should not be employed in construing an information in traffic cases, it is nevertheless the law that an information must state an offense. *Smith v. District of Columbia* (D. C. Mun. App. 1950, 71 A. 2d 766).

#### § 40-103. Fees classified and use of proceeds designated.

(a) There shall be levied, collected, and paid for each registration year for each motor vehicle or trailer required to be registered under this chapter, the registration fee provided in this section, except that in the event the District of Columbia Council prescribes and the Commissioner of the District of Columbia issues as the official identification tags for the District of Columbia tags treated with special reflective materials designed to increase the visibility and legibility of such tags, the Council may charge a fee not exceeding fifty cents in addition to all other fees which may be required, and in the event the markings on any such tag are specially ordered by the person to whom the tag is to be issued and such markings are other than those in a regular series, a reservation fee of \$25 and an annual fee of \$10, in addition to all other fees which may be required, shall be charged for such specially ordered tag.

(b) Class A: For each passenger vehicle, including passenger vehicles licensed under paragraph (d) of section 47-2331.

(1) When wholly equipped with pneumatic tires, the manufacturer's shipping weight of which is less than three thousand four hundred pounds, \$30; three thousand four hundred pounds or more, \$50.

(2) When wholly or partially equipped with other than pneumatic tires, double the above fees.

Class B. For each truck, tractor, and passenger-carrying vehicle for hire having a seating capacity of eight passengers or more in addition to the driver or operator with the exception of passenger vehicles licensed under paragraph (b) of section 47-2331.

(1) When wholly equipped with pneumatic tires, the manufacturer's shipping weight of the chassis, plus the weight of the cab and body, is less than three thousand pounds, \$53; three thousand pounds or more but less than four thousand pounds, \$59; four thousand pounds or more but less than five thousand pounds, \$69; five thousand pounds or more but less than six thousand pounds, \$80; six thousand pounds or more but less than seven thousand pounds, \$91; seven

thousand pounds or more but less than eight thousand pounds, \$99; eight thousand pounds or more but less than nine thousand pounds, \$112; nine thousand pounds or more but less than ten thousand pounds, \$128; ten thousand pounds or more but less than twelve thousand pounds, \$163; twelve thousand pounds or more but less than fourteen thousand pounds, \$191; fourteen thousand pounds or more but less than sixteen thousand pounds, \$229; sixteen thousand pounds or more, \$269: *Provided*, That in determining the total weight of a vehicle subject to the provisions of this clause, there shall be excluded, in computing such weight; the weight of any special equipment which is subject to taxation as tangible personal property under subsection (e) of this section.

(2) When wholly or partially equipped with other than pneumatic tires, double the above fees.

Class C. For each trailer, when the manufacturer's shipping weight of the chassis, plus the weight of the body, is less than five hundred pounds, \$11; five hundred pounds or more but less than one thousand pounds, \$16; one thousand pounds or more but less than one thousand five hundred pounds, \$27; one thousand five hundred pounds or more but less than two thousand five hundred pounds, \$43; two thousand five hundred pounds or more but less than three thousand five hundred pounds, \$61; three thousand five hundred pounds or more but less than six thousand pounds, \$80; six thousand pounds or more but less than eight thousand pounds, \$99; eight thousand pounds or more but less than ten thousand pounds, \$123; ten thousand pounds or more but less than twelve thousand pounds, \$163; twelve thousand pounds or more but less than sixteen thousand pounds, \$203; sixteen thousand pounds or more, \$243: *Provided*, That in determining the total weight of a trailer subject to the provisions of this Class C, there shall be excluded, in computing such weight, the weight of any special equipment which is subject to taxation as tangible personal property under subsection (e) of this section.

Class D. For each motorcycle, motor bicycle, motor tricycle, and motor wheel, \$12.00.

Class E. For each motor vehicle classified by the Commissioner or his designated agent as an antique motor vehicle on the basis of a finding that such vehicle was manufactured prior to January 1, 1930, and is owned solely as a collector's item, with its use limited to participation in club activities, exhibits, tours, parades, and similar uses, but in no event for general transportation, \$5.

Class F. For dealers' identification tags, first set of tags, \$30, and \$10 for each additional set.

Class G. For each motor vehicle propelled by fuel not subject to taxation under chapter 19 of title 47, and motor vehicles propelled by any means other than motor fuels as defined in said chapter, double the fees provided in this subsection for classes A through D.

(c) When application for registration of any motor vehicle or trailer or for registration as a dealer or for issuance of dealers' identification tags is received by the director on or after October 1, the



registration fee, or the fee for issuance of dealers' identification tags shall be one-half the amount otherwise provided.

(d) Proceeds from fees payable under this chapter shall be divided between the General Fund and the Highway Fund. The Council is authorized and empowered to determine the percentage of all proceeds from fees payable under this chapter which shall be deposited to the credit of the General Fund of the District of Columbia: *Provided*, That the percentage of proceeds deposited to the credit of the General Fund shall be not less than forty-two per centum or more than forty-seven per centum of all proceeds from fees payable under this chapter. The remainder of such proceeds payable under this chapter, all moneys collected from the motor-vehicle-fuel tax, and fees charged for the titling of motor vehicles and trailers, including fees charged for the issuance of permits to operate motor vehicles, shall be deposited in a special account in the Treasury of the United States entirely to the credit of the District of Columbia and shall be appropriated and used solely and exclusively for the following purposes:

(1) For construction, reconstruction, improvement, and maintenance of public highways, including the necessary administrative expenses in connection therewith;

(2) For the expenses of the office of the director of vehicles and traffic incident to the regulation and control of traffic and the administration of the same; and

(3) For the expenses necessarily involved in the police control, regulation, and administration of traffic upon the highways: *Provided, however*, That the total amount to be expended under this item shall not exceed 15 per centum of the total payment appropriated for pay and allowances of officers and members of the Metropolitan police force.

For the fiscal year 1938 all moneys appropriated for the construction, reconstruction, improvement, and maintenance of highways and administrative expenses in connection therewith, all moneys appropriated for the department of vehicles and traffic, and 15 per centum of all moneys appropriated for pay and allowances for officers and members of the Metropolitan police force shall be paid from and chargeable against the fund hereby created.

(e) Notwithstanding the provisions of this chapter, special equipment mounted on a motor vehicle or trailer and not used primarily for the transportation of persons or property shall be taxed as tangible personal property as provided by law. For the purpose of determining the fees authorized by clause 1 of class B and classes C and G of subsection (b) of this section, the weight of special equipment taxed in accordance with the provisions of this subsection (e) shall be excluded in computing the weight of the vehicle or trailer on which it is mounted. (Aug. 17, 1937, 50 Stat. 681, ch. 690, § 3, title IV; May 16, 1938, 52 Stat. 359, ch. 223, § 4; July 17, 1939, 53 Stat. 1046, ch. 313, § 2; Sept. 8, 1950, 64 Stat. 793, ch. 921, §§ 4, 5, 6; May 18, 1954, 68 Stat. 112, ch. 218, title VI, §§ 602, 603, 604; Sept. 2, 1957, 71 Stat. 598, Pub. L.

85-273, §§ 1, 2; Sept. 6, 1960, 74 Stat. 816, Pub. L. 88-716, §§ 1-3; Oct. 31, 1969, Pub. L. 91-106, title IV, § 402, 83 Stat. 174.)

#### AMENDMENTS

1969—Act Oct. 31, 1969, Pub. L. 91-106, title IV, § 402, made the following amendments:

In subsection (a) inserted the matter relating to fees for tags containing markings specially ordered;

In subsection (b) relating to "Class A" struck out "three-thousand five hundred" each place it appeared and inserted in lieu "three-thousand four hundred" and struck out \$22 and \$32 and inserted instead \$30 and \$50 respectively;

In subsection (b) relating to "Class B" increased fees for trucks, tractors and certain commercial vehicles as above set out.

In subsection (b) relating to "Class C" increased the fees for trailers as above set out; and

In subsection (d) changed "sixty-four" and "seventy-four" to "forty-two" and "forty-seven" respectively.

1960—Subsec. (a) amended by act Sept. 16, 1960, § 1, which authorized the Commissioners to charge a fee of not more than 50 cents in addition to other fees in the event they prescribe and issue as the official tags for the District tags treated with special reflective materials.

Subsec. (b) amended by act Sept. 16, 1960, § 2, which eliminated words "gasoline-propelled" in Class A and Class B, substituted "set of tags, \$30" for "three sets of tags, \$50" in Class F, and added Class G.

Subsec. (e) amended by act Sept. 16, 1960, § 3, which inserted a reference to class G of subsection (b) of this section.

1957—Section 1, of act of Sept. 2, 1957, struck out Class C in subsection (b) and substituted a new Class C as above set out.

Section 2 of the same act also inserted into the section a new Class E, as above set out.

1954—Act May 18, 1954, amended subsec. (b) in order to provide a "flat fee" system of registration fees based on the weight of the vehicle in place of the previous system of combined registration fees and personal property taxes on motor vehicles.

The act increased the registration rates in classes A, B, C, D, and E; and amended subsection (d) so as to provide that the proceeds from fees paid under the chapter be divided between the General Fund and the special Treasury account as provided in the section; and added subsec. (e).

1950—Subsec. (a) amended by act Sept. 8, 1960, by adding "or trailer" after "motor vehicle"; by striking out the figures and words "\$25 and \$5" in Class F of (b), and inserting in lieu thereof the figures and words "\$50 and \$10"; by adding the words "or trailer or for registration as a dealer or for issuance of dealers' identification tags" and "or the fee for issuance of dealers' identification tags" respectively, after the words "motor vehicle" and "registration fee" in (c); and by adding the words "and trailers" after the words "titling of motor vehicles" in (d).

1939—Subsec. (c) amended by act July 17, 1939, by changing "September 1" to "October 1."

1938—Subsec. (b) amended by act May 16, 1938, by inserting "wholly" in clause (1) of Class A; "wholly or partially" in clause (2) of Class A; "wholly" in clause (1) of Class B; "wholly or partially" in clause (2) of Class B; by removing trailers from the provisions of clause (1) of Class B and inserting Class C and changing the then Classes C to E to Classes D to F.

Subsec. (c) amended by act May 16, 1938, by changing "August 1" to "September 1" and in 1939 by changing "September 1" to "October 1."

#### EFFECTIVE DATE OF 1969 AMENDMENTS

See note under § 40-102.

#### EFFECTIVE DATE OF 1954 AMENDMENT

See note under § 40-202.

#### SHORT TITLE, DEFINITIONS, CONSTRUCTION, SEPARABILITY AND REGULATIONS PROVISIONS OF ACT MAY 18, 1954

See notes under § 43-1601, and § 43-1618 and note thereunder.



## TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(290 and 291) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsections (a) and (d), in the particulars described in pars. 290 and 291, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

## CROSS REFERENCES

Department of motor vehicles and traffic, see § 40-603.  
Fees for operators permits, see § 40-301.  
Hauling permit fees for certain multi-axle vehicles, see § 5-316.  
Inspection fees, see §§ 40-201, 40-202.  
Motor vehicle fuel tax, see § 47-1901 et seq.  
Tinting and retinting, fees, see § 40-603.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9-220, 40-202.

## § 40-104. Unlawful acts—Penalty.

(a) It shall be unlawful—

(1) for any person to operate any motor vehicle or trailer upon any public highway of the District of Columbia (except motor vehicles or trailers operated by nonresidents exempted under the provisions of section 40-303) (A) if such motor vehicle or trailer is not registered or covered by a dealer's registration or by a special use certificate as required by this chapter, (B) if such motor vehicle or trailer does not have attached thereto and displayed thereon the identification tags required therefor, or (C) if such person does not have in his possession or in the motor vehicle or trailer operated the registration certificate or special use certificate required therefor;

(2) for the owner of any motor vehicle or trailer knowingly to permit the operation thereof contrary to any provision of paragraph (1);

(3) to use a false or fictitious name or address in any application for registration or for a special use certificate, or any renewal or duplicate thereof, or knowingly to make any false statement or conceal any material fact in any such application.

(b) Any person violating any provision of this chapter or the regulations made or promulgated under the authority hereof shall upon conviction thereof be subject to a fine of not more than \$300 or imprisonment of not more than thirty days, or both such fine and imprisonment. All such prosecutions shall be in the Superior Court of the District of Columbia upon information filed by the corporation counsel of the District of Columbia or any of his assistants in the name of the District of Columbia. (Aug. 17, 1937, 50 Stat. 682, ch. 690, § 4, title IV; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; Sept. 8, 1950, 64 Stat. 794, ch. 921, § 7; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

## AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Pub. L. 91-358, amended subsec. (b) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

1950—Subsec. (a) amended by act Sept. 8, 1950, by inserting "or covered by a dealer's registration or by a special use certificate" in (1) (A); by striking out "certificate of registration" and inserting in lieu thereof "registration certificate or special use certificate" in (1) (C); by inserting "or trailer" in (2); and by inserting "or for a special use certificate," in (3).

## EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

## CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

## NOTES TO DECISIONS

## Arrest

Where police officer, on foot patrol, saw a bag of trash thrown into a public street from left front window of automobile standing at curb with motor running, and where the automobile's occupant, after being approached by the officer and questioned about the bag, alighted from the automobile, picked up the bag and put it back inside the car, it could not be said that the incident was over and that it was unlawful for the officer to ask the occupant to produce his operator's permit and the registration card for the automobile, which inquiries resulted in discovery that the occupant's permit had been revoked and, later, that the automobile had been stolen. *United States v. R. Weston* (1972, 466 F. 2d 435, 151 U.S. App. D.C. 264).

## Investigatory stops

Actions of police officers in stopping rented vehicle in order to determine if the defendant had proper license and rental agreement was reasonable, and seizure of pistol that was in plain view of officer who was looking at interior of car with flashlight while other officer was engaged in conversation with defendant did not violate the Fourth Amendment. *R. F. Palmore v. United States* (D.C. App. 1972, 290 A. 2d 573; see also 93 S. Ct. 66, 409 U.S. 840).

## § 40-105. Provisions not affected.

(a) Nothing in this chapter shall be construed to affect the power of the District of Columbia Council, under the District of Columbia Traffic Act, 1925, as amended, to make rules and regulations, not inconsistent with the provisions of this chapter, with respect to the registration of motor vehicles.

(b) Nothing in this chapter shall be construed to relieve any person from the payment of any license tax under chapters 21 and 23 of title 47. (Aug. 17, 1937, 50 Stat. 682, ch. 690, § 5, title IV.)

## REFERENCES IN TEXT

The District of Columbia Traffic Act, 1925, as amended referred to in the text, is classified to sections 40-301 to 40-303, 40-601 to 40-603, 40-605, 40-609, 40-610, 40-612, 40-614, and 40-615.

## CODIFICATION

In subsec. (a), reference to the District of Columbia Council was substituted for "Commissioners of the District of Columbia" on authority of §§ 40-301 and 40-603 of this title and § 402 (292, 293, 295 to 299) of Reorg. Plan No. 3 of 1967, under which the regulations are prescribed by the Council.

## CROSS REFERENCE

For compact on interstate bus taxation proration and reciprocity, see note to section 47-1901.



## Chapter 2.—INSPECTION

## Sec.

- 40-201. Annual inspection of motor vehicles—Inspection fee.  
 40-202. Payment to collector of taxes.  
 40-203. Appropriations for facilities for inspection  
 40-204. Vehicles exempt from inspection fee.  
 40-205. Vehicles not inspected, or unsafe.  
 40-206. Penalties.  
 40-207. Regulations by Commissioner.

## § 40-201. Annual inspection of motor vehicles—Inspection fee.

At the time of the registration of each motor vehicle or trailer there shall be levied and collected a fee known as the "inspection fee" of \$2. The District of Columbia Council may prescribe regulations to permit a person who owns a motor vehicle or trailer not required to be registered in the District of Columbia to have such motor vehicle or trailer inspected in the District of Columbia. Such regulations shall fix the fee for such inspection in such amount as, in the Council's judgment, will be commensurate with the cost to the District of Columbia of such inspection. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 1; July 16, 1947, 61 Stat. 360, ch. 258, Art. IV, § 1; Oct. 12, 1968, Pub. L. 90-567, § 1, 82 Stat. 1002; Oct. 31, 1969, Pub. L. 91-106, title IV, § 403, 83 Stat. 174.)

## AMENDMENTS

1969—Act Oct. 31, 1969, Pub. L. 91-106 title IV, § 403, amended section by changing the fee from \$1 to \$2.

1968—Pub. L. 90-567, amended the section by adding thereto the sentences above set out dealing with the authority of the District Council to make regulations permitting the inspection of vehicles not required to be registered and fixing the fees.

1947—Act July 16, 1947, added "or trailer" and struck out provision for subsequent inspections at a fee of 50 cents.

## EFFECTIVE DATE OF 1969 AMENDMENTS

See note under § 40-102.

## EFFECTIVE DATE OF 1947 AMENDMENT

Section 4 of act July 16, 1947, provided that: "This article [amending this section and §§ 40-203, 40-204] shall become effective thirty days after the approval of this Act [July 16, 1947]".

## AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91-106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91-106, set out as a note under § 47-2501a.

## CROSS REFERENCES

Fees generally, see § 40-103.

Other provisions concerning supervision, control, and inspection of motor vehicles, see § 40-603.

## § 40-202. Payment to collector of taxes.

The inspection fee shall be paid to the collector of taxes and shall be deposited in the Treasury of the United States to the credit of the special fund created by sections 40-103 and 47-1901. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 2.)

## CODIFICATION

Reference to "sections 40-103 and 47-1901" was substituted for "the Act entitled 'An Act to provide for a tax on motor-vehicle fuels sold within the District of Columbia, and for other purposes', approved April 23, 1924, and the Act entitled 'An Act to provide additional revenue for the District of Columbia, and for other purposes', approved August 17, 1937".

## TRANSFER OF FUNCTIONS

The Office of the Collector of Taxes was abolished and the functions thereof transferred, see note under § 47-301.

## § 40-203. Appropriations for facilities for inspection.

The annual estimates of appropriations for the government of the District of Columbia for the fiscal year 1939 and succeeding fiscal years shall include estimates of appropriations for the construction and/or rental and/or leasing of ground and buildings, the purchase of equipment and supplies, and the payment of salaries of mechanics, laborers, clerks, and other employees to carry out the annual inspection of all motor vehicles and trailers in the District of Columbia. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 3; July 16, 1947, 61 Stat. 360, ch. 258, Art. IV, § 2.)

## AMENDMENT

1947—Act July 16, 1947, added the words "or trailers."

## EFFECTIVE DATE OF 1947 AMENDMENT

See note under section 40-201.

## TRANSFER OF FUNCTIONS

For transfer of functions with respect to budgetary matters, see § 403 of Reorg. Plan No. 3 of 1967, set out in the Appendix to title 1.

## § 40-204. Vehicles exempt from inspection fee.

All motor vehicles and trailers owned and officially used by the government of the United States or by the government of the District of Columbia or by the representatives of foreign governments, shall be subject to annual inspection, such inspections to be furnished without charge. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 4; July 16, 1947, 61 Stat. 360, ch. 258, Art. IV, § 3.)

## AMENDMENT

1947—Act July 16, 1947, added the words "or trailers."

## EFFECTIVE DATE OF 1947 AMENDMENT

See note under section 40-201.

## CROSS REFERENCE

Publicly owned vehicles, see § 40-501 et seq.

## § 40-205. Vehicles not inspected, or unsafe.

The Commissioner of the District of Columbia or his designated agent may refuse to register any motor vehicle or trailer which has not been inspected as required, or which is unsafe or improperly equipped, or otherwise unfit to be operated, and for like reason he may revoke or suspend any registration already made: *Provided*, That the provisions of section 40-302 (a) shall be applicable in all cases where registration is refused, revoked, or suspended under the terms of this chapter. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 5.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## CROSS REFERENCE

Administrative procedure, see § 1-1501 et seq.

## § 40-206. Penalties.

Any individual, partnership, firm, or corporation found guilty of using or permitting the use of any unregistered motor vehicle or trailer, or who is found guilty of using or permitting the use of the same during the period for which any such vehicle's registration is revoked or suspended under the terms of this chapter, shall, for each such offense, be fined not more than \$300. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 6.)



## § 40-207. Regulations by Commissioner.

The Commissioner of the District of Columbia shall make such regulations as in his judgment are necessary for the administration of this chapter, and may affix thereto such reasonable fines and penalties as in his judgment are necessary to enforce such regulations. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 7.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## CROSS REFERENCE

Rules and regulations generally, see §§ 40-102, 40-201, 40-301, 40-603.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40-102.

## Chapter 3.—OPERATORS' PERMITS

Sec.

- 40-301. Operators' permits—Application—Examination—Periods for which issued—Fee—Lost permits—Age requirements—Provisions affecting personnel of armed forces of United States and foreign nations—Contents of permits—Possession of operator—Operation without permit prohibited.
- 40-302. Revocation or suspension of operators' permits—Procedure—New permit after revocation—Non-residents—Penalty.
- 40-303. Nonresidents exempt from registration—Period of exemption.

## CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 9-131, 47-2331.

§ 40-301. Operators' permits—Application—Examination—Periods for which issued—Fee—Lost permits—Age requirements—Provisions affecting personnel of armed forces of United States and foreign nations—Contents of permits—Possession of operator—Operation without permit prohibited.

(a) (1) The Commissioner of the District of Columbia or his designated agent shall, upon application, the payment of a fee of \$12, and compliance with such regulations as the District of Columbia Council or its designated agent may prescribe, issue a motor vehicle operator's permit valid for a period not in excess of four years, to any individual sixteen years of age or over who, after examination, in the opinion of the Commissioner or his designated agent, is mentally, morally, and physically qualified to operate a motor vehicle in such manner as not to jeopardize the safety of individuals or property. The Commissioner or his designated agent shall cause each applicant to be examined as to his knowledge of the traffic regulations of the District and shall require the applicant to give a practical demonstration, or produce evidence acceptable to the Commissioner or his designated agent, of his ability to operate a motor vehicle within a congested portion of the District, except that upon the renewal of any such operator's permit such examination and demonstration may be waived in the discretion of the Commissioner or his designated agent. Should the Commissioner or his designated agent believe that the issuance or reissuance of a permit in accordance with the provisions of this chapter may prove a menace to public safety, he or his agent may refuse the issuance or reissuance thereof. No operator's per-

mit issued to any individual under eighteen years of age shall authorize the operation by such individual while he is under the age of eighteen years of any motor vehicle other than a passenger vehicle or motorcycle or motor bicycle, used solely for purposes of pleasure and not for compensation.

(2) The Commissioner or his designated agent may, upon application and the payment of a fee of \$5, issue a learner's permit, valid for a period of sixty days, to any applicant for a motor vehicle operator's permit, sixteen years of age or over, who has successfully passed all parts of the examination other than the driving demonstration test. Such permit shall entitle the permittee, while having such permit in his immediate possession, to operate a passenger motor vehicle, used solely for purposes of pleasure and not for compensation, when accompanied by the holder of a valid motor vehicle operator's permit who is occupying a seat beside such permittee.

(3) Any pupil fifteen years of age or over enrolled in a high school or junior high school driver education and training course approved by the Commissioner or his designated agent may, without obtaining either an operator's or a learner's permit, operate a dual-control motor vehicle at such times as such pupil is under instruction and accompanied by a licensed motor-vehicle driving instructor: *Provided*, That such instructor shall at all times while he is engaged in such instruction have on his person a certificate from the principal or other person in charge of such school, stating that such instructor is officially designated to instruct pupils enrolled in such course, and whenever demand is made by a police officer such instructor shall display to him such certificate.

(4) In the event an operator's permit or a learner's permit issued under the authority of this section is lost or destroyed, or requires replacement for any reason other than through error or other act of the Commissioner not caused by the person to whom such permit was issued, such person may obtain a duplicate or replacement permit upon payment of a fee of \$2.

(5) Enlisted men of the Army, Navy, Air Force, Marine Corps, and Coast Guard shall be issued, without charge, a permit to operate Government-owned vehicles, while engaged in official business, upon the presentation of a certificate from their commanding officers to the effect that they are assigned to operate a Government vehicle and are qualified to drive, and upon proving to the satisfaction of the director of vehicles and traffic that they are familiar with the traffic regulations of the District of Columbia.

(6) Notwithstanding the provisions of this subsection, the Commissioner or his designated agent may, upon compliance with such regulations as the Council or its designated agent may prescribe, extend for a period not in excess of six years the validity of the operator's permit of any person who is a resident of the District and who is on active duty outside the District in the Armed Forces or the Merchant Marine of the United States and who was at the time of leaving the District the holder of a valid operator's permit.



(b) Each operator's permit shall state the name and address of the permittee, together with such other matter as the Council or its designated agent may by regulation prescribe, and shall bear the signature of the permittee.

(c) Any individual to whom has been issued a permit to operate a motor vehicle shall have such permit in his immediate possession at all times when operating a motor vehicle in the District and shall exhibit such permit to any police officer when demand is made therefor. Any individual failing to comply with the provisions of this subdivision shall upon conviction thereof, be fined not less than \$2 nor more than \$40: *Provided*, That this shall not apply to transient visitors from States in the Union which do not require drivers' permits.

(d) No individual shall operate a motor vehicle in the District, except as provided in section 40-303, without first having obtained an operator's permit or a learner's permit issued under the provisions of this chapter. Any individual violating any provision of this subdivision shall, upon conviction thereof, be fined not more than \$300 or be imprisoned not more than ninety days.

(e) Nothing in this chapter shall relieve any individual from compliance with section 47-2331 (e). (Mar. 3, 1925, 43 Stat. 1121, ch. 443, § 7; July 3, 1926, 44 Stat. 812, ch. 739, § 2; Feb. 18, 1929, 45 Stat. 1226, ch. 258; Feb. 27, 1931, 46 Stat. 1424, ch. 317, § 2; June 20, 1939, 53 Stat. 850, ch. 231; Nov. 25, 1942, 56 Stat. 1023, ch. 642, § 2; Dec. 15, 1944, 58 Stat. 806, ch. 589, § 1; Apr. 20, 1948, 62 Stat. 173, ch. 215, §§ 1, 2; Aug. 16, 1954, 68 Stat. 732, ch. 741, §§ 1, 2, 3, 4, 5; July 24, 1956, 70 Stat. 633, ch. 695, § 2; Oct. 3, 1962, 76 Stat. 710, Pub. L. 87-737, § 1; Mar. 18, 1964, 78 Stat. 167, Pub. L. 88-287, § 1; Oct. 31, 1969, Pub. L. 91-106, title IV, § 405, 83 Stat. 174.)

#### REFERENCES IN TEXT

In the original, "this chapter", as used in this section, reads "this Act", meaning the above-cited act of March 3, 1925. The provisions of such act still in force are classified to §§ 40-301 to 40-303, 40-601 to 40-603, 40-605, and 40-609, 40-610, 40-611 and 40-613 to 40-615.

#### CODIFICATION

Section was enacted as part of the District of Columbia Traffic Act, 1925, which is classified generally to chapter 6 of title 40. For definitions applicable to this section, see § 40-602.

In subsec. (a) (5), "Air Force" was inserted on authority of § 207(a) (f) of act July 26, 1947, ch. 343, 61 Stat. 502.

#### AMENDMENTS

1969—Act Oct. 31, 1969, Pub. L. 91-106, title IV, § 405, amended subsection (a) (1) by striking out §3 and inserting §12 and changing "three years" to "four years". Also struck out par (a) (4) and changed it to read as above set out. The amendment of (a) (4) makes it applicable to cases where the permit is lost or destroyed or replacement is required for any reason, other than error, or other act of the Commissioner not caused by the holder of the permit and increases the fee from 50 cents to \$2.

1964—Act Mar. 18, 1964, increased the fee for learner's permits from \$2 to \$5.

1962—Act Oct. 3, 1962, increased the fee for learner's permits from \$1 to \$2.

The act of July 24, 1956, amended subsection (a) (2) by striking out the word "District".

Section 1 of act Aug. 16, 1954, amended the first paragraph of subsection (a) by designating the \$3 fee and providing for the issuance of operators permits in accordance with regulations of the Commissioners for not to

exceed three year periods. The subsection was further amended to permit the Director of Vehicles and Traffic to waive the road test for an applicant presenting a license from a State having equivalent standards.

Section 2 of the act amended paragraph 2 of subsection (a) to permit the issuance of a learner's permit for 60 days.

Section 3 of the act added a new paragraph (6) to subsection (a).

Section 4 of the act amended subsection (b) so as to eliminate the requirement that judges make a notation of traffic violations on the permit.

Section 5 of the act repealed former subsection (d) and renumbered former subsection (e) and (f) as present subsections (d) and (e).

The act of April 20, 1948, amended subsec. (a) generally.

The act of Dec. 15, 1944, amended subsec. (a) by adding last two pars.

The act of Nov. 25, 1942, amended subsec. (e) of section by deleting proviso which provided that operators of Government-owned vehicles stationed outside of District were not required to have permits while operating within limits of District, and also provided that violation of subsec. (e) was punishable with \$500 fine and/or imprisonment not more than six months.

The 1939 act added the proviso in paragraph (e).

The 1931 act inserted "commissioners or their designated agent" in lieu of "director." This act became effective July 1, 1931.

The 1929 act added the proviso to paragraph (a).

Prior to the 1926 amendment, this section provided for the annual renewal of operators' permits and prescribed fees of \$1 and \$2. The 1926 amendment also added the third sentence in paragraph (a); added "which do not require drivers' permits" at the end of paragraph (c); changed paragraph (d) which prior thereto related to the issuance without charge of temporary permits to expire on March 31, 1936, to persons holding permits issued prior to that act; and reduced the penalty in paragraph (e) from "not more than one year" to "not more than six months."

The act of 1926 also provided, "(g) This act shall become effective immediately upon passage, and promptly thereafter the director shall commence the call of outstanding permits and the reissuance thereof in accordance with the provisions of this act, and shall complete such reissuance within a period of one year."

#### EFFECTIVE DATE OF 1969 AMENDMENT

See note under § 40-102.

#### EFFECTIVE DATE OF 1956 AMENDMENT

Section 3 of act July 24, 1956, provided that: "This Act [amending this section and § 40-603] shall take effect thirty days after its approval [July 24, 1956]."

#### EFFECTIVE DATE OF 1954 AMENDMENT

Section 9 of act Aug. 16, 1954, provided that: "This Act [amending this section and §§ 40-303, 40-609] shall become effective thirty days after its enactment [Aug. 16, 1954]."

#### EFFECTIVE DATE

See note under § 40-601.

#### AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91-106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91-106, set out as a note under § 47-2501a.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(292 and 293) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the functions of the Board of Commissioners of prescribing regulations relating to the issuance of motor vehicle operators' permits and to extending the validity of certain motor vehicle operators' permits under subsec. (a) (1) and (6), and prescribing by regulation matter to be stated on each motor vehicle operator's permit under subsec. (b), to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix



to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### TRANSFER OF FUNCTIONS

See note under section 40-101 concerning Department of Motor Vehicles.

#### CROSS REFERENCES

Alcoholic Beverage Control Act inapplicable, see § 25-127.

Definition of "this chapter" and other terms used, see § 40-602.

Fees and disposition thereof, see § 40-103.

Licensing provisions of this section not affected by provisions for licensing motor vehicles generally, see § 40-105.

Metropolitan Police may not perform any functions under this chapter, except enforcement thereof, see § 40-603.

Power of Council to make rules and regulations for issuance and revocation or suspension of operators' permits, see § 40-603.

Prosecution of violations of this chapter, see § 40-603.

Rules and regulations concerning motor vehicles generally, see § 40-603.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 25-127, 40-303.

#### NOTES TO DECISIONS

##### In general

In action by child and others against automobile owners, father and son, for injuries received when child was pinned to school bus from which she had just alighted by owners' automobile which was then being driven by father's employee without owners' permission, questions whether father was negligent in permitting employee to have access to the automobile and whether there was causal connection between such negligence and injury were for jury. *Boland, etc. v. Love et al.* (1955, 222 F. 2d 27, 95 U. S. App. D. C. 337).

In prosecution for driving without permit and leaving scene of collision, tried by court, erroneous admission of officer's testimony that persons who witnessed collision identified accused, in his presence, as driver of automobile involved in collision, was not cured by court's recognition of error and statement that such testimony was disregarded, where competent evidence of accused's guilt was far from conclusive. *Penwell v. District of Columbia* (D.C. Mun. App. 1943, 31 A. 2d 891).

##### Arrest

Where pertinent municipal regulation authorized police to move an illegally parked automobile, conduct of officer, who observed the defendant parked in bus zone and who arrested defendant for failure to have driver's permit in his possession, in opening door of defendant's automobile after defendant had been placed in police car and in seizing pistol that was in plain view on floor of automobile was proper and pistol is admissible in prosecution for carrying pistol without a license. *R. H. Banks v. United States* (D.C. App. 1972, 287 A. 2d 85).

Actions of police officers in stopping automobile driven by defendant, who had prior narcotics offender record, to check whether he had valid driver's permit was authorized as routine police traffic investigation, and did not constitute an arrest. *J. D. Williams v. United States* (D.C. App. 1970, 263 A. 2d 659).

Stopping motorist to ascertain whether he possessed valid operator's permit was "routine interrogation" and was not an arrest. *Mincy v. District of Columbia* (D.C. App. 1966, 218 A. 2d 507).

Arrest of motorist stopped for routine operator's permit check did not occur until motorist failed to exhibit his operator's permit and admitted that it had been revoked. *Id.*

Routine spot check of a motorist, to ascertain if he has complied with requirement of possession of valid operator's permit is neither unreasonable nor invalid, provided such check is not used as a substitute for search for evidence of some possible crime unrelated to possession of operator's permit. *Id.*

##### Change of residence

A person does not cease to be a legal resident of one jurisdiction for automobile operator's permit purposes by merely forming an intention of moving to another jurisdiction in which such person has never resided. *Bush v. District of Columbia* (D. C. Mun. App. 1951, 78 A. 2d 234).

##### Collateral estoppel

Prior acquittal on charge of driving without operator's permit at time of defendant's arrest for criminal offenses did not estop government from contending in the criminal case that defendant was driving the automobile, where basis for acquittal was not shown. *J. Moore v. United States* (1965, 344 F. 2d 558, 120 U.S. App. D.C. 173).

##### Evidence

Evidence was sufficient to show that motorist having Maryland driver's permit and owning automobile having Maryland tags was District of Columbia resident required to have District operator's permit and was not resident of Maryland not required to have District permit to operate automobile in District. *Bush v. District of Columbia* (D. C. Mun. App. 1951, 78 A. 2d 234).

##### Exclusive powers of Congress

Congress, as to the District of Columbia, has express power to exercise exclusive legislation in all cases whatsoever, thus possessing the combined powers of a general and a state government in all cases where legislation is possible, and when and how it shall delegate or distribute authority to make detailed regulations under the police power are questions which Congress may determine for itself. *LaForest v. Board of Comrs. of District of Columbia* (1937, 92 F. 2d 547, 67 App. D.C. 396).

##### Fines

Fine of \$275 with commitment to jail for sixty days on default of payment, was not excessive. *Dorsey v. Peak* (1928, 24 F. 2d 892, 58 App. D.C. 64).

##### Government employees

Traffic regulations apply to United States employees, driving government automobiles. *Crosen v. District of Columbia* (1925, 2 F. 2d 924, 55 App. D.C. 122).

There is no exception in favor of the vehicles of the Post Office Department, and the manifest purpose of the acts does not imply such an exception. *White v. District of Columbia* (1925, 4 F. 2d 163, 55 App. D.C. 197).

##### Illegal arrest

Offense of failure to exhibit operator's permit could not be upheld since it was directly traceable to illegal stopping in District of Columbia by Maryland state police officer and subsequent illegal arrest by the United States Park Police officer, even though committed within officer's presence. *District of Columbia v. Perry* (D.C. App. 1965, 215 A. 2d 845).

##### Jurisdiction

Jurisdiction of the Court of General Sessions extended to prosecution for carrying a dangerous weapon, possessing a prohibited weapon and driving a motor vehicle without an operator's license, notwithstanding contention that the trial court had jurisdiction only over offenses punishable by fine or imprisonment and that the offenses charged carried penalties of a fine, imprisonment, or both. *W. P. Martin v. United States* (D.C. App. 1971, 283 A. 2d 448).

##### Law governing

Law of Maryland, which was place of actionable wrong, governed in determining liability of mother who signed application for minor's driver's license from District of Columbia. *M. P. Tsoy etc. v. L. MacFarland et ano.* (D.C.D.C. 1963, 219 F Supp. 220).

Maryland statute imputing motor vehicle negligence of minor to person who signed his application for operator's permit applies only to one signing application for Maryland permit. *Id.*

Where, in personal injury action, which arose from automobile accident occurring in Virginia, but which was brought in Federal District Court in District of Columbia in which defendants resided, court was unable to determine from Virginia decisions standard of conduct to be required of the parties, District of Columbia law would be referred to to determine such standard. *Boland etc. v. Love et al.* (1955, 222 F. 2d 27, 95 U.S. App. D.C. 337).



**Nonresidents**

The exception of motorist not residing in District of Columbia and complying with automobile registration and driver's license laws of a State from statutory prohibition against operation of automobile in District without District operator's permit is a defense and not part of description of offense, and District law enforcement officers are not required to prove that motorist is not within exception but motorist must prove facts establishing that motorist is within exception. *Bush v. District of Columbia* (D. C. Mun. App. 1951, 78 A. 2d 234).

**"Operating" defined**

A person found sitting behind the steering wheel of an automobile at the point of collision with another vehicle is "operating" such vehicle within this section requiring every person who operates a motor vehicle to have an operator's permit in his possession. *H. I. Taylor v. United States* (D.C. App. 1969, 259 A. 2d 835).

Arresting officer who arrived at the scene of accident and observed defendant sitting behind steering wheel of an automobile which had collided with rear-end of a tractor-trailer, and where defendant was unable to produce an operator's permit, arrest of defendant was justified and pistol discovered on defendant's person in routine weapons check was admissible as incident to a lawful arrest. *Id.*

In view of provisions dealing with registration of motor vehicles and defining terms "operate" and "operated" to include operating, moving, standing, or parking any motor vehicle or trailer on public highway, defendant, who had no operator's permit and who was manually pushing automobile, temporarily incapable of movement under its own power, along highway and controlling its direction by reaching through open window and manipulating steering wheel was guilty of violating regulation that no individual shall operate a motor vehicle without first having obtained an operator's permit. *Richardson v. District of Columbia* (D. C. Mun. App. 1957, 134 A. 2d 492).

**Permit in possession**

Holder of a permit is required to have it in his immediate possession when operating a motor vehicle and exhibit the same to any police officer when demand is made therefor. *Dorsey v. Peak* (1928, 24 F. 2d 892, 58 App. D.C. 64).

**Restoration of permit**

Director of Motor Vehicles did not abuse his power when he denied application of petitioner, who had accumulated 17 points for traffic violations, for restoration of operator's permit. *T. Thalís v. G. A. England, Director of Motor Vehicles etc.* (D.C. App. 1963, 193 A. 2d 855).

**Restricted license**

Driver whose operator's license was subject to restriction that he wear glasses and who operated automobile without glasses was guilty of operating automobile contrary to restricted license notwithstanding his own medical examination showing such glasses were no longer necessary. *B. Reis v. District of Columbia* (D.C., App. 1967, 230 A. 2d 487).

**Suspension of permit**

Failure to prove that the permit had not been restored before the date of arrest was immaterial, even though the information contained no averment of it, as such averment was mere surplusage, and the burden of proof respecting it did not rest on the prosecution. *Chesevoir v. District of Columbia* (1929, 29 F. 2d 798, 58 App. D.C. 268).

Action of the Commissioners in suspending petitioner's permit was not based upon illegally delegated power. *LaForest v. Board of Comrs. of District of Columbia* (1937, 92 F. 2d 547, 67 App. D.C. 396).

**§ 40-302. Revocation or suspension of operators' permits—Procedure—New permit after revocation—Nonresidents—Penalty.**

(a) Except where for any violation of this chapter revocation of the operator's permit is mandatory, the Commissioner or his designated agent may with

or without a prior hearing revoke or suspend an operator's permit for any cause which he or his agent may deem sufficient: *Provided*, That in each case where a permit is revoked or suspended the reasons therefor shall be set out in the order of revocation or suspension: *Provided further*, That such order shall take effect five days after its issuance unless the holder of the permit shall have filed within such period, written application with the Commissioner of the District of Columbia for a review of his order or the order of his agent, and, if upon such review, the Commissioner shall sustain such order, the same shall become effective immediately: *Provided further*, That application to said Commissioner for a review shall not operate as a stay of such order of the Commissioner or his agent when the order has been issued revoking or suspending a permit on account of mental or physical incapacity, for driving under the influence of liquor or narcotic drugs; for manslaughter when an automobile is involved, or for operating a motor vehicle equipped with a smoke screen.

An individual whose permit is denied, suspended, or revoked by the Commissioner or his agent may, if application for a review by the Commissioner of an order for revocation or suspension is not filed, or if an application for review by him is filed, after the Commissioner's decision on the review, petition the District of Columbia Court of Appeals for a review of the order or decision in the manner provided by the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1501 to 1-1510).

(b) In case the operator's permit of any individual is revoked no new permit shall be issued to such individual for at least six months after the revocation except in the discretion of the Commissioners or his designated agent.

(c) The Commissioner of the District of Columbia, or his designated agent, may suspend or revoke the right of any nonresident person as defined in section 40-303, to operate a motor vehicle in the District of Columbia, for any cause he or his agent may deem sufficient, and the proper authority at the place of issuance of the permit, or other authority to operate a motor vehicle shall be notified of such suspension and the reason therefor, immediately: *Provided*, That such order of suspension or revocation shall take effect ten days after its issuance, and the same be subject to review and appeal in the manner and under the same conditions as are provided for such matters in subsection (a) of this section.

(d) Any individual found guilty of operating a motor vehicle in the District during the period for which his operator's permit is revoked or suspended or for which his right to operate is suspended under this act shall, for each such offense, be fined not less than \$100 nor more than \$500, or imprisoned not less than 30 days nor more than one year, or both. (Mar. 3, 1925, 43 Stat. 1125, ch. 443, § 13; July 3, 1926, 44 Stat. 814, ch. 739, § 3; Feb. 27, 1931, 46 Stat. 1424, 1428, ch. 317, §§ 2, 4; June 7, 1934, 48 Stat. 926, ch. 426; May 15, 1936, 49 Stat. 1273, ch. 393; Aug. 31, 1954, 68 Stat. 1048, ch. 1173, § 1; July 8, 1963, 77 Stat. 78, Pub. L. 88-60, § 6; Dec. 23, 1963.



77 Stat. 617, Pub. L. 88-241, § 8; July 29, 1970, Pub. L. 91-358, title I, § 163(g) (1), 84 Stat. 583.)

#### REFERENCES IN TEXT

In the original, "this chapter", as used in this section, reads "this Act", meaning the above-cited act of March 3, 1925. The provisions of such act still in force are classified to §§ 40-301 to 40-303, 40-601 to 40-603, 40-605, 40-609, 40-610, 40-611, and 40-613 to 40-615.

#### CODIFICATION

Section was enacted as part of the District of Columbia Traffic Act, 1925, which is classified generally to chapter 6 of title 40. For definitions applicable to this section, see § 40-602.

#### AMENDMENTS

1970—Section 163(g) (1) of Act July 29, 1970, Public Law 91-358 amended subsection (a) by striking out "sections 11-742, 17-303, 17-304, 17-305(b), 17-306 and 17-307 of the District of Columbia Code" and inserting in lieu thereof "the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1501 to 1-1510)".

1963—Section 8 of act Dec. 23, 1963, amend subsection (a) by striking out the fourth proviso in the first sentence; by striking out the colon preceding that proviso and inserting a period in lieu thereof and by striking the second sentence and inserting in lieu thereof a new second sentence beginning with the words, "An individual".

1936—Act May 15, 1936, amended paragraph (c) by adding the proviso and giving the right to revoke for any cause, this right being previously given only upon conviction of a violation.

1931—Act Feb. 27, 1931, substituted "commissioners or their designated agent" for "director"; and in subdivision (a) substituted "five days" for "ten days" in the second proviso; omitted from the second proviso "but if the director or his assistant, such order shall thereupon be vacated;" and added the third proviso.

1926—Act July 3, 1926, amended paragraph (a) generally, and among other changes, provided for a hearing on revocation or suspension of operator's permit.

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 23, 1963, was made effective on Jan. 1, 1964.

#### EFFECTIVE DATE OF 1931 AMENDMENT

Section 6 of act Feb. 27, 1931, provided that: "This Act [amending this section and §§ 40-303, 40-602, 40-603, 40-605, and 40-609] shall take effect July 1, 1931."

#### CHANGE OF NAME

Act June 7, 1934, substituted "United States Court of Appeals for the District of Columbia" for "court of appeals of the District of Columbia."

"The Municipal Court of Appeals for the District of Columbia" was substituted for "any justice of the United States Court of Appeals for the District of Columbia" to conform to the provisions of act Aug. 31, 1954, which vested exclusive jurisdiction to review action of the Commissioners in revoking, suspending or denying a license under this section in the Municipal Court of Appeals for the District of Columbia. See § 11-742.

Act July 8, 1963, § 6, substituted "District of Columbia Court of Appeals" for "Municipal Court of Appeals for the District of Columbia". Provisions identical with those of said section 6 were contained in act Oct. 23, 1962, 76 Stat. 1172, Pub. L. 88-873, § 6, which was repealed by act Dec. 23, 1963, 77 Stat. 629, Pub. L. 88-241, § 21(a). See section 11-101.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CROSS REFERENCES

Alcoholic Beverage Control Act inapplicable, see § 25-127.

Definition of "this chapter" and other terms used, see § 40-602.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 25-127, 40-205, 40-603, 40-612.

#### NOTES TO DECISIONS

##### Actual physical control

Where automobile, ownership of which was not disclosed, was parked facing east on north sidewalk of a one-way street, and defendant, whose operator's permit had been revoked, was sitting behind steering wheel, and motor was running, in absence of any explanatory testimony from defendant, trial court was justified in finding that defendant was in actual physical control of automobile, capable of putting it into movement or preventing its movement, and hence "operating" the automobile within meaning of statute prohibiting operation during period for which operator's permit has been revoked. *Houston v. District of Columbia* (D. C. Mun. App. 1959, 149 A. 2d 790).

##### Administrative action

Mere fact that proof tended to reveal at a suspension hearing before permit control officer of District of Columbia Department of Motor Vehicles that 17-year-old driver, whose license was suspended, was driving while under influence of alcohol did not thereby convert the proceedings, administrative in character, into a judicial proceeding of the kind Congress assigned exclusively to juvenile court. *K. P. Murphy, a minor etc. v. W. D. Heath, Director, etc.* (D.C. App. 1969, 256 A. 2d 421).

The court held that the exclusive jurisdiction in judicial proceedings conferred by Juvenile Court Act on the juvenile court is not a jurisdictional bar to the administrative action of suspending motor vehicle operator's permit of 17-year-old driver. *Id.*

##### Appeals

Where there was nothing in record on appeal by motorist from order of the Board of Commissioners of the District of Columbia sustaining order suspending motor vehicle operator's permit of motorist, to support motorist's contention that prior to his election to forfeit collateral posted by him when he was charged with backing without caution and with being involved in an accident involving a pedestrian, there was a mutual understanding between him and office of Corporation Counsel that charge of an accident involving a pedestrian would be withdrawn, Municipal Court of Appeals for the District of Columbia could not consider that contention on appeal. *Lambert v. Board of Commissioners of District of Columbia* (D. C. Mun. App. 1955, 116 A. 2d 926).

##### Arrest

Where police officer, on foot patrol, saw a bag of trash thrown into a public street from left front window of automobile standing at curb with motor running, and where the automobile's occupant, after being approached by the officer and questioned about the bag, alighted from the automobile, picked up the bag and put it back inside the car, it could not be said that the incident was over and that it was unlawful for the officer to ask the occupant to produce his operator's permit and the registration card for the automobile, which inquiries resulted in discovery that the occupant's permit had been revoked and, later, that the automobile had been stolen. *United States v. R. Weston* (1972, 466 F. 2d 435, 151 U.S. App. D.C. 264).

Motorist's arrest while operating motor vehicle during period in which operator's permit has been revoked was legal where motorist was stopped for routine check for operator's permit and for no other purpose. *Mincy v. District of Columbia* (D.C. App. 1966, 218 A. 2d 507).

##### Authority to revoke

Director of Motor Vehicles did not exceed his discretionary power in revoking driver's license on ground that licensee who had been convicted of housebreaking, larceny, and destroying movable property and who had previously been convicted of crimes in 1940, 1941, 1952, 1958, 1960 was morally unfit to operate a motor vehicle. *S. W. James v. Director of Motor Vehicles, etc.* (D.C. App. 1963, 193 A. 2d 209).

Driver's crimes were not required to be connected with operation of motor vehicle to authorize finding that license should be revoked on ground that he was not morally qualified to drive. *Id.*



Driver's license is privilege which may be denied as long as danger exists that licensee will make unlawful use of automobile jeopardizing safety of persons or property. *Id.*

Proof of commission of a crime, regardless of its nature, is not sufficient to disqualify a person from holding a driver's license. *Id.*

Neither order of Commissioners of District of Columbia giving Director of Motor Vehicles full authority to act for Commissioners in suspension of operator's permit nor statute authorizing Commissioners or their designated agents to suspend operator's permit where there has been breach of usual and reasonable rules and regulations made concerning control of traffic authorized Director of Motor Vehicles to suspend operating permit of petitioner merely because petitioner violated regulation providing that no owner of motor vehicle shall allow it to be operated by any individual who is not duly licensed operator. *F. Justin Mason v. Director of Motor Vehicles etc.* (D.C. Mun. App. 1962, 186 A.2d 893).

Where driver had been convicted in Virginia of driving while under the influence of intoxicating liquors and such conviction had been certified to the District of Columbia, and where, as a result of such certification, driver's total points under "point system" of regulation exceeded 12 thereby permitting revocation of driver's operator's permit, Director of Motor Vehicles did not abuse his discretion in allowing points to be assessed for conviction outside District, since, if incident had occurred in District of Columbia, it would have meant mandatory revocation of driver's permit without exercise of any discretion by Director, without a hearing and without reference to any point system. *Council v. Director of Motor Vehicles, etc.* (D.C. Mun. App. 1960, 159 A.2d 874).

Traffic hearing officer did not exceed his authority in revoking operator's permit of a motorist convicted of speeding in a school zone even though under the "point system" used in the District, only three points could be assessed for such violation, since notwithstanding such point system Director of Vehicles and Traffic was authorized to revoke operator's permit when, following lawful hearing, he concluded that motorist drove in such a manner as to show a flagrant disregard for the safety of persons or property. *Tillman v. Director of Vehicles and Traffic of District of Columbia* (D.C. Mun. App. 1958, 144 A.2d 922).

#### Construction

Statute which permits the revocation or suspension of an operator's permit for any cause deemed sufficient was properly interpreted as permitting such revocation or suspension only for violations of usual and reasonable traffic regulations and, so construed, did not unconstitutionally delegate legislative authority. *W. R. Franklin v. District of Columbia* (D.C. App. 1968, 248 A.2d 677).

#### Foreign registration after suspension

Where defendant's automobile operator's permit was revoked in the District of Columbia, his residence in Virginia and possession of a valid Virginia operator's permit did not bar his conviction for driving in the District of Columbia while his permit was revoked there, notwithstanding the reciprocal benefits conferred on nonresident operators by the Code. *Hicks v. District of Columbia* (D.C. App. 1966, 217 A.2d 309).

Even where period between revocation of operator's permit and apprehension of driver was more than three-year period for which District of Columbia operator's permits were validly issued, driver who had become resident of Virginia and had Virginia operator's permit could not lawfully operate motor vehicle in District of Columbia under reciprocal benefits conferred on nonresident motorists. *Rickard v. District of Columbia* (D.C. App. 1965, 214 A.2d 476).

Revocation of license to drive does not expire at same time license itself would expire, but continues until privilege has been restored by revoking authority. *Id.*

One whose operator's permit in the District of Columbia had been revoked was properly convicted of driving in the District during the suspension period though he had become a resident of Virginia and had obtained registra-

tion and operator's licenses from that state. *District of Columbia v. Fred* (1930, 50 S. Ct. 163, 281 U.S. 49, 74 L. Ed. 694).

#### Mandatory revocation

Where it was mandatory on the Commissioners to revoke the defendant's operator's permit when notified of his conviction of operating a motor vehicle while intoxicated, the defendant was not entitled to a hearing on the matter of revocation and administrative review. *Oliver v. Silver* (D.C. Mun. App. 1959, 155 A.2d 719).

In prosecution for operating a motor vehicle in the District of Columbia during period for which defendant's operator's permit had been revoked, charge that there was no dispute as to fact that defendant's permit had been revoked and that he had driven in the District was not erroneous in view of defendant's statement in final argument that prosecutor's statement that defendant was driving a motor vehicle on a street in the District was substantially true. *Mathews v. District of Columbia* (D.C. Mun. App. 1957, 134 A.2d 650).

In prosecution for operating a motor vehicle in District of Columbia during period for which defendant's operator's permit had been revoked, failure of court to charge that if the Government failed to prove each element of the offense beyond a reasonable doubt, the jury should find the defendant not guilty, was error but not prejudicial in view of defendant's failure to request such instruction and failure to object to charge as given and in view of charge that jury was sole judge of facts and that it was their duty as finders of the facts to reach a verdict on the testimony. *Id.*

#### Operating vehicle after revocation

Within the meaning of statute making it a misdemeanor for a person to operate a motor vehicle in the District of Columbia during the period for which his operator's permit is revoked or suspended or for which his right to operate is suspended, the defendant, when seated in automobile alone, behind steering wheel with ignition switch on and motor running, was "operating" an automobile. *United States v. R. Weston* (1972, 466 F.2d 435, 151 U.S. App. D.C. 264).

Although operating permit would have been restored to driver had he promptly applied for restoration at end of suspension period, driver who drove vehicle thereafter without obtaining official restoration was guilty of driving vehicle while operating privilege was suspended. *J. L. Brown v. District of Columbia* (D.C. Mun. App. 1961, 170 A.2d 925).

Conviction for operating a motor vehicle after revocation of license was affirmed, and it was not necessary for the prosecution to show that no new permit had been issued. *Chesevoir v. District of Columbia* (1929, 29 F.2d 798, 58 App. D.C. 268).

#### "Operator" defined

Evidence supported finding that defendant, who had been seen behind wheel manipulating automobile's controls after collision had occurred, and who was charged with driving while permit was revoked, was "operator" of vehicle within statute providing penalty for driving while permit is revoked. *D. W. Jackson, Jr. v. District of Columbia* (D.C. Mun. App. 1962, 180 A.2d 885).

In view of Motor Vehicle Safety Responsibility Act definition of driver or operator, and in view of regulation defining driver or operator as "every person who drives or is in actual physical control of a vehicle", an "operator" within this section, prohibiting operation of a motor vehicle during a period for which operator's permit has been revoked is one who is in actual physical control of a vehicle upon a public highway. *Houston v. District of Columbia* (D.C. Mun. App. 1959, 149 A.2d 790).

#### Public sidewalk

Where automobile, ownership of which was not disclosed, was parked facing east on north sidewalk of a one-way street, and defendant, whose operator's permit had been revoked, was sitting behind steering-wheel, and motor was running, conviction of operating a motor vehicle during period for which his operator's permit had been revoked was not invalid on ground that traffic statutes and regulations were directed at operation of motor



vehicles on public highways since a public sidewalk is part of the public highway. *Houston v. District of Columbia* (D. C. Mun. App. 1959, 149 A. 2d 790).

#### Reasonableness of regulation

Prohibition against motorist, whose privilege to drive had been revoked, again operating motor vehicle in District of Columbia until after some affirmative action on his part followed by official action by Department of Motor Vehicles was reasonable as purpose of revocation procedure was not to punish offending driver but to protect public. *Rickard v. District of Columbia* (D.C. App. 1965, 214 A. 2d 476).

Point system which provides for the assessment of points against the motorist for moving traffic violations and for suspension of the motorist's operating permit upon accumulation of eight points, is a reasonable regulation concerning the control of traffic and Board of Commissioners had the authority to enact such a system. *Ritch, Jr. v. Director of Vehicles and Traffic of District of Columbia* (D. C. Mun. App. 1956, 124 A. 2d 301).

#### Statutory right of review

Where statute authorized the Board of Commissioners of District of Columbia to delegate any of its functions to other agencies and the Board did delegate its right to review action of Department of Vehicles and Traffic in revoking a motorist operator's permit to the Director of Vehicles and Traffic, motorist who had his operator's permit revoked was not denied statutory right of having his case reviewed by the commissioners when it was reviewed by the Board's legally delegated authority. *Ritch, Jr. v. Director of Vehicles and Traffic of District of Columbia* (D. C. Mun. App. 1956, 124 A. 2d 301).

### § 40-303. Nonresidents exempt from registration—Period of exemption.

(a) The owner or operator of any motor vehicle who is not a legal resident of the District, and who has complied with the laws of any State, Territory, or possession of the United States, or of a foreign country or political subdivision thereof, in respect of the registration of motor vehicles and the licensing of operators thereof, shall, subject to the provisions of this section, be exempt from compliance with section 40-301 and with any provision of law or regulation requiring the registration of motor vehicles or the display of identification tags in the District. Such exemption shall cover the period immediately following the entrance of such owner or operator into the District equal to the period for which the Commissioner of the District of Columbia or his designated agent has previously found that a similar privilege is extended to legal residents of the District by such State, Territory, or possession of the United States, or foreign country or political subdivision thereof. The Commissioner or his designated agent shall from time to time ascertain such privileges and cause his findings to be promulgated. When the laws of any State, Territory, or possession of the United States or of a foreign country or of a political subdivision thereof contain a reciprocity provision similar to that hereinabove set forth, or the privilege extended to a legal resident of the District is for the remaining portion of the current District of Columbia registration year, then the owner of any motor vehicle who is a legal resident of such State, Territory, or possession of the United States, or of a foreign country or political subdivision thereof shall comply with the provisions of section 40-301 and with every other provision of law or regulation requiring the registration of motor vehicles and the display of identification tags in the District

at the time of the expiration of the current motor vehicle registration issued to such owner by such State, Territory, or possession of the United States or a foreign country or political subdivision thereof, unless the Commissioner or his designated agent shall have entered into a reciprocal agreement or arrangement with the duly authorized representatives of such State, Territory, or possession of the United States or a foreign country or political subdivision thereof, further to limit or to extend the period of time during which the validity of the motor vehicle registration and identification tags of such State, Territory, or possession of the United States or foreign country or political subdivision thereof shall be recognized by the District. The Commissioner or his designated agent is hereby authorized and empowered to enter into reciprocal agreements and arrangements as aforesaid. The following persons shall, with respect to the registration of motor vehicles and the licensing of operators thereof, if they have complied with the laws of the State, Territory, or possession from which they have been elected or appointed, or of which they are legal residents, be exempt during their respective terms of office or during the period of their employment as administrative employees from compliance with section 40-301 and with any other provision of law or regulation requiring the registration of motor vehicles and the display of identification tags in the District: Senators and Representatives in Congress; Delegates to Congress; Resident Commissioners; administrative employees of Senators, Representatives, Delegates, and Resident Commissioners who are legal residents of the State, Territory, or possession from which said Senators, Representatives, Delegates, and Resident Commissioners have been elected or appointed; and officers of the executive branch of the Government of the United States who are not domiciled within the District of Columbia, whose appointment to the office held by them was by the President of the United States, subject to confirmation by the Senate, and whose tenure of office is at the pleasure of the President.

(b) Any operator of a motor vehicle who is not a legal resident of the District and who does not have in his immediate possession an operator's permit issued by a State, Territory, or possession of the United States, or foreign country or political subdivision thereof, having motor vehicle reciprocity relations with the District, shall not operate a motor vehicle in the District unless (1) the laws of the State, Territory, or possession of the United States, or foreign country or political subdivision thereof, under which the motor vehicle is registered do not require the issuance of a motor vehicle operator's permit or (2) he has submitted to examination within 72 hours after entering the District and obtained an operator's permit in accordance with the provisions of section 40-301. Any individual who violates any provision of this subdivision shall, upon conviction thereof, be fined not less than \$5 nor more than \$50 or imprisoned not less than 30 days, or both. (Mar. 3, 1925, 43 Stat. 1123, ch. 443, § 8; Feb. 27, 1931, 46 Stat. 1424, ch. 317, § 2; Aug. 16, 1954, 68 Stat. 733, ch. 741, § 6.)



## CODIFICATION

Section was enacted as part of the District of Columbia Traffic Act, 1925, which is classified generally to chapter 6 of title 40. For definitions applicable to this section, see § 40-602.

## AMENDMENTS

1954—Act Aug. 16, 1954, amended subsection (a) to authorize the District to enter into reciprocity agreements on registration of vehicles and licensing of drivers and to clarify the application of laws in the case of similar reciprocity provisions.

Act Aug. 16, 1954, also added a new provision exempting certain Government officials from the requirement of registering personal motor vehicles and licensing operators in the District. The exemption was extended to administrative employees of Members of Congress, Delegates, and Resident Commissioners.

1931—Act Feb. 27, 1931, inserted "commissioners or their designated agent" in lieu of "director."

## EFFECTIVE DATE OF 1954 AMENDMENT

See note under § 40-301.

## EFFECTIVE DATE OF 1931 AMENDMENT

See note under § 40-302.

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## CROSS REFERENCES

Alcoholic Beverage Control Act as not affecting this section, see § 25-127.

Definition of terms, see § 40-602.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 25-127, 40-102, 40-104, 40-301; 40-302.

## NOTES TO DECISIONS

## In general

Where bus passenger sued bus company for injuries arising from bus collision with automobile owned by District of Columbia and being operated by policeman, bus company could not maintain a third party action against District of Columbia for contribution notwithstanding provisions of the Financial Responsibility Act. *Capital Transit Co. v. District of Columbia* (1955, 225 F. 2d 38, 96 U. S. App. D. C. 199).

## Change of residence

A person does not cease to be a legal resident of one jurisdiction for automobile operator's permit purposes by merely forming an intention of moving to another jurisdiction in which such person has never resided. *Bush v. District of Columbia* (D. C. Mun. App. 1951, 78 A. 2d 234).

## Construction

In the first part of this act the word "registration" is applied to the vehicle and the word "licensing" to the operator; and in the latter part the words "licensed or registered" should be treated as used in the same relation as their noun forms in the first part. *King v. District of Columbia* (1922, 277 F. 562, 51 App. D.C. 160). This case was in effect overruled on another point by *District of Columbia v. Fred* (1930, 50 S. Ct. 163, 281 U.S. 49, 74 L. Ed. 694).

The meaning of this act being doubtful, the District's interpretation thereof as evidenced by its agreement with Virginia as to operation of a motor vehicle in the District by a person of that State should prevail. This case was in effect overruled on another point by *District of Columbia v. Fred* (1930, 50 S. Ct. 163, 281 U.S. 49, 74 L. Ed. 694).

The exception of motorist not residing in District of Columbia and complying with automobile registration and driver's license laws of a state from statutory prohibition against operation of automobile in District without District operator's permit is a defense and not part of description of offense, and District law enforcement of-

ficers are not required to prove that motorist is not within exception but motorist must prove facts establishing that motorist is within exception. *Bush v. District of Columbia* (D. C. Mun. App. 1951, 78 A. 2d 234).

## Duty of nonresident to obey regulations

Where defendant's automobile operator's permit was revoked in the District of Columbia, his residence in Virginia and possession of a valid Virginia operator's permit did not bar his conviction for driving in the District of Columbia while his permit was revoked there, notwithstanding the reciprocal benefits conferred on nonresident operators by the Code. *Hicks v. District of Columbia* (D.C. App. 1966, 217, A. 2d 309).

Driver whose operator's permit was revoked by District of Columbia and who moved to Virginia and obtained valid resident operator's permit did not have privilege to operate motor vehicle in District of Columbia under reciprocal benefits conferred upon nonresident operators. *Rickard v. District of Columbia* (D.C. App. 1965, 214 A. 2d 476).

Revocation of license to drive does not expire at same time license itself would expire, but continues until privilege of operating has been restored by revoking authority. *Id.*

Even where period between revocation of operator's permit and apprehension of driver was more than three-year period for which District of Columbia operator's permits were validly issued, driver who had become resident of Virginia and had Virginia operator's permit could not lawfully operate motor vehicle in District of Columbia under reciprocal benefits conferred on nonresident motorists. *Id.*

This section does not exempt a nonresident from compliance with the laws of the District of Columbia when, while a resident of the District, his driver's permit was revoked under § 40-302 and he is subject to punishment under that section. *District of Columbia v. Fred* (1930, 50 S. Ct. 163, 281 U.S. 49, 74 L. Ed. 694).

This act does not relieve a nonresident operator of amenability to valid traffic regulations. *King v. District of Columbia* (1922, 277 F. 562, 51 App. D.C. 160). This case was in effect overruled on another point by *District of Columbia v. Fred* (1930, 50 S. Ct. 163, 281 U.S. 49, 74 L. Ed. 694).

## Evasion of revocation

One may be convicted of operating a motor vehicle without a license who procures a Virginia license after his District license has been revoked, and drives in the District during its unexpired period. *District of Columbia v. Fred* (1930, 50 S. Ct. 163, 281 U.S. 49, 74 L. Ed. 694).

## Evidence

Evidence was sufficient to show that motorist having Maryland driver's permit and owning automobile having Maryland tags was District of Columbia resident required to have District operator's permit and was not resident of Maryland not required to have District permit to operate automobile in District. *Bush v. District of Columbia* (D. C. Mun. App. 1951, 78 A. 2d 234).

## Owners

Where there had been a meeting of minds of sellers and buyer, payment of purchase price by buyer and delivery of automobiles by sellers, sellers were not the "owners", and were not liable for damage caused by buyer's negligent operation of automobile, notwithstanding fact that notarization of assignment of title, was defective and automobile was still registered in sellers' names. *Burt and Mumford v. Cordover* (D. C. Mun. App. 1955, 117 A. 2d 116).

## Purpose of revocation procedure

Prohibition against motorist, whose privilege to drive had been revoked, again operating motor vehicle in District of Columbia until after some affirmative action on his part followed by official action by Department of Motor Vehicles was reasonable as purpose of revocation procedure was not to punish offending driver but to protect public. *R. W. Rickard v. District of Columbia* (D.C. App. 1965, 214 A. 2d 476).



## Chapter 4—MOTOR VEHICLE SAFETY RESPONSIBILITY

Sec.

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Sec.

- 40-464. Discharge in bankruptcy.
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- 40-497. Provisions of chapter not to prevent other processes provided by law.
- 40-498. Interpretation of provisions of chapter.
- 40-498a. Effect of Reorganization Plan Number 5 of 1952.
- 40-498b. Separability of provisions.
- 40-498c. Effect of prior law—Repeal.

§§ 40-401 to 40-416. Repealed. May 25, 1954, 68 Stat. 139, ch. 222, § 82.

Sections, act May 3, 1935, 49 Stat. 166, ch. 89, §§ 1-16, related to the financial responsibility of owners and operators of motor vehicles, and are now covered by sections 40-417 to 40-498.

Section 40-402 was amended by act May 9, 1941, 55 Stat. 184, ch. 98, § 1.

Sections 40-403 and 40-409 were amended by act Aug. 24, 1937, 50 Stat. 751, ch. 753, § 1, and section 40-404 by section 2 of said act.

### EFFECTIVE DATE OF REPEAL

Sections repealed effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under section 40-417.

§ 40-417. Short title.

This chapter may be cited as the "Motor Vehicle Safety Responsibility Act of the District of Columbia." (May 25, 1954, 68 Stat. 120, ch. 222, § 1.)

### EFFECTIVE DATE

Section 87 of act May 25, 1954, provided that: "This Act [§§ 40-417 to 40-498c] shall take effect one year after its enactment [May 25, 1954]."



## NOTES TO DECISIONS

## Constitutionality

Congress has reposed issuance and retraction of driver's licenses within discretion of the Commissioners and it may surround this grant with reasonable requisites and contingencies. *J. F. Cheek et al. v. W. E. Washington et al.* (1970, 311 F. Supp. 965).

## § 40-418. Definitions.

The following words and phrases used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this article except in those instances where the context clearly indicates a different meaning.

(a) **COMMISSIONER.**—The Commissioner of the District of Columbia, or his designated agent or agents.

(b) **DRIVER OR OPERATOR.**—Every person who drives or is in actual physical control of a motor vehicle upon a public highway or who is exercising control over or steering a vehicle being pushed or towed by a motor vehicle upon a public highway.

(c) **LICENSE.**—Any operator's permit or any other license or permit to operate a motor vehicle issued under the laws of the District of Columbia including—

- (1) any temporary or learner's permit;
- (2) the privilege of any person to drive a motor vehicle whether or not such person holds a valid license; and
- (3) any nonresident's operating privilege as defined herein.

(d) **MOTOR VEHICLE.**—Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from over-head trolley wires, but not operated upon rails.

(e) **NONRESIDENT.**—Every person who is not a resident of the District of Columbia.

(f) **NONRESIDENT'S OPERATING PRIVILEGE.**—The privilege conferred upon a nonresident by the laws of the District of Columbia pertaining to the operation by such person of a motor vehicle, or the use of a vehicle owned by such person, in the District of Columbia.

(g) **OWNER.**—A person who holds the legal title of a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

(h) **PERSON.**—Every natural person, firm, copartnership, association, or corporation.

(i) **PUBLIC HIGHWAY.**—Any street, road, or public thoroughfare.

(j) **REGISTRATION.**—The registration plates issued under the laws of the District of Columbia pertaining to the registration of vehicles.

(k) **VEHICLE.**—Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks. (May 25, 1954, 68 Stat. 120, ch. 222, § 2.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## TRANSFER OF FUNCTIONS

Designation of Director, Department of Motor Vehicles as agent of Commissioner, see Org. Ord. No. 105, as amended, set out in the appendix to title 1.

## NOTES TO DECISIONS

## Chattel mortgagee

Chattel mortgagee is not an "owner" of an automobile, nor does he become such merely by virtue of a default by the mortgagor, though the right to possession may accrue immediately upon default, but something more than a lien on the automobile, though presently and summarily enforceable, is necessary. *Mason v. Automobile Finance Co.* (1941, 121 F. 2d 32, 73 App. D.C. 284).

## Conditional sales

That codefendant in action for personal injuries resulting from automobile collision was seller under conditional sales contract with reservation of title clause did not establish him as owner as clause was intended to provide only means of achieving security for unpaid balance of purchase price. *Herman v. Anacostia Chrysler-Plymouth, Inc.* (1965, 350 F. 2d 781, 121 U.S. App. D.C. 403).

One who had sold and delivered taxicab to another on conditional sale contract and had retained legal title solely for security, was not the owner thereof nor liable for the property damage caused by negligence of another to whom purchaser had entrusted the taxicab and was not estopped to deny such ownership though his name appeared on taxicab. *Gasque v. Saidman* (D.C. Mun. App. 1945, 44 A. 2d 537).

## Joint enterprise

Whether the contributory negligence of the driver of a rented taxicab may be imputed to its owner must be based on the theory that both were engaged in a joint enterprise, but to establish such relationship there must exist not only a community of interest in the subject of the venture but also an equal right, express or implied, to direct and control the management and movement of the car. *National Trucking and Storage Co. v. Driscoll* (D.C. Mun. App. 1949, 64 A. 2d 304).

To constitute a joint enterprise there must be not only joint or community of interest but also an equal right, express or implied, to direct and control the management and movement of the motor vehicle involved. *Gasque v. Saidman* (D.C. Mun. App. 1945, 44 A. 2d 537).

## "Operator" defined

In view of Motor Vehicle Safety Responsibility Act definition of driver or operator, and in view of regulation defining driver or operator as "every person who drives or is in actual physical control of a vehicle", an "operator" within provision prohibiting operation of a motor vehicle during a period for which operator's permit has been revoked is one who is in actual physical control of a vehicle upon a public highway. *Houston v. District of Columbia* (D.C. Mun. App. 1959, 149 A. 2d 790).

## Owners and ownership

Where uncontradicted evidence was that automobile involved in collision was property of insured driver and that insured's sister held only the bare, legal, registration title, in absence of any finding on credibility of testimony regarding ownership of the automobile it was improper to impose liability on insured's sister. *Bush v. Johnson* (D.C. App. 1966, 215 A. 2d 850).

There is sale where minds of buyer and seller have met on all essential terms of contract of sale and automobile is delivered by seller and unconditionally accepted by buyer, despite any omission to comply strictly with law regulating transfer and recordation of title. *F. M. Frei, Adm. of Estate, etc. v. S. Gordon, t/a Red's Sales, etc.* (D.C. App. 1965, 215 A. 2d 488).

There was executed contract of sale between plaintiff and defendant's decedent, where there was meeting of minds between parties, decedent's execution of promissory note duly secured by chattel deed of trust, plaintiff's acceptance of trade-in automobile, and delivery of new



automobile which decedent retained, despite plaintiff's neglect to deliver manufacturer's certificate of origin and certificate of title. *Id.*

Contract for sale of automobile was not illegal and contrary to public policy despite seller's failure to deliver certificate of origin and certificate of title, in absence of evidence of deliberate, intentional violation by parties of law governing transfer of title. *Id.*

Holding automobile registration certificate at the time of accident is not conclusive as to ownership within Motor Vehicle Safety Responsibility Act, notwithstanding statutory definition of owner as one who holds legal title of a vehicle. *H. Johnson et al. v. G. Keyes* (D.C. App. 1964, 201 A. 2d 24).

To determine ownership of automobile for purpose of applying Motor Vehicle Safety Responsibility Act, it is necessary to look to purpose of statute, namely, to place liability upon person in position immediately to allow or prevent use of vehicle and to do so by giving lawful and effective consent or prohibition as to its operation by others. *Id.*

Where there had been a meeting of minds of sellers and buyer, payment of purchase price by buyer and delivery of automobiles by sellers, sellers were not the "owners", and were not liable for damage caused by buyer's negligent operation of automobile, notwithstanding fact that notarization of assignment of title, was defective and automobile was still registered in sellers' names. *Burt and Mumford v. Cordover* (D.C. Mun. App. 1955, 117 A. 2d 116).

The terms "owner" and "ownership" must be defined by judicial determination, made in a manner giving effect to the objects and purposes of statutory provisions. *Mason v. Automobile Finance Co.* (1941, 121 F. 2d 32, 73 App. D.C. 284).

Possession plus power and legal right to permit its use by another constitutes ownership. *Id.*

#### § 40-419. Administration.

(a) The Commissioner shall administer and enforce the provisions of this chapter, and the District of Columbia Council may make rules and regulations necessary for its administration, including rules and regulations assessing reasonable fees to reimburse the District of Columbia for the cost of reinstating licenses and registrations suspended under the authority of this chapter, such fees not to exceed the amount of \$10 for the reinstatement of a license or registration, or both a license and registration.

(b) The Commissioner shall receive and consider any pertinent information upon request of persons aggrieved by their orders or acts under any of the provisions of this chapter.

(c) The Commissioner shall prescribe and provide suitable forms requisite or deemed necessary for the purpose of this chapter.

(d) The Commissioner shall retain records required for the administration of this chapter for a period of five years, after which the Commissioner may destroy or otherwise dispose of such records. (May 25, 1954, 68 Stat. 121, ch. 222, § 3; (Sept. 8, 1960, 74 Stat. 862, Pub. L. 86-730, § 1; Oct. 31, 1969, Pub. L. 91-106, title IV, § 406, 83 Stat. 175.)

#### AMENDMENTS

1969—Act Oct. 31, 1969, Pub. L. 91-106, § 406, amended subsection (a) by enlarging the authority to make rules and regulations relating to reinstatement of a license or registration as above set out.

1960—Subsec. (d) added by act Sept. 8, 1960.

#### EFFECTIVE DATE OF 1969 AMENDMENTS

See note under § 40-102.

#### AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91-106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91-106, set out as a note under § 47-2501a.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(294) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners of making rules and regulations under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### § 40-420. Review by Commissioner.

Any order or act of any agent of the Commissioner under the provisions of this chapter shall be subject to review by the Commissioner. Application for review of any such order or act shall be in writing and shall set out in detail the reasons for such review. Such application shall be filed with the Commissioner within five days after the issuance of the order or occurrence of the act in question. If upon review the Commissioner shall sustain such order or act, the same shall become effective immediately.

Any person whose license or motor-vehicle registration shall be denied, suspended, or revoked by the Commissioner under the provisions of this chapter may, within thirty days after such denial, revocation, or suspension has been reviewed by the Commissioner and sustained by him, file in the District of Columbia Court of Appeals an application for the allowance of an appeal from the order or decision of the Commissioner. Appeal shall be as provided in the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1501 to 1-1510).

For the purposes of this section, the phrase "review by the Commissioner" shall mean a review by the Commissioner of the District of Columbia or a review by any board of review established by the Commissioner of the District of Columbia to review the order or act of any agent of the Commissioner pursuant to the provisions of this chapter. No member of such board of review established by the Commissioner shall review any of his own orders or acts. (May 25, 1954, 68 Stat. 122, ch. 222, § 4; Aug. 28, 1958, 72 Stat. 954, Pub. L. 85-792, § 3; July 8, 1963, 77 Stat. 78, Pub. L. 88-60, § 6; July 29, 1970, Pub. L. 91-358, § 163(h), title I, 84 Stat. 583.)

#### AMENDMENTS

1970—Section 163(h) of Act July 29, 1970, Public Law 91-358 amended the second paragraph of section by striking out the second and succeeding sentences and inserting in lieu thereof "Appeal shall be as provided in the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1501 to 1-1510)."

For provisions of stricken matter see 1967 edition of the code.

1958—Act Aug. 28, 1958, struck the second sentence providing for filing of application of review with commissioners within five days after issuance of order or occurrence complained of, and added the new matter set out as the second and third sentences of the section.

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.



## CHANGE OF NAME

Act July 8, 1963, § 6, substituted "District of Columbia Court of Appeals" for "Municipal Court of Appeals for the District of Columbia". Provisions identical with those of said section 6 were contained in act Oct. 23, 1962, 76 Stat. 1172, Pub. L. 88-873, § 6, which was repealed by act Dec. 23, 1963, 77 Stat. 629, Pub. L. 88-241, § 21(a).

## AUTHORITY OF COMMISSIONERS NOT AFFECTED—DELEGATION OF AUTHORITY

Section 16 of act Aug. 28, 1958, provides as follows: "Nothing in this Act shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan."

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## CROSS REFERENCES

Suspension for or after conviction of certain crimes, see §§ 40-453, 40-455, 40-609, 40-617.

Suspension for failure to deposit security, see § 40-437.

Suspension for transfer of registration to defeat purpose of chapter, see § 40-485.

## NOTES TO DECISIONS

## Adversely affected or aggrieved

Uninsured motorist who posted the administratively required security following involvement in automobile mishap and who did not seek review of order by the Commissioner of the District of Columbia could nevertheless be considered a person suffering a legal wrong, or adversely affected or aggrieved by order or decision of Commissioner within meaning of District of Columbia Administrative Procedure Act. *D. A. Smith et al. v. J. P. Murphy et al.* (D.C. App. 1972, 294 A. 2d 357).

## Declaratory and injunctive relief

Uninsured motorists who were in traffic mishaps and required to comply with the security provisions of the Motor Vehicle Safety Responsibility Act of the District of Columbia or face suspension of driving privileges and automobile registration, including two who were unable to post security and had their driver's permits suspended, but who failed to utilize statutorily prescribed mode for review by Commissioner of District of Columbia of an order of the Director of Department of Motor Vehicles were precluded from maintaining action for declaratory and injunctive relief to require the Department of Motor Vehicles to follow certain procedures when proceeding under the Act. *D. A. Smith et al. v. J. P. Murphy et al.* (D.C. App. 1972, 294 A. 2d 357).

## Exhaustion of administrative remedy

To hold that the likelihood of failure to succeed at administrative level justified resort to court of general jurisdiction would frustrate specific mandate of Congress giving court discretion as to whether to review adverse orders of the Commissioner under the District of Columbia Motor Vehicle Safety Responsibility Act and providing that such review, if allowed, be on an administrative record and as provided by District of Columbia Administrative Procedure Act. *D. A. Smith et al. v. J. P. Murphy et al.* (D.C. App. 1972, 294 A. 2d 357).

Where final steps of review in the administrative process culminate in application for allowance of judicial appeal and the discretionary exercise of review by court, it cannot be said that exhaustion of the remedy should be aborted in order that the trial court confront and deal initially with asserted constitutional issues. *Id.*

## Judicial review

Uninsured motorists who failed to follow necessary administrative remedies could not maintain action in court on ground that they asserted a class action, since the similarly situated class must also be deemed to be persons

who had not exercised their right to review as prescribed by statute. *D. A. Smith et al. v. J. P. Murphy et al.* (D.C. App. 1972, 294 A. 2d 357).

## Suspension mandatory

Automobile driver's license was properly suspended after driver, who had been in accident which resulted in property damage in excess of \$100, failed to post security since suspension of license is mandatory under circumstances, without respect to question of nonliability on part of driver. *Haith v. Commissioners of the District of Columbia* (D. C. Mun. App. 1957, 135 A. 2d 458).

## § 40-421. Abstract of operating record.

(a) The Commissioner shall upon request furnish any person a certified abstract of the District of Columbia operating record of any person subject to the provisions of this chapter, which abstract shall include enumeration of any motor-vehicle accidents in which such person has been involved and reference to any convictions of said person for violation of the motor-vehicle laws as reported to the Commissioner and a record of any vehicles registered in the name of such person. The Commissioner shall collect for each abstract the sum of \$2.

(b) The Commissioner shall upon request furnish any person an uncertified abstract of the District operating record of any person subject to the provisions of this chapter, which abstract shall include enumeration of any motor vehicle accidents in which such person has been involved and reference to any convictions of said person for violation of the motor vehicle laws, as reported to the Commissioner. The Commissioner shall collect for each such uncertified abstract a sum equal to the cost to the District of furnishing such abstract, as such cost may be determined by the Commissioner from time to time. (May 25, 1954, 68 Stat. 122, ch. 222, § 5.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## § 40-422. Information regarding financial responsibility to be furnished person injured.

The Commissioner shall furnish to any person who may be injured in person or property by any motor vehicle, upon written request, a statement that the owner or operator of any motor vehicle has furnished evidence of his ability to respond in damages in accordance with the provisions of this chapter, and if such owner or operator shall have furnished evidence of having had in effect at the time of such injury or damage a motor-vehicle liability policy, the name and address of the insurance carrier writing such policy. The Commissioner shall collect for each abstract the sum of \$2. (May 25, 1954, 68 Stat. 122, ch. 222, § 6.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## § 40-423. Service of process on nonresident.

(a) The operation by a nonresident or by his agent of a motor vehicle on any public highway of the District of Columbia shall be deemed equivalent to an appointment by such nonresident of the Commissioner or his successor in office to be his true



and lawful attorney upon whom may be served all lawful processes in any action or proceedings against such nonresident growing out of any accident or collision in which said nonresident or his agent may be involved while operating a motor vehicle on any such public highway, and said operation shall be a signification of his agreement that any such process against him, which is so served, shall be of the same legal force and validity as if served upon him personally in the District of Columbia. Service of such process shall be made by leaving a copy of the process with a fee of \$2 in the hands of the Commissioner or in his office, and such service shall be sufficient service upon the said nonresident: *Provided*, That the plaintiff in such action shall first file in the court in which said action is commenced an undertaking in form and amount, and with one or more sureties, approved by said court, to reimburse the defendant, on the failure of the plaintiff to prevail in the action, for the expenses necessarily incurred by the defendant, including a reasonable attorney's fee in an amount to be fixed by the said court in defending the action in the District of Columbia, except that nothing contained in this proviso shall be construed to require the United States or the District of Columbia to file the undertaking hereby required: *And provided further*, That notice of such service and a copy of the process are forthwith sent by registered mail by the plaintiff, or his attorney, to the defendant, and the defendant's return receipt appended to the writ and entered with the declaration, or such notice of such service and a copy of the process may be served upon the defendant in the manner provided by section 13-108. The court in which the action is pending may order such continuances as may be necessary to afford the defendant a reasonable opportunity to defend the action, and no judgment by default in any such action shall be granted until at least twenty days shall have elapsed after service upon the defendant, as hereinabove provided, of a copy of the process and notice of service of said process upon the Commissioner.

(b) For the purposes of this section—

(1) The term "operation" as used in connection with a motor vehicle includes any use as well as any operation of such vehicle.

(2) The term "nonresident" shall include any person who is not a resident of the District of Columbia and who was the owner or operator of a motor vehicle at the time such vehicle was involved in an accident or collision in the District of Columbia, and includes any such person who was a resident of the District of Columbia at the time such motor vehicle was involved in such accident or collision but who subsequently became a nonresident of the District of Columbia and is a nonresident thereof at the time process is sought to be served on him as a result of such accident or collision.

(c) The appointment of the Commissioner or his successor in office to be the true and lawful attorney for such nonresident as provided by this section shall be irrevocable and binding upon the executor, administrator, or other personal repre-

sentative of such nonresident. Where a nonresident has been served in accordance with this section and he dies thereafter, the court must allow the action to be continued against his executor, administrator, or other personal representative upon motion, and with such notice as the court deems proper. Except as otherwise provided in the two preceding sentences, service of process may be made on the executor, administrator, or other personal representative of a nonresident in the same manner as is provided in this section in the case of a nonresident. (May 25, 1954, 68 Stat. 123, ch. 222, § 7; Aug. 28, 1958, 72 Stat. 954, Pub. L. 85-792, § 4.)

#### REFERENCES IN TEXT

Section 13-108, referred to in subsection (a) of this section, was repealed by act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88-241, eff. Jan. 1, 1964, and is now covered by sections 13-336 and 13-337.

#### AMENDMENT

1958—Act Aug. 28, 1958, amended section generally, and among other changes, designated first paragraph as (a), second paragraph as (b), inserted exception clause at the end of the first proviso preceding the colon in paragraph (a), added the definition of the term "operation" in paragraph (b), and added paragraph (c).

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40-493.

#### NOTES TO DECISIONS

##### Administrator

The District of Columbia statute providing that administration may be granted on application of largest creditor in absence of application for administration by one entitled to apply therefor and statute providing for service of process on nonresident motorist involved in automobile accident in District of Columbia permitted motorist who had cause of action against estate of deceased nonresident motorist for injuries sustained in collision in District to have administrator appointed for decedent, where cause of action, if established, would give motorist right to proceed against decedent's insurer, notwithstanding that decedent's widow was named as executrix in decedent's will and that she had declined or failed to come into District of Columbia and that petition for administration recited that decedent was resident of District of Columbia. *G. J. O'Sullivan v. A. G. Hicks* (1963, 313 F. 2d 900, 114 U.S. App. D.C. 219).

##### Attorney's fees

Where it was clear that statute providing for institution in District of Columbia of automobile negligence action against nonresident, had been invoked against defendant, that defendant engaged attorney and came into District to defend suit, and that plaintiff failed to prevail in the action, defendant was entitled, in absence of special circumstances or presentation of reason to contrary to an attorney's fee under bond executed by plaintiff as required by statute. *Dew v. Simon* (D. C. Mun. App. 1953, 95 A. 2d 482).

Where motion by nonresident defendant for attorney's fee under bond executed by unsuccessful plaintiff in automobile negligence action was presented to same judge who tried case, judge could have fixed amount of fee without taking evidence on the subject, since he was considered to be an expert on the value of legal services. *Id.*

Fact that defendant operated taxicab in District of Columbia and lived "within metropolitan area" in nearby Maryland did not preclude his recovery of attorney's fee under bond executed in his favor by plaintiff who instituted in the District of Columbia an automobile negligence action against defendant as a "nonresident." *Id.*



**Common law**

Statute is in derogation of common law and must be strictly construed. *Wood v. White* (1938, 97 F. 2d 646, 68 App. D.C. 341).

**Construction**

In authorizing substituted service on nonresident motorists, in derogation of the common law, Motor Vehicle Safety Responsibility Act affects substantial rights and must therefore be strictly construed and strictly complied with. *R. J. Heinrich v. R. S. Huke* (D.C. App. 1968, 244 A. 2d 915).

In construing statutes, general purpose is more important aid to meaning than any rule which grammar or formal logic may lay down. *E. Shaffer and J. Shaffer v. T. Singh* (1965, 343 F. 2d 324, 120 U.S. App. D.C. 42).

Assuming that defendant when served in India under Nonresident Motorist's Act of District of Columbia was no longer entitled to diplomatic immunity, he was not "nonresident" to whom Act was applicable where, at time of collision out of which suit arose, he enjoyed diplomatic immunity. *Id.*

In construing Nonresident Motorist Act, court was not required to adopt literal meaning of "nonresident" if term could be given meaning which, while protecting diplomatic immunity of defendant, also enabled purpose of statute to be satisfied. *Id.*

**Delay in delivery of summons and complaint to Marshal**

Failure of plaintiff to deliver summonses and copies of complaint to the United States Marshal until 18 days after period of limitations had run was not excusable because of fact that two of corporate defendants were not residents of the District of Columbia and could not be sued and would not be served until plaintiff first filed traffic act bond required by D.C. Code. *Criterion Insurance Company, etc. v. W. L. Lyles, et al.* (D.C. App. 1968, 244 A. 2d 913).

**Delay in mailing summons and complaint**

Although copies of summons and complaint were served upon Director of Motor Vehicles in action arising out of motor vehicle collision in District of Columbia with nonresident motorist, mailing summons and complaint to nonresident motorist seven months after statute of limitations had run constituted failure to comply with statutory requirement that notice of such service and copy of process be sent "forthwith" by registered mail. *R. J. Heinrich v. R. S. Huke* (D.C. App. 1968, 244 A. 2d 915).

**Filing of return receipt**

Filing of return receipt is not an integral part of the District of Columbia Motor Safety Responsibility Act which authorizes substituted service on nonresident motorist since jurisdiction attaches when service is made on the Director of Motor Vehicles and the nonresident receives copies of the process and notice of service. *M. L. Harper v. E. W. Catherton, Jr.* (D.C. App. 1969, 255 A. 2d 492).

Although defendant was a resident of Maryland at the time service was purported to have been made under the District of Columbia Motor Safety Responsibility Act that fact did not render notice to the defendant in Virginia at his place of work ineffective, as the statute requires that notice of such service be sent to defendant, not to him at his residence. *Id.*

Notice is essential to the court's jurisdiction. *Id.*

**Forum non conveniens**

Unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed. *Caspar et al. v. Devine et ano.* (1958, 257 F. 2d 197, 103 U.S. App. D.C. 193).

**Nature and scope of process**

Financial Responsibility Act authorizing substituted service on nonresident motorist imposes a contractual obligation in derogation of common law, affects substantial rights, and has effect of conferring jurisdiction upon courts where none existed before, and hence it must be strictly construed and strictly complied with. *Brenner v. Margolies* (D. C. Mun. App. 1954, 102 A. 2d 300).

**Notice and mailing of process**

Requirement of Financial Responsibility Act, which authorizes substituted service on non-resident motorist, that notice of such service and a copy of the process be sent by registered mail to defendant, was not met by mailing a copy of the complaint to defendant. *Brenner v. Margolies* (D. C. Mun. App. 1954, 102 A. 2d 300).

**Power of attorney**

Where judgment creditor instituted action against judgment debtor's insurer to recover on judgment, and served the summons and a copy of complaint upon agent of board of commissioners, and insurer had filed power of attorney authorizing agent of board of commissioners to accept service on its behalf thereby enabling its insureds to comply with financial responsibility act specifically providing it was not applicable to accidents occurring prior to its effective date which was subsequent to creditor's accident, even though power of attorney was broader than statutory requirements, when it was considered together with a resolution by insurer directors authorizing same, it could not be construed to apply to creditor's action. *Orban v. The State Automobile Ass'n* (D. C. Mun. App. 1956, 127 A. 2d 143).

**Proof of service of notice**

Since there was no conclusive proof one way or the other that nonresident motorist actually received notice of service, purported to have been made under the District of Columbia Motor Safety Responsibility Act, it was not error to vacate default judgement previously entered against motorist. *M. L. Harper v. E. W. Catherton, Jr.* (D.C. App. 1969, 255 A. 2d 492).

**Purpose of substituted service**

Financial Responsibility Act authorizing substituted service on non-resident motorist was not intended to reach an actual resident, but was enacted to provide a means of bringing before the local court a non-resident transient motorist, and hence the statute did not apply to a motorist who was a resident at time of accident and who never thereafter became a non-resident. *Brenner v. Margolies* (D. C. Mun. App. 1954, 102 A. 2d 300).

Provision for service of summons on nonresident defendant in motor vehicle accident case by substituted service on Director of Vehicles and Traffic was passed for the benefit of injured persons within the District of Columbia, not for the benefit of nonresident motorists who caused injury within the District and then by absenting themselves therefrom avoid service and prevent recovery. *Seymour v. Hawkins* (1943, 133 F. 2d 15, 76 U.S. App. D.C. 376).

**Residents**

The Financial Responsibility Act of District of Columbia authorizing substituted service on nonresident motorist does not apply to one who was resident of the District at time of accident and who became nonresident after accident, but prior to time action was instituted. *Johnson v. Jacoby* (1952, 195 F. 2d 563, 90 U. S. App. D. C. 280).

Under the District of Columbia Financial Responsibility Act authorizing substituted service on "nonresident" motorist, quoted word did not include one who had lived in the District for more than 15 months before accident and continued to live there for more than eight months after it occurred, although he was driving a vehicle using New York license plates and may have been domiciled in New York on date of accident. *Id.*

One may be resident of District of Columbia although domiciled elsewhere for purposes of the Financial Responsibility Act authorizing substituted service on nonresident motorist. *Id.*

Statute does not apply where person was resident of District of Columbia at time of accident and later moved from the jurisdiction. *Wood v. White* (1938, 97 F. 2d 646, 68 App. D.C. 341).

**Review**

Where, on date complaint was filed, plaintiff furnished copies of complaint to be served to initiate the process of effecting service on nonresident defendants, but no undertaking was filed and no return of service appeared in the docket, and subsequently the District Court dismissed the complaint without prejudice, there was final



judicial action subject to appellate review, notwithstanding no appearance was entered for the appellees in the appellate court or in the District Court. *Caspar et al. v. Devine et ano.* (1958, 257 F. 2d 197, 103 U.S. App. D. C. 193).

#### Surety

Automobile negligence action defendant who, as successful nonresident defendant, was entitled to attorney's fee on plaintiff's undertaking, would have to give surety notice and an opportunity to be heard before he was entitled to have judgment on undertaking run against such surety. *Dew v. Simon* (D. C. Mun. App. 1953, 95 A. 2d 482).

#### Undertaking

One purpose of statute requiring that plaintiff, who institutes automobile negligence action in District of Columbia against nonresident by service of process on Director of Vehicles and Traffic, file undertaking in favor of nonresident defendant is to prevent the reckless reaching out into other jurisdictions and forcing of nonresident to come back into District to defend collision suits, and another is to reimburse a nonresident defendant for expense of successfully defending such action. *Dew v. Simon* (D. C. Mun. App. 1953, 95 A. 2d 482).

The undertaking in favor of a nonresident defendant which is required of a plaintiff who institutes automobile negligence action in District of Columbia against such nonresident by service of process on Director of Vehicles and Traffic, is such an "undertaking" as is defined by Code as an agreement by a party to a suit upon which a judgment or decree may be rendered in same suit or proceeding in which it has been filed. *Id.*

#### § 40-424. Operator deemed to be agent of owner.

Whenever any motor vehicle, after the passage of this chapter, shall be operated upon the public highways of the District of Columbia by any person other than the owner, with the consent of the owner, express or implied, the operator thereof shall in case of accident, be deemed to be the agent of the owner of such motor vehicle, and the proof of the ownership of said motor vehicle shall be prima facie evidence that such person operated said motor vehicle with the consent of the owner. (May 25, 1954, 68 Stat. 123, ch. 222, § 8.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40-493.

#### NOTES TO DECISIONS

##### In general

Where statute, except final clause making proof of ownership of motor vehicle involved in accident prima facie evidence of consent, was in identical words of statute previously enacted by other states, there was imported into its terms the construction adopted by courts of such other states. *Senator Cab Co. v. Rothberg* (D.C. Mun. App. 1945, 42 A. 2d 245).

##### Accident occurring before effective date

Prior to passage of the statute imposing on the owner of a car liability for the acts of any person who drives it with his consent, a corporation was not liable for an accident of its driver merely because it had entrusted its car to him. *Balinovic v. Evening Star Newspaper Co.* (1940, 113 F. 2d 505, 72 App. D.C. 176).

In accident occurring before enactment statute imposing liability on owner, a corporation was not liable for damages where the driver of its car at the time of the collision was engaged in chasing a traffic violator under direction of a policeman who was riding on the running board. *Id.*

The Automobile Financial Responsibility Law cannot be applied to a collision occurring before its effective date. *Smith v. Doyle* (1938, 98 F. 2d 341, 69 App. D.C. 60).

##### Action against owner of vehicle

The fact that D.C. Employees Non-Liability Act barred an action by a passenger-schoolteacher against a driver-

schoolteacher did not preclude an action by passenger-schoolteacher against the owner of the vehicle. *F. P. Davis et ano. v. P. O. Harrod et ano.* (1969, 407 F. 2d 1280, 132 U.S. App. D.C. 345).

##### Agency based on consent

Lessor of truck having notified lessee, pursuant to provisions of lease, that given employee of lessee must no longer be permitted to drive truck could not, under statute, be presumed to have permitted such employee of lessee to drive, and, in absence of some further showing against lessor, it was entitled to directed verdict when sued for injuries sustained by reason of such employee's conduct while driving leased truck. *R. V. Neary v. The Hertz Corporation et al.* (D.C.D.C. 1964, 231 F. Supp. 480).

Proof that record title to taxicab, O. D. T. certificate, tire ration application, gas allotment papers and Public Utilities Commission certificate were in defendant's name, which was on outside of taxicab, operated by another, gave rise to presumption that taxicab was being operated by defendant's agent with defendant's consent and required proof from defendant to the contrary. *Gasque v. Saidman* (D.C. Mun. App. 1945, 44 A. 2d 537).

In determining whether an automobile is operated with consent of owner, the usual rules governing relation of master and servant are applied and a substantial deviation from an authorized use terminates consent. *Senator Cab Co. v. Rothberg* (D.C. Mun. App. 1945, 42 A. 2d 245).

Where party, injured by taxicab owned and operated by member of unincorporated association composed of men who owned and operated taxicabs, obtained judgment against members of association on theory that they were engaged with negligent operator in joint enterprise and were responsible for his negligence, the negligent operator was "agent" of other members of association within this section, so that permits and registration certificates of members of association were required to be suspended unless judgment against them was promptly paid. *Champ v. Atkins* (1942, 128 F. 2d 601, 76 U.S. App. D.C. 15).

This section makes express or implied consent by owner to another's operation of his vehicle on public highways the equivalent of agency. *Rosenberg v. Murray* (1941, 116 F. 2d 552, 73 U.S. App. D.C. 67).

Congress intended to establish a new rule of liability in which agency is based on consent. *Forrester v. Jerman* (1937, 90 F. 2d 412, 67 App. D.C. 167).

##### Bailors and bailees

The better reasoned view is that the contributory negligence of a bailee is attributable to a bailor under the Automobile Financial Responsibility Law. *National Trucking and Storage Co. v. Driscoll* (D.C. Mun. App. 1949, 64 A. 2d 304).

Owner of car was liable in damages for injury from accident which occurred when her car was being delivered to her by employee of a garage with which she had a monthly storage and delivery contract. *Jones v. King* (1940, 113 F. 2d 522, 72 App. D.C. 257).

##### Burden of proof

Owner of automobile operated by another must prove that it was not being driven with his consent at time of accident to avoid liability for any negligence of driver, but presumption may be rebutted by uncontradicted denial by owner that vehicle was being operated with his consent. *J. P. Lancaster et ano. v. R. J. Canuel et ano.* (D.C. App. 1963, 193 A. 2d 555).

Owner's lending of automobile to pharmacy as matter of courtesy for making small deliveries by pharmacy employees did not make pharmacy a co-owner of automobile within statutory presumption that in case of accident driver of automobile is owner's agent. *Id.*

Under statute providing that automobile operator in case of accident is deemed to be the agent of automobile owner, a presumption of agency is created upon proof of ownership and imposes upon owner the affirmative duty of proving that at time of accident the vehicle was not operated with his express or implied consent. *H. R. Miller v. Imperial Insurance Inc.* (D.C. App. 1963, 189 A. 2d 359).



Under statute providing that automobile operator in case of accident shall be deemed to be the agent of automobile owner, presumption of agency can be overcome by uncontradicted proof sufficient to destroy the inference. *Id.*

Where trial court concluded that mother who was owner of automobile had not overcome the presumption that her 18-year-old son who was operating the vehicle at the time of the accident was her agent, the Court of Appeals could not say the decision was wrong as a matter of law even though 18-year-old son confirmed his mother's testimony that she had refused him permission to use the automobile and that he had taken keys and registration card from her purse, where there were circumstances which left question of mother's permission open to doubt. *Id.*

In action against District of Columbia for damages sustained when truck collided with plaintiff's automobile, the presumption under the District of Columbia Motor Vehicle Safety Responsibility Act, if such act was applicable, that driver was operating truck with consent of district, arising out of proof of ownership of truck by district, placed on district the burden of proving that truck at time of accident was not operated with district's express or implied consent. *District of Columbia v. Abramson et al.* (D.C. Mun. App. 1959, 148 A. 2d 578).

Financial Responsibility Act providing that proof of ownership of motor vehicle involved in accident shall be prima facie evidence that driver operated automobile with owner's consent casts burden of proof as to question of consent upon owner of automobile. *Milstead v. District of Columbia* (D. C. Mun. App. 1952, 91 A. 2d 93).

Effect of Owners' Financial Responsibility Act declaring that where accident results when person other than owner is driving motor vehicle on highway, with express or implied consent of owner, driver shall be deemed agent of owner, and that proof of ownership shall be prima facie evidence of consent, is to place burden on owner of proving that vehicle was not operated with his express or implied consent at time of accident. *Conrad v. Porter* (D. C. Mun. App. 1951, 79 A. 2d 777).

The effect of statute making proof of ownership of automobile evidence of owner's consent to operation of automobile by another is simply to shift the burden of proof and impose on owner the affirmative duty of proving that automobile at time of accident was not operated with his express or implied consent. *Schwartzbach v. Thompson* (D.C. Mun. App. 1943, 33 A. 2d 624). See, also, *Rice v. Simmons* (D.C. Mun. App. 1947, 53 A. 2d 587).

The effect of this provision is simply to shift burden of proof and impose on owner the affirmative duty of proving that automobile was not at time of accident operated with his express or implied consent. *Rosenberg v. Murray* (1941, 116 F. 2d 552, 73 App. D.C. 67).

#### Common law

Except insofar as statute creates a prima facie case of owner's consent to use of his automobile at time of accident, common-law rules defining liability of employer for acts of employee are unaffected by such statute. *Senator Cab Co. v. Rothberg* (D.C. Mun. App. 1945, 42 A. 2d 245).

#### Common law presumption

As to an area which is not covered by District of Columbia Financial Responsibility Law, plaintiff was entitled to common-law presumption. *F. O. Gaither v. C. R. Myers et al.* (1968, 404 F. 2d 216, 131 U.S. App. D.C. 216, see also 232 A. 2d 577).

#### Conditional sale vendor

One who had sold and delivered taxicab to another on conditional sale contract and had retained legal title solely for security, was not the owner thereof nor liable for the property damage caused by negligence of another to whom purchaser had entrusted the taxicab and was not estopped to deny such ownership though his name appeared on taxicab. *Gasque v. Saidman* (D. C. Mun. App. 1945, 44 A. 2d 537).

#### Conflict of law

A classic "false conflicts" situation was presented where adoption of New York doctrine estopping former owner from denying ownership in order to avoid liability when

he has failed to comply with statutes governing transfer of title would further interests of New York but would not interfere with any of articulated policies of District of Columbia while application of District's rule permitting registered owner to prove passage of equitable title and thus relieve himself of liability would impinge upon New York's interests without furthering any of recognized policies of District and, accordingly, New York rule would be applied to action against New York seller based on negligence of New York buyer of automobile which buyer drove into collision in District of Columbia. *Williams v. Rawlings Truck Line, Inc.* (1965, 357 F. 2d 581, 123 U.S. App. D.C. 121).

#### Consent

The "consent" which is contemplated by a statute creating a presumption that motor vehicle was being operated with the consent of the owner is an informed consent, based on knowledge, not clouded by mistake or misrepresentation, or produced by error of fact. *J. A. McClellan v. Allstate Insurance Company et al.* (D.C. App. 1968, 247 A. 2d 58).

A presumption that a motor vehicle involved in an accident was being operated with the consent of owner is a rebuttable one and continues only until overcome by uncontradicted proof sufficient to destroy the inference. *Id.*

#### Co-owner

Statute providing that whenever vehicle is operated by any person other than owner with consent of owner, express or implied, operator shall be deemed agent of owner and proof of ownership shall be prima facie evidence that such person operated vehicle with consent of owner applied where automobile was jointly owned by driver and co-owner so as to make such co-owner presumptively liable for driver's acts and to warrant imposition of liability on him where he offered no proof whatever. *J. R. Joyner v. J. H. Holland et al.* (D.C. App. 1965, 212 A. 2d 541).

#### Defective vehicles

Where defendant owned the taxicab and rented it to the driver he was legally responsible for the driver's negligence as well as his own in maintaining a door of a cab in defective condition or the negligence of the driver in failing to see that the door was closed when the trip resulting in injury to plaintiff began. *Greene et al. v. Hathaway* (1951, 191 F. 2d 656, 89 U. S. App. D. C. 229).

#### Deviation from authorized use

Presumption that owner consented to use of automobile continues until there is creditable evidence to contrary and ceases when there is uncontradicted proof that automobile was not at time being used with owner's permission, but, when fact of deviation from authorized use is established, the issue is one of law for court. *Senator Cab Co. v. Rothberg* (D. C. Mun. App. 1945, 42 A. 2d 245).

#### Directed verdict

Under statute making proof of ownership of motor vehicle involved in accident prima facie evidence that driver was operating vehicle with owner's consent, where ownership is proved in defendant who offers no credible evidence to negative the statutory presumption, plaintiff who has otherwise established liability is entitled to directed verdict. *Milstead v. District of Columbia* (D. C. Mun. App. 1952, 91 A. 2d 93).

In action for damage growing out of operation of taxicab, where evidence established defendant's ownership of taxicab, and defendant's evidence was somewhat inconsistent and self-contradictory, and the police report of accident stated that defendant was driver of taxicab at time of accident and testimony of plaintiff and one of his witnesses, brought out on cross-examination, contradicted defendant's story that taxicab was being operated without defendant's permission and placed the defendant as operator, evidence was sufficient for jury and directed verdict for defendant was improper. *Hiscox v. Jackson* (1942, 127 F. 2d 160, 75 U.S. App. D. C. 293).

Under provision of statute that proof of ownership of automobile causing damage shall be prima facie evidence that driver was operating automobile with owner's consent, to justify a directed verdict for defendant, shown



to be owner of automobile involved, evidence must destroy all inferences and presumptions supporting plaintiff and must raise no doubts against defendant. *Id.*

#### Evidence overcoming presumption

Even though automobile rental company did not report rental violation by lessee to District of Columbia police after date of expiration of rental period and took no other steps to recover automobile or locate lessee, filing of criminal complaint by rental company against lessee in Maryland for failure to return automobile prior to time of accident involving lessee was sufficient to rebut presumption that rental company's automobile was operated at time of accident with company's consent for purposes of application of Financial Responsibility Act. *Amicar Rentals, Inc. v. G. Moore, III, et al.* (D.C. App. 1972, 294 A.2d 361).

Statutory presumption that owner has consented to operator's use of his vehicle is rebuttable by uncontradicted and manifestly credible testimony to contrary, and though such uncontradicted proof entitles the owner to a directed verdict as matter of law in an action against him as result of operation of his vehicle, trier of fact must assume the usual role of resolving any conflict presented if evidence is not so convincing or positive. *T. W. Alsbrooks v. Washington Deliveries, Inc.* (D.C. App. 1971, 281 A.2d 220).

In action for personal injuries and property damage arising out of motor vehicle collision, statutory presumption that owner had consented to the operator's use of truck involved in accident was not in this case fully overcome as matter of law, precluding direction of verdict for owner. *Id.*

Statutory presumption that proof of ownership of motor vehicle shall be prima facie evidence that motor vehicle was being operated with consent of owner may be overcome by uncontradicted denial by the owner, and in such a case a directed verdict for owner is proper. *C. R. Meyers et ano. v. F. O. Gaither* (D.C. App. 1967, 232 A.2d 577; remanded 404 F.2d 216, 131 U.S. App. D.C. 216).

Evidence that automobile of defendant was involved in accident in Maryland about 11:30 p.m., that it was not until about 3:30 a.m., after repeated telephone calls, that police succeeded in contacting owner, and testimony of owner that he had been at his home all evening made question for jury whether automobile was being operated by owner or with owner's consent. *Id.*

Where uncontradicted testimony indicated that employee's use of delivery truck at time of collision was without employer's permission, presumption of agency arising from employer's ownership of truck was overcome. *Eastern Aquatics, Inc. v. Washington* (D.C. App. 1965, 213 A.2d 293).

Evidence authorized finding that automobile title holder sued for property damage arising out of collision when automobile was being driven by her husband had mere naked legal title to and no immediate right of control of automobile, which husband had taken with him at time of marital separation before accident. *H. Johnson et ano. v. G. Keyes* (D.C. App. 1964, 201 A.2d 24).

Automobile title holder who did not have power to allow or prevent use of automobile by her husband at time husband was involved in accident was not "owner" of automobile within Motor Vehicle Safety Responsibility Act. *Id.*

Evidence raised fact question whether automobile title holder who was sued for property damage allegedly caused when automobile was involved in collision while being operated by holder's husband and who testified that upon occurrence of marital separation before accident husband took automobile with him had given consent for operation of automobile at time of collision. *Id.*

Positive statements of automobile owner that he had never given employee of pharmacy, which borrowed automobile, right to drive automobile after business hours and that he had never known of pharmacy employee doing so destroyed any presumption that automobile was being used with his permission at time of accident and owner was not liable for injuries resulting from employee's negligence. *J. P. Lancaster et ano. v. R. J. Canuel et ano.* (D.C. App. 1963, 1933 A.2d 555).

Statutory presumption that vehicle was driven with owner's consent continues only until there is credible evidence to contrary, and ceases when there is uncontradicted proof that automobile was not at time being used with owner's permission. *E. M. Jones, Sr. v. J. Halun* (1961, 296 F.2d 597, 111 U.S. App. D.C. 340).

The statutory presumption that vehicle was driven with owner's consent continues only until there is credible evidence to contrary, and ceases when there is uncontradicted proof that automobile was not at the time being used with owner's permission. *Hudson v. Lazarus* (1954, 217 F.2d 344, 95 U.S. App. D.C. 16).

*Rosenberg v. Murray* (1941, 116 F.2d 552, 73 App. D.C. 67). See, also, *Conrad v. Porter* (D.C. Mun. App. 1951, 79 A.2d 777); *Schwartzbach v. Thompson* (D.C. Mun. App. 1943, 33 A.2d 624); *Rice v. Simmons* (D.C. Mun. App. 1947, 53 A.2d 587).

Mere ownership of vehicle causing accident creates a presumption that operation was with the consent of the owner, but such may be overcome by uncontradicted proof that the vehicle was not being operated with the owner's consent, and when so overcome, the owner is entitled to a directed verdict. *Sawyer et ano. v. Misell* (D.C. Mun. App. 1959, 156 A.2d 141).

In action against District of Columbia for damages sustained when truck, which was owned by district and which was assigned to recreation department and which was operated by department employee, collided with plaintiff's automobile while employee was driving truck out from the curb in front of employee's house where employee had parked truck while he was having his lunch, proof of district's ownership of truck raised a presumption under District of Columbia Motor Vehicle Safety Responsibility Act, if such act was applicable, that employee was operating with consent of district, and the evidence, consisting of regulation of district commissioners requiring that government-owned vehicles be used exclusively for official purposes and testimony of employee's superiors in the department that employee did not have permission to use truck to go home for lunch, was sufficient to overcome such presumption. *District of Columbia v. Abrahamson et ano.* (D.C. Mun. App. 1959, 148 A.2d 578).

In action for personal injuries and property damage sustained when truck owned by defendant and driven by one of his employees struck rear of plaintiff's vehicle, evidence on consent issue was sufficient to overcome statutory presumption and entitled defendant to directed verdict as a matter of law. *Stumbar v. Harrison* (D.C. Mun. App. 1957, 136 A.2d 870).

In action against truck owners for damages caused by employee, where statutory presumption that owners had consented to such employee's driving truck was rebutted by uncontradicted proof that he had no authority to drive, fact that authorized employee-driver had turned truck over to unauthorized employee to park it did not establish owners' liability under principles of master and servant relationship, in view of fact that transfer of possession took place. *Chasin v. Miller* (D.C. Mun. App. 1953, 94 A.2d 647).

Presumption created by Owners' Financial Responsibility Act which arises by mere fact of ownership of motor vehicle that owner has consented to driving of his automobile by another person, is sufficiently rebutted by the uncontradicted denial by owner that vehicle was used with his express or implied consent. *Conrad v. Porter* (D.C. Mun. App. 1951, 79 A.2d 777).

Under statute, making proof of ownership prima facie evidence of consent, owner must offer evidence sufficient to overcome the prima facie case. *Senator Cab Co. v. Rothberg* (D.C. Mun. App. 1945, 42 A.2d 245).

#### Extra territorial effect

The District of Columbia Financial Responsibility Law was inapplicable where at the time of injury the automobile was being operated in Maryland. *F. O. Gaither v. C. R. Myers et ano.* (1968, 404 F.2d 216, 131 U.S. App. D.C. 216, see also 232 A.2d 577).

Application of evidentiary clause of District of Columbia statute that proof of ownership of automobile shall be prima facie evidence that automobile was operated with consent of owner to trial of cause of action arising



from operation of automobile in Maryland did not give statute extra-territorial effect. *C. R. Meyers et ano. v. F. O. Gaither* (D.C. App. 1967, 232 A. 2d 577; remanded 404 F. 2d 216, 131 U.S. App. D.C. 216).

#### Findings

Where owner of automobile involved in accident had permitted driver to drive automobiles on previous occasions and the testimony, that at time of accident automobile was not driven with owner's consent was inconsistent and self-contradictory, a finding that owner had failed to break the force of the statutory presumption of consent was justified. *Schwartzbach v. Thompson* (D.C. Mun. App. 1943, 33 A. 2d 624).

#### Husband and wife

Negligence of driver who was taking lady home at her request in her husband's automobile, was attributable to husband, under District of Columbia statute making one who operates automobile with owner's consent the agent of the owner in case of accident, in his action against motor carrier for expenses due to collision with its truck and in carrier's counterclaim against him, in absence of sufficient evidence to overcome prima facie case of consent arising, by statute, from husband's ownership. *Baber v. Akers Motor Lines* (1954, 215 F. 2d 843, 94 U. S. App. D. C. 211).

District of Columbia rule that a married woman may not maintain action, under District of Columbia Financial Responsibility Act, for injuries she sustained as passenger in automobile while it was driven by one who was, at time of maintaining action, her husband, against person who lent automobile to her husband, whether spouses were married at time of accident was applicable to preclude actions being brought in District for injuries sustained in New York. *Baker v. Gaffney* (D.C.D.C. 1956, 141 F. Supp. 602).

A married woman may not maintain action, under District of Columbia Financial Responsibility Act, for injuries she sustained as passenger in automobile while it was driven by one who was, at time of maintaining action, her husband, against person who lent automobile to her husband, whether spouses were married at time of accident. *Id.*

#### Issue of permission to use automobile

Evidence on the issue of whether defendant automobile owner consented to use of her automobile by defendant driver, who was an employee of corporation of which owner was a major stockholder, and who had used owner's automobile on other occasions, and with whom owner left her keys and note about certain errands, was for the jury in action for damages sustained by plaintiffs in collision with that automobile. *M. Williams v. M. Baines and F. Baines* (D.C. App. 1969, 257 A. 2d 762).

#### Joint enterprises

Whether the contributory negligence of the driver of a rented taxicab may be imputed to its owner must be based on the theory that both were engaged in a joint enterprise, but to establish such relationship there must exist not only a community of interest in the subject of the venture but also an equal right, express or implied, to direct and control the management and movement of the car. *National Trucking and Storage Co. v. Driscoll* (D.C. Mun. App. 1949, 64 A. 2d 304).

To constitute a joint enterprise there must be not only joint or community of interest but also an equal right express or implied, to direct and control the management and movement of the motor vehicle involved. *Gasque v. Saidman* (D. C. Mun. App. 1945, 44 A. 2d 537).

#### Law governing

Principle that questions of liability in tort are governed by law of state in which tort is committed is subject to exception where forum does not possess necessary procedural machinery to enforce such law. *Baker v. Gaffney* (D.C.D.C. 1956, 141 F. Supp. 602).

#### Negligent hiring

Recovery under theory of alleged negligent hiring of negligent employee requires proof that employer omitted use of ordinary care in selection of employee unfit to perform services for which he was hired, but no liability attaches to employer unless incompetency or unfitness of

servant was proximate cause of injury. *J. P. Lancaster et ano. v. R. J. Canuel et ano.* (D.C. App. 1963, 193 A. 2d 555).

Parties injured by automobile being driven for personal purposes by employee of pharmacy, to which automobile had been lent, were not entitled to recover from pharmacy on ground of alleged negligent hiring of employee, where there was no showing of unfitness of employee to perform services rendered, including operation of two motor vehicles in course of his duties at pharmacy. *Id.*

#### New trial

Where principal question was whether colliding automobile was being operated with owner's consent and Municipal Court judge in case tried without a jury made a general finding for plaintiff and assessed damages and general finding was entered on the jacket of the case and in court's minutes and docket, and before judgment was entered defendant moved to set aside and render judgment for defendant, the court was without power to reverse such general finding and enter judgment for defendant, but the court's only recourse was to grant a new trial. *Rice v. Simmons* (D.C. Mun. App. 1947, 53 A. 2d 587).

#### Operation and control

Evidence was insufficient to present question for jury as to whether owner of automobile could be held liable under Financial Responsibility Act for injuries sustained in collision when automobile was being driven by employee of service station and it appeared that owner at most entrusted employee with driving automobile from owner's place of work to service station, and that employee was not driving back to the station by any route at time of collision but was driving away from it. *Hudson v. Lazarus* (1954, 217 F. 2d 344, 95 U. S. App. D. C. 16).

Where parking lot attendant was authorized to drive automobile and park it in street in front of owner's store after 6:30 p.m. and attendant had driven four blocks beyond his usual route at time of accident at 6:45 p.m., finding that evidence did not establish that attendant had removed automobile from parking lot for purpose of delivering automobile to owner, and did establish that at time of accident attendant was operating automobile without consent of owner, did not justify judgment relieving owner from liability for attendant's negligence. *Senator Cab Co. v. Rothberg* (D.C. Mun. App. 1945, 42 A. 2d 245).

#### "Owners" and "ownership"

Where registered owner of automobile who was automobile operator's mother had no right to prevent operator's use of automobile but rather took title to automobile merely to accommodate operator, with whom financing bank declined to deal directly because of his minority, and payments on automobile were made by operator out of his own earnings, operator rather than registered owner is the "owner" of the automobile within the Motor Vehicle Safety Responsibility Act and the registered owner is not liable for operator's negligence. *E. F. Spindle et ano. v. P. Reid* (D.C. App. 1971, 277 A. 2d 117).

Registration of legal title to an automobile in one's name is not conclusive as to ownership within the Motor Vehicle Safety Responsibility Act. *Id.*

The terms "owner" and "ownership" which are not defined in this provision must be defined by judicial determination, made in a manner giving effect to the objects and purposes of this provision. *Mason v. Automobile Finance Co.* (1941, 121 F. 2d 32, 73 App. D.C. 284).

Possession plus power and legal right to permit its use by another constitutes ownership within the meaning of this provision. *Id.*

Chattel mortgagee is not an "owner" of an automobile, nor does he become such merely by virtue of a default by the mortgagor, though the right to possession may accrue immediately upon default, but something more than a lien on the automobile, though presently and summarily enforceable, is necessary. *Id.*

#### Ownership as evidence

Under provision that proof of ownership of motor vehicle causing damage shall be "prima facie evidence" that driver operated automobile with owner's consent,



with proof that defendant owned automobile involved and with no evidence on behalf of defendant, a plaintiff who has otherwise established liability is entitled to a directed verdict. *Hiscox v. Jackson* (1942, 127 F. 2d 160, 75 U.S. App. D.C. 293).

Under provision of statute that proof of ownership of motor vehicle causing damage shall be prima facie evidence that driver operated motor vehicle with owner's consent, the presumption continues until there is credible evidence to the contrary and ceases when there is uncontradicted proof that the vehicle was not at the time being used with the owner's permission. *Id.*

#### Purpose

District of Columbia code section making operator driving with consent of owner agent of owner, and District doctrine allowing registered owner to disprove ownership were designed to protect persons and property of District residents by encouraging safe driving and providing injured parties with potential defendants. *Williams v. Rawlings Truck Line, Inc.* (1965, 357 F. 2d 581, 123 U.S. App. D.C. 121).

Object of Motor Vehicle Safety Responsibility Act was not to impose liability on one having naked legal title to automobile with no immediate right of control. *H. Johnson et ano. v. G. Keyes* (D.C. App. 1964, 201 A. 2d 24).

In absence of some definite statutory criterion of ownership, the purpose of statute was to place liability on the person in a position immediately to allow or prevent the use of the automobile and to do so by giving a lawful and effective consent or prohibition to its operation by others, and its object was to control the giving of consent to irresponsible drivers by the one having that power rather than to impose liability on one having a naked legal title with no immediate right of control. *Mason v. Automobile Finance Co.* (1941, 121 F. 2d 32, 73 App. D.C. 284).

The statute has a twofold purpose: To furnish a financially responsible defendant in case a person driving a car, with the owner's consent, negligently causes damage to another; and to promote more careful driving. *National Trucking and Storage Co. v. Driscoll* (D.C. Mun. App. 1949, 64 A. 2d 304).

The purpose of this chapter was the extension of liability of master for acts of servant to those owners who entrust their automobiles to others or give consent, express or implied, to their use by others. *Senator Cab Co. v. Rothberg* (D.C. Mun. App. 1945, 42 A. 2d 245).

#### Questions of fact

Whether automobile owner whose keys were removed while he was asleep at a home where he had gone with one who drove his automobile in collision had given permission to him to use automobile was question for trier. *H. M. Hancock et ano. v. C. L. Morris* (D.C. Mun. App. 1961, 173 A. 2d 922).

In action for damages sustained when a plaintiff's taxicab was struck by an automobile owned by defendant, evidence, including testimony that driver and passenger in the automobile ran away from it after the collision which occurred about four blocks from automobile owner's home, and that automobile owner appeared on the scene shortly after the occurrence, was sufficient to present a question for the jury as to whether automobile was being driven at time of the accident by owner, or with consent of the owner. *Farralitano v. Ellis* (D.C. Mun. App. 1960, 157 A. 2d 127).

In an action against owner of an automobile, for damages sustained by a plaintiff, when his taxicab collided with the automobile, unless automobile owner offered uncontradicted proof that his automobile was not at the time of the accident being used with his permission, question of automobile owner's liability should have been submitted to the jury as a question of fact. *Id.*

Positive, unequivocal and uncontradicted testimony of owner of an automobile that it was not being used with his permission, at time it was involved in an accident in question, may constitute uncontradicted proof to that effect, for purposes of excusing owner from liability, but if the proof offered by the owner contains inconsistencies and self-contradictions, raising doubt as to owner's credibility or that of his witnesses, issue of permissive use of the automobile is for the jury. *Id.*

"Uncontradicted proof" requires evidence which destroys all inferences and presumptions supporting one party, and which raises no doubts against the other party. *Id.*

In action brought by automobile owner to recover for damage sustained when his automobile was struck, while parked, at night, against one whose automobile had been identified as the one doing the damage, defendant's evidence that neither he nor anyone with his consent had driven his automobile at time involved was not so uncontradicted as to justify withdrawal of matter from jury. *Love et ano. v. Gaskins* (D. C. Mun. App. 1959, 153 A. 2d 660).

Statutory presumption of consent may be overcome by positive testimony of motor vehicle's owner, and if such presumption is overcome by uncontradicted proof, owner is entitled to directed verdict as a matter of law; but if on the other hand, evidence contains inconsistencies and self-contradictions or is reasonably subject to contradictory interpretations, question is one of fact for jury determination. *Stumpner v. Harrison* (D. C. Mun. App. 1957, 136 A. 2d 870).

Upon establishment of defendant's ownership of automobile involved in accident while being driven by another, the Financial Responsibility Act creates presumption of agency and places burden of proof as to question of consent upon defendant, but defendant overcomes such presumption when he offers uncontradicted proof that automobile was not being used with his permission, and is then entitled to favorable finding as matter of law, but where defendant offers some credible evidence to overcome presumption, but not enough to entitle him to judgment as matter of law, question of liability becomes one of fact. *McMickle v. Nickens* (D. C. Mun. App. 1954, 104 A. 2d 409).

Where statutory presumption that defendant truck owners had consented to the driving of their truck by employee was overcome by uncontradicted proof, question of truck owners' liability to owners of automobiles struck by truck was not strictly one of fact such that trial court's decision should not be disturbed on appeal. *Chasin v. Miller* (D. C. Mun. App. 1953, 94 A. 2d 647).

Upon establishment of defendant's ownership of automobile involved, the Financial Responsibility Act creates a presumption of agency and places burden of proof as to question of consent upon defendant-owner, but defendant-owner overcomes such presumption when he offers uncontradicted proof that automobile was not being used with his permission and owner is then entitled to favorable finding as a matter of law, but, where defendant-owner offers some credible evidence to overcome the presumption but not enough to entitle him to judgment as matter of law, question of liability becomes one of fact. *Simon v. Dew* (D. C. Mun. App. 1952, 91 A. 2d 214).

Whenever presumption raised by statute providing that proof of ownership of motor vehicle involved in accident shall be prima facie evidence that driver was operating vehicle with owner's consent is overcome by uncontradicted proof, a directed verdict for owner is proper, but if the evidence is contradictory, question of owner's liability is for the jury. *Milstead v. District of Columbia* (D. C. Mun. App. 1952, 91 A. 2d 93).

Although presumption, arising under Owners' Financial Responsibility Act by virtue of ownership of vehicle, that vehicle, driven by person other than owner when involved in accident, was being driven with consent of owner and thereby as agent of owner, ceases when confronted with uncontradicted denial by owner of giving of consent, when uncontradicted denial is self-contradictory and inconsistent, it becomes question for jury as to credibility of witness and as to whether presumption has been rebutted. *Conrad v. Porter* (D. C. Mun. App. 1951, 79 A. 2d 777).

Evidence presented was sufficient to meet the statutory presumption of consent under Owner's Financial Responsibility Act, and when a statutory presumption is met by some credible evidence, it becomes, in a sense, something like an inference and when more than a single inference may be drawn from the evidence, it becomes a question of fact for a jury's determination. *Bill's Auto Rental, Inc. v. Bonded Taxi Company* (D. C. Mun. App. 1950, 72 A. 2d 254).



If the presumption that automobile was being used with the express or implied consent of owner at time of accident is overcome by uncontradicted proof, a motion for directed verdict for the owner will be granted, but if the evidence is contradictory or reasonably subject to contradictory interpretations, the question of liability is for the trier of the facts. *Rice v. Simmons* (D.C. Mun. App. 1948, 58 A. 2d 587).

Where owner of taxicab driven by another was in taxicab at time of collision and the evidence was conflicting whether driver was driving with owner's consent, the inferences to be drawn from the facts were for jury. *Gasque v. Saidman* (D.C. Mun. App. 1945, 44 A. 2d 537).

#### Review

Where action against owner of taxicab involved in accident was heard before court without jury, and trial judge's memorandum opinion did not state whether statutory presumption of agency had been overcome as a matter of law or of fact, the Municipal Court of Appeals would assume that the trial judge had found for defendant as a matter of law. *Simon v. Dew* (D. C. Mun. App. 1952, 91 A. 2d 214).

On appeal from judgment for plaintiff in action against automobile owner for damages resulting from operation of automobile by another, the test is whether the showing was such as to justify a holding that defendant had failed to break the force of the statutory presumption of owner's consent, and in applying that test and in measuring the force, effect and extent of the testimony, the municipal court of appeals, like the trial court, was governed by the rules of reason, credibility, and probability. *Schwartzbach v. Thompson* (D.C. Mun. App. 1943, 33 A. 2d 624).

#### Setting aside default judgment

Where plaintiff obtained default judgment in automobile accident case and the court had jurisdiction of the subject and of the parties and there was a lack of proof of ownership of the automobile involved, such fact would render the judgment merely erroneous and not void and hence motion to set it aside was properly denied. *Lynch v. Williams etc.* (D.C. Mun. App. 1960, 162 A. 2d 770).

#### Unauthorized use

Inasmuch as employee admitted that he took automobile from his employer's lot in order to drive on his own errand after hours of employment and to achieve no objective directly or indirectly furthering his employer's business, employer was not liable to persons injured by employee's careless operation of automobile. *J. P. Lancaster et ano. v. R. J. Canuel et ano.* (D.C. App. 1963, 193 A. 2d 555).

Evidence was insufficient to present question for jury as to whether owner of automobile could be held liable under Financial Responsibility Act for injuries sustained in collision when automobile was being driven by companion of owner's son and it appeared that owner had forbidden son to let anyone else drive automobile. *E. M. Jones, Sr. v. J. Halun* (1961, 296 F. 2d 597, 111 U.S. App. D.C. 340).

In action for damage to automobiles, uncontradicted testimony by defendant truck owners that driver-employees were instructed to allow no one else to drive, and that a helper-employee who was driving truck in intoxicated condition at time of collision, had no driver's license and went out on truck only when specifically instructed to do so, overcame statutory presumption that owners had consented to helper's driving of truck. *Chasin v. Miller* (D. C. Mun. App. 1953, 94 A. 2d 647).

Where lessee of taxicab obeyed lessor's instructions not to permit any one else to drive taxicab, but, after locking ignition, left keys on radio in her apartment, and another person obtained such keys without lessee's knowledge and became involved in automobile accident, owner did not consent to such use and was not liable for the accident. *Simon v. Dew* (D. C. Mun. App. 1952, 91 A. 2d 214).

Under Owners' Financial Responsibility Act which raises presumption of consent by owner to driving of his automobile by another person involved in accident upon showing of single fact of ownership, where there was uncontradicted testimony of owner and his agents which

was not self-contradictory that automobile was driven without consent by third party when accident occurred, it was error to submit issue of owner's liability to jury. *Conrad v. Porter* (D. C. Mun. App. 1951, 79 A. 2d 777).

#### § 40-425. Motor Vehicle Owners' and Operators' Financial Responsibility Fund, D. C.

(a) There is hereby created in the Treasury of the United States a special fund which shall be known as the Motor Vehicle Owners' and Operators' Financial Responsibility Fund, D. C., to which shall be deposited any funds paid to the Commissioner as security or proof in accordance with the provisions of this chapter.

(b) Said Motor Vehicle Owners' and Operators' Financial Responsibility Fund, D. C., is available to the Commissioner for disbursements required under the provisions of this chapter, such disbursements to be made in the same manner as other disbursements for the District of Columbia are made. (May 25, 1954, 68 Stat. 123, ch. 222, § 9.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### NOTES TO DECISIONS

##### Waiver of deposit

Question whether Commissioners of the District of Columbia should have discretion to waive deposit of security, as required by automobile statute relating to accidents when driver does not have liability policy, in cases of nonliability or in cases of possible extortion is for legislature. *Haith v. Commissioners of the District of Columbia* (D. C. Mun. App. 1957, 135 A. 2d 458).

#### § 40-426. Report of accident required.

The driver of a vehicle of a type subject to registration under the motor vehicle laws of the District of Columbia which is in any manner involved in an accident within the District of Columbia, which accident has resulted in damage to the property of any one person in excess of \$100 or in bodily injury to or in the death of any person shall within five days after such accident report the accident on a form approved by the Commissioner to the office of the Commissioner subject to the following exceptions in sections 40-426 to 40-431. (May 25, 1954, 68 Stat. 124, ch. 222, § 10.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-428, 40-431, 40-433, 40-487, 40-493.

#### § 40-427. Form of accident report.

The form of accident report prescribed by the Commissioner shall contain information sufficient to enable the Commissioner to determine whether the requirements for the deposit of security under this chapter are inapplicable by reason of the existence of insurance or other exceptions specified in this chapter. (May 25, 1954, 68 Stat. 124, ch. 222, § 11.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.



## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-426, 40-428, 40-431, 40-433, 40-493.

## § 40-428. Incapacity of person to make an accident report.

(a) An accident report is not required under sections 40-426 to 40-431 from any person who is physically incapable of making report during the period of such incapacity.

(b) If any driver be physically incapable of making a required accident report or refuses or neglects to make such report, and is not the owner of the vehicle involved in such accident, then the owner of such vehicle shall within five days after he learns of the accident make such report not made by the driver. (May 25, 1954, 68 Stat. 124, ch. 222, § 12; Aug. 28, 1958, 72 Stat. 955, Pub. L. 85-792, § 5.)

## AMENDMENT

1958—Act Aug. 28, 1958, amended subsection (b) by inserting the phrase "or refuses or neglects to make such report."

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-426, 40-431, 40-433, 40-487, 40-493.

## § 40-429. Additional information concerning accident to be furnished on request.

The driver or the owner of the vehicle involved in the accident shall furnish such additional relevant information as the Commissioner may require. (May 25, 1954, 68 Stat. 124, ch. 222, § 13.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-426, 40-428, 40-431, 40-433, 40-487, 40-493.

## § 40-430. Suspension of license and registration for failure to report.

The Commissioner is authorized in his discretion, to suspend the license and registration of any person who fails to report as required by the Commissioner until such report has been filed and for such further period, not to exceed thirty days, as the Commissioner may determine. (May 25, 1954, 68 Stat. 124, ch. 222, § 14; Sept. 8, 1960, 74 Stat. 862, Pub. L. 86-730, § 2.)

## AMENDMENT

1960—Act Sept. 8, 1960, empowered the Commissioners to suspend the registration.

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## CROSS REFERENCE

Review of suspension, see § 40-420.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-426, 40-428, 40-431, 40-433, 40-493.

## § 40-431. Accident reports to be confidential.

Accident reports and supplemental information in connection therewith required under sections 40-426 to 40-431 may be examined by any person named in such report or his representative designated in writ-

ing, but shall not be open to public inspection, nor shall copying of lists of such reports be permitted. (May 25, 1954, 68 Stat. 124, ch. 222, § 15.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-426, 40-428, 40-433, 40-493.

## § 40-432. Application of chapter—Amount.

The provisions of this chapter, requiring deposit of security and suspensions for failure to deposit security, subject to certain exemptions, shall apply to the driver and owner of any vehicle of a type subject to registration under the motor vehicle laws of the District of Columbia which is in any manner involved in an accident within the District of Columbia, which accident has resulted in bodily injury to or death of any person or damage to the property of any one person in excess of \$100. (May 25, 1954, 68 Stat. 124, ch. 222, § 16.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-434, 40-436 to 40-438, 40-440 to 40-444, 40-446, 40-448, 40-449.

## NOTES TO DECISIONS

## Suspension mandatory

Automobile driver's license was properly suspended after driver, who had been in accident which resulted in property damage in excess of \$100, failed to post security since suspension of license is mandatory under circumstances, without respect to question of nonliability on part of driver. *Haith v. Commissioners of the District of Columbia* (D. C. Mun. App. 1957, 135 A. 2d 458).

## Waiver of deposit

Question whether Commissioners of the District of Columbia should have discretion to waive deposit of security, as required by automobile statute relating to accidents when driver does not have liability policy, in cases of nonliability or in cases of possible extortion is for legislature. *Haith v. Commissioners of the District of Columbia* (D. C. Mun. App. 1957, 135 A. 2d 458).

## § 40-433. Determination of the amount of security.

(a) The Commissioner, not less than twenty days after receipt of a report of an accident as described in sections 40-426 to 40-431, shall determine the amount of security which shall be sufficient in his judgment to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each driver or owner. Such determination shall not be made with respect to drivers or owners who are exempt under succeeding sections of this chapter from the requirements as to security and suspension.

(b) The Commissioner shall determine the amount of security deposit required of any person upon the basis of the reports or other information submitted. In the event a person involved in an accident as described in this chapter fails to make a report or submit information indicating the extent of his injuries or the damage to his property within fifty days after the accident and the Commissioner does not have sufficient information on which to base an evaluation of such injuries or damage, then the Commissioner after reasonable notice to such person, if it is possible to give such notice, otherwise without such notice, shall not require any deposit of security for the benefit or protection of such person. If the Commissioner finds that a person required by this subsection to make such report or submit



such information is or was physically incapable of so doing within the specified fifty-day period, the Commissioner shall permit such person to make such report or submit such information within thirty days after becoming physically able so to do.

(c) The Commissioner within fifty days after receipt of report of any accident referred to herein and upon determining the amount of security to be required of any person involved in such accident or to be required of the owner of any vehicle involved in such accident shall give written notice to every such person of the amount of security required to be deposited by him and that an order of suspension will be made as hereinafter provided upon the expiration of ten days after the sending of such notice unless within said time security be deposited as required by said notice. (May 25, 1954, 68 Stat. 125, ch. 222, § 17; Sept. 8, 1960, 74 Stat. 862, Pub. L. 86-730, § 3.)

#### AMENDMENT

1960—Subsec. (b) amended by act Sept. 8, 1960, empowered the Commissioners to permit a report or submission of information to be made within thirty days after a physically incapable person is able to do so.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-434, 40-436 to 40-438, 40-440 to 40-444, 40-446, 40-448, 40-449.

#### NOTES TO DECISIONS

##### Suspension mandatory

Automobile driver's license was properly suspended after driver, who had been in accident which resulted in property damage in excess of \$100, failed to post security since suspension of license is mandatory under circumstances, without respect to question of nonliability on part of driver. *Haith v. Commissioners of the District of Columbia* (D. C. Mun. App. 1957, 135 A. 2d 458).

##### Waiver of deposit

Question whether Commissioners of the District of Columbia should have discretion to waive deposit of security, as required by automobile statute relating to accidents when driver does not have liability policy, in cases of nonliability or in cases of possible extortion is for legislature. *Haith v. Commissioners of the District of Columbia* (D. C. Mun. App. 1957, 135 A. 2d 458).

#### § 40-434. Exceptions to requirements as to security and suspension.

The requirements as to security and suspension in sections 40-432 to 40-449 shall not apply—

(1) to the driver or owner if the owner had in effect at the time of the accident an automobile liability policy or bond with respect to the vehicle involved in the accident, except that a driver shall not be exempt under this paragraph if at the time of the accident the vehicle was being operated without the owner's permission, express or implied;

(2) to the driver, if not the owner of the vehicle involved in the accident, if there was in effect at the time of the accident an automobile liability policy or bond with respect to his driving of vehicles not owned by him;

(3) to a driver or owner whose liability for damages resulting from the accident is, in the judgment of the Commissioner, covered by any

other form of liability insurance policy or bond;

(4) to any person qualifying as a self-insurer under section 40-494 or part II of the Interstate Commerce Act (49 U.S.C. § 301 et seq.) or to any person operating a vehicle for such self-insurer;

(5) to the driver or the owner of a vehicle involved in an accident wherein no injury or damage was caused to the person or property of anyone other than such driver or owner;

(6) to the driver or owner of a vehicle which at the time of the accident was parked, unless such vehicle was parked at a place where parking was at the time of the accident prohibited under any applicable law or ordinance;

(7) to the owner of a vehicle if at the time of the accident the vehicle was being operated without his permission, express or implied, or was parked by a person who had been operating such vehicle without such permission;

(8) to the owner of a vehicle involved in an accident if at the time of the accident such vehicle was owned by or leased to the United States, a State or any political subdivision thereof, the District of Columbia, or to the driver of such vehicle if operating such vehicle with permission; or

(9) to the driver or the owner of a vehicle in the event at the time of the accident the vehicle was being operated by or under the direction of a police officer who, in the performance of his duties, shall have assumed custody of such vehicle. (May 25, 1954, 68 Stat. 125, ch. 222, § 18; Aug. 28, 1958, 72 Stat. 955, Pub. L. 85-792, § 6.)

#### AMENDMENT

1958—Act Aug. 28, 1958, amended paragraph (4) of the section by adding the phrase "or Part II of the Interstate Commerce Act".

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-435 to 40-438, 40-440 to 40-444, 40-446, 40-448, 40-449.

#### § 40-435. Automobile liability policy or bond—Requirements.

(a) No policy or bond shall be effective under section 40-434 unless issued by an insurance company or surety company authorized to do business in the District of Columbia, except as provided in subdivision (b) of this section, nor unless such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than \$10,000 because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than \$20,000 because of bodily injury to or death of two or more persons in any one accident, and if the accident has resulted in injury to, or destruction of property, to a limit of not less than \$5,000 because of injury to or destruction of property of others in any one accident.

(b) No policy or bond shall be effective under section 40-434 with respect to any vehicle which



was not registered in the District of Columbia or a vehicle which was registered elsewhere than in the District of Columbia at the effective date of the policy or bond or the most recent renewal thereof unless the insurance company or surety company issuing such policy or bond is authorized to do business in the District of Columbia, or if said company is not authorized to do business in the District of Columbia, unless it shall execute a power of attorney authorizing the Commissioner to accept service on its behalf of notice or process in any action upon such policy or bond arising out of such accident.

(c) The Commissioner may rely upon the accuracy of the information in a required report of an accident as to the existence of insurance or a bond unless and until the Commissioner has reason to believe that the information is erroneous. (May 25, 1954, 68 Stat. 126, ch. 222, § 19.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-434, 40-436 to 40-438, 40-440 to 40-444, 40-446, 40-448, 40-449.

#### NOTES TO DECISIONS

##### Coverage of insurance

Where policy of liability insurance by its own terms "does not cover any liability for death sustained by named insured" the financial responsibility act was applicable, where the insured was killed in her own automobile driven by another and the administratrix of named insured could not recover. *Hepburn v. Pennsylvania Indem. Corp.* (1940, 109 F. 2d 833, 71 App. D.C. 257).

##### Power of attorney construed

Where judgment creditor instituted action against judgment debtor's insurer to recover on judgment, and served the summons and a copy of complaint upon agent of board of commissioners, and insurer had filed power of attorney authorizing agent of board of commissioners to accept service on its behalf thereby enabling its insureds to comply with financial responsibility act specifically providing it was not applicable to accidents occurring prior to its effective date which was subsequent to creditor's accident, even though power of attorney was broader than statutory requirements, when it was considered together with a resolution by insurer directors authorizing same, it could not be construed to apply to creditor's action. *Orban v. The State Automobile Association* (D. C. Mun. App. 1956, 127 A. 2d 143).

#### § 40-436. Security—Form and amount.

(a) The security required under sections 40-432 to 40-449 shall be in such form and in such amount as the Commissioner may require, but in no case in excess of the limits specified in section 40-435 in reference to the acceptable limits of a policy or bond.

(b) Every depositor of security shall designate in writing every person in whose name such deposit is made, but any single deposit of security shall be applicable only on behalf of persons required to furnish security because of the same accident. (May 25, 1954, 68 Stat. 126, ch. 222, § 20.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-434, 40-437, 40-438, 40-440 to 40-444, 40-446, 40-448, 40-449.

#### § 40-437. Failure to deposit security—Suspensions.

In the event that any person required to deposit security under sections 40-432 to 40-449 fails to deposit such security within ten days after the Commissioner has sent the notice as hereinbefore provided, the Commissioner shall thereupon suspend—

- (1) the license of each driver in any manner involved in the accident;
- (2) the registration of all vehicles owned by the owner of each vehicle of a type subject to registration under the laws of the District of Columbia involved in such accident;
- (3) if the driver is a nonresident, the privilege of operating, within the District of Columbia, a vehicle of a type subject to registration under the laws of the District of Columbia; and
- (4) if such owner is a nonresident, the privilege of such owner to operate or permit the operation within the District of Columbia of a vehicle of a type subject to registration under the laws of the District of Columbia.

Such suspensions shall be made in respect to persons not otherwise exempt under this chapter who are required by the Commissioner to deposit security and who fail to deposit such security, except as otherwise provided under this chapter. (May 25, 1954, 68 Stat. 126, ch. 222, § 21.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-434, 40-436, 40-438, 40-440 to 40-444, 40-446, 40-448, 40-449.

#### NOTES TO DECISIONS

##### Constitutionality

The plaintiff's claim of unconstitutionality of this section, requiring suspension of drivers' licenses and automobile registrations for persons who are involved in automobile accident causing more than \$100 damages and are either uninsured, unable to post security, or unable to obtain release from other parties involved, was so insubstantial as not to require the convening of a three-judge federal court. *J. F. Cheek et al. v. W. E. Washington, et al.* (1970, 311 F. Supp. 965).

Congress has reposed issuance and retraction of driver's licenses within the discretion of the Commissioners and it may surround this grant with reasonable requisites and contingencies. *Id.*

##### Judicial review

Where plaintiff was notified that his driver's permit and registration were subject to suspension under this section, plaintiff appealed action to board of appeals and review of Department of Motor Vehicles which upheld order of suspension, plaintiff's avenue of further relief was by petition for review in District of Columbia Court of Appeals and not in District Court. *J. F. Cheek v. W. E. Washington et al.* (1971, 333 F. Supp. 481).

##### Suspension mandatory

Automobile driver's license was properly suspended after driver, who had been in accident which resulted in property damage in excess of \$100, failed to post security since suspension of license is mandatory under circumstances, without respect to question of nonliability on part of driver. *Haith v. Commissioners of the District of Columbia* (D. C. Mun. App. 1957, 135 A. 2d 458).



**Waiver of deposit**

Question whether Commissioners of the District of Columbia should have discretion to waive deposit of security, as required by automobile statute relating to accidents when driver does not have liability policy, in cases of nonliability or in cases of possible extortion is for legislature. *Haith v. Commissioners of the District of Columbia* (D. C. Mun. App. 1957, 135 A. 2d 458).

**§ 40-438. Release from liability.**

(a) A person shall be relieved from the requirement for deposit of security for the benefit or protection of another person injured or damaged in the accident in the event he is released from liability by such other person.

(b) A covenant not to sue shall relieve the parties thereto as to each other from the security requirements of sections 40-432 to 40-449.

(c) In the event the Commissioner has evaluated the injuries or damage to any minor in an amount not more than \$200 the Commissioner may accept, for the purpose of sections 40-432 to 40-449 only, evidence of a release from liability executed by a natural guardian or a legal guardian on behalf of such minor without the approval of any court.

(d) In any accident involving property of the United States or the District of Columbia, should it appear upon investigation by or on behalf of the United States or the District that a person involved in such accident may not be liable to the United States or the District for any damage resulting therefrom, such person may submit, and the appropriate United States official and the Commissioner is hereby authorized to give to him, a statement to such effect, and such statement may be in lieu of the release required by this section: *Provided*, That the United States and the Commissioner may withdraw such statement at any time if it should appear that the person to whom it was given may be liable to the United States or the District for damages arising out of such accident, and if such statement be withdrawn, the person to whom it was given shall be required to comply with the provisions of this chapter. (May 25, 1954, 68 Stat. 127, ch. 222, § 22; Aug. 28, 1958, 72 Stat. 955, Pub. L. 85-792, § 7.)

**AMENDMENT**

1958—Act Aug. 28, 1958, amended the section by adding subparagraph (d) thereto.

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 40-434, 40-436, 40-437, 40-440 to 40-444, 40-446, 40-448, 40-449.

**§ 40-439. Adjudication of nonliability—Release from requirement of the deposit of security.**

A person shall be relieved from the requirement for deposit of security in respect to a claim for injury or damage arising out of the accident in the event such person has been finally adjudicated not to be liable in respect to such claim. (May 25, 1954, 68 Stat. 127, ch. 222, § 23.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 40-434, 40-436 to 40-438, 40-440 to 40-444, 40-446, 40-448, 40-449.

**§ 40-440. Agreements for payment of damages.**

(a) Any two or more of the persons involved in or affected by an accident as described in section 40-432 may at any time enter into a written agreement for the payment of an agreed amount with respect to all claims of any such persons because of bodily injury to or death or property damage arising from such accident, which agreement may provide for payment in installments, and may file a signed copy thereof with the Commissioner.

(b) The Commissioner, to the extent provided by any such written agreement filed with him, shall not require the deposit of security and shall terminate any prior order of suspension, or if security has previously been deposited, the Commissioner shall return such security to the depositor or his personal representative, or pay such security to the depositor's assignee, as the case may be, when all payments required by such agreement have been made in full, when an amount equal to such security has been paid in accordance with such agreement, or when such security is assigned to the person injured or damaged as a result of said accident.

(c) In the event of a default in any payment under such agreement and upon notice of such default the Commissioner shall take action suspending the license or registration of such person in default as would be appropriate in the event of failure of such person to deposit security when required under this chapter.

(d) Such suspension shall remain in effect and such license or registration shall not be restored unless and until the person in default has paid all payments then in default.

(e) The Commissioner may accept evidence of a payment to the driver or owner of a vehicle involved in any accident by any other person involved in such accident or by the insurance carrier of any other person involved in such accident on account of damage to property or bodily injury as a settlement agreement relieving such driver or owner from the security and suspension provisions of sections 40-432 to 40-449 in respect to any possible claim by the person on whose behalf such payment has been made might have for property damage or bodily injury arising out of the accident. A payment to the insurance carrier of a driver or owner under the carrier's right of subrogation for the purposes of sections 40-432 to 40-449 shall be considered the equivalent of a payment to such driver or owner. (May 25, 1954, 68 Stat. 127, ch. 222, § 24; Aug. 28, 1958, 72 Stat. 955, Pub. L. 85-792, § 8.)

**AMENDMENT**

1958—Act Aug. 28, 1958, amended the section by adding subsection (e) thereto.

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 40-434, 40-436 to 40-438, 40-441 to 40-444, 40-446, 40-448, 40-449.

**§ 40-441. Payment upon judgment—Release of judgment debtor.**

The payment of a judgment arising out of an accident or the payment upon such judgment of an



amount equal to the maximum amount which could be required for deposit under sections 40-432 to 40-449 shall, for the purposes of such sections, release the judgment debtor from the liability evidenced by such judgment. (May 25, 1954, 68 Stat. 127, ch. 222, § 25.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-434, 40-436 to 40-438, 40-440, 40-442 to 40-444, 40-446, 40-448, 40-449.

#### § 40-442. Termination of security requirement.

The Commissioner, if satisfied as to the existence of any fact which under sections 40-438, 40-439, 40-440, and 40-441 would entitle a person to be relieved from the security requirements of sections 40-432 to 40-449, shall not require the deposit of security by the person so relieved from such requirement and shall terminate any prior order of suspension in respect to such person, or if security has previously been deposited by such person, the Commissioner shall immediately return such deposit to such person or to his personal representative. (May 25, 1954, 68 Stat. 127, § 26.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-434, 40-436 to 40-438, 40-440, 40-441, 40-443, 40-444, 40-446, 40-448, 40-449.

#### NOTES TO DECISIONS

##### Waiver of deposit

Question whether Commissioners of the District of Columbia should have discretion to waive deposit of security, as required by automobile statute relating to accidents when driver does not have liability policy, in cases of nonliability or in cases of possible extortion is for legislature. *Haith v. Commissioners of the District of Columbia* (D.C. Mun. App. 1957, 135 A. 2d 458).

#### § 40-443. Duration of suspension.

Unless a suspension is terminated under other provisions of sections 40-432 to 40-449, any order of suspension by the Commissioner under such sections shall remain in effect and no license shall be renewed for or issued to any person whose license is so suspended and no registration shall be renewed for or issued to any person whose vehicle registration is so suspended until—

(1) such person shall deposit or there shall be deposited on his behalf the security required under sections 40-432 to 40-449; or

(2) one year shall have elapsed following the date of such suspension and evidence satisfactory to the Commissioner has been filed with him that during such period no action for damages arising out of the accident resulting in such suspension has been instituted.

An affidavit of the applicant that no action at law or damages arising out of the accident has been filed against him or, if filed, that it is not still pending shall be prima facie evidence of that fact. The Commissioner may take whatever steps are necessary to verify the statement set forth in any said affidavit. (May 25, 1954, 68 Stat. 128, ch. 222, § 27.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-434, 40-436 to 40-438, 40-440 to 40-442, 40-444, 40-446, 40-448, 40-449.

#### NOTES TO DECISIONS

##### Suspension mandatory

Automobile driver's license was properly suspended after driver, who had been in accident which resulted in property damage in excess of \$100, failed to post security since suspension of license is mandatory under circumstances, without respect to question of nonliability on part of driver. *Haith v. Commissioners of the District of Columbia* (D.C. Mun. App. 1957, 135 A. 2d 458).

#### § 40-444. Nonresidents—Unlicensed drivers—Unregistered vehicles—Accidents in other States.

(a) In case the driver or the owner of a vehicle of a type subject to registration under the laws of the District of Columbia involved in an accident within the District of Columbia has no license or registration in the District of Columbia, then such driver shall not be allowed a license, nor shall such owner be allowed to register any vehicle in the District of Columbia, until he has complied with the requirements of sections 40-432 to 40-449 to the same extent that would be necessary if, at the time of the accident, he had held a license or been the owner of a vehicle registered in the District of Columbia.

(b) When a nonresident's operating privilege is suspended pursuant to section 40-437, the Commissioner shall transmit a certified copy of the record of such action to the official in charge of the issuance of licenses and registration certificates in the State in which such nonresident resides.

(c) Upon receipt of certification that the operating privilege of a resident of the District of Columbia has been suspended or revoked in any State pursuant to a law providing for its suspension or revocation for failure to deposit security for the payment of judgments arising out of a motor vehicle accident, under circumstances which would require the Commissioner to suspend a nonresident's operating privilege had the accident occurred in the District of Columbia, the Commissioner shall suspend the license of such resident if he was the driver, and all of his registrations if he was the owner of a motor vehicle involved in such accident. Such suspension shall continue until such resident furnishes evidence of his compliance with the law of such State relating to the deposit of such security.

The provisions of this subsection shall be applicable only to a certification from a State which by its laws has made provision for the suspension or revocation of the license and all registrations of a resident of such State for failure to deposit security for the payment of any judgment arising out of a motor vehicle accident in the District of Columbia, or for failure to make payment of an agreed amount with respect to all claims arising from such accident, in accordance with the provisions of this chapter. (May 25, 1954, 68 Stat. 128, ch. 222, § 28.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.



## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-434, 40-436 to 40-438, 40-440 to 40-443, 40-446, 40-448, 40-449.

## NOTES TO DECISIONS

## Suspension mandatory

Automobile driver's license was properly suspended after driver, who had been in accident which resulted in property damage in excess of \$100, failed to post security since suspension of license is mandatory under circumstances, without respect to question of nonliability on part of driver. *Haith v. Commissioners of the District of Columbia* (D.C. Mun. App. 1957, 135 A. 2d 458).

## § 40-445. Commissioner authorized to decrease amount of security.

The Commissioner may reduce the amount of security ordered in any case within six months after the date of the accident if in his judgment the amount ordered is excessive. In case the security originally ordered has been deposited, the excess deposit over the reduced amount ordered shall be returned to the depositor or his personal representative forthwith. (May 25, 1954, 68 Stat. 129, ch. 222, § 29.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-434, 40-436 to 40-438, 40-440 to 40-444, 40-448, 40-449.

## § 40-446. Correction of Commissioner's action within one year.

Whenever the Commissioner has taken any action or has failed to take any action under sections 40-432 to 40-449 by reason of having received erroneous information, then upon receiving correct information within one year after the date of an accident the Commissioner shall take appropriate action to carry out the purposes and effect of this chapter. The foregoing shall not, however, be deemed to require the Commissioner to reevaluate the amount of any deposit required under sections 40-432 to 40-449. (May 25, 1954, 68 Stat. 129, ch. 222, § 30; Sept. 8, 1960, 74 Stat. 862, Pub. L. 86-730, § 4.)

## AMENDMENT

1960—Act Sept. 8, 1960, eliminated words "or by reason of having received no information" which followed "having received erroneous information."

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-434, 40-436 to 40-438, 40-440 to 40-444, 40-448, 40-449.

## § 40-447. Disposition of security.

(a) Such security shall be applicable and available only—

(1) for the payment of any settlement agreement covering any claim arising out of the accident upon instruction of the person who made the deposit; or

(2) for the payment of a judgment or judgments, rendered against the person required to

make the deposit for damages arising out of the accident in an action at law begun not later than one year after the deposit of such security.

(b) Every distribution of funds from the security deposits shall be subject to the limits of the Commissioner's evaluation on behalf of a claimant. (May 25, 1954, 68 Stat. 129, ch. 222, § 31.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-434, 40-436 to 40-438, 40-440 to 40-444, 40-446, 40-448, 40-449.

## § 40-448. Return of deposit.

Upon the expiration of one year from the date of any deposit of security any security remaining or deposit shall be returned to the person who made such deposit or to his personal representative if an affidavit or other evidence satisfactory to the Commissioner has been filed with him stating—

(1) that no action for damages arising out of the accident for which deposit was made is pending against any person on whose behalf the deposit was made, and

(2) that there does not exist any unpaid judgment rendered against any such person in such an action.

The foregoing provisions of this section shall not be construed to limit the return of any deposit of security under any other provision of sections 40-432 to 40-449 authorizing such return. (May 25, 1954, 68 Stat. 129, ch. 222, § 32.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-434, 40-436 to 40-438, 40-440 to 40-444, 40-446, 40-449.

## § 40-449. Matters not to be evidence in civil suits.

The report required following an accident, the action taken by the Commissioner pursuant to sections 40-432 to 40-449, the findings, if any, of the Commissioner upon which such action is based, and the security filed as provided in sections 40-432 to 40-449, shall not be referred to in any way, and shall not be any evidence of the negligence or due care of either party, at the trial of any action at law to recover damages. (May 25, 1954, 68 Stat. 129, ch. 222, § 33.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-434, 40-436 to 40-438, 40-440 to 40-444, 40-446, 40-448.

## § 40-450. Persons required to deposit proof of future responsibility.

The provisions of this chapter requiring the deposit of proof of financial responsibility for the



future, subject to certain exemptions, shall apply with respect to persons who have been convicted of or forfeited bail for certain offenses under motor vehicle laws or who have failed to pay judgments upon causes of action arising out of ownership, maintenance, or use of vehicles of a type subject to registration under the laws of the District of Columbia. (May 25, 1954, 68 Stat. 129, ch. 222, § 34.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-452, 40-453, 40-462, 40-474.

#### § 40-451. Proof of financial responsibility for the future.

The term "proof of financial responsibility for the future" as used in this chapter shall mean: Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance, or use of a vehicle of a type subject to registration under the laws of the District of Columbia in the amount of \$10,000 because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of \$20,000 because of bodily injury to or death of two or more persons in any one accident, and in the amount of \$5,000 because of injury to or destruction of property of others in any one accident. Wherever used in this chapter the term "proof of financial responsibility" or "proof" shall be synonymous with the term "proof of financial responsibility for the future". (May 25, 1954, 68 Stat. 129, ch. 222, § 35.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-452, 40-453, 40-462, 40-474, 40-476.

#### § 40-452. "Judgment" and "State" defined.

The following words and phrases when used in sections 40-450 to 40-484 shall, for the purpose of such sections, have the meanings respectively ascribed to them in this section.

(a) The term "judgment" shall mean: Any judgment which shall have become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any State, the District of Columbia, or of the United States, upon a cause of action arising out of the ownership, maintenance, or use of any vehicle of a type subject to registration under the laws of the District of Columbia, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.

(b) The term "State" shall mean: Any State, Territory, or possession of the United States, or any province of the Dominion of Canada. (May 25, 1954, 68 Stat. 130, ch. 222, § 36.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-453, 40-462, 40-474.

§ 40-453. Suspension of license and registration for certain convictions—Effect of proof of financial responsibility—Vehicles owned or leased by the United States, a State, or a political subdivision thereof—Suspension for out of District convictions.

(a) The license and registration of all vehicles registered in the name of any person who by a final order or judgment shall have been convicted of, or shall have forfeited any bond or collateral given to secure appearance for trial for a violation of any of the following provisions of law:

(1) Operating a motor vehicle under the influence of any intoxicating liquor or narcotic drug;

(2) Any homicide committed by means of a motor vehicle;

(3) Leaving the scene of an accident in which the motor vehicle driven by him was involved and in which there is personal injury, without giving assistance or making known his identity and address and the identity and address of the owner of said vehicle;

(4) Reckless driving involving personal injury;

(5) Any felony in the commission of which a motor vehicle is used; or

(6) A conviction of, or forfeiture of bail or collateral for an offense in any State which, if committed in the District of Columbia, would be one of the offenses listed in paragraphs (1) through (5) of this subsection (a);

shall be suspended by the Commissioner and shall remain so suspended and shall not at any time thereafter be renewed, nor shall any other motor vehicle be thereafter registered in the name of such person as owner, except that (1) if such owner has previously given or shall immediately give and thereafter maintain proof of financial responsibility for the future with respect to all such vehicles registered by such person as the owner, the Commissioner shall not suspend such registration unless otherwise required or permitted by law, or (2) if a conviction arose out of the operation, with permission, of a vehicle owned by or leased to the United States, the District of Columbia, a State, or a political subdivision of a State or a municipality thereof, the Commissioner shall not suspend the registration of any vehicle so owned or leased. If such person be not a resident of the District of Columbia, the privilege of operating any motor vehicle in the District of Columbia and the privilege of operation within the District of Columbia of any motor vehicle owned by him shall be suspended until he shall have furnished proof of financial responsibility for the future with respect to all such vehicles registered by such person as the owner, and such person shall not be allowed a license, nor shall such owner be allowed to register any vehicle in the District of Columbia, until he has complied with the requirements of sections 40-450 to 40-484 to the same extent that would be necessary if, at the time of the conviction or forfeiture, he had held a license or had been the owner of a vehicle registered in the District of Columbia.



(b) Upon receipt of a certification from any State that the operating privilege of a resident of the District of Columbia has been suspended or revoked pursuant to a law providing for such suspension or revocation for a conviction or forfeiture under circumstances which would require the Commissioner to suspend a nonresident's operating privilege had the offense occurred in the District of Columbia, the Commissioner shall suspend the license of such resident and the registration of all vehicles registered in his name. (May 25, 1954, 68 Stat. 130, ch. 222, § 37; Aug. 28, 1958, 72 Stat. 955, Pub. L. 85-792, § 9; Sept. 8, 1960, 74 Stat. 862, Pub. L. 86-730, § 5.)

#### AMENDMENTS

1960—Subsec. (a) amended by act Sept. 8, 1960, which inserted words "shall have been convicted of, or" following "final order or judgment."

1958—Act Aug. 28, 1958, amended section generally, and among other changes, added subparagraph (6) of paragraph (a), the last sentence of paragraph (a) concerning nonresidents, and paragraph (b) with respect to suspension of operating privileges of residents of the District by any state.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CROSS REFERENCE

Review of suspension, see § 40-420.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-452, 40-462, 40-474.

#### NOTES TO DECISIONS

##### Violations in foreign jurisdictions

Where driver had been convicted in Virginia of driving while under the influence of intoxicating liquors and such conviction had been certified to the District of Columbia, and where, as a result of such certification, driver's total points under "point system" of regulation exceeded 12 thereby permitting revocation of driver's operator's permit, Director of Motor Vehicles did not abuse his discretion in allowing points to be assessed for conviction outside District since, if incident had occurred in District of Columbia, it would have meant mandatory revocation of driver's permit without exercise of any discretion by Director, without a hearing and without reference to any point system. *Council v. Director of Motor Vehicles, etc.* (D.C. Mun. App. 1960, 159 A. 2d 874).

#### § 40-454. Duration of suspension—Giving and maintenance of proof of financial responsibility.

The suspension or revocation hereinbefore required shall remain in effect and the Commissioner shall not issue to such person any new or renewal of license or register or reregister in the name of such person as owner of any such vehicle until permitted under the motor vehicle laws of the District of Columbia and not then unless and until such person shall give and thereafter maintain proof of financial responsibility for the future. (May 25, 1954, 68 Stat. 131, ch. 222, § 38.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-452, 40-453, 40-462, 40-474.

#### § 40-455. Suspension of unlicensed or licensed person after certain convictions—Proof of financial responsibility required—Certificate of conviction to be forwarded to Commissioner.

(a) If a person by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for driving a motor vehicle within the District of Columbia at a time when his license is suspended or revoked, the operating privilege of such person shall be suspended and no license shall thereafter be issued to such person, but if such person has obtained a license prior to the time the Commissioner has issued an order precluding the issuance of such license, then such license shall be suspended; and no vehicle shall continue to be registered or thereafter be registered in the name of such person as owner, unless such person shall give and thereafter maintain proof of financial responsibility.

(b) It shall be the duty of the clerk of the court in which any such conviction or forfeiture is ordered to forward immediately to the Commissioner a certified copy of said order, which certified copy shall be prima facie evidence of the facts stated therein. (May 25, 1954, 68 Stat. 131, ch. 222, § 39; Aug. 28, 1958, 72 Stat. 956, Pub. L. 85-792, § 10; Oct. 17, 1968, Pub. L. 90-589, § 1, 82 Stat. 1152.)

#### AMENDMENTS

1968—Act, Oct. 17, 1968, Pub. L. 90-589, amended subsection (a) by striking out the following language: "trial for:

"(1) Driving a motor vehicle upon the highways without being licensed to do so under the laws of the District of Columbia when so required; or

"(2) Driving a vehicle not registered under the laws of the District of Columbia when so required; the operating privilege" and inserting in lieu thereof the following: "trial for driving a motor vehicle within the District of Columbia at a time when his license is suspended or revoked, the operating privilege".

1958—Aug. 28, 1958, amended section generally, and among other changes, added provision for suspension of license obtained prior to issuance of order precluding issuance of such license, and also added paragraph (b) respecting duty of clerk of court in which conviction or forfeiture is ordered to forward copy of such order to Commissioners.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CROSS REFERENCE

Review of suspension, see § 40-420.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-452, 40-453, 40-462, 40-474.

#### § 40-456. Suspension of nonresidents' operating privilege—Duration.

Whenever the Commissioner suspends or revokes a nonresident's operating privilege by reason of a conviction or forfeiture of bail, such privilege shall remain so suspended or revoked unless such person shall have previously given or shall immediately give and thereafter maintain proof of financial responsibility for the future. (May 25, 1954, 68 Stat. 131, ch. 222, § 40.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.



## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-452, 40-453, 40-462, 40-474.

## § 40-457. Report by courts of nonpayment of judgments.

Whenever any person fails within thirty days to satisfy any judgment, then upon the written request of the judgment creditor or his attorney it shall be the duty of the clerk of the court in which any such judgment is rendered within the District of Columbia to forward to the Commissioner immediately upon such request a certificate of facts relative to such judgment, upon a form provided by the Commissioner, which said certificate shall be prima facie evidence of the facts therein stated. (May 25, 1954, 68 Stat. 131, ch. 222, § 41; Aug. 28, 1958, 72 Stat. 957, Pub. L. 85-792, § 11.)

## AMENDMENT

1958—Act Aug. 28, 1958, struck out the phrase "a certified copy of such judgment" and inserted in lieu thereof the phrase beginning with "a certificate of facts" and ending with "Commissioners" and also struck out the words "certified copy" and substituted in place thereof the word "certificate".

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-452, 40-453, 40-462, 40-474.

## § 40-458. Judgment against a nonresident—Transmittal of copy to license and registration official of defendant's State.

If the defendant named in any certified copy of a judgment reported to the Commissioner is a nonresident, the Commissioner shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registrations of the State of which the defendant is a resident. (May 25, 1954, 68 Stat. 131, ch. 222, § 42.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-452, 40-453, 40-462, 40-474.

## § 40-459. Suspension for nonpayment of judgment.

The Commissioner upon receipt of a certified copy of a judgment or a certificate of facts relative to such judgment, shall forthwith suspend the license and registration and any nonresident's operating privilege of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this chapter. (May 25, 1954, 68 Stat. 131, ch. 222, § 43; Aug. 28, 1958, 72 Stat. 957, Pub. L. 85-792, § 12.)

## AMENDMENT

1958—Act Aug. 28, 1958, struck the word "and" following "copy of a judgment" and substituted the word "or" and also struck out the phrase "on a form provided by the Commissioners" following "such judgment".

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-452, 40-453, 40-460, 40-462, 40-474.

## NOTES TO DECISIONS

## In general

Where party, injured by taxicab operated by member of unincorporated association composed of men who owned and operated taxicabs, obtained judgment against members of association on theory that they were engaged with the negligent operator in joint enterprise and were responsible for his negligence, such judgment was conclusive in suit by members of association for declaratory judgment that members' permits and registration certificates should not be suspended on ground that they were not judgment debtors within this section. *Champ v. Atkins* (1942, 128 F. 2d 601, 76 U.S. App. D.C. 15).

## § 40-460. Government vehicles—Exception as to nonpayment of judgment provisions.

The provisions of section 40-459 shall not apply with respect to any such judgment arising out of an accident caused by the ownership or operation with permission, of a vehicle owned by or leased to the United States, a State or any political subdivision thereof, the District of Columbia or any political subdivision of the District of Columbia. (May 25, 1954, 68 Stat. 131, ch. 222, § 44.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-452, 40-453, 40-462, 40-463, 40-474.

## § 40-461. Consent by judgment creditor to allowance of license, registration, or operating privileges to judgment debtor.

If the judgment creditor consents in writing, in such form as the Commissioner may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, the same may be allowed by the Commissioner, in his discretion, for six months from the date of such consent and thereafter until such consent is revoked in writing, notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in section 40-466, provided the judgment debtor furnishes proof of financial responsibility. (May 25, 1954, 68 Stat. 131, ch. 222, § 45.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-452, 40-453, 40-462, 40-463, 40-474.

## § 40-462. Commissioner's finding that an insurer is obligated to pay judgment—Effect of finding—License, registration and operating privileges in the event of a finding.

No license, registration, or nonresident's operating privilege of any person shall be suspended under the provisions of sections 40-450 to 40-484 if the Commissioner shall find that an insurer was obligated to pay the judgment upon which suspension is based, at least to the extent and for the amounts required in this chapter, but has not paid such judgment for any reason. A finding by the Commissioner that an insurer is obligated to pay a judgment shall not be binding upon such insurer and shall have no legal effect whatever except for the purpose of administering this section. Whenever in any judicial proceedings it shall be deter-



mined by any final judgment, decree or order that an insurer is not obligated to pay any such judgment, the Commissioner, notwithstanding any contrary finding theretofore made by him shall forthwith suspend the license and registration and any nonresident's operating privilege of any person against whom such judgment was rendered, as provided in section 40-459. (May 25, 1954, 68 Stat. 132, ch. 222, § 46.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 40-452, 40-453, 40-474.

#### § 40-463. Continuance of suspension until judgment paid and proof given.

Such license, registration and nonresident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent hereinafter provided and until the said person gives proof of financial responsibility subject to the exemptions stated in sections 40-460, 40-461, and 40-466. (May 25, 1954, 68 Stat. 132, ch. 222, § 47.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-452, 40-453, 40-462, 40-474.

#### § 40-464. Discharge in bankruptcy.

A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this chapter. (May 25, 1954, 68 Stat. 132, ch. 222, § 48.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-452, 40-453, 40-462, 40-474.

#### NOTES TO DECISIONS

##### Reinstatement of operator's permit

Plaintiff was not entitled to reinstatement of his motor vehicle operator's permit or motor vehicle registration privileges where he failed to satisfy judgment obtained against him arising out of operation of a motor vehicle, and fact judgments were not revived after expiration of statute of limitations and were discharged in bankruptcy, did not entitle plaintiff to renewal of such privileges. *G. A. Le v. G. A. England et al.* (D.C.D.C. 1962, 206 F. Supp. 957).

#### § 40-465. Required payments—Amounts—Settlements.

(a) Judgments herein referred to shall, for the purpose of this chapter only, be deemed satisfied—

(1) when \$10,000 has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident; or

(2) when, subject to such limit of \$10,000 because of bodily injury to or death of one person, the sum of \$20,000 has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or

(3) when \$5,000 has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident.

(b) Payments made in settlements of any claims because of bodily injury, death, or property damage arising from such accident shall be credited in reduction of the amounts provided for in this section. (May 25, 1954, 68 Stat. 132, ch. 222, § 49.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-452, 40-453, 40-462, 40-474.

#### § 40-466. Installment payment of judgments—Default.

(a) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

(b) The Commissioner shall not suspend a license, registration, or nonresident's operating privilege, and shall restore any license, registration, or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains such an order permitting the payment of such judgment in installments, and while the payment of any said installments is not in default. (May 25, 1954, 68 Stat. 132, ch. 222, § 50.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-452, 40-453, 40-461 to 40-463, 40-474.

#### § 40-467. Breach of agreement to pay in installments.

In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the Commissioner shall forthwith suspend the license, registration, or nonresident's operating privilege of the judgment debtor until such judgment is satisfied, as provided in this chapter. (May 25, 1954, 68 Stat. 133, ch. 222, § 51.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-452, 40-453, 40-462, 40-474.

#### § 40-468. Proof required for each registered vehicle.

No vehicle shall be or continue to be registered in the name of any person required to file proof of financial responsibility for the future unless such proof shall be furnished for such vehicle. (May 25, 1954, 68 Stat. 133, ch. 133, § 52.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-452, 40-453, 40-462, 40-474.



**§ 40-469. Alternate methods of giving proof.**

Proof of financial responsibility when required under this chapter, with respect to such a vehicle or with respect to a person who is not the owner of such a vehicle, may be given by filing—

- (1) a certificate of insurance as provided in section 40-470 or section 40-471; or
- (2) a bond as provided in section 40-476; or
- (3) a certificate of deposit of money or securities as provided in section 40-479; or
- (4) a certificate of self-insurance, as provided in section 40-494; supplemented by an agreement by the self-insurer that, with respect to accidents occurring while the certificate is in force, he will pay the same amounts that an insurer would have been obliged to pay under an owner's motor vehicle liability policy if it had issued such a policy to said self-insurer.

(May 25, 1954, 68 Stat. 133, ch. 222, § 53.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 40-452, 40-453, 40-462, 40-474.

**§ 40-470. Certificate of insurance as proof.**

Proof of financial responsibility for the future may be furnished by filing with the Commissioner the written certificate of any insurance carrier duly authorized to do business in the District of Columbia certifying that there is in effect a motor-vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall give the effective date of such motor-vehicle liability policy, which date shall be the same as the effective date of the certificate, and shall designate by explicit description or by appropriate reference all vehicles covered thereby unless the policy is issued to a person who is not the owner of a motor vehicle. (May 25, 1954, 68 Stat. 133, ch. 222, § 54.)

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 40-452, 40-453, 40-462, 40-469, 40-473, 40-474.

**§ 40-471. Certificate filed by nonresident as proof of financial responsibility.**

A nonresident may give proof of financial responsibility by filing with the Commissioner a written certificate or certificates of an insurance carrier authorized to transact business in the State in which the vehicle, or vehicles, owned by such nonresident is registered, or in the State in which such nonresident resides, if he does not own a vehicle, provided such certificate otherwise conforms with the provisions of this chapter, and the Commissioner shall accept the same upon condition that said insurance carrier complies with the following provisions with respect to the policies so certified:

- (1) Said insurance carrier shall execute a power of attorney authorizing the Commissioner to accept service on its behalf of notice or process in any action arising out of a motor-vehicle accident in the District of Columbia;

- (2) Said insurance carrier shall agree in writing that such policies shall be deemed to conform with the laws of the District of Columbia relating to the terms of motor-vehicle liability policies issued therein.

(May 25, 1954, 68 Stat. 133, ch. 222, § 55.)

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 40-452, 40-453, 40-462, 40-469, 40-473, 40-474.

**NOTES TO DECISIONS****Power of attorney construed**

Where judgment creditor instituted action against judgment debtor's insurer to recover on judgment, and served the summons and a copy of complaint upon agent of board of commissioners, and insurer had filed power of attorney authorizing agent of board of commissioners to accept service on its behalf thereby enabling its insureds to comply with financial responsibility act specifically providing it was not applicable to accidents occurring prior to its effective date which was subsequent to creditor's accident, even though power of attorney was broader than statutory requirements, when it was considered together with a resolution by insurer directors authorizing same, it could not be construed to apply to creditor's action. *Orban v. The State Automobile Association* (D. C. Mun. App. 1956, 127 A. 2d 143).

**§ 40-472. Default by nonresident insurance carrier.**

If any insurance carrier not authorized to transact business in the District of Columbia, which has qualified to furnish proof of financial responsibility defaults in any said undertakings or agreements, the Commissioner shall not thereafter accept as proof any certificate of said carrier whether theretofore filed or thereafter tendered as proof, so long as such default continues. (May 25, 1954, 68 Stat. 134, ch. 222, § 56.)

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 40-452, 40-453, 40-462, 40-474.

**§ 40-473. "Motor-vehicle liability policy" defined.**

(a) **CERTIFICATION.**—A "motor-vehicle liability policy" as said term is used in this chapter shall mean an "owner's policy" or an "operator's policy" of liability insurance, certified as provided in section 40-470 or section 40-471 as proof of financial responsibility for the future, and issued, except as otherwise provided in section 40-471, by an insurance carrier duly authorized to transact business in the District of Columbia to or for the benefit of the person named therein as insured.

(b) **OWNER'S POLICY.**—Such owner's policy of liability insurance—

1. shall designate by explicit description or by appropriate reference all vehicles with respect to which coverage is thereby to be granted; and
2. shall insure the person named therein and any other person as insured, using any such vehicle or vehicles with the express or implied permission of such named insured, against loss



from the liability imposed by law for damages arising out of the ownership, maintenance, or use of such vehicle or vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such vehicle, as follows: \$10,000 because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, \$20,000 because of bodily injury to or death of two or more persons in any one accident, and \$5,000 because of injury to or destruction of property of others in any one accident.

(c) **OPERATOR'S POLICY.**—Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(d) **REQUIRED STATEMENTS IN POLICIES.**—Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period, and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this chapter.

(e) **POLICY NEED NOT INSURE WORKMEN'S COMPENSATION, ETC.**—Such motor-vehicle liability policy need not insure any liability under any workmen's compensation law nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance, or repair of any such vehicle nor any liability for damage to property owned by, rented to, in charge of, or transported by the insured.

(f) **PROVISIONS INCORPORATED IN POLICY.**—Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

1. The liability of the insurance carrier with respect to the insurance required by this chapter shall become absolute whenever injury or damage covered by said motor-vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy.

2. The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage.

3. The insurance carrier shall have the right to settle any claim covered by the policy, and if such

settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in subdivision 2 of subsection (b) of this section.

4. The policy, the written application therefor, if any and any rider or endorsement which does not conflict with the provisions of this chapter shall constitute the entire contract between the parties.

(g) **EXCESS OR ADDITIONAL COVERAGE.**—Any policy which grants the coverage required for a motor-vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor-vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this chapter. With respect to a policy which grants such excess or additional coverage the term "motor-vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

(h) **REIMBURSEMENT PROVISION PERMITTED.**—Any motor-vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this chapter.

(i) **PRORATION OF INSURANCE PERMITTED.**—Any motor-vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(j) **MULTIPLE POLICIES.**—The requirements for a motor-vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

(k) **BINDERS.**—Any binder issued pending the issuance of a motor-vehicle liability policy shall be deemed to fulfill the requirements for such a policy. (May 25, 1954, 68 Stat. 134, ch. 222, § 57.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-452, 40-453, 40-462, 40-474.

#### NOTES TO DECISIONS

##### In general

Where policy of liability insurance by its own terms "does not cover any liability for death sustained by named insured" the financial responsibility act was applicable, where the insured was killed in her own automobile driven by another and the administratrix of named insured could not recover. *Hepburn v. Pennsylvania Indem. Corp.* (1940, 109 F.2d 833).

#### § 40-474. Notice of cancellation or termination of certified policy.

The Commissioner shall be notified of the cancellation of any motor-vehicle liability policy of insurance certified under the provisions of sections 40-450 to 40-484 or of any surety or real estate bond at least ten days before the effective date of such cancellation. In the absence of such notice of cancellation said policy of insurance shall remain in full force and effect that any policy subsequently procured and certified shall on the effective date of its certification terminate the insurance previously certified with respect to any vehicle designated in both certificates. Upon receipt of such notice of cancellation the said Commissioner shall require other evidence of ability to respond in damages and upon failure to furnish the same before the effective



date of such cancellation, the license and all of the registration certificates of the person failing to comply herewith shall be suspended by the Commissioner and shall remain so suspended until such other evidence of ability to respond in damages shall have been given. (May 25, 1954, 68 Stat. 135, ch. 222, § 58; Sept. 8, 1960, 74 Stat. 86, Pub. L. 86-730, § 6.)

#### AMENDMENT

1960—Act Sept. 8, 1960, eliminated words "or expiration" which followed "cancellation" in five instances.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-452, 40-453, 40-462.

#### § 40-475. Provisions of chapter not to affect other policies.

(a) This chapter shall not be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of the District of Columbia, and such policies, if they contain an agreement or are endorsed to conform with the requirements of this chapter may be certified as proof of financial responsibility under this chapter.

(b) This chapter shall not be held to apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on his behalf of vehicles not owned by the insured. (May 25, 1954, 68 Stat. 136, ch. 222, § 59.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-452, 40-453, 40-462, 40-474.

#### § 40-476. Surety bond as proof of financial responsibility.

Proof of financial responsibility may be evidenced by the bond of a surety company duly authorized to transact business within the District of Columbia, or a bond with at least two individual sureties each owning unencumbered real estate within the District of Columbia, and together having equities equal in value to at least twice the amount of the bond which real estate shall be scheduled in the bond approved by a judge of a court of record, which said bond shall be conditioned for payment of the amounts specified in section 40-451. Such bond shall be filed with the Commissioner and shall not be cancelable except after ten days' written notice to the Commissioner. (May 25, 1954, 68 Stat. 136, ch. 222, § 60.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-452, 40-453, 40-462, 40-469, 40-474.

#### § 40-477. Bond a lien against scheduled real estate—Recording—Notice.

Such bond shall constitute a lien in favor of the District of Columbia upon the real estate so scheduled of any surety, which lien shall exist in

favor of any holder of a final judgment against the person who has filed such bond, for damages, including damages for care and loss of service because of bodily injury to or death of any person, or for damage because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use, or operation of a vehicle of a type subject to registration under the laws of the District of Columbia after such bond was filed. Said bond shall be recorded by the principal named therein among the land records of the District of Columbia before the same is filed with the Commissioner. Recordation shall constitute notice as provided by statutes governing the recordation of liens on real estate. (May 25, 1954, 68 Stat. 136, ch. 222, § 61.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-452, 40-453, 40-462, 40-474.

#### § 40-478. Action on bond.

If such a judgment, rendered against the principal on such bond, shall not be satisfied within thirty days after it has become final, the judgment creditor may, for his own use and benefit and at his sole expense bring an action or actions in the name of the District of Columbia against the company or persons executing such bond, including an action or proceeding to foreclose any lien that may exist upon the real estate of a person who has executed such bond, which foreclosure action shall be brought in like manner and subject to all the provisions of law applicable to an action to foreclose a mortgage on real estate. (May 25, 1954, 68 Stat. 136, ch. 222, § 62.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-452, 40-453, 40-462, 40-474.

#### NOTES TO DECISIONS

##### Power of attorney construed

Where judgment creditor instituted action against judgment debtor's insurer to recover on judgment, and served the summons and a copy of complaint upon agent of board of commissioners, and insurer had filed power of attorney authorizing agent of board of commissioners to accept service on its behalf thereby enabling its insureds to comply with financial responsibility act specifically providing it was not applicable to accidents occurring prior to its effective date which was subsequent to creditor's accident, even though power of attorney was broader than statutory requirements, when it was considered together with a resolution by insurer directors authorizing same, it could not be construed to apply to creditor's action. *Orban v. The State Automobile Association* (D. C. Mun. App. 1956, 127 A. 2d 143).

#### § 40-479. Deposit of money with Commissioner—Certificate—Evidence of no unsatisfied judgments.

(a) Proof of financial responsibility may be evidenced by the certificate of the Commissioner that the person named therein has deposited with him the sum of \$25,000 in cash. The Commissioner shall not accept any such deposit and issue a certificate therefor unless such deposit is accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the locality where the depositor resides.



(b) The Commissioner may accept as a substitute for a deposit of money required herein other security under such conditions as he may establish. (May 25, 1954, 68 Stat. 136, ch. 222, § 63.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-452, 40-453, 40-462, 40-469, 40-474.

### § 40-480. Application of money deposit—Limits.

Such deposit shall be used to satisfy in accordance with the provisions of this chapter, any execution on a judgment issued against such person making the deposit for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use or operation of a vehicle of a type subject to registration under the laws of the District of Columbia after such deposit was made. Money so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages as aforesaid. (May 25, 1954, 68 Stat. 137, ch. 222, § 64.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-452, 40-453, 40-462, 40-474.

### § 40-481. Owner of a motor vehicle may give proof for others.

The owner of a motor vehicle may give proof of financial responsibility on behalf of his employee or a member of his immediate family or household in lieu of the furnishing of proof by any said person. The furnishing of such proof shall permit such person to operate only a motor vehicle covered by such proof. The Commissioner shall endorse appropriate restrictions on the face of the license held by such person, or may issue a new license containing such restrictions. (May 25, 1954, 68 Stat. 137, ch. 222, § 65.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-452, 40-453, 40-462, 40-474.

### § 40-482. Substitution of proof.

The Commissioner shall consent to the cancellation of any bond or certificate of insurance or return any money to the person entitled thereto upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to this chapter. (May 25, 1954, 68 Stat. 137, ch. 222, § 66.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-452, 40-453, 40-462, 40-474.

### § 40-483. Requirement of other proof of financial responsibility—Prior proof—Suspension.

Whenever any proof of financial responsibility filed under the provisions of this chapter no longer fulfills the purposes for which required, the Commissioner shall, for the purpose of this chapter, require other proof as required by this chapter and shall suspend the license and registration pending the filing of such other proof. (May 25, 1954, 68 Stat. 137, ch. 222, § 67.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-452, 40-453, 40-462, 40-474.

### § 40-484. Duration of proof—Cancellation or return of proof.

(a) The Commissioner shall upon request consent to the immediate cancellation of any bond or certificate of insurance, or the Commissioner shall return to the person entitled thereto any money deposited pursuant to this chapter as proof of financial responsibility, or the Commissioner shall waive the requirement of filing proof, in any of the following events:

(1) At any time after three years from the date such proof was required when, during the three-year period preceding the request, the Commissioner has not received the record of a conviction or a forfeiture of bail which would require or permit the suspension or revocation of the license or registration of the person by or for whom such proof was furnished; or

(2) In the event of the death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle; or

(3) In the event the person who has given proof surrenders his license and registration to the Commissioner.

(b) The Commissioner shall not consent to the cancellation of any bond or the return of any money in the event any action for damages upon a liability covered by such proof is then pending or any judgment upon any such liability is then unsatisfied, or in the event the person who has filed such bond or deposited such money has within one year immediately preceding such request been involved as a driver or owner in any motor-vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts, or that he has been released from all of his liability, or has been finally adjudicated not to be liable, for such injury or damage, shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the Commissioner.

(c) Whenever any person whose proof has been canceled or returned under subsection (a) (3) of this section applies for a license or registration within a period of three years from the date proof was originally required, any such application shall be refused unless the applicant shall reestablish



such proof for the remainder of such three-year period. (May 25, 1954, 68 Stat. 137, ch. 222, § 68.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-452, 40-453, 40-462, 40-474, 40-498c.

#### § 40-485. Transfer of registration to defeat purpose of chapter.

(a) If an owner's registration has been suspended hereunder, such registration shall not be transferred nor the vehicle in respect to which such registration was issued registered in any other name until the Commissioner is satisfied that such transfer of registration is proposed in good faith and not for the purpose or with the effect of defeating the purposes of this chapter.

(b) Nothing in this section shall in anywise affect the rights of any conditional vendor, chattel,<sup>1</sup> mortgagee or lessor of such a vehicle registered in the name of another as owner who becomes subject to the provisions of this chapter.

(c) The Commissioner shall suspend the registration of any vehicle transferred in violation of the provisions of this section. (May 25, 1954, 68 Stat. 138, ch. 222, § 69.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### CROSS REFERENCE

Review of suspension, see § 40-420.

#### § 40-486. Surrender of license and registration.

Any person whose license or registration shall have been suspended under any provision of this chapter, or whose policy of insurance or bond, when required under this chapter, shall have been canceled or terminated, shall immediately return his license and registration to the Commissioner. If any person shall fail to return to the Commissioner the license or registration as provided herein, the Commissioner shall forthwith direct any police officer to secure possession thereof and to return the same to the Commissioner. (May 25, 1954, 68 Stat. 138, ch. 222, § 70.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40-490.

#### § 40-487. Failure to report accident—Penalty.

Failure to report a motor-vehicle accident or to furnish additional information as required under section 40-426, 40-428, or 40-429 shall be punished by a fine not in excess of \$100. (May 25, 1954, 68 Stat. 138, ch. 222, § 71.)

<sup>1</sup> So in original. Comma should probably be omitted.

#### § 40-488. Erroneous report—Forged signature—Filing forged evidence of proof of financial responsibility—Penalty—False swearing.

(a) Any person who gives information required in such report or otherwise required for such purpose knowing or having reason to believe that such information is false, or who shall forge, or, without authority, sign any evidence of proof of financial responsibility for the future, or who files or offers for filing any such evidence or proof knowing or having reason to believe that it is forged or signed without authority, shall be fined not more than \$1,000 or imprisoned for not more than one year or both.

(b) No person shall swear falsely to any affidavit required by the Commissioner under the authority of this chapter. (May 25, 1954, 68 Stat. 138, ch. 222, § 72; Aug. 28, 1958, 72 Stat. 957, Pub. L. 85-792, § 13.)

#### AMENDMENT

1958—Act Aug. 28, 1958, amended the section by designating the first paragraph as (a) and adding subparagraph (b) thereto.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 40-489. Operating motor vehicle when license suspended or revoked.

Any person whose license has been suspended or revoked under this chapter and who, during such suspension or revocation, drives any motor vehicle upon any highway, except as permitted under this chapter, shall be fined not more than \$500 or imprisoned not exceeding six months, or both. (May 25, 1954, 68 Stat. 138, ch. 222, § 73; Aug. 28, 1958, 72 Stat. 957, Pub. L. 85-792, § 14.)

#### AMENDMENT

1958—Act Aug. 28, 1958, struck reference to "registration" following "license" and the phrase beginning with "or knowingly permits" and ending "upon any highway" following "highway" and preceding "except".

#### NOTES TO DECISIONS

##### Collateral estoppel

Since the defendant who had been acquitted on charges of reckless driving, speeding, and driving motor vehicle after his permit had been suspended failed to present defense of collateral estoppel to the trial court hearing prosecution for unauthorized use of motor vehicle, the reviewing court would not consider claim. *R. Mahoney v. United States* (1969, 420 F. 2d 253, 137 U.S. App. D.C. 3.)

#### § 40-490. Failure to return license or registration—Penalty.

Any person willfully failing to return license or registration as required in section 40-486 shall be fined not more than \$500 or imprisoned not to exceed thirty days, or both. (May 25, 1954, 68 Stat. 139, ch. 222, § 74.)

#### § 40-491. Penalty for violations of chapter.

Any person who shall violate any provision of this chapter for which no penalty is otherwise provided shall be fined not more than \$500 or imprisoned not more than ninety days, or both. (May 25, 1954, 68 Stat. 139, ch. 222, § 75.)



**§ 40-492. Jurisdiction of the Superior Court of the District of Columbia as to prosecutions for violations of provisions of chapter.**

All prosecutions for violations of this chapter shall be in the Superior Court of the District of Columbia, in the name of the District of Columbia, by the corporation counsel or any of his assistants. (May 25, 1954, 68 Stat. 139, ch. 222, § 76; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

**AMENDMENT**

1970—Section 155(a) of Act July 29, 1970, Pub. L. 91-358, struck out "District of Columbia Court of General Sessions" and inserted in lieu thereof "Superior Court of the District of Columbia".

**EFFECTIVE DATE OF 1970 AMENDMENT**

See note preceding § 11-101.

**CHANGE OF NAME**

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

**§ 40-493. Vehicles insured under other laws—Exception.**

Except for sections 40-423, 40-424, 40-426 to 40-431, this chapter shall not apply to any vehicle the owner of which has complied with the requirements of existing laws of the District of Columbia requiring insurance or other security on motor vehicles. (May 25, 1954, 68 Stat. 139, ch. 222, § 78; Aug. 28, 1958, 72 Stat. 957, Pub. L. 85-792, § 15.)

**AMENDMENT**

1958—Act Aug. 28, 1958, amended the section by adding references to sections 40-423, 40-424, 40-426 to 40-431, and eliminating a reference to section 40-481.

**§ 40-494. Self-insurers.**

(a) Any person in whose name more than twenty-five vehicles are registered in the District of Columbia may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the Commissioner as provided in subsection (b) of this section.

(b) The Commissioner may, in his discretion, upon the application of such a person, issue a certificate of self-insurance when he is satisfied that such person is possessed and will continue to be possessed of ability to pay judgments obtained against such person. Such certificate may be issued authorizing a person to act as a self-insurer for either property damage or bodily injury, or both.

(c) Upon not less than five days' notice and a hearing pursuant to such notice, the Commissioner may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay any judgment within thirty days after such judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance. (May 25, 1954, 68 Stat. 139, ch. 222, § 79.)

**TRANSFER OF FUNCTIONS TO COMMISSIONER**

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 40-434, 40-469.

**§ 40-495. Appropriations authorized.**

There is hereby authorized to be appropriated out of the general fund of the District of Columbia such sums as may be necessary to carry out the provisions of this chapter. (May 25, 1954, 68 Stat. 139, ch. 222, § 80.)

**§ 40-496. Retroactive application of chapter.**

This chapter shall not apply with respect to any accident, or judgment arising therefrom, or violation of the motor-vehicle laws of the District of Columbia, occurring prior to May 25, 1955. (May 25, 1954, 68 Stat. 140, ch. 222, § 83.)

**NOTES TO DECISIONS**

**Power of attorney construed**

Where judgment creditor instituted action against judgment debtor's insurer to recover on judgment, and served the summons and a copy of complaint upon agent of board of commissioners, and insurer had filed power of attorney authorizing agent of board of commissioners to accept service on its behalf thereby enabling its insureds to comply with financial responsibility act specifically providing it was not applicable to accidents occurring prior to its effective date which was subsequent to creditor's accident, even though power of attorney was broader than statutory requirements, when it was considered together with a resolution by insurer directors authorizing same, it could not be construed to apply to creditor's action. *Orban v. The State Automobile Association* (D. C. Mun. App. 1956, 127 A. 2d 143).

**§ 40-497. Provisions of chapter not to prevent other processes provided by law.**

Nothing in this chapter shall be construed as preventing the plaintiff in any action at law from relying for relief upon the other processes provided by law. (May 25, 1954, 68 Stat. 140, ch. 222, § 84.)

**§ 40-498. Interpretation of provisions of chapter.**

This chapter shall be so interpreted and construed as to effectuate its general purpose to make it uniform with similar laws enacted by the several States. (May 25, 1954, 68 Stat. 140, ch. 222, § 85.)

**§ 40-498a. Effect of Reorganization Plan Number 5 of 1952.**

Where any provision of this chapter, or any amendment made by this chapter, refers to an office or agency abolished by Reorganization Plan Number 5 of 1952, such reference shall be deemed to be the office, agency, or officer exercising the functions of the office or agency so abolished. (May 25, 1954, 68 Stat. 139, ch. 222, § 81.)

**REFERENCES IN TEXT**

Reorganization Plan No. 5 of 1952 is set out in the Appendix to title 1, Administration.

**§ 40-498b. Separability of provisions.**

If any part or parts of this chapter shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this chapter. (May 25, 1954, 68 Stat. 140, ch. 222, § 86.)

**§ 40-498c. Effect of prior law—Repeal.**

This chapter shall in no respect be considered as a repeal of the Traffic Acts of the District of Columbia, except as specifically provided herein, but shall be construed as supplemental thereto.



The Owners' Financial Responsibility Act of the District of Columbia, is hereby repealed except with respect to any accident or judgment arising therefrom occurring prior to the effective date of this chapter. Section 40-484 shall govern as to the duration of proof of financial responsibility in all cases arising under the aforementioned Act. (May 25, 1954, 68 Stat. 139, ch. 222, § 82; Sept. 8, 1960, 74 Stat. 863, Pub. L. 86-730, § 7.)

#### REFERENCES IN TEXT

The Owners' Financial Responsibility Act of the District of Columbia, act May 3, 1935, 49 Stat. 166, ch. 89, §§ 1-17, was previously set out as sections 40-401 to 40-416 of this chapter.

#### AMENDMENT

1960—Act Sept. 8, 1960 inserted provisions requiring section 40-484 to govern as to the duration of proof of financial responsibility in all cases arising under the Owners' Financial Responsibility Act.

### Chapter 5.—PUBLIC-OWNED VEHICLES

Sec.

- 40-501. Motor vehicles to be marked.
- 40-502. Repealed.
- 40-503. Omitted.
- 40-504. Police and fire departments—Transfer of vehicles.

#### § 40-501. Motor vehicles to be marked.

All motor vehicles and all horse-drawn carriages and buggies owned by the District of Columbia shall be of uniform color and have painted conspicuously thereon, in letters not less than three inches high and markedly contrasting in color with the body color of the vehicle, the words, "District of Columbia." (Mar. 3, 1917, 39 Stat. 1010, ch. 160.)

#### USE OF PUBLICLY-OWNED VEHICLES

Section 8 of act July 10, 1972, Pub. L. 92-344, 86 Stat. 455 (District of Columbia Appropriation Act, 1973), provided:

"All passenger motor vehicles (including watercraft) owned by the District of Columbia shall be operated and utilized in conformity with section 16 of the Act of August 2, 1946 (60 Stat. 810) [31 U.S.C. 638a], and shall be under the direction and control of the Commissioner, who may from time to time alter or change the assignment for use thereof or direct the alteration of interchangeable use of any of the same by officers and employees of the District, except as otherwise provided in this Act. 'Official purposes' as used in the section 16 shall not apply to the Commissioner or in cases of officers and employees the character of whose duties make such transportation necessary, but only as to such latter cases when approved by the Commissioner."

Similar provisions were contained in the following prior appropriation acts:

- 1972—Dec. 18, 1971, Pub. L. 92-202, § 9, 85 Stat. 686.
  - 1971—July 16, 1970, Pub. L. 91-337, § 9, 84 Stat. 436.
  - 1970—Dec. 24, 1969, Pub. L. 91-155, § 10, 83 Stat. 432.
  - 1969—Aug. 10, 1968, Pub. L. 90-473, § 10, 82 Stat. 699.
  - 1968—Nov. 13, 1967, Pub. L. 90-134, § 10, 81 Stat. 440.
  - 1967—Nov. 2, 1966, 80 Stat. 1173, Pub. L. 89-743, § 10.
  - 1966—July 16, 1965, 79 Stat. 242, Pub. L. 89-75, § 10.
  - 1965—Aug. 22, 1964, 78 Stat. 592, Pub. L. 88-479, § 10.
  - 1964—Dec. 30, 1963, 77 Stat. 839, Pub. L. 88-252, § 10.
  - 1963—Oct. 23, 1962, 76 Stat. 1154, Pub. L. 87-867, § 10.
- Provisions on the subject, prior to the above-cited acts, were contained in acts July 15, 1939, 53 Stat. 1009, ch. 281, § 1; June 12, 1940, 54 Stat. 312, ch. 331, § 1.

#### USE OF CHAUFFEURS

Section 14 of the District of Columbia Appropriation Act, 1972, approved July 10, 1972, Pub. L. 92-344, 86 Stat. 455, provided:

"No part of any funds appropriated by this Act shall be used to pay the compensation (whether by contract

or otherwise) of any individual for performing services as a chauffeur or driver for any designated officer or employee of the District of Columbia government (other than the Commissioner of the District of Columbia, Chief of Police and Fire Chief), or for performing services as a chauffeur or driver of a motor vehicle assigned for the personal or individual use of any such officer or employee (other than the Commissioner of the District of Columbia, Chief of Police and Fire Chief). No part of any funds appropriated by this Act, in excess of \$12,000 in the aggregate, shall, in any fiscal year, be used to pay the compensation (whether by contract or otherwise) of individuals for performing services as a chauffeur or driver for the Commissioner of the District of Columbia, or for performing services as a chauffeur or driver of a motor vehicle assigned for the personal or individual use of the Commissioner of the District of Columbia."

Similar provisions were contained in the following prior appropriation act:

- 1972—Dec. 18, 1971, Pub. L. 92-202, § 16, 85 Stat. 687.

#### CROSS REFERENCES

Inspection, exemption from fees, see § 40-204.

Licensing and registration of publicly owned vehicles, see § 40-102.

Operators' permits for operation of publicly owned vehicles, see § 40-301.

#### § 40-502. Repealed. June 30, 1949, ch. 288, title VI, § 602(a)(33) renumbered and added Sept. 5, 1950, ch. 849, § 7(d), 64 Stat. 590.

Section dealt with the use of appropriated funds for the purchase, maintenance, driving or operating any carriage or vehicle for the personal or official use of any officer or employee of any of the Executive Departments or other government establishments at Washington, District of Columbia, without specific authorizations or specific markings. The section was based on act Feb. 3, 1905, 33 Stat. 687, ch. 297, § 4. It was amended to read as follows by act Aug. 2, 1946, ch. 744, 60 Stat. 811, section 16(b). "All motor vehicles acquired and used for official purposes of the departmental service in the District of Columbia shall have conspicuously imprinted thereon at all times the full name of the executive department or other branch of the public service to which the same belong and in the service of which the same are used."

The section as amended was repealed by act of June 30, 1949, ch. 288, title VI, section 602(a)(33) as renumbered and added by act Sept. 5, 1950, ch. 849, section 7(d), 64 Stat. 590. The subject matter is now covered by 40 U.S.C. § 491(k).

#### § 40-503. Omitted.

#### CODIFICATION

This section was predicated on section 40-502. However, section 40-502 as amended by the act of Aug. 2, 1946, ch. 744, 60 Stat. 811, section 16(b), was repealed by the act of June 30, 1949, ch. 288, title VI, section 602(a)(33) as added by the act of Sept. 5, 1950, ch. 849, section 7(d), 64 Stat. 590. Since the section on which this section was based is repealed, it is omitted. The section read as follows: "Section 40-502 shall apply to carriages, motor, and other vehicles owned by and used in the several branches of the government of the District of Columbia. (May 18, 1910, 36 Stat. 381, ch. 248, § 1.)"

#### § 40-504. Police and fire departments—Transfer of vehicles.

No motor vehicles shall be transferred from the police and fire departments to any other branch of the government of the District of Columbia. (July 15, 1939, 53 Stat. 1010, ch. 281, § 1; June 12, 1940, 54 Stat. 312, ch. 333, § 1.)

### Chapter 6.—REGULATION OF TRAFFIC

Sec.

- 40-601. Short title.
- 40-602. Definitions.



Sec.

- 40-603. Council authorized to make regulations—Department of Vehicles and Traffic—Director—Congressional tags—Titling—Arterial and boulevard highways—Council may prescribe penalties—Publication of regulations—Signs on highways—Prosecutions—Excise tax imposed for issuance of motor vehicle title certificate—Impoundment of motor vehicle for outstanding traffic violation notices.
- 40-603-1. Appeal from assessment of excise tax for issuance of motor vehicle title certificates—Election of remedies.
- 40-603-2. Commissioner may enter into interstate agreement concerning enforcement of traffic laws.
- 40-603a. Office of Registrar of Titles and Tags.
- 40-603b. Issuance of congressional tags.
- 40-604. Parking space for Members of Congress.
- 40-604a. Parking of automobiles in Municipal Center—Regulations—Violations and penalties.
- 40-605. Speeding and reckless driving.
- 40-606. Negligent homicide.
- 40-607. Negligent homicide included in manslaughter where death due to operation of vehicle.
- 40-608. Immoderate speed not dependent on legal rate of speed.
- 40-609. Fleeing from scene of accident—Driving under the influence of liquor or drugs.
- 40-609a. Operating of vehicles while under the influence of intoxicating liquor and in violation of other laws—Prima facie evidence of intoxication—Relevant evidence of use of intoxicating liquor.
- 40-610. Smoke screens.
- 40-611. Reporting by garage keeper of cars damaged in accidents.
- 40-612. Convictions to be reported.
- 40-613. Control over park system not affected by this chapter.
- 40-614. Repeal and saving clauses.
- 40-615. Separability of provisions.
- 40-616. Parking meters.
- 40-617. Loitering by public cabs.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 9-131, 47-2331.

#### § 40-601. Short title.

This chapter may be cited as the "District of Columbia Traffic Act, 1925." (Mar. 3, 1925, 43 Stat. 1119, ch. 443, § 1.)

#### REFERENCES IN TEXT

In the original, "this chapter", as used in this section, reads "this Act", meaning the above-cited act of March 3, 1925. The provisions of such act still in force are classified to §§ 40-301 to 40-303, 40-601 to 40-603, 40-605, 40-609, 40-610, 40-611 and 40-613 to 40-615.

#### EFFECTIVE DATE

Section 17 of Act Mar. 3, 1925, provided:

"(a) The following provisions of this Act shall take effect sixty days after its enactment: Sections 7 and 8, and subdivision (a) of section 16.

"(b) Except as provided in subdivision (a) of this section and in subdivision (b) of section 6, the provisions of this Act shall take effect upon its enactment."

#### § 40-602. Definitions.

When used in this chapter—

(a) The term "motor vehicle" means all vehicles propelled by internal-combustion engines, electricity, or steam, except traction engines, road rollers, and vehicles propelled only upon rails and tracks;

(b) The term "court" means the Superior Court of the District of Columbia;

(c) The term "District" means the District of Columbia;

(d) The term "Commissioner" means the Commissioner of the District of Columbia;

(e) [Repealed].

(f) The term "person" means individual, partnership, corporation, or association;

(g) The term "park" means to leave any motor vehicle standing on a public highway, whether or not attended;

(h) The term "public highway" means any street, road, or public thoroughfare; and

(i) The term "this chapter" includes all lawful regulations issued thereunder by the District of Columbia Council.

(j) The term "vehicle" shall apply to any appliance moved over a highway on wheels or traction tread, including street cars, draft animals, and beasts of burden.

(k) Traffic shall be deemed to include not only motor vehicles but also all vehicles, pedestrians, and animals, of every description. (Mar. 3, 1925, 43 Stat. 1119, ch. 443, § 2; July 3, 1926, 44 Stat. 812, ch. 739, § 1; Feb. 27, 1931, 46 Stat. 1424, ch. 317, § 1; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### REFERENCES IN TEXT

In the original, "this chapter", as used in this section, reads "this Act", meaning the above-cited act of March 3, 1925. The provisions of such act still in force are classified to §§ 40-301 to 40-303, 40-601 to 40-603, 40-605, 40-609, 40-610, 40-611, and 40-613 to 40-615.

#### CODIFICATION

This section as enacted contained the following paragraph, "(c) The term 'District of Columbia Code' means the act entitled 'An act to establish a code of law for the District of Columbia approved March 3, 1901,' as amended;" this phrase appeared only in the introductory lines of those sections of the act of March 3, 1925, amending that Code.

In par. (i), reference to the District of Columbia Council was substituted for "Commissioners" on authority of §§ 40-301, 40-603 of this title, and § 402(292, 293, 295 to 299) of Reorg. Plan No. 3 of 1967, under which the regulations are prescribed by the Council.

#### AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended par. (b) by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia."

1931—Act Feb. 27, 1931, repealed paragraph (e) which provided: "(e) The term 'director' means the director of traffic of the District of Columbia."

1926—Act July 3, 1926, added paragraphs (i) and (j).

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### EFFECTIVE DATE OF 1931 AMENDMENT

See note under § 40-302.

#### CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.



## CROSS REFERENCE

District of Columbia Motor Vehicle Parking Facility Act of 1942, see §§ 40-801 to 40-809.

## NOTES TO DECISIONS

## Construction

Term "this act" includes all lawful regulations issued thereunder by the commissioners. *Smallwood v. District of Columbia* (1927, 17 F. 2d 210, 57 App. D.C. 58).

This chapter is not limited in its scope and purpose to motor vehicle traffic only. *Id.*

## Horse-drawn vehicles

The director of traffic is authorized to exclude horse-drawn vehicles from arterial highways or boulevards. *McBoyle v. United States* (1931, 51 S. Ct. 340, 283 U.S. 25, 75 L. Ed. 816).

## Vehicles included

Vehicles are limited to those that run on the land. *McBoyle v. United States* (1931, 51 S. Ct. 340, 283 U.S. 25, 75 L. Ed. 816).

Commercial vehicles with solid tires. *Smallwood v. District of Columbia* (1927, 17 F. 2d 210, 57 App. D.C. 58).

§ 40-603. Council authorized to make regulations—Department of Vehicles and Traffic—Director—Congressional tags—Titling—Arterial and boulevard highways—Council may prescribe penalties—Publication of regulations—Signs on highways—Prosecutions—Excise tax imposed for issuance of motor vehicle title certificates—Impoundment of motor vehicle for outstanding traffic violation notices.

(a) The District of Columbia Council is authorized and empowered to make, modify, and repeal, and the Commissioner is authorized and empowered to enforce, usual and reasonable traffic rules and regulations relating to vehicles, and rules and regulations concerning the control of traffic, the registration of motor vehicles, and the issuance, suspension, and revocation of operators' permits and the suspension and revocation of operating privileges, including rules and regulations assessing reasonable fees to reimburse the District for the cost of restoring suspended or revoked operators' permits and privileges, such fees not to exceed the amount of \$10 per restoration and the Commissioner is authorized and empowered to exercise any power or perform any duty imposed on the director of traffic, which office is hereby abolished; and in the administration of the above powers and authority the Commissioner may exercise the same through such officers or agents of the District as the Commissioner may designate: *Provided*, That no member of the Metropolitan Police Department may be empowered to perform any function under this chapter other than in the enforcement thereof.

(b) There is established in the government of the District of Columbia a department of vehicles and traffic, which under the direction of the Commissioner, shall have charge of the issuance and revocation of operators' permits, the registration and titling of motor vehicles, the making of traffic studies and plans, the installation and maintenance of traffic signs, signals, and markers, and of such other matters as may be determined by the Commissioner. The Commissioner shall appoint a director of vehicles and traffic, who shall be in charge of said department, and such other personnel as he may deem necessary to perform the duties thereof and as may be appropriated for by Congress. The salaries of such director of vehicles and traffic and

other personnel shall be fixed in accordance with chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]. The director of vehicles and traffic shall be responsible directly to the Commissioner for the faithful performance of his duties and shall be subject to removal by the Commissioner for cause.

(c) The District of Columbia Council is authorized and empowered to make and modify, and the Commissioner is authorized and empowered to enforce, reasonable regulations in respect to brakes, horns, lights, mufflers, and other equipment, the inspection of the same; the registering, reregistering, titling, retitling, transferring of titles, and revocation of the certificate of title to motor vehicles and trailers: *Provided*, That congressional tags shall be issued by the Commissioner under consecutive numbers, one to each Senator and Representative in Congress, to the elective officers and disbursing clerks of the Senate and the House of Representatives, Comptroller of the Senate, the chief clerk of the Senate, the Parliamentarian of the Senate, the Parliamentarian of the House of Representatives, the attending physician of the Capitol, and the assistant secretaries (one for the majority and one for the minority of the Senate), for their official use, which, when used by them individually while on official business, shall authorize them to park their automobiles in any available curb space in the District of Columbia, except within fire plug, fire house, loading station, and loading platform limitations, and such congressional tags shall not be assigned to or used by others: *Provided further*, That such congressional tags shall be valid only for the Congress in which such tags are so issued, and it shall be unlawful to display such congressional tags for a period longer than thirty days after the opening of the next Congress.

Any person violating this section shall be fined not more than \$300 or imprisoned not more than ninety days, or both.

(d) The Commissioner shall cause to be levied, collected, and paid such fees for titling and retitling as they deem necessary, not to exceed the sum of \$5 for each such titling or retitling, and he shall not, after the 1st day of January, 1932, register or renew the registration of any motor vehicle or trailer unless and until the owner thereof shall make application in the form prescribed by the Commissioner and be granted an official certificate of title for such vehicle. No registration or other fee shall be charged to vehicles owned by the federal or District government or any duly accredited representative of a foreign government. The owner of a motor vehicle or trailer registered in the District of Columbia shall not, after the 1st day of January, 1932, operate or permit or cause to be operated any such vehicle upon any public highway in the District without first obtaining a certificate of title therefor, nor shall any individual knowingly permit any certificate of title to be obtained in his name for any vehicle not in fact owned by him, and any individual violating any provision of this subsection or any regulations promulgated thereunder shall be fined not more than \$1,000 or imprisoned not more than one year, or both. If



the properly designated agent of the Commissioner shall determine that an applicant for a certificate of title is not entitled thereto, such certificate of title may be refused, and in that event unless such determination is reversed upon written application to the Commissioner by the individual affected, such individual shall be entitled to proceed further as provided under section 40-302(a): *Provided*, That reasonable time for hearing be given the applicant in the first instance.

(e) The Commissioner may in the administration of this chapter, section or any provision of the Traffic Acts for the District, exercise any power or perform any duty conferred on him by this chapter through such officers and agents of the District as the Commissioner may designate. The Council is authorized and empowered to make, modify and repeal, and the Commissioner is further authorized and empowered to enforce, reasonable rules and regulations in respect to the movement of traffic, speed, length, weight, height, width, routing, and parking of vehicles, and the establishment and location of hack stands: *Provided*, That the Council shall establish and locate parking areas in the vicinity of governmental establishments for use only by members of Congress and governmental officials when on official business: *Provided further*, That as to all common carriers by vehicle which enter, operate in, or leave the District of Columbia, the power to route such vehicles within the District of Columbia, to regulate their equipment other than that specifically named elsewhere in this chapter, to regulate their schedules and their loading and unloading, to locate their stops, and all platforms and loading zones and to require the appropriate marking thereof, is vested in the Public Service Commission of the District of Columbia.

(f) The Council may establish and designate arterial and boulevard highways, regulate the speed of vehicles thereon, and provide for the equipment of any street, road, or highway, with control lights and/or other devices for the regulation of traffic, and make such other regulations with respect to the control of traffic as are deemed advisable.

(g) The Council is authorized to prescribe within the limitations of this chapter reasonable penalties of fine, or imprisonments not to exceed ten days in lieu of or in addition to any fine, for the violation of any rule or regulation promulgated under the authority of this chapter not otherwise herein provided for. All traffic, motor vehicle, and vehicle regulations not inconsistent herewith adopted and promulgated prior to July 1, 1931, are continued and shall remain in full force and effect until amended, altered, or revoked.

(h) All regulations promulgated under the authority of this chapter, except those made by the Public Service Commission under powers given it by Title 43 of this Code, shall, when adopted, be printed in one or more of the daily newspapers published in the District, and no penalty shall be enforced for any violation of any such regulation which occurs within ten days after such publication, except that whenever the District of Columbia Council deems it advisable to make effective immediately any

regulation relating to parking, diverting of vehicular traffic, or the closing of streets to such traffic, the regulation shall be effective immediately upon placing at the point where it is to be in force conspicuous signs containing a notice of the regulation. The placing at or upon the public highway of any sign relating to parking or regulation of traffic, except by the authority of the District of Columbia Council or its designated agent, or of the joint board, is prohibited: *Provided*, That this restriction shall not apply to any such signs which do not purport to reserve space on the public highways and which the Public Service Commission may authorize under the provision of this chapter.

(i) All prosecutions for violations of this chapter, excepting section 40-610, and this act or regulations made and promulgated under authority of this chapter shall be in the Superior Court of the District of Columbia upon information filed by the corporation counsel of the District of Columbia or any of his assistants.

(j) In addition to the fees and charges levied under other provisions of this chapter, there is hereby levied and imposed an excise tax for the issuance of every original certificate of title for a motor vehicle or trailer in the District, and for the issuance of every subsequent certificate of title for a motor vehicle or trailer in the District in the case of sale or resale thereof, at the rate of 5 per centum of the fair market value of such motor vehicle or trailer at the time such certificate is issued, as determined by the Assessor of the District of Columbia or his duly authorized representatives. As used in this section, the term "original certificate of title" shall mean the first certificate of title issued by the District of Columbia for any particular motor vehicle or trailer. No certificate of title so issued shall be delivered or furnished to the person entitled thereto until the tax has been paid in full. The Assessor of the District of Columbia may require every applicant for a certificate of title to supply such information as he deems necessary as to the time of purchase, the purchase price, and other information relative to the determination of the fair market value of any motor vehicle or trailer for which a certificate of title is required and issued. The issuance of certificates of title for the following motor vehicles and trailers shall be exempt from the tax imposed by this subsection:

(1) Motor vehicles and trailers owned by the United States or the District of Columbia.

(2) Motor vehicles and trailers purchased or acquired by nonresidents prior to coming into the District of Columbia and establishing or maintaining residences in the District.

(3) Motor vehicles and trailers purchased or acquired by nonresidents prior to coming into the District of Columbia and establishing or maintaining a business or businesses in the District. Except as hereinafter provided, it is not intended to exempt from the tax the issuance of certificates of title for motor vehicles and trailers owned by nonresidents who are engaged in business in the District at the time of their purchase or acquisition of such vehicles and trailers and who use such vehicles and trailers in the conduct of their District business or businesses.



(4) Motor vehicles and trailers owned by a utility or public service company for use in furnishing a commodity or service: *Provided*, That the receipts from furnishing such commodity or service are subject to a gross-receipts or mileage tax in force in the District of Columbia at the time of a certificate of title for any such vehicle or trailer is issued.

(5) New motor vehicles acquired from dealers as replacements for defective vehicles purchased new not more than sixty days prior to the date of such replacement, except that if the fair market value of any replacement vehicle is greater than that of the vehicle which it replaces, than the tax imposed by this section shall be paid on such difference in value. If the fair market value of any replacement vehicle is less than that of the vehicle which it replaces, then the Commissioner or his designated agent is authorized to refund to the owner of the replacement vehicle an amount equal to the difference between the excise tax paid on the defective vehicle and the excise tax paid on the replacement vehicle.

(k)(1) Any unattended motor vehicle found parked at any time upon any public highway of the District of Columbia against which there are two or more outstanding or otherwise unsettled traffic violation notices or against which there have been issued two or more warrants, may, by or under the direction of an officer or member of the Metropolitan Police force or the United States Park Police force, either by towing or otherwise, be removed or conveyed to and impounded in any place designated by the Commissioner, or immobilized in such manner as to prevent its operation, except that no such vehicle shall be immobilized by any means other than by the use of a device or other mechanism which will cause no damage to such vehicle unless it is moved while such device or mechanism is in place.

(2) It shall be the duty of the officer or member of the police force removing or immobilizing such motor vehicle, or under whose directions such vehicle is removed or immobilized, to inform as soon as practicable the owner of an impounded or immobilized vehicle of the nature and circumstances of the prior unsettled traffic violation notices or warrants, for which or on account of which, such vehicle was impounded or immobilized. In any case involving immobilization of a vehicle pursuant to this subsection, such member or officer shall cause to be placed on such vehicle, in a conspicuous manner, notice sufficient to warn any individual to the effect that such vehicle has been immobilized and that any attempt to move such vehicle might result in damage to such vehicle.

(3) The owner of such impounded or immobilized motor vehicle, or other duly authorized person, shall be permitted to repossess or to secure the release of the vehicle upon the depositing of the collateral required for his appearance in the Superior Court of the District of Columbia to answer for each violation for which there is an outstanding or otherwise unsettled traffic violation notice or warrant. (Mar. 3, 1925, 43 Stat. 1121, ch. 443, § 6; July 3, 1926, 44 Stat. 814, ch. 739, § 4; Feb. 27, 1931, 46 Stat. 1424, ch. 317, §§ 3, 4; Dec. 19, 1932, 47 Stat. 750, ch. 5; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 2, 1945,

59 Stat. 313, ch. 222; May 27, 1949, 63 Stat. 128, ch. 146 title III, § 301; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a); July 24, 1956, 70 Stat. 633, ch. 695, § 1; Sept. 2, 1957, 71 Stat. 598, Pub. L. 85-273, § 3; Oct. 3, 1962, 76 Stat. 742, Pub. L. 87-745, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; Sept. 30, 1966, 80 Stat. 856 Pub. L. 89-610, title II, § 201; 1967 Reorg. Plan No. 3, § 503(c), eff. Nov. 3, 1967, 81 Stat. 980; Dec. 4, 1967, Pub. L. 90-172, § 1, 81 Stat. 532; Oct. 31, 1969, Pub. L. 91-106, titles II, IV, §§ 201, 404, 83 Stat. 172, 174; Dec. 12, 1969, Pub. L. 91-145, § 101, 83 Stat. 343; July 29, 1970, Pub. L. 91-358, §§ 155(a), 163(g)(2), title I, 84 Stat. 570, 583; Dec. 15, 1971, Pub. L. 92-196, title VII, § 705, 85 Stat. 657; Oct. 21, 1972, Pub. L. 92-518, title III, § 301(a), 86 Stat. 1015.)

#### REFERENCES IN TEXT

In the original, "this chapter", as used in this section, reads "this Act", meaning the above-cited act of March 3, 1925. The provisions of such act still in force are classified to §§ 40-301 to 40-303, 40-601 to 40-603, 40-605, 40-609, 40-610, 40-611, and 40-613 to 40-615.

#### CODIFICATION

The reference in subsec. (b) to "chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89-554, set out in note under § 1-251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

#### AMENDMENTS

1972—Section 301(a) of Act Oct. 21, 1972, Pub. L. 92-518, amended subsec. (j) by striking out "4 per centum" and inserting "5 per centum" in lieu thereof.

1971—Section 705 of Act Dec. 15, 1971, Pub. L. 92-196, added subsec. (k).

1970—Section 163(g)(2) of Act July 29, 1970, Public Law 91-358 amended subsection (d) by striking out "and jurisdiction is hereby conferred upon the Court of Appeals of the district for this purpose".

Section 155(a) of Act July 29, 1970, Public Law 91-358 amended subsec. (i) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

1969—Section 101, Act Dec. 12, 1969, Pub. L. 91-145, 83 Stat. 343, Amended subsec. (c) by inserting after "Senate and House of Representatives," the "Comptroller of the Senate."

Act Oct. 31, 1969, Pub. L. 91-106, §§ 201 and 404 amended section as follows: Subsection (a) struck out \$5 fee of restoration of permits and changed it to \$10; subsection (d) changed the fee from \$1 to \$5; and in subsection (j) changed the rate from 3 to 4 per centum.

1967—Sec. 1, Act Dec. 4, 1967, Pub. L. 90-172 amended the first sentence of subsection (d) by striking out "under oath."

Reorg. Plan No. 3 of 1967, § 3(c), abolished the joint Board authorized and created by subsec. (e), together with its functions. This resulted in the elimination of the following provisions at the end of subsec. (e): "Provided further, That whenever any order, rule, or regulation of the Public Utilities Commission shall be made relative to the routing of common carrier vehicles, to the location of their stops, to the establishment or change in location of platforms, loading zones, or other spaces on the public highway to be reserved for any purpose whatsoever, or to the appropriate marking thereof, or whenever any order, rule, or regulation of the District Commissioners shall be made which affects such routing, stops, platforms, zones, or spaces, said order, rule, or



regulation shall, prior to promulgation, be referred to a joint board to be composed of the Commissioners of the District of Columbia and the members of the Public Utilities Commission, which is hereby authorized and created. Such joint board may, by the affirmative action of any three members thereof, adopt rules and regulations which, when promulgated, shall be binding and shall have the full force and effect of law, and the engineer commissioner shall be the chairman of such joint board, and shall have but one vote. Any of said rules and regulations hereafter promulgated, after reasonable trial and within a reasonable time, may be changed by the joint board upon the request of the Commissioners of the District of Columbia or of the Public Utilities Commission."

1966—Act Sept. 30, 1966, amended subsec. (j) by increasing the rate of excise tax therein specified from 2 per centum of fair market value to 3 per centum of fair market value.

1962—Act Oct. 3, 1962, amended subsection (a) by striking out the words "issuance and revocation of operator's permits" and inserting in lieu thereof the words beginning with "issuance" and ending with "\$5 per restoration".

1957—Act Sept. 2, 1957, amended subsection (c) by inserting into the first proviso clause the words, "The Chief Clerk of the Senate, the Parliamentarian of Senate," extending congressional tag privileges to said officials.

1956—Act July 24, 1956, amended subsection (j) by adding paragraph (5) thereto.

1949—Act Oct. 28, 1949, § 1106(a), which was a part of the Classification Act of 1949, and which has since been repealed, substituted "Classification Act of 1949" for "Classification Act of 1923". See codification note above.

1949—Act May 27, 1949, added subsection (j).

1945—Act July 2, 1945, amended subsec. (c) by adding the last proviso and second par.

1932—Act Dec. 19, 1932, added that part of the proviso in paragraph (c) following "Representative in Congress" and preceding "(c) for their official use."

1931—Act Feb. 27, 1931, adopted this section in the form it now exists.

1926—Act July 3, 1926, added a paragraph substantially the same as present paragraph (i) but contained the additional proviso "That nothing herein contained shall deprive any person of the right of trial by jury."

#### EFFECTIVE DATE OF 1972 AMENDMENT

Section 301(b) of Act Oct. 21, 1972, Pub. L. 92-518, provided: "The effective date of the amendment made by subsection (a) [amending § 40-603(j)] is the first day of the first month which begins on or after the thirtieth day after the date of enactment of this Act."

#### EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11-101.

#### EFFECTIVE DATE OF 1969 AMENDMENT

Sections 202 and 407, Pub. L. 91-106, titles II, and IV provided: "The amendment made by this title (amending sec. 40-603(a) (d) and (j)) shall take effect on the first day of the first month which begins on or after the thirtieth day after the date of enactment of this Act. (Nov. 1969)."

#### EFFECTIVE DATE OF 1966 AMENDMENT

Section 202 of act Sept. 30, 1966, 80 Stat. 856, Pub. L. 89-610, title II, provided: "The amendment made by this title [by § 201 of the act to this section] shall take effect on the first day of the first month which begins on or after the thirtieth day after the date of enactment of this Act [Sept. 30, 1966]."

#### EFFECTIVE DATE OF 1956 AMENDMENT

See note under § 40-301.

#### EFFECTIVE DATE OF 1949 AMENDMENT

Section 302 of act May 27, 1949, provided that: "The provisions of this title [adding § 40-603-1 and amending this section] shall be applicable with respect to all certificates of title issued on or after the first day of the first month succeeding the sixtieth day after the approval of his Act [May 27, 1949]."

#### EFFECTIVE DATE OF 1931 AMENDMENT

See note under § 40-302.

#### CHANGE OF NAME

Section 21 of act, Aug. 30, 1964, Pub. L. 88-503, changed the name of the Public Utilities Commission of the District of Columbia to "Public Service Commission of the District of Columbia." See section 2-2418.

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act April 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

#### SEPARABILITY, AUTHORITY OF COMMISSIONER AND DISTRICT COUNCIL, SAVINGS, AND EFFECTIVE DATE PROVISIONS OF PUB. L. 92-196

See secs. 801-804 of Act Dec. 15, 1971, Pub. L. 92-196, set out as a note under § 47-2501a.

#### AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91-106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91-106, set out as a note under § 47-2501a.

#### CONSTRUCTION; SEVERABILITY OF PROVISIONS; RULES AND REGULATIONS

For construction of act Sept. 30, 1966, Pub. L. 89-610, amending this section, severability of provisions with respect thereto, and authority to make rules and regulations to carry out provisions thereof, see §§ 1003-1005 of such act, set out as a note under § 25-124.

#### ABOLISHMENT OF JOINT BOARD CREATED UNDER SUBSECTION (e)

Section 503(c) of Reorganization Plan No. 3 of 1967, effective November 3, 1967, provides:

"The joint board authorized and created by section 6(e) of the Act of March 3, 1925, 43 Stat. 1121, as amended (D.C. Code, sec. 40-603(e)), together with its functions, is hereby abolished."

As to the performance of certain functions under subsection (e) by the Commissioners, the Public Service Commission and the Joint Board relating to transportation in the District and the Metropolitan area, see sections 1-1410 to 1416, particularly the compact set out as a note to section 1-1410 and section 1-1412.

#### ABOLITION OF DEPARTMENT AND TRANSFER OF FUNCTIONS

See note under § 40-101.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(295 to 299) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners under subsections (a), (c), (e), (f) and (g) in the particulars described in pars. 295 to 299, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### TRANSFER OF FUNCTIONS

The Office of the Assessor was abolished and the functions thereof transferred, see note under § 47-601.

#### CROSS REFERENCES

Alcoholic Beverage Control Act inapplicable, see § 25-127.

Authority of Commissioner and Council to delegate functions vested in them by Reorg. Plan. No. 3 of 1967, see §§ 205 and 305 of the Plan set out in the Appendix to title 1.

Authority of commissioner to make rules and regulations concerning public utilities until altered by Public Service Commission, see § 43-209.

D.C. Council may designate portions of streets and sidewalks to be used for business purposes including parking, see § 7-1205.

Commissioner's power to make rules and regulations not inconsistent with chapter 1 of this title, see § 40-105.



Convictions to be reported, see § 40-612.

Funds for expenses of office of director, see § 40-103.

Hack stands, see §§ 1-221, 1-222.

Inspection of motor vehicles, see § 40-201 et seq.

Interstate agreement concerning enforcement of traffic laws, see § 40-603-2.

Jurisdiction and control over public ways, generally, see § 7-102.

Other provisions relating to publication of rules and regulations, see § 1-1506.

Parking meters; rules and regulations, see § 40-616.

Regulating traffic in public parks and playgrounds, see §§ 8-109, 40-613.

Rules and regulations for registration and licensing of motor vehicles, see § 40-102.

Rules and regulations for the inspection of motor vehicles, see § 40-207.

Rules and regulations for protection of life, health, and property, generally, see § 1-226.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1006, 1-1412, 25-127, 40-102, 40-603-1, 40-603b, 40-612, 43-907, 47-2331, 47-2333.

#### SECTION REFERRED TO IN U.S. CODE

This section is referred to in section 40 U.S.C. 71e.

#### NOTES TO DECISIONS

##### In general

Traffic Act, as amended, delegates to the commissioners authority to make rules and regulations in relation to traffic on the public highways, and to the Director of Parks authority to make regulations in relation to traffic on the roads in the public parks within the District; and to provide for punishment for violations by proceedings in the police court at instance of corporation counsel and to exclude United States Attorney from any prosecutions except provision involving smoke-screen felony. *Persham v. United States* (1939, 104 F. 2d 249, 70 App. D.C. 116).

##### Authority to revoke permit

"Flagrant," in the motor vehicle regulations authorizing revocation of operator's permit for operation of vehicle in flagrant disregard or willful disregard for safety of persons or property, emphasizes open or notorious nature of the act but also imports an element of willfulness, and "willfulness" does not necessarily require an intent to do harm, but it does require a conscious indifference to consequences under circumstances likely to cause harm. *A. Bohannon v. District of Columbia Department of Motor Vehicles* (D.C. App. 1972, 288 A. 2d 672).

Revocation or suspension of driver's license is permitted only in those cases where there is shown to have been a breach of usual and reasonable regulations made concerning control of traffic. *Bungardeanu v. England* (D.C. App. 1966, 219 A. 2d 104).

Petitioner's operation of motor vehicle in such manner as to show flagrant disregard for safety of persons and property could be made basis of revocation of petitioner's driver's license even though petitioner had previously been acquitted of traffic charges arising out of same incidents leading to revocation of license. *Id.*

Point system was designed to facilitate determination of drivers who present such danger to the community at large that they should not be allowed to continue to use public highways, but it is by no means exclusive method which Department of Motor Vehicles may use to suspend or revoke licenses; a person's driver's license may be suspended or revoked where person's driving demonstrates flagrant disregard for safety of persons or property. *Id.*

Traffic hearing officer did not exceed his authority in revoking operator's permit of a motorist convicted of speeding in a school zone even though under the "point system" used in the District, only three points could be assessed for such violation, since notwithstanding such point system Director of Vehicles and Traffic was authorized to revoke operator's permit when, following lawful hearing, he concluded that motorist drove in such a manner as to show a flagrant disregard for the safety of persons or property. *Tillman v. Director of*

*Vehicles and Traffic of District of Columbia* (D.C. Mun. App. 1958, 144 A. 2d 922).

##### Commissioners' discretion

The designation by commissioners of the District of Columbia of intersections for installation of traffic control signals is essentially legislative in character and is result of commissioners' exercise of discretion and judgment, and failure to establish signal at intersection was not such negligence as would make District liable for death of pedestrian who was killed by motor vehicle while crossing street. *E. C. Urow, Administratrix etc. v. District of Columbia* (1963, 316 F. 2d 351, 114 U.S. App. D.C. 350).

Complaint alleging that negligence of District of Columbia in failing to provide traffic control device at intersection caused death of plaintiff's decedent who was struck by motor vehicle while crossing street did not state claim for relief within exception to general rule of municipal immunity with regard to obligation to keep streets in safe condition after being put on notice of defect. *Id.*

##### Constitutionality

This section is not unconstitutional as vesting legislative power and unregulated discretion in administrative officers. *La Forest v. Board of Comrs. of District of Columbia* (1937, 92 F. 2d 547, 67 App. D. C. 396).

##### Duplicate certificates

The requirements of this section for registration of a motor vehicle do not apply to duplicate certificates of title, and the oath required for registration is not required for issuance of a duplicate certificate. *Shelton v. United States* (1948, 165 F. 2d 241, 83 U.S. App. D.C. 32).

##### Effect on contracts of purchase

Subsection (d) of this section providing that the owner of a motor vehicle shall not operate it upon any public highway in the District of Columbia without first obtaining a certificate of title therefor does not void an otherwise valid contract for purchase of an automobile. *Associates Discount Corporation v. Hardesty* (1941, 122 F. 2d 18, 74 App. D. C. 44).

##### Evidence

In view of regulation promulgated by commissioners that proof that automobile operator's urine contained .20 percent of alcohol at time of operation of motor vehicle shall constitute prima facie proof that operator was intoxicated was usual and reasonable regulation concerning revocation of operator's permits and in view thereof result of urinalysis without testimony of expert qualified to interpret result was not wrongfully admitted into evidence and considered by hearing examiner in reaching his decision as to revocation. *Bungardeanu v. England* (D.C. App. 1966, 219 A. 2d 104).

Motorist's urine specimen given more than an hour after operation of automobile was given in close enough proximity to events in question to provide accurate indication of alcohol in motorist's system at that time. *Id.*

##### Excessive penalties in indigent cases

Where maximum penalty for jaywalking was fine of \$300 or imprisonment of 10 days or both and indigent defendant received a sentence of a fine of \$150 or 60 days' imprisonment, imprisonment was 50 days in excess of maximum which could have been imposed. *C. F. Sawyer v. District of Columbia* (D.C. App. 1968, 238 A. 2d 314).

Where defendant is indigent, sentence of imprisonment in default of payment of fine which exceeds maximum term of imprisonment which could be imposed under substantive statute as original sentence is an invalid exercise of court's discretion. *Id.*

##### Government-owned vehicles

Traffic laws of District govern as to mail trucks over orders of Post Office Department. *White v. District of Columbia* (1925, 4 F. 2d 163, 55 App. D. C. 197).

##### Pedestrians' right of way

Under the regulations of this act pedestrians are given the right of way at all crosswalks except at controlled crossings. *Griffith v. Slaybaugh* (1929, 29 F. 2d 437, 58 App. D. C. 237).

##### "Pick-up and delivery" of railroads

In a mandamus action brought by a railroad company to compel the Public Utilities Commission to act on



the railroad company's petition for designation of a route for alleged "pick-up and delivery service," relief was denied until the railroad company obtained a certificate of convenience and necessity from the Interstate Commerce Commission. *United States ex rel. Arlington & F. Auto R. Co. v. Elgen* (1938, 98 F. 2d 264, 68 App. D. C. 392).

The question of what constitutes a terminal district is so largely one of fact and so far involves considerations calling for the expert knowledge in technical matters of transportation, that a railroad company seeking by mandamus to require the Public Utilities Commission to designate a route for alleged "pick-up and delivery service" within railroad terminal districts, should pursue its remedy before the Commerce Commission rather than the courts. *Id.*

#### Prosecution

By (i) last paragraph Congress intended that all prosecutions for violations of the traffic act, except for the violation of the smoke-screen provision in section eleven should be at the instance of the corporation counsel and in the name of the District of Columbia. *District of Columbia v. Moyer* (1938, 93 F. 2d 527, 68 App. D. C. 98).

#### Purpose

Purpose of revocation and suspension proceedings is not punishment of driver but protection of public from those who have demonstrated that their driving presents a hazard to life and property. *Bungardeanu v. England* (D.C. App. 1966, 219 A. 2d 104).

#### Residence

A long-continued physical presence, without more, does not constitute "residence" within meaning of statutory provision exempting from excise tax levied for issuance of every original certificate of title for a motor vehicle or trailer in the District of Columbia those motor vehicles and trailers purchased or acquired by nonresidents prior to coming into the District and establishing or maintaining "residences" in the District. *District of Columbia v. Fleming* (1954, 217 F. 2d 18, 95 U. S. App. D. C. 4).

Where government employee, who lived at mother's home in District of Columbia, purchased automobile in District and drove it immediately to Connecticut where he had maintained a home for seven years, and left automobile in Connecticut for use of his wife and their two daughters, and he spent every other week end in Connecticut with his family, and it was not until a year later that his wife joined him in District, he was not subject to excise tax in District under statute levying an excise tax for issuance of every original certificate of title for a motor vehicle in District but exempting from tax motor vehicles purchased or acquired by nonresidents prior to coming into District and "establishing" or maintaining "residences" in District. *Id.*

#### Sale without certificate of title

The registration regulation requiring that certificate of title be assigned at time ownership of motor vehicle is transferred, and the regulation requiring that a dealer acquire a certificate of origin with a new motor vehicle should be construed consistently with reference to the effect of a failure to assign and deliver required certificate at time of transfer. *Fogle v. General Credit* (1941, 122 F. 2d 45, 74 App. D. C. 208, 136 A. L. R. 814).

The sale of used automobile by dealer who had possession thereof with authority from finance company to offer it for sale in regular course of business was not void because certificate of title held by finance company was not assigned to buyer by dealer at time of transfer, as required by registration regulations. *Id.*

The purpose of registration regulation that no dealer shall have any used motor vehicle or trailer in his possession unless he shall have a certificate of title for it issued or assigned to him is apparently to prevent persons holding certificate from giving possession of vehicle to a dealer without also delivering certificate to him. *Id.*

#### Suspension of sentence

Where defendant was convicted for violation of a traffic regulation, and execution of sentence was suspended, such suspension must be vacated because such

power is derived from the Federal Probation Act, and though under the District of Columbia Probation Act, the court is authorized to suspend execution, clearly the suspension in this case was not and did not purport to be exercised under the authority of the probation law and was beyond the power of the court. *Ziegler v. District of Columbia* (D. C. Mun. App. 1950, 71 A. 2d 618).

#### Validity and reasonableness

Traffic and motor vehicle regulation permitting Director of Motor Vehicles to suspend or revoke driver's license on basis of operation of motor vehicle in such manner as to show flagrant disregard for safety of persons or property is not unreasonable or too vague to inform public of prohibited conduct and does not make its enforcement unpredictable. *Bungardeanu v. England* (D.C. App. 1966, 219 A. 2d 104).

Regulations prohibiting use of vehicles with solid tires on certain arterial streets were valid and reasonable. *Smallwood v. District of Columbia* (1927, 17 F. 2d 210, 57 App. D. C. 58).

Regulations prohibiting speed in excess of 15 miles an hour on certain bridges were valid and reasonable. *District of Columbia v. Bailey* (1927, 18 F. 2d 367, 57 App. D. C. 151).

Regulations which prevent parking of automobiles on certain streets between 2 a. m. and 8 a. m. to enable the snow-removal machinery of the city to function is a reasonable and proper regulation. *District of Columbia v. Smith* (1938, 93 F. 2d 650, 68 App. D. C. 104).

#### Validity of amended sentence in absentia

Where defendant had not been present when illegal sentence for traffic violation had been amended and he had not been given right to make statement in his own behalf, he was entitled to have case remanded for resentencing. *D. H. Monette v. District of Columbia* (D.C. App. 1964, 201 A. 2d 875).

#### Violation as negligence

Violation of an ordinance intended to promote safety is negligence, and if by creating hazard which ordinance was intended to avoid it brings about harm which ordinance was intended to prevent, it is a legal cause of the harm. *Ross v. Hartman* (1944, 139 F. 2d 14, 78 U. S. App. D. C. 217, 158 A. L. R. 1370, certiorari denied 64 S. Ct. 790, 321 U. S. 790, 88 L. Ed. 1080).

An ordinance requiring motor vehicles, left unattended in public place, to be locked is a safety measure, and its violation is negligence. *Id.*

Where truck owner's agent violated traffic ordinance by leaving truck unattended, in a public alley, with ignition unlocked and key in switch, and an unknown person drove truck away and negligently ran over plaintiff, the violation of the ordinance was negligence and constituted the "proximate cause" of the injury rendering owner liable therefor. *Id.*

Where defendant's driver was negligent in leaving motor vehicle unlocked and such negligence was proximate cause of accident in which plaintiffs were injured, defendant was liable for damages. *R. W. Claxton, Inc. v. Schaff* (1948, 169 F. 2d 303, 83 U. S. App. D. C. 271, certiorari denied 69 S. Ct. 168, 335 U. S. 871, 93 L. Ed. 415).

Violation of a traffic regulation constitutes negligence per se. *Rogers v. Cox* (D. C. Mun. App. 1950, 75 A. 2d 776).

#### § 40-603-1. Appeal from assessment of excise tax for issuance of motor vehicle title certificates—Election of remedies.

Any person aggrieved by the assessment of any tax imposed by subsection 40-603(j) may, within six months from the date the person entitled to a certificate of title was notified of the amount of such tax, appeal to the Superior Court of the District of Columbia in the same manner and to the same extent as set forth in sections 47-2403, 47-2404, 47-2407, 47-2408, 47-2409, 47-2410 and 47-2411, and as the same may hereafter be amended. (May 27, 1949, 63 Stat. 129, ch. 146, title III, § 303; July 29, 1970, Pub. L. 91-358, §§ 156(a), 161(d)(2), title I, 84 Stat. 573, 581.)



## CODIFICATION

Section was not enacted as part of the District of Columbia Traffic Act, 1925, which comprises this chapter.

## AMENDMENTS

1970—Section 156(a) of Act July 29, 1970, Public Law 91-358, amended section by striking out "Board or Tax Appeals for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

Section 161(d)(2) of Act July 29, 1970, Public Law 91-358 further amended section—

- (A) By striking out the second sentence thereof, and
- (B) By striking out "ninety days" and inserting in lieu thereof "six months".

## EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11-101.

§ 40-603-2. Commissioner may enter into interstate agreement concerning enforcement of traffic laws.

The Commissioner of the District of Columbia may enter into an interstate agreement with the Commonwealth of Virginia or with the State of Maryland, or with both, pursuant to which the parties to such agreement may assist each other in the enforcements of its laws relating to traffic (including parking violations). (June 30, 1972, Pub. L. 92-327, § 2, 86 Stat. 392.)

## CODIFICATION

This section was not enacted as part of the District of Columbia Traffic Act, 1925, which comprises this chapter.

§ 40-603a. Office of Registrar of Titles and Tags.

The employee of the Department of Vehicles and Traffic who is charged with the immediate responsibility for, and exercises supervision over, the issuance of tags and certificates of title and the registration of motor vehicles and trailers shall be known as the Registrar of Titles and Tags. (June 28, 1944, 58 Stat. 527, ch. 300, § 1.)

## CODIFICATION

Section was not enacted as part of the District of Columbia Traffic Act, 1925, which comprises this chapter.

## TRANSFER OF FUNCTIONS

See note under section 40-101 concerning Department of Motor Vehicles.

§ 40-603b. Issuance of congressional tags.

After June 28, 1944, no part of any District of Columbia appropriations shall be available for any expense for or incident to the issuance of congressional tags except to those persons set out in section 40-603, including the Speaker and the Vice President. (June 28, 1944, 58 Stat. 532, ch. 300, § 8.)

## CODIFICATION

Section was not enacted as part of the District of Columbia Traffic Act, 1925, which comprises this chapter.

## SIMILAR PROVISIONS

- 1944—July 1, 1943, ch. 184, § 8, 57 Stat. 346.
- 1943—June 27, 1942, ch. 452, § 8, 56 Stat. 460.
- 1942—July 1, 1941, ch. 271, § 8, 55 Stat. 539.
- 1941—June 12, 1940, ch. 333, § 9, 54 Stat. 343.

§ 40-604. Parking space for Members of Congress.

On and after June 29, 1956, the District of Columbia Council is authorized and directed to designate, reserve, and properly mark appropriate and sufficient parking spaces on the streets adjacent to all public buildings in such District for the use of Members of Congress engaged on public business. (June 29, 1956, ch. 479, § 1, 70 Stat. 447.)

## CODIFICATION

This section was not enacted as part of the District of Columbia Traffic Act, 1925, which comprises this chapter, and is therefore not included in the term "this chapter" as used elsewhere herein.

Section is also classified to 40 U.S.C. 60a.

## SIMILAR PROVISIONS

The text of this section is from the District of Columbia Appropriation Act, 1957. Similar provisions were contained in the following prior appropriation acts:

- 1956—July 5, 1955, ch. 272, § 1, 69 Stat. 254.
- 1955—July 1, 1954, ch. 499, § 1, 68 Stat. 386.
- 1954—July 31, 1953, ch. 299, § 1, 67 Stat. 290.
- 1953—July 2, 1952, ch. 576, § 1, 60 Stat. 385.
- 1952—Aug. 3, 1951, ch. 292, § 1, 65 Stat. 167.
- 1951—July 18, 1950, ch. 467, § 1, 64 Stat. 364.
- 1950—June 29, 1949, ch. 279, § 1, 63 Stat. 319.
- 1949—June 19, 1948, ch. 555, § 1, 62 Stat. 553.
- 1948—July 25, 1947, ch. 324, § 1, 61 Stat. 443.
- 1947—July 9, 1946, ch. 544, § 1, 60 Stat. 518.
- 1946—June 30, 1945, ch. 209, § 1, 59 Stat. 289.
- 1945—June 28, 1944, ch. 300, § 1, 58 Stat. 526.
- 1944—July 1, 1943, ch. 184, § 1, 57 Stat. 338.
- 1943—June 27, 1942, ch. 452, § 1, 56 Stat. 451.
- 1942—July 1, 1941, ch. 271, § 1, 55 Stat. 529.
- 1941—June 12, 1940, ch. 333, § 1, 54 Stat. 334.
- 1940—July 15, 1939, ch. 281, § 1, 53 Stat. 1033.

## TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(300) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

## CROSS REFERENCES

Congressional tags, issuance by Commissioner, see § 40-603 (c).

Parking restrictions on public and private property, see §§ 40-810, 40-811.

Regulation of public off-street parking facilities, see §§ 40-801 to 40-809.

§ 40-604a. Parking of automobiles in Municipal Center—Regulations—Violations and penalties.

(a) The District of Columbia Council is authorized, in its discretion, to permit such officers and employees of the District of Columbia Government as the Council may select to park motor vehicles in any building or buildings now or hereafter erected upon squares numbered 490, 491, and 533, and reservation numbered 10, in the District of Columbia, known as the Municipal Center, and to make regulations, which the Commissioner shall enforce, for the control of the parking of such vehicles, including the authority to prescribe fees and charges, which the Commissioner shall collect, for the privilege of parking of such vehicles.

(b) The Council is further authorized, in its discretion, to permit the public to park motor vehicles in such portion or portions of squares numbered 490, 491, and 533, and reservation 10, in the District of Columbia, known as the Municipal Center, as may be set apart by the said Council for such purpose, and to make such regulations, which the Commissioner shall enforce, as the Council may deem advisable for the control of parking in such portion or portions of the Municipal Center as the Council may set apart for such purpose, including authority to restrict the privilege of parking therein to persons having business in the Municipal Center, and to make regulations, which the Commissioner shall



enforce, to prohibit parking in all portions of the Municipal Center not set apart by the Council for such purpose. The Council is further authorized in its discretion, to prescribe fees and charges, which the Commissioner shall collect, for the privilege of parking motor vehicles in such portion or portions of the Municipal Center as may be set apart for such purpose, and, to aid in the collection of such fees and charges and the enforcement of such regulations, the Commissioner may install mechanical parking meters or devices.

(c) The Council is further authorized to prescribe reasonable penalties of fine not to exceed \$25 or imprisonment not to exceed ten days for the violation of any regulation promulgated under the authority of this section. (June 6, 1940, 54 Stat. 241, ch. 253, §§ 1, 2, 3.)

#### CODIFICATION

Section is comprised of §§ 1, 2, and 3 of act June 6, 1940, and was not enacted as part of the District of Columbia Traffic Act, 1925, which comprises this chapter.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(301, 302, and 303) of Reorg. Plan. No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners under this section in the particulars described in pars. 301, 302 and 303, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### DELEGATION OF AUTHORITY

Reorganization Order No. 18, dated Oct. 23, 1952, created in the Department of General Administration, District of Columbia, under the direction and control of the Director of General Administration, an "Administrative Services Office". This office was assigned the duties of maintaining records of space allotted to District employees for parking privately owned motor vehicles on District or Federal property, also to review requests for and make recommendations for assignments and execute control of approved assignments.

Reorg. Ord. No. 18 was revoked by Org. Ord. 3, dated Dec. 13, 1967, Part IVA of which continued the Administrative Services Office and the parking functions thereof. The Administrative Services Office and the functions stated in Part IVA of Org. Ord. No. 3 were transferred to the Director of the Department of General Services by Commissioner's Order [Org. Action] No. 69-96, dated Mar. 7, 1969.

The Orders are set out in the appendix to title 1.

#### CROSS REFERENCE

Deposit of fees in special account in highway fund, see § 40-808.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-805, 40-808.

#### § 40-605. Speeding and reckless driving.

(a) No vehicle shall be operated at a greater rate of speed than permitted by the regulations adopted under the authority of this chapter.

(b) Any person who drives any vehicle upon a highway carelessly and heedlessly in willful or wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property, shall be guilty of reckless driving.

(c) Any individual violating any provision of this section where the offense constitutes reckless driving shall upon conviction for the first offense be fined not more than \$250 or imprisoned not more than three months, or both; and upon conviction for the second or any subsequent offense committed within two years from the date of any such previous offense such individual shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(d) Any individual violating any provision of this section, except where the offense constitutes reckless driving, shall upon conviction thereof be fined not more than \$300 or be imprisoned not more than ninety days. (Mar. 3, 1925, 43 Stat. 1123, ch. 443, § 9; July 3, 1926, 44 Stat. 814, ch. 739, § 5; Feb. 27, 1931, 46 Stat. 1427, ch. 317, § 4; June 24, 1936, 49 Stat. 1901, ch. 749; Nov. 25, 1942, 56 Stat. 1023, ch. 642, § 1.)

#### REFERENCES IN TEXT

In the original, "this chapter", as used in this section, reads "this Act", meaning the above-cited act of March 3, 1925. The provisions of such act still in force are classified to §§ 40-301 to 40-303, 40-601 to 40-603, 40-605, 40-609, 40-610, 40-611, and 40-613 to 40-615.

#### AMENDMENTS

1942—Act Nov. 25, 1942, amended subsec. (d) of section by deleting provisions making first offense punishable with \$25 fine, second offense within one year punishable with \$100 fine, and third offense within one year punishable with \$300 fine and/or imprisonment not more than ninety days or both.

1936—Act June 24, 1936, raised the upper limits for a first offense to those now provided in this section. The penalties for other offenses provided by this section were originally a fine of from \$5 to \$25 for a first offense; a fine of from \$25 to \$100 for a second offense; and a fine of from \$100 to \$500 and imprisonment of 30 days to one year for subsequent offenses.

1931—Act Feb. 27, 1931, amended paragraph (a) as it now exists, and also changed the definition of reckless driving in paragraph (b). The penalties for reckless driving were originally a fine of \$25 to \$100 and imprisonment of 10 to 30 days for first offense; and a fine of \$100 to \$1,000 and imprisonment of 30 days to 1 year for a subsequent offense. The 1931 act removed the lower limits on the fines and imprisonment permitted and included the provision that the subsequent offense must be committed within two years, removed the lower limits on the fines and imprisonments and changed the upper limits on third and subsequent offenses as now provided in this section. The 1931 act also included the provisions that subsequent offenses must be committed within one year of the first offense.

1926—Act July 3, 1926, provided for the regulation of speed in outlying districts.

#### EFFECTIVE DATE OF 1931 AMENDMENT

Amendment of section by act July 1, 1931, effective July 1, 1931, see section 6 of act Feb. 27, 1931, set out as a note under § 40-302.

#### CROSS REFERENCES

Alcoholic Beverage Control Act inapplicable, see § 25-127.

Convictions to be reported, see § 40-612.

Definition of "this chapter" and other terms used, see § 40-602.

Power of D.C. Council to make rules and regulations, see § 40-603.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 25-127, 40-612.

#### NOTES TO DECISIONS

##### Arrest

Defendant's arrest by United States Park Police officer for offenses of operating automobile in excess of speed



limit and while under influence of intoxicating liquor was invalid where offenses were not committed in presence of or within view of officer. *District of Columbia v. Perry* (D.C. App. 1965, 215 A. 2d 845).

#### Collateral estoppel

Since the defendant who had been acquitted on charges of reckless driving, speeding, and driving motor vehicle after his permit had been suspended failed to present defense of collateral estoppel to trial court hearing prosecution for unauthorized use of motor vehicle, the reviewing court would not consider claim. *R. Mahoney v. United States* (1969, 420 F. 2d 253, 137 U.S. App. D.C. 3).

#### Evidence

There was substantial evidence to support convictions for driving at unreasonable speed and changing lanes without caution even though jury had found defendant not guilty of driving while intoxicated or recklessly and accordingly fact that trial court chose to believe statements of police officers rather than denials of defendant did not compel reversal of convictions. *Swailes v. District of Columbia* (D.C. App. 1966, 219 A. 2d 100).

Where arresting officer testified that he had paced defendant for about two blocks at a speed varying from thirty-three to thirty-eight miles per hour, it cannot be said that the trial judge was wrong in making a finding of guilt. *Seidenberg v. District of Columbia* (D. C. Mun. App. 1950, 71 A. 2d 607).

#### Jury trial

One charged with driving an automobile recklessly, and so as to endanger property and individuals, has a right to a jury trial. *District of Columbia v. Colts* (1930, 51 S. Ct. 52, 282 U. S. 63, 75 L. Ed. 177).

#### Regulations of director of traffic

Provisions of this act are not in conflict with regulations of director of traffic, as to speed of vehicles on certain bridges and highways. *District of Columbia v. Bailey*, (1927, 18 F. 2d 367, 57 App. D. C. 151).

Section 40-603 authorized regulation excluding commercial vehicles equipped with solid tires on certain streets, in view of paragraph (a) of this section and act Mar. 3, 1925, ch. 443, § 14, 43 Stat. 1123, 1125. *Smallwood v. District of Columbia* (1927, 17 F. 2d 210, 57 App. D. C. 58).

Regulation, excluding commercial vehicles equipped with solid tires from certain streets, was reasonable. *Id.*

#### Review

Where fine was imposed for speeding and was within the statutory limitation, appellate court has no right to disturb it. *Seidenberg v. District of Columbia* (D. C. Mun. App. 1950, 71 A. 2d 607).

#### Sentence

Probation report detailing prior traffic record of defendant who was found not guilty of driving while intoxicated that defendant having been under influence of liquor when offense took place would appear to have forfeited all right to probation was not shown to have so prejudiced sentencing judge that in effect defendant was sentenced for driving while intoxicated rather than driving at unreasonable speed and changing lanes without caution. *Swailes v. District of Columbia* (D.C. App. 1966, 219 A. 2d 100).

Statute providing that except where offense constitutes reckless driving individual violating speeding statute should be fined not more than \$300 or be imprisoned not more than ninety days permitted fine of not more than \$300 or not more than ninety days but not both, and sentence of thirty days imprisonment and \$150 fine was improper. *B. R. Paschal v. District of Columbia* (D.C. App. 1965, 206 A. 2d 402).

#### Separate offenses

Unreasonable speed and changing lanes without caution were not essential elements of reckless driving but were distinct and separate offenses, and acquittal by jury of charge of reckless driving did not preclude conviction by court on charges of unreasonable speed and of changing lanes without caution and accordingly there was no valid basis for a claim of double jeopardy. *Swailes v. District of Columbia* (D.C. App. 1966, 219 A. 2d 100).

### § 40-606. Negligent homicide.

Any person who, by the operation of any vehicle at an immoderate rate of speed or in a careless, reckless, or negligent manner, but not wilfully or wantonly, shall cause the death of another, shall be guilty of a misdemeanor, and shall be punished by imprisonment for not more than one year or by a fine of not more than \$1,000 or both. (Mar. 3, 1901, ch. 854, § 802(a), as added June 17, 1935, 49 Stat. 385, ch. 266, and amended June 25, 1936, 49 Stat. 1921, ch. 804; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 160(a) (3), 84 Stat. 578.)

#### CODIFICATION

This section was not enacted as part of the District of Columbia Traffic Act, 1925, which comprises this chapter.

#### AMENDMENT

1970—Section 160(a) (3) of Act July 29, 1970, Public Law 91-358 amended section by striking out the second paragraph, relating to duty of coroner.

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-607, 40-608, 40-609a.

#### NOTES TO DECISIONS

##### Causal connection

In a prosecution for negligent homicide, causal connection between injuries received in an automobile accident by decedent and his death must be proven beyond a reasonable doubt. *S. J. Stevens v. United States* (D.C. App. 1969, 249 A. 2d 514).

Evidence that decedent who died of a coronary occlusion five weeks after the automobile accident and was debilitated by the injuries sustained in the accident and that it was possible that state of debility precipitated the heart attack was insufficient to establish causal connection between injuries sustained in the accident and death and did not support a conviction for negligent homicide. *Id.*

##### Concurring negligence

Where, as a consequence of collision of bus and an automobile, deceased motorist was struck by bus or such automobile, or both, joinder of both bus driver and driver of automobile in the same information in prosecution for statutory negligent homicide was proper, and refusal of separate trials was not an abuse of discretion. *Miciotto v. United States* (1952, 198 F. 2d 951, 91 U. S. App. D. C. 102.)

Where driver of first automobile collided with bus at intersection, and either the automobile or the bus or both struck second automobile with such force that the driver was thrown from it and killed, bus driver and driver of first automobile would be deemed in prosecution under



Negligent Homicide Statute to have participated in the same act or transaction or in the same series of acts or transactions constituting the offense charged within meaning of rule that two or more defendants may be charged in an information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. *Simcic v. United States* (D.C. Mun. App. 1952, 86 A. 2d 98).

If defendant drove bus at an immoderate rate of speed and such act was proximate or direct cause of death of deceased who was riding in another automobile with which the bus collided, defendant was not relieved from guilt of negligent homicide, because negligence of the driver of the automobile concurred in producing the result though acts of other drivers were to be considered so far as they shed light on question of defendant's negligence, but if negligence of other driver was sole cause of decedent's death, defendant was entitled to an acquittal. *Prezzi v. United States* (D.C. Mun. App. 1948, 62 A. 2d 196).

#### Constitutionality

This section specifies with sufficient certainty the conduct which it is intended to proscribe and punish and hence comes within the requirements of constitutionality. *United States v. Henderson* (1941, 121 F. 2d 75, 73 App. D.C. 369).

#### Crime, elements of

In prosecution for negligent homicide based on death caused by motortruck, the "corpus delicti" consisted of the death of a human being by the instrumentality of a motortruck operated at an immoderate rate of speed or in a careless, reckless or negligent manner but not willfully or wantonly. *Ercoli v. United States* (1943, 131 F. 2d 354, 76 U.S. App. D. 360).

The elements of the corpus delicti of negligent homicide by motor vehicle are the death of a human being, by the instrumentality of a motor vehicle, operated at an immoderate rate of speed or in a careless, reckless, or negligent manner, but not wilfully or wantonly. *Solar v. United States* (D. C. Mun. App. 1953, 94 A. 2d 34).

In negligent homicide prosecution against motorist whose automobile entered intersection and struck taxicab which crushed child on curb, corroborating evidence independent of motorist's extrajudicial confessions was sufficiently substantial to establish the element of the corpus delicti that motorist operated his automobile in a careless, reckless or negligent manner in failing to observe and obey stop sign. *Id.*

#### Criticism of defense counsel

Unjustified criticizing of defense counsel for being unfair to government witness, taking over examination of four defense witnesses, consuming with two of them considerable time on extraneous matters placing them in bad light, and rebuking defense counsel for unfair questions or tactics and stopping him in course of examination and making belittling or sardonic remarks required new trial on charge of negligent homicide. *A. C. Williams v. United States* (D.C. App. 1967, 228 A. 2d 846).

#### Dismissal with prejudice

Absent any notation on record or oral statement by judge in prior prosecution for negligent homicide that he was dismissing case with prejudice, trial court's conclusion in dismissing second case against defendant for negligent homicide that the prior dismissal has been on speedy trial grounds and was intended to be dismissed with prejudice was not warranted. *United States v. W. J. Young* (D.C. App. 1968, 237 A. 2d 542).

#### Double jeopardy

Where defendant as result of one accident was charged with negligent homicide by motor vehicle, an offense against United States, and with violation of traffic regulation making it offense against District of Columbia for operator of motor vehicle to fail to give his full time and attention to operation of vehicle, principle of double jeopardy did not preclude prosecution of defendant on the traffic charge after he had been acquitted of charge of negligent homicide. *Randolph v. District of Columbia* (D.C. Mun. App. 1959, 156 A 2d 686).

#### Elements of proof required by government

In a prosecution for negligent homicide, government must prove three elements: (1) death of human being, (2) by instrumentality of motor vehicle, (3) operated at an immoderate rate of speed or in a careless, reckless, or negligent manner, but not wilfully or wantonly. *S. J. Stevens v. United States* (D.C. App. 1969, 249 A. 2d 514).

#### Evidence

In prosecution for negligent homicide based on death caused by motortruck, evidence that the motortruck under defendant's control was of tremendous size and weight, that it was being driven on busy city street at speed that made it impossible to stop when defendant first saw pedestrian approximately 25 to 30 feet away, and that automobile in traffic lane to defendant's right obstructed his view of pedestrian until it was too late to stop truck, tended to prove the "corpus delicti", so that defendant's extrajudicial admissions were properly received in evidence. *Ercoli v. United States* (1943, 131 F. 2d 354, 76 U.S. App. D.C. 360).

In prosecution for negligent homicide, there was sufficient substantial independent evidence to corroborate extrajudicial admissions made by defendant to police officers after accident in which his automobile allegedly collided with pedestrian in crosswalk. *Sanderson v. United States* (D. C. Mun. App. 1956, 125 A. 2d 70).

Circumstantial, as well as direct evidence, may supply sufficient corroboration of the corpus delicti in cases of negligent homicide. *Solar v. United States* (D. C. Mun. App. 1953, 94 A. 2d 34).

#### Instructions

In prosecution of bus driver and driver of automobile under the Negligent Homicide Statute, wherein driver of automobile testified that the first thing he knew, he heard a tremendous noise to his left and his automobile was then hit by the bus, driver of automobile was not entitled to instruction on theory of imminent or unexpected danger. *Simcic v. United States* (D. C. Mun. App. 1952, 86 A. 2d 98).

In prosecution of bus driver and driver of automobile under the Negligent Homicide Statute, court sufficiently charged with respect to element of causation as to automobile driver, where at outset of instruction court carefully told jury that charge was that defendants operated bus and automobile at an immoderate rate of speed and in such a careless, reckless, and negligent manner as to cause the death of the deceased, and that in order to convict driver of automobile, jury was required first to find that in operation of automobile he violated the law in one of the particulars charged and that such operation was a proximate cause of the death of the deceased. *Id.*

In prosecution of bus driver and driver of automobile under the Negligent Homicide Statute, court properly refused to give requested instruction of driver of automobile that to justify finding of guilt, jury must find beyond reasonable doubt not only that driver of automobile drove automobile at an immoderate rate of speed or negligently, but also that such immoderate rate of speed or such negligence directly and proximately caused death of deceased, since instruction was an erroneous and incomplete statement. *Id.*

In prosecution of bus driver and driver of automobile under the Negligent Homicide Statute, instruction that if jury found beyond reasonable doubt that bus driver operated bus in a negligent, careless, or reckless manner or at an immoderate rate of speed, and that such operation by bus driver was cause of collision, and that driver of automobile also operated automobile in negligent, careless, or reckless manner or at immoderate rate of speed and that such operation was also a cause of the collision, and collision was proximate cause of death of deceased, it was duty of jury to find both bus driver and driver of automobile guilty, was not subject to objection that it was confusing and did not properly explain theory of causation. *Id.*

Refusal of defendant's instructions precluding conviction of negligent homicide unless death of deceased was the proximate result of operation of the bus by defendant was not error in view of instruction by the court on same subject matter though nowhere therein did the court use



the expression "proximate cause." *Prezzi v. United States* (D.C. Mun. App. 1948, 62 A. 2d 196).

In prosecution for negligent homicide by driver of bus which collided with automobile in which decedent was riding instructions not to ignore other drivers' action because whether defendant was driving at an immoderate rate of speed depended upon all other circumstances, and that if defendant was driving at such speed, then he was one of the causes of the accident, and that if driver of other automobile also caused the accident would make no difference but that defendant was not responsible for acts of the other drivers, were sufficient. *Id.*

#### Judicial comment

In prosecution for negligent homicide by driving a bus at an immoderate rate of speed and colliding with an automobile in which decedent was riding, trial court's comment that in its opinion, and as a matter of common sense, if immoderate speed was established, such speed caused the death, which contradicted or at least materially weakened, previous instruction respecting immoderate speed, and which had a strong tendency to eliminate from the jury, the question whether the acts of the driver of the other automobile were the sole cause of the collision, was reversible error. *Prezzi v. United States* (D.C. Mun. App. 1948, 62 A. 2d 196).

#### Joint trial

Where driver of first automobile collided with bus at intersection, and either the automobile or the bus or both struck second automobile with such force that the driver was thrown from it and killed, the case was a proper one in which to order a joint trial of bus driver and driver of first automobile for negligent homicide. *Simcic v. United States* (D. C. Mun. App. 1952, 86 A. 2d 98).

#### Res judicata

Judgment of acquittal of defendant charged with negligent homicide, a crime against United States, was not res judicata of charge of failing to give full time and attention to operation of motor vehicle in violation of traffic and motor vehicle regulations of District of Columbia although both charges arose out of same accident. *Randolph v. District of Columbia* (D.C. Mun. App. 1959, 156 A. 2d 686).

#### Speedy trial

Defendant who allegedly committed offense on February 16, 1970, was arraigned on October 20, 1970, but sought one-month continuance on December 16, 1971, on which date the government indicated it was ready to go to trial, that was ultimately held on February 9, 1971, after further three-week delay for lack of available judges, was not denied his right to speedy trial. *United States v. H. L. Kramer* (D.C. App. 1972, 286 A. 2d 856).

Since there was no showing by the defendant that his ability to defend himself had been impaired by virtue of delay between February 16, 1970, date of offense and October 20 arraignment, or between arraignment and February 9, 1971, trial, delay did not violate defendant's right to due process. *Id.*

Where government took approximately two months to reinstate charge against defendant for negligent homicide after first charge had been dismissed and case did not come for trial, due to delays wholly attributable to government, for seven and one-half months after date of accident and defendant, a taxicab driver, has his license revoked until disposition of charge against him, defendant has been prejudiced by the delay and had been denied speedy trial. *United States v. W. J. Young* (D.C. App. 1968, 237 A. 2d 542).

**§ 40-607. Negligent homicide included in manslaughter where death due to operation of vehicle.**

The crime of negligent homicide defined in section 40-606 shall be deemed to be included within every crime of manslaughter charged to have been committed in the operation of any vehicle, and in any case where a defendant is charged with manslaughter committed in the operation of any vehicle, if the jury shall find the defendant not guilty of the

crime of manslaughter such jury may, in its discretion, render a verdict of guilty of negligent homicide. (Mar. 3, 1901, ch. 854, § 802 (b), as added June 17, 1935, 49 Stat. 385, ch. 266.)

#### CODIFICATION

This section was not enacted as part of the District of Columbia Traffic Act, 1925, which comprises this chapter.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40-608.

#### NOTES TO DECISIONS

##### Evidence

In prosecution for injuring a person with a motor vehicle and failing to stop and give assistance and report to police, excluding evidence of accused's reputation for tenderness and mercy was not shown to be error where record did not disclose the evidence concerning flight. *Morris v. District of Columbia* (1942, 124 F. 2d 284, 75 U. S. App. D. C. 82).

In prosecution for injuring a person with a motor vehicle and failing to stop and give assistance and report to police, where accused asked for a subpoena duces tecum requiring production of statements which record implied were obtained by counsel for the person injured, but where there was nothing in the record to show that, at the trial, a foundation was or could have been laid for admitting the statements in evidence, either to impeach their authors or for any other purpose, there was no basis in the record for an inference that the error, if any, in refusing the subpoena was prejudicial. *Id.*

In prosecution for injuring a person with a motor vehicle and failing to stop and give assistance and report to police, excluding evidence that accused carried \$100,000 of liability insurance was not prejudicial error where record did not show what testimony concerning flight there may or may not have been. *Id.*

**§ 40-608. Immoderate speed not dependent on legal rate of speed.**

In any prosecution under sections 40-606 or 40-607, whether the defendant was driving at an immoderate rate of speed shall not depend upon the rate of speed fixed by law for operating such vehicle. (Mar. 3, 1901, ch. 854, § 802(c), as added June 17, 1935, 49 Stat. 385, ch. 266.)

#### CODIFICATION

This section was not enacted as part of the District of Columbia Traffic Act, 1925, which comprises this chapter.

#### NOTES TO DECISIONS

##### Evidence

This section providing that in any prosecution for negligent homicide whether defendant was driving at an immoderate rate of speed shall not depend upon rate fixed by law for operating the vehicle manifests intent that speed shall be determined as a fact from all surrounding circumstances and this section does not expressly prohibit evidence of speed regulations which are admissible as one of the circumstances for the jury, in determining the question of immoderate speed. *Prezzi v. United States* (D.C. Mun. App. 1948, 62 A. 2d 196).

**§ 40-609. Fleeing from scene of accident—Driving under the influence of liquor or drugs.**

(a) Any person operating a vehicle, who shall injure any person therewith, or who shall do substantial damage to property therewith and fail to stop and give assistance, together with his name, place of residence, including street and number, and the name and address of the owner of the vehicle so operated, to the person so injured, or to the owner of such property so damaged, or to the operator of such other vehicle, or to any bystander who shall request such information on behalf of the injured



person, or, if such owner or operator is not present, then he shall report the information above required to a police station or to any police officer within the District immediately. In all cases of accidents resulting in injury to any person, the operator of the vehicle causing such injury shall also report the same to any police station or police officer within the District immediately.

Any operator whose vehicle causes personal injury to an individual and who fails to conform to the above requirements shall, upon conviction of the first offense, be fined not more than \$500, or shall be imprisoned not more than six months, or both; and upon the conviction of his second or subsequent offense, shall be fined not more than \$1,000, or shall be imprisoned not more than one year, or both.

Any operator whose vehicle causes substantial damage to any other vehicle or property and fails to conform to the above requirements, shall, upon conviction of the first offense, be fined not more than \$100, or be imprisoned not more than thirty days, or both; and for the second or any subsequent offense, be fined not more than \$300, or be imprisoned not more than ninety days, or both.

(b) No individual shall, while under the influence of any intoxicating liquor or narcotic drug, operate any vehicle in the District. Any individual violating any provision of this subdivision shall upon conviction for the first offense be fined not more than \$500 or imprisoned not more than six months, or both; and upon conviction for the second or any subsequent offense be fined not more than \$1,000 or imprisoned not more than one year, or both.

(c) Any violation of any provision of law or regulation issued thereunder which is repealed or amended by this chapter, and any liability arising under such provisions or regulations may, if the violation occurred or the liability arose prior to such repeal or amendment, be prosecuted to the same extent as if this chapter had not been enacted.

(d) The Commissioner or his designated agent shall revoke the operator's permit or the privilege to drive a motor vehicle in the District of Columbia, or revoke both such permit and privilege, of any person, who is convicted in the District of any of the following offenses:

(1) Operating a motor vehicle while under the influence of any intoxicating liquor or narcotic drug.

(2) Any homicide committed by means of a motor vehicle.

(3) Leaving the scene of an accident in which the motor vehicle driven by him was involved and in which there is bodily injury, without giving assistance or making known his identity and address and the identity and address of the owner of said vehicle.

(4) Reckless driving involving bodily injury.

(5) Any felony in the commission of which a motor vehicle is involved.

(e) Whenever a judgment of conviction of any offense set forth in subsection (d) has become final, the clerk of the court in which the judgment was entered shall certify such conviction to the Com-

missioner or his designated agent, who shall thereupon take the action required by subsection (d) of this section. A judgment of conviction shall be deemed to have become final for the purposes of this subsection—

(1) if no appeal is taken from the judgment, upon the expiration of the time within which an appeal could have been taken, or

(2) if an appeal is taken from the judgment, the date upon which the judgment, having been sustained, can no longer be appealed from or reviewed on a writ of certiorari.

(Mar. 3, 1925, 43 Stat. 1124, ch. 443, § 10; Feb. 27, 1931, 46 Stat. 1427, ch. 317, § 4; Dec. 15, 1944, 58 Stat. 805, ch. 588; Aug. 16, 1954, 68 Stat. 732, ch. 741, §§ 7, 8.)

#### AMENDMENTS

1954—Act Aug. 16, 1954, amended section by striking the third sentence from subsection (b) which sentence concerned revocation of an operator's permit upon conviction of a violation of the paragraph, and the manner of certification of a conviction. These matters are covered by new subsections (d) and (e) added to the section by the act.

Subsection (d) adds to the traffic offenses calling for mandatory revocation of an operator's permit homicide committed by an automobile, a person's leaving the scene of an accident involving bodily injury without giving assistance or making his identity or the identity of the vehicle's owner known, reckless driving involving bodily injury, and any felony in the commission of which a motor vehicle is involved.

Subsection (e) requires a court to certify to the Commissioners convictions of the offenses included in subsection (d) just as was previously required on convictions of drunken driving.

1944—Act Dec. 15, 1944, amended section generally by omitting word "motor" preceding "vehicle" whenever appearing in subsection (a), by inserting "involving the operator of a motor vehicle" following "of this paragraph" in subsection (b), and reenacting subsection (c).

1931—Act Feb. 27, 1931, amended section generally. Prior to such amendment, subsection (a) of this section provided for the giving of the information upon striking "any individual or any vehicle" or where the vehicle has been struck by another vehicle and provided only for the giving of information concerning the driver including the registration and operators permit numbers. The act also added all that part of the first paragraph of subsection (a) beginning with "if such owner or operator is not present."

The penalties provided for in subsection (a) were originally, for personal injury, a fine of \$100 to \$500 and imprisonment of 60 days to 6 months for a first offense, and a fine of \$500 to \$1,000 and imprisonment of 6 months to 1 year for a subsequent offense. The 1931 act removed the lower limits of fines and imprisonment. The penalties for damage to a vehicle prior to the 1931 amendment were a fine of not more than \$500 or imprisonment of not more than six months for a first offense and a fine of not more than \$1,000 or imprisonment of not more than one year for a subsequent offense.

The penalties provided for in subsection (b) were originally a fine of from \$100 to \$500 and imprisonment of 60 days to 6 months for a first offense, and a fine of \$200 to \$1,000 and imprisonment of 6 months to 1 year for a subsequent offense. The 1931 act removed the lower limits of fines and imprisonment and also added the present subsection (c) and included former paragraph (c) as the last sentence in present paragraph (b).

#### EFFECTIVE DATE OF 1954 AMENDMENT

See note under section 40-301.

#### EFFECTIVE DATE OF 1931 AMENDMENT

See note under § 40-302.



## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## CROSS REFERENCES

Alcoholic Beverage Control Act inapplicable, see § 25-127.

Convictions to be reported, see § 40-612.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 25-127, 40-609a, 40-612.

## NOTES TO DECISIONS

## Agreement not to prosecute

The entry of a nolle prosequi, without more, to an information charging operation of a motor vehicle while intoxicated, would not warrant a holding that there was an implied agreement by assistant corporation counsel to withdraw information in consideration of a plea of guilty to less serious charge in another information of operating a motor vehicle on wrong side of street. *District of Columbia v. Buckley* (1942, 128 F. 2d 17, 75 U. S. App. D. C. 301, certiorari denied 63 S. Ct. 57, 317 U. S. 658, 87 L. Ed. 529).

An agreement between assistant corporation counsel and a defendant for withdrawal of an information, to which a nolle prosequi was entered, charging operation of a motor vehicle while intoxicated, in consideration of a plea of guilty to less serious charge in another information of operating a motor vehicle on wrong side of street, would not be binding. *Id.*

## Arrest

Defendant's arrest by United States Park Police officer for offenses of operating automobile in excess of speed limit and while under influence of intoxicating liquor was invalid where offenses were not committed in presence of or within view of officer. *District of Columbia v. Perry* (D.C. App. 1965, 215 A. 2d 845).

## — Without warrant

Where police officer, in early hours of morning, heard a crash and subsequently received certain information from a citizen, he was justified in stopping defendant's automobile and making inquiries and when, after observing defendant, officer believed him to be intoxicated, he was justified in arresting defendant, without warrant, for driving while under influence of intoxicating liquor. *Johnson v. District of Columbia* (D. C. Mun. App. 1956, 119 A. 2d 444).

## Constitutionality

Subsection (a) of this section making it an offense for a motorist to leave the scene of an accident, without making his identity known, where he has caused substantial damage to property, is not invalid on ground that it is indefinite because it provides no guide to a motorist for determination of what constitutes substantial damage. *Scott v. District of Columbia* (D.C. Mun. App. 1947, 55 A. 2d 854).

## Evidence

Evidence was ample to support the jury's finding that defendant was operating a motor vehicle while under the influence of intoxicating liquor. *R. B. Kelly v. District of Columbia* (D.C. App. 1967, 233 A. 2d 503).

Evidence tending to identify defendant as driver of striking vehicle was insufficient to sustain conviction for colliding with another vehicle and leaving after colliding. *J. R. Peterson v. District of Columbia* (D.C. Mun. App. 1961, 171 A. 2d 95).

Conviction for a criminal offense requires more support than a mere possibility that accused was person who committed the crime. *Id.*

Evidence sustained conviction for driving an automobile while under influence of intoxicating liquor. *F. H. Kruse v. District of Columbia* (D.C. Mun. App. 1961, 171 A. 2d 752).

Where two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of trial court. *Id.*

In view of fact that District of Columbia sobriety test statute gives a right to refuse the test, accused's refusal to take test was explained and justified, and refusal was not admissible in prosecution for driving under the influence of intoxicating liquor. *Stuart v. District of Columbia* (D.C. Mun. App. 1960, 157 A. 2d 294).

Evidence sustained conviction of operating a motor vehicle while under the influence of intoxicating liquor, where defendant's intoxication was conceded, on the ground that the government's proof was sufficient to establish that defendant operated the vehicle, where the circumstantial evidence in support of the admission by the defendant had the effect of placing him in the driver's position immediately following the accident. *McKnight v. District of Columbia* (D. C. Mun. App. 1958, 141 A. 2d 922).

Evidence sustained conviction for operating automobile while under influence of intoxicating liquor and making an improper turn resulting in collision against a defendant who contended that he had not drunk but was suffering from kidney trouble, low blood pressure, ulcers and shock brought about by collision and that alleged smell of alcohol was caused by medicine. *Idler v. District of Columbia* (D. C. Mun. App. 1957, 134 A. 2d 104).

Evidence warranted conviction for drunken driving and for driving through safety zone. *Williams v. District of Columbia* (D. C. Mun. App. 1957, 130 A. 2d 596).

In drunken driving prosecution, where government introduced evidence of intoxication and defendant offered medical testimony that his behavior was caused by a blackout and not by intoxication, there was an issue of fact for trier of fact, who was not compelled to give controlling weight to such medical testimony even though no rebutting medical testimony was offered by government. *Id.*

In prosecution for driving without permit and leaving scene of collision, tried by court, erroneous admission of officer's testimony that persons who witnessed collision identified accused, in his presence, as driver of automobile involved in collision, was not cured by court's recognition of error and statement that such testimony was disregarded, where competent evidence of accused's guilt was far from conclusive. *Pennell v. District of Columbia* (D.C. Mun. App. 1943, 31 A. 2d 891).

Testimony as to manner in which defendant's automobile was driven, identification of defendant as driver, and condition of defendant a short time thereafter, as reported by officers, was sufficient evidence, independent of defendant's confession, to support conviction of operating a motor vehicle while intoxicated. *Price v. District of Columbia* (D. C. Mun. App. 1947, 54 A. 2d 142).

In prosecution for operating a motor vehicle while intoxicated, proof that defendant, while in such condition, collided with another vehicle and left the scene of the collision without stopping, although disclosing two other offenses, was admissible as proof of the offense charged and as merely incidentally proving other offenses. *Id.*

It was error to exclude testimony of police officers who observed defendant that, in their opinion, defendant was under influence of intoxicating liquor, on ground that an expert may not testify to his conclusion regarding facts from which the jury are capable of drawing their own conclusions. Even though one is not an expert he may give his opinion based on personal observation as to whether a person is intoxicated. *Woolard v. District of Columbia* (D. C. Mun. App. 1949, 62 A. 2d 640).

## Failure to report accident

Admitted failure of defendant to report automobile accident to police station or officer justified conviction, and failure of prosecution to establish other charge that defendant failed to stop, give name and residence would not invalidate verdict or sentence. *Carpenter v. District of Columbia* (D.C. Mun. App. 1943, 32 A. 2d 251).

In prosecution for drunken driving, admission of records of analysis of specimen of urine taken from defendant who had been legally arrested and was being detained was not an infringement of defendant's rights under U. S. Code Const. Amend. 4 prohibiting unreasonable searches and seizures. *Novak v. District of Columbia* (D. C. Mun. App. 1946, 49 A. 2d 88, reversed on other grounds 160 F. 2d 588, 82 U. S. App. D. C. 95).



The taking of specimen of urine from defendant who had been arrested and was being detained for drunken driving and the use in evidence of the analysis of the urine was not violative of defendant's rights under U. S. Code Const. Amend. 5 where specimen was given voluntarily, notwithstanding that police officer who requested specimen was in uniform and did not state that defendant had a right to refuse to give the sample, but did state that "If sample were right it would be to the defendant's benefit." *Id.*

#### Failure to stop and give assistance

Fact that defendant stopped and parked her automobile at the nearest available point, when informed of the accident, at a distance not exceeding 150 feet from the point where the collision occurred and furnished all the information, is all that the statute requires. *Oden v. District of Columbia* (1935, 79 F. 2d 175, 65 App. D. C. 50).

While defendant testified that he intended to return and give the assistance and information required, the jury was at liberty to disbelieve him under the circumstances, and to conclude from his conduct, as testified to by the District's witnesses, that he did not so intend. *Seher v. District of Columbia* (1938, 95 F. 2d 118, 68 App. D. C. 207).

#### Former jeopardy

In prosecution for driving a motor vehicle while intoxicated, police judge erroneously sustained defendant's plea of "autrefois convict" alleging that offense of driving on wrong side of street, in respect of which defendant had pleaded guilty, and offense of driving while intoxicated were the outgrowth of one identical act, since the same evidence would not sustain the two charges. *District of Columbia v. Buckley* (1942, 128 F. 2d 17, 75 U. S. App. D. C. 301, certiorari denied 63 S. Ct. 57, 317 U. S. 658, 87 L. Ed. 529).

#### Hearing

Where it was mandatory on the Commissioners to revoke the defendant's operator's permit when notified of his conviction of operating a motor vehicle while intoxicated, the defendant was not entitled to a hearing on the matter of revocation and administrative review. *Oliver v. Silver* (D.C. Mun. App. 1959, 155 A. 2d 719).

#### Instructions

Where there was sufficient evidence independent of defendant's statement to authorize conviction of operating a motor vehicle while intoxicated and trial court charged on presumption of innocence, burden of proof and reasonable doubt, requested charge that there could be no conviction upon an uncorroborated confession without first proving the corpus delicti was properly refused. *Price v. District of Columbia* (D. C. Mun. App. 1947, 54 A. 2d 142).

#### Proof of damage

In prosecution of motorist for causing substantial property damage and leaving scene of collision without disclosing his identity, evidence disclosed substantial damage to other vehicle even though there was no proof of cost of repairing the other vehicle. *Russel, Jr. v. District of Columbia* (D. C. Mun. App. 1955, 118 A. 2d 519).

#### Purpose

Subsection (a) of this section making it an offense for a motorist to leave the scene of an accident, without making his identity known, where he has caused substantial damage to property, was intended to discourage and punish "hit and run" drivers. *Scott v. District of Columbia* (D. C. Mun. App. 1947, 55 A. 2d 854).

#### Questions for jury

In prosecution for drunken driving, the weight to be given to results of analysis of specimen of defendant's urine and the medical testimony on the meaning thereof was for the jury. *Novak v. District of Columbia* (D. C. Mun. App. 1946, 49 A. 2d 88, reversed on other grounds 160 F. 2d 588, 82 U. S. App. D. C. 95).

#### Scope of employment

An assault committed by employee-motorist in course of giving information required by statute after having been involved in automobile accident while about business of employer is within scope of employment, rendering em-

ployer liable. *R. V. Neary v. The Hertz Corporation, et al.* (D.C.D.C. 1964, 231 F. Supp. 480).

Flight of employee-motorist from scene of vehicle collision, involving chase by owner of other vehicle over several miles and over a period of 15 to 30 minutes, did not constitute a turning aside by employee-motorist from business of principal in which he was engaged at time of collision, and, accordingly, assault which he committed upon other motorist who was pursuing him in effort to get identification data required by statute was not an independent trespass, but the employer was liable therefor. *Id.*

#### Specimen analysis, proof

In prosecution for driving automobile while intoxicated, the government must prove that urine specimen taken from defendant and the specimen analyzed by chemists and reported on in court were the same and were in substantially the same condition when tested as when taken. *Novak v. District of Columbia* (D. C. Mun. App. 1946, 49 A. 2d 88, reversed on other grounds 160 F. 2d 588, 82 U. S. App. D. C. 95).

Where witness for prosecution testified that he made an analysis of defendant's urine, the right of the defendant was properly protected by withdrawing from the jury all consideration of the urine analysis, and the withdrawal of such evidence had the effect of showing the jury that they were to make no inference regarding the test. *Woolard v. District of Columbia* (D. C. Mun. App. 1949, 62 A. 2d 640).

#### Substantial damage

In prosecution of motorist for causing substantial property damage and leaving scene of collision without disclosing his identity, evidence established that motorist struck another vehicle. *Russel, Jr. v. District of Columbia* (D.C. Mun. App. 1955, 118 A. 2d 519).

Motorist who ran into a parked vehicle, mashing in its rear bumper, damaging trunk and skirt, knocking out speedometer, and driving vehicle up and over sidewalk into lamp post caused "substantial damage" within subsection (a) of this section. *Scott v. District of Columbia* (D. C. Mun. App. 1947, 55 A. 2d 854).

In prosecution of motorist for leaving scene of accident, without making his identity known, after causing "substantial damage" to property, motorist was not entitled to have the prosecution dismissed because of government's failure to prove cost of repairing damage, where there was evidence that motorist caused substantial damage. *Id.*

#### Urine specimen—Admissibility as evidence

Questioning by an officer of a defendant, who was charged with driving while under influence of intoxicating liquor and who was upset and sobbing and who was told that he did not have to take urine test but that if he did not it would be his word against the policeman's, but who was not physically abused, was not conduct which was so outrageous as to require exclusion of results of urine test. *J. E. Davis v. District of Columbia* (D.C. App. 1968, 247 A. 2d 417).

Urine specimen is admissible at the trial for driving while under the influence of intoxicating liquor despite absence of medical supervision at time of taking of test. *Id.*

Evidence was sufficient to support trial court's finding that defendant charged with driving while under the influence of intoxicating liquor voluntarily gave urine specimen admitted at trial though officer had used considerable powers of persuasion to obtain the specimen. *Id.*

#### Violations in foreign jurisdictions

Where driver had been convicted in Virginia of driving while under the influence of intoxicating liquors and such conviction had been certified to the District of Columbia, and where, as a result of such certification, driver's total points under "point system" of regulation exceeded 12 thereby permitting revocation of driver's operator's permit, Director of Motor Vehicles did not abuse his discretion in allowing points to be assessed for conviction outside District, since, if incident had occurred in District of Columbia, it would have meant mandatory revocation of driver's permit without exercise of any discretion by Director, without a hearing and



without reference to any point system. *Council v. Director of Motor Vehicles etc.* (D.C. Mun. App. 1960, 159 A. 2d 874).

**§ 40-609a. Operating of vehicles while under the influence of intoxicating liquor and in violation of other laws—Prima facie evidence of intoxication—Relevant evidence of use of intoxicating liquor.**

If as a result of the operation of a vehicle, any person is tried in any court of competent jurisdiction within the District of Columbia for (1) operating such vehicle while under the influence of any intoxicating liquor in violation of section 40-609 (2) negligent homicide in violation of section 40-606, or (3) manslaughter committed in the operation of such vehicle in violation of section 22-2405, and in the course of such trial there is received in evidence, based upon a chemical test, competent proof to the effect that at the time of such operation—

(1) defendant's blood contained five one-hundredths of 1 per centum or less, by weight, of alcohol, or that an equivalent quantity of alcohol was contained in two thousand cubic centimeters of his breath (true breath or alveolar air having  $5\frac{1}{2}$  per centum of carbon dioxide), or that defendant's urine contained eight one-hundredths of 1 per centum or less, by weight, of alcohol, such proof shall be deemed prima facie proof that defendant at such time was not under the influence of any intoxicating liquor;

(2) defendant's blood contained more than five one-hundredths of 1 per centum, but less than ten one-hundredths of 1 per centum, by weight, of alcohol, or that an equivalent quantity of alcohol was contained in two thousand cubic centimeters of his breath (true breath or alveolar air having  $5\frac{1}{2}$  per centum of carbon dioxide), or that defendant's urine contained more than six one-hundredths of 1 per centum, but less than eleven one-hundredths of 1 per centum, by weight, of alcohol, such proof shall constitute relevant evidence, but shall not constitute prima facie proof that defendant was or was not at such time under the influence of any intoxicating liquor; and

(3) defendant's blood contained ten one-hundredths of 1 per centum or more, by weight, of alcohol, or that an equivalent quantity of alcohol was contained in two thousand cubic centimeters of his breath (true breath or alveolar air having  $5\frac{1}{2}$  per centum of carbon dioxide), or that defendant's urine contained eleven one-hundredths of 1 per centum or more, by weight, of alcohol, such proof shall constitute prima facie proof that defendant at such time was under the influence of intoxicating liquor.

(Mar. 4, 1958, 72 Stat. 30, 31, Pub. L. 85-338, §§ 1, 2; Oct. 21, 1972, Pub. L. 92-519, § 8, 86 Stat. 1018.)

**CODIFICATION**

This section was not enacted as part of the District of Columbia Traffic Act, 1925, which comprises this chapter.

**AMENDMENT**

1972—Section 8 of Act Oct. 21, 1972, Pub. L. 92-519, amended section as follows: (a) by striking out the subsection designation "(a)" at the beginning of the section; (b) by striking out in paragraph (2) "fifteen one-hundredths", "eight one-hundredths", and "twenty one-hun-

dredths", and inserting in lieu thereof "ten one-hundredths", "six one-hundredths", and "eleven one-hundredths", respectively; (c) by striking out in paragraph (3) "fifteen one-hundredths" and "twenty one-hundredths" and inserting in lieu thereof "ten one-hundredths" and "eleven one-hundredths" respectively; and (d) by striking out subsections (b), (c), (d), and (e). For provisions of section prior to this amendment, see 1967 ed. of the Code.

**CROSS REFERENCE**

Implied consent to chemical tests of blood, breath, or urine to determine blood alcohol content, see § 40-1001 et seq.

**NOTES TO DECISIONS**

**Refusal to take test**

In view of fact that District of Columbia sobriety test statute gives a right to refuse the test, accused's, refusal to take test was explained and justified, and refusal was not admissible in prosecution for driving under the influence of intoxicating liquor. *Stuart v. District of Columbia* (D.C. Mun. App. 1960, 157 A. 2d 294).

**Rule of evidence in administrative proceedings**

Statute providing that, in prosecutions for operating motor vehicle while under influence of intoxicating liquor, result of chemical analysis of blood, urine or breath may be prima facie proof that defendant was under influence of intoxicating liquor has no application to administrative proceeding. *H. E. Lister v. G. A. England etc.* (D.C. App. 1963, 195 A. 2d 260.)

Result of chemical analysis of blood, urine or breath cannot be received in evidence in hearing before Department of Motor Vehicles to determine whether privilege to operate motor vehicle shall be revoked unless accompanied by expert testimony of witness qualified to interpret the result. *Id.*

Finding of hearing officer, who, in hearing to determine whether privilege to operate motor vehicle should be revoked, attempted to apply statutory standard for determining intoxication on basis of urinalysis without expert testimony of witness qualified to interpret result could not stand. *Id.*

**Urine specimen—Admissibility as evidence**

Questioning by an officer of a defendant, who was charged with driving while under influence of intoxicating liquor and who was upset and sobbing and who was told that he did not have to take urine test but that if he did not it would be his word against the policeman's, but who was not physically abused, was not conduct which was so outrageous as to require exclusion of results of urine test. *J. E. Davis v. District of Columbia* (D.C. App. 1968, 247 A. 2d 417).

Urine specimen is admissible at the trial for driving while under the influence of intoxicating liquor despite absence of medical supervision at time of taking of test. *Id.*

**§ 40-610. Smoke screens.**

(a) No individual shall knowingly—

(1) Have in his possession any device designed to cause the emission from a motor vehicle of a dense mass of smoke commonly called a smoke screen;

(2) Use or permit the use of any such device in the operation of any motor vehicle; or

(3) Have in his possession or control any motor vehicle equipped with any such device or specially fitted for the attachment thereto of any such device.

(b) Any individual violating any provision of this section shall be guilty of a felony and upon conviction shall be punished by imprisonment in the penitentiary for a term of not less than one year nor more than five years. (Mar. 3, 1925, 43 Stat. 1124, ch. 443, § 11.)



## CROSS REFERENCE

Definitions of terms used, see § 40-602.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40-603.

## NOTES TO DECISIONS

## In general

Traffic Act, as amended, delegates to the commissioners authority to make rules and regulations in relation to traffic on the public highways, and to the Director of Parks authority to make regulations in relation to traffic on the roads in the public parks within the District; and to provide for punishment for violations by proceedings in the police court at instance of corporation counsel and to exclude United States Attorney from any prosecutions except provision involving smoke-screen felony. *Pershram v. United States* (1939, 104 F. 2d 249, 70 App. D.C. 116).

## § 40-611. Reporting by garage keeper of cars damaged in accidents.

The individual in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been involved in an accident or struck by bullets shall report to a police station within 24 hours after such motor vehicle is received, giving the make of the motor vehicle, the engine number, the registry number, and the name and address of the owner or operator of such motor vehicle. Any such individual failing so to report shall, upon conviction thereof, be fined not less than \$25 nor more than \$100 for each offense. (Mar. 3, 1925, 43 Stat. 1125, ch. 443, § 12.)

## CROSS REFERENCES

Alcoholic Beverage Control Act inapplicable, see § 25-127.

Definitions of terms used, see § 40-602.

## § 40-612. Convictions to be reported.

All convictions under sections 40-302, 40-603, 40-605, and 40-609 shall be reported by the clerk of the court to the Commissioner or his designated agent. (Feb. 27, 1931, 46 Stat. 1429, ch. 317, § 5.)

## CODIFICATION

This section was not enacted as part of the District of Columbia Traffic Act, 1925, which comprises this chapter.

## CROSS REFERENCE

Alcoholic Beverage Control Act inapplicable, see § 25-127.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 25-127.

## § 40-613. Control over park system not affected by this chapter.

Nothing contained in this chapter shall be construed to interfere with the exclusive charge and control prior to March 3, 1925, committed to the Director of the National Park Service over the park system of the District, and he is hereby authorized and empowered to make and enforce all regulations for the control of vehicles and traffic, and limiting the speed thereof on roads, highways, and bridges within the public grounds in the District, under his control, subject to the penalties prescribed in this chapter. (Mar. 3, 1925, 43 Stat. 1126, ch. 443, § 16 (b); July 3, 1926, 44 Stat. 835, ch. 760, § 3.)

## REFERENCES IN TEXT

In the original, "this chapter", as used in this section, reads "this Act", meaning the above-cited act of March 3, 1925. The provisions of such act still in force are classi-

fied to §§ 40-301 to 40-303, 40-601 to 40-603, 40-605, 40-609, 40-610, 40-611, and 40-613 to 40-615.

## TRANSFER OF FUNCTIONS

Act July 3, 1926, amended section by striking out "Chief of Engineers" and inserting in lieu thereof "Director of Public Buildings and Public Parks of the National Capital."

By Executive Order 6166, June 10, 1933, the office was changed to National Parks, Buildings, and Reservations.

Act of March 2, 1934, 48 Stat. 389, ch. 38, § 1, abolished National Parks, Buildings, and Reservations and transferred its powers and duties to the National Park Service.

All functions of all officers of the Department of the Interior and all functions of all agencies and employees of such Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, U.S. Code.

## CROSS REFERENCES

Definition of "this chapter" and other terms used, see § 40-602.

Regulating traffic in public parks and playgrounds, see § 8-109.

Rules and regulations generally, see § 40-603.

## NOTES TO DECISIONS

## Bus tours on Capitol Mall

A certificate of convenience and necessity is not required of a concessionaire under contract with Secretary of Interior to conduct bus tours of Capitol Mall from Washington Metropolitan Area Transit Commission. *Universal Interpretive Shuttle Corporation v. Washington Metropolitan Area Transit Commission et al.* (1968, 89 S. Ct. 354, 393 U.S. 186; rev'g 390 F. 2d 474).

Transit system's franchise did not give it absolute monopoly of sightseeing service on Capitol Mall and it does not protect system against competition from concessionaire acting under contract with Secretary of Interior. *Id.*

## § 40-614. Repeal and saving clauses.

(a) The provisions of the act entitled "An Act regulating the speed of automobiles in the District of Columbia, and for other purposes," approved June 29, 1906 (34 Stat. 621, ch. 3615), and, in so far as they relate to the regulation of vehicles or vehicle traffic in the District, the provisions of the act entitled "An act to authorize the Commissioners of the District of Columbia to make police regulations for the government of said District," approved January 26, 1887 (24 Stat. 369, ch. 49) and of the joint resolution entitled "Joint resolution to regulate licenses to proprietors of theaters in the city of Washington, District of Columbia, and for other purposes," approved February 26, 1892 (27 Stat. 394, Res. 4, 7) and of the act entitled "An act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and eighteen, and for other purposes," approved March 3, 1917 (39 Stat. 1064, ch. 160), are repealed. The provisions of section 20 of the Act entitled "An Act to prevent the manufacture and sale of alcoholic liquors in the District of Columbia, and for other purposes," approved March 3, 1917 (39 Stat. 1129, ch. 165), shall not apply to any person operating any motor vehicle in the District.

(b) Any violation of any provision of law or regulation issued thereunder which is repealed by this



chapter and any liability arising under such provisions or regulations may, if the violation occurred or the liability arose prior to such repeal, be prosecuted to the same extent as if this chapter had not been enacted. (Mar. 3, 1925, 43 Stat. 1125, ch. 443, § 16 (a), (c).)

#### REFERENCES IN TEXT

In the original, "this chapter", as used in this section, reads "this Act", meaning the above-cited act of March 3, 1925. The provisions of such act still in force are classified to §§ 40-301 to 40-303, 40-601 to 40-603, 40-605, 40-609, 40-610, 40-611, 40-613 to 40-615.

Section 20 of the act entitled "An act to prevent the manufacture and sale of alcoholic liquors in the District of Columbia, and for other purposes" was repealed by act of Jan. 24, 1934, 48 Stat. 334, ch. 4, § 28.

#### CODIFICATION

Subsections (a) and (b) were respectively subsections (a) and (c) of the act as enacted. The act of 1887 referred to is set forth in §§ 1-224 and 1-225. Subsection (b) of § 16 of the act of 1925 is § 40-613. The act of 1917 referred to has been repealed.

#### § 40-615. Separability of provisions.

If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of the chapter and the applicability of such provision to other persons and circumstances shall not be affected thereby. (Mar. 3, 1925, 43 Stat. 1126, ch. 443, § 18.)

#### REFERENCES IN TEXT

In the original, "this chapter", as used in this section, reads "this Act", meaning the above-cited act of March 3, 1925. The provisions of such act still in force are classified to §§ 40-301 to 40-303, 40-601 to 40-603, 40-605, 40-609, 40-610, 40-611, 40-613 to 40-615.

#### § 40-616. Parking meters.

The Commissioner of the District of Columbia is hereby authorized and empowered, in his discretion, to secure and to install experimentally, at no expense to the said District, mechanical parking meters or devices on the streets, avenues, roads, highways, and other public spaces in the District of Columbia under the jurisdiction and control of said Commissioner, such installations to be limited to a linear footage not to exceed the total of the perimeters of four normally sized squares in such District; and the District of Columbia Council is authorized and empowered to make, and the Commissioner to enforce rules and regulations for the control of the parking of vehicles on such streets, avenues, roads, highways, and other public spaces, and as an aid to such regulation and control of the parking of vehicles the Council may prescribe fees for the privilege of parking vehicles where said meters or devices are installed.

The Commissioner is further authorized and empowered to pay the purchase-price and cost of installation of the said meters or devices from the fees collected, which are hereby appropriated for such purpose, for the fiscal years 1938 and 1939, and thereafter such meters or devices shall become the property of said District, and all fees collected shall be paid to the collector of taxes for deposit in the treasury of the United States to the credit of the revenues of said District. (April 4, 1938, 52 Stat. 192, ch. 62, § 11.)

#### CODIFICATION

This section was not enacted as part of the District of Columbia Traffic Act, 1925, which comprises this chapter.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(304) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to making rules and regulations for the control of parking and prescribing fees, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### TRANSFER OF FUNCTIONS

The Office of the Collector of Taxes was abolished and the functions thereof transferred, see note under § 47-301.

#### CROSS REFERENCES

Additional parking meters and devices, see § 40-804 (e).  
Deposit of fees in special account in highway fund, see § 40-808.

Use of fees collected, see § 40-808.

Rules and regulations generally, see § 40-603.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-804, 40-808.

#### § 40-617. Loitering by public cabs.

The loitering of public cabs and hacks or vehicles of all descriptions around or in front of the hotels, theaters, or public buildings in the District of Columbia, either by stopping, except to take on or discharge a passenger, or unnecessarily slow driving, is hereby prohibited, and any driver of any such cab or hack who willfully causes the same to loiter either by stopping or slow driving as aforesaid shall be deemed guilty of a misdemeanor and punished in the Superior Court of the District of Columbia by a fine of not less than \$10 nor more than \$40 for such offense. The District of Columbia Council is hereby authorized and empowered to make any regulations that may be necessary in furtherance of the purpose of this section, and the Commissioner of the District of Columbia is hereby given authority to revoke the license of the driver of any public hack or cab who is convicted of a violation of this section. (July 11, 1919, 41 Stat. 104, ch. 7, § 12; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### CODIFICATION

This section was not enacted as part of the District of Columbia Traffic Act, 1925, which comprises this chapter.

#### AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended section by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia."

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct.



23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(305) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory function of the Board of Commissioners under this section with respect to making regulations under the last sentence of the section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### CROSS REFERENCE

Power to locate hackstands, see §§ 1-221, 1-222, 40-603.

#### NOTES TO DECISIONS

##### Hotels

This section does not apply to a taxicab stationed near a hotel which was for the exclusive use of the hotel and its guests, as the cab was under jurisdiction of the Public Utilities Commission and not of the District Commissioners. *Bell v. District of Columbia* (1921, 273 F. 315, 50 App. D. C. 351). See, also, *Parker v. District of Columbia* (1921, 273 F. 320, 50 App. D. C. 356).

##### Police regulations

This section supersedes police regulation, art. 4, § 8, adopted April 1918. *Willis v. District of Columbia* (1924, 295 F. 1012, 54 App. D. C. 191).

##### Public street

As the space upon which the cab was standing at the time of the arrest of its driver is stipulated to have been the private property of the Washington Terminal Company, by whose authority and permission he was there, it follows that he was not then upon any public street or avenue, and consequently his presence there did not fall within the purview of an act directed against the improper use of public streets and avenues. *Reamy v. District of Columbia* (1921, 273 F. 323, 50 App. D. C. 359).

### Chapter 7.—LIENS ON MOTOR VEHICLES OR TRAILERS

#### Sec.

- 40-701. Definitions.
- 40-702. Lien to appear on certificate of title—Effect of other liens.
- 40-703. Entry of lien—Priority.
- 40-704. Entry of lien—Form and requirements of instrument creating lien—When lien not entered.
- 40-705. Liens to be kept by recorder in director's office.
- 40-706. Liens shown by application for certificate—Entry of lien—Collection of fees—Absence of liens to be shown—Certificate to holder of first lien.
- 40-707. Entry of lien on previously issued certificate.
- 40-708. Assignment of lien—Form and requirement of assignment—Entry and recording of assignment—Certificate to holder of first lien.
- 40-709. Entry of lien or assignment where certificate is not available—Recorder to obtain certificate.
- 40-710. Possession of certificate—Satisfaction of liens.
- 40-711. Satisfaction of lien—Duties of recorder—Procedure when certificate lost.
- 40-712. Fees.
- 40-712a. Fee for releasing liens.
- 40-713. Recording liens, place and method.
- 40-714. False statements as to liens, violations of law, penalties.
- 40-715. Appropriation.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 28:9-203, 28:9-302, 42-104, 45-701.

#### § 40-701. Definitions.

"Person" shall include one or more individuals, firms or unincorporated associations, or corporations.

"Director" shall mean the director of vehicles and traffic of the District of Columbia, including assistants or agents duly designated by the Commissioner of the District of Columbia.

"Recorder" shall mean the recorder of deeds of the District of Columbia, including assistants or agents duly designated by the recorder.

"Certificate" shall mean a certificate of title for a motor vehicle or trailer issued by the director.

"Owner" shall mean the person to whom such certificate is issued by the director.

"Lien" shall mean any right or interest in or to, any security interest as defined in section 28:1-201 of the District of Columbia Code in, or lien or encumbrance upon any motor vehicle or trailer, or the equipment or accessories affixed or sold to be affixed thereto, in favor of a person other than the owner, except (1) a sale of such motor vehicle or trailer accompanied by delivery of possession and on execution of the assignment on the back of the certificate covering it, or (2) any possessory lien now or hereafter provided by law or any lien acquired in any judicial proceeding.

"Instrument" shall mean any security agreement, as defined in section 28:9-105(h) of the District of Columbia Code, creating such lien.

"Lien information" shall mean the amount, kind, date of lien, name and address of holder or secured party as defined in section 28:9-105(i) of the District of Columbia Code, and recorder's record number, if any. (July 2, 1940, 54 Stat. 736, ch. 527, § 1, Dec. 30, 1963, 77 Stat. 771, Pub. L. 88-243, § 6(a).)

#### AMENDMENTS

1963—Section 6(a) of act Dec. 30, 1963, amended the definitions of "Lien," "Instrument" and "Lien information."

#### EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 30, 1963, effective on Jan. 1, 1965. See note preceding article I of subtitle I of title 28.

#### EFFECTIVE DATE

Section 16 of act July 2, 1940, provided in part that: "The provisions of this Act [this chapter] shall become effective January 1, 1941".

#### SAVINGS CLAUSE

Section 16 of act July 2, 1940, provided in part that: "Nothing herein contained shall effect existing liens on motor vehicles and trailers, or any equipment or accessories affixed thereto recorded prior to the effective date of this Act [January 1, 1941]".

#### ABOLITION OF DEPARTMENT AND TRANSFER OF FUNCTIONS

See note under § 40-101.

#### CROSS REFERENCE

Applicability of provisions of this chapter to transactions under article 9 of subtitle I, title 28, see §§ 28:9-203 and 28:9-302.

#### § 40-702. Lien to appear on certificate of title—Effect of other liens.

During the time a certificate is outstanding for any motor vehicle or trailer, no lien against such motor vehicle or trailer or any equipment or accessories affixed or sold to be affixed thereto shall be valid except as between the parties and as to other persons having actual notice, unless and until entered on such certificate as hereinafter set forth: *Provided*, That the foregoing shall not apply to a lien or liens in existence on January 1, 1940, against



a motor vehicle or trailer for which a certificate is outstanding at the effective date of this chapter, or any equipment or accessories affixed thereto. The filing provisions of Article 9 of Subtitle I of Title 28 of the District of Columbia Code do not apply to liens recorded as herein provided, and a lien has no greater validity or effect during the time a certificate is outstanding for the motor vehicle or trailer covered thereby by reason of the fact that the lien has been filed in accordance with that article. (July 2, 1940, 54 Stat. 736, ch. 527, § 2; Dec. 30, 1963, 77 Stat. 771, Pub. L. 88-243, § 6(b).)

#### AMENDMENT

1963—Section 6(b) of act Dec. 30, 1963, amended the second sentence of the section.

#### EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 30, 1963, effective on Jan. 1, 1965. See note preceding article I of subtitle I of title 28.

#### NOTES TO DECISIONS

##### Recording

Where automobile dealer had a "floor plan" arrangement by which plaintiff would advance funds to dealer for purchase of automobiles and would take back chattel mortgages, and dealer had arrangement whereby finance company would purchase the conditional sales contracts executed by buyers of automobiles, and the buyer of an automobile gave conditional sales contract which was assigned to finance company but company never received title certificate because dealer had financial difficulties and never repaid plaintiff, plaintiff was estopped from asserting lien against buyer who had no actual knowledge of plaintiff's recorded chattel mortgage lien, and the buyer, not being in default, was entitled to use and enjoyment of automobile, and finance company was entitled to have its lien recorded on certificate of title. *Smith, Kirkpatrick & Co., Inc. v. Continental Autos, Ltd., et al.* (D.C.D.C. 1960, 184 F. Supp. 764).

A contract, made in District of Columbia, for conditional sale of automobile to resident of Maryland, wherein he used and retained automobile, was not required to be recorded in such District, but was properly recorded in Maryland, law of which requires recordation of such contract where vendee resides. *In re Burton* (D.C.D.C. 1954, 120 F. Supp. 148).

#### § 40-703. Entry of lien—Priority.

In the absence of agreement of all parties affected and in the absence of circumstances estopping a lienholder from insisting upon such rights, lien shall be entered on the certificate by the recorder and shall have priority among themselves in the following order:

(a) If the motor vehicle or trailer has been previously titled or registered in this or some other jurisdiction, unsatisfied liens shown by the previous certificate, title, registry, or proof of ownership shall be entered in the order in which they appear on such previous certificate, title, registry, or proof of ownership.

(b) Liens for which instruments are presented with the application for the certificate.

(c) Liens, where the instruments are presented for recording, together with the certificate, irrespective of the fact that one or more instruments not entered on the certificate may have been previously presented for recording without such certificate.

(d) As between two or more instruments presented for recording without the certificate, the one first presented for recording shall have priority. (July 2, 1940, 54 Stat. 737, ch. 527, § 3.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40-709.

#### § 40-704. Entry of lien—Form and requirements of instrument creating lien—When lien not entered.

An instrument shall be in writing; shall show the name and address of the holder, the trade name and engine, serial or identification number of the motor vehicle or the trade name and serial number, if any, of the trailer; shall be signed by the parties. A lien shall not be entered upon a certificate unless (1) the motor vehicle or trailer has been previously titled or registered in this or some other jurisdiction and the lien is shown upon such previous certificate, title, registry, or proof of ownership; or (2) such an instrument is presented for recording pursuant to the provisions of this chapter; or (3) the lien is shown on the application for a certificate, and was created prior to January 1, 1941, or was created while the motor vehicle or trailer was titled or registered in some other jurisdiction. (July 2, 1940, 54 Stat. 737, ch. 527, § 4; June 4, 1952, 66 Stat. 100, ch. 365, § 1; Dec. 30, 1963, 77 Stat. 771, Pub. L. 88-243, § 7.)

#### AMENDMENT

1963—Section 7 of act Dec. 30, 1963, amended the first sentence by striking out at the end thereof the words, "and acknowledged by the owner in the manner provided by law for deeds of real estate."

1952—Act June 4, 1952, added "serial or identification" between the words "engine" and "number".

#### EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 30, 1963, effective on Jan. 1, 1965. See note preceding article I of subtitle I of title 28.

#### § 40-705. Liens to be kept by recorder in director's office.

The Commissioner of the District of Columbia shall assign to the recorder space in the office of the director, and the recorder shall furnish and maintain the necessary furniture, equipment, cards hereinafter mentioned, and other supplies and the required personnel for the purpose of carrying out the provisions of this chapter. (July 2, 1940, 54 Stat. 737, ch. 527, § 5.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### § 40-706. Liens shown by application for certificate—Entry of lien—Collection of fees—Absence of liens to be shown—Certificate to holder of first lien.

Applications for certificates, in addition to all other matters which may be required by law, shall show whether or not there are any liens against the motor vehicle or trailer or any equipment or accessories affixed thereto and if so, the lien information in the order of its priority, and shall be accompanied by instruments or any other papers necessary to entitle liens to be entered on the certificate. Upon receipt by the recorder from the director of an application for a certificate and accompanying documents, if any, or on the application for a duplicate, the recorder shall compare the statements in the application as to liens with his records and the documents and instruments accompanying the application and if such statements are incorrect or incomplete or if any of the liens shown by the



application and not entitled to be entered on the certificate in the same order as they appear on the application the recorder shall return all of said papers to the director and advise him of the reasons therefor. If the statements as to liens are full, true, and complete and all liens shown by the application are entitled to be entered on the certificate in the same order as they appear on the application, the recorder shall stamp on the application the words, "Statements as to liens in accordance with records," a facsimile of his signature, and the date, shall accept all instruments accompanying the application for recording and shall stamp his record number opposite the statement of each lien on the application for certificate. The recorder shall retain the instruments for his permanent file and collect the fees and charges thereon and return the application and all other papers to the director, who shall thereupon deliver same to a representative of the collector of taxes of the District of Columbia, stationed in the office of the director. Said representative shall then collect from the applicant or his representative all fees and charges in connection with the issuance of the certificate and shall return said application and papers to the director. The director shall thereupon issue the certificate and where liens are shown on such an application shall stamp upon a card, the size of which shall be fixed by the director, the information stamped by the director on the face of such certificate and shall deliver such certificate, its application card, if any, and the identification-tag application to the recorder. If the application for title shows no liens, the recorder shall stamp on the certificate and on the reverse side of that portion of the application for identification tags known as "Collector's Coupon" the words "No Liens Shown By Records" and the date. If the application shows liens, the recorder shall stamp aforesaid "Collector's Coupon" with the words "Lien Recorded" and shall enter the lien information on certificate and on the said card. The aforesaid stamping and entering shall be made on the face of the certificate in the space provided for the use of the recorder. The recorder shall then deliver both applications and the papers attached and the certificate to the director, who shall retain the application and the papers attached and shall deliver or mail the certificate to the record holder of the first lien shown thereon or his representative; or if there are no liens, then to the owner or his representative. (July 2, 1940, 54 Stat. 737, ch. 527, § 6; Aug. 5, 1963, 77 Stat. 119, Pub. L. 88-89, § 1; Dec. 4, 1967, Pub. L. 90-172, § 2, 81 Stat. 532.)

#### AMENDMENTS

1967—Sec. 2, Act Dec. 4, 1967, Pub. L. 90-172, amended the first sentence by striking out "under oath".

1963—Section 1 of act Aug. 5, 1963, amended the sixth sentence of the section by striking "each of two cards" and "cards" and inserting in lieu thereof respectively "a card" and "card" and by striking from the eighth sentence "each of the said cards" and inserting in lieu thereof "the said card".

#### TRANSFER OF FUNCTIONS

The Office of the Collector of Taxes was abolished and the functions thereof transferred, see note under § 47-301.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-707, 40-711.

#### § 40-707. Entry of lien on previously issued certificate.

When it is desired to have a lien entered on a certificate theretofore issued, the instrument and the certificate shall be presented to the recorder in the office of the director and upon the payment of the necessary fees to the representative of the recorder of deeds of the District of Columbia in the office of the director the recorder shall accept the instruments for recording and unless he has a card covering said motor vehicle or trailer the director shall stamp a card in the manner set forth in section 40-706. The recorder shall enter the lien information on the certificate in the space hereinbefore mentioned and on said card and shall deliver or mail the certificate to the record holder of the first unsatisfied lien shown thereon or his representative. (July 2, 1940, 54 Stat. 738, ch. 527, § 7; Aug. 5, 1963, 77 Stat. 119, Pub. L. 88-89, § 2.)

#### AMENDMENT

1963—Section 2 of act Aug. 5, 1963, amended the first sentence by striking "cards" where same appears and inserting in lieu thereof "a card" and the second sentence by striking therefrom "each of said cards" and inserting in lieu thereof "said card".

#### § 40-708. Assignment of lien—Form and requirement of assignment—Entry and recording of assignment—Certificate to holder of first lien.

The rights of the holder of an unsatisfied lien shown on a certificate may be assigned by an assignment in writing, which shall show the name and address of the assignee, the trade name and engine, serial or identification number of the motor vehicle, or the trade name and serial number, if any, of the trailer, and the recorder's record number of the instrument, or if none, a brief description sufficient to identify the lien shall be signed by the holder of the lien. Upon presentation of an assignment and a certificate and the payment of the prescribed fee to the representative of the recorder of deeds of the District of Columbia in the office of the director, the recorder shall enter upon the face of the certificate and upon the card hereinbefore described the recorder's record number of the lien which is being assigned, or, if no such instrument is on file, a brief description sufficient to identify the lien, the date of the assignment and the words, "Assigned to," and the name and address of the assignee, and the date. The assignment shall be attached to the instrument if the instrument has been filed with the recorder, and, if not, the assignment shall be given a recorder's record number and filed by the recorder and such number shall be entered on the certificate and on the said card opposite the entry of the information relative to the assignment. The certificate shall be delivered to the record holder of the first unsatisfied lien shown thereon, or his representative. (July 2, 1940, 54 Stat. 738, ch. 527, § 8; June 4, 1952, 66 Stat. 100, ch. 365, § 2; Aug. 5, 1963, 77 Stat. 119, Pub. L. 88-89, § 3; Dec. 30, 1963, 77 Stat. 771, Pub. L. 88-243, § 8.)

#### AMENDMENTS

1963—Section 8 of act Dec. 30, 1963, amended the first sentence by striking out at the end thereof the words, "and acknowledged by him in the manner provided by law for deeds of real estate."

1963—Section 3 of act Aug. 5, 1963, amended the second sentence by striking the words "each of the cards", and



inserting in lieu thereof the words "the card" and the third sentence by striking therefrom "each of the cards" and inserting in lieu thereof "the said card".

1952—Act June 4, 1952, added "serial or identification" between the words "engine" and "number".

#### EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 30, 1963, effective on Jan. 1, 1965. See note preceding article I of subtitle I of title 28.

#### § 40-709. Entry of lien or assignment where certificate is not available—Recorder to obtain certificate.

Whenever it is desired to enter a lien or an assignment upon a certificate and such certificate is not available, upon delivery to the recorder of the instrument or assignment the recorder shall demand that the person possessing the certificate surrender it for the purpose of entering thereon the lien or the assignment and upon surrender of the certificate the recorder shall perform the same acts as in cases where the certificate was presented with the instrument. This section shall not be deemed to affect the priority given under section 40-703 (c) to a lien where the instrument is presented together with the certificate. (July 2, 1940, 54 Stat. 739, ch. 527, § 9.)

#### § 40-710. Possession of certificate—Satisfaction of liens.

The record holder of the first unsatisfied lien shown upon the certificate shall be entitled to the possession of the certificate and upon satisfaction of his lien he shall, within seventy-two hours, place upon the face of the certificate the recorder's record number of the lien, or, if no such instrument is on file, a brief description sufficient to identify the lien, and in either case the word "satisfied," or its equivalent, and his signature, swear to it before a notary public, and forward or deliver the certificate to the holder of the lien next in priority, or, if none, to the owner or to the person designated in writing by the owner. Upon the satisfaction of any lien other than the first unsatisfied lien shown on the certificate, the record holder of the lien so satisfied shall, within seventy-two hours, make similar entries upon the face of the certificate, and it shall be the duty of the person in possession of the certificate, upon demand, to permit such holder to make said entries. Any person in possession of a certificate shall, upon demand of the recorder, surrender it to the recorder within seventy-two hours for the purpose of entering the lien or assignment thereon. (July 2, 1940, 54 Stat. 739, ch. 527, § 10.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40-711.

#### § 40-711. Satisfaction of lien—Duties of recorder—Procedure when certificate lost.

The recorder, upon receipt of a certificate whereon a lien is marked "Satisfied" as set forth in section 40-710, shall enter on the face of the certificate and on the card described in section 40-706, and on the instrument, if any, filed in the recorder's office as hereinafter provided, his said record number, or, if no such instrument is on file, a brief description sufficient to identify the lien, and in either case the word "released," a facsimile of his signature and the date. Where for any reason a lien-holder upon satisfaction of his lien has failed to mark the cer-

tificate as herein provided and the lien-holder cannot be located, or where the certificate after being so marked has been lost or destroyed and a duplicate certificate issued, the recorder upon receipt of evidence satisfactory to him that the lien has been satisfied shall release it upon the certificate or duplicate certificate, the aforesaid cards and instrument, if any, as above set forth. Whenever any lien has been released as provided in this section for a period of more than three years, the Recorder of Deeds may destroy the instrument which created such lien and the index card upon which the lien information was entered: *Provided*, That no other unsatisfied lien is shown on any such index card. (July 2, 1940, 54 Stat. 739, ch. 527, § 11; June 5, 1952, 66 Stat. 126, ch. 370, § 4; Aug. 5, 1963, 77 Stat. 119, Pub. L. 88-89, § 4.)

#### AMENDMENTS

1963—Section 4 of act Aug. 5, 1963, amended the first sentence by striking "each of the cards" and inserting in lieu thereof "the card" and the last sentence by striking "cards" and inserting in lieu thereof "card".

1952—Act June 5, 1952, added the last sentence providing for destruction by the Recorder of Deeds of instrument creating lien and the index cards with the lien information on release of lien.

#### EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section by act June 5, 1952, effective 90 days after June 5, 1952, see section 6 of act June 5, 1952, set out as a note under section 42-102.

#### § 40-712. Fees.

The fee for recording liens or assignments of liens upon a certificate shall be the sum of \$1 for each lien or assignment of lien on each motor vehicle or trailer contained in the instrument, which fee shall include the charge for recording the release of such lien. (July 2, 1940, 54 Stat. 739, ch. 527, § 12; Dec. 15, 1945, 59 Stat. 610, ch. 578; June 19, 1948, 62 Stat. 493, ch. 522, § 1.)

#### AMENDMENTS

1948—Act June 19, 1948, increased the recording fee of liens and assignments from 50 cents to \$1 on "each motor vehicle or trailer" rather than each "automobile", and deleted the words "there shall be no fee for releasing".

1945—Act Dec. 15, 1945, amended section by inserting "or assignment or release of lien" following "for each lien" and by deleting second sentence which read "There shall be no fee for releasing."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-712a, 45-714.

#### § 40-712a. Fee for releasing liens.

Notwithstanding the provisions of section 40-712, there shall be a fee of 50 cents for recording the release of a lien which is recorded under the provisions of this chapter, prior to June 19, 1948, and no assignment of which is recorded under the provisions of this chapter after June 19, 1948. (June 19, 1948, 62 Stat. 493, ch. 522, § 2.)

#### CODIFICATION

Section was not enacted as a part of the Act of July 2, 1940, which comprises this chapter.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 45-714.

#### § 40-713. Recording liens, place and method.

The recorder shall maintain, in the space assigned to him in the office of the director, a file wherein he shall file a set of cards hereinbefore described under



the trade name and engine, serial or identification number if it covers a motor vehicle, or the trade name and serial number, if any, if it covers a trailer. The recorder shall file the instruments at his main office. (July 2, 1940, 54 Stat. 739, ch. 527, § 13; June 4, 1952, 66 Stat. 100, ch. 365, § 3; Aug. 5, 1963, 77 Stat. 119, Pub. L. 88-89, § 5.)

#### AMENDMENTS

1963—Section 5 of act Aug. 5, 1963, amended the section by striking "files wherein he shall file one set of the cards hereinbefore described alphabetically under the name of owner and the other", and inserting in lieu thereof "a file wherein he shall file a set of cards hereinbefore described".

1952—Act June 4, 1952, added "serial or identification" between the words "engine" and "number".

#### DESTRUCTION OF ALPHABETICAL FILES

Section 6 of act Aug. 5, 1963, provides as follows: "Alphabetical files established and maintained in accordance with the requirements of section 13 of such Act approved July 2, 1940 [§ 40-713], may, with the approval of the Commissioners of the District of Columbia, be destroyed."

#### § 40-714. False statements as to liens, violations of law, penalties.

Any person intentionally making a false statement with respect to liens in an application for a certificate, or wilfully violating any of the provisions of this chapter, shall upon conviction be punished by a fine of not more than \$500 or be imprisoned for not more than one year, or both. Prosecutions for violations of this chapter shall be by the corporation counsel of the District of Columbia or any of his assistants, in the name of the District of Columbia. (July 2, 1940, 54 Stat. 739, ch. 527, § 14.)

#### NOTES TO DECISIONS

##### In general

Where counts charging perjury were merged and it could not be determined upon which false statement in application for certificate of title the jury rested its general verdict, but verdict if upon statement as to liens would not support sentence, judgment of conviction was subject to reversal. *Shelton v. United States* (1948, 165 F. 2d 241, 83 U.S. App. D.C. 32).

##### Duplicate certificates

Section 706 of this title and this section relating to certificates of title apply to duplicate as well as original certificates. *Shelton v. United States* (1948, 165 F. 2d 241, 83 U.S. App. D.C. 32).

##### Number of offenses

One making two false statements, one violating the general perjury statute, § 22-2501, and the other violating this section, commits two offenses, though both statements are under one oath. *Shelton v. United States* (1948, 165 F. 2d 241, 83 U.S. App. D.C. 32).

##### Prosecution by corporation counsel

The making of false statement of lien under oath in application for certificate or duplicate certificate of title for motor vehicle in the District of Columbia must be prosecuted by corporation counsel in the name of the District of Columbia, under this section, rather than by the United States attorney in the name of the United States under the general perjury statute, § 22-2501. *Shelton v. United States* (1948, 165 F. 2d 241, 83 U.S. App. D.C. 32).

#### § 40-715. Appropriation.

Appropriation is hereby authorized to be made to carry out the provisions of this chapter, and the Commissioner of the District of Columbia is authorized to include in his annual estimates provision for all the expenses of the office of the director

and recorder incident to such purposes, and for personnel subject to the limitations of chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]. (July 2, 1940, 54 Stat. 740, ch. 527, § 15; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a).)

#### CODIFICATION

The reference in this section to "chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89-554, set out in note under § 1-251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

#### AMENDMENT

1949—Act Oct. 28, 1949, § 1106(a), which was a part of the "Classification Act of 1949" for "Classification Act of 1923". See codification note above.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### TRANSFER OF FUNCTIONS

For transfer of functions with respect to budgetary matters, see § 403 of Reorg. Plan No. 3 of 1967, set out in the Appendix to title 1.

### Chapter 8.—REGULATION OF PARKING

#### Sec.

- 40-801. Short title.
- 40-802. Findings and declaration of necessity.
- 40-803. Definitions.
- 40-804. Powers—Acquisition of property—Construction and maintenance—Leasing to private interests—Disposal of property—Establishment of rates—Miscellaneous rules and regulations—Parking meters.
- 40-805. Motor-Vehicle Parking Agency—Creation and composition—Term—Powers.
- 40-806. Establishment of parking facilities.
- 40-807. Records and data available—Additional surveys.
- 40-808. Disposition of fees and moneys collected.
- 40-809. Appropriations—Employment of director—Salaries of employees—Salaries of members of agency.
- 40-809a. Acquisition of new parking facilities prohibited—Operation and expansion of existing facilities—Exempt facilities.
- 40-810. Parking restrictions—Vehicles impounded—Penalties.
- 40-811. Same—United States public buildings and property—Regulations—Penalties.

#### § 40-801. Short title.

This chapter may be cited as the "District of Columbia Motor Vehicle Parking Facility Act of 1942." (Feb. 16, 1942, 56 Stat. 93, ch. 76, § 10, redesignated as section 11, by act Mar. 2, 1962, 76 Stat. 18, Pub. L. 87-408, § 603.)

#### AMENDMENT

1962—Section 603. act Mar. 2, 1962, 76 Stat. 18, Pub. L. 87-408, renumbered section 10 of act February 1942, 56 Stat. 93, ch. 76, as section 11.

#### SEPARABILITY OF PROVISIONS

Section 9 of act Feb. 16, 1942, provided that: "If any provision of this Act [§§ 40-801 to 40-809], or the application thereof to any person or circumstances, shall be held invalid, the validity of the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby."



## CROSS REFERENCE

District of Columbia Traffic Act, see §§ 40-601 et seq.

## § 40-802. Findings and declaration of necessity.

It is hereby declared that the free circulation of traffic of all kinds through the highways of the District is necessary to the health, safety, and general welfare of the public, whether residing in said District, or traveling to, through, or from said District in the course of lawful pursuits; that in recent years the greatly increased use by the public of motor vehicles of all kinds has caused serious traffic congestion on the highways of the District; that the parking of motor vehicles on the highways of the District has contributed to this congestion to such an extent as to interfere seriously with the primary use of such highways for the movement of traffic; that such parking prevents the free circulation of traffic in, through, and from said District impedes rapid and effective fighting of fires and the disposition of police forces in the District, threatens irreparable loss in valuations of property in the District, which can no longer be readily reached by vehicular traffic, and endangers the health, safety, and welfare of the general public; that this parking nuisance can be reduced by providing sufficient off-street parking facilities conveniently located in the several residential, commercial, industrial, and governmental areas of the District; that adequate off-street parking facilities have not been provided by private enterprise; that it may be necessary to supplement private parking spaces by off-street parking facilities provided by public undertaking; and that the enactment of this chapter, as well as the use of land for the purposes set forth in this chapter, is hereby declared to be a public necessity. (Feb. 16, 1942, 56 Stat. 90, ch. 76, § 1.)

## CROSS REFERENCE

Regulations and enforcement for control of vehicles. see § 8-109.

## § 40-803. Definitions.

When used in this chapter, unless the context indicates otherwise—

The term "District" means the District of Columbia.

The term "Commissioner" means the Commissioner of the District of Columbia.

The term "agency" means the Motor Vehicle Parking Agency created in section 40-805.

The term "parking facilities" means one or more public off-street parking areas for motor vehicles, including necessary structures. (Feb. 16, 1942, 56 Stat. 91, ch. 76, § 2.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## ABOLITION OF AGENCY AND TRANSFER OF FUNCTIONS

See note under § 40-805.

## § 40-804. Powers—Acquisition of property—Construction and maintenance—Leasing to private interests—Disposal of property—Establishment of rates—Miscellaneous rules and regulations—Parking meters.

The Commissioner, and the District of Columbia Council to the extent provided by paragraphs (306)

and (307) of section 402 of Reorganization Plan No. 3 of 1967, within the limits of appropriations by Congress therefor, are authorized to exercise all powers necessary and convenient to carry out the purposes of this chapter, the said purposes being hereby declared to be the acquisition, creation, and operation, in any manner hereinafter provided, under public regulation, of public off-street parking facilities in the District as a necessary incident to insuring in the public interest the free circulation of traffic in and through said District. Such powers shall include, but shall not be limited to, the powers hereinafter enumerated:

(a) The power to acquire any property, real or personal, or any interest therein, by purchase, lease, gift, bequest, devise, or grant, or by condemnation under the provisions of chapter 13 of title 16 in any area of the District as to which the agency shall have made a determination that public parking facilities are necessary or expedient. Before acquiring any area for parking facilities the Commissioner shall request the National Capital Park and Planning Commission for its recommendations and it shall be the duty of said Commission to report thereon within thirty days of such request.

(b) The power to undertake, by contract or otherwise, the clearance and improvement of any such property as well as the construction, establishment, reconstruction, alteration, repair, maintenance, and operation thereon of parking facilities; to contract, by lease or otherwise, with competitive bidding, with any individual, firm, association, or corporation, private or public, for the operation of any parking facilities for such period, not exceeding five years, as the Commissioner shall determine, and to terminate, without prior notice, any contract in the event of any failure or omission of any party thereto to observe or enforce the rules or schedules of rates made under authority of paragraph (d) of this section. The words "such property" in this paragraph shall include, in addition to property acquired under this chapter, any other property, heretofore or hereafter acquired by the District, until needed for the purpose for which it was acquired, or if no longer needed for the purpose for which it was acquired, or upon which parking facilities may be established without impairing its use for the purpose for which it was acquired: *Provided*, That in each case the agency shall have made a determination that parking facilities thereon are necessary or expedient. Before establishing any parking facilities upon the property not acquired under authority of this chapter, the Commissioner shall request the National Capital Park and Planning Commission for its recommendations and it shall be the duty of said Commission to report thereon within thirty days of such request.

(c) The power to sell, exchange, transfer, or assign any property, real or personal, or any interest therein, acquired under authority of this chapter, whether or not improved: *Provided*, That such action shall be in accordance with the general law covering the disposal of such property by the District of Columbia: *Provided further*, That the agency shall have first determined such property to be no longer necessary for the purposes of this chapter.



(d) The power to establish and from time to time to revise, with or without public hearings, uniform schedules of rates to be charged for use of space in each such parking facility; to provide rate differentials between said parking facilities for such reasons as the amount of space occupied, the location of the facility, and other reasonable differences; and to prescribe and promulgate such rules and regulations for the carrying out of the provisions of this chapter as may be necessary to keep said parking facilities subject at all times to public regulation, and to insure the maintenance and operation of such parking facilities in a clean and orderly manner and in such a manner as to provide efficient and adequate service to the public. The rates to be charged for parking of motor vehicles within said parking facilities shall be fixed at the lowest possible rates, consistent with the achievement of the purposes of this chapter, that will defray the cost of maintaining, operating, and administering the parking facilities; liquidate within such time as the Council shall determine the cost of acquiring and improving the required property for parking-facility purposes; and provide for the acquisition and improvement of other necessary parking facilities, but without any purpose of obtaining for the District any profit or surplus revenue from the operation of said parking facilities. There shall be no discrimination in rates or privileges among the members of the public using said parking facilities.

(e) The power to secure and install mechanical parking meters or parking devices on the streets, avenues, roads, highways, and other public spaces in the District under the jurisdiction and control of the said Commissioner, in addition to those mechanical parking meters and devices installed pursuant to the authority conferred on the said Commissioner by section 40-616, such meters or devices to be located at such points as the Commissioner may determine, and the said Council is authorized and empowered to make and, the Commissioner to enforce, rules and regulations for the control of parking of vehicles on such streets, avenues, roads, highways, and other public spaces, and as an aid to such regulation and control of the parking of vehicles the Council may prescribe fees for the parking of vehicles where meters or devices are installed.

(f) The power to lease on competitive bids for terms not exceeding fifty years, any property acquired pursuant to this chapter, or any other property heretofore or hereafter acquired by the District if no longer needed for the purpose for which it was acquired, and to stipulate in any such lease that the lessee shall erect at his or its expense a structure or structures on the land leased, which structure or structures and property shall be used, maintained, and operated for the purposes of this chapter, including purposes incidental thereto, subject to regulation as provided in paragraph (d) of this section, except that the rates for use of space in parking facilities covered by any such lease shall be fixed and regulated by the Council so as to allow to the lessee a fair return, as fixed by the Commissioner, on the cost of such structure or structures, together with an amount sufficient to amortize within the

term of any such lease the cost of such structure or structures. Every such lease shall be entered into upon such terms and conditions as the Commissioner shall impose including, but not limited to, requirements that such structure or structures shall conform with plans and specifications approved by the Commissioner, that such structure or structures shall become the property of the District upon termination or expiration of any such lease; that the lessee shall furnish security in the form of a penal bond or otherwise to guarantee fulfillment of his or its obligations, and any other requirement which, in the judgment of the Commissioner, shall be related to the accomplishment of the purposes of this chapter.

(g) The power to use moneys in the fund established by section 40-808 for the purpose of widening or channelizing streets or making other street improvements to correct or improve traffic conditions in the vicinity of off-street parking facilities, and to correct traffic conditions resulting from a lack or shortage of parking facilities. (Feb. 16, 1942, 56 Stat. 91, ch. 76, § 3; Dec. 16, 1944, 58 Stat. 808, ch. 595, § 1; June 19, 1948, 62 Stat. 565, ch. 559; Aug. 20, 1958, 72 Stat. 686, Pub. L. 85-692, § 1; July 29, 1970, Pub. L. 91-358, § 166(g), title I, 84 Stat. 587.)

#### CODIFICATION

In the first paragraph, the words "and the District of Columbia Council to the extent provided by paragraphs (306) and (307) of section 402 of Reorganization Plan No. 3 of 1967" were inserted on authority of such provisions of the Plan.

In subsec. (f), reference to "Council" has been substituted for "Commissioners" in the clause "except that the rates for use of space in parking facilities covered by any such lease shall be fixed and regulated by the . . . so as to allow to the lessee a fair return" to reflect the provisions of subsec. (d) and § 402(306) of Reorg. Plan No. 3 of 1967, under which the rates are fixed by the Council.

#### AMENDMENTS

1970—Section 166(g) of Act July 29, 1970, Public Law 91-358 amended subsection (a) by striking out "sections 483 to 491, inclusive, of chapter XV, as amended, of the Code of Law for the District of Columbia, approved March 3, 1901 (31 Stat. 1265-1266)" and inserting in lieu thereof "chapter 13 of title 16 of the District of Columbia Code".

1958—Act Aug. 20, 1958, added subsection (g).

1948—Act June 19, 1948, added subsection (f).

1944—Act Dec. 16, 1944, amended subsection (b) by adding the last three sentences.

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(306 and 307) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsections (d) and (e) in the particulars described in pars. 306 and 307, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### CROSS REFERENCES

Acquisition of new facilities prohibited, see § 40-809a.  
Interstate agreement concerning enforcement of traffic laws, including parking violations, see § 40-603-2.  
Jurisdiction and control of street parking, see § 8-110.



## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40-805.

## NOTES TO DECISIONS

## In general

Appellant's contention, that, by placing the sign upon the meters the District is estopped to urge that Saturday afternoon is not a holiday within the meaning of the traffic regulation, is unfounded since the principle of estoppel generally does not apply to a city or a state when acting in its governmental capacity. *Doing v. District of Columbia* (D. C. Mun. App. 1949, 67 A. 2d 396).

## Parking regulations

Where appellant was convicted for illegal parking on Saturday afternoon and controversy arose by reason of fact that parking meter bore sign limiting parking to one hour, except on Sundays and holidays, his contention that Saturday afternoon was a legal holiday is without merit because Saturday is not a holiday under the statute or regulations issued thereunder. *Doing v. District of Columbia* (D. C. Mun. App. 1949, 67 A. 2d 396).

## Presumption

The presumption that everyone is presumed to know the law applies to traffic regulations just as it does to statutes. *Doing v. District of Columbia* (D. C. Mun. App. 1949, 67 A. 2d 396).

## § 40-805. Motor-Vehicle Parking Agency—Creation and composition—Term—Powers.

There is hereby created a motor-vehicle parking agency consisting of seven members, namely, a representative of the Federal Works Agency, to be designated by the Administrator thereof; a representative of the National Park Service, to be designated by the Secretary of the Interior; a representative of the Department of Vehicles and Traffic of the District, to be designated by the Commissioner, and four other members, each of whom shall have been a bona fide resident of the District for at least three years immediately preceding his appointment, to be appointed by the Commissioner, without regard to race or creed. The Secretary of the Interior, the Federal Works Administrator, and the Commissioner may from time to time, in his discretion, change their respective designates in office, and they shall name new designates to fill any vacancies caused by the death, resignation, or other inability to serve of their respective designates in office. The terms of the other four members of the agency shall be four years each, except that in the case of the initial appointments, one shall be for a term of one year, one for a term of two years, and one for a term of three years. In the case of any vacancy in the position of the members appointed for definite terms the same shall be filled for the remainder of the term. The said agency shall perform the duties imposed upon it by this chapter and such other duties as the Commissioner may assign to it. The Commissioner is authorized to delegate to the agency any or all of the powers vested in the said Commissioner by this chapter, except the powers set forth in paragraphs lettered (a) and (c) in section 40-804. The Commissioner is also authorized to delegate to the agency any or all of the powers vested in said Commissioner by subsections (a) and (b) of section 40-604a. (Feb. 16, 1942, 56 Stat. 92, ch. 76, § 4, Dec. 16, 1944, 58 Stat. 808, ch. 595, § 2.)

## AMENDMENT

1944—Act Dec. 16, 1944, amended section by adding last sentence.

## ABOLITION OF AGENCY AND TRANSFER OF FUNCTIONS

The Motor Vehicle Parking Agency was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorg. Plan No. 5 of 1952. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorg. Plan No. 3 of 1967. The Agency was reestablished by Reorganization Order No. 54, dated June 30, 1953, and continued by Organization Order No. 106, dated May 17, 1955. The Plans and the Orders are set out in the Appendix to title 1, Administration.

## ABOLITION OF FEDERAL WORKS AGENCY

The Federal Works Agency and the office of Federal Works Administrator were abolished and the functions thereof transferred to the Administrator of General Services by Act June 30, 1949, § 103, 63 Stat. 380 (40 U.S.C. 753). Certain functions of the Federal Works Administrator with respect to public roads were transferred to the Secretary of Commerce by Reorganization Plan No. 7 of 1949, and subsequently transferred to the Secretary of Transportation, see 49 U.S.C. 1655.

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## TRANSFER OF FUNCTIONS

See note under section 40-101 concerning Department of Motor Vehicles.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40-803.

## § 40-806. Establishment of parking facilities.

Parking facilities may be established in any section or portion of the District except that no parking facilities shall be established upon any property zoned residential without the approval of the Zoning Commission of the District. The Zoning Commission may grant such approval only after public notice and hearing in accordance with section 5-415. (Feb. 16, 1942, 56 Stat. 93, ch. 76, § 5.)

## § 40-807. Records and data available—Additional surveys.

The National Capital Park and Planning Commission and the Highway Planning Survey Unit shall make available such records and factual data and make such additional surveys as the Commissioner or the agency may deem necessary to carry out the purposes of this chapter. (Feb. 16, 1942, 56 Stat. 93, ch. 76, § 6.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## § 40-808. Disposition of fees and moneys collected.

All fees and other moneys collected under this chapter, including all fees collected pursuant to section 40-616 and section 40-604a, and all moneys derived from the sale or assignment of any property, real or personal, shall be deposited in a special account within the highway fund established in section 47-1901. Moneys deposited in such special account shall be available, first to defray the expenses of enforcing laws, rules, and regulations relating to the parking of vehicles in the District of Columbia; second, to defray the expenses of operating parking facilities under this chapter; third, for the acquisition, creation, and operation of parking facilities exempt from section 40-809a; and fourth, for the



maintenance of highways within the District of Columbia, including the removal of snow and ice therefrom, and the purchase or rental of necessary equipment. (Feb. 16, 1942, 56 Stat. 93, ch. 76, § 7; Dec. 16, 1944, 58 Stat. 809, ch. 595, § 3; Mar. 2, 1962, 76 Stat. 18, Pub. L. 87-408, § 601.)

#### AMENDMENTS

1962—Act Mar. 2, 1962, amended section generally.

1940—Act Dec. 16, 1940, amended section by adding reference to "section 40-604a" following "section 40-616".

#### PARKING METER FEES

The following District of Columbia Appropriation Acts provided that the fees from parking meters should be deposited to the credit of the highway fund:

1951—July 18, 1950, ch. 467, § 1, 64 Stat. 364.

1950—June 29, 1949, ch. 279, § 1, 63 Stat. 318.

1949—June 19, 1948, ch. 555, § 1, 62 Stat. 553.

1948—July 25, 1947, ch. 324, § 1, 61 Stat. 443.

1947—July 9, 1946, ch. 544, § 1, 60 Stat. 518.

1946—June 30, 1945, ch. 209, § 1, 59 Stat. 289.

1945—June 28, 1944, ch. 300, § 1, 58 Stat. 526.

1944—July 1, 1943, ch. 184, § 1, 57 Stat. 338.

1943—June 27, 1942, ch. 452, § 1, 56 Stat. 451.

1942—July 1, 1941, ch. 271, § 1, 55 Stat. 528.

#### TRANSFER OF MONEYS TO HIGHWAY FUND

Section 604, act Mar. 2, 1962, 76 Stat. 19, Pub. L. 87-408, provided as follows: "All fees and other moneys which have been deposited in the special account of the Treasury of the United States before the date of enactment of this title [amending sections 40-801, 40-808, 40-809 and adding section 40-809a] to the credit of the District of Columbia in accordance with section 40-808 are hereby transferred to the special account established in the highway fund by the amendment made to section 40-808 by section 601 of this title, and such funds shall be available for the purposes provided in such amendment to such section 40-808."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40-804.

#### § 40-809. Appropriations—Employment of director—Salaries of employees—Salaries of members of agency.

The Commissioner shall include in his annual budget such amounts as may be required from the highway fund established in section 47-1901, for the purpose of carrying out the provisions of this chapter. The Commissioner is authorized to employ a director and such other personal services as may be necessary to carry out the provisions of this chapter, and the salaries of such employees, other than members of said agency, are to be fixed in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]. The Commissioner shall fix the compensation of the members of said agency without reference to the provisions of the Classification Act of 1923: *Provided, however,* That the compensation of any members shall not exceed \$500 per annum: *And provided further,* That no compensation for services as a member of such agency shall be provided for any member who holds a salaried public office or position, in the District of Columbia or the Federal Government. (Feb. 16, 1942, 56 Stat. 93, ch. 76, § 8; Oct. 28, 1949, 63 Stat. 992, ch. 782, title XI, § 1106(a); Mar. 2, 1962, 76 Stat. 18, Pub. L. 87-408, § 602.)

#### CODIFICATION

The reference in this section to "chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code, relating to the classification of government employees and related

matters" was substituted for "the Classification Act of 1949 as amended" on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89-554, set out in note under § 1-251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

The exception from the "Classification Act of 1923" is obsolete. Sections 1202 and 1204 of the Classification Act of 1949 (63 Stat. 972, 973) repealed the 1923 Act and all laws or parts of laws inconsistent with the 1949 Act. While § 1106(a) of the 1949 Act provided that references in other laws to the 1923 Act should be held and considered to mean the 1949 Act, it did not have the effect of continuing the exception contained in this section because of § 1106(b) that provided that the application of the 1949 Act to any position, officer, or employee shall not be affected by § 1106(a). Section 5102 of title 5, U.S.C., now contains the applicability provisions of the 1949 Act.

#### AMENDMENTS

1962—Act Mar. 2, 1962, amended first sentence of section generally.

1949—Act Oct. 28, 1949, § 1106(a), which was a part of the "Classification Act of 1949" for "Classification Act of 1923". See codification note above.

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### TRANSFER OF FUNCTIONS

For transfer of functions with respect to budgetary matters, see § 403 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the Appendix to title 1.

#### § 40-809a. Acquisition of new parking facilities prohibited—Operation and expansion of existing facilities—Exempt facilities.

Notwithstanding any provision of this chapter, no real property shall be acquired under the authority of this chapter for use as a parking facility on or after March 2, 1962, and the Commissioner and the agency are authorized to operate and maintain only those parking facilities which have been established prior to March 2, 1962. No such existing parking facility shall be expanded or otherwise altered except to the extent as may be necessary to permit its continued operation in the same manner as it was being operated immediately before March 2, 1962. This section shall not apply to (1) any parking facility which is limited to use by officers and employees of the Governments of the United States or of the District of Columbia by reason of their employment by any such Government, (2) any fringe parking facility, and (3) any parking facility located on property of the District of Columbia beneath any elevated portion of a public highway. (Feb. 16, 1942, 56 Stat. 93, ch. 76, § 10, as added Mar. 2, 1962, 76 Stat. 19, Pub. L. 87-408, § 603.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40-808.

#### § 40-810. Parking restrictions—Vehicles impounded—Penalties.

It shall be unlawful to park, store, or leave any vehicle of any kind, whether attended or not, or for the owner of any vehicle of any kind to allow, permit, or suffer the same to be parked, stored, or left,



whether attended or not, upon any public or private property in the District of Columbia, other than public highways, without the consent of the owner of such public or private property and the Commissioner of the District of Columbia, and his designated agent or agents, are authorized to remove and impound any vehicle parked, stored, or left in violation of this section and section 40-811 and to keep the same impounded until the owner thereof, or other duly authorized person, shall deposit collateral for his appearance in court to answer for such violation, the amount of such collateral to be fixed by the District of Columbia Council in an amount not to exceed \$25. Whoever violates the provisions of this section and section 40-811 shall be punished by a fine of not more than \$25. Prosecutions for violations of the provisions of this section shall be in the Superior Court of the District of Columbia upon information filed by the corporation counsel of the District of Columbia or any of his assistants. In any prosecution under this section, proof that a vehicle was parked, stored, or left on public or private property shall be prima facie evidence that the vehicle was so parked, stored, or left without the consent of the owner of such public or private property. (Jan. 15, 1942, 56 Stat. 5, ch. 4, § 1; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

#### SEPARABILITY OF PROVISIONS

Section 3 of act Jan. 15, 1942, provided that: "Should any provisions of this Act be declared by the courts to be unconstitutional or invalid, the validity of the Act as a whole or any part thereof, other than the part declared to be unconstitutional or invalid, shall not be affected."

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(308) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners under this section with respect to fixing the amount of collateral, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### CROSS REFERENCES

Jurisdiction and control of street parking, see §§ 8-110, 40-603.

Regulation and enforcement for control of vehicles, see §§ 8-109, 40-603.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40-811.

#### NOTES TO DECISIONS

##### Liability for impounding and ticketing vehicles

Complaint alleging that, though plaintiff had obtained from his landlord equal and coextensive parking privileges in allegedly private alley adjoining business premises involved with a defendant, such defendant had engaged in wrongful or illegal action against plaintiff's parking, resulting in ticketing and impounding of his automobile, was sufficient as against such defendant. *J. C. Gager v. "Bob Seidel" etc.* (1962, 300 F. 2d 727, 112 U.S. App. D.C. 135).

Record as a whole disclosed that plaintiff suing police officers and others for damages resulting from alleged conspiracy with respect to ticketing and impounding his automobile which he repeatedly parked in what he alleged was a private alley failed to state cause against police officers. *Id.*

##### § 40-811. Same—United States public buildings and property—Regulations—Penalties.

Nothing contained in this section and section 40-810 shall be construed to interfere with the charge and control committed to the Administrator of General Services, acting through the Commissioner of Public Buildings, over the public buildings and property of the United States in the District of Columbia or any other officer charged with the custody and control of property of the United States in the District of Columbia and such officers with respect to such property, under their respective jurisdiction and control, are hereby authorized and empowered to make and enforce all regulations for the parking of vehicles upon the property of the United States in the District of Columbia (other than public highways), to remove and impound any vehicle, parked, stored, or left in violation of this section and section 40-810 and to keep the same impounded until the owner thereof, or other duly authorized person, shall deposit collateral for his appearance in court to answer for such violation, the amount of collateral to be fixed by the officer charged with the custody and control of property of the United States in the District of Columbia in an amount not to exceed \$25. Violations of regulations for the parking of cars upon the property of the United States in the District of Columbia shall be subject to the penalties prescribed in section 40-810 and all prosecutions for the violations thereof shall be upon information filed by the United States attorney in the Superior Court of the District of Columbia. (Jan. 15, 1942, 56 Stat. 6, ch. 4, § 2; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

#### AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

#### EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

#### CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the



District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87-873, § 1, which contained identical provisions.

#### TRANSFER OF FUNCTIONS

All functions of the Federal Works Administrator and the Commissioner of Public Buildings were transferred to the Administrator of General Services by section 103(a) of act June 30, 1949, 63 Stat. 380 (40 U.S.C. 753).

#### CROSS REFERENCES

Jurisdiction and control of street parking, see §§ 8-110, 40-603.

Regulation and enforcement for control of vehicles, see §§ 8-109, 40-603.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40-810.

### Chapter 9.—INSTALLMENT SALES OF MOTOR VEHICLES

Sec.

40-901. Definitions.

40-902. Maximum finance charges—Computation—Proportionate adjustments—Investigation of economic conditions to determine finance charges—Regulations—Classification of parties—Waiver.

40-903. Bonding of automobile dealers and applicants—Liability Insurance—Designation of Commissioner as agent for service of process—Limitation on bonds—Action on bonds.

40-904. Delegation of functions—Exception.

40-905. Promulgation of regulations—Public hearings.

40-906. False statements.

40-907. Penalties.

40-908. Corporation counsel to conduct prosecutions.

40-909. Additional authority granted to Commissioner.

40-910. Separability of provisions.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 28:9-203, 28-3601, 35-1361.

#### § 40-901. Definitions.

For purposes of this chapter, unless the context requires a different meaning—

(1) "Commissioner" means the Commissioner of the District of Columbia, or his designated agent.

(2) "District" means the District of Columbia.

(3) "Finance charge" means the total amount to be added to the principal balance to determine the balance of the buyer's indebtedness to be paid under a retail installment contract.

(4) "Governmental charges" means the excise tax, personal property tax, inspection fee, registration fee, recording fee, and such other fees charged by any government, or otherwise authorized by law, incident to the transfer of title to a motor vehicle as the District of Columbia Council may by regulation include within such term.

(5) "Instrument of security" means any promissory note, retail installment contract, or other written promise to pay the unpaid balance of the total amount to be paid by a retail buyer of a motor vehicle.

(6) "Motor vehicle" means any automobile, mobile home, motorcycle, truck, truck tractor, trailer, semitrailer, or bus, but shall not include any boat trailer or any vehicle propelled or drawn exclusively by muscular power or designed to run only on rails or tracks.

(7) "Person" means an individual, firm, partnership, joint stock company, corporation, association, incorporated society, statutory or common law

trust, estate, executor, administrator, receiver, trustee, conservator, liquidator, committee, assignee, officer, employee, principal, or agent.

(8) "Principal balance" means the cash sale price of a motor vehicle, including accessories and equipment, plus the amounts, if any, included in the retail installment contract, if separate identified charges are stated therein, for insurance and governmental charges, less the amount of the purchaser's downpayment, if any, in money or goods or both.

(9) "Retail installment contract" means a contract entered into in the District or entered into by a seller licensed or required to be licensed by the District evidencing a retail installment transaction pursuant to which the title to or a lien on, or security or a security interest in, the motor vehicle, which is the subject matter of the transaction, is retained or taken to secure, in whole or in part, the retail buyer's obligations. The term includes a security agreement, chattel mortgage, conditional sale contract and a contract in the form of a bailment or a lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the value of the motor vehicle sold and it is agreed that the bailee or lessee is bound to become, or, for no further or a merely nominal consideration, has the option of becoming, the owner of the motor vehicle upon full compliance with the terms of the bailment or lease.

(10) "Retail installment transaction" means any transaction in which a retail buyer purchases a motor vehicle for a price in excess of the cash sale price and agrees to pay part or all of such price in one or more deferred installments.

(11) "Security interest" and "secured party" have the same meanings as those given to the terms in sections 28:1-201 and 28:9-105(i). (Apr. 22, 1960, 74 Stat. 69, Pub. L. 86-431, § 1; Dec. 30, 1963, 77 Stat. 771, Pub. L. 88-243, § 9.)

#### AMENDMENT

1963—Section 9(a) of act Dec. 30, 1963, amended paragraph (9) by adding the words "in whole or in part" after the words "to secure" in the first sentence, adding the words "security agreement" after the words "includes a" in the second sentence, and by striking the word "provisions" and substituting the word "terms" in the last sentence. Section 9(b) of the same act amended the section by adding paragraph (11) thereto.

#### EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 30, 1963, effective on Jan. 1, 1965. See note preceding article I of subtitle I of title 28.

#### EFFECTIVE DATE

Section 12 of act Apr. 22, 1960, provided that: "This Act [adding this chapter and amending § 47-2345] shall take effect on the thirtieth day after the date of enactment of this Act [Apr. 22, 1960]."

#### TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

#### TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(309) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the function of the Board of Commissioners, under subsection (4) with respect to including fees within the definition of the term "Governmental charges", to the District of Columbia Council,



subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

#### CROSS REFERENCE

Applicability of provisions of this chapter to transactions under article 9 of subtitle I, title 28, see § 28:9-203.

#### § 40-902. Maximum finance charges—Computation—Proportionate adjustments—Investigation of economic conditions to determine finance charges—Regulations—Classification of parties—Waiver.

(a) Notwithstanding the provisions of any instrument of security, refinancing contract, or other instrument to the contrary, made or entered into on or after the effective date of this chapter, no person shall charge, contract for, receive, or collect a finance charge if such charge exceeds the larger of \$25 or an amount determined under the following schedule:

Class 1. Any new domestic motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made and any new foreign motor vehicle—\$8 per \$100 per year.

Class 2. Any new domestic motor vehicle not in class 1 and any used domestic motor vehicle designated by the manufacturer by a year model of the same or not more than two years prior to the year in which the sale is made and used foreign motor vehicle not more than two years old—\$11 per \$100 per year.

Class 3. Any used motor vehicle not in class 2, and, if a domestic motor vehicle, designated by the manufacturer by a year model not more than four years prior to the year in which the sale is made, and, if a foreign motor vehicle, not more than four years old—\$14 per \$100 per year.

Class 4. Any used motor vehicle not in class 2 or class 3—\$16 per \$100 per year.

(b) The finance charge authorized by the preceding subsection shall be computed on the principal balance payable for a motor vehicle from the date of the instrument or contract until the maturity of the final installment, notwithstanding that the balance thereof is required to be paid in installments.

(c) For a period less or greater than twelve months or for amounts less or greater than \$100, the amount of the maximum charge set forth in the foregoing schedule shall be decreased or increased proportionately.

(d) The Commissioner shall from time to time investigate the economic conditions and other factors relating to and affecting finance charges, and shall ascertain all pertinent facts necessary to determine what maximum charges should be permitted in such transactions. Upon the basis of such ascertained facts, the District of Columbia Council, notwithstanding the provisions of the preceding subsections, shall from time to time by regulation or order determine and fix the maximum finance charges sufficiently high to result in a fair return on investment to persons engaged in the business of financing retail installment transactions, but not so high as to constitute an unreasonable economic burden on the purchasers of motor vehicles

under retail installment contracts. The Council may from time to time, upon the basis of changed conditions or facts, redetermine and refix any such maximum finance charge, but, before determining or redetermining any such maximum charge, the Council shall give reasonable notice of its intention to consider doing so, and provide a reasonable opportunity to persons desiring to be heard with respect to any such proposed determination or redetermination. Notice of the action proposed by the Council shall be published once a week for two consecutive weeks in one or more of the daily newspapers published in the District. Any such changed maximum finance charge shall not affect any pre-existing instrument of security lawfully entered into between the seller and the purchaser of any motor vehicle.

(e) (1) The Council is hereby authorized to make, and the Commissioner is authorized to enforce, such regulations as the Council in its discretion deems appropriate to carry out the purposes of this section and to prevent unconscionable practices in connection with retail installment transactions, including, without limitation, provisions:

(i) governing the form and substance of instruments of security;

(ii) requiring that installment payments under instruments of security be made in substantially equal amounts and at regular intervals except (1) that the interval for the first installment payment may be longer than the other intervals; (2) that the final installment payment may be less in amount than the preceding installment payments; (3) that where a buyer's livelihood is dependent upon seasonal or intermittent income, one or more installment payments in the schedule of payments included in any such instrument of security may be reduced or omitted; and (4) that any contract covering a new motor vehicle to be used primarily as a demonstrator sold to a bona fide motor-vehicle salesman employed by the seller shall be exempt from the requirement that installment payments be in substantially equal amounts;

(iii) requiring that amounts due under instruments of security may be prepaid in full and that the unearned charges, whether for finance, insurance, or for other purposes, attributable to or resulting from such prepayments shall be refunded or credited;

(iv) establishing maximum delinquency, collection, repossession and other charges;

(v) specifying the types and maximum amounts of insurance which may be required, at the expense of the retail buyer, to protect from loss the seller in a retail installment transaction or his assignee or any other person entitled to payments from a retail buyer under an instrument of security;

(vi) respecting the manner and methods of the sale or disposition of repossessed motor vehicles under such conditions, including, without limitation, rights of redemption, as the Council deems advisable;

(vii) requiring the books and records of persons engaged in the business of financing retail



installment transactions to be subject to production for examination by the Commissioner.

(2) The Council is further authorized, in its discretion, to make, and the Commissioner enforce, such additional regulations as it deems necessary to insure that purchasers of motor vehicles under instruments of security are not being required, directly or indirectly, to pay finance, insurance, or other charges in excess of those authorized by this chapter or by the Council pursuant to the authority vested in it.

(3) In exercising their powers and authority under this subsection (e), the Council is authorized, in its discretion, to make reasonable classifications (i) according to the parties to retail installment transactions, or (ii) according to the parties to the instruments of security, or (iii) according to the parties involved in repossessions, or (iv) according to other bases, or (v) according to two or more of the foregoing clauses (i) through (iv), and to exercise such powers and authority under this subsection with respect to any one or more of any classifications so made or with respect to all of said classifications.

(f) No provision shall be inserted in any retail installment contract whereby the buyer waives or purports to waive any provision of this chapter, and any such waiver or purported waiver shall be void and of no effect. The Council is authorized in its discretion, by regulation (1) to prohibit the inclusion in any retail installment contract of any provision waiving or purporting to waive any provision of any regulation promulgated by the Council relating to retail installment transactions, and (2) to provide that any such waiver or purported waiver, shall be void and of no effect. (Apr. 22, 1960, 74 Stat. 69, Pub. L. 86-431, § 2.)

#### TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402 (310 to 314) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsections (d), (e) (1), (2), (3) and (f) in the particulars described in pars. 310 to 314, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

#### NOTES TO DECISIONS

##### Insurance regulations

Statute authorizing District Commissioners to make regulations specifying types and maximum amount of insurance which may be required of automobile buyer to protect seller from loss on installment contract, authorized Commissioners to specify what charges may be included in installment contracts. *Franklin Investment Co., Inc. v. W. N. Tobriner etc.* (1961, 296 F. 2d 451, 111 U.S. App. D.C. 329)

#### § 40-903. Bonding of automobile dealers and applicants—Liability Insurance—Designation of Commissioner as agent for service of process—Limitation on bonds—Action on bonds.

(a) In connection with the licensing of persons under the authority of chapter 23 of title 47, the District of Columbia Council is authorized to require either bonds or such other security as it may by regulation deem necessary, of persons licensed to

engage in the business of buying or selling motor vehicles and of persons licensed to engage in the business of purchasing contracts for the retail installment sales of motor vehicles, and the Council may, from time to time, and in its discretion, establish classes and subclasses of such persons and, subject to subsection (b) of this section, specify the amount and conditions of the bond to be deposited by each of the members of any such class or subclass. In connection with the licensing of said persons, and the bonding of the members of any class or subclass of the said persons, the Council, in its discretion, may by regulation require applicants for licenses:

(1) to furnish and keep in force a bond running to the District, or other security, to protect members of the public against financial loss by reason of the failure of the licensee or of any officer, agent, employee, or other person acting on behalf of said licensee, to observe any law or regulation in force in the District of Columbia applicable to the licensee's conduct of the licensed business;

(2) to procure and keep in force public liability insurance or property damage insurance, or both;

(3) to appoint the Commissioner as their true and lawful attorney upon whom all judicial and other process or legal notice directed to such person may be served.

(b) The bonds authorized by this section shall be corporate surety bonds in amounts to be fixed by the Commissioner, but no bond shall exceed \$25,000, and such bond shall be conditioned upon the observance by the licensee and any officer, agent, employee, or other person acting on behalf of said licensee, of all laws and regulations in force in the District applicable to the licensee's conduct of the licensed business, for the benefit of any person who may suffer damages resulting from the violation of any such law or regulation by or on the part of such licensee or any officer, agent, employee, or other person acting on behalf of the licensee.

(c) Any person aggrieved by the violation of any law or regulation applicable to the licensee's conduct of the licensed activity shall have, in addition to his right of action against such licensee, a right to bring suit against the surety on a bond authorized by this section, either alone or jointly with the principal thereon, and to recover in an amount not exceeding the penalty of the bond any damages sustained by reason of any act, transaction, or conduct of the licensee, or of any officer, agent, employee, or other person acting on behalf of said licensee, which is in violation of law or regulation in force in the District relating to the licensed activity. The provisions of the second, third, and the fifth subparagraphs of paragraph (b) of section 1-244, shall be applicable to each bond authorized by this section as if it were the bond authorized by the first subparagraph of such paragraph (b) of section 1-244: *Provided*, That nothing in this subsection shall be construed to impose upon the surety on any such bond a greater liability than the total amount thereof or the amount remaining unextinguished after any prior recovery or recoveries. (Apr. 22, 1960, 74 Stat. 71, Pub. L. 86-431, § 3.)



## TRANSFER OF FUNCTIONS TO COMMISSIONER AND COUNCIL

Section 402(315) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (a) in the particulars described in par. 315, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1. Section 401 of the Plan transferred all other functions of the Board of Commissioners under this section to the Commissioner of the District of Columbia.

## § 40-904. Delegation of functions—Exception.

With the exception of the function of making regulations to carry out the purposes of this chapter, the Commissioner is authorized to delegate, with power to redelegate, any of the functions vested in him by this chapter. (Apr. 22, 1960, 74 Stat. 73, Pub. L. 86-431, § 5.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## CROSS REFERENCE

Authority of Commissioner and Council to delegate functions vested in them by Reorg. Plan No. 3 of 1967, see §§ 205 and 305 of the Plan set out in the Appendix to title 1.

## § 40-905. Promulgation of regulations—Public hearings.

The District of Columbia Council is authorized to promulgate regulations to carry out the purposes of this chapter: *Provided*, That no such regulation shall become effective until after a public hearing has been held thereon. (Apr. 22, 1960, 74 Stat. 73, Pub. L. 86-431, § 6.)

## TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(316) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory function of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

## § 40-906. False statements.

No person shall make any statement required or authorized by this chapter to be filed with the Commissioner, knowing that the information set forth in such statement is false. (Apr. 22, 1960, 74 Stat. 73, Pub. L. 86-431, § 7.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## § 40-907. Penalties.

Any person who shall violate any provision of this chapter or of any regulation promulgated by the District of Columbia Council under the authority of this chapter, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding \$500 or by imprisonment for not more than six months, or both. (Apr. 22, 1960, 74 Stat. 73, Pub. L. 86-431, § 8.)

## CODIFICATION

Reference to the District of Columbia Council was substituted for "Commissioners" on authority of §§ 40-901

to 40-903 and 40-905 of this chapter and section 402(309 to 316) of Reorg. Plan No. 3 of 1967, under which the regulations are prescribed by the Council.

## § 40-908. Corporation counsel to conduct prosecutions.

Prosecutions for violations of this chapter, or of the regulations made pursuant thereto, shall be conducted in the name of the District by the Corporation Counsel or any of his assistants. As used in this chapter the term "Corporation Counsel" means the attorney for the District, by whatever title such attorney may be known, designated by the Commissioner to perform the functions prescribed for the Corporation Counsel in this chapter. (Apr. 22, 1960, 74 Stat. 73, Pub. L. 86-431, § 9.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## § 40-909. Additional authority granted to Commissioner.

The authority and power vested in the Commissioner by any provision of this chapter shall be deemed to be additional and supplementary to authority and power now vested in him, and not as a limitation. (Apr. 22, 1960, 74 Stat. 73, Pub. L. 86-431, § 10.)

## TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

## § 40-910. Separability of provisions.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not effect other provisions or the application of this chapter which can be effected without the invalid provision or application, and to this end the provisions of this chapter are severable. (Apr. 22, 1960, 74 Stat. 73, Pub. L. 86-431, § 11.)

## Chapter 10.—MOTOR VEHICLE OPERATORS—IMPLIED CONSENT TO BLOOD-ALCOHOL CONTENT TESTS

## Sec.

## 40-1001. Definitions.

## 40-1002. Implied consent to blood-alcohol content tests—Administration—Accidents.

## 40-1003. Blood tests—Physician or nurse to withdraw blood—Additional test by private physician.

## 40-1004. Test information—Availability.

## 40-1005. Test refusal—Penalty—Incapacitated person—Use of evidence.

## 40-1006. License revocation or denial order—Hearing.

## 40-1007. Judicial review.

## § 40-1001. Definitions.

As used in this chapter—

(1) The term "Commissioner" means the Commissioner of the District, or his designated agent;

(2) The term "District" means the District of Columbia;

(3) The term "license" means any operator's permit or any other license or permit to operate a motor vehicle issued under the laws of the District, including—

(A) any temporary or learner's permit;



(B) the privilege of any person to drive a motor vehicle whether or not such person holds a valid license; and

(C) any nonresident's operating privilege;

(4) The term "nonresident" means every person who is not a resident of the District;

(5) The term "nonresident's operating privilege" means the privilege conferred upon a nonresident by the laws of the District relating to the operation by such person of a motor vehicle, or the use of a vehicle owned by such person, in the District; and

(6) The term "police officer" means an officer or member of the Metropolitan Police force, the United States Park Police force, or the Capitol Police force, or any other person actually and officially engaged in the performance of police duties in connection with guarding the property of the United States or of the District.

(7) The term "specimen" means that quantity of a person's blood, breath, or urine necessary to conduct a chemical test or tests to determine blood alcoholic content. (Oct. 21, 1972, Pub. L. 92-519, § 1, 86 Stat. 1016.)

#### SHORT TITLE

Section 9 of Act Oct. 21, 1972, Pub. L. 92-519, provided: "This Act [enacting this chapter and amending § 40-609a] shall be known and may be cited as the 'District of Columbia Implied Consent Act'."

#### § 40-1002. Implied consent to blood-alcohol content tests—Administration—Accidents.

(a) Any person, other than one described in subsection (b) of this section, who operates a motor vehicle within the District shall be deemed to have given his consent, subject to the provisions of this chapter, to two chemical tests of his blood, breath, or urine, whichever he may elect, for the purpose of determining blood-alcohol content. However, when the election of a particular test, such as a blood test requiring a physician or registered nurse, causes unreasonable delay or inconvenience, the arresting officer or other appropriate law enforcement officer shall elect which chemical test should be administered. In such a case, the operator can only object to a particular test on valid religious or medical grounds. The tests shall be administered at the direction of a police officer who, having arrested such person for a violation of law, has reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle within the District while under the influence of intoxicating liquor.

(b) Any person who operates a motor vehicle within the District of Columbia and who is involved in a motor vehicle collision or accident in which death or personal injury results shall submit, subject to the provisions of this chapter, to two chemical tests of his blood, breath, or urine, for the purpose of determining blood alcoholic content whenever a police officer (i) arrests such person for a violation of law, and (ii) has reasonable grounds to believe such person to have been driving or in actual physical control of a motor vehicle within the District while under the influence of an intoxicating liquor. However, when the election of a particular test, such as a blood test requiring a physician or registered

nurse, causes unreasonable delay or inconvenience, the arresting officer or other appropriate law enforcement officer shall elect which chemical test should be administered. In such a case, the operator can only object to a particular test on valid religious or medical grounds. (Oct. 21, 1972, Pub. L. 92-519, § 2, 86 Stat. 1017.)

#### CROSS REFERENCE

Operating vehicle while under the influence of intoxicating liquor and in violation of law, prima facie evidence of intoxication, see § 40-609a.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40-1005.

#### § 40-1003. Blood tests—Physician or nurse to withdraw blood—Additional test by private physician.

Only a physician or registered nurse acting at the request of a police officer may withdraw blood for the purpose of determining the alcoholic content thereof. This limitation shall not apply to the taking of a breath or urine specimen. The person tested may, in addition to submitting to the two tests administered at the direction of a police officer, also submit to a chemical test or tests administered to him by a physician, registered nurse, or other person of his own choosing who is qualified to administer such test or tests. The failure or inability to obtain an additional test by a person shall not preclude the admission of the tests taken at the direction of a police officer. (Oct. 21, 1972, Pub. L. 92-519, § 3, 86 Stat. 1017.)

#### § 40-1004. Test information—Availability.

Full information concerning the tests administered under this chapter shall be made available to the person from whom a specimen was obtained. Prior to administering the tests the police officer shall advise the operator of the motor vehicle about the requirements of this chapter. (Oct. 21, 1972, Pub. L. 92-519, § 4, 86 Stat. 1017.)

#### § 40-1005. Test refusal—Penalty—Incapacitated person—Use of evidence.

(a) If a person under arrest refuses to submit to chemical testing as provided in section 40-1002(a) he shall be informed that failure to submit to such test will result in the revocation of his license. If such person, after having been so informed, still refuses to submit to chemical testing, no test shall be given, but the Commissioner, upon receipt of a sworn report of the police officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highways while under the influence of intoxicating liquor, and that the person had refused to submit to the two tests, shall revoke his license for a period of six months; or if the person is a resident without a license to operate a motor vehicle in the District, the Commissioner shall deny to the person the issuance of a license for a period of six months after the date of the alleged violation, subject to review as hereinafter provided.

(b) Any person who is unconscious, or who is otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by section 40-1002 and the two



tests may be given; except, that if such person thereafter objects to the use of the evidence so secured, such evidence shall not be used and the license of such person shall be revoked, or, if he is a resident without a license, no license shall be issued to him for a period of six months. (Oct. 21, 1972, Pub. L. 92-519, § 5, 86 Stat. 1018.)

**§ 40-1006. License revocation or denial order—Hearing.**

(a) Whenever any license has been revoked or denied under the provisions of this chapter, the reasons therefor shall be set forth in the order of revocation or denial, as the case may be. Such order shall take effect five days after service of notice on the person whose license is to be revoked or who is to be denied a license unless such person shall have filed within such period written application with the Commissioner for a hearing. Such hearing by the Commissioner shall cover the issues of—

(1) whether a police officer had reasonable grounds to believe such person had been driving

or was in actual control of a motor vehicle upon the public street or highway while under the influence of intoxicating liquor; and

(2) whether such person, having been placed under arrest, refused to submit to the test or tests, after having been informed of the consequences of such refusal.

(b) If, following the hearing provided in subsection (a) of this section, the Commissioner shall sustain the order of revocation, the same shall become effective immediately. (Oct. 21, 1972, Pub. L. 92-519, § 6, 86 Stat. 1018.)

**§ 40-1007. Judicial review.**

Any person aggrieved by a final order of the Commissioner revoking his license or denying him a license under the authority of this chapter, may obtain a review thereof in accordance with section 1-1510. (Oct. 21, 1972, Pub. L. 92-519, § 7, 86 Stat. 1018.)















